(2009) 03 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : RA No. 132 of 2008 in CWP No. 11501 of 2007

Court on its own motion — APPELLANT

Vs

Haryana Urban Development Authority and Others — RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 — Section 15

Citation : (2009) 03 P&H CK 0073

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of R.A. No. 132 of 2008 in CWP No. 11501 of 2007 and R.A. No. 418 of 2008 in CWP No. 9962 of 2007. These review applications are directed against the judgment passed in the case of Delhi Assam Roadways Corporation Ltd. v. The Haryana Urban Development Authority and Ors. C.W.P. No. 7790 of 2007 decided on 13.3.2008 disposing of a bunch of petitions including C.W.P. Nos. 11501 and 9962 of 2007. The principal ground raised in these applications has been that the applicant, namely, M/s. B.R.C. Electronics Private Limited (for brevity, ''the applicant-company''), which was impleaded as respondent Nos. 6 and 28 in C.W.P. No. 11501 of 2007 and C.W.P. No. 9962 of 2007 respectively, was not served in the writ proceedings and, therefore, no order dated 13.3.2008 could be deemed to have been passed prejudicing their interests.

2. We had issued notice of the review applications to the non-applicant-HUDA and others. After ascertaining that the applicant-company, was not served in the writ proceedings, we granted time to file its written statements, vide order dated 28.11.2008. Accordingly, the written statements have been filed and we have heard the matter afresh.

3. The facts are already recorded in detail alongwith various other contentions and conclusions in the judgment dated 13.3.2008 rendered in the case of Delhi Assam Roadways Corporation Ltd. (supra) and, therefore, we do not feel the necessity of repeating those facts and numerous contentions, which have been raised in detail by the Amicus Curiae as well as learned Counsel for the respondents. However, the additional facts, which have been highlighted in the written statement filed by the applicant-company are hereby noticed.

4. The applicant-company is a private limited company having its office at Chopra House, Sultanpur, Mehrauli, New Delhi. The applicant company is stated to have been incorporated on 9.9.2005. A Memorandum of Understanding (MOU) dated 20.2.2006 was entered into by the company with M/s. Elixir Web Solutions (EWS), F-24, Kalka Ji, New Delhi (A-3). According to the MOU the applicant-company and M/s. Elixir Web Solutions had agreed to establish a State of Art Staff Education and Training Centre. The MOU alongwith other documents were duly submitted by the applicant-company to the HUDA at the time of submission of application form for allotment of plot which was made on 9.3.2006. It is specifically averred that application was made for allotment of half acre of plot in Sector 44. A detailed project report by the applicant-company for setting up a Staff Education and Training Centre was also submitted alongwith the application (A-4). The authorized representative of the applicant-company had appeared before the Screening Committee for interview in relation to the allotment of a plot, which resulted into issuance of offer letter dated 28.9.2006 by the Estate Officer, HUDA, Gurgaon, proposing allotment of half acre plot, bearing No. 66 in Sector 32, Gurgaon, instead of plot in Sector 44(A-5). According to the averments made in the written statement, Sectors 32 and 44 are in close proximity to each other and the rates of both the sectors are the same. The area of Sector 44 is better than the area of Sector 32 because it is nearer to the proposed metro rail and proposed metro station. The offer made by the HUDA was accepted by the applicant-company and vide letter dated 8.9.2006 an amount of Rs. 43,12,500/ - was deposited in addition to the earnest money of Rs. 26,25,000/ - (A-6). Thereafter allotment letter dated 26.9.2006 was issued by the Estate Officer, Gurgaon, to the applicant-company and possession was also offered as per Clause 7 of the allotment letter (A-7). According to Clause 18 of the allotment letter the applicant-company was to complete the construction within two years from the date of offer of possession. The applicant-company was given possession on 8.11.2006 in terms of possession certificate (A-8). After taking possession and on payment of balance consideration of Rs. 1,53,00,000/ -, a conveyance deed dated 16.5.2007 (A-9) was executed between HUDA and the applicant-company for a total consideration of Rs. 2,70,98,750/ -. During the period between allotment of the plot and the execution of conveyance deed, the applicant-company applied to the Haryana Financial Corporation (HFC) for grant of loan of Rs. 500 lacs, which was sanctioned vide letter dated 27.2.2007 (A-10). After the sanction of loan, the applicant-company submitted an application on 29.5.2007 to the Estate Officer, HUDA, Gurgaon, for grant of permission to

mortgage the plot with the HFC (A-11) and it was permitted to do so vide letter dated 30.5.2007 (A-12). After the grant of permission, the plot was mortgaged by the applicant-company with the HFC and lien to that effect was also entered by the Estate Officer, HUDA, Gurgaon, in their records, vide Memo dated 14.6.2007 (A-13). A proposed building plan was also sanctioned by the HUDA authorities on 5.4.2007 (A-14). Thereafter construction was started by the applicant-company over the plot. A DPC certificate dated 8.10.2007 was issued by HUDA Sub Division (Survey), Gurgaon, on completion of construction upto plinth level (A-15). It is averred that till the receipt of order dated 13.3.2008 passed by this Court, the applicant-company had raised construction of 7 storey building.

5. Mr. Chandhok, learned senior counsel for the applicant- company has argued that the writ petition challenging allotments made in favour of the applicant-company and other respondents was filed in July, 2007 and stay order was passed on 7.7.2007. According to the learned Counsel the applicant-company has not only taken loan on 27.2.2007 but has also raised seven storey construction after due sanction of the building plan on 6.4.2007. He has emphasized that conveyance deed was executed on 16.5.2007 and property was mortgaged thereafter with the consent of the HUDA authorities. His main plank of argument is that even if allotment made to the applicant-company suffers from illegality, violation of rules and the Constitution, there is material and significant delay in challenging the allotment of plot to the applicant-company, which would be fatal to the challenge of the petition, as has been held by Hon''ble the Supreme Court in the case of Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, . He has particularly emphasised on the observations made in paras 31, 32 and 33 and argued that in cases of illegality and significant delay that has brought in third party right then the interference of the Court must be very slow. In support of his submission, he has placed reliance on the observations made in para 24 of the judgment of Hon''ble the Supreme Court in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, wherein it has been noticed that where there is inordinate and unexplained delay and third party rights have been created in the intervening period, the High Court would decline to interfere even if the State action complained of is unconstitutional or illegal.

6. Learned Counsel has also submitted that the applicant-company has incurred huge liability by obtaining loan and mortgaging property, which is beyond recall. According to the learned Counsel the applicant-company is already in deep debts and it has to repay huge interest which is not possible until and unless the allotment of plot is made final without any legal curbs.

7. Mr. Arun Palli, learned Counsel appearing as Amicus Curie has, however, submitted that the applicant-company has submitted an application for allotment of half acre of plot only in respect of Sector 44 and there was no application even made for allotment of half acre of plot in Sector 32. According to the learned

Counsel in Sector 32 there were total eight institutional plots, four of them were earmarked for allotment to governmental institutions and the remaining four were meant for non governmental institutions. Mr. Palli has also submitted that a specific notice of the aforesaid fact has been taken by the Division Bench in the case of Delhi Assam Roadways Corporation Ltd. (supra). In para 26(7), following observations have been made with regard to the applicant-company:

That the record further shows that M/s. BRC Electronic Limited, M/s. Gautam Builtron Private Limited, M/s. Kalyan Harbals Private Limited, M/s. Trishla Internationals Private Limited-respondents Nos. 6 to 9 in C.W.P. No. 11501 of 2007 had never applied for allotment of plots in Sector 32. They had applied for allotment of 1/2 acre plots in Sectors 18 and 44, Gurgaon. However, they were allotted 1/2 acre plot each in Sector 32. There is nothing on record to clarify as to how their applications were considered for Sector 32 and it was for the aforementioned reason that when application for withdrawal of the petition was filed vide order dated 10.10.2007 we allowed the petitioner to withdraw but substitute the titled ''Court on its own motion''. We are not able to understand as to how plots in Sector 32 have been allotted to those applicants, who never applied for allotment in that Sector.

8. On the aforesaid basis Mr. Palli has submitted that there is no equity in favour of the applicant-company once the allotment made to them has been found to be in flagrant violation of Article 14 of the Constitution and the statutory provisions. In that regard, he has placed reliance on Head Note "E" of the judgment of Hon''ble the Supreme Court in the case of V. Purushotam Rao v. Union of India. (2001) 10 SCC 305 and has argued that if the illegal allotments were made in flagrant violation of the statutory provisions then the investment made in the business would not attract any equitable consideration.

9. In the replication, Mr. Chandok learned Counsel for the applicant-company has drawn our attention to advertisement (A-2), which announces that size and number of plots is tentative and is liable to change. He has also argued that for the purposes of allotments Sectors 18, 32 and 44 constitute one category and the applications made in respect of one plot would automatically be considered as applications for another plot in the other category. In that regard he has also drawn our attention to the offer letter dated 29.8.2006 (A-4). Countering the argument of the counsel appearing as Amicus Curie it has been submitted that the judgment of Hon''ble the Supreme Court in the case of V. Purushotam Rao (supra) would not be applicable to the facts of the present case as in that case total arbitrary allotment of petrol pumps have been made. He has also placed reliance on the observations made in para 56 of the judgment rendered in the case of Amey Co-op. Housing Society Ltd. Vs. Public Concern for Governance Trust and Others, .

10. We have thoughtfully considered the submissions made by the learned Counsel for the parties and are of the view that the instant applications are devoid of merit. It has come on record that the applicant-company applied for

half acre of plot in sector 44 and we are not satisfied with the explanation tendered for allotment of half acre plot to the applicant-company in Sector 32, which itself is a circumstance showing the arbitrary allotment of plots, which is violative of Article 14 of the Constitution. Furthermore, we have already found that the allotments are in flagrant violation of Section 15 of the Haryana Urban Development (Disposal of Land and Building) Regulations, 1978, which were duly interpreted by the Hon''ble Supreme Court in the case of New India Public School and other etc. Vs. HUDA and others etc., . The authorities of HUDA were fully aware of the law laid down by Hon''ble the Supreme Court in the aforesaid judgment because it was not only party to that judgment but actively pursued the litigation upto Supreme Court still it preferred to act contrary to the law laid down by their Lordships. It is obvious that it had contested the petition in the High Court and then in the Hon''ble Supreme Court in New India Public School (supra). Moreover, we find that the observations made by Hon''ble the Supreme Court in the case of V. Purushotam Rao (supra) would be fully applicable because it could not be supposed that any equity could prevail in favour of the applicant-company when it was fully aware of the law laid down by Hon''ble the Supreme Court. In any case it has made no application for allotment of plot in Sector 32. The applicant-company has made an application for allotment of plot in Sector 44 only.

11. Still further, while disposing of the writ petitions on 13.3.2008, this Court had granted State Government the following two options:

A. The State Government may take a conscious decision that these institutional plots may be sold by open auction by allowing only those applicants, who have applied for allotment, to participate in the auction without inviting any fresh applications.

OR

B. The State Government may take a conscious decision that these plots are to be disposed of by allotment.

for reconsideration of the allotment made to the applicants in pursuance to the advertisement (A-2). Accordingly, the whole matter was to be reconsidered, which is yet to take place. The rights of the parties have not been yet determined. It cannot be concluded at this stage that the applicant-company would not succeed on reconsideration. We have been informed that status quo order has been passed by Hon''ble the Supreme Court on 9.5.2008 in Special Leave to Appeal (Civil) No(s) 10818-10823 of 2008 and in the light thereof no final decision has been taken.

12. For the aforesaid reason and the additional reasons given in the judgment in the case of Delhi Assam Roadways Corporation Ltd. (supra) we dismiss these review applications.

