

(2022) 02 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1848 Of 2016, IA No. 01 Of 2016

M/S Kashmir Jam Industries And Ors

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 09-02-2022

Acts Referred:

Citation : (2022) 02 J&K CK 0009

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Sumir Pandita, Gagan Kohli, Ajay Abrol

Final Decision : Disposed Of

Judgement

Sanjeev Kumar, J

1. In this petition the petitioner has inter alia prayed for direction to the respondent No.1 to re-consider the case of the petitioner for allotment of

adjoining strip of land measuring 2 kanals, which, the petitioner claims, has been earmarked by the Industries Department for its allotment to the petitioner.

2. The case set up by the petitioner in this petition is that the petitioner is a partnership concern, having Dr. Navindu Raizada and Sandeep Gupta as

partners. It is submitted that the Industrial Unit in the name and style of M/S Kashmir Jam Industries was established by the erstwhile promoter at

Industrial Unit Samba and the Unit was later on transferred by its proprietor in favour of the aforesaid partners, after execution of proper sale

documents. It is submitted that the respondent No.1 vide its communication dated 30.11.2016 conveyed to the respondent No.2 that the case of the

petitioner for allotment of strip of land measuring 2 kanals adjoining to the

petitioner-Unit, has been rejected. It is contended that pursuant to the lease deed executed by the respondent No.2 in favour of the original allottee/promoter of the petitioner-Unit on 25.04.2002, the original allottee applied to the J&K State Pollution Control Board and the Electric Department and, after obtaining the No Objection Certificates from them, the erstwhile promoter was issued a license by the Ministry of Food processing Industries for running the Unit. On completion of requisite formalities, the erstwhile promoter of the Unit was allotted total 4 kanals of land on 20.10.2004 and possession was accordingly handed over. The erstwhile promoter/allottee thereafter purchased the requisite machinery and established the Unit under the Name of M/S Kashmir Jam Industries. After establishment of the Unit, the original allottee made a representation to the respondents for allotment of the adjoining strip of land measuring 2 kanals for augmenting his industry. A written representation in this regard was made on 13.12.2007 but nothing was done by the respondents and the matter remained under consideration. It is submitted that the adjoining strips were allotted in favour of various other Unit holders but the request of the original allottee, in whose shoes the petitioners have stepped in, was not acceded to. In the meanwhile, the Unit came to be transferred to the present partners. They too approached the respondents for reviewing their decision with a request to allot the adjoining strip in their favour so that same could be used for expansion of their industry.

3. It is claimed that the erstwhile promoter also approached this Court by way of different writ petitions seeking, inter alia, directions to the respondents to accord consideration to his claim but the respondents considered the claim only to be rejected.

4. It is, in the context of these submissions, the learned counsel for the petitioner prays for a direction to the respondents to allot the adjacent strip measuring 2 kanals in favour of the petitioner, as has been done in the case of similar situated unit holders.

5. Respondents have filed their objections and have prayed for dismissal of the writ petition along with exemplary costs on the ground that the petitioner has suppressed and concealed material facts from this Court. It is submitted that M/S Kashmir Jam Industries was leased out 4 kanals of land in the year 2004 for the industrial activity of Fruit Juice, Squash,

Concentrate Jams, Pickles, Masala and Beverages etc. In the year 2008, the Unit applied for allotment of additional 2 kanals of land available adjacent to the petitioner Unit for undertaking additional activity for manufacture of Ghee, Milk and Curd etc. The Unit holder was asked to submit documents to justify the claim for allotment of additional land. However, the Unit holder failed to do the needful. As a result thereof, his application for allotment of adjacent land was rejected.

6. That the erstwhile promoter also approached this Court by way of OWP No. 1475/2010 which was disposed of by this Court by directing the

respondents to consider the case of the petitioner for allotment of adjacent strip of land. Pursuant to the directions passed by this Court, the case of

the erstwhile promoter of the Unit was placed before the Director of Industries and Commerce Department for allotment of additional 2 kanals of land

and the Committee in its decision dated 14.06.2012 approved the allotment of the land in favour of the original allottee. However, the allotment order

could not be issued in favour of the original promoter because of non-completion of requisite formalities. It is further submitted that in the year 2015,

the Original Promoter inducted two partners in the Unit, namely, Dr. Navindu Raizada and Sandeep Gupta and applied for change of the constitution

of the firm. The Original promoter Mr. Abdul Jabar Lone later retired himself from the partnership firm and the constitution of the firm was again

changed to be consisting of the above named two partners. The newly inducted partners, it is pointed out by the respondents, applied to the District

Industries Centre Jammu for change of line of activity from Fruit Concentrate, Fruit jams, Fruit Squash and Fruit Beverages etc to manufacture of

Punched tape Concertina Coils, Barbed Wires, Steel almirahs, Steel Poles and Pre-Fabricated Shelters etc. and at present the said industrial activities

are being carried out at the allotted land. It is further submitted that in terms of the policy, the earmarking of land usually remains valid for a period of

six months during which period the entrepreneur has to complete the requisite formalities but in the instant case, despite lapse of four years, the unit

holder has not been able to complete the formalities and obtain the formal allotment order. As a consequence, the earmarking stood cancelled. It is

also pointed out by the respondents that in view of the change in the manufacturing activities of the unit and with the retirement of original promoter

from the business, the prayer of the petitioner cannot be considered.

7. Having heard learned counsel for the parties and perused the material on record, I am of the view that the petitioner concern, which, upon

reconstitution, consists of Dr. Navindu Raizada and Sandeep Gupta, cannot rely upon the decision of the committee headed by the Director Industries,

permitting allotment of adjacent strip of two kanals of land in favour of the erstwhile promoter of the petitioner unit. As has come out from the reply of

the respondents, the request of the original promoter of the unit was favourably considered and with a view to facilitate him to start the additional

activities, he was allotted additional strip of land subject to fulfillment of requisite formalities and conditions. The requisite formalities and conditions

were required to be met within a period of six months but nobody turned up for more than four years to complete the formalities and for issuance of

formal allotment order from the respondents. As is the stand of the respondents, in the face of the aforesaid circumstances, when the allottee did not

turn up to complete the formalities, the decision taken by the respondents for allotment of additional strip in favour of the original promoter was

cancelled. The present partners of the unit are riding on the process which was undertaken at the request of the original promoter, namely, Mr. Abdul

Jabar Lone. Indisputably the constitution of the firm has been changed. Originally, the petitioner unit was a proprietorship concerned of Abdul Jabar

Lone but later on Dr. Navindu Raizada and Sandeep Gupta were added as partners. However, with the retirement of original promoter, the firm was

reconstituted consisting of above said two partners only. If the petitioner intends to have additional strip of land allotted in its favour, it is for the

petitioner to represent, through its partners Dr. Navindu Raizada and Sandeep Gupta, afresh and make out a case for allotment in terms of the policy

of the respondents in vogue. Admittedly, the petitioner herein has not made any formal request to the respondents for such allotment. The request

made by the erstwhile promoter for allotment of adjoining strip stands rejected in the circumstances explained above, and therefore, no right is vested

in the present petitioner to claim the allotment which was made in favour of the erstwhile promoter.

8. In these circumstances, no case is made out for issuance of directions as prayed for. However, this petition is disposed of by permitting the

petitioner to apply to the respondents afresh for allotment of the adjoining strip of land, if the same is still lying vacant, and in case the petitioner applies and meets all the requisite requirements, the respondents shall consider the same and take an appropriate decision in terms of the policy in vogue, within a period of two months from the date such representation is made by the petitioner.