

(2022) 12 J&K CK 0053

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 237 Of 2010

Gurdev Singh

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 21-12-2022

Acts Referred:

Citation : (2022) 12 J&K CK 0053

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Ashish Singh Kotwal, Pallavi Sharma, Ravinder Gupta, Ajay Abrol

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The petitioner installed a unit under the name and style "M/s Jupiter Agro Industries" for manufacturing of poultry, cattle feed and mineral mix at Dhobiwan (Tangmarg) District Baramulla. Due to turmoil in Kashmir, the petitioner along with his family migrated to Jammu and the petitioner was registered as a migrant along with his family. The petitioner thereafter applied for allotment of land as per the Scheme applicable to migrant Kashmiri Entrepreneurs.

2. The General Manager, District Industries Centre, Jammu i.e. respondent No. 5 vide its communication dated 06.06.1996 to the Managing Director SIDCO, Jammu i.e. respondent No.4 forwarded names of five Migrant SSI unit holders for allotment of land, which included the unit of the petitioner, namely, "M/s Flora Oil Mills", Nanak Nagar, Jammu.

3. The J&K, SIDCO vide its communication dated 21.01.1999 agreed in principle to allot the land for the unit of the petitioner. The petitioner was also permitted to change the line of the manufacturing activity from edible oil to cloth and knitting dress materials and also the name of unit from "from "M/s Flora Oil Mills to M/s Deshmesh Cloths Mill".

4. The petitioner came to know that SIDCO has allotted the land in favour of one "M/s Bharat Feed Co." on the terms and conditions mentioned in the letter under the Kashmiri Migrant quota. The petitioner made number of requests to the respondents for extending similar benefits as granted to the "M/s Bharat Feed Co." with regard to the payment of premium of allotment of land and other benefits, but the respondents did not take any step. Thereafter, the petitioner again came to know that the General Manager, District Industries Centre, Jammu vide its communication dated 19.04.2002 has forwarded the names of 14 units, registered by Kashmir Migrants Entrepreneurs to the Director of Industries and Commerce, J&K Government, Jammu. The General Manager, District Industries Centre, Jammu without including the unit of the petitioner i.e. "M/s Deshmesh Cloth Mills" recommended the name of 5 Kashmir Migrants Entrepreneurs for waving off conditions of guarantor and mortgage thereof. Despite the fact that the unit of the petitioner was registered prior to the year 2005, no allotment of land with relaxation of payment of premium in instalments and waiving off conditions of guarantor and mortgage, was made in favour of the petitioner.

5. As the respondents did not provide any kind of relief under the Migrant Industrial Policy, the petitioner made a representation to the respondents on 24.01.2008 for change of manufacturing activities from knitting cloth and dress material to craft media paper and requested for allotment of 15 kanals land at Industrial Growth Centre, Samba on the same terms and conditions as were offered to Migrants Industrial Association in 1996. The General Manager, District Industries Centre, Samba vide communication dated 26.04.2008 requested the petitioner to furnish the documents referred in the letter. The petitioner furnished the documents and also made a representation dated 23.07.2008 for allotment of 15 kanals of land at Industrial Growth Centre, Samba. The General Manager, District Industries Centre, Samba vide its communication dated 01.01.2009 requested the Managing Director, J&K, SIDCO to earmark 15 Kanals of land for the unit of the petitioner, namely, "M/s Deshmesh Cloth Mills". The petitioner was told by the respondents that no land was available for the petitioner.

6. As the petitioner was not allotted land under the same terms and conditions as per the policy of 1996 of the Government for rehabilitation of the Kashmiri Migrants Entrepreneurs, the petitioner without applying under the Migrant category, straightway registered another unit under the name and style of "M/s Nirankar Rubber Industries" and applied to the respondents for allotment of land which as per the respondents was not available.

7. The respondents vide allotment order No. 120-S (7) SWCS of 2010 dated 27.01.2010 allotted 4 kanals of land in favour of the petitioner on the terms and conditions as mentioned in the aforementioned allotment order. It is stated by the petitioner that it is impossible for him to pay the premium of the land which has been subsequently allotted to the petitioner on 27.01.2010 and because of the non payment of the premium, the allotment of land in favour of the petitioner will be cancelled.

8. The petitioner has filed the present writ petition seeking directions to the respondents to extend him the same benefits of waiving off conditions of guarantor and mortgage in respect of loan proposals for Kashmir Migrants Entrepreneurs and apply the same terms and conditions for allotment of land as have been applied in case of other Kashmiri Migrants with a further direction to the respondents not to cancel the allotment of land measuring 4 kanals in favour of the petitioner vide allotment No. 120-S (7) SWCS of 2010 dated 27.01.2010.

9. Response stands filed by the respondent Nos. 3 and 5. Respondent No. 4 has also filed the response. Respondent Nos. 1 and 2 have adopted the response filed by the respondent Nos. 3 and 5.

10. Respondent Nos. 3 and 5, in their response, have stated that the petitioner failed to furnish the necessary documents despite verbal request and in this regard even a communication dated 26.04.2008 was also addressed to the petitioner. The petitioner thereafter, vide its communication dated 23.07.2008 submitted the migrant certificate as also the project report. It is also stated that no special benefits have been extended to "M/s Bharat Feed Co." except for paying the premium in instalments. It is further stated that the petitioner once again registered another unit but not under the migrant category rather under the name and style of "M/s Nirankar Rubber Industries" and the land measuring 4 kanals was allotted in favour of the petitioner vide allotment No. 120-S (7) SWCS of 2010 dated 27.01.2010 and as per stipulations contained in the allotment order, he was required to pay a premium of land within a period of 30 days from the date of issue of the order and further the petitioner was required to enter into Agreement with SIDCO through a lease deed within 60 days failing which the allotment was deemed to be cancelled without any notice to the petitioner. The petitioner failed to comply with the said stipulations and therefore, the allotment of land in favour of the petitioner stood automatically cancelled with the efflux of time.

11. The respondent No. 4 has stated that there is no exemption of payment of premium to the Kashmiri Migrants and the petitioner was required to pay the premium of the land and also the annual ground rent and further the petitioner was under obligation to comply with the terms and conditions of the allotment order dated 27.01.2010 which the petitioner has failed to do. It is stated that "M/s Bharat Feed Co." was allotted the land on the basis of instructions issued by the State for allotment of land to the Migrants and the said entrepreneur was allotted the land under that category. At the time of allotment of land to the said unit, the answering respondents had only one industrial estate and due to scarcity of land, the allotment in favour of the said entrepreneur could not be considered at that relevant point of time. It is further stated that the petitioner's case was considered on the basis of his application under the name and style of "M/s Nirankar Rubber Industries", an independent unit and allotment of 4 kanals of land was made in favour of the petitioner. The petitioner was required to comply with the terms and conditions of allotment order which he has failed to do.

12. Mr. Ashish Singh Kotwal, learned counsel for the petitioner vehemently argued that the petitioner has suffered a lot because of the inaction of the respondents and respondents are under obligation to provide the same benefits to the petitioner as have been granted to the other Kashmir Migrant Entrepreneurs.

13. Per contra, Mr. Ravinder Gupta, learned AAG appearing on behalf of the official respondents argued that the petitioner has not got his unit registered under the Migrant category and, as such, the benefits cannot be extended to him under the scheme meant for the Migrant Entrepreneurs from Kashmir.

14. Mr. Ajay Abrol, learned counsel for the respondents while echoing the submissions made by Mr. Ravinder Gupta submitted that the only benefit that was applicable to the migrants was payment of premium in instalments and there was no whisper of waiving off of premium at all.

15. Heard and perused the record.

16. Though, on the first blush it appears that a migrant has approached this Court for grant of benefits granted to the other Migrant Entrepreneurs from Kashmir, more particularly in view of the pleading made in Para 19 of the writ petition that the allotment and earmarking of the land in favour of the "M/s Deshmesh Cloth Mills" is in question, but in fact the dispute raised by the petitioner is with regard to the 4 kanals of land allotted to "M/s Nirankar Rubber Industries" which is also a unit of the petitioner. The petitioner himself has admitted in para 11 of the petition that he without applying under the migrant category, straightway registered another unit under the name and style of "M/s Nirankar Rubber Industries" and applied with the respondents for allotment of land. Pursuant to the said application only, that was not made by the petitioner being a migrant, land measuring 4 kanals was allotted to the petitioner vide order No. 120-S (7) SWCS of 2010 dated 27.01.2010. The petitioner in fact, seeks directions of this Court to direct the respondents to grant him the same benefits as have been granted to other Kashmir Migrant Entrepreneurs.

17. Once, it is admitted by the petitioner that he applied for allotment of land in favour of "M/s Nirankar Rubber Industries" not as a migrant, so he cannot be treated at par with the Kashmir Migrant Entrepreneurs and as such, he cannot be granted the benefits as have been granted to the Kashmir Migrant Entrepreneurs. Had the petitioner applied for allotment of land under migrant's category, the position would have been different. If the petitioner was not being provided with land for the unit registered by him being a migrant from Kashmir and treated differently vis-a-vis other migrants, he could have approached this court for seeking appropriate directions but he did not resort to the same and instead devised a novel method for allotment of land. This court does not approve the conduct of the petitioner.

18. In view of what has been discussed above, this Court is of the considered opinion that there is no merit in the present writ petition and the same deserves

to be dismissed.

19. Before parting, this Court would like to observe that the petitioner has made an attempt to mislead the Court by pleading in Para 19 of the writ petition that the allotment and earmarking of land in favour of

"M/s Deshmesh Cloth Mills" is in question, which in fact is not true as the grievance projected by the petitioner in this writ petition pertains to the allotment of land made for other unit of the petitioner namely

"M/s Nirankar Rubber Industries". Thus, this petition was fit to be dismissed with costs, but taking into consideration the age of the petitioner and also the fact that he is a migrant, the same is dismissed without costs.