
(1987) 07 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2168 of 1987

Chopra Fabricators and Manufacturers Pvt. Ltd., Allahabad
and Another

APPELLANT

Vs

U.P. State Industrial Development Corporation Ltd., Lucknow
and Others

RESPONDENT

Date of Decision : 15-07-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1988 All 21

Hon'ble Judges : R.M. Sahai, J;Om Prakash, J

Bench : Division Bench

Advocate : Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash, J.—The allotment of the three plots : D-1, D-2 and D-3 situate in Industrial Area, Naini, Allahabad, for which the petitioner No. 1, which was then a partnership firm (hereinafter referred to as the "petitioner") applied, having been refused by the respondent No. 1 to the petitioner and their allotment having been made in favour of the respondent No. 2 instead, the petitioner filed this writ petition praying: (i) that the allotment of the aforesaid plots in favour of the respondent No. 2 be quashed; (ii) that the respondent No. 1 be restrained from delivering possession of the, aforesaid plots to the respondent No. 2 and (iii) that a writ of mandamus be issued to the respondent No. 1 directing it to allot the plots in question to the petitioner.

2. The petitioner while applying for the allotment of the aforesaid plots, claimed the status of partnership, but later, it was incorporated under the Companies Act, 1956. The facts, as briefly stated, are that the petitioner carried on business of fabricating and manufacturing at their business premises, viz. 14 Mayo Road, Allahabad When the respondent No. 1 published a scheme for allotment of plots in the Industrial Area, Naini, Allahabad, the petitioner specifically applied for the

aforementioned plots having a total area of 15 acres, vide application dated 28th July, 1985, which is Annexure "1" to the writ petition. The petitioner paid Rs. 100/- as application fee and deposited the earnest money, aggregating to Rs. 7500/-. The respondent No. 1 duly acknowledged the receipt of the application (Annexure "1"). In the said application, the petitioner clearly stated that the running unit situated at 14, Mayo Road, Allahabad, would be expanded and that the expansion would be completed within two years. The respondent No. 1 addressed a letter dated 22nd Aug. 1985 (Ann. 4 to the writ petition) to the petitioner requiring it to attend an interview on 2nd Sept. 1985, when the allotment committee proposed to consider the project of the petitioner and also by that letter, the latter was called upon to furnish a project report of its unit in duplicate and a letter from the General Manager District Industrial Centre (GMDIC, Allahabad) agreeing to the transfer of unit from Mayo Road, Allahabad. The G.M.D.I.C. gave the requisite certificates, which are annexures "5" and "6" to the writ petition. In these certificates, the G.M.D.I.C also stated that since the petitioner possessed a running unit, no project report was needed. The respondent No. 1 again vide letter dated 31st Sept. 1985 (Ann. 7 to the writ petition) reiterated that the project report in duplicate be furnished, inter alia. Thereafter, the petitioner says that nothing was heard from the respondent No. 1 regarding allotment of the plots despite frequent reminders being sent to and several meetings held with it. The petitioner to its surprise received an information on 5-2-1987 from the respondent No. 1 that the plots in question had been allotted to the respondent No. 2 on 12-1-1987. It is averred by the petitioner that the respondent No. 1 having accepted the earnest money, was bound to allot the plots, which the petitioner specifically applied for under application (Ann. "1" to the writ petition) and that the allotment of the said plots in favour of the respondent No. 2 by the respondent No. 1, is arbitrary and violative of Article 14 of the Constitution of India. In the rejoinder affidavit, the petitioner stated that in all other cases, the respondent No. 1 allotted the plots to all the applicants which they applied for and that the allotment was made on "first come first serve" basis, but departure was made from this practice only in the case of the petitioner.

3. Both the respondents filed their separate counter-affidavit. Firstly, we refer to the counter-affidavit of the respondent No. 1. Pithily, the averment of the respondent No. 1 is that the petitioner deliberately omitted to submit the project report, because it could not justify the acquisition of 15 acres of land for the shifting of the unit, which is situated at 14, Mayo Road, Allahabad, on an area, being less than 2400 sq. yards. It is contended that the petitioner was called upon time and again to furnish the project report to satisfy the respondent No. 1 its genuine requirement of 15 acres of land, but never the compliance was made. It is averred in para 10 of the counter-affidavit, filed by the respondent No. 1 that the petitioner runs its unit on a small scale and 15 acres of land was not genuinely needed for shifting the running unit. It is stated that the establishment of the petitioner consists of only 16 workers and for the running unit, load of 50

horse power only was contracted upon. For the year 1986, the respondent No. 1 averred that in the application, filed before the Inspector of Factories, the petitioner showed the total strength of workers being 17 only. The case is that the running unit is situated over a small plot having irregular size, total area of which is not more than 2400 sq. yards. It is stated that all the machineries belonging to the petitioner, situate over an area admeasuring 153 sq. feet. It is also averred that the petitioner has not paid provident fund on the ground that it has less than 28 workers in its establishment. In para 11, looking to the size of the running unit of the petitioner, the respondent No. 1 averred that the petitioner does not require more than 1/2 acre land for its factory. It is stated that to prevent the respondent No. 1 from having the correct assessment of the area genuinely needed by the petitioner, the submission of the project report was deliberately avoided.

3A. In its counter-affidavit, the respondent No. 2 averred that no hint was given to it that the allotment of, the plots in question was under consideration for the petitioner. It is stated that negotiations were held at a high level and considering the genuine need of the respondent No. 2, roughly 54 acres of land was allotted to it.

4. The petitioner filed rejoinder affidavit, but the averments made in para 10 of the counter-affidavit, have not been controverted. The petitioner, however, stated that more land was required for expanding the running unit.

5. When the application vacating the stay order dated 12-2-1987 came up for hearing, learned counsel for the parties advanced arguments at some length and, therefore, we thought it fit to dispose of the writ petition itself than disposing of the application vacating the stay order only. Both the parties agreed to this course, as the counter and rejoinder affidavits have been exchanged and no more material was needed to dispose of the writ petition. This is how we took up the writ petition for final disposal.

6. Sri Sudhir Chandra, learned counsel for the petitioner, submitted before us that the respondent No. 1 being an authority within the meaning of Art 12 of the Constitution of India, is amenable to writ jurisdiction and, therefore, if the action of the respondent No. 1 is arbitrary, the same is liable to be struck down being violative of Art 14. It is not disputed that the respondent No. 1 is an authority within the meaning of Article 12. In the case of *E.P. Royappa Vs. State of Tamil Nadu and Another*, the Supreme Court held that Art 14 strike at arbitrariness in State action and ensure fairness and equality of treatment. Article 14 requires that the State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any "extraneous or irrelevant considerations, because that would be denial of equality. It was also held that where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. The Supreme

Court added that mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice, in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16. The legal proposition so enunciated by the Supreme Court for the first time in E P. Royappa's case, has been consistently followed in the later cases. What follows from this authority is that if a State action is mala fide, then that is arbitrary, because an arbitrary action comprehends mala fide, exercise of power,

7. The question for consideration in the instant case : whether the action of the respondent No. 1 in not having allotted the plots : D-1, D-2 and D-3 is arbitrary ? Whereas, the contention of the respondent No. 1, briefly, is that the petitioner having failed to establish its genuine need for the acquisition of the aforesaid plots having 15 acres area, was not entitled to secure allotment of the said plots, the contention of the petitioner is that in the past; plots were allotted on first come first serve basis and the petitioner having been the first applicant for these plots, was entitled to secure allotment and that the denial of allotment by the respondent No. 1 was arbitrary.

8. Development either of industrial area or of residential colonies involves huge expenditure of Government exchequer. The Government, therefore cannot afford to waste the developed area. It becomes the duty of the Government to prevent any kind of misuse of the land, developed incurring considerable public funds. The underlying idea behind the, allotment is to ensure systematic and rapid growth of industries in a town or in a Province. Before making allotment, the respondent No. 1 which is responsible for the development of industrial area, is under legal obligation to ensure that every inch of the developed area is used "for nothing but for the industrial growth. The question then arises as to how will this duty be discharged by the respondent No. 1? The plain answer is that the respondent No. 1 will have to satisfy in each case whether the land applied for is genuinely needed by the applicant With a view to ensuring the genuine need, the respondent No. 1 called upon the petitioner to submit "Project report" and rough lay out plan under Annexures 4 and 7 to the writ petition. From Annexure 4 to the writ petition dated 22-8-1985, it appears that the petitioner was required to attend an interview, scheduled to be held on 2-9-1985, when the Allotment Committee was supposed to consider the project report of the petitioner. It was made clear in Annexure "4" that the Allotment Committee will not entertain the petitioner's application in absence of any papers, specified therein. By means of Ann. "4", the petitioner was called upon to submit project report and the letter from G.M. D. I. C. Allahabad relating to transfer of Unit from Mayo Road Allahabad, to Naini Industrial Area. Whereas, the petitioner furnished the letter from G.M.D.I.C. agreeing to the transfer of Unit from the existing premises, viz. 14, Mayo Road, Allahabad to Naini Industrial Area; it failed to furnish project report. Sri Sudhir Chandra drew our attention to Anns. "5" and "6" to the writ petition, which are the letters from G.M.D.I.C. Allahabad. Whereas, the G.M.D.I.C. Allahabad had no objection in regard to shifting of the petitioner's Unit from 14, Mayo Road, Allahabad, is less than

2,400 square yards, (sic) The area occupied by the entire machinery belonging to the petitioner at the aforesaid premises, is 153 square yards and the petitioner has contracted total load of 50 horse power only. This gives a full idea of the size of the petitioner's unit. These facts have not been controverted in the rejoinder-affidavit. The size of the existing factory can hardly justify the acquisition of 15 acres of land in the attractive and well planned industrial area at Naini, Allahabad. The petitioner was well conscious of this fact and that was why in its application (Ann. "1" to the writ petition) it stated at several places that it required 15 acres of land for expansion of its existing unit.

9. What is the nature or magnitude of expansion? This can be gathered only from the project report. It is only the project report which can throw a light on the fact as to how much more machinery would be added and how much space that would require. If the Running Unit is to be shifted as such to the new site, then, of course, one can understand that no project report is necessary, because ordinarily, project report would be needed only in the case of new set up or establishment. Shifting of the running unit may not amount to a new set up, but when a running Unit is to be expanded that postulates set up of new machineries and, therefore, project report becomes a necessary document. The reason given by the G.M.D.I.C is, therefore, no reason, much less a good reason. The respondent No. 1 required the petitioner to submit the project report under Anns. "4" and "7" to the writ petition. The petitioner was required to obtain a certificate only to approve transfer of the Unit from 14, Mayo Road, Allahabad to Naini Industrial Area from the G.M.D.I.C. Allahabad under Ann. "4" to the writ petition. We fail to comprehend as to how did the G.M.D.I.C. plead the case of the petitioner, so far as the production of project report is concerned. G.M.D.I.C. is not an authority on the point whether or not on the facts and circumstances of this case, a project report is necessary. The intervention of the G.M.D.I.C Allahabad in this regard was wholly uncalled for and its opinion that no project report is needed in the case of petitioner, is wholly misconceived. It is not a case merely of shifting of a running unit from one premises to another, but the case of the petitioner all along has been of expansion to justify acquisition of a far larger area, which is not needed at all for the running Unit.

10. The petitioner having failed to submit the project report, which alone would have satisfied the respondent No. 1 in regard to the acquisition of 15 acres of land, which is far in excess than the area currently occupied by the running Unit, we are of the opinion that the respondent No. 1 rightly ignored the case of the petitioner for the allotment of plots: D-1, D-2 and D-3 in Naini Industrial Area.

11. The submission of Sri Sudhir Chandra was that the respondent No. 1 allotted the plots hitherto on first come first serve basis. He submitted that the petitioner was the first applicant for these plots and, therefore, was entitled to secure their allotment. Even if it is assumed to be correct that the respondent No. 1 followed the first come first served basis so far, the petitioner cannot successfully contend that the action of the respondent No. 1 in not having allotted the plots in

question to the petitioner, is arbitrary. Satisfaction about the genuine need of the petitioner is a prerequisite condition, which is inherent and implicit in the scheme of allotment of the respondent No. 1. It is only when the respondent No. 1 feels satisfied about the genuine need of the applicant, then only the question of following the first come first serve basis would arise. Such a basis will be made applicable only to the eligible and qualified applicants. If an applicant fails to submit a project report and, consequently, fails to establish its genuine need for the land, the question of making allotment following the first come first serve basis, does not arise. The petitioner was rendered disqualified and ineligible right at the stage, when it failed to satisfy the respondent No. 1 that it genuinely needed 15 acres land for expansion of the Unit. By virtue of Ann. "4" to the writ petition, in which it is clearly stated that the Allotment Committee will not entertain application in absence of any specified paper being produced, the petitioner could not press upon the respondent No. 1 to consider its application, but the respondent No. 1 has shown a good gesture by having offered to the petitioner some other suitable land in Naini Industrial Area for shifting its running Unit.

12. Then Sri Sudhir Chandra submitted that the respondent No. 1 gave up the requirement of the production of the project report. He drew our attention to the petitioner's letters relating to the period, ranging from September, 1985 to June, 1986, which are Anns. "1" to "4" to the rejoinder-affidavit dated 24/25th March, 1987. By means of these letters, the petitioner requested the respondent No. 1 that it having complied with all the conditions and formalities, the plots applied for, be allotted to it. The submission is that these letters were not replied by the respondent No. 1 and that the latter did not press for the production of the project report having received such letters. This is how it is argued that the respondent no. 1 gave up the requirement of the Project report There is nothing on record to show that the respondent No. 1, ever dispensed with the production of the project report, nor can it be done, because otherwise the respondent No. 1 could not possibly satisfy itself in regard to the genuine need of the petitioner. The petitioner's application (Ann. "1" to the writ petition), which is on printed form, is dated 28-/1985. The respondent No. 1 sent two communications dated 22-8-1985 and 31-9-1985, being Anns. "4" and "7" to the writ petition, requiring it to furnish the project report inter alia. At no stage thereafter did the petitioner address any letter to the respondent No. 1 that it be absolved from the obligation of furnishing the project report. It is only the G.M.D.I.C Allahabad, who stated under the letters dated 29-8-1985 and 31-7-1985, being Anns. "5" and "6" respectively to the writ petition then in case of a running Unit, no project report was required. When the petitioner made no request to the respondent No. 1 to exempt it from furnishing the project report, the question of giving up the requirement of the project report does not arise. It is noteworthy that whereas, the G.M.D.I.C Allahabad stated in last letter dated 29-8-1985 (Ann. "5" to the writ petition) that there was no relevance of a project report in the case of a running Unit, the respondent No. 1 having not agreed with the view point of the

G.M.D.I.C Allahabad, sent a communication dated 31st Sept. 1985, being Annexure "7" to the writ petition, reiterating the production of the project report. So the facts on record do not prove the case of the petitioner that the project report was dispensed with, but otherwise that despite the opinion of the G.M.D.I.C the respondent No. 1 pressed upon the petitioner to furnish the project report.

13. It was also urged by Sri Sudhir Chandra that the respondent No. 1 having accepted the earnest money aggregating to Rs. 7500/- was under legal obligation to allot the plots in question to the petitioner. Receipt of the earnest money is no commitment or guarantee for the allotment of plots. Only those applicants, who deposited the earnest money, become qualified for being considered. Having accepted the earnest money from one applicant, the respondent No. 1 is not estopped from allotting the land to another applicant.

14. There is no case of the petitioner that it has been discriminated against other applicants similarly situated, meaning thereby, that the allotment has been made to others without having the satisfaction about the genuine need. Even if there is any such instance that would be a hard case, where the respondent No. 1 failed to discharge its duty, i.e. allotting the land to a person who does not genuinely need it. But on that ground, refusal of allotment to the petitioner on the facts and circumstances of its case, will not become arbitrary. There is no arbitrariness or mala fide on the part of the respondent No. 1 in having called upon the petitioner to furnish the project report. The petitioner running a small Unit in small area cannot justify the requirement of 15 acres of land, unless established by project report or by any other convincing document that extra land is required for the purpose of expansion of the existing Unit. Requirement of the project report is not arbitrary, but absolutely necessary to ensure rapid industrial development over the precious land, developed at the public cost. Land is not allotted merely for asking to those who whimsically demand it without having a genuine need. "General conditions for allotment of plots and grant of lease" are contained in the printed application form itself, which the petitioner submitted being Ann. "1" to the writ petition. Condition No. 4 of general conditions runs as follows : --

"The Corporation reserves the right to make its own assessment of the requirement of land and is not bound to make allotment according to the demand made in the application....."

Since the petitioner made the application on a printed form containing such general conditions, it is presumed to have full knowledge of this condition and in the face of this, the petitioner cannot urge that it became entitled to get the plots specified in the application or that the respondent No. 1 was legally obliged to allot them, without making any investigation into the case.

15. Lastly, it was argued by Sri Sudhir Chandra that ignoring the claim of the petitioner, the respondent No. 1 arbitrarily allotted the plots in question, inter

alia, to the respondent No. 2 on 12-1-1987 the intimation of which was given to the petitioner on 5th Feb. 1987, without any application of the respondent No. 2 in that behalf at the time, when the petitioner applied for those plots. The respondent No. 2 filed a counter-affidavit and stated that it is a public limited company having its registered office at Calcutta. It is a Government company set up to carry on business of manufacturing telecommunication cables and wires. The company has been allotted total land of about 54 acres including the plots: D-1, D-2 and D 3 in Naini Industrial Area. It is stated that the site of this company was chosen in the interest of the general public of Allahabad in particular and of the Uttar Pradesh in general. In the case of Government company it is implied that deep study must have been made by the Government in regard to the need of 54 acres. The public of any district or of any province can on having such a big company, which can bring the district or the province on the map of industrially developed area, the respondent No. 1 has committed no wrong in having allotted the plots in question, inter alia, to the respondent No. 2, which is a far bigger Unit and which will substantially contribute to the industrial growth not only of district Allahabad but of the province as a whole. Highly industrially developed areas or the areas developed for residential colonies should not be allotted to those who have merely a pride of possession by having surplus land with them, but it should be allotted only to those who are in dire necessity of having an industry or a residential building, as the case may be, thereon.

16. If the land goes to those who do not need it then that will not be merely a national waste, but that will not permit the underlying idea behind such scheme to be fulfilled. The result would be that in case of a residential colony, plots would remain lying vacant depriving the multitude of the modest shelter on their head, and the plots in an industrial area will remain idle depriving the enthusiastic entrepreneurs, who by heart wish to contribute their mite to the rapid industrial growth of the nation. Tendency of the industrialists of hoarding the land, cheaply available from Government undertakings, is not only to be deprecated but that has to be curbed vigilantly.

17. For the reasons, we are of the opinion that this is not a fit case to make interference under Article 226 of the Constitution.

18. In the result, the petition fails and is dismissed. Looking to the facts and circumstances of the case we do not make order for costs. The stay order dated 12-2-1987 is vacated.