
(2006) 03 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19750 of 2004

Dharampal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Development Act, 1957 — Section 21(1), 21(2)

Citation : AIR 2007 P&H 37 : (2006) 3 CivCC 595 : (2006) 144 PLR 110 :
(2006) 3 RCR(Civil) 5

Hon'ble Judges : T.P.S. Mann, J;M.M. Kumar, J

Bench : Division Bench

Advocate : S.P. Khatri, for the Appellant; B.S. Rana, D.A.G. for Respondent No. 1 and Raminder Gadhoke, for the Respondent

Judgement

M.M. Kumar, J.—This petition filed Under Article 226 of the Constitution prays for issuance of directions to the respondents to allot to the petitioner a residential plot according to the oustees policy, dated 10.9.1987 (P-I). It is admitted position that the status of the petitioner is that of an oustee as his land measuring 20 Kanals 10 Marias was acquired on 5.11.1996 for development of Sectors 3 and 7, Sonapat and Award No. 11 was announced. On 18.11.2002, the petitioner applied for applotment of 10 marlas size of plot under the oustees" policy and deposited Rs. 50,232/-. In support of the claim, the petitioner has placed on record receipt dated 18.11.2002 (P-2). However respondent Nos. 2 and 3 proceeded with draw of lots in May, 2003 as is evident from para 1 of the preliminary submissions of the reply filed on behalf of respondent No. 2. It is the categorical stand of the petitioner that his application for the C.W.P. No. 19750 of 2004 allotment of a residential plot was considered in the draw of lots meant for general category which ought to have been considered separately under oustees" quota as envisaged by the policy dated 10.9.1987 and 12.3.1993. Aggrieved by the afore-mentioned action of the respondents, the petitioner served a legal notice dated 27.2.2004 to the respondents for allotment of plot under the

oustees policy. The petitioner claimed that all the necessary documents fulfilling the requirements of the policy have been submitted on 23.6.2004 (P-5). It is evident from the perusal of Annexures P-4, P-5 and para 10 of the petition that the petitioner in fact furnished all the details to the respondents.

2. The averments made by the petitioner in the writ petition have not been controverted and it has been accepted that the application of the petitioner has been considered in the draw of lots meant for General Category and the case of the petitioner has not been considered in the oustees category as is required by the policy dated 10.9.1987 (P- 1). Another policy dated 12.3.1993 (P-7) has also been placed on record where the mode of allotment for oustees has been substantiated.

3. After hearing learned Counsel for the parties, we are of the view that this petition deserves to be allowed. The policy dated 10.9.1987 (P-I), and 12.3.1993 (P-7) recognize the rights of an oustee as a separate category and none of the policies envisages consideration of the oustees in a draw of lots meant for general category. Some of the clauses of the policies which are relevant to the controversy raised reads as under:

Policy Instructions dated 10.9.1987 (P-I).

1. Among others, those who own land upto 500 sq. yds should be offered a plot of 100 sq.yds., those who own land more than 500 sq. yds. to one acre should be offered of 250 sq. yds. & owners of larger lands should be offered plots of 250 sq. yards.

2. If there are a number of owners for particular land efforts should be made to accommodate them subject to the limit of one plot of 250 sq. yds. for every acre of land acquired. Such plot should be offered to the person when he files an affidavit to the effect that he does not hold any house/shop or plot in that town. This condition will be in conformity with the decision of the Hon"ble Supreme Court in Pista Devi's case.

The land owners will be given compensation for their land which is acquired while they will have to pay for these plots at the normal allotment rate of Haryana Urban Development Authority. Those, whose constructed houses are released will pay Development cost for the portion of the land.

The persons whose part of the land of some houses have been released from the acquisition and the remaining land stands acquired, should not be considered in the category of oustees for allotment of plots under this category.

The Hon"ble Supreme Court has also decided in a number of cases that land should be allotted for a house/shop to all those persons whose land has been acquired. Legally, it becomes the responsibility of Haryana Urban Development Authority to allot/reserve some commercial sites for oustees. The commercial sites/building are sold by auction and under these circumstances such sites/building could be considered for allotment to oustees on reserve price as and

when the auction for the same is held, As and when these sites/building are put to auction, the oustees who want to purchase the sites/building could represent before hand for allotment so that requisite number could be reserved for them.

These instructions may be brought to the notice of all concerned.

Policy Instructions dated 12.3.1993 (P-7)

4. The policy instructions dated 12.3.1993 further envisage that the claim of the out-sees are required to be invited through press/newspaper for allotment of plots much before flotation of the sector. Even the past claims of the oustees are required to be scrutinised by a committee in terms of the policy which was applicable at the relevant time and a time frame of four months has been fixed. Thereafter, mode of allotment has also been described which is required to be undertaken much before the other allotments of general category who are to be considered in the draw of lots. Clause (vi) which deals with mode of allotment reads as under:

(vi) Mode of allotment

After the claims have been finally accepted by the competent Authority, the applicant's claims will be kept in a live register and applicants shall be asked to deposit the earnest money equivalent to 10% of the costs of the plot as and when sector scheme is to be floated. The allotment of plots to such claimants shall normally be done prior to or at least along with other applicants who have been declared successful in the draw of lots after the flotation of the scheme. By doing so, the number of plots, which are to be offered in general draw will be identified after the claims of the oustees have been crutinised/accepted and the residual plots are earmarked for the general draw. Those allottees who do not prefer their claims within the stipulated period along with requisite information will have no right for consideration of their claims after the general draw is over in respect of that sector.

(emphasis supplied)

5. Some additional policies dated 18.3.1992 and 28.8.1998 have also been brought to our notice which are taken on record Mark-A and B. These policies go to the extent that if the plots could not be allotted to the oustees in the same sector for which their land was acquired then allotment of plots could be made in the adjoining sector or even in another sector.

6. In none of these policies Annexures P-I, P-7, Mark-A and Mark-B framed by respondents, it is envisaged that the cases of the oustees were to be considered in the draw of lots alongwith the general category as has been done by the respondents in the present case. The category of oustees has been considered a distinct and separate category. A different and a distinct treatment has been envisaged by the policy instructions. But the respondents treated both the distinct category alike which is in flagrant violation of the policies. It is appropriate to mention that these policies have been framed in pursuance to the

elaborate directions issued by the Supreme Court in the case of State of U.P. Vs. Smt. Pista Devi and Others, . Their Lordships of the Supreme Court referred to Section 21(2) of the Delhi Development Act, 1957 which reads as under:

21(2). The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under Sub-section (I) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.

7. Holding that the aforementioned section although is not applicable to the facts of the case in Pista Devi's case (supra) still the following guidelines were issued by Hon''ble the Supreme Court in para 10 which reads as under:

Although the said section is not in terms applicable to the present acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question.

A perusal of the policy dated 10.9.1987 would show that respondents have followed the judgment in Pista Devi's case (supra) in framing the policy. However, it is not understandable as to how they have given a complete go by to the aforementioned policy and have treated the petitioner in the category of general class whose land has not been acquired. In fact there is virtual no defence pleaded by the respondents and it is candidly admitted that the petitioner was considered alongwith the general category in the draw of lots and he remained unsuccessful.

8. Even otherwise the matter is not res-integra, A Division Bench of this Court while disposing of bunch of writ petitions in Siriya Devi v. State of Haryana C.W.P. No. 17567 of 2003 decided on 6.7.2004 has held that the respondents were duty

bound to allot a plot to the petitioner. The earlier judgment of the Court in the cases of Savitri Devi v. State of Haryana 1996 P.L.J. 449 and that of the Supreme Court in Jalandhar Improvement Trust Vs. Sampuran Singh, have been followed for the proposition that allotment of a residential plots to a oustee cannot be denied on the ground that there land was acquired for an industrial purposes. The rationale of the Division Bench judgment appears to be that once there is compulsory acquisition by the State depriving the petitioners of their land then they would be entitled to consideration for the allotment of plot in terms of the policies. Therefore, the writ petition deserves to be allowed.

9. For the reasons stated above, this petition succeeds. The respondents are directed to allot a residential plot to the petitioner measuring 10 marla within a period of two months from the date a certified copy of this order is produced before respondents No. 2 and 3 after accepting the price in terms of the policy.