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**(2015) 12 RAJ CK 0060**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 9859/2014**

Mehta Spinning Mills

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 14-12-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226, 227

**Citation :** (2015) 12 RAJ CK 0060

**Hon'ble Judges :** Pratap Krishna Lohra, J.

**Bench :** Single Bench

**Advocate :** Muktesh Maheshwari, for the Appellant; Rajat Arora for Sanjeet Purohit, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pratap Krishna Lohra, J.—Petitioner, a proprietorship-firm, through its sole proprietor has laid this writ petition under Article 226 & 227 of the Constitution of India for besetting impugned order dated 11th of September, 2014 (Annex.6) and processing his application for allotment of land of Plot No. F-119 at Nayagaon Industrial Area, Pali. A further direction is sought by the petitioner against respondents not to de-reserve Nayagaon Industrial Area, Pali from Powerloom Industries to General & Powerloom Industries.

2. For craving the aforementioned reliefs, it is, inter alia, averred in the writ petition that Govt. of Rajasthan, vide order dated 12th June, 2011 floated a scheme for establishment of new power loom enterprise in Pali and other districts. Subsequent to that, Finance Department (Tax Division), Govt. of Rajasthan, on 12th of July, 2011, ordered customized package under sub-clause (c) of Clause 15 of Rajasthan Investment Promotion Scheme, 2010 for establishment of new enterprise(s) in powerloom sector in the Districts of Jodhpur, Pali and Barmer. Letter dated 12th of July, 2011, gives a layout plan of Industrial Area Nayagaon District Pali with statement showing the number of plots in various categories. Vide Annex.(3), office order dated 21st of November,

2011, procedure for allotment of plots in Industrial Area Nayagaon, Pali, is notified by respondent RIICO. Later on, respondents by letter dated 20th of February, 2012 decided the parameters recommended by duly constituted committee for allotment of plots in Industrial Area Nayagaon, Pali. Thereafter, respondent-RIICO for establishment of Powerloom Industries in Pali invited applications from interested entrepreneurs, which are eligible and fulfilling the terms and conditions of the allotment of land and willing to set up powerloom unit. The petitioner-firm being interested in establishing powerloom industry and fulfilling the terms and conditions, offered its candidature for allotment. On receipts of application forms from various aspirants for allotment of plots, the applications were scrutinised including the application of the petitioner-firm and a decision was taken to allot the plots by draw of lottery. Initially, for draw of lottery, the date was fixed as 25th July, 2012 but the same was postponed. As per the version of the petitioner, it completed all the formalities including submission of documents for allotment of land and the respondents were to issue sanction order and deed in its favour, in view of the fact that petitioner-firm had already deposited requisite amount demanded by the respondents. When the petitioner was waiting for issuance of sanction order, it was utterly shocked on a decision of respondent-RIICO dated 6th of August, 2014, whereby it decided to de-reserve Nayagaon Industrial Area, Pali from Powerloom Industries for General Industries including Powerloom Industries and as a consequence thereof decided to refund the cheque/DD received from the petitioner-firm. Pursuant to the decision of respondent-RIICO, the petitioner-firm was addressed a communication dated 11th of September, 2014, whereby the amount deposited by the petitioner was refunded to the petitioner by a DD/Bankers Cheque. After receiving the said communication, the petitioner-firm served a notice for demand of justice on 19th of September, 2014 seeking redressal of its grievances. Questioning the action of the respondent-RIICO, on the anvil of being violative of Article 14 of the Constitution of India, the petitioner has submitted that the impugned order is liable to be quashed and set aside and requisite direction be issued for allotment of plot to it.

3. On behalf of RIICO reply to the writ petition is submitted wherein some preliminary objections are also incorporated. The respondent-RIICO has urged in the reply that the petitioner-firm has not approached the Court with clean hands and is guilty of making false averments to mislead the Court. An objection is also sought to be raised that the petitioner has miserably failed to show invasion of any of its constitutional/legal right so as to invoke extraordinary jurisdiction of the Court. While advertng to the positive assertion of the petitioner about issuance of allotment order/letter in its favour, the RIICO has submitted that no such order was issued by the competent authority and the entire story about allotment of industrial plot is a mere concoction of the petitioner. It is also averred in the preliminary objections that all the applications received by the respondent-RIICO were treated alike, including the petitioner's application, and no discrimination was practised. In the pleadings, some additional facts are also

mentioned by placing on record advertisement dated 18th December, 2014 (Annex.R/1) and result of draw of lottery dated 10th of March, 2015 showing allotment of plots to various aspirants. A document (Annex.R/3) is also placed on record showing allotment of plots to some of the applicants for powerloom industries. It is also specifically pleaded that pursuant to advertisement dated 18th December, 2014, the petitioner had not applied, and therefore, he has got no right to question the impugned order after finalization of allotment of industrial plots.

4. Joining issue with the petitioner on merits, the respondents have submitted that mere submission of application for allotment of industrial plot has not created any right in favour of the petitioner. It is specifically mentioned in the reply that a meeting of RIICO under the stewardship of its Managing Director was held on 17th February, 2014 to discuss various aspects of the area reserved for powerloom industry. In the meeting, various technical and financial aspects were examined threadbare and a policy decision was taken to de-reserve Nayagaon Industrial Area, Pali for powerloom industries and to allow allotment of land for general industries also at the said industrial area. As a consequence of this decision, the amount received from various applicants including the petitioner were refunded. In substance, it is submitted by the respondent-RIICO that it has not acted arbitrarily and as such Article 14 is not attracted to categorise the impugned action of respondent-RIICO as infirm.

5. Mr. Muktesh Maheshwari, learned counsel for the petitioner, has vehemently argued that action of the respondent-RIICO is arbitrary and unreasonable in clear negation of Article 14 of the Constitution of India. Learned counsel has made an attempt to substantiate all the grounds urged in the writ petition to question the impugned action of the respondent-RIICO.

6. Per contra, learned counsel, Mr. Rajat Arora submits that admittedly no allotment order/letter was issued to the petitioner, and therefore, petitioner's challenge to the impugned action of the respondent-RIICO is not sustainable. Learned counsel for the respondent submits that there is no question of violation of Article 14 of the Constitution of India in the instant petition and a policy decision of the RIICO to de-reserve allotment of plots exclusively for powerloom industries to general industries & power loom industries vis-?-vis Nayagaon Industrial Area, Pali, cannot be faulted and the said policy decision is not justiciable. In support of his contentions, learned counsel for the respondents has placed reliance on following legal precedents:

? Jasbir Singh Chhabra and Others Vs. State of Punjab and Others,

? Delhi Development Authority Vs. Pushpendra Kumr Jain,

? U.P. Avas Evam Vikas Parishad and Others Vs. Om Prakash Sharma,

7. I have heard learned counsel for the parties, perused the impugned order and materials available on record.

8. Upon thorough evaluation of the afflictions of the petitioner in conjunction with the materials available on record, it is undeniable that no allotment order/letter was issued to it by respondent RIICO. Although in the writ petition, the petitioner has projected a version that allotment of industrial plot was made in its favour of the land Area No. F-119, but there is nothing on record to substantiate the same. All that which emerge out from the record is that petitioner-firm made endeavour for allotment of industrial plot to establish powerloom industry and completed requisite formalities in this behalf. True it is, that earlier respondent-RIICO has issued advertisement to establish powerloom industries but then the said advertisement was not processed further, inasmuch, as the draw of lottery was not carried out. In this background, the petitioner's status remained as of an applicant for allotment of land only, and if the RIICO has decided to alter its policy by de-reserving the area from powerloom industries to general & powerloom industries vis-?-vis Nayagaon Industrial Area, Pali, then the said policy decision of the RIICO cannot be made subject matter of judicial review. From the averments contained in the reply, it is clearly apparent that the policy decision was taken by respondent-RIICO after analyzing all the technical and financial aspects objectively, in the best interest of development of the industries within the area, by making it open for all the industries, and therefore, the said decision, per se, cannot be categorised as arbitrary or unreasonable.

9. There is yet another aspect of the matter that after de-reserving Nayagaon Industrial Area from powerloom industries for general industries & power loom industries, a fresh advertisement was issued by RIICO inviting applications from aspirants for allotment, and pursuant thereto petitioner has not applied. The process of allotment, pursuant to the subsequent advertisement, has been completed and allotment orders have been issued to various applicants including the incumbents who applied for allotment of plot for establishment of powerloom industries, therefore, the petitioner cannot have any cause of grievance against the allotment of industrial plots to various incumbents, who are allotted industrial plots pursuant to advertisement dated 18.12.2014.

10. Supreme Court in Jasbir Singh Chhabra (supra) declined to interfere with the policy decision of the State Government for change of land use from industrial to residential. The Court held:

"It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision

taken by the Government is tainted by mala fides or is influenced by extraneous considerations. The Court is duty-bound to carefully take note of the same. In this context, reference can usefully be made to the decision of the Constitution Bench in *E.P. Royappa v. State of T.N.* In that case, the petitioner, who was at one time holding the post of Chief Secretary of the State, questioned the decision of the Government to post him as an Officer-on-Special Duty. One of the grounds on which he attacked the decision of the Government was that the Chief Minister of the State, Shri K. Karunanidhi was ill-disposed against him."

11. While scrutinizing the plea of doctrine of promissory estoppel, the Court declined to accept the plea of the applicant that success in draw of lottery has made him entitled to invoke the doctrine of promissory estoppel. The Court held:

"We are in complete agreement with the Division Bench of the High Court that no promise much less an enforceable promise was made by the Corporation to the prospective applicants that by making an application pursuant to the advertisement and on being declared successful in the draw of lots, they will get residential plots. Rather, being conscious of the fact that in terms of the approval accorded by the State Government vide Memo dated 26.12.2001, it could utilize 20-30% area of the focal point only for Industrial Housing, the Corporation had made it clear to the prospective applicants that there is no certainty of their getting residential plots in Phases VIII-A and VIII-B, Mohali. The decision taken by Plan Approval Committee of the Corporation to approve the layouts of residential pockets in Phases VIII-A and VIII-B, Mohali was not final. The same was subject to sanction of change of land use in accordance with the provisions of the 1995 Act.

The Allotment Committee made a clear recommendation against utilization of surplus land for housing purposes. The writ petitioners were very much aware of the tentative character of the initial advertisement as also the advertisement issued for holding draw of lots. By incorporating note in the second advertisement, which has been reproduced hereinabove, the Corporation had made it known to every one that the entire exercise was provisional and those who did not want to participate in that exercise were at liberty to seek refund of the earnest money. To put it differently, the Corporation did not make any representation to the prospective applicants which induced them to part with their money or adversely change their position. Therefore, the High Court rightly refused to invoke the doctrine of promissory estoppel in favour of the writ petitioners."

12. In *Delhi Development Authority (supra)*, while examining the status of an applicant, successful in draw of lottery, declined to accept the same as his vested right. The Court held:

"Now coming to the other ground, we are unable to find any legal basis for holding that the respondent obtained a vested right to allotment on the draw of lots. Since D.D.A. is a public authority and because the number of applicants are

always more than the number of flats available, the system of drawing of lots is being resorted to with a view to identify the allottee. It is only a mode, a method, a process to identify the allottee, i.e., it is a process of selection. It is not allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of drawl of lots. The scheme evolved by the appellant does not say so either expressly or by necessary implication. On the contrary, clause (14) thereof says that "the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay out, cost of construction etc." It may be noted that registration of applicants under the said scheme opened on September 1, 1979 and closed on September 30, 1979. About, 1,70,000 persons applied. Flats were being constructed in a continuous process and lots were being drawn from time to time for a given number of flats ready for allotment. Clause (14) of the Scheme has to be understood in this context-the steady rise in the cost of construction and of land. No provision of law also could be brought to our notice in support of the proposition that mere drawl of lots wastes an indefeasible right in the allottee for allotment at the price obtaining on the date of drawl of lots. In our opinion, since the right to flat arises only on the communication of the letter of allotment, the price or rates prevailing on the date of such communication is applicable unless otherwise provided in the Scheme. If in case the respondent is not willing to take or accept the allotment at such rate, it is always open to him to decline the allotment. We see no unfairness in the above procedure."

13. In U.P. Avas Evam Vikas Parishad (supra), Supreme Court has declined to acknowledge vested right accrued in favour of an incumbent for plot in question merely on the ground that his bid was found to be highest and he had deposited 20% of the highest bid amount.

14. Therefore, in totality, in the backdrop of facts and circumstances of the case, none of the grounds urged by the petitioner are substantial to assail the impugned order/action of the respondent-RIICO. The petitioner has utterly failed to make out a case for interference in exercise of extraordinary jurisdiction of this Court.

15. Resultantly, the petition fails and same is, hereby, dismissed. It is made clear that dismissal of the writ petition shall not prejudice the right of the petitioner to claim refund of the amount deposited by it for allotment of industrial plot pursuant to earlier advertisement.