

(2022) 11 J&K CK 0028
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 3011 Of 2019

M/S Ravenbhel Biotech And Others

APPELLANT

Vs

State And Others

RESPONDENT

Date of Decision : 10-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 11 J&K CK 0028

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R.K.Gutpa, Uday Bhaskar, Ravinder Gupta, Ajay Abrol

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has, inter alia, prayed for the following reliefs:

"(i). Writ of Certiorari quashing order No.IDC/BB/09/U/970/282-85 dated 21.06.2019 issued by respondent No.6 whereby the order of allotment of land measuring 04 kanals situated at EIPIC Kartholi, SIDCO Industrial Complex, Bari Bhrahamana has been made by the SIDCO in favour of respondent No.7 by way of change of site;

(ii). Writ of mandamus directing and commanding the respondents to offer the allotment of plot of land measuring 06 kanals situated at EPIP Kartholi, SIDCO Industrial Complex, Bari Brahamana adjoining to the existing allotted plot of the petitioners; and,

(iii) writ of prohibition restraining the respondents from taking any further action in pursuance of order of allotment of plot of land measuring 04 kanals situated at EPIP Kartholi, SIDCO Industrial Complex, Bari Brahamana to respondent No.7.

2. Facts, in brief, leading to the filing of this writ petition are that a plot of land

measuring 10 kanals situated at EPIP Kartholi, SIDCO Industrial Complex, Bari Brahamana came to be leased out to the petitioner-firm by the J&K State Industrial Development Corporation Ltd. vide Lease Deed registered before the Court of learned Sub Registrar, Samba on 27.07.2011. The said plot of land was leased out to the petitioner-firm for setting up of an industrial unit for manufacturing of pharmaceutical preparations for a period of eighty four (84) years from the date of execution of the Lease Deed. The petitioner-firm, after allotment of the said plot in its favour, established an industrial unit for manufacturing of capsules, syrup and tablets. It was registered as a Small Scale Manufacturing Enterprise by the General Manager, District Industries Centres, Jammu vide Entrepreneurs Memorandum dated 04.04.2012. On 15.03.2016, the Government of Jammu and Kashmir came up with a Industrial Policy, 2016. With a view to giving effect to the said Industrial Policy, the Government of Jammu and Kashmir vide its order No. 129-Ind. of 2017 dated 07.06.2017 formulated the procedural guidelines of Industrial Policy, 2016 (supra).

3 It is submitted that clause 2.12 of the Guidelines aforesaid provides that the land available in the Land Bank after its development by SICOP/SIDCO shall be allotted to the entrepreneurs on first come first serve basis and the Director, Industries and Commerce/General Manager, DIC shall consider the request for allotment of land and determine the size of the plot to be allotted. The said clause also provides that the size of the plot allotted would not be more than what is required for the unit. It is further submitted that as per clause 17.2 of the Guidelines aforesaid, the owner of the adjacent functional unit shall be afforded first opportunity for allotment of the retrieved land. However, such opportunity shall be afforded for a genuine substantial expansion plan/project required to be submitted by such functional unit and duly approved by the competent authority. It is pleaded that plot of land measuring 06 kanals of land was originally allotted by the SIDCO to the firm M/S Premier Exports. It is submitted that the SIDCO cancelled the allotment of said plot made in favour of aforesaid firm and retrieved the same. After retrieving the said plot of land, the SIDCO vide order dated 21.06.2019 instead of offering this adjoining retrieved land to the petitioner, allotted 04 kanals out of the 06 kanals of retrieved land in favour of respondent No.7 on the ground of "by way of change of site". The petitioner-firm thereafter vide its letter dated 01.08.2019 approached the Managing Director, SIDCO for allotment of the aforesaid retrieved plot to it by referring to the procedural Guidelines of the Industrial Policy, 2016-26 issued by the Government vide its order dated 07.06.2017. The petitioner-firm also approached respondent No.2, the Director, Industries and Commerce, by way of a representation for intervening in the matter and for passing of appropriate orders for allotment of the aforesaid plot in its favour. The Director, in response to the representation of the petitioner-firm, vide her letter dated 06.08.2019 requested the Managing Director SIDCO to afford first opportunity to the petitioner-firm for allotment of the retrieved land. It is further submitted that respondent Nos. 4 to 6 despite the representation of the petitioner firm for

affording first opportunity for allotment of the aforesaid retrieved plot of land to the petitioner-firm and also despite the recommendations of respondent Nos.2 and 3, did not withdraw the order of allotment made in favour of respondent No.7, nor have they offered the allotment of said plot to the petitioner-firm in terms of the Guidelines of Industrial Policy 2016-2026. This constrained the petitioner-firm to approach this Court by way of instant writ petition to challenge, inter alia, the order of allotment of adjoining land measuring 04 kanals out of the retrieved land i.e 06 kanals of land situated at EPIP Kartholi.

5. The respondents have filed their objections in which they have stated that the the earlier Industrial Policy of 2016 stood superseded by the Industrial Policy, 2021. It is submitted that after retrieval of 04 kanals of land out of 06 kanals of retrieved land, the same was allotted in favour of respondent No.7 by way of "change of site" as the earlier allotment in favour of respondent No.7 was in litigation. It is submitted that after litigation was concluded, respondent No.7 was shifted back to his original place of allotment and, as such, the writ petition has been rendered infructuous so far it challenges the order dated 21.06.2019 impugned herein. It is pleaded that with the cancellation of order of allotment of 04 kanals of adjoining land made in favour of respondent No.7, and his shifting back to his original place of allotment, the retrieved land as per the new policy would be put in the land bank for its auction and that in case, the petitioner is interested in the allotment, he may participate in the auction process. It is further submitted that since the earlier industrial policy is changed and replaced by the new industrial policy of 2021, the retrieved land would be allotted to eligible entrepreneurs only way of auction to be conducted by the Committee, to be constituted in this behalf by the Government. The petitioner cannot claim the allotment of adjoining land as a matter of right without participating in the auction process.

6 The petitioner-firm has also filed rejoinder to the objections filed by the respondents reiterating the stand taken in the petition. It is contended in the rejoinder that allotment of 04 kanals of land out of 06 of retrieved land in favour of respondent No.7 has been cancelled and the said respondent has been allotted a separate piece of land for establishing its unit which means that the said retrieved land is available to be allotted to the petitioner firm as per the Industrial Policy 2016-26. However, the respondents are going to auction the retrieved land as per the new Industrial Policy 2021-30 issued vide Government Order dated 19.04.2021 It is submitted that the right of the petitioner-firm for allotment of adjacent retrieved land measuring 06 kanals for expansion of its existing unit arose under the then Industrial Policy, 2016-26. It is submitted that when the petitioner-firm applied for allotment of adjacent retrieved land in its favour, the Industrial Policy 2016-26 was in vogue and therefore the new Industrial Policy is not applicable to the case of the petitioner-firm. In view of the aforesaid submissions, the petitioner-firm prays that the instant writ petition may be allowed.

7 Heard learned counsel for the parties and perused the material on record.

8 The prayer regarding issue of writ of certiorari for quashing order dated 21.06.2019 issued by respondent No.6 allotting 04 kanals of land situated at EPIP Kartholi, SIDCO Industrial Complex, Bari Brahmana in favour of respondent No.7 by way of "change of site" is rendered infructuous as the the petitioner-firm itself has admitted in the rejoinder that allotment of 04 kanals of land out of 06 kanals of retrieved land in favour of respondent No.7 has been cancelled and the said respondent has been allotted a separate piece of land for establishing its unit. As a matter of fact, it is because of this development, the respondent No.7 was struck off from the array of respondents.

9 The only controversy that remains to be resolved is with regard to the entitlement of the petitioner-firm for allotment of adjacent land for expansion of its unit. To resolve this controversy, it is necessary to examine clause 17.2 of the Procedural Guidelines of Industrial Policy 2016-26 which reads thus:

"17.2 In case of land retrieved after cancellation from a unit, which is adjacent to an existing functional unit, the owner of the adjacent functional unit shall be afforded first opportunity for allotment of the retrieved land. Such opportunity will however be afforded for a genuine substantial expansion plan/project required to be submitted by such functional unit and duly approved by the competent authority. The response to avail such opportunity, by coming forth with the approved substantial expansion plan or new project should be submitted within one month of receipt of the notice offering such opportunity to the adjacent functional unit. The time limit of taking effective steps and coming into production shall also apply in this case".

(underlined by me)

10 A bare perusal of clause 17.2 of the procedural guidelines of Industrial Policy, 2016-26 issued in terms of Government Order dated 07.06.2017 reveals that the SIDCO is duty bound to first offer the land retrieved after cancellation from a unit to an adjacent existing functional unit.

11 Indisputably, the land in question was retrieved by the SIDCO from the erstwhile allottee after cancellation of his allotment. In terms of clause 17.2 of the guidelines of aforesaid policy, which were in vogue at the relevant time, the petitioner being allottee of adjacent functional unit was required to be offered the allotment of retrieved land. This offer was then required to be responded by the petitioner-firm by submitting substantial expansion plan within one month of receipt of notice offering such opportunity to the petitioner-firm.

12 There is no denying the fact that such offer was never made to the petitioner and, therefore, the petitioner had no opportunity to respond and submit substantial expansion plan. What the respondents, however, did, they allotted 04 kanals of land out of the adjacent retrieved plot in favour of respondent No. 7 in exchange for the land which was originally allotted to it and had, somehow

landed into litigation.

13 The contention of Mr. Abrol learned counsel appearing for SIDCO that, clause 17.2 of Industrial Policy, 2016 was not adhered to as it was not a case of making any fresh allotment, rather it was a case of making the allotment in favour of respondent No.7 in lieu of and in exchange for the plot of land which stood already allotted to it by the SIDCO, cannot be accepted in the face of clear and unambiguous language of clause 17.2. Clause 17.2 of the said Policy does not make any distinction between fresh allotment in favour of an entrepreneur and the allotment of the plot in favour of entrepreneur in exchange of the land already allotted. What the said clause provides unequivocally is that, a plot of land becoming available due to its retrieval consequent upon cancellation of allotment is, in the first instance, required to be offered to the owner of the adjacent functional unit and in case he avails such opportunity, he shall come forward with the approved substantial expansion plan, to be submitted within one month of receipt of notice offering such opportunity to the owner of the adjacent functional unit.

14 The expression "notice offering such opportunity" clearly indicates that the notice required to be given to the owner of adjacent existing functional unit, in terms of clause 17.2 of the Industrial Policy 2016, has to be in writing or there should be some concrete evidence that it is offered. It is only once the notice offering opportunity to the adjacent functional unit to have the retrieved plot allotted is given, a duty cast upon the owner of the adjacent functional unit to justify allotment of the adjoining plot by submitting approved substantial expansion plan.

15 In the instant case, there was no such opportunity by way of a notice ever given to the petitioner and, therefore, there was no occasion for the petitioner to submit the approved substantial expansion plan.

16 The plea of Mr. Abrol learned counsel appearing for the SIDCO that, with the coming into force of the Jammu and Kashmir Industrial Policy 2021, the earlier Industrial Policy of the year 2016 stands superseded and, therefore, under the new policy, the petitioner is not entitled to the adjacent plot on priority basis, is also without any substance. The right to the petitioner to have the adjacent plot allotted in his favour subject to the fulfillment of conditions laid down in the clause 17.2 of the Procedural Guidelines of the Industrial Policy 2016 accrued when the allotment made in favour of M/S Premium Exports was cancelled and adjacent plot of land measuring 06 kanals was retrieved by the SIDCO in the year 2013 as is evident from the office memo No. IDC/BB/13/ 01 dated 12.07.2013 issued by the SIDCO. The subsequent promulgation of Industrial Policy, 2021, in terms of Government Order No.117-ID of 2021 dated 19.4.2021 cannot take away the aforesaid accrued right of the petitioner. In any case, the Industry Policy, 2021 is prospective in operation and cannot be construed to take away the vested or accrued rights of the entrepreneurs, who were or had been the beneficiary of the Industry Policy, 2016.

17 The respondents did not adhere to clause 17.2 reproduced above, and offer the available adjacent piece of land retrieved from M/S Premium Exports to the petitioner in the year 2016 when the Industrial Policy 2016 was promulgated or in the year 2018 when the petitioner approached the General Manager DIC, Jammu with his written request for recommending the case of the petitioner for allotment of adjacent plot of land measuring 6 kanals which had become available due to the cancellation of allotment earlier made in favour of M/S Premium Experts. The respondents did not perform their duty enjoined by clause 17.2 of the Guidelines in time and allowed the matter to linger on. Subsequently, even the allotment of land measuring 04 kanals out of the retrieved plot of land made in favour of respondent No.7 (now deleted) came to be withdrawn and respondent No.7 reverted back to his original allotment, that means the adjacent piece of land measuring 06 kanals retrieved by cancellation of allotment made in favour of M/S Premium Experts is still available with the respondents.

18 The only question that needs reaffirmation by this Court is, whether the allotment of the vacant piece of land would be governed by new industrial policy or the respondents are obliged to act in terms of clause 17.2 of the Guidelines framed to give effect to Industrial Policy, 2016. The answer to this question is obvious. Absent any accrued right of the petitioner to have this plot of land allotted in his favour in terms of clause 17.2 aforeaid, the respondents are free to deal with, allot or lease out this plot of land strictly in accordance with the Industrial Policy, 2021 and the Procedural Guidelines issued vide Government dated 22.04.2021. Since this Court has already come to the conclusion that a right to have the adjacent piece of land allotted in its favour accrued to the petitioner with the promulgation of Industrial Policy, 2016 and the procedural guidelines issued thereunder in the year 2016, as such, the adjacent piece of land over which the petitioner has staked his claim is required to be disposed of as per the provisions of Industrial Policy, 2016 and the procedural guidelines issued thereunder, in particular clause 17.2 thereof.

19 A separate set of objections have been filed by the Department of Industries. In the objections filed by the Department of Industries supported by an affidavit of then General Manager DIC Jammu, the stand taken by the respondents is that the Department of Industries did receive a proposal for grant of permission for undertaking substantial expansion of unit of the petitioner. After considering the proposal, the Department of Industries, Jammu, vide communication No. 10668-Ind/8182-83 dated 24.09.2015 followed by permission to install P&M, granted the requisite permission. The Department of Industries is also on affidavit to state that it also received a representation from the petitioner with a request to intervene in the matter in respect of allotment of adjacent plot of land. The request of the petitioner was examined and respondent No.3, vide his communication No.DIC-J/10668-Ind/4857-59 dated 10.08.2019 recommended the case of the petitioner for allotment of adjacent retrieved plot of land as per the provisions of the Procedural Guidelines of Industrial Policy, 2016 issued vide Government Order No.129-Ind of 2017 dated 07.06.2017.

20 From the reply affidavit filed by respondent No.3, the Department of Industries, it is evident that, not only the Department of Industries had granted permission for purchase and installation of additional machinery to undertake substantial expansion programme, but it also recommended the case of the petitioner to SIDCO for allotment of adjacent retrieved plot of land in tune with the procedural guidelines of Industrial Policy, 2016.

21 Viewed from any angle, this Court finds that the respondent- SIDCO has not approached the case of the petitioner in proper perspective and has, in the process, acted unfairly and arbitrarily. The right to be considered for allotment of adjacent piece of land in question accrued to the petitioner under the Industrial Policy, 2016 and the procedural guidelines issued to give effect to the said policy. However, the same was denied to the petitioner on the wholly untenable and unsustainable ground that 4 kanals out of the adjacent retrieved plot of land was allotted to an entrepreneur in exchange for and in lieu of his original allotment due to some litigation issue. The litigation issue too was later on sorted out and the allotment made in favour of respondent No.07 (now deleted) was withdrawn and respondent No.7 rehabilitated on the plot originally allotted to him for industrial purpose.

22 In the aforesaid facts and circumstances and in light of the discussion made above, I find substance in this petition and the same is accordingly, allowed. The respondents, in particular respondents No. 4 to 6 are directed to consider the case of the petitioner for allotment of the adjacent retrieved plot of land measuring 6 kanals as per clause 17.2 of the Guidelines of the Industrial Policy, 2016 issued vide Government order dated 7.06.2017 (supra). The respondents 4 to 6 shall do well to give an offer of allotment to the petitioner in respect of plot in question within a period of two weeks from today by giving the petitioner a written notice in this regard. The petitioner, if still interested to have the piece of land allotted, shall respond to the offer by submitting an approved substantial expansion plan in terms of clause 17 of the procedural guidelines (supra) within a period of one month from the date of receipt of notice of offer. On the completion of the requisite formalities envisaged under clause 17, in particular clause 17.2 of the procedural guidelines of Industrial Policy, 2016, respondents No. 4 to 6 shall formally allot the plot in question in favour of the petitioner by charging usual rates of allotment prescribed under the Industrial policy and the procedural guidelines framed thereunder. For the purpose of working out the rates of allotment of land in question, the respondents shall be free to rely upon the provisions of Industrial Policy presently in vogue. The entire procedure aforesaid shall be completed by the respondents within a period of four months from the date copy of this judgment is served upon them.

Disposed of in the above terms.