
(2014) 08 AHC CK 0023
In the Allahabad High Court
Case No : C.M.W.P. No. 44317 of 2014

Sadhir Kumar Maurya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Citation : (2015) 1 AWC 128

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : Arun Kumar and Prashant Kumar Singh, Advocates for the Appellant;
Satyam Singh and S.K. Mishra, Advocates for the Respondent

Judgement

Amreshwar Pratap Sahi and Vivek Kumar Birla, JJ.—Heard Sri Arun Kumar, learned counsel for the petitioner and Sri S.K. Mishra for the respondents. The petitioner's plot was cancelled on account of default. He moved an application for restoration of the same which was also rejected as the application was not accompanied by any affidavit or the deposit that was to be made.

2. Learned counsel for the respondent-Corporation informs that under the Operating Manual where provisions are made for restoration of Plots that has been cancelled, the following norms have to be followed and observed before any such application for restoration is entertained.

"CHAPTER-V

Guidelines for restoration of allotment of cancelled Plot in Industrial Areas

The policy of restoration has been provided with a view to give an opportunity to entrepreneurs who defaulted due to genuine reasons and felt to correct and communicate it after cancellation. It seeks to minimize chances of litigation by ex-allottees in regard to cancelled plots. Restoration of cancelled plots in favour of original (last) allottee only can be considered by the Corporation on following terms and conditions :

1. Application for restoration of allotment of cancelled plot will generally be considered upto 30 days from the date of cancellation. However, application beyond the above period may be considered in cases where, plot remained unallotted due to stay by court or possession of the plot could not be obtained by the Corporation or due to other reasons.
2. The ex-allottee shall have to apply for restoration of allotment alongwith affidavit in prescribed format as on Annexure-6.
3. Restoration of allotment will be made only in favour of the entity who was allottee/lessee at the time of last cancellation and the plot has not been allotted to someone else.
4. The entire outstanding dues against the cancelled plot upto the date of cancellation will have to be paid before restoration is allowed irrespective of the fact that re-entry has been made, possession has been taken back and the plot was declared vacant for allotment.
5. A processing fee of Rs. 2,000 (for V.F.M.AS. and F.M. As.) and Rs. 1,000 (for S.M. As.) shall accompany each application for restoration. Besides above the ex-allottee will have to pay the outstanding dues and at least 25 or 10 percent of the restoration levy due in very fast/fast moving or slow moving areas respectively before restoration. Restoration levy due will be as per the following Table or @ 5%, 3% and 1% of the current premium prevailing on the date of restoration in very fast moving, fast moving and slow moving Industrial Areas respectively, whichever is higher.

While calculating the restoration levy the location charges of a particular plot shall not be considered

and only basic premium shall be taken into account.

1. Balance restoration levy shall be payable in ten-half-yearly equal installments alongwith interest at the rate prevailing on the date of restoration on unpaid restoration levy from time to time. However, balance premium in respect of the plot will be payable in lump-sum or in 10 six-monthly installments with interest on the rates prevailing at the time of restoration.
2. Alongwith request for restoration, the ex-allottee will have to submit time-bound programme for implementation of the project for which two years time from the date of restoration will be allowed. In case the allottee fails in setting up project within stipulated period, the plot will be liable to be cancelled as per existing rules. However, allottees can avail time extension on payment of Time Extension Fee. For determining T.E.F. in case of restored plots, the original premium rate and of Restoration levy will be clubbed together which shall be the original rate of premium for calculating T.E.F. Further, time elapsed for T.E.F. purpose will be counted from the date of restoration.
3. In case of restored plots, date of allotment will be the same as per the original

allotment letter.

4. Restoration of cancelled plots will not be considered in cases where any court of law has passed orders in favour of the Corporation in legal suits filed by ex-allottee against cancellation, or delivery of possession of the plots to the Corporation.

5. The restoration shall be made to the last allottee and all prior sanctions or orders shall also be deemed to be restored as if there was no cancellation, i.e., status as on the date of cancellation shall be restored in all respect.

6. In cases of restoration the allottee shall be required to execute supplementary/correction deed and stamp duty on the amount of restoration levy has to be paid. It shall be ensured by Regional Office that such stamp duty is paid in order to avoid any loss to State Exchequer.

7. In case where the unit of the plot was running unit on or before the date of cancellation, the rate of restoration levy shall be 50% of the applicable slab rate. The status of running unit should be substantiated by documentary evidence as explained in Chapter-6 relating to transfer of plots.

Regional Manager can restore the Industrial Plots only upon the area of 500 sq.m. in all Industrial Areas within 4 years from the date of allotment. Plots of more than 500 sq.m. can be restored by Head Office. Proposals for such restoration of plots shall be forwarded by Regional Office to the Head Office within 10 days of the receipt alongwith documents and recommendation. After approval of the Head Office, offer of restoration spelling out terms and conditions as above and details of payments required to be made by the ex-allottee will be sent by the Regional Office within 7 days of intimation by Head Office.

Re-Restoration of Industrial Plots

In case the restoration of the plot is taken back due to default of terms or restoration, re-restoration of Industrial Plots in favour of ex-allottees can be considered by the Corporation only in following cases :

(a) Ex-allottee (Sole proprietor/Principal partner/Major Share holder/Promoter) has suffered from severe ailment and has been admitted in hospital at least for 6 months.

(b) Minimum 10% construction on the plot has been completed and construction work is in progress.

(c) If re-restoration has been instructed by the competent court of law.

(d) If Managing Director of the Corporation is of the opinion that there is some other adequate reason for allowing re-restoration.

All terms and conditions of first restoration shall remain same in case of second restoration also."

3. According to the aforesaid Operating Manual, a prerequisite is to be performed and the calculations are clearly contained therein. The petitioner does not appear to have complied with the same.

4. In the aforesaid circumstances, we do not find any plausible reason to interfere with the impugned order. However, if the petitioner complies with the conditions as prescribed therein and the Plot is still available, it will be open to the U.P.S.I.D.C. to consider the request of the petitioner. With the aforesaid observations, the writ petition is disposed of.