
(2003) 04 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14718 of 2001

Vijay Industries

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Haryana Urban Development Authority Act, 1977 — Section 17(3)

Citation : (2003) 134 PLR 407

Hon'ble Judges : S.S. Nijjar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : O.P. Sharma, for the Appellant; B.S. Walia, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—The petitioner was allotted an industrial plot No. 158, Sector Phase I of the Industrial Estate, Bahadurgarh, Distt. Jhajjar measuring 250 Square Yards by allotment letter dated 6.2.1978. The petitioner deposited the entire sale consideration of Rs. 5000/- with the Estate Officer. The conveyance deed was executed and registered on 19.4.1994. The possession was also offered to the petitioner on 4.8.1983. According to Annexure P-1, the allotment letter the petitioner had to complete the construction within two years of the date of offer of possession. This stipulation is further reiterated in Clause 5 of the Conveyance Deed which is as follows:-

"5. The transferee shall have to complete the construction within two years from the date of offer of possession of the said land in accordance with the relevant rules/regulations.

Provided that the time limit for construction may be extended by the Estate Officer in case he fails to complete the building by the stipulated date due to reasons beyond the control of the Transferee."

2. A perusal of the aforesaid provision shows that the petitioner was duty bound

to complete the construction within two years from the date of offer of possession in accordance with the relevant rules/regulations. The aforesaid time limit could be extended by the Estate Officer in case the petitioner had failed to complete the construction by stipulated date due to reasons beyond the control of the petitioner. When the petitioner failed to make any construction on the plot for a number of years, respondent No. 3 issued a show-cause notice dated 5.2.93 u/s 17(3) of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as "the Act") calling upon the petitioner to explain as to why the construction has not been completed. Then on 15.3.1995, respondent No. 3 issued a notice u/s 17(4) of the Act giving an opportunity of hearing to the petitioner. He was directed to appear either in person or through a duly authorised representative on 11.4.95 11 A.M. in the office of respondent No. 3. The petitioner gave reply to the aforesaid notice and stated that he may be given time for four months to pay extension fees. He also stated that "at this stage, I am not in a position to pay the extension fees". On 21.6.1995, the petitioner was given another opportunity of hearing and he was directed to appear either in person or through a duly authorised representative on 11.7.95 at 11.00 A.M. in the office of respondent No. 3. The petitioner was also informed that if he fails to appear, ex parte proceeding will be taken in the matter. The petitioner gave reply to the aforesaid notice by letter dated 11.7.1995 in which he stated as follows:-

"Respected Sir,

I beg to say that I have an Industrial Plot No. 158, Phase 1, M.I.E. at Bahadurgarh. Due to some bad circumstances, I cannot make construction in the part and also have to pay extension fee due Rs. 13975.

So, I request you to allow me time for two months upto 30th September, 1995, for payment and construction. I shall pay all your dues in the above period. So, most humbly I again request you to allow me 2 months more time."

3. A perusal of the aforesaid reply shows that the petitioner was unable to make the construction due to some bad circumstances, which he did not care to explain to the respondents. He again sought time for two months after 30.9.1995 for payment of extension fees and to complete the construction. Since the petitioner failed to appear before respondent No. 3 at any stage, an order was passed on 14.7.1995 by which the plot allotted to the petitioner was resumed. Against the aforesaid order, the petitioner filed an appeal before respondent No. 2. In this appeal, for the first time, the petitioner stated that the construction could not be completed as no basic amenities like road, water-supply, sewerage line and proper electrical facilities have been provided to the industrialists at the time of allotment of the plot. Therefore, it was not possible to construct and shift the factory premises of the petitioner. It was also stated that till the date of the filing of appeal, no proper facilities as mentioned above were available. Respondent No. 2 heard the appellant in person on 10.10.1996 and dismissed the appeal. It has been noticed in the order dismissing the appeal that the possession was offered on 4.8.1983. The petitioner failed to construct the

building within the stipulated time. Notices were issued to the petitioner on 8.11.1990 and 21.6.1995 respectively. The petitioner neither appeared before respondent No. 3 nor constructed the building within the stipulated period. Hence the order of resumption was passed on 14.7.1995 by respondent No. 3. When the petitioner appeared before the Appellate Authority in person he stated that due to the family circumstances, the appellant was not able to start construction. He stated that he is ready to start the construction, if the plot in question is restored. He also showed his willingness to pay all the penalties as per HUDA rules and regulations. It is to be noticed that the petitioner did not raise the plea of discrimination before the Appellate Authority. No details were given by the petitioner of the plots which have been restored to allottees who were similarly situated to the petitioner. His only plea before the Appellate Authority was that he could not start the construction due to family circumstances. He did not even argue before the Appellate Authority that there were no amenities available either at the time of allotment of the plot or at the time when the appeal was heard. After noticing the aforesaid facts, the appeal was dismissed on the ground that the petitioner has no intention to construct the building and start the industrial production for which industrial plot was offered.

4. Thereafter, the petitioner challenged the aforesaid order by filing revision petition before respondent No. 1. In the grounds of revision, the petitioner had abandoned the plea that he could not construct building due to personal and financial difficulties. He restricted the challenge to the order passed by the Appellate Authority to the ground of discrimination- In ground (e), it is stated as follows:-

"(e) That my case was also of the same status/nature with other Approx. 100 allottees, whose plots were resumed. Whereas some of the applicants had been favoured and their plots had been restored which were also resumed for non-construction of site. (The list of favoured/restored plots till date after resumption is attached herewith)."

5. From the above, it becomes apparent that the petitioner has been shifting his stand before the various authorities. In fact before the Appellate Authority he had stated that the petitioner had his industry in the name of M/s Vijay Industries at Rohtak since the year 1973. He had wanted to shift it to Bahadurgarh as it was nearer to Delhi. But the petitioner was unable to complete the construction as the facilities were not made available by the respondents. The revision petition was also dismissed. It has been held that no convincing reason has been put forward by the allottee on the basis of which the plot could be restored to him. It has also been held that there is no document on the file to prove that the allottee did make genuine effort to start construction at site, but could not do so because of lack of development work in the area. It has also been noticed that the reason of family dispute has no relevance to the case. The Revisional Authority also notices the argument put forward by the petitioner that construction could not be started due to dispute regarding ownership of the plot

within the family. The case of the petitioner has also been distinguished with regard to restoration of other plots, in that, the other allottees had constructed the plots in accordance with the directions given by the Appellate Authority.

6. Mr. Sharma has vehemently argued that the matter is squarely covered by the decision of the Division Bench of this Court rendered in CWP No. 7665 of 1997. We are unable to accept the submission made by the learned counsel. A perusal of the aforesaid judgment of the Division Bench shows that the decision has been rendered on the basis concession. The Division Bench observed that "Ordinarily we may not have interfered with the impugned orders but in view of the candid admission made by the learned counsel for the respondents that in cases of other allottees of Bahadurgarh, the Appellate Authority has set aside the orders of resumption and granted extension of time in the construction of building on payment of extension fee, we feel that the ends of justice would be met by according similar treatment to the petitioner". The Division Bench also observed as follows:-

"In this connection, we may refer to the decisions of this Court in C.W.P. No. 8737 of 1997 S.C. Khanuja v. State of Haryana and Ors., decided on 10.11.1997 and C.W.P. No. 10257 of 1997 S.L. Sharma v. State of Haryana and Ors., decided on 14.9.1998. In these cases, the Court held that the failure of the appellate authority to give one opportunity to the petitioner to raise construction of building on the condition of payment of extension fee alongwith interest has resulted in invidious discrimination and on that premise, directions similar to those given by the Appellate Authority were given in the cases of those petitioners."

7. A perusal of the aforesaid observations of the Division Bench shows that clearly the same had been rendered on the basis of admission made by the counsel for the respondents. There is no such admission made by the counsel for the respondents in the present case. The aforesaid decision is clearly rendered on the facts and circumstances of that cases. In the present case, the petitioner has been shifting his stand from authority to authority. In our opinion, he has not come to court with clean hands. Such a litigant cannot be granted any discretionary relief in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India. No details have been given by the petitioner as to how his case is identical to the individual plots that may have been restored to the original allottees. The plea of discrimination is a question of fact which has to be specifically pleaded. Even the revisional authority has noticed that the petitioner has failed to put on record any details as to how the facilities had not been provided by HUDA for construction of the factory. Rather in the facts and circumstances of the present case, it appears that the petitioner has not been able to make construction on the plot allotted due to a family dispute, about the ownership of the plot. We are of the considered opinion that the orders passed by the respondents do not call for any interference.

In view of the above, the writ petition is dismissed. No costs.

Sd/- Hem ant Gupta, J.