

(2019) 03 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ No. 769, 1186, 1188, 1191, 1192, 1193, 1194, 1195, 1196, 1198, 1212, 1756, 1757, 1768, 1770, 2068, 2073, 2075, 2076, 2077, 2382, 2427, 2437, 2439, 2440, 2441, 2442, 3314, Of 2010, 9865 Of 2011, 5679 Of 2012, 3760 Of 2013 782 Of 2014, 13362 Of 2

Vinayak Febtax And Ors

APPELLANT

Vs

Riico Ltd. & Anr

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21

Citation : (2019) 03 RAJ CK 0017

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Rakesh Arora, Niraj Jain, Rajesh Parihar, Sanjeet Purohit, C.S. Bareth

Judgement

The instant bunch of writ petitions involve common question of law and facts, thus is being decided by this single order.

The facts relevant and necessary for disposal of these writ petitions are noted hereinbelow for the sake of reference.

A large number of textile industries were established within the municipal areas of Pali which were operating in an indiscriminate and haphazard manner which resulted into mass scale pollution to the land as well as water bodies of town and its surrounding areas. A public interest litigation being D.B. Civil Writ Petition No.759/2002 : Mahaveer Nagar Vikas Samiti vs State of Rajasthan & Ors. came to be filed by one Mahaveer Nagar Vikas Samiti raising issues regarding environmental hazards and industrial malactivities being caused by the unauthorized industries many of which were in operation even in the residential areas of Pali.

The Hon'ble Division Bench of this Court issued detailed directions thereby mandating the establishment of a new industrial area and for shifting of the

existing industries to such an area which would mandatorily be equipped with all necessary measures so as to prevent further damage to the environment. The substratum of directions given by Division Bench of this Court in the said PIL vide order dated 09.03.2004 is reproduced hereinbelow for sake of ready reference.

"I. The Pollution Control Board shall immediately make fresh inspection of the Textile Processing Units at Pali and surrounding areas and in case any of the units are found to be creating pollution and not connected to the CETPs shall be closed.

II. The units which are creating pollution shall adopt measures to eliminate pollution.

III. RIICO shall set up industrial area at a suitable place exclusively for textile processing units. The industrial area must be located at an appropriate distance from residential areas. RIICO shall set up the industrial area within a period of six months and the industry shall be shifted to the industrial area from residential areas immediately thereafter.

IV. The trust shall make modification in the CETP so that the emissions therefrom are compatible with the norms prescribed by the Pollution Control Board.

V. The industrial units which are discharging the industrial pollutant on the land or/and river shall be closed forthwith.

VI. The State shall employ experts to assess the damage caused to the environment and health of the public by the pollution created by the Units. On assessment of the damage, the concerned authority shall file a report in this court within a period of eight weeks, whereupon the question of payment of compensation by the units on the principles of polluter pays shall be determined."

Accordingly, a new industrial area was carved out in Village Punayata, District Pali; requisite surveys were conducted and a list was prepared by the District Industrial Centre, Pali for allotment of fresh industrial plots. The industrial area, thus, created comprised of 333 plots. The process of allotment was initiated in the year 2005. The first survey list dated 11.07.2005 prepared by the DIC included names of as many as 255 incumbents. The second survey list dated 02.09.2008 contained names of 32 industries whereas the third survey list contained names of 61 industries of which 37 were common to the earlier list/s. The applications for allotment were invited from the incumbents whose names were included in these survey lists which were also approved by the Collector. The aspirants were required to submit the title proof viz. (1) allotment letter/patta if the land was within municipal area or the Jamabandi in case if the industry was established on agricultural land; (2) electricity bill; & (3) affidavit to the effect that the existing industry had been closed down.

First Phase of Allotment.

After completion of survey, the respondent RIICO issued advertisement in the

month of July, 2005 and August, 2005 inviting applications from such industries/factories whose names formed part of the existing survey list for the purpose of making allotment of industrial plot. The first phase of allotment was completed in view of decision taken by the Allotment Committee in its meeting dated 03.09.2005 wherein total 148 plots were allotted to various industries.

Second Phase of Allotment.

The second round of allotment was undertaken on 12.12.2005 & 20.12.2005 respectively wherein it was stipulated that even those persons whose names were not mentioned in the survey list would be entitled to apply alongwith the required title proof and the allotment would be made after proper spot inspection. A total of 69 allotments were made in the second phase.

Third Phase of Allotment

The third phase of allotment ensued thereafter vide advertisements dated 13.05.2009 & 14.05.2009 and tenants were also allowed to apply therein with the pre-condition that they were eligible and the landlord gave an undertaking that he would not claim the plot in future. In the third phase as many as 52 allotments were made. A total of 63 plots remained vacant at this point of time.

The petitioners and numerous other aspirants, claiming to be existing industrialists who for one or other reason could not stake a claim for allotment or had been denied such opportunity in the first three phases have approached this Hon'ble Court by way of a bunch of writ petition seeking a direction to be issued to the respondents so as to allot them an industrial plot each from the remaining 63 plots in the Punayata Industrial Scheme.

The entire bunch of writ petitions led by SBCWP No.1186/2010 : Nandu Dyeing vs RIICO Ltd. was disposed of by this Court vide order dated 17.04.2013. The respondent RIICO challenged the Single Bench judgment by filing a special appeal which came to be allowed by order dated 11.07.2016 in the leading case being D.B. Civil Special Appeal (Writ) No.766/2013 and the order dated 19.12.2016 passed in Special Appeal No.781/2013.

Upon remand, most of the petitioners have filed amended writ petitions for challenging the decision/s of the allotment committee whereby, it has rejected their prayer to be allotted the remaining vacant plots.

Upon considering all the said writ petitions individually on their own merits, this Court is of the opinion that the entitlement of the present set of writ petitioners has been negated on identical grounds and thus, for the sake of convenience, the present set of writ petitions are being decided by a common judgment.

The present set of writ petitions cover such applications which were rejected by the Allotment Committee on the ground that the name of the landlord has been mentioned in the survey list. The petitioners applied in the capacity of tenant and the allotment cannot be made on the basis of the rent agreement. It was further

recorded that the petitioners have failed to submit any notice issued by the Rajasthan Pollution Control Board in their name. On the said grounds, the applications of the petitioners were rejected.

It is contended by learned Counsel for the petitioners that the reasons for rejecting the applications of the petitioners are grossly arbitrary, unreasonable and contrary to the terms of the advertisement issued by the RIICO. Learned Counsel for the petitioners fervently and vehemently argued that as a matter of fact, in the advertisement dated 14.05.2009, avenue was provided to the tenants to submit their applications for allotment alongwith an affidavit of the landlord in favour of the tenant and in pursuance of which, the applications have been submitted by the petitioners who were running the industries in the capacity of tenant and the required affidavit of landlord was also placed on record. As regards, the notice issued by the RPCB is concerned, it is contended by learned Counsel that the same was not a document required as pre-requisite in any of the advertisement and therefore, the reason given by the allotment committee for rejecting their applications does not stand to scrutiny.

While supporting the said reasons recorded by the Allotment Committee for rejecting the applications of the petitioners, Shri Sanjeet Purohit, counsel representing the respondent RIICO stated that no error has been committed by the Allotment Committee in rejecting the applications submitted by the petitioners as the name of the petitioners were not included in any survey list and the Allotment Committee was justified in rejecting the application for allotment merely on the basis of rent agreement. It was further argued that since the Hon'ble Division Bench of this Court has specifically directed for shifting the industries creating pollution, therefore, the notice issued by the RPCB was unexceptional for ascertaining the existence of petitioner's industry as a polluting industry. Therefore, the consideration and rejection of the petitioners' applications as made by the Allotment Committee was absolutely justified.

Having heard and considered the rival submissions advanced by both the sides, it is manifest that a bare perusal of the advertisement dated 14.09.2009 goes to show that the respondent RIICO specifically called for the applications from the tenant and the only requirement shown was that of an affidavit on behalf of the landlord expressing his relinquishment of claim for an industrial plot in favour of tenant. Thus, rejection of the applications of the petitioners merely on the ground that the name of the landlord was mentioned in the survey list but the application has been submitted by a tenant is in clear contravention of the terms of the advertisement. Further, where an industrial establishment is run by a tenant and the same has been closed down in pursuance of the directions given by this Court, the right of rehabilitation as directed clearly accrues in favour of such tenant. Thus, this Court is of view that the application of a tenant if supported by the required affidavit of landlord ought to have been considered by the Allotment Committee in an objective manner.

It was vehemently contended on behalf of the petitioners that there are

instances where the Allotment Committee has made allotments to the landlord as well as the tenant. In such circumstances, the rejection of petitioners' applications merely on the ground that the same has been made in the capacity of tenant clearly amounts to hostile discrimination and violative of Article 14 of the Constitution of India.

A close scrutiny of the advertisement issued with regard to all three phases of allotment clearly reveals that none of the advertisement prescribes the notice issued by RPCB to the applicant as a mandatory pre-condition for allotment of an industrial plot. This court has reasons to believe that there may be circumstances where the RPCB has issued the notices for closure of industry only to the landlords while referring to the names mentioned in the survey list and thus, obviously the notices were not issued in the name of tenants, like the petitioners. In such circumstances, lack of such notice issued by the RPCB cannot be said to be a conclusive ground to reject the claim of the petitioner where all the proofs as required in advertisement were placed on record showing the running of the industry by the petitioners as tenants. Thus, from any point of view, the reasons for rejection of petitioners' applications are not sustainable in the eye of law.

As a matter of fact, the entire exercise of shifting of the industries has been undertaken in compliance of the judgment passed by this Court in public interest on 09.03.2004. The whole premise of giving such detailed directions was to provide a sustainable solution for the rehabilitation of the world famous textile industries of Pali. This Court has not only ordered for closure of industries creating and contributing to the pollution in the non-conforming area but has also given specific directions to shift the existing industries to a well developed new industrial area. It is worth mentioning that the said directions to shift and rehabilitate the industries were given in order to protect their fundamental right to freely carry on their trade or business as enshrined under Article 19 of the Constitution of India as well as to provide healthy and hygienic environment to the District Pali and to uphold the fundamental right to life and liberty of the citizens enshrined under Article 21 of the Constitution of India. It is quite unfortunate to observe that despite elapse of more than fourteen years since this Court issued detailed directions for arresting pollution and rehabilitation of the industries, the said order has not been complied with in its right spirit till date. It further pains the Court that the State authorities have adopted a hyper-technical approach which has given rise to multiple rounds of litigation continuing over the past more than one decade.

In view of above and in my considered opinion, the reason for rejection of the petitioners' applications as given by the Allotment Committee in the minutes of the meeting held on 29.09.2009 and 05.11.2009 is totally bereft of justification and misconceived.

The writ petitions are allowed. The communications issued by the Allotment Committee in its meeting held on 29.09.2009 and 05.11.2009 rejecting the petitioners' applications are quashed and set aside. The Allotment Committee is

directed to re-consider the applications of the petitioners afresh in an objective manner. The writ petitions are disposed of with the following directions:-

1. The petitioners are directed to file fresh applications alongwith all necessary documents to prove their eligibility for their respective claim seeking allotment of an industrial plot and deposit the requisite charges on or before 15.05.2019.
2. In cases, where the petitioners' original applications or requisite charges are already submitted with the respondent RIICO, the said petitioners will be granted one time opportunity to submit additional necessary documents, if any, in support of their respective claims, to the respondent RIICO on or before 15.05.2019.
3. The Allotment Committee is directed to consider the applications of the petitioners afresh for allotment of existing plots in industrial area, Punayata, Pali objectively while taking into consideration the documentary proof submitted by the petitioners and pass reasoned order in this regard. The said exercise for scrutiny of the applications submitted by the petitioners as well as the allotment of industrial plot (if found eligible) shall be positively completed by the Allotment Committee on or before 30.06.2019.
4. While adjudging the entitlement of the applicants, the Allotment Committee shall act strictly in accordance with law and shall take into account the following factors:
 - i. Preferably the name of the industry is included/shown in any of the survey lists prepared by the State Authorities including the list prepared by the District Industries Centre, Pali.
 - ii. The applicant has submitted the relevant documents as required in the advertisement issued by the RIICO for making allotment of industrial plot.
 - iii. The applicant has produced the documentary proof showing the existence and functioning of the industry prior to passing of the judgment of this Court in the year 2004.
5. The Allotment Committee is expected to undertake and complete the entire process for scrutiny of claims of the respective applicants for the purpose of shifting of industries strictly in accordance with law and while avoiding unnecessary technicalities. The Allotment Committee shall make positive efforts so as to ensure proper and complete compliance of the directions given by the Hon'ble Division Bench in its judgment dated 09.03.2004 passed in D.B. Civil Writ Petition No.759/2002 : Mahaveer Nagar Vikas Samiti Vs State of Rajasthan in its true letter and spirit.

No order as to costs. A copy of this order be placed in each file.