
(1996) 07 P&H CK 0158
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3514 of 1995

Smt. Sandhya Jindal

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:

Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 — Regulation 6(2)
Haryana Urban Development Authority Act, 1977 — Section 17, 5(1)

Citation : (1996) 114 PLR 614 : (1997) 2 RCR(Civil) 71

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Sanjay Bansal, for the Appellant; Ritu Bahri, Assistant Advocate Gen. for the Respondent Nos. 1 and 2, Rameshwar Puri and Deepali Puri for the Respondent Nos. 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The issues raised in these writ petitions which have been filed against the cancellation of allotment of Booth Site and Shop-cum-Office/Flat Sites in Sector 15, Part-II, Gurgaon, are almost identical and therefore, all the petitions are being decided by a common order.

2. A few facts: Petitioner-Smt. Sandhya Jindal gave highest bid of Rs. 2,60,000/- in an open auction held on 26th February, 1992 by the Estate Officer, Haryana Urban Development Authority (HUDA), Gurgaon for Booth Site No. 47, Sector 15. Part-II, Gurgaon. She deposited Rs. 26,000/- as 10 percent of the bid amount at the fall of the hammer. After about six months, the petitioner received letter Annexure P2 from the Estate Officer, HUDA, Gurgaon informing that allotment made in her favour had been cancelled and 10 percent amount deposited by her had been forfeited. Aggrieved by the cancellation of allotment, the petitioner filed an appeal before the Administrator, HUDA, on the ground that she had not received formal confirmation of allotment and there was no default on her part of

making payment of the amount. She expressed her willingness to pay 50 percent value of the plot with interest as per rules. Her appeal remained pending with the Appellate Authority for about nine months when it was dismissed vide order Annexure P6 dated 25th August, 1993. Feeling dissatisfied by the order of the Appellate Authority, the petitioner filed a revision petition before respondent No. 2. As on the date of the filing of this petition, her revision had not been decided by the Government. However, during the pendency of the writ petition, the revision petition has been dismissed as would appear from Annexure P11 dated 15th March, 1993 conveyed to the petitioner by the Chief Administrator, HUDA.

3. The petitioner has challenged the cancellation of the allotment as well as the orders passed by the Appellate and the Revisional Authorities on the ground of violation of the provisions of the Haryana Urban Development Authority Act, 1977 (for short, "the Act") and the principles of the natural justice. Her case is that letter dated 1st April, 1992 was never received by her and she had no knowledge of requirement to deposit Rs. 39,000/- upto 30th April, 1992 and, therefore, the Estate Officer was not justified in invoking Clause (4) of the Allotment Letter Annexure P1. Another plea raised by the petitioner relates to the jurisdiction of the Estate Officer. Her assertion is that the Estate Officer is not competent authority who could cancel the allotment made by HUDA. Plea of discrimination has been raised by making reference to an order passed by the Appellate Authority in the case of one Roshan Lal who was permitted to deposit the amount with penal interest despite the delay of 191 days. Orders passed by the Appellate Authority and the Government have also been challenged on the ground that they are non-speaking in as much as in neither of these orders the points raised by the petitioner have been considered.

4. Petitioner-2. M. Garg gave highest bid of Rs. 6,72,000/- on 26th February, 1992 in the open auction held by the Estate Officer, HUDA, Gurgaon for allotment of Shop-cum-Office/Flat Site No. 4 in Sector 15, Part-II, Gurgaon. He deposited 10 percent money at the fall of hammer. Subsequently, his allotment was cancelled by the Estate Officer and 10 percent amount was forfeited vide Annexure P2 on the ground that he failed to deposit 15 percent of the bid money in spite of communication dated 1st April, 1992. His appeal came to be dismissed by the Appellate Authority vide order dated 11th May, 1993. His revision petition has also been dismissed during the pendency of the writ petition. Challenge to the orders impugned in this petition is based on the same grounds on which challenge in Civil Writ Petition No. 3214 of 1995 has been made.

5. Petitioner-Gagan Garg gave highest bid of Rs. seven lacs for allotment of Shop-cum-Office/Flat Site No. 5 in Sector 15, Part- II, Gurgaon in an open auction held on 26th February, 1992 by the Estate Officer, HUDA, Gurgaon. He deposited 10 percent bid amount on 26th February, 1992 but his allotment came to be cancelled by the Estate Officer vide Annexure P2 on the ground of his failure to deposit 15 percent bid amount even after sending of memo No. 120 dated 1st April, 1992. The appeal filed by him came to be dismissed by the Appellate

Authority, his revision petition has been dismissed by the Government during the pendency of the writ petition.

6. The first contention of Shri Bansal is that the Estate Officer did not have authority to cancel the allotment made in favour of the petitioners because he does not fall within the definition of "Authority" u/s 2(b) read with Section 3(1) of the Act. On the other hand, Shri Puri argued that the Estate Officer does fall within the definition of "Authority" by virtue of Section 51(1) of the Act because the powers stand delegated to the Estate Officer and, therefore, he is entitled to act on behalf of "the Authority".

7. Perusal of Section 51(1) of the Act shows that it is within the competence of "Authority" to pass a resolution authorising any officer of the Authority or the State Government or Local Authority to exercise the powers which are exercisable under the provisions of the Act and rules or regulations made thereunder. It is, therefore, evident that Authority constituted u/s 51(1) of the Act can delegate its powers to any officer of the Authority or the State Government. There is no dispute between the parties that the Estate Officer is an officer of the Authority. Therefore, in view of the delegation of powers made in favour of the Estate Officer, it is not possible to accept the contention of Shri Bansal that the cancellation of allotment ordered by the Estate Officer is without jurisdiction.

8. Second contention of Shri Bansal has many facets. His first submission is that the Estate officer has acted arbitrarily in proceeding on assumption that letters dated 1st April, 1992 sent to the petitioners had been received by them. Learned counsel submitted that none of the petitioners had received the communication dated 1st April, 1992 and, therefore, the condition precedent for exercise of the power of cancellation had not been satisfied. He then argued that no show cause notice or opportunity of hearing was given to the petitioners before the Estate Officer cancelled the allotment made in their favour and, therefore, the impugned cancellation is in violation of the principles of natural justice. Shri Bansal further argued that the Appellate Authority did not correctly appreciate the contentions raised on behalf of the petitioners and rejected the appeals mechanically. Shri Bansal referred to the order passed in the case of one Roshan Lal (Annexure P9) and pointed out that in the case of Roshan Lal, the Appellate Authority condoned the delay of 191 days in making of deposit, but, in the case of the petitioners such compassionate approach was not adopted. According to the learned counsel, there can be no reason or justification for adopting different standards for making adjudication in the similar cases of alleged defaults in the payment of bid money. Lastly, he argued that the appellate as well as revisional orders are non-speaking in as much as they do not contain reasons for not accepting the points raised on behalf of the petitioners.

9. Shri Puri argued that the cancellation of allotment made in favour of the petitioners was automatic in view of their failure to deposit the part of bid money even after receiving intimation regarding deposit of 15 percent of the bid

amount. Shri Puri referred to paragraph 4 of the allotment letter Annexure RI and Regulation 6(2) of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 and submitted that forfeiture of the amount deposited by the petitioners at the time of auction is automatic once it is found that the allottee has failed to deposit 15 percent of the bid money. Shri Puri further argued that the petitioners cannot claim parity with the case of Roshan Lal because in each case the Appellate Authority has to examine the facts and then it has come to the conclusion whether the cancellation of allotment is justified or not. Lastly, he argued that the Appellate Authority has given cogent reasons for rejecting the appeal filed by the Appellate Authority and even though the Revisional Authority may not have given detailed reasons, it has affirmed the findings recorded by the Appellate Authority and, therefore, the revisional order cannot be quashed on the ground of it being a non-speaking order.

10. We have thoughtfully considered the rival contentions and have carefully gone through the records of these cases. Annexure P1 is a document containing terms and conditions of auction of commercial sites. Paragraphs 7 and 11 of these conditions are quite significant. Paragraph 7 requires the successful bidder to pay 10 percent of the bid amount at the fall of the hammer. It also requires that the highest bidder shall deposit another 15 percent of the bid amount within 30 days from the date of issue of acceptance of bid/allotment letter. Paragraph 11 empowers the Chief Administrator to cancel the allotment and forfeit the whole or part of the amount paid in the event of default or breach of non-compliance of the terms and conditions of auction as well as those contained in the allotment letter or in case of furnishing of incorrect information or failure of the bidder to comply with the conditions No. 7 and 8. Although on a plain reading of condition No. 7 it can be said that the highest bidder should deposit 15 percent of the bid amount within 30 days from the date of acceptance of bid or the issue of letter of allotment but it is reasonable to construe this condition as meaning that within thirty days of the receipt of the letter of acceptance or allotment letter, the bidder should deposit 15 percent of the bid money and the bidder's failure to do so or to fulfill the term of the auction or allotment letter entitles the Chief Administrator to cancel the allotment and forfeit whole or part of the amount already paid. However, there is nothing in paragraphs 7 and 11 which casts a duty on the Chief Administrator or other competent authority to cancel the allotment as a matter of course and to apply forfeiture clause. Similarly, paragraph 4 of the allotment letter provides for cancellation of allotment letter and forfeiture of 10 percent of the earnest money on the failure of the bidder to deposit 15 percent of the amount but there is nothing in this paragraph to show automatic cancellation of the allotment. In our opinion, paragraph 4 of the allotment letter must be read in conjunction with paragraphs 7 and 11 of the conditions of allotment and if they are so read, it becomes clear that no action can be taken by the competent authority to the prejudice of an allottee without compliance of the rules of natural justice. That apart, Section 17 of the Act which speaks of resumption and forfeiture for breach of the conditions

of transfer clearly provides for a notice to the transferee to show cause before an order of resumption of the land or plot can be passed and before the amount already deposited can be forfeited. Thus, Section 17 represents embodiment of the rule of audi alteram partem. We, therefore, hold that before passing an order of cancellation of allotment due to alleged breach of the conditions of auction or allotment, an auction-oriented notice and an opportunity of hearing must be given to the affected person. This procedure is also required to be followed when the competent authority seeks to invoke forfeiture clause.

11. We are further of the opinion that even if Section 17 does not contain a statutory requirement of notice to the allottee as a condition precedent to the cancellation of allotment, such requirement would have to be read as implicit in the exercise of power of cancellation. There can be no manner of doubt that even though the power of cancellation of allotment and forfeiture of amount already paid is administrative in character, but, at the same time it cannot be denied that such an action is fraught with grave consequences qua the allottee. An order of this nature not only deprives the allottee of the expected property but also deprives him/her/it of the amount already paid as a part of the bid money. Therefore, giving of notice and opportunity of hearing to the allottee before an order of cancellation or forfeiture of deposit can be made is sine qua non to the validity of the action taken by the competent authority. In *State of Orissa v. Dr. (Miss) Binapani Dei and Ors.*, AIR 1967 S.C. 1267 their Lordships gave a new dimension to the principles of natural justice and applied them to administrative action by observing:-

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide, an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences, it is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof

transcends and significance of a decision in any particular case."

12. Repelling the argument that in purely administrative action the rules of natural justice are not required to be followed, the Supreme Court held:-

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting of explaining the evidence."

13. Above referred principle has not only been followed but has been given extended meaning in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , *S.L. Kapoor Vs. Jagmohan and Others*, ; *Swadeshi Cotton Mills Vs. Union of India (UOI)*, and *Olga Tellis v. Bombay Municipal Corporation* AIR 1985 S.C. 180.

14. In the instant case, no notice or opportunity of hearing was afforded to the petitioners before the impugned orders of cancellation were passed by the Estate Officer. Therefore, these orders are liable to be voided on the ground of violation of principles of natural justice.

15. There is also substantial merit in the submission of Shri Bansal that the Estate Officer passed the impugned orders of resumption on a wholly wrong assumption that the orders of allotment had been served upon the petitioners and yet they had not deposited 15 percent of the bid amount. It appears to us that the Estate Officer treated the act of sending of the letters by registered post as equivalent to receipt of those letters by the petitioners. On their part, the petitioners have specifically pleaded in their appeals and even in the writ petitions that they have stated that letters issued by the Estate Officer had not been received by them. In the face of such assertion it was the duty of the authorities of HUDA to make an enquiry whether the allotment letters had in fact been served upon the petitioners or not. Without such enquiry it was not open to the Estate Officer to conclude that the petitioners failed to deposit 15 percent of the amount even after intimation. In our opinion, the functionaries of HUDA have acted arbitrarily in cancelling the allotment without even verifying from the postal authorities whether letters despatched to the petitioners had been delivered to them or not.

16. We shall now examine the challenge to the legality of the orders Annexures P6 and P11 on the ground that they do not contain reasons and, therefore, these orders are contrary to the principles of natural justice. It is a well established principle of law that every quasi judicial authority must give reasons in support of its order and recording of reasons as well as communication thereof constitute an integral part of the concept of natural justice. This principle emerges from the decisions of the Supreme Court in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, ; *Bharat Raja Vs. The Union of India (UOI)* and

Others, ; Travancore Rayon Lid v. Union of India AIR 1971 S.C 862; Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, ; The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, and Ajanta Industries v. Union of India AIR 1976 S.C. 434.

17. Perusal of the appellate orders shows that in first three paragraphs of its order the Appellate Authority made reference to the factum of. filing of the appeal and contentions put forward by two sides. In the fourth paragraph, it again referred to some of the facts and in the last paragraph it recorded rejection of the appeal with the following observations:

"As per latest policy guidelines circulated vide Chief Administrator, HUDA memo No. A-11-(P)-91/23298 dated 12th November, 1991 the Estate Officer, Administrator and Chief Administrator, HUDA are empowered to condone delay upto 7, 14 and 30 days respectively beyond the normal period of 30 days but this case cannot be covered under the above provisions. "The cancellation orders passed by the Estate Officer are legal and as per rules. Hence, I dismiss the appeal."

18. Revisional order passed by respondent No. 2 does nothing more than to record the following:-

"I have perused the entire case on merits. No case for exercise of revisional jurisdiction is made out. I do not find any lack of jurisdiction or inherent legal infirmity in the orders passed by the Administrator. This revision petition is accordingly dismissed."

19. In our opinion, neither of these two orders satisfies the requirement of a speaking order. On its part, the Appellate Authority did not decide any of the points raised on behalf of the petitioners. It has not recorded even a bald conclusion that points raised on behalf of the petitioners do not merit acceptance. There is no indication in the orders of the Appellate Authority as to by what process of reasoning it came to the final conclusion that cancellation orders passed by the Estate Officer are legal and consistent with the rules. The Appellate Authority has not decided important plea raised by the petitioners about the violation of the principles of natural justice. The revisional orders are still more cryptic and arbitrary. None of the orders passed by the Revisional Authority contains any indication of consideration of the points raised on behalf of the petitioners. Instead of passing reasoned orders, the Revisional Authority has repeated stock phrases like, "no case for exercise of revisional jurisdiction is made out" or "I do not find any lack of jurisdiction or inherent legal infirmity in the orders passed by the Administrator." This cannot, in any manner, be termed as a satisfactory method of deciding revision petitions filed by the petitioners against the orders of the Estate Officer and the Appellate Authority.

20. In view of the above discussion, we hold that the orders passed by the Appellate Authority as well as Revisional Authority are non-speaking and the same are liable to be quashed being contrary to the principles of natural justice.

21. The argument of the learned counsel regarding discrimination though appears to be attractive cannot be accepted. Roshan Lal's case was decided on 23rd November, 1993, i.e. much after the decision of the cases of the petitioners. Therefore, it cannot be said that the Appellate Authority adopted a different yard- stick for deciding appeals of similarly situated persons.

22. For the reasons mentioned above, the writ petitions are allowed. The impugned orders passed by the Estate Officer, the Appellate Authority and the Revisional Authority (Annexure P2, P6 and P11) are quashed. Looking to the nature of the cases, we do not consider it proper to remand the cases, but, direct the respondents to accept the money due from the petitioners towards different instalments subject to the condition that the petitioners pay interest specified in the letters of allotment and also pay penal interest, at the rate of 18% per annum. The respondent-Estate Officer is directed to intimate to the petitioner the amount due from them within a period of 15 days and within one month thereafter, the petitioners shall deposit the arrears of the bid money and interest. If the petitioners fail to deposit the amount in terms of this direction, they shall not be entitled to possession of the property.