

(1998) 10 RAJ CK 0016
In the Rajasthan High Court
Case No : C.W.P. No. 643 of 1981

Major Suraj Bhan Singh Jodha

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 27-10-1998

Acts Referred:

Rajasthan Urban Improvement Trust Act, 1959 — Section 60(1)

Citation : AIR 1999 Raj 35

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Virendra Bandhu, for the Appellant; Bharat Vyas and S.N. Bohra, for the Respondent

Final Decision : Allowed

Judgement

J.C. Verma, J.—The petitioner, an ex-serviceman of-the rank of Major, is aggrieved because of the orders dated 5-2-81 (Ann. 14A) and 18-8-80 (Ann. 14B) by which orders the residential plot allotted to petitioner vide order dated 12-9-78 (Ann. 8) by Government of Rajasthan while exercising the powers u/s 60(1)(b) of the Rajasthan Urban Improvement Act, 1959 had been withdrawn all of a sudden and without any prior notice to petitioner.

2. The petitioner had joined Army in the year 1962, he had applied for allotment of a residential plot under the notification issued by State Government u/s 60 of The Improvement Act. The notification dated 9-5-63 enabled the State Government to allot the land to army personnel for residential purposes. The petitioner did apply and also sent repeated applications. On further pursuing the matter in regard to allotment of plot he was asked to submit certain certificate about his bona fide residence of State of Rajasthan, which was complied with. The petitioner has narrated the dates and circumstances when right from 1964 onwards he had been pursuing his case for allotment under the category of Army personnel. Vide letter dated 13-7-78 (Ann. 7) written by Secretary of UIT (now the functions of UIT had been taken over by JDA since 1982) to Government to

the effect that the petitioner even though figured in the priority list of eligible allottees". Some how was not allotted the plot and many other persons named in letter dated 13-7-78, as many as 11 in number, who were junior on the priority list have been allotted plots. The Secretary in his letter dated 13-7-82 had strongly recommended for consideration of the case of petitioner, which was inadvertently over looked by the authorities in past and to allot a suitable residential plot in favour of petitioner on the basis of the priority list. The Secretary had also pointed out that because of the disposal of Land Rules, 1974 having come into force, the plot can only be allotted by the Government after exercising the powers u/s 60 (1) (b) of the UIT Act. The matter was considered by the Government and vide letter dated 12-9-78 (Ann. 8), on examination of case of petitioner, the Government was pleased to sanction the allotment of residential plot. Later on vide letter dated 11-12-79 (Ann. 11), the petitioner was informed by the Chairman of UIT that he will be allotted residential plot in Malviya Nagar Scheme at the rate of Rs. 65/- per sq. yds. and the possession will be given at the time of allotment. The letter dated 11-12-79 is said to be passed on the basis of sanction of allotment by the Government vide letter dated 12-9-78. The petitioner had been pressing for allotment But without there being any reason ever told to petitioner, the recommendation made by Government for allotment of plot to petitioner was cancelled by UIT vide order dated 5-2-81 (Ann. 14A), which cancellation order was passed as per direction given by Government vide letter dated 18-8-80 (Ann. 14B). The case of the petitioner was also taken up by the State Sanik Board, which Board had been constituted by State of Rajasthan to lookafter the welfare and benefits of ex-serviceman. The Board had specifically asked the State Government and UIT to intimate the reasons for cancellation of residential plot to petitioner.

3. State Government respondent No. 1, who had passed the order of cancellation had been duly served, but no written statement had been filed, nor the respondent No. 1 is represented through any person, and therefore, this Court has not been told by State Government as to why and under what circumstances and on what reasons the order of allotment of plot had been cancelled.

4. The respondent No. 2 has filed the reply. The facts of allotment and cancellation of plot are not denied nor any reasons have been given by respondent No. 2 in written statement as to why the allotment in favour of petitioner was cancelled by State Government. Learned counsel for respondent No. 2 frankly submits that the respondent No. 2 had only acted on the instructions issued by State Government. After the sanction Having been made by State Government for allotment of residential plot to petitioner, the respondent No. 2 had informed the petitioner, that a plot was to be allotted to him in Malviya Nagar Scheme and if the State Government had withdrawn the recommendation of allotment, the respondent No. 2 had no option but to comply with the order of State Government. However, a defence is being taken by respondent No. 2, that the petitioner has taken different stands in regard to his income. It is stated that as per certificate dated 23-10-78 the income of

petitioner was shown Rs. 1,700/- and in April, 1979 he had declared his income as Rs. 1,913/- per month and in July, 1979 as Rs. 800/-. The attention of the Court has been invited to Rule 7 of the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974, wherein it has been mentioned that the army personnel including ex-serviceman and their families are entitled to allotment of plot if the income of such army personnel does not exceed to Rs. 7,500/- per month. It has not been shown or brought on record that the petitioner was earning more or less than the prescribed limit of the income at the relevant time. Even otherwise, it seems that there must be a type mistake in mentioning the income as Rs. 800/- of the rank of a Major in the Army when the income in October, 1978 was 1,700/-in April, 1979 it was about Rs. 1,900/-. However, it has not been shown or brought on record that under any Rules or instructions it was relevant or material fact for allotment or cancellation of allotment. No reasons whatsoever have been given by the respondents.

5. In my opinion, unnecessary and irrelevant defence is being taken by respondent No. 2, who according to its own submissions was only acting on the instructions of State Government. No record is made available in court, no reasons are forthcoming for cancellation of allotment. In the present case, the Government had reconsidered the case of petitioner as special case and acting under the statutory provisions of Section 60 (I) (b) UIT had specifically recommended allotment in favour of the petitioner. Section 60 does enable the Government to pass such recommendation. Apart from above, it is not disputed as revealed in letter dated 13-7-78 (Ann. 7), that there were many persons who are lower at the priority of petitioner but still were allotted the plots. It was one of the primary reasons that the case of petitioner was re-considered as special case when the consideration of his case was somehow inadvertently overlooked at the time when the persons lower to petitioner in priority list were considered by the State Government. In such situation the Government vide order dated 5-2-81 (Ann. 14A) without informing the petitioner and without giving any reason and by passing a cryptic order of 2-3 lines had definitely acted in arbitrary manner.

6. The petitioner was informed that he would be allotted a plot by the UIT in Malviya Nagar, when the allotment of Malviya Nagar Scheme was to be started. The cancellation of such order without assigning any reasons does violate the civil rights of the petitioner, specially when junior persons in the priority list, had been allotted plots as depicted in letter dated 13-7-78. In such circumstances the orders dated 5-2-81 (Ann. 14A) and 18-8-80 (Ann. 14B) cannot be sustained in the eyes of law and, are therefore, quashed.

7. In these circumstances, the petitioner shall be entitled for residential plot as per order dated 13-7-78 (Ann. 8) in Malviya Nagar scheme if any plot is available of the size as per income group of petitioner. Mr. Vyas submits that at present the plots are available ranging from 190 sq.mtr. to 250 sq.mtr. However, if any plot of the entitlement of petitioner is available in Malviya Nagar scheme or in

any other scheme the same shall be offered to him. The petitioner shall be at liberty to give preference if any offer is made in any other scheme. It shall be also open to the respondents to offer any plot of any other size near about the size which was to be offered to the petitioner had the allotment not been cancelled. This exercise shall be completed by respondent within three months from today.

8. The petitioner was offered the plot at the rate of Rs. 65A per sq.yd. No demand notice was issued for payment because of cancellation of the plot, in my opinion, because of the mistake or illegality committed by State Government, the petitioner should not be allowed to suffer. It shall be appropriate in the circumstances of the case, wherever the plot is allotted to petitioner and if the price of the plot is more than Rs. 65/-, the price shall be charged from the petitioner at the rate of Rs. 65/- per sq. yd. with the interest of 10% p.a. from the date of cancellation of allotment dt. 5-2-81 (Ann. 14A) till offer is made with the condition that the total price of the plot shall not, in any case, exceed the reserve price fixed by the JDA under the Rules in that locality.

9. For the reasons mentioned above, the writ petition is allowed with the cost. The cost is assessed as Rs. 5,000/-, which is to be paid by State of Rajasthan.