(2015) 05 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19647, 20116, 20213, 20433, 20455, 20442, 21603 and 22787 of 2013

Harmail Singh and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2015) 05 P&H CK 0062

Hon'ble Judges : Rajive Bhalla, J;Amol Rattan Singh, J

Bench : Division Bench

Advocate : Naresh Kaushal, J.S. Khattar and Deepak Sharma, for the Appellant; Jagmohan Bansal, A.A.G, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—By way of this order, we shall dispose of Civil Writ Petition Nos. 19647, 20116, 20213, 20433, 20442, 20455, 21603 and 22787 of 2013, as they involve adjudication of identical questions. Facts necessary for adjudication are being taken from Civil Writ Petition No. 19647 of 2013.

2. The petitioners, who are oustees of Sector 81, pray for issuance of a writ in the nature of certiorari for quashing the decision taken by the Greater Mohali Area Development Authority (hereinafter referred to as ''GMADA''), to charge them @ Rs. 23500/- per square yard, as the rate offered for allotment of oustee category plots and pray that plots be allotted at the rate charged from oustees of Sectors 76 to 80, SAS Nagar, Mohali, i.e. Rs. 3350/- per square yard as or Rs. 12,000/- per square yard as charged from oustees of Aerocity.

3. Before we de-limit the arguments and record our opinion, it would be necessary to record that we do not propose to determine the price to be charged from the petitioners or to hold that an oustee has a vested right to any concession other than a right to be considered for allotment of a plot and,

therefore, confine consideration in this set of writ petitions to the date to be applied for determining the rate to be offered to the petitioners, i.e. whether it is the year in which their lands were acquired, the year in which plots were allotted to oustees of Sectors 76 to 80, the year in which plots were allotted to oustees of Aerocity or the year in which plots were offered to the petitioners?

4. A brief reference to the facts would be necessary.

5. The petitioners were admittedly owners of parcels of land in villages, Mauli Baidwan, Kumbra and Chilla, Tehsil and District SAS Nagar, Mohali, which were acquired for setting up Sector 81, SAS Nagar, Mohali. The Land Acquisition Collector, assessed compensation by different awards, dated 26.12.2006 and awarded a uniform rate of compensation @ Rs. 40 lakhs, per acre. A policy, dated 26.09.1994 (hereinafter referred to as ''the 1994 policy''), prescribing the mode and manner of transfer of urban properties, including the allotment of plots for rehabilitation of landowners ousted from acquired lands, was admittedly in vogue on the date of pronouncement of these awards. The petitioners applied for allotment of plots as oustees, by depositing earnest money calculated at Rs. 3350/- per square yard, but their applications remained pending.

6. A new oustee policy was notified, on 25.05.2011 (hereinafter referred to as ''the 2011 policy''). The oustees of Sectors 76 to 80 were given six months'' time from the date of notification of the policy, to apply afresh and or to modify their pending applications and were eventually offered plots @ Rs. 3350/- per square yard, as applicable on the date of acquisition. The applications filed by the petitioners, who are oustees of Sector 81, were rejected by holding that the outsee policy does not provide for allotment of plots to oustees whose lands were acquired for Sector 81, i.e. for a water treatment plant and institutional purposes.

7. The petitioners and others, filed writ petitions, challenging the rejection of their applications. Eventually vide order dated 28.01.2013, passed in Civil Writ Petition No. 1714 of 2012 (Harmail Singh and others Versus The State of Punjab and others), the petitions were allowed, the orders rejecting their applications were set aside as discriminatory and arbitrary and the respondents were directed to consider the petitioners'' claim for allotment of oustee category plots, strictly in accordance with the 1994 policy.

8. The respondents in compliance with the direction notified changes in the policy, on 08.05.2013 (hereinafter referred to the 2013 clarifications/policy) by clarifying that the oustee policy shall apply irrespective of the nature of utilisation of the land and that rights of oustees whose lands were acquired between 2001 and 2011 would be governed by the policy in vogue on the date of acquisition. As already noticed, oustees of Sectors 76 to 80, whose lands were acquired in the year 2003, had been allotted plots at the rate of Rs. 3350/- per square yard, calculated by reference to the date of acquisition. The oustees of Aerocity, whose lands were acquired in the year 2009, three years after the petitioners, were allotted plots @ 12000/- per square yard.

9. The applications filed by the petitioners were reconsidered and a brochure was advertised on 26.08.2013, inviting applications from the petitioners (oustees of Sector 81), for allotment of plots in Sector 82A and 83A,SAS Nagar, Mohali, @ Rs. 23500/- per square yard. The petitioners are aggrieved by the offer of Rs. 23500/- per square yard as the rate for allotment of oustee category plots.

10. Counsel for the petitioners submits that the decision to charge Rs. 23500/- per square yard, from the petitioners, is contrary to directions issued in Civil Writ Petition No. 1714 of 2012 (Harmail Singh and others) (supra). The respondents were directed to consider the petitioners'' applications strictly in accordance with the 1994 policy. The respondents have not only disregarded the 1994 policy but also the 2011 policy and the clarifications issued on 08.05.2013, which both provide that rights of oustees, before 2011 shall be determined in accordance with policies in force at the time of acquisition. The respondents have, by a decision dated 29.07.2011, allotted plots to oustees of Sectors 76 to 80, @ of Rs. 3350/- per square yard i.e., on the principle that market rate prevalent on the date of acquisition, is to be charged. The oustees of Aerocity, whose lands were acquired, on 28.05.2009, were offered plots @ Rs. 12,000/- per square yard, once again at the rate prevalent on the date of acquisition. The petitioners, however, have been offered plots at the rate prevalent on the date of allotment. The petitioners, the oustees of sectors 76 to 80 and the oustees of Aerocity are all governed by the 1994 oustee policy. The respondents having applied the principle of calculating the rate prevalent on the date of acquisitions, in the case of other oustees, amenable to the 1994 policy, were required to apply the rates prevalent, on the date of acquisition in the year, 2006, to the petitioners but have arbitrarily applied rates prevalent in 2013. The fact that the allotments were delayed cannot be used against the petitioners to charge any additional amount over and above the rate prevalent on the date of acquisition. The delay lies at the door step of the respondents. The rate to be offered to the petitioners has to be calculated by reference to the date of their acquisitions, i.e. date on which their rights to be allotted plots, fructified into a determinate right. Counsel for the petitioners places reliance upon judgments of the Supreme Court in Civil Appeal No. 1 of 2011 (Brij Mohan and others v. Haryana Urban Development Authority, and another) and Kanpur Development Authority Vs. Smt. Sheela Devi and Others etc., AIR 2004 SC 400 : (2004) 1 CPJ 12 : (2004) 1 CTC 368 : (2004) 1 CTLJ 552 : (2003) 10 JT 18 : (2003) 10 SCALE 36 : (2003) 12 SCC 497 : (2003) 6 SCR 374 Supp , in support of his arguments that the petitioners should be allotted plots at the rate, prevalent on the date of acquisition.

11. Counsel for the respondents submits that the petitioners do not have a right to dictate the rate of allotment. As held in State of Punjab and Another Vs. Mewa Singh, AIR 2006 SC 3491 : (2006) 4 JT 239 : (2006) 3 SCALE 344 : (2006) 9 SCC 276 : (2006) AIRSCW 1940 : (2006) 3 Supreme 167 , the rate prevalent on the date of allotment, can be charged. The lands belonging to the petitioners were acquired for institutional purposes and as existing policies did not permit allotment to the petitioners, their applications were rejected but in compliance

with the order passed in Civil Writ Petition No. 1714 of 2012, the respondents notified a fresh policy on 08.05.2013 and offered plots to the petitioners in another sector. The respondents have while calculating the rate considered all relevant factors i.e the rate prevalent on the date of allotment, the price paid for acquisition of the land to be allotted, the area to be used for industrial purposes, group housing, economically weaker sections, commercial purposes, internal development and the rate of acquisition of the land to be offered to the petitioners. The rate fixed by the respondents being referable to a just and valid criteria, cannot be said to be discriminatory or arbitrary. The judgment, in the case of the petitioners, merely directed the respondents to make allotment in accordance with the 1994 policy. The 1994 policy does not set out any particular rate but merely confers a right upon the petitioners to be considered for allotment of plots. The petitioners have been paid due compensation which has now been enhanced by the reference court and as they do not have a vested right to allotment, or allotment at a particular rate, cannot dictate the price to be charged. The oustees of Sectors 76 to 80 were allotted plots at Rs. 3350/- per square yard as the rate was fixed immediately after pronouncement of the award but as allotment could not be made, in view of pending challenges to the acquisition, the allotment was notified in the year 2011 at the initial rate. In the case of the petitioners, no such rate was determined or settled. The rate charged from oustees of Aerocity is irrelevant as the petitioners were not a part of the initial policy and it was only after this Court directed that the petitioners have to be considered for allotment, was a new policy framed in the year 2013. The right to be considered, having been conferred in the year 2013, the respondents are justified in charging the rate prevalent in the year 2013. Counsel for the respondents further submits by reference to affidavit of Sh. Sanjeev Kumar, Estate Officer, GMADA, dated 09.12.2013, that details in the affidavit clearly refer to the reasons for charging @ Rs. 23500/- per square yard. The expenditure for diverting land for the petitioners, the compensation and all other relevant factors have been taken into consideration while calculating the rate.

12. We have heard counsel for the parties, perused the pleadings as well as precedents cited by counsel for the parties. The question that calls for an answer is the rate to be offered to the petitioners, i.e. whether it would relate to: (a) the rate offered to oustees of 76 to 80; (b) the rate offered to oustees of Aerocity, (c) the year in which lands were acquired; or (d) the year in which plots were offered to the petitioners?

13. The land belonging to the petitioners was acquired pursuant to awards, pronounced by the Land Acquisition Collector, in the year 2006. The 1994 policy, which amongst other matters provides for reservation in the allotment of plots to oustees, was in force on the date of acquisition in the year 2006. The 1994 policy, however, does not make any distinction between oustees on account of the end user of the acquired land but the applications filed by the petitioners, for allotment of plots as oustees, were rejected on the specious premise that their lands were not acquired for a residential sector. The petitioners filed writ

petitions which were allowed on 28.01.2013 (Civil Writ Petition No. 1714 of 2012 (Harmail Singh and others v. State of Punjab and others), by holding as follows:-

"21. The owners, however, cannot be discriminated with and subjected to differential treatment on the basis of an incidental circumstance like utilization of their acquired land for varied purposes of an integrated urban development project. The classification sought to be brought in is neither based upon an intelligible criteria nor has any rationale with the object sought to be achieved through the Oustee Policy. The purpose of the Rehabilitation/Oustee Policy is to rehabilitate all the land owners whose lands have been acquired for the planned development and setting up of an urban estate. Once it is proved that the land of the petitioners was also acquired for that very purpose, the microscopic classification suggested by the respondents to deprive a group of land owners of the benefits of a welfare policy, cannot be accepted. Such an artificial grouping cannot stand the test of Article 14 of the Constitution."

14. After holding as above, the following directions were issued:-

"22. For the reasons afore-stated, we allow this petition, quash the impugned letters-cum-orders dated 19.9.2011, 13.9.2011, 5.9.2011, 29.9.2011, 16.9.2011, 28.10.2011 and 17.10.2011 [Annexure P-7(colly)] and direct the respondents to consider the claim of the petitioners for allotment of residential plots strictly in accordance with the policy dated 26.9.1994 (Annexure P-3). The needful shall be done within a period of two months from the date of receipt of certified copy of this order."

15. A perusal of the above extract reveals that the respondents were directed to consider the claim of the petitioners for allotment of residential plots "strictly in accordance with the 1994 policy", thus laying at rest any dispute that the petitioners'' rights as oustee have to be considered under the 1994 policy. The respondents, in compliance with directions issued in Civil Writ Petition No. 1714 of 2012, issued a notification, dated 08.05.2013, revising the 2011 policy. Clause (1) of the policy reads as follows:-

"1. This policy shall be applicable in cases where land is acquired for setting up of any Residential Institutional, Industrial or Integrated Mixed-Land Use Estate irrespective of the use of land in the Urban Estate by any Development Authority constituted under the Punjab Regional and Town Planning and Development Act, 1995. It shall also apply for land acquisitions undertaken for filling up any critical gaps to facilitate the development of any Residential, Institutional, Industrial or Integrated Mixed Land Use Estate by any private developer".

16. Clause (1) of the policy clarifies that the policy shall be applicable even where land has been acquired for setting up of institutional, industrial or integrated mixed-land use estates, thereby accepting that the petitioners have a right to be considered for allotment of oustee category plots.

17. At this stage, it would be appropriate to recapitulate that the respondents

had in the meanwhile notified a new policy on 25.05.2011 (hereinafter referred to as the 2011 policy), for allotment of plots to oustees. Clause 11 of this policy reads as follows:-

"11. As regards the oustees whose land was acquired through land acquisition awards announced on or after 07.05.2001 but before the notification of this policy, they shall continue to be governed by the policy hitherto in force. However, in Para 2.2 and Para 5 of this policy shall also be applicable to such oustees."

18. A perusal of Clause 11 of the policy reveals that it provides that in case of land acquisition awards announced on or after 07.05.2001 but before the notification of this policy the rights of oustees shall continue to be governed by the policy hitherto in force, thereby, providing that the applications filed by the petitioners, the oustees of Sectors 76 to 80 and the oustees of Aerocity, whose lands were acquired in the year 2006, 2001 and 2009, respectively, are to be considered under the 1994 policy, i.e. the rights of the petitioners, the rights of oustees of Sectors 76 to 80 and rights of oustes of Aerocity are to be considered under the 1994 policy. It would be appropriate to notice that Rules 2.2 and 5 of the 2011 policy only relate to the "quantum" of land to be allotted and as such, are not germane to the present issue.

19. Thus, the date relevant for calculating the rate to be offered to the petitioners would depend upon any such date being prescribed by the 1994 policy and if not so prescribed upon any other policy that may prescribe such a date and if still not prescribed upon any decision taken by the respondents in the cases of other oustees, governed by the 1994 policy.

20. A perusal of the 1994 policy reveals that it does not prescribe any date for calculating the rate to be offered to oustees, but by Clause 6 of the policy provides that plots shall be offered at the rate offered to the general public. Clause-6 of the policy reads as follows:-

6. Policy for oustees

Policy for allotment of plots to Oustees would be as under:-

i) The plot would be allotted to an Oustee in the Urban Estate for his bonafide residence.

ii) The application from the oustee will not be entertained after a period of one year from the date of taking possession of his acquired land.

Iii) An oustee would only be allotted a plot on the following basis.

However, if on the land there is a dwelling unit; 100 sq. yds. plot may be allotted even though the area acquired may be less than 1/2 acres.

iv) The price chargeable for allotment of plots to the oustees would be the same as for general category.(emphasis supplied)

v) All oustees of any joint khata would be entitled to one plot only."

21. The 1994 policy, thus, merely provides that plots would be allotted at the price to be charged for allotment of plots to the general public. The petitioners have, therefore, to be offered and are required to pay at the rate offered to the general public.

22. The question that now arises is whether, in the absence of any relevant date set out in the 1994 policy, the respondents may pick or choose any date or are to be guided by some principle that they may have adopted in determining the rate offered to the general public in relation to oustees governed by the 1994 policy.

23. Before we answer this question, it would be necessary to record that the respondents appear to have relied upon the first Clause 3.2 (the policy as appended with the writ petition (which contains two clauses numbered as 3.2) of the 2013 policy, Clause 3.2 provides that plots shall be allotted to eligible landowners at the price determined by such authority for general public prevailing "at the time of allotment" for a particular scheme and reads as follows:-

"3.2. Where land is acquired for setting up of any Estate by any Development Authority, Plots/Flats shall be allotted to the eligible landowners by the concerned Authority at the price determined by such authority for general public prevailing at the time of allotment for the particular scheme, where the plots are being allotted to them. However, in case land is acquired for filling the critical gaps of an estate being developed by a private developer, plots/flats shall be allotted to the eligible landowners by the private developer under supervision of the Authority having jurisdiction in the area."

24. Clause 3.2 of the policy, which appears to empower the respondents to charge the rate prevalent on the date of allotment, cannot be invoked in the case of the petitioners as Clause 11 of the 2011 policy (already reproduced) provides that acquisitions before the notification of the 2011 policy shall be governed by the policy hitherto in force i.e. the 1994 policy. This apart, Clauses-10 and 12 of the 2013, amended policy, also provide that the foregoing paras, which would obviously include Clause 3.2 of the 2011 policy, shall be applicable to land acquisition awards announced after the date of issuance of this policy i.e. the 2011 policy, as amended in 2013. Clauses 10 and 12 of the policy read as follows:-

"10. The policy mentioned in the foregoing paras shall be applicable to land acquisition awards announced after the date of issuance of this policy i.e. 25.5.2011".

12. As regards the oustees whose land has been acquired through land acquisition awards announced on or after 07.05.2001 but before the notification of this policy, they shall continue to be governed by the policy hitherto in force. However, in para 2.2 and Para 5 of this policy shall also be applicable to such

oustees."

25. The clear annunciation of policy set out in Clauses 10 of the 2011 policy, 11 and 12 of the 2013 policy, leave no ambiguity that Clause 3.2 of the policy, which enables the respondents to calculate the rate and price as prevalent on the date of allotment does not apply to the petitioners.

26. As regards an argument raised by the respondents, on the basis of a Supreme Court judgment in State of Punjab and Another Vs. Mewa Singh, AIR 2006 SC 3491 : (2006) 4 JT 239 : (2006) 3 SCALE 344 : (2006) 9 SCC 276 : (2006) AIRSCW 1940 : (2006) 3 Supreme 167 , that the rate has to be determined on the date of allotment, suffice is to say that the argument, in our considered opinion, is fallacious as no such principle has been set down by the Supreme Court. The Hon''ble Supreme Court has held that rate prevalent on the date of allotment has been rightly charged as the allottee himself, in his letter accompanying his affidavit forwarded to the Punjab Urban Development Authority, had agreed to accept allotment at the prevalent rates. A relevant extract from the judgment read as follows:-

"7. Admittedly, the respondent himself in the affidavit accompanying the letter had clearly indicated that he was agreeable to the prevalent rates of PUDA. This is clearly stated in para 6 of the affidavit accompanying the respondent''s letter dated 8.9.2000. There is no dispute that at the time allotment was made by the allotment letter dated 13.7.2001, the rate was Rs. 3200 per sq. yd.

8. Above being the position, the High Court''s direction to the appellants to charge the rate prevalent in the year 1985 is clearly unsustainable. Learned counsel for the respondent submitted that the respondent is willing to pay at the rate indicated in the allotment letter dated 13.7.2001. In case the respondent deposits the amount payable pursuant to the allotment letter within three months from today, the appellants shall allot the land and deliver possession within two weeks from the date of the payment of the amount due which is to be calculated by the appellants."

27. As already noticed, land belonging to the petitioners was acquired in the year 2006. The policy "hitherto in force" and, therefore, applicable to acquisitions, after 07.05.2001 and before notification of policy dated 25.05.2011 (as amended by the 2013 policy), was the 1994 policy. As already held that acquisitions of land, for Sectors 76 to 80, in the year 2001, from the petitioners in the year 2006 and for Aerocity in the year 2009, are all governed by the 1994 policy. The 1994 policy, which we have already noticed, is silent as to any date for determining the rate and price to be offered. Therefore, in the absence of any guiding principle in the 1994, policy prescribing the date to be applied while determining the rate and price to be offered to oustees, we are left without a policy decision to determine the relevant date for calculating the price, to be offered to the petitioner and, therefore, proceed to examine whether the respondents have taken any decision as to the relevant date, in the case of other

oustees covered by the 1994 policy.

28. The first such decision, admittedly taken by the respondents with respect to the date to be applied, for calculating the rate or price to be offered to oustees pertains to oustees of Sectors 76 to 80, whose lands were acquired in the year 2001. Admittedly, these oustees have been offered plots at the rate of Rs. 3350/- per square yard by reference to the rate prevalent on the date of acquisition, in the year 2001. The decision taken by the respondents on 29.07.2011, reads as follows:-

"Agenda No. 15.04

With regard to charging of rate from the applicants/oustees of Sectors 76-80 for the purposes of allotment of plots under New Policy.

On behalf of the Executive Committee, as per the legal advice given by Sh. Dharamvir Sharma, Senior Advocate, the oustees should not be discriminated with other allottees and taking into consideration the said advice, as per Agenda Para 7.0(a), "the oustees are to be charged the rate prevalent at the time of their acquisition at the rate of Rs. 3350/- per square yard for the plots measuring 100 sq. yds. And 200 sq. yds. and at the rate of Rs. 3750/- per square yard", the same is approved."

29. A perusal of the aforesaid decision reveals that the respondents have in the case of oustees of sectors 76 to 80 accepted the principle that "oustees are to be charged the rate prevalent at the time of their acquisition". The oustees of Sectors 76 to 80, were also governed by the 1994 policy. The respondents, therefore, cannot treat the petitioners, who are also governed by the 1994 policy, differently. The respondents having applied the principle that oustees are to be charged the "rate prevalent at the time of their acquisition", in the case of oustees of the year 2001, must treat all oustees covered by the 1994 policy similarly. The respondents cannot be allowed to depart from the above decision which must enure to the benefit of all oustees, covered by the 1994 policy. To hold to the contrary and allow the respondents to charge the rate prevalent in 2013 would require us to disregard this decision, disregard Clause 11 of the 2011 policy and Clauses 10 and 12 of the 2013 policy and penalise the petitioners for delay, in allotment and, therefore, in finalising the rate caused by the illogical stand taken by the respondents while rejecting the petitioners'' application for allotment, as already adversely commented upon Civil Writ Petition No. 1714 of 2012. The market rate to be charged from the petitioners must, therefore, be determined by reference to the date their rights to be considered for allotment crystalised, i.e. the date of acquisition, in the year 2006.

30. The argument that as the petitioners'' rights to be considered for allotment were accepted in the year 2011, they have to be offered plots at the rate prevalent on the date of allotment cannot but be rejected. The petitioners are covered by the 1994 policy. The respondents while considering the case of oustees of Sectors 76 to 80, who were also covered by the 1994 policy, have

calculated the rate to be offered by reference to the date of acquisition. The petitioners, therefore, cannot depart from this principle merely because the petitioners'' applications were rejected and only accepted after this Court intervened and held the rejection to be illegal and arbitrary. An argument that the respondents have provided other acquired rate, to accommodate the petitioners, where rates of acquisition are much higher than rates in the year 2006, is entirely irrelevant as delay was on the part of the respondents and, therefore, cannot visit the petitioners with detrimental consequences.

31. The petitioners, however, cannot be granted the rate offered to oustees of Sectors 76 to 80, as the lands were acquired in the year 2001, whereas land belonging to the petitioners were acquired in the year 2006.

32. The next decision pertaining to oustees covered by the 1994 scheme are oustees of Aerocity. The land belonging to oustees of Aerocity were acquired in the year 2009. The oustees of Aerocity were offered plots in the year 2011, @ Rs. 12,000/- per square yard, apparently by reference to the rate prevalent on the date of acquisition. The petitioners'' lands were acquired, three years earlier and even if this rate was the rate prevalent on the date of allotment, the petitioners cannot be placed at a disadvantage viz-a-viz oustees whose land were acquired three years later. The petitioners would have been allotted plots at the rate offered to the general public, between the acquisition of their land in the year 2006 and allotment to oustees of Aerocity in the 2011, but for the erroneous stand taken by the respondents while rejecting their applications. The petitioners, therefore, are to be allotted plots at the rate to be determined on the date of their acquisition and if no such date is available between their acquisition and plots offered to oustees of Aerocity, then at the rate offered to Aerocity.

33. A due consideration of the rights of petitioners and the policies leads us to a singular conclusion that the rate offered to the general public in the year 2013, is illegal, arbitrary and would, therefore, be required to be reconsidered, by the respondents.

34. The writ petitions are, therefore, allowed, the clause in the brochure offering plots at Rs. 23500/- per square yard is quashed and the respondents are directed to re-calculate the price/rate, by reference to the rate offered to the general public between the year 2006 and 2011 and if no such rate is available, by reference to the first allotment offered to general public after 2006 and if no such rate is available then by reference to the rate charged from oustees of Sectors 82A and 83A (Aerocity). The needful be done, within two months from the date of receipt of a certified copy of this order. No order as to costs.

