
(1993) 09 P&H CK 0158
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3396 of 1983

Mrs. Sudha Mittal

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 28-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Haryana Urban Development Authority Act, 1977 — Section 17

Citation : (1994) 106 PLR 732

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : N.S. Panwar, for the Appellant; Deepak Sibal, Harbhagwan Singh and J.S. Yadav, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioner, a non-resident Indian, complains against the bureaucratic highhandedness. She was offered a plot measuring 500 square meters in the Industrial Estate, Panchkula. Vide order dated December 28, 1982, the offer was "withdrawn." Her representation against this order having been rejected. She has approached this Court through the present writ petition. She prays for the issue of a writ in the nature of certiorari quashing the impugned order and for a writ of mandamus directing the respondents to allot a 1000 square meters or a 500 square meters plot to her. The respondents justify the impugned order primarily on the ground that the petitioner had "failed to complete the requisite formalities mentioned in the letter of intent within the specified period of 180 days--." A few facts may be noticed.

On July 31, 1981, the Haryana Development Authority (hereinafter referred to as the "Authority") published a notice in "The Tribune" offering plots to non-resident Indians in the various Industrial Estates being developed at different places including Panchkula in the State of Haryana. The tentative price of a plot at Panchkula was mentioned as Rs. 55/- per square meter. The application had to

be submitted on the prescribed form "attached with the Key Plan Folder for the Urban Estates-." The applicants were required to pay 25% of the total tentative price of the plot with the application in the shape of a Bank Draft in favour of the Chief Administrator, Haryana Urban Development Authority, Chandigarh (hereinafter referred to as "HUDA"). The mode of payment of the balance amount was also mentioned. It was also stipulated that preference will be given to those who pay full amount in advance. The applicants were further required to send the application alongwith the "biodata, professional background, experience in industry and two copies of the Project profile." The size of the plot required was also required to be clearly indicated. Besides, it was also said that "an affidavit of being Non-Resident Indian and Photostat copies of Pages 2,3,4 & 5 of the Passport be also sent with the application." The last date for receipt of applications was fixed as October 15, 1981. A copy of this notice has been produced as Annexure P-I with the writ petition.

2. In pursuance of this notice, the petitioner obtained the prescribed form alongwith the Key Plan Folder from the office of the Chief Administrator. A copy of the relevant extract has been produced as Annexure P-2 with the writ petition. A perusal of this document shows that applications were invited for 14 plots measuring 2000 square meters each and 43 plots measuring 1000 square meters each. The terms and conditions of allotment were also laid down. It was inter-alia mentioned that "the tentative price of the plots shall be payable in foreign exchange to be converted into Indian rupees especially for this purpose through State Bank of India. The price of land enhanced by the Court or otherwise, if any, shall also have to be paid in foreign exchange in addition to the price of the plots. In addition to the cost of land each plot-holder shall be required to remit to India foreign exchange equivalent to the cost of construction of the factory building to be built by him according to plan approved." Vide notice dated October 29, 1981, the last date for submission of applications was further extended.

3. In pursuance to the above, the petitioner forwarded the application on the prescribed form alongwith the necessary documents with her letter dated September 10, 1981. Alongwith the application, she also forwarded four Drafts for a total sum of 6600 U.S. Dollars drawn on the Chandigarh Branch of the State Bank of India. In response to this application, the Chief Administrator, HUDA informed the petitioner that "on the scrutiny of your project for the manufacture of Bakelite electrical accessories, a plot measuring 500 square meters has been earmarked for you in the Panchkula Industrial Estate. However, before a formal allotment letter is issued in your favour, you are requested to please complete the following formalities connected with the implementation of your project." These formalities included getting the "Unit registered with the concerned General Manager, Distt. Industries Centre -----."; sending the "implementation schedule"; getting the "drawing of your unit prepared from qualified Architect and submit the same to the concerned Estate Office."; "approaching the Haryana Financial Corporation/a Scheduled Bank for sanction of loan required to meet the

cost of land, building and machinery" and supply the "complete list of plant and machinery to be installed in your proposed unit for scrutiny by this authority." It was further mentioned that "with your zeal to set up a unit in the above industrial Estate we are sure that the above formalities can be completed by you within a period of 180 days (six months) from the date of issue of this letter, failing which the authority shall be constrained to withdraw the offer." Thereafter, vide letter dated April 16, 1982, the petitioner was informed that Industrial plot No. 147 "measuring 500 = 15.50x35 (tentative)" had been earmarked in her favour. Copies of these two letter have been produced as Annexures P-5 and P-6 with the writ petition. In pursuance to these two letters, the petitioner addressed a communication dated July 4, 1982 to the Chief Administrator, HUDA pointing out that in the notice inviting applications, plots measuring 2000 square meters and 1000 square meters only had been mentioned and that "not a single plot of 500 square meters" was mentioned in the Brochure. She further submitted that she had applied for a plot measuring 2000 square meters "with a request that if the same is not available, then a plot of a 1000 Sq. meters may kindly be allotted to me." She further pointed out that the cost of a 1000 square meters plot comes to about Rs. 55,000/- @ Rs. 55/- per Sq. meter as per your advertisement and accordingly I sent Demand Draft for \$ 6600/- (U.S.A. Dollars) which are equal to more than 61,000/- Indian rupees." In view of this position, she requested the Administrator "to please reconsider your decision and allot me a plot of atleast 1000 Sq. meter as a smaller plot does not serve the purpose of our project." It was also mentioned that "on hearing from you we shall try to complete the formalities mentioned by you as early as possible." A copy of this letter is on record as Annexure P-7. The petitioner avers that to her utter surprise, instead of considering the request for allotment of 1000 square meters plot, she received a letter dated December, 28, 1982 (Copy Annexure P-8) whereby the allotment of Plot No. 147 of 500 square meters area was withdrawn. She avers that this order was passed "without any notice or opportunity to show cause having been served--." She represented against it vide her letter dated January 12, 1983. A copy of this representation has been produced as Annexure P-9. In response to this letter, she was informed vide letter dated March 3, 1983 that the offer had been withdrawn as she had failed "to complete the formalities within the stipulated period ----." Aggrieved by this action, she has approached this Court and challenged the order inter alia on the grounds that these were violative of the principles of natural justice and that the action is arbitrary and violative of Article 14 of the Constitution.

4. A written statement has been filed on behalf of respondent Nos. 2 and 3 viz. the Chief Administrator, Haryana Urban Development Authority and the Estate Officer, Panchkula. It has been averred by way of preliminary objection that "according to condition of the letter of intent dated 16.2.82 the petitioner was to complete specific formalities within a period of 180 days (six months) from the date of issue of the letter, failing which the authority shall be constrained to withdraw the offer. The petitioner has not completed the formalities within

stipulated period, therefore, his letter of intent was rightly cancelled." It has been further averred that mere filing of the application "with the deposit of the price of the plot does not give any right to the applicant to claim allotment of the plot." Relying on the decision of a Full Bench of this Court in *Surjit Singh v. State of Punjab and Ors.* (1979)81 P.L.R. 413 (FB) it has been averred that the petitioner is not legally entitled to the allotment. It has been also averred that "the petitioner deposited Rs. 6317.50 (66 U.S. Dollars) with the application for the allotment of the plot."

5. On merits, it has been averred that "on the recommendations of the Technical/allotment committee she was earmarked a plot of 500 sq. mtr. at Panchkula Industrial Estate and letter of intent was issued vide this office letter No. 4298 dated 16.2.82. As per the contents of the letter of intent she was to complete specific formalities within a period of 180 days failing which the offer was to be withdrawn. In the event of the completion of the formalities, this letter of intent was to be converted into the actual allotment letter. As the applicant failed to complete the requisite formalities mentioned in the letter of intent within the specified period of 180 days the offer of allotment was withdrawn and letter of intent was cancelled vide this letter No. 34013-18 dated 18-12-82. The withdrawal effected is not illegal as it was clearly mentioned in the letter of intent that the Authority would be constrained to withdraw the offer in case the requisite formalities are not completed within 180 days of issuance of the letter (offer) and thus the withdrawal has not infringed the rights of the petitioner in any way." It has been further averred that "the number of plots were increased later on and 500 sq.mtr. plots were also included for allotment; The petitioner applied for 2000 sq.mtr. plot and stated in his(her) application that in case 2000 sq.mtr. plot is not available then 1000 sq.mt plot be allotted. The Technical/allotment Committee recommended the plot of 500 sq.mt. which was found in consonance with the requirements of project report. This fact was brought to the notice of the applicant vide Director of Industries letter No. 39870-A dated 23.10.81. Subsequently letter of intent for 500 sq.mt. plot was issued vide letter No. 4298 dated 16-2-82--. After a silence of full 5 months the Authority received a letter (dated 4.7.82 received in this office on 27.7.82) requesting the reconsideration of the decision to allot 1000 sq.mt. plot instead of 500 sq.mt. plot. The petitioner was informed vide this letter No. 20328 dated 13.8.82 that the requirement of land of 1000 sq.mtr. is not in consonance with the project report and the land of 500 sq.mtr. is only justified for the project report. As nothing was heard from the side of the applicant for another 5 months the offer of the allotment was withdrawn vide office letter No. 34013-18 dated 28-12-82 i.e. after full one year of the offer of allotment which was valid only for 180 days. "The averment in the petition that no opportunity was given to the petitioner to show cause against the impugned order has been controverted by stating that "it is wrong to suggest that no show cause notice was served because the Authority has issued 3 letters in succession vide which it was again and again made clear to the petitioner that the formalities be completed within the specified period and

in case of non-completion of formalities the Authority would be constrained to withdraw the offer."

6. A short written statement has been filed by the Additional Director of Industries wherein" it has been averred that the petitioner might have obtained the Key Plan Folder from his office.

7. These are the pleadings of the parties.

8. This case has initially come up for hearing before me on July 29, 1991. Mr. Naubat Singh, learned counsel for the petitioner had stated that the petitioner was prepared to accept a plot measuring 500 square meters and that the plot of this size were still available with the respondent. In the alternative, he had prayed that the amount was paid by the petitioner in foreign currency and that it should be refunded to her in that very currency alongwith interest. The case was adjourned to enable the learned counsel for HUDA to obtain instructions. It appears that some-how the case was delisted. It has now come up for hearing after a lapse of more than 2 years. Since no concrete instructions are stated to have been conveyed to the learned counsel for the respondents, I have heard the counsel for the parties on the merits of the case.

9. Mr. Naubat Singh, learned counsel appearing for the petitioner contends that the action of the respondents is absolutely violative of the- principles of natural justice as no opportunity whatsoever was given to the petitioner to show cause against the impugned action. He further submits that in any event, the action is absolutely arbitrary and violative of Article 14 of the Constitution. On the other hand, Mr. Harbhagwan Singh, learned counsel for the respondents has submitted that the action of the respondents is in conformity with the terms of the offer which had been conveyed to the petitioner. He has further submitted that the petitioner is wanting to get the plot at this belated stage only because it has now become a "goldmine" as its value has considerably appreciated. It was further submitted that the petitioner had no cause of action which may be remediable by resort to the present proceedings.

10. Arguments in this case were concluded on August 23, 1993 and the orders were reserved. On a perusal of the record, it was found that the petitioner had averred in the petition that she had submitted the application alongwith Bank Draft for a sum of 6600 U.S. Dollars. This fact had also been mentioned in the letter dated September 10, 1981 (Annexure P-4) in which even the details of the Bank Drafts including Number etc. had been mentioned. However, in the written statement filed on behalf of the respondents, it had been stated that the petitioner "deposited Rs. 6317,50 (66 U.S.A. Dollars) with the application for the allotment of the plot." Consequently, the learned counsel for the authority was called upon to check-up the factual position. Mr. Harbhagwan Singh, Senior Advocate appeared before the Court and stated that the petitioner had actually paid 6600 U.S. Dollars and not 66 Dollars as mentioned in the written statement. Apparently, the statement made in the written statement is false. Neither the

amount mentioned in rupees nor that mentioned in U.S. Currency was correct.

11. A perusal of sequence of events as delineated above shows that applications had been invited for allotment of plots measuring 2000 square meters and 1000 square meters. There was no mention of any plot measuring 500 square meters. The petitioner had applied for a plot measuring 2000 square meters but had offered to accept the allotment of even a plot measuring 1000 square meters. She had made payment of 6600 U.S. Dollars which was more than the total price of a plot measuring 1000 square meters. Vide letter dated February 16, 1982, a copy of which has been produced as Annexure P-5 with the writ petition, she was offered a plot measuring 500 square meters. Neither the plot Number nor its measurements were indicated in this letter. Yet, she was inter alia called upon to get the drawing of a unit "prepared from qualified Architect and submit the same to the concerned Estate office-----." She was further told that "in case you accept this offer, please send us Rs.-----to make the total amount equal to 25% 100% of the total tentative price within 30 days from, the issue of the letter." It was also stipulated that "the above formalities can be completed by you within a period of 180 days (six months) from the date of issue of this letter, failing which the authority shall be constrained to withdraw the offer." It is on account of her failure to comply with the stipulated conditions that the allotment has been cancelled. Has the authority acted legally in doing so or is its action arbitrary?

It appears to be elementary that before any Architect can prepare a drawing for an Industrial Unit, he must know the dimensions of the plot. It is also necessary to know the zoning of the plot so that adequate provision for sun-light etc. can be made. This elementary information was not even remotely indicated by the authority. The dimensions of the plot were not mentioned. Even the Plot Number has not been indicated. In such a situation, it could not be possible for any one to prepare a drawing plan for an Industrial Unit. Not only that, the petitioner had applied for a plot measuring atleast 1000 square meters. She had paid more than the total tentative price for a plot of that size. Yet she was asked to "send us Rs.____." No amount was specified. In fact nothing was due. If at all, the authority had to refund an amount equivalent to Rs. 33,500/-. Still further, vide letter dated April 16, 1982, the petitioner was informed that Plot No. 147 measuring 500 = 15.50x35 (tentative) "has been earmarked for you in the Panchkula Industrial Estate." This was the first time that the Number of Plot and the tentative measurements thereof were disclosed to the petitioner. In response to this letter, the petitioner vide her communication dated July 4, 1982 requested the authorities to reconsider the matter and allot a plot of at least 1000 square meters. The respondents aver that a reply to this letter was sent vide letter dated August 13, 1982. The petitioner was informed that "the requirement of land of 1000 square meters is not in consonance with the project report and the land of 500 square meters is only justified for the project report." Thereafter vide letter dated December 28, 1982, the offer was withdrawn. In this letter, curiously, the Number of the Plot was mentioned as 142 instead of 147 as had been indicated in the letter dated April 16, 1982. Even on a perusal of the

aforementioned communications, it is clear that the petitioner had not been given the exact dimensions of the plot allotted to her. In the letter dated April 16, 1982, a copy of which is on record as Annexure P-6, the measurements of the plot were stated to be "tentative". It is not averred that any other communication was sent disclosing the exact and final dimensions of the plot. Still further, the measurements of the plot were stated to be $500 = 15.50 \times 35$. One of the two was inaccurate. 15.50×35 would be equal to 542.50. Apparently, either the size of the plot was wrong or the dimensions mentioned in the letter were inaccurate. In either event, it was impossible for the Architect to prepare a final drawing on the basis of the information supplied by the authority. In such a situation, it is clear that a compliance with the directions given by the authority was totally impossible in at least so far as the submission of the drawing was concerned. Still further, the authority does not appear to be sure of the plot which had "earmarked" for the petitioner. While in the letter dated April 16, 1982 the authority has referred to Plot No. 147, in the letter dated December 28, 1982, the plot Number has been mentioned as 142 instead of 147. One cannot also lose sight of the fact that the petitioner had vide her letter dated July 4, 1982 requested the authority to reconsider the matter regarding the size of the plot. Even if it is assumed that the reply was sent to her vide letter dated August 13, 1982, it is clear that the petitioner could have proceeded to take steps to comply with the instructions given by the authority only after the receipt of letter dated August 13, 1982 and not earlier than that. She was entitled to a period of six months for taking the necessary steps. This was admittedly not given to her. In fact, the impugned order was passed on December 28, 1982.

12. In view of the above sequence of events, it is apparent that the authority had itself failed to furnish the requisite information to the petitioner. In fact, the conditions stipulated by it could not have been complied with unless the requisite information had been supplied to the petitioner. It appears to have taken advantage of its own wrong. The action was unfair. It suffers from the vice of arbitrariness. It is violative of Article 14. It cannot, consequently, be sustained.

13. It is even violative of the principles of natural justice. The petitioner had submitted an application for allotment of a plot. She had even got a project report prepared. She was found to be eligible. Her project report was accepted. Even a plot was earmarked for her. Even if the contention raised by the learned counsel for the respondents is accepted that mere officer of a plot confers no right on the petitioner, yet she was entitled to have a reasonable expectation that she would get the plot and would be able to set up an Industrial Unit thereon. This expectation was arbitrarily throttled by passing the impugned order without affording her any opportunity whatsoever. Even the money paid by her was not refunded to the petitioner. In fact, the money has not been refunded to her so far. This was wholly unfair. At the lowest, the petitioner was entitled to the grant of a reasonable opportunity. If such an opportunity had been granted, she could have shown that in view of the fact that the exact measurements of the plot had not been given to her, the Architect could not have prepared a drawing plan nor

could she have complied with the conditions stipulated in the letter dated April 16, 1982. Equally well she could have shown that no amount of money was due from her and that the condition stipulated in the letter in that behalf was wholly untenable. It thus appears that the action of the authority was wholly violative of the principles of natural justice.

14. The functioning of the Authority is governed by the provisions of the Haryana Urban Development Authority Act, 1977. Section 17 inter alia provides for the grant of an "opportunity before taking any action in a case "where any transferee makes failure in the payment of any consideration money, or any instalments, on account of the sale of the land or building-." Thereafter the Estate Officer has to decide the matter by passing a speaking order. Even a provision for appeal has been made. In other words, Section 17 embodies an elementary principle of natural justice. If the Legislative intent is to grant a reasonable opportunity before any penal action is taken even in a case where the full price of the plot has not been paid, it is reasonable to hold that such an opportunity should also be granted even in a case where the full price had already been paid but a formal letter of allotment was yet to be issued.

15. Accordingly, it is held that the action of the Authority was violative of the principles of natural justice.

16. Before parting with the case, it is appropriate to mention that the Scheme for allotment of plots to non-resident Indians had been prepared inter alia with the object of attracting foreign investment. It would have helped the country to earn the much-needed foreign exchange. It would have promoted the Industrial development in the State. The action of the respondents was not in conformity with the requirements of the situation. Their actions were not calculated to encourage the foreign investors. On the contrary, bureaucratic bottlenecks and the arbitrary action of the respondents could have only spelt harassment to the prospective investors. This does not promote either industrial development or the interest of the country. If at all, it only dissuades the foreign investor from coming to this country. No wonder, even after more than 45 years of our independence, our country has not grown in proportion to the potential of the people of the country.

17. In view of the above, the impugned order passed by the respondents on December 28, 1982 is quashed. It is held that the petitioner will be entitled to allotment of a plot of at least 500 square meters or 1000 square meters as may be actually available at the rates at which such plots had been allotted to the other similarly placed persons. In case, the allotment is not made to the petitioner within a period of one month from the date of receipt of a copy of this order, she would be entitled to the refund of the money paid by her alongwith interest at the rate of 15 percent from the date of deposit till the date of actual payment. Normally, she should be entitled to the payment in the same currency viz. U.S. Dollars. However, if the Authority is unable to do that, then the refund shall be made within two months from the date of receipt of a copy of this order.

18. Accordingly, the writ petition is allowed in the above terms. The petitioner would also be entitled to her costs which are assessed at Rs. 3000/-