(1997) 01 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7431 of 1995

H.K. Sanghi & Company — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 06-01-1997

Acts Referred:

Citation : (1997) 2 ICC 562 : (1997) 1 PLJ 329 : (1997) 3 RCR(Civil) 87

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. Subhash Goyal & Ms. Sandeepa Trehan, Advocates., Mr. Ashok Aggarwal, Sr. Advocate, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. C.W.P. No. 3536 of 1993 (M/s. H.K. Sanghi & Co. v. State of Haryana and others) and C.W.P. No. 7431 of 1995, also titled as M/s. H.K. Sanghi & Co. v. State of Haryana, are being disposed of by the judgment as common question of law and fact is involved in both the writ petitions.

2. In C.W.P. No. 3536 the prayer of the petitionerCompany is for the issuance of a writ in the nature of mandamus directing the respondents to release the land of the petitioner measuring 45 Kanals 7 Marlas, fully detailed in the writ petition itself acquired vide award Nos. 7 and 8 dated 29.10.1968 passed by the Land Acquisition Collector and the Director of Land Acquisition, Haryana, Chandigarh, and it has been prayed, in the alternative for the issuance of the directions to the respondents to allot any other plot of land of the same size and at the same rate in the Industrial Area, Faridabad, to the petitionerCompany. I need not incorporate the pleadings of C.W.P. No. 3536 of 1993 as in the opinion of this Court this writ petition has become infructuous in the light of the averments in C.W.P. 7431 of 1995 filed under Articles 226/227 of the Constitution of India in which the petitioner Company has prayed for the issuance of directions in the nature of mandamus directing the respondents to fix the price of industrial plot in Sector 59, Faridabad, and to allot the same to the petitionerCompany at the rate of Rs. 10.54 per sq. yard instead of Rs. 425/ per sq. metre. Since the relief

claimed in C.W.P. No. 3536 of 1993 regarding the allotment of the plot has been made by the Haryana Urban Development Authority (HUDA), as suggested and contained in C.W.P. No. 7431 of 1995, therefore, this prayer has become redundant. With regard to the second prayer contained in C.W.P. No. 3536 of 1993 this Court is not in a position to give any direction to the respondents to release the plot from acquisition which was acquired vide award Nos. 7 and 8; therefore, Civil Writ Petition No. 3536 of 1993 is hereby dismissed as infructuous. Otherwise also it was fairly conceded by the learned counsel for the petitioner, appearing in C.W.P. 3536 of 1993 that the same may be dismissed in the light of the averments made by the petitioner in C.W.P. No. 7431 of 1995.

3. Now I proceed with the material averments of the parties as contained in C.W.P. No. 7431 of 1995 in which the petitionerCompany has averred that it purchased land measuring 45 Kanals 7 Marlas situated on DelhiMathura Road forming part of the boundary of village Arjounda, Tehsil Ballabgarh, District Faridabad for industrial purposes vide sale deed dated 26.11.1965. In pursuance of the agreement of purchase, the petitioner got the possession of the said land in the year 1963 in part performance of the agreement. Thereafter, this land was acquired by the authorities under Section 4 of the Land Acquisition Act on 8.9.1966 along with other lands situated in three villages, namely, Sihi, Arjounda and Majesar for development purposes. On 4.11.1964 the Government of Punjab took a policy decision relating to the release of the landsites for industries in Ballabhgarh Controlled Area and provision was made for releasing the land of following categories :

(i) Existing industrial estate held in operation before the enforcement of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963;

(ii) Industries constructed without sanction after the enforcement of the Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963;

(iii) Vacant industrial sites.

As per above policy, the petitionerCompany fulfilled all the conditions and was entitled to release of the land from acquisition. The petitioner Company requested the authorities for the release of the land. The case of the petitioner was recommended to respondent No. 2, who adopted the policy of pick and choose and released the land of some of the owners, but the land of the petitioner was not released despite requests and persuasion from the petitionerCompany, even though it fulfilled all the conditions of the policy decision of the State Government. The Company represented the matter to the authorities for the release of its land from acquisition. However, the respondentauthorities did not accept that request but recognised the right of the Company and the State proposed to allot industrial plot of the same size and at the same rate and, consequently, it allotted industrial plot No. 8, approximately of 5 Acres in Sector 6, Faridabad and the petitionerCompany was informed about this decision vide letter dated 28.7.1969 and the petitioner Company was asked to deposit 10% of the cost of the plot. The petitioner Company accepted the allotment and sought clarification as to the area and mode of payment. The respondents told the petitioner that the tentative price of the plot was fixed at the rate of Rs. 10.54 per sq. yard and the petitionerCompany was required to make the payment of Rs. 70,454.50 being 25% price of the plot. The petitioner prepared a draft for a sum of Rs. 70,545.50. However, the respondents informed the petitionerCompany vide letter dated 22.8.1969 about the cancellation of the allotment of this alternative plot. The Company filed an appeal against the cancellation of the plot and it was accepted by respondent No. 3 vide order dated 30.11.1969 (Annexure P8) and the order of respondent No. 4 was set aside and he was directed to reallot plot No. 8 situated in Sector 6, Faridabad, to the petitionerCompany. After the acceptance of the appeal, the petitioner Company was asked to deposit a sum of Rs. 70,454.50 with the Estate Officer, HUDA, and the Company deposited the same on 8.12.1969 vide bank draft and receipt was also issued by the Estate Office on 12.12.1969. Later on, it transpired that this plot No. 8 situated in Sector 6 had already been allotted to M/s. Telephone Manufacturing Company and in this manner the allotment of the plot in favour of the petitioner was cancelled. After the cancellation of plot No. 8, Sector 6, the petitionerCompany again requested the respondents for the allotment of any other plot and, consequently, the petitionerCompany was allotted a plot of 3 Acres size in Sector 24, Faridabad. Since it was far away from the land of the petitionerCompany and being smaller in size, it requested the respondents to allot any other plot of suitable size. The respondents did not pay any heed to that request. The petitionerCompany continued to make representations one after the other and considering the case of the petitioner as genuine, the respondents earmarked plot No. 1 situated in Sector 31 measuring 2 hectares as alternative site vide letter dated 23.8.1983 and the petitionerCompany was informed of the allotment and the Estate Officer was directed that the proposal showing the plot in the layout plan be sent when the land in these sectors would be acquired. After earmarking plot No. 1 in Sector 31, Faridabad, the petitionerCompany wrote to the Town Planner, Faridabad, to confirm that after taking possession of the land from the cultivators, the plot would be shown in the lay out plan after the award. The petitionerCompany was very much anxious to acquire plot No. 1, Sector 31 and continued with the correspondence, but nothing was done by the respondents. When the petitionerCompany was not getting even plot No. 1 in Sector 31, it made a representation to the respondents either to make allotment of this plot or to release the land measuring 45 Kanals 7 Marlas, which was purchased by the petitioner and acquired by the Government. When nothing was done even on these representations, the petitionerCompany had filed C.W.P. No. 3536 of 1993, reference of which has been made above. During the pendency of this writ petition, the petitionerCompany received letter dated 29.6.1994 from the Estate Officer, HUDA, intimating that the HUDA had decided to offer an alternative plot in Sector 59 measuring 5 Acres in the Urban Estate, Faridabad, in lieu of industrial plot earmarked in Sector 31 at the rate of Rs. 425/ per sq. metre. It was further intimated to the Company that if this offer of alternative plot is acceptable to the petitioner Company, then it should submit a letter of acceptance to the Estate Officer within 30 days. Thereafter the petitionerCompany intimated to the Estate Officer vide letter dated 7.7.1994 that the previous plot measuring 5 Acres situated on main Mathura Road was acquired by the HUDA in the year 1967 at the rate of Rs. 5 per sq. yard. That land has not been put to use so far. In lieu of that land the petitionerCompany was given alternative plot of 5 Acres in Sector 6, Faridabad at the price of Rs. 10 per sq. yard and in pursuance thereof the amount was deposited. Why the petitionerCompany is being asked that it would be charged price of the land situated in Sector 59 at the rate of Rs. 425 per sq. metre ? The petitionerCompany intimated the Estate Officer that the proposed price of Rs. 425/ per sq. metre is excessive, illegal and arbitrary, and he should reconsider the matter. The letter of the petitioner was not replied, but vide letter dated 22.3.1995 the petitioner Company was intimated by respondent No. 4 that under the policy of HUDA the offer of alternative industrial plot could be made only on the prevalent rate, and if this offer is acceptable to the Company, the acceptance be conveyed within 30 days. The petitioner had been persuading various authorities, including political one, about the illegal decision taken by the HUDA that it would charge price at the rate of Rs. 425/ per sq. yard, but to no effect, as a result of which the petitionerCompany had to accept the allotment of the plot in Sector 59 subject to its right regarding price vide letter dated 3.4.1995 (Annexure P5).

4. The grouse of the petitionerCompany before the High Court is that its land measuring 45 Kanals 7 Marlas was acquired at the rate of Rs. 5/ per sq. yard and the site in question is being sold at the rate of Rs. 15,000/ per sq. yard and that the land of some of the owners had been released from acquisition, but its land has not been released and as such a discrimination has been caused to it; that when the land was allotted to it in Sector 6 at the rate of Rs. 10.54 per sq. yard and the petitionerCompany deposited the amount of Rs. 70,454.50, still that plot has not been alloted to it and has been restored to M/s. Telephone Manufacturing Co. under the orders of the High Court as it set aside the resumption orders for no fault of the petitioner; that the allotment of the plot situated in Sector 24 has also not materialised; that the allotment of plot No. 1 in Sector 31 has not materialised because its acquisition did not materialise and now when plot in Sector 59 is being allotted, why the petitionerCompany should be asked to pay the price of the plot at the rate of Rs. 425/ per sq. metre when at one point of time the land was allotted to it at the rate of Rs. 10.54 per sq. yard. For all these faults on the part of the respondentAuthorities, the petitionerCompany is entitled to the allotment of the plot now being offered in Sector 59 at the rate of Rs. 10.54 per sq. yard. Further the grouse of the petitionerCompany is that the respondents are the instrumentalities of the State and they cannot act arbitrarily while demanding the price at the rate of Rs. 425/ per sq. metre.

5. Notice of the writ petition was given to the respondents. It has been contested by respondents Nos. 3 and 4, who filed a joint written statement and denied the allegations made in the writ petition. It has been submitted that the petitioner was allotted plot No. 8 in Section 6 of 5 Acres size at the rate of Rs. 10.54 per sq. yard. However, Telephone Manufacturing Co. filed C.W.P. No. 1329 of 1969 in the High Court and the said plot was restored to it under the orders of the Court. If an alternative plot was allotted to the petitioner, it could only do so at the new rate, which is as per the policy of the HUDA. Moreover, plot No. 8, Sector 6, Faridabad, was cancelled because the petitioner failed to deposit the requisite 10% as earnest money. The petitionerCompany missed the bus at the first instance due to its own fault and thus cannot claim the subsequent allotment at the earlier rate. It is further submitted at by the respondents that the petitionerCompany cannot claim the plot on the same rate as was existing in the year 1970. As the market value has arisen, the compensation for the acquired land has been paid at a higher rate. It has also been submitted in the written statement that the Negotiating Committee in its meeting held on 10.7.1969 offered plot No. 8, Sector 6, Faridabad, and asked the petitioner to deposit 10% of the tentative cost, but it did not do so. It has also been averred in the written statement that plot in Sector 24 was offered on the request of the petitionerCompany. It has been admitted by the respondents that the land of plot No. 1, Sector 31, Faridabad, could not be allotted to the petitionerCompany as the land acquisition proceedings did not finalise. The respondents admit that a sum of Rs. 70,454.50 was deposited by the petitionerCompany. (It may be mentioned here that before the start of the arguments, Smt. Nirmaljit Kaur, learned counsel appearing on behalf of the HUDA, submitted that the amount of Rs. 70,454.50 deposited by the petitionerCompany has been withdrawn by it and as a result of that it has forfeited its claim to call upon the Court to issue the directions for the allotment of the plot at the rate of Rs. 10.54). Though this fact has been disputed by the learned counsel appearing on behalf of the petitioner, yet what would be the effect of its withdrawal even if it is assumed for the sake of argument, would be discussed in the later portion of this judgment.

6. To continue with the pleadings of the respondents Nos. 3 and 4, these respondents admit that HUDA offered the plot at the rate of Rs. 425/ per sq. metre and this offer was valid upto 31st March, 1995. Justifying their stand, respondents Nos. 3 and 4 submitted that plot No. 8, Sector 6, Faridabad, could not be allotted to the petitioner as it was restored to M/s. Telephone Manufacturing Co. and that plot No. 1, Sector 31, Faridabad, could not be given to the petitioner as its acquisition never materialised. Plot in Sector 59 has been earmarked for the petitioner, but it could be allotted at the prevalent price, i.e., at the rate of Rs. 425/ per sq. metre and the petitioner cannot claim as of right that it should be allotted the plot at the rate of Rs. 10.54 per sq. yard due to changed circumstances.

7. In support of their pleadings the parties have placed some documents on the record and I will make a brief mention of the relevant portion of the documents

in the subsequent portion of this judgment in order to appreciate the controversy involved in C.W.P. No. 7431 of 1995.

8. The admitted facts are that the petitionerCompany was the owner of the land measuring 45 Kanals 7 Marlas and this land was acquired. There was a Government policy for the exemption from acqusiton of the land. Although the case of the petitioner fell in that category, yet exemption from acquisition could not be granted to it, though it was granted to two other owners, who were similarly situated, like the petitioner. It is also the common case of the parties that at the first instance plot No. 8, Sector 6, Faridabad, was allotted to the petitioner vide letter (Annexure P1 dated 28.7.1969 and the petitionerCompany was called upon to deposit a sum of Rs. 32,086/ being 10% of the total price of the plot. Unfortunately, this plot could not be allotted to the petitionerCompany. It was the resumed plot. The owner challenged the resumption and under the orders of the Court that plot was restored to its owner. Thus, it can be safely held that the petitioner was not at fault when plot No. 8, Sector 6 went out of its hand. Again plot in Sector 24 was offered. It was smaller in area and in these circumstances the petitionerCompany was justified in making a representation to the respondentAuthorities for a larger area. Consequently, plot No. 1, Sector 31 was agreed to be allotted to the petitioner. This plot also could not be allotted to the petitioner as its acquisition did not mature and, therefore, one plot in Sector 59 was offered to it vide Annexure P3. A perusal of the same would show that this plot has been offered as an alternative measure in lieu of the industrial plot No. 1, Sector 31, though it is stipulated in Annexure P3 that the rate of the cost of plot in Sector 59 would be charged at the rate of Rs. 425/ per sq. metre. Annexure P4 is the other letter dated 22.3.1995, which again suggests that alternative industrial accommodation in Sector 59 was offered to the petitioner in lieu of the disputed plots. It is also a common case of the parties that at one point of time the petitioner Company deposited a sum of Rs. 70,454.50 as is evident from Annexure P2.

9. With this background learned counsel for the petitioner submitted that offer of allotment of the plots situated in Sectors 24, 31 and 59 was an alternative offer to plot No. 8, Sector 6 and this offer was in recognition of the earlier right of the petitioner; therefore, the respondentauthorities are bound to allot plot in Sector 59 at the price first time offered at the rate of Rs. 10.54 because the fault, if any, in nonallotment of the plot to the petitioner is referable to the respondentauthorities.

10. On the contrary, Smt. Nirmaljit Kaur, learned counsel appearing for the respondents, submitted that as per policy of the HUDA, incorporated in Memo. No. 25714 dated 12.12.1991, the allottee is liable to pay the prevalent rates with respect to the changed plots and as such the petitioner cannot take the advantage by saying that he must be allotted the plot on the reduced rate of Rs. 10.54 per sq. yard. Smt. Nirmaljit Kaur submitted that the memo. dated 12.12.1991 containing the policy of the HUDA had not been challenged in the

writ petition and, therefore, the writ petition is liable to be dismissed. She further submitted that the earlier amount deposited by the petitioner had been withdrawn and it is not now open to the petitioner to say that the respondents are under obligation to allot the plot at the previous rate of Rs. 10.54 per sq. yard. Mrs. Nirmaljit Kaur also referred to the letter (Annexure R1) and urged that plot No. 8 situated in Sector 6 stood cancelled in the name of the petitioner, as it failed to deposit 10% of the total value of the plot and in these circumstances the petitioner cannot claim that plots in Sectors 24, 31 and 59 were allotted as an alternative measure.

11. I have given my thoughtful consideration to the rival contentions of the parties and this Court is of the opinion that the respondentauthorities have no case. The chain of documents which have been relied upon by the petitioner would show that it was offered plots from time to time by the respondent authorities as an alternative and the respondentauthorities have also recognised the earlier right of the petitioner that plots in Sectors 24, 31 and 59 were offered for sale. The petitionerCompany cannot be allowed to suffer for its no fault. Situated in Sector 6 was a resumed plot and under the orders of this Court it was restored to its original allottee. Plot No. 1 of Sector 31 could not be acquired validly. Finally, the plot in Sector 59 was allotted and in these circumstances it is not open to the HUDA authorities to say that it would claim higher price at the rate of Rs. 425/ per sq. metre. Assuming even if plot of Sector 59 is not offered for sometime or the other, and after lapse of years, the HUDA offers another plot, how the petitionerCompany can suffer due to the acts and omissions for which the sole responsibility lies upon the HUDA authorities. Had it been one clear offer with regard to the allotment and thereafter on account of acquisition proceedings, HUDA suffers financial losses due to the payment of enhanced compensation to the owners, certainly it has the right to call upon the allottee to pay the enhanced compensation irrespective of the fact that the earlier offer was for the lower rate. In the present case the vocal distinction is that plots in Sectors 24, 31 and 59 were offered as an alternative site to plot No. 8 of Sector 6 and in these circumstances the HUDA authorities cannot unilaterally enhance the price than the one which was at one point of time offered to the petitionerCompany.

12. The record of the writ petition shows that plot No. 8, Sector 6 though was cancelled vide Annexure R1, yet it is a disputed point whether this R1 was ever sent to the petitioner because it has stated categorically in its replication that this letter dated 27.1.1971 was never communicated to it. Annexure P8 is the copy of the order dated 30.11.1969, which would show that against the order of cancellation of plot No. 8 of Sector 6 an appeal was filed by the petitionerCompany before the Chief Administrator, Haryana, and this appeal was allowed and the order of the Estate Officer, Faridabad, was set aside and directions were given to the HUDA authorities to give a fresh opportunity to the party to deposit the due amount as per the rate fixed treating it to be the final price as per normal practice within 15 days of the communication of that order.

With the passing of this order it was not justified on the part of the authorities to communicate to the petitioner vide Annexure R1 that offer of allotment of industrial plot No. 8 in Sector 6 was withdrawn due to the nondeposit of the amount; rather after the passing of this order the petitioner deposited a sum of Rs. 70,454.50 and disputed if the HUDA could charge the price at the rate of Rs. 425/ per sq. metre. With the deposit of this amount, the petitionerCompany showed its willingness to purchase the plot at the initial rate of Rs. 10.54 per sq. yard and even its withdrawal cannot make any difference because the respondentauthorities were never willing to discharge their obligations by offering plot at the rate of Rs. 10.54 per sq. yard. Similarly, in the light of the order dated 30.11.1969 the respondentauthorities could not justify their stand as taken by them in their letter dated 19.11.1970 (Annexure P9). This Court is not in agreement with the submissions of Smt. Nirmaljit Kaur, learned counsel appearing on behalf of the respondents, that once the plot in favour of the petitioner Company has been cancelled on account of the nondeposit of the amount, it cannot call upon the respondentauthorities to fulfil its obligations because the respondentauthorities throughout had been recognising the earlier right of the petitioner and the respondents cannot be put to advantage for their own fault when they did not fulfil their obligation in allotting plot No. 8 in Sector 6, Faridabad.

13. Learned counsel for the petitioner in support of his case has drawn my attention to the judgment passed by the Division Bench of this Court dated 29.4.1983 in C.W.P. 330 of 1983 (M/s. Indian Core Oils Pvt. Ltd., Faridabad v. The State of Haryana and others), wherein similar point was discussed and decided in the following terms :

``After hearing the learned counsel for the parties, we find considerable force in the contention of the learned counsel for the petitioner. It is correct that in the earlier order there is no mention of the price; but that fact would not by itself be sufficient to negative the plea of the petitioner. The petitionerfirm was entitled to the allotment of a plot. The authority acted arbitrarily in not allotting a plot to the petitionerfirm. In the writ petition, direction was issued to the authority to allot a plot. The right to get allotment of the plot was when the petitionerfirm paid the earnest money and the right to allotment was approved. As is evident, in similar circumstances, the Supreme Court allowed allotment of plot at old price. The Authorities cannot be permitted to negative the relief granted by this Court to the petitioner by claiming the present market price. The petitioner cannot be made to suffer for the wrong act of the Authorities.......''

Learned counsel for the respondents, however, invited my attention to a chain of authorities reported as M/s. Radhakrishnan Agarwal and others v. State of Bihar and others, AIR 1977 S.C. 1446; The Divisional Forest Officer v. Bishwanath Tea Co. Ltd., AIR 1981 S.C. 1368; Bareilly Development Authority and another v. Ajay Pal Singh and others, AIR 1989 S.C. 1076; Delhi Development Authority v. Pushpendra Kumar Jain, 1994(3) RRR 723 (SC) : AIR 1995 S.C. 1; Smt.

Sheelawanti and another v. D.D.A. and another, AIR 1995 Delhi 212; and Chandigarh Housing Board v. K.K. Kalsi and others, 1996(2) AIJ 554; and she wanted to convey to this Court that the price factor could not be determined while exercising the jurisdiction under Article 226 of the Constitution of India and secondly, the entire case of the petitioner arises from the alleged breach of a contractual obligation and such breach cannot be remedied in the writ jurisdiction. It was also submitted that the allotment of a plot does not confer any right on the petitioner to seek directions from this Court that it be allotted the plot at the reduced rate. I have the occasion to go through all the citations relied upon by the learned counsel for the respondents, but patent distinction in the cited cases and the present case is that in the case in hand the respondentauthorities throughout had recognised the right of the petitionerCompany for the allotment of the plot and in lieu of that recognition plots from time to time were allotted. For the first time Plot No. 8 in Sector 6 had been allotted at the price of Rs. 10.54 per sq. yard. Had that allotment materialised, the petitioner Company would not have been supposed to pay the enhanced amount. Why in equity the petitionerCompany should be allowed to pay the enhanced price of Rs. 425/ per sq. metre when the entire fault is attributable to the respondent authorities ? HUDA is a statutory body and the present case is not a pure case of contract or its breach; rather it is a case where the action on the part of the respondentauthorities while claiming the enhanced amount cannot be held to be legal or within jurisdiction in view of their earlier obligations and this court is of the opinion that the respondent authorities cannot be permitted to call upon the petitionerCompany to pay the enhanced amount under the barb of policy decision.

14. In this view of the matter, while dismissing C.W.P. No. 3536 of 1993, Civil Writ Petition No. 7431 of 1995 is hereby allowed and directions are given to the respondents to fix the price of the industrial plot in Sector 59, Faridabad, and to allot the same to the petitionerCompany at the rate of Rs. 10.54 per sq. yard instead of Rs. 425/ per sq. metre, within three months from the date of the receipt of the copy of this order.

In view of the peculiar circumstances of the case, costs are made easy.

