(2010) 05 P&H CK 0285

In the Punjab And Haryana At Chandigarh

Nirmal Singh APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab Town Improvement (Utilisation of Lands and Allotment of Plots) Rules, 1983 — Rule 11, 14, 8
Specific Relief Act, 1963 — Section 10, 19

Citation : (2010) 159 PLR 533

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The petition seeks for quashing of the sale of a plot in an open auction in favour of the 4th respondent and for directions that the possession of the plot No. SCF 10, Area No. 2 and 3, Part-1, opposite Improvement Trust office, shall not be delivered to the 4th respondent auction purchaser. The petitioner claims in effect preemptive right of allotment pursuant to a resolution that had been passed by the Improvement Trust purporting to operate as a firm contractual obligation to allot the property to the petitioner in his capacity as a Sikh riot victim. The petitioner claims that the necessary sanction had also been obtained from the Government and points out that the Government had granted a 2% reservation of all public allotments to riot victims and he was qualified to obtain such an allotment.

2. The Improvement Trust does not deny that it had passed a resolution and it had also obtained a sanction from the Government for the allotment of the property to the petitioner. The contention is that the petitioner had not parted with any consideration and the decision that had been previously taken, was not in conformity with the rules. The sanction which the Government had only granted that the allotment shall be as per rules and, therefore, an interdict against the offer of a commercial plot in any other manner than by a public

auction applied to the sanction order. The Counsel appearing on behalf of the Improvement Trust would also refer to the provisions of the Punjab Town Improvement (Utilization of land and allotment of plots) Rules of 1983, to contend that before a person applies for an allotment, he shall make an application for allotment in Form-B and C appended to the rules and shall also make a token in advance of earnest money. The mere provisional offer will not create a binding obligation. The 3rd respondent, who has been the purchaser of the public auction, would urge that the condition for sale of a commercial plot is mandated under Rule 8 of the aforesaid rules to take place only through auction and there could not have been any resolution for allotment of the property to the petitioner. Pointing to a plea of relaxation of this rule by reference to Rule 14 which empowers the State to make relaxation, it is contended by the Counsel appearing on behalf of the 3rd respondent that the language employed in Rule 14 is such that only such of those guidelines provided under the rules could be relaxed and, in this case, there is specifically no order giving such relaxation and further a decision not to put up the property for auction is not a decision that could be said to be a relaxation of a guideline mentioned under the rules. To him, guidelines must be understood as distinct from the essence of the rules themselves and while a power existed for relaxation of such guidelines, the power did not extent to relax the essential features of the rules, which, according to him, in relation to a commercial plot was mandated to be done only through an auction.

3. The decision to allot the property in favour of the petitioner has come through in several stages. At the first instance, the Learned Counsel appearing on behalf of the petitioner would rely on the policy issued by the Government of Punjab, Department of Local Government, on 01.01.1987, that there shall be a reservation of 5% residential plots, 20% reservation of commercial plots for the Sikh migrants. This was affirmation of an earlier statement of policy made on 05.02.1986 that all Trusts were allowed to auction commercial plots or booths only after reserving 20% of the plots for allotment to Sikh migrants. It must be noticed while the policy mentioned about reservation of 20% for commercial plots, it does not state anywhere that such reservation would be possible by merely identifying the person to be a Sikh migrant. The manner of sale itself is not indicated there and, therefore, we may have to only look to rule which specifies the mode of effecting such sale. It appears that the petitioner had come to know that one property had been reserved for allotment for Sikh migrants and he had made such an application on 15.02.1990, The Sales Branch of the Trust by a noting dated 29.03.1990 had recorded the fact that one SCF falling within the scheme of Area No. 2 and 3 was reserved for Sikh migrants and that as per the Government letter dated 08.04.1988, the Shop-cum-Flat could be allotted to the petitioner, who was an applicant, after the approval from the Government. This note was placed in the Trust meeting for consideration on 29.03.1990 but it appears that the subject was taken up and put through resolution No. 5 of 17.04.1990. On that day, the resolution had been passed that the property could

be allotted to the petitioner, who was a red card holder and had granted an approval for further transmission of its decision to the Government to secure its sanction. The Government''s sanction did came soon thereafter on 24.06.1994 to approve the allotment of the property to the petitioner and a formal order of allotment had been directed to be issued. The petitioner made an application dated 05.07.1994 and requested the authorities to inform him about the price of the property which was allotted to him to enable him to deposit the first installment in the office.

4. Even before the price was communicated and the amount was collected from the petitioner, there had been a suit at the instance of one Harwant Kaur for a restraint against the authorities from allotting the SCF to the petitioner before the Sub Judge, 1st Class, Pathankot. The reference to this judgment obtains importance for the petitioner to point out to the written statement filed on behalf of the Trust admitting to its decision to allot the property to the petitioner and the fact that the State had granted sanction for such allotment. This statement is used by the petitioner further to contend that it was estopped from resiling from the contentions put forward before a Civil Court and from stating that there was no entitlement for the petitioner to claim the property.

5. In my view, the case cannot be decided merely on a reference to a sanction or an approval from the State divorced wholly from the rule which governs the issue. A reservation of a particular plot for a Sikh migrant in terms of a declared policy could be enforced only if all other legal ingredients that would enable the petitioner to claim specific enforcement is possible. A decision to allot a property is not the issue before this Court but the issue is whether a subsequent sale of the property through auction could be annulled at the instance of a person, who had not yet obtained a purchase in his favour nor had he subjected himself to any form of detriment that could provide a consideration for its enforcement. Again, it should be noticed that a reservation of the property for a Sikh migrant does not immediately obtain to the petitioner an enforceable right. If we are considering that there is a public interest involved and the funds are transferred to a Improvement Trust which is a public body, it shall also stand the test of reasonableness. The Trust could not have engaged in any pick and choose policy for an allotment. A person cannot come by a benefit of State largesse by the mere fact that he was the first person to make the application. It is clear that the rules obtain relevance for, the mode of sale which is contemplated under Rule 8 in relation to a commercial plot is that it shall be by an auction only. There must be, therefore, two things: one, that there could be a policy consideration for reservation of 20% of commercial plots. The choice of the property as reserved for allotment for Sikh migrants, was perfectly justified. Two, if such a property is identified, the Trust could not have acceded to the request of the petitioner only at the mere asking. It had perforce to apply to itself Rule 8 and put it for auction which could have restricted it only to Sikh migrants. If the petitioner''s contention were to be accepted that the Government was free to relax the rule, the relaxation ought not to be understood as obtaining even for relaxing the

rules to the transfer of a commercial plot other than by an auction. I accede to the plea of the Learned Counsel for the 3rd respondent that there exists a dichotomy between the essential rules which are prescribed and the guidelines provided through such rules. Rule 14 reads as follows:

14 Power to relax.- Where the Government is of opinion that it is necessary or expedient so to do, whether of its own motion or on being moved by a Trust, it may, by order for reasons to be recorded, in writing, relax the guidelines provided in these rules, to meet the special requirements of any scheme.

6. Learned Counsel Shri Akshay Bhan illustrates with reference to Rule 11 that provides for the manner of allotment which sets out the affidavit to be given in particular forms; the amount to be paid in a particular manner; the variations of the amounts depending on the various sizes, etc. Procedures to following certain formalities attendant on the transactions, could be matters of guidelines which could be relaxed, but a reference to a sale of a property such as a commercial plot through an auction is an essential mandate which cannot itself be relaxed. There have been decisions without number that distribution of State largesse shall always be tested through the prism of Article 14 of the Constitution. In the context of sale of immovable property belonging to public bodies, this test could be satisfied only by making it available through a competitive market and that again could be obtained only by putting the property through auction. A choice of a particular individual for allotment on a mere application could not enable the petitioner to obtain to himself such a benefit. It has been held by the Hon''ble Supreme Court in Lakshmanasami Gounder Vs. Commissioner of Income Tax , Selvamani and Others, , that public auction is one of the modes of sale intending to get highest competitive price at a public auction. Public auction ensures fairness in action of the public authorities.

7. The Learned Senior Counsel Shri Arun Jain would referred to the fact that the State itself has gone on an affidavit of the Joint Secretary, Department of Local Government admitting to several such allotments made through various Improvement Trusts to Sikh migrants. The details given as Annexure R-1 to the written statement filed on behalf of the 1st respondent, while it sets out the commercial plots that were allotted to the migrants is still not very clear as to whether the relaxation resulted in even dispensing with the auction process itself. A relaxation from the auction to all persons and reserving it for Sikh migrants could be possible through a policy but allotment of the property to a specific individual without reference to auction process does not appear to have come through in any previous instances or it if did, there is no definite material placed before me to make such an inference that in all the occasions when such relaxation had been granted, they had relaxed even the provisions for offering the property through auctions.

8. There is yet another impediment for the petitioner to take a claim for the property. If the petitioner at any point of time had been informed about the price of the property or if the petitioner had parted with some consideration and

suffered a detriment, it shall be possible for him to seek for a specific enforcement of the resolution. A writ petition under Article 226 that seeks for allotment of an immovable property must still be understood as falling within the genre law relating to contract and for specific relief relating to immovable property. The petitioner cannot obtain a relief that could flout the statutory norms relating to consideration laid down under the Contract Act or the enforcement of an offer for sale of immovable property without parting with consideration in the manner laid down u/s 10 of the Specific Relief Act. Over all these, if the petitioner would want an offer of the sale of the property to a 3rd party annulled, it has still to satisfy the requirement of Section 19 of the Specific Relief Act. The relief under Article 226 merely substitutes a procedure but the application of laws cannot themselves be supplanted. A decision for allotment of a property cannot obtain to the petitioner a right to infringe upon right of a 3rd party, who has come by a benefit of the transaction by parting with consideration. Perhaps, it may not be possible to contend that the petitioner was at any point of time delaying the proceedings. The Learned Counsel refers to the fact that as soon as he came to know about the decision of the Trust to put up the property for auction through an advertisement made, he had issued a notice and when the auction was conducted on 21.02.1996, the writ petition had been filed on 06.03.1996 itself. If I am denying to the petitioner a right of enforcement, I am not doing it on the ground that there was any delay on his part. On the other hand, I rest my decision on a fundamental position that the petitioner has not parted with any consideration to seek for a relief of obtaining the allotment in his favour. I also hasten to add that as far as the 3rd respondent is concerned, there is no evidence to imputing any knowledge to him, that the particular property had been offered to be allotted to the petitioner. A person that participates in a public auction conducted by a public body has a reason to believe that the authority is competent to sell the property. If he had parted with consideration, it is the fulfillment of the second requirement as well that apart from being the bona fide purchaser, he has also parted with consideration and such a person''s right can not be infringed at the instance of a person who holds but a promise of allotment.

9. By the decision that I have come to, that the petitioner cannot impeach the auction sale held in favour of the 3rd respondent, I do not deny that the State is entitled to enforce through its directives a policy of specific reservation of properties for certain classes of persons. If such reservation had been done, it shall not still relieve the Trust to flout the constitutional norms of Article 14 and allot a property selectively to the petitioner. The issue would still be whether a property which had been directed to be reserved by the State and for sale of the property as per the rules could have enabled the Trust to put up for auction without such reservation. The matter will not stand for consideration now for State may have other remedies to enforce its own policies through its functionaries but if a third party interest has intervened, the mere existence of a policy still will not affect his interest. This was laid through a judgment of this

Court in G.S. Lamba v. Punjab State (1994-1) 106 P.L.R. 709, that a mandamus cannot issue for enforcement of a policy of the Government to rehabilitate Sikh migrants. The Division Bench of this Court was dealing with the case of a petitioner, who remained unsuccessful in the draw of lots and when he filed a writ petition, his plea was repulsed by a reasoning of this Court that a policy does not confer any legal right to any individual nor could he ask for a writ of mandamus without a legal right.

10. The writ petition, under the circumstances, shall fail and it is dismissed accordingly. There shall be however no directions as to costs.

