

(2011) 09 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16258 of 1989 (O and M)

Delhi Prakashan Vitran Private Ltd.

APPELLANT

Vs

Haryana State Industrial Development Corporation Limited
and Another

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Citation : (2011) 164 PLR 453

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.

CM No. 4755 of 2011

1. The order dated 18.03.2011 had been passed on an assumption that the property had been re-allotted to some other parties and the issue of allotment of the year 1989 cannot survive for consideration two decades later. At the time when the order was passed, there was no representation on behalf of the petitioner. This re-allotment itself was pointed out by the counsel for the petitioner as having been withdrawn and there was a specific order of this Court that the property shall not be re-allotted to any other party pending the writ petition. It is shown to the that the property remains unallotted and is vacant for all these years. The order was passed on an erroneous assumption and it is, therefore, recalled. Application for recalling the order passed in the absence of the counsel for the petitioner is allowed.

2. I have directed both the counsel to argue the case on merits and I proceed to dispose of the case now, on merits.

Civil Writ Petition No. 16258 of 1989

3. The writ petition contains a challenge to the proceedings of the Haryana State

Industrial Development Corporation (HSIDC), dated 27.07.1989, withdrawing the offer of allotment of an industrial plot bearing No. 53-54 at Gurgaon. The letter purports to make a refund of the money deposited by the petitioner for allotment of the plot.

4. The petitioner was informed through a letter dated 27.12.1984 that there had been a provisional letter of allotment of about 1/2th acre at a rate of Rs. 120/- per square meter. The petitioner had paid 25% of the same and the balance of 75% was to be paid in 10 equated installments. The provisional letter declared that before the final allotment letter was issued, the allottee should complete four requisites: (i) registration with District Industries Centre; (ii) to get the drawings of the unit approved by the competent authority; (iii) to obtain sanction for loans required to meet the cost of land, building and machinery; and (iv) to provide a list of plant and machinery to be installed. The letter came with a specification of time line before when the pre-requisites were to be complied with. There had been a request for an extension of time by the petitioner which was also granted. The HSIDC had principally two concerns: (i) there was no proof that the petitioner had the requisite funds to begin the activities of establishing the unit if the property was allotted, (ii) the actual purchase of machineries and how and when they were going to be installed.

5. As the communication between parties swelled for a long time, the price of the property also stood revised and through communication dated 29.08.1988, the petitioner was informed of three requirements: (i) the latest audited balance-sheet of the Company; (ii) the undertaking to pay a revised price for the property at Rs. 175/- per square meter; and (iii) Rs. 27,500/- towards the balance of payment of 25% cost of the plot after the price of the plot was revised. It is on record that contains an acknowledgment that the petitioner had provided the audited balance-sheet, expressed himself willingly to pay the revised price and actually paid the revised additional cost of the initial payment to be made namely of Rs. 27,500/-. The letter of the Corporation on 09.09.1988 finally brought down the bargain of the parties to stay confined on the issue of an additional payment of Rs. 35,000/-, which, according to the new policy of allotment, was required to be paid in cases of persons, who were setting up their units from their own resources. After this letter on 09.09.1988, it is on record to show that the amount of Rs. 35,000/- was also paid on 14.09.1988 through a demand draft No. 008330, dated 13.09.1988. After this demand on 09.09.1988 and the payment of Rs. 35,000/- if there was anything more to be done, it should have been only with reference to an appraisal on the latest audited balance-sheet which could have caused an issue for further discussion, that is, if there was anything suspicious or inadequate about the audited balance-sheet that could give rise to a situation where the petitioner could have been denied the right of allotment.

6. On the other hand, there was nothing pointed out from the balance-sheet as giving out any information that would have disintitiled the petitioner of his

allotment. The petitioner has reminded through communication dated 29.08.1988 that after the compliance of all requirements, there was no justification for the Corporation not to have made the allotment. It is seen that this has gone to further communications and probably, the most significant communication showing out a change in the stance of the respondent came through the letter dated 02.03.1989 and it would, therefore, become necessary to reproduce the same.

I am directed to refer to the discussion your representation had with the members of the Committee on 23.1.1989 regarding availability of own resources as compliance of the condition regarding sanction of loan. The representative promised to send the means of financing the project as the machinery for the project will be on lease from one of the sister organization. You are, therefore, requested to please send us means of financing documentary proof immediately so as to enable us to consider your case. The information may please be supplied immediately but not later than 30 days from the date of issue of this letter, failing which the case will be closed.

7. The Corporation was now beginning to state that the representative of the petitioner had promised to send the means of financing project as the machinery for the project would be on lease through its sister organization. The petitioner has responded to this by saying that the capacity of financing project was never an issue and that the Corporation had delayed the project by 5 years in useless correspondence and kept demanding more clarifications, documents and data which were uncalled for. These expressions in response by the letter dated 17.03.1989 was not inconsequential, if we consider that the import of machineries from Germany had been shown to have been made by M/s Delhi Press Patra Prakashan Private Limited which was said, to be a sister concern and all the invoices had been produced along with the letter issued by the petitioner on 29.11.1986 itself. The letter specifically states that copy of the bill of entry, invoices etc. towards the import of the machineries had been enclosed along with the letter dated 29.11.1986. In other words, there was really nothing for the petitioner to prove especially when everything of what was demanded by the HSIDC had been complied with. When the respondent was demanding for an affidavit of the Managing Director of the petitioner relating to the financial resources and how the liability of the Company could be met, a copy of the resolution had been produced to show that the existing liabilities of the Company for return of the deposits could be deferred.

8. To a query to the learned senior counsel for the respondent as to how it became possible for the respondents to scale up to new demands after the exchange of communications that had come to the last stage of issuing a letter of allotment, the learned counsel would point out that the petitioner had not given appropriate explanation as to how there were going to service the liability to agents' deposits to the tune of Rs. 39,65,842.81 and a mere unilateral decision by them that they could defer the repayment, could not be accepted. I

find this explanation to be a lame excuse for the HSIDC to take, for, this point has been specifically adverted in an earlier communication dated 17.08.1988 itself. The petitioner was explaining that they held deposits from various agents, who were stocking their books and whenever they appointed agents, a certain amount of money as security deposits had been taken and that was being refunded only when the agency was being terminated. The amount of Rs. 39 lakhs and odd lying with the Company as agents' deposits were not immediately refundable till the agencies themselves were terminated, which were practically impossible. The final letter of termination to the allotment proposals has come about by a cryptic letter dated 27.07.1989. It says as follows:-

In continuation to this Corporation letter dated 2.3.1989 vide which you were requested to supply the information within 30 days from the issue of the said letter. But regret to say that nothing has been heard from you in this regard. So PLA in respect of plot No. 53-54, Udyog Vihar-IV, Gurgaon, is hereby withdrawn. A cheque of refund of money deposited by you for allotment of plot will be sent to you shortly. No further correspondence in this regard will be entertained.

9. We have already extracted the entire letter dated 02.03.1989. The said letter contains no more than the need for petitioner's disclosure of the means of financing project. If the concern was that the petitioner did not have the wherewithal pay lease for the machineries, there was already an undertaking for the sister Company that they would deliver the machineries the moment the plot was allotted and the construction had been made. It is not as if the petitioner was trying to build castle in the air and was giving out false excuses. The Corporation had no necessity to demand any further details and they were unnecessarily crying wolf by making a bogey of lack of financial resources when it had been settled through an earlier communication and all that they demanded on 09.09.1988, had also been complied with. The basis for cancellation of the allotment was untenable and it would require to be quashed.

10. The learned senior counsel appearing on behalf of the respondents would refer to a judgment of this Court itself on the issue of allotment in CWP No. 11536 of 1990. In that case, the petitioner was found not entitled to any more than refund of the amount which the petitioner had paid with interest, for, the provisional allotment did not grant to the petitioner a vested right. The Court had specifically found that the petitioner was at fault in not providing the necessary details to show that it had made all facilities available to merit an allotment and was trying to obtain an allotment of a larger plot than what the investment of the petitioner-Company allowed for. In this case, every one of the pre-requisites that was demanded in the letter of provisional allotment had been complied with. If the Corporation was dragging its feet and denying to the petitioner a letter of final allotment, it was doing so for no valid or tenable reasons. Public properties are not pocket burroughs of the officials that run the Corporation. Public interest demands that the persons, who are prepared to invest monies, are offered the necessary incentives when the parameters set for allotment are satisfied. The

mandate shall, therefore, be that consequent on the quashing of the letter of withdrawal, the respondents shall make a final letter of allotment.

11. It shall be open to the petitioner on such allotment to legitimize his right of securing such right in the property as the contract would provide for in accordance with law. The impugned letter states that the amount that had been deposited by the petitioner had been refunded. The petitioner, however, denies that the Corporation had made any such refund. It is not possible for the to definitely say whether the amount has been refunded or not, for, there are no details of such refund. If there has been such refund and if that could be established, the petitioner shall be liable to pay, the amount that it may have received from the respondents with interest at 18%. On the other hand, if the respondents has not refunded the same, there shall be no further liability on the petitioner before it obtains a letter of allotment. The petitioner shall issue a letter of allotment if no amount is still payable within a period of 4 weeks from the date of receipt of copy of this order. The letter could impose reasonable restrictions of compelling the petitioner to set up plant and machineries within a time frame and also impose restrictions on alienations, so that the benefit of allotment is not converted as undeserving lottery.

12. The writ petition is allowed on the above terms.