(1994) 10 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3310 of 1990

Nirmal Singh and others APPELLANT

Vs

State of Punjab and others RESPONDENT

Date of Decision : 13-10-1994

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1994 P&H 302 : (1994) 107 PLR 524

Hon'ble Judges : S.K. Jain, J;G.R. Majithia, J

Bench : Division Bench

Advocate : G.S. Bhatia, for the Appellant; S.K. Pipat and Sanjeev Sharma, for the Respondent

Judgement

S.R. Majithia, J.—This judgment disposes of Civil Writ Petitions No. 3310, 8586,9586,8486,13137,11895,11560,10007, 10008,10179,11295,15573,7391,7392,9621, 7411,7676,8234, 14543,7141, 15552, 13950, 7813, 8276, 8328, 9587, 8181, 7970, 7939, 8109,7791, 7870 and 7752 all of 1990; 3771 & 3882 of 1991; 385, 7709 of 1992 since common questions of law arise for determination therein.

2. A challenge has been made to the advertisement inviting applications for allotment of industrial plots in Phase II, S.A.S. Nagar pursuant to the directions given by this Court in Civil Writ Petition No. 6698 of 1987 (Sbri Hazara Singh Mavi v. the State of Punjab etc. decided on June 2, 1989, on identical grounds.

3. A reference to relevant facts has been made from the pleadings in C.W.P. No. 3310 of 1990.

4. The Punjab Small Scale Industries and Export Corporation Ltd. (hereinafter to be referred to as the Corporation) through advertisement appearing in the Tribune dated January 23, 1984, invited applications for allotment of freehold industrial plots in Phase II, S.A.S. Nagar (Mohali) under self-financing scheme. The terms and conditions for allotment of those plots were duly publicised. The

industrial plots were to be allotted on freehold basis at the rate of Rs. 80/ - per Sq. Yard. However, the final cost to the eligible entrepreneurs after availing land subsidy was stated to be Rs.28/- per Sq. Yard. The applications on the prescribed form along with earnest money at the rate of 10 per cent of the tentative sale price @ Rs. 80/- per Sq. Yard were to be submitted on or before January 30, 1984. The date of receipt of applications under the ''Self Financing Scheme'' was extended by the Corporation uptil March 31, 1984, on account of disruption in the normal functioning of''banks. One of the terms and conditions was that the allotment of the industrial plots would be made within two years of the last date of receipt of applications in accordance with the policy already approved by the Slate Government. Along with the application, the petitioners submitted complete and detailed project reports for setting up the industrial unit which they proposed to set up on the plot to be allotted to them. The Allotment and the Technical Committees were constituted under the instruction of the State Government. The project reports submitted by the petitioners were approved by the Technical Committee and they were allotted plots. Petitioner No, 1 was informed through letter No. PSIEC/EW/EO/4483-4460, dated September 12, 1987, issued by the Estate Officer of the Corporation that a plot measuring 1 Kanal had been allotted to him in the draw of lots held on September 12, 1987. Allotment letter No. PSIEC/EW/EO/5578, dated September 25, 1987 was sent to him, through registered post, whereby he was allotted Plot No. 203 measuring 478 sq. yards at Industrial Focal Point Mohali-IX, at a tentative price of Rs. 38,240/-. The relevant portion of the same reads thus :--

"Plot No. 203 measuring 478 Sq. yds. at Industrial Focal Point, Mohali IX is hereby allotted to you for the manufacturing of Dies on free hold basis on the following terms and conditions :--

(i) The tentative price of the plot has been calculated as Rs. 38,240/- This is, however, subject to adjustment and revision according to the works completed and accounts finally closed. A sum of Rs. 15,296/- being 40% amount of tentative price of plot is payable within a period of 30 days from the date of this allotment order through a demand draft drawn on any Scheduled Bank at Chandigarh and in favour of the Punjab Small Industries & Export Corporation Ltd. Chandigarh

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(ii) The above price of the plot is subject to variation with reference to the actual measurement of the plot, cost of development of the plot, cost of acquisition of land by the Industries Department. In case of enhancement of compensation on account of acquisition of land by the court or otherwise, you shall have to pay such additional price for the plot, if any, to be determined by the Corporation within 30 days from the date of demand.

(iii) In case the payment mentioned in condition (i) above is not made within stipulated period or you refuse to accept the allotment within the stipulated period of 30 days, the allotment shall be cancelled and the amount of earnest money deposited by you shall be forfeited.

(iv) Balance 50% of the total tentative price shall be payable either in lumpsum with in 60 days from the date of issue of allotment letter without interest or in five equated annual instalments along with interest @ 15% per annum. The first instalment will become due/ payable along with interest after one year from the date of allotment. For the default period, if any, the interest would be 21% on the over due principal and interest to be paid by the 7th of the following month on which the instalment falls due. All expenses incurred on account of transfer of the plot in your favour by way of conveyance deed or other document to be executed in this regard shall be borne by you.

(v) xxxxx

(vi) xxxxx

(vii) Along with payment of 50% tentative price of the plot, you shall submit an agreement in such a form and in such a manner as may be directed by the Managing Director, Punjab Small Industries and Export Corporation Limited. The possession will be given on receiving the agreement and 50% price of the plot within 30 days.

(viii) You will enjoy the right of possession so long as you continue paying instalments and interest on due rate and abide by other terms and conditions.

(ix) You shall have to accept and abide by the rules and orders made qr issued by the Punjab Small Industries & Export Corporation Ltd. Chandigarh from time to time.

(x) The Land shall continue to belong to the Corporation until the entire consideration money together with the interest and other amount, if any, due to the Corporation on account of sale of such land is paid, you shall have no right to transfer by way of sale gift, mortgage or otherwise the plot or any right title or interest therein, till the full price is paid to the Corporation.

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(xii) On the payment of 100 per cent of the tentative price of the plot along with the interest and other amounts accruing due, you shall execute the Deed in the prescribed form and in such manner as may be directed by the Corporation. The charge on registration and stamp duty will be paid by you.

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(xviii)You shall complete, the construction of factory building and the industry/ project within two years from the date of allotment (by original allottee or subsequent trans-feree).

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(xxiii) You shall have to show positive evidence of effective steps having been taken within six months from the date of allotment towards the establishment of the proposed industrial Unit or Project, failing which the Corporation will have the right to cancel your allotment.

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(xxvi) Since the amount of 10% (Rs. 14,000/-) has already been paid by you, you may please deposit the balance of 40% which comes to Rs. 15,120/- making upto 50% i.e. Rs. 19,120/- failing which the allotment of plot shall be cancelled and the amount already paid by you shall be forfeited."

Petitioner No. 1 deposited 40% of the tentative sale price of the plot amounting to Rs. 15,120/- with the Corporation vide Receipt No. A/80/41175, dated October 6, 1987. The possession of the plot was to be delivered within thirty days of the payment of the 40% of the estimated sale price. The Possession was not delivered in accordance with the terms and conditions of allotment. An advertisement appeared in the newspaper on May 10, 1990. The relevant portion of the same reads thus :--

In pursuance to the judgment of the Punjab and Haryana High Court in the writ petition CWP No. 6698 of 1987 fresh applications are invited for allotment of industrial plots in Phase-IX, SAS Nagar on the terms and conditions specified in the application form obtainable from the office of all the General Managers, DICs, Depot/ Phulkari, Punjab Government Emporia as well as Head Office of the Corporation on payment of Rs. 10/-(non-refundable) in cash or by bank draft/ postal order drawn in favour of the Corporation, payable at Chandigarh :--

Size of plots (in sq. yds.)

Number of plots

Rate per sq. yd.

480

170

Rs. 150/-

1000

31

-do-

1300

16

-do-

2000

4

-do-

2700

2

-do-

4280

1

-do-

The advertisement was the necessary consequence of the judgment rendered by this Court in C. W.P. No. 6698 of 1987, decided on June 2, 1989 by this Court. The petitioners were not made parties to C.W.P. No. 6698 of 1987.

5. Indisputably, the petitioners can maintain these writ petitions for relieving themselves of the direction given by this Court in the judgment rendered in C. W. P. No 6698 of 1987. Reliance in this behalf can usefully be placed on Shivdeo Singh and Others Vs. State of Punjab and Others, where it was held thus :--

"The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which, in effect, reviews his prior order. Learned counsel contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and therefore the second order of Khosla. J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J. affected the interests of persons who were not made parties to the proceedings before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not made parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."

6. In C. W. P. No. 6698 of 1987 and the other connected cases, the petitioners in those writ petitions had challenged the orders by which their applications for allotment of industrial plots were cancelled by the Estate Officer of the Corporation. The order indicates that the learned single Judge quashed the allotment of plots to other persons like the petitioner who were not parties to those writ petitioners. It appears that the Corporation did not bring to the notice of the learned Judge that valid allotment had been made to the persons like the

present petitioners in these writ petitions and the petitioners had fulfilled the conditions of allotment. 50% of the tentative sale price of the plot as provided for in the terms and conditions of allotment had been deposited by them. Their project reports had been approved by the Technical Committee and they are waiting for transference of possession of plots which had been allotted to them.

7. Learned counsel for the Corporation submitted that possession of plots could not be delivered to the petitioners because of the interim directions given in the writ petitions disposed of with CWP No. 6698 of 1987. The allotments made in favour of the petitioners were cancelled by the learned single Judge of this Court while disposing of CWP No. 6698 of 1987 and the other connected writ petitions. The petitioners in these writ petitions were not parties to those writ petitions and therefore they are not bound by the judgment dated June 2, 1989 rendered in those petitions.

8. Learned counsel for the Corporation very fairly stated at the Bar that allotment of plots in favour of the petitioners was not given effect to in view of the judgments rendered by a learned single Judge of this Court in C.W. P. No. 6698 of 1987 and the other connected writ petitions. He says that since the allotment in favour of the petitioners had been cancelled the Corporation could not comply with the terms and contitions of allotment under which the possession has to be delivered to the petitioners on deposit of 50% of the tentative sale price of the plot. He further submits that the allotment in favour of the petitioners suffers from no infirmity.

9. We are constrained to observe that the Corporation did not bring correct facts to the notice of the learned Judge disposing of C. W. P. No. 6698 of 1987 and the connected writ petitions. Be that as it may, the judgment rendered in CWP No. 6698 of 1987 and the other connected writ petitions does not disentitle the present petitioners from enforcing the terms and conditions of their allotment letters. The petitioners have complied with the terms and conditions of allotment and a valid contract had come into existence between them and the Corporation which can only be avoided in accordance with law and not otherwise. The contract between the petitioners and the Corporation has not been assailed by any of the parties and, in fact the Corporation does not dispute that a valid contract had come into existence between them.

10. For the reasons stated above, we allow these writ petitions and hold that judgment dated June 2, 1989 rendered in C. W. P. No. 6698 of 1987 and the connected writ petitions whereby the allotment of industrial plots made in favour of different persons like the petitioners was cancelled will be ineffective so far as the rights of the petitioners are concerned. The corporation is directed to make allotment of industrial plots to the petitioners as per the terms and conditions mentioned in the letters of allotment. However, it is made clear that the Corporation will be entitled to claim additional price for the plots on account of enhancement of compensation under the Land Acquisition Act. In view of the very fair stand taken by the counsel for the Corporation, we make no order as to

costs.

11. Petitions allowed.

