
(2014) 11 RAJ CK 0161
In the Rajasthan High Court
Case No : Civil Writ Petition No. 21758/2013

Sushil Kumar Bhandari

APPELLANT

Vs

RIICO

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 226(3)

Citation : (2014) 11 RAJ CK 0161

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Sarthak Rastogi, Advocate for the Appellant; Virendra Lodha, Senior Advocate and Vinod Singhal, Advocate for the Respondent

Judgement

Alok Sharma, J.—The matter comes up on an application under Article 226(3) of the Constitution of India for vacating the interim order dated 7-4-2012 passed by this court directing that if the petitioner were to deposit Rs. 25 lacs with the Rajasthan State Industrial Development and Investment Corporation (hereinafter "RIICO") within one month of passing of the interim order, RIICO would be restrained from allotting the plots earmarked for Information Technology & Bio Technology (ITBT) as detailed in the writ petition.

2. Since the disposal of the application for vacating the ex-parte ad interim order dated 7-4-2012 would entail arguments on the merit of the writ petition itself, final arguments have been heard and the writ petition itself is being disposed of.

3. This petition has been filed fundamentally against the rejection letter dated 25-7-2013 under the hand of Senior Regional Manager, RIICO informing the petitioner that his application dated 22-7-2013 for allotment of 15,200 sq. meter land in Bio Tech park, Sitapura Phase-III was being returned along with the original cheque for Rs. 39,52,000/- on the ground that "presently allotment" in Bio Tech park, Sitapura Phase-III were being made through inviting Expressions of Interest. The petitioner has also effectively challenged the reserve price of plots in Bio Tech park, Sitapura Phase-III fixed at the rate of Rs. 5,500/- per sq.

meter as against about Rs. 1000/- per sq. meter and further sought direction that the plots should not be allotted on the basis of invitation of Expressions of Interest but on "first Come First Serve" basis (hereinafter "FCFS").

4. The case of the petitioner is that the mode of allotment of plots for bio tech industries in Bio Tech park, Sitapura Phase-III, RIICO's industrial area was determined by the Infrastructure Development Committee (IDC) on 11-3-2005. It has been submitted that IDC of the RIICO has been conferred powers subject to the provisions of Companies Act, Memorandum and Articles of Association of the Corporation and over-all supervision, control, directions of the Board of Directors of the Corporation to review the progress of Industrial Areas/Estates; to select areas for development of industrial Areas/Estates; to decide on the acquisition of land for industrial areas; to approve area-wise plans for development of industrial areas and construction of sheds; to approve terms and conditions of allotment of plots and sheds in the industrial areas/estates as per directions of the Managing Director; to approve the lay out of various industrial areas and dimensions of various types of sheds as per directions of the Managing Director; to approve amendment in the RIICO Disposal of Land Rules; to decide and approve all related matters with the development of infrastructure in the industrial areas of the Corporation (including transferred areas from the State Government) viz. allotment of land, sanction of funds for the development and maintenance of industrial areas, conversion of industrial land for residential/commercial use, conversion of open land into the industrial land etc.; to decide all the incidental/allied matters arising out of the implementation of the above functions; to sub-delegate any of the above functions to any other Committee/Sub-Committee of the Board or to any Director/Officer/Committee of Officers of the Corporation; to reduce/relax the rates, rules, terms and conditions decided/framed with regard to all the functions mentioned above.

5. In the exercise of aforesaid powers, according to the petitioner the IDC decided on the allotment of IT/BT plots in its Bio tech park, Sitapura Phase-III industrial area Jaipur in IT/BT zone on "FCFS" basis under Tatkal Scheme at the enhanced Special Tatkal Rates of development charges of Rs. 1000/- per sq. meter, with rebate in accordance with special land packages to these sectors vide office order No. 19/2004 dated 18-11-2004 and order No. 4/2005 dated 13-1-2005-However, the aforesaid office orders have not been annexed to the writ petition. It has been submitted that the IDC was duly empowered to act by the Board of Directors under the Articles of Association of the RIICO and to take a decision for allotment of plots in IT/BT zone of Bio Tech park, Sitapura Phase-III, Jaipur on first come first service basis. The Managing Director and the Senior Regional Manager could not have taken a decision to change the mode of allotment of such plots or enhance the development charges/allotment charges therefor from Rs. 1000/- to Rs. 5500/- submitted counsel. This could only have been done by the Board of Directors or due change by the IDC itself of the policy earlier articulated by it. It was submitted that consequently the decision dated 15-1-2009 allegedly taken by a Committee headed by the Managing Director of

RIICO or under his authorisation or the decision of the said Committee on 27-1-2009 was ab initio void and of no effect. It was submitted that consequently neither the development charges/allotment charges could have been enhanced from Rs. 1000/- to Rs. 5500/-, nor the mode of allotment changed from "FCFS" to invitation of Expressions of Interest from interested parties through advertisement in news papers. It was submitted that the decisions dated 15-1-2009 and 17-1-2009 are thus ultra vires of Articles of Association of RIICO, in the face of a duly constituted IDC and of no effect, per se arbitrary, without authority, and therefore liable to be quashed and set aside. It has been submitted that the respondent RIICO has acted arbitrarily and has from time to time exercised its powers of allotment, purportedly under the RIICO Disposal of Land Rules, 1979 (hereinafter 'the 1979 Rules') at its whims and fancy in a wholly discriminatory manner. Reference to various allotments made by the RIICO in accordance with IDC's decision dated 11-3-2005 has been made in support of the submission that the petitioner's case should be similarly addressed without any invidious discrimination under a camouflage of changed policy to RIICO's sweet will. The following illustrations have been set out:

"1. Allotment to M/s. Vitromed Healthcare, Jaipur on 24-1-2006 @ Rs. 1000/- sq. meter in accordance with the IDC's decision dated 11-3-2005 on first come first serve basis and rebate was also allowing @ 50%.

2. Allotment to M/s. Shanti Education Society, Jaipur @ Rs. 1,328/- sq. meter on 21-2-2007, on the basis of auction after inviting Expression of Interest.

3. Allotment to M/s. Therachem Research Medilab (India) Pvt. Ltd. Jaipur on 30-3-2007 @ Rs. 1,000/- per sq. meter on first come first serve basis as per IDC's decision dated 11-3-2005.

4. Three different applications for allotment of different parcels of land in Bio Technology park, Sitapura industrial Area were filed on 26-2-2007, 15-3-2007 and 16-3-2007. These applications were returned on 28-8-2008 and on 2-2-2009 these applicants were informed to apply for land @ Rs. 5,500/- per sq. meter through expression of interest. By this time terms of allotment and reserve price for allotment had already been allegedly amended by a Committee headed by the Managing Director vide two orders dated 15-1-2009 and 27-1-2009."

6. Reply to the writ petition has been filed. It has been submitted that RIICO formulated a scheme for establishment of Bio Tech and Bio Informatics Industries in the year 2004. Certain lands with RIICO were earmarked for the exclusive purpose of Bio Tech park wherein all facilities for running Bio Technology industries were provided. IDC vide item NO. 15 dated 23-4-2002 accorded approval for a special package for allotment of land to bio technology industries. Vide item No. 7 in its meeting on 24-3-2003, IDC also allowed 10% rebate for allotment of land upto 4000 sq. meters. Vide item No. 32 in its meeting of 20-5-2003, IDC granted approval for guidelines for allotment of land in Bio Tech park. A Committee consisting of Chief General Manager, Advisor (Infra), F.A.

General Manager, and Senior Dy. General Manager was constituted for making allotment of land to Bio Tech Industries. IDC also authorised the Managing Director of RIICO to review and make necessary changes in the guidelines for modern Bio Technology from time to time. Vide Item No. 5 dated 12-10-2004 IDC modified the land packages to be provided to Bio Tech Industries and land allotment to Bio Tech Industries was to be made at the rate of development charges prevailing in the area. Importantly IDC again authorised the Managing Director to review and make necessary changes in the guidelines for providing land for modern Bio Technology units from time to time.

7. It has been further submitted that in order to promote the establishment of Bio Technology Park, RIICO had indeed started a Tatkal Scheme for allotment of land to Bio Tech units on special tatkal price. But the decision was not frozen for all times to come and allotment policy was open to alteration in the context of overall view of RIICO manifesting itself in the decision of RIICO through its Managing Directors as per the Company's Articles of Association. Thereunder from April, 2007 to December, 2008 no plot in Bio Tech park was allotted to any industrial unit on Tatkal basis and thereafter RIICO formulated in 2009 a scheme of allotment of Bio Tech park, Sitapura Phase-III Jaipur by inviting expressions of interest through advertisement in leading news papers. The interested applicants were required to submit their application of expression of interest to set up Bio Tech units in Sitapura Phase-III Jaipur. The applications were scrutinised by RIICO and feasibility of the project evaluated by a Committee. Rate @ Rs. 5,500/- per sq. meter was fixed as reserve price. After scrutinising the applications received for feasibility, in case of multiple applicants for a plot competitive bidding was required to be made to maximise RIICO's revenue.

8. It was submitted that in the circumstances, the petitioner's claim for allotment under the Tatkal scheme in the year 2013 was baseless and rightly rejected vide letter dated 25-7-2013.

9. Mr. Sarthak Rastogi, counsel for the petitioner has submitted that RIICO was bound by the IDC's decision of 11-3-2005 qua allotment of plots to Bio Tech Informatics Industries in BT Parks on first come first service basis @ Rs. 1000/- per sq. meter with applicable deductions. He submitted that the rejection of the petitioner's application for allotment on 25-7-2013 was arbitrary and discriminatory as also ultra vires. RIICO's own allotment policy relatable to IDC's decision in its meeting of 11-3-2005.

10. Mr. Virendra Lodha, learned Senior Counsel appearing with Mr. Vinod Singhal for RIICO, submitted that the writ petition is misdirected as the petitioner has no cause of action or any ground whatsoever to impugn a change in the policy by RIICO with regard to reserve price for allotment of land in its IT/BT park Sitapura Phase-III Jaipur or the mode of its allotment. No case of arbitrariness or discrimination is made out, he submitted. Senior Counsel has submitted rather RIICO has now evolved a scheme for allotment of plots in its IT/BT parks more transparent and in public interest. It is not for the petitioner to determine RIICO's

land allotment policy or as to what price RIICO should allot its land or the mode of such allotment. The petitioner has no legal or fundamental right to have a price of his choice or dictate that the mode adopted be to its advantage.

11. Perused the writ petition and reply thereto. Heard counsel for the parties.

12. In my considered opinion, the writ petition is absolutely misdirected. The petitioner has no right in law to determine the price of land on which he seeks allotment from RIICO. A government company incorporated under Companies Act, 1956 RIICO is entitled to determine the manner of its business, method of allotment of plots in its industrial areas and their price. The Industrial Infrastructure Committee (IDC) is a construct of the Board of Directors of RIICO. IDC cannot override RIICO's Board of Directors headed by the Managing Director. Further a bare reading of various resolutions referred to above indicates that the Managing Director is empowered to act in the interest of the RIICO and even override IDC recommendations. Resolutions of even the IDC such as 20-5-2003 and 12-10-2004 evidence this fact.

13. Aside of above, there is no occasion for this court to exercise its powers under Article 226 of the Constitution of India to interfere with the internal/indoor management of the RIICO in terms of its Articles of Association. The management of RIICO is not a matter which can be agitated before this court unless the Company's Articles of Association are evidently violated or palpable discrimination by RIICO, a government company is made out. No such violation of RIICO's Articles of Association has been pointed out by the petitioner before this court and the court finds no case of discrimination. No allotment in BT/IT areas of RIICO's industrial parks has been made on "FCFS" basis since 2009. Allotment of plots in IT/BT area of Sitapura Phase-III Jaipur on the basis of invitation of expression of interest on available plots at the rate of Rs. 5,500/- per sq. meter or more is RIICO's current policy and nothing illegal can be attributed thereto. RIICO has categorically denied that since 2009 any allotment of plot @ Rs. 1000/- per sq. meter in the BT/IT area has been made under the tatkal scheme. Aside of the aforesaid, the Board of Directors of the RIICO has a right to modify any policy for allotment and even where variation thereto is made to RIICO's benefit, to ratify such allotment. The instrument of the extraordinary equitable jurisdiction of this court cannot be used to stultify public interest, interfere in RIICO's current allotment policy and benefit private parties by directing allotment to them at a rock-bottom beneficial price 20% or less of current reserve allotment price.

14. The writ petition is hopelessly misdirected.

15. Dismissed.

16. Resultantly, the applications for vacation of ex-parte ad interim order dated 7-4-2012 stands allowed. Stay vacated.