

Chief Justice's Court

Case :- WRIT - C No. - 14989 of 2018

Petitioner :- M/S Friends Corporates Thru. Partner Shri Mohan Lal

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue And Others

Counsel for Petitioner :- Laltaprasad Misra, Abhinav Singh, Gaurav Mehrotra

Counsel for Respondent :- C.S.C., J.B.S. Rathaur, Yogendra Nath Yadav

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Jaspreet Singh, J.

1. Heard Shri Gaurav Mehrotra, learned counsel alongwith Shri Abhinav Singh and Ms. Rikha Singh for the petitioner and Shri V. P. Nag, learned Standing Counsel for the State-respondents.
2. The petitioner has approached this Court assailing the order impugned dated 14.06.2017 passed by the respondent no.3 whereby the proposal made in favour of the petitioner has been cancelled. Under challenge is also the consequential order dated 03.03.2018 passed by the respondent no.5 whereby the application moved by the petitioner requesting the respondents to reconsider his case has also been rejected.
3. In order to appreciate the controversy involved in the instant petition, it will be relevant to notice the facts giving rise to the instant petition.
4. The petitioner is a partnership firm which is involved in developing a residential colony under the name of style of 'Friends Colony' over Khasra Plots No.489, 465, 475, 552, 457Kha, 463, 464, 470, 472, 466, 460, 473 and 505 situate in village Hariyarpur, Pargana Tehsil and District Lucknow.
5. Since the land in question was situate within the rural area and was not under the development area of the Development Authority, accordingly its layout plan was approved by the Zila Panchayat vide Permit No.1376 dated 05.08.2011.
6. Contiguous to the land belonging to the petitioner, three Khasra Plots no.462, 636 and 644 of the Gram Sabha are adjacent to the boundaries of the sanctioned layout plan of the petitioner and since the petitioner considered the same to be beneficial for its planned development, accordingly it sought the good offices of the respondents for allotting the said land to the petitioner

taking aid of the Government policy enunciated in Govt. Order dated 09.05.1984.

7. As per the Govt. Order dated 09.05.1984, in cases where any land vested in the Gram Sabha, the same could be resumed in terms of Section 117 (6) of the UP Zamindari Abolition and Land Reforms Act 1950 and the same could be allotted on lease to private persons/industry/company subject to the terms and conditions as set out in the said Govt. Order and upon payment of twice, the amount of market value of the land as one time charge and further payment of lease rent equivalent to two time or the Annual Revenue of the Land.

8. The said Govt. Order dated 09.05.1984 further stipulated that the recommendation/report from the concerned District Magistrate under his own signatures was required stating that the terms of the Govt. Order of 1984 which indicated an order of preference relating to the persons who were eligible for such allotment. In the aforesaid context, the District Magistrate had to file a report indicating that all the persons indicated in the order of preference have been accommodated/exhausted and in order of preference, it is now only the private individual/company who is left for consideration and then the said land may be allotted in favour of such private entities. The same policy of the State Govt. was adopted and by means of another Govt. order dated 20.11.2015, it was reiterated except that the consideration was enhanced.

9. The petitioner moved an application seeking allotment of the three plots of Gram Sabha which were contiguous to the plots belonging to the petitioner and in furtherance thereof the State Authorities had processed the same and sought reports. The District Magistrate concerned by means of his report dated 17.10.2016 had also submitted recommendation clearly indicating that the proposal as made by the petitioner was not in contravention with any of the conditions nor was in violation of the Govt. Order dated 09.05.1984 and as such there was no impediment in processing and allowing the said proposal.

10. A similar report was also furnished by the Avas Evam Vikas Parishad and thus it would be noticed that in furtherance of the Govt. Order dated 09.05.1984 the petitioner complied with all requisites and was fully eligible for being considered favourably for the allotment of the three plots.

11. Despite the said eligibility having been confirmed and recommendation and reports submitted by the various Govt. Authorities including the District Magistrate concerned yet no decision was taken by the State Govt. However, it is only on 14.06.2017 that the State Authorities by means of the impugned order dated 14.06.2017 rejected the proposal.

12. Learned counsel for the petitioner submits that the ground as noticed in the impugned order was that the layout of the petitioner was not approved or sanctioned and there was no provision for providing such government land to such private entities. It is in furtherance thereof that the consequential order dated 03.03.2018 was served on the petitioner which has been challenged in the instant petition.

13. The submission is that apparently the two orders impugned are against the principles of natural justice and also suffer from the vice of arbitrariness; inasmuch as the grounds indicated therein are completely contrary to the record; inasmuch as the petitioner got the layout map sanctioned on 05.08.2011 vide Permit No.1376 from the Zila Panchayat, Lucknow, thus the ground taken to reject was completely erroneous.

14. The other ground noticed in the impugned order is that there is no Govt. policy is also contrary to the record; inasmuch as the Govt. Order of 09.05.1984, a copy of which has been brought on record as annexure no.6 clearly covers the subject and it conferred powers on the State to provide land and thus it cannot be said that there was no policy of the State. The said Govt. Order of 1984 was slightly modified vide Govt. Order dated 20.11.2015 only regarding the consideration chargeable but rest it reiterated the earlier Govt. Order of 1984. Even after the enactment of U.P. Revenue Code 2006, the powers which were vested in the State in terms of Section 117 of the U.P. Z.A. & L.R. Act, 1950 the same continues to vest in terms of Section 59 of the U.P. Revenue Code, 2006, accordingly it cannot be said that the powers are not vested or that there is no policy of the State. Apparently for the aforesaid reasons it is clear that the ground given in the impugned orders are untenable which indicates that the order has been passed without appreciating the material on record and is a result of colourable exercise of power, accordingly the writ petition deserves to be allowed.

15. Shri V. P. Nag, learned Standing Counsel for the State has submitted that

the land in question is within the development area as notified under the Uttar Pradesh Urban Planning and Development Act, 1973 and since the layout which is to be sanctioned and approved by the Lucknow Development Authority has not been done, consequently the ground taken in the impugned order that the layout of the petitioner is not sanctioned, does not suffer from any error.

16. It is further submitted that the Govt. Orders which have been relied upon by the petitioner merely vests discretion with the State to grant the allotment or not and the same cannot be claimed as a matter of right. It is further submitted that the petitioner had already encroached some part of the contiguous land and accordingly that had to be removed hence taking and overall view, the State has taken a conscious decision of not granting the allotment to the petitioner and as such the same cannot be faulted nor it can be made the subject matter of the judicial review of this Court, hence the petition deserves to be dismissed.

17. Learned counsel for the petitioner in response has pointed out that the petitioner had made the representation/request for seeking allotment much prior in time and the notification made for extending the development limits under the provisions of the U.P. Urban Planning & Development Act, 1973 was issued only on 05.12.2019 and that too during pendency of the instant petition and as such the same cannot be taken as a ground. It is further urged that the order impugned is to be tested on the grounds disclosed therein and any subsequent event or further reasoning cannot be introduced to improve the impugned order and for the aforesaid reason, the reiteration made by the petitioner deserves to be upheld and the petition deserves to be allowed.

18. The Court has considered the submissions and also perused the material on record.

19. Apparently from the perusal of the impugned order dated 14.06.2017, it is clear that the ground for rejecting the proposal of the petitioner is two fold:- **(i)** that the layout plan has not been approved by the Competent Authority; **(ii)** that there is no policy/provision for providing the land to such private entities.

20. Apparently, what this Court finds that the Govt. order dated 09.05.1984 is quite comprehensive and it clearly contemplates providing land after resumption in terms of 117 of the U.P. Z.A. & L.R. Act, 1950. An order of

preference has been envisaged in the said Govt. Order and one of the categories to whom the land can be allotted includes private entities. Clause 6 of the Govt. Order of 1984 clearly includes private entities in the order of preference. Allotment of land to private entities is regulated by compliance of certain conditions. In the instant case, the record reveals that the petitioner had made request for such allotment and in terms of the Govt. Order of 1984 the same was processed. The District Magistrate had also submitted its report dated 17.10.2016, copy of which has been placed on record as annexure no.18 which indicates that there does not appear to be any impediment nor any of the conditions as mentioned in the Govt. Order of 1984 were violated.

21. Another report from the Uttar Pradesh Avas Vikas Parishad is also on record as annexure no.20 which also echoes the sentiment as accorded by the District Magistrate in his report. The petitioner has also filed the sanctioned layout which is on record and is part of annexure no.5.

22. Apparently, there is no denial of the State that the development limit was enhanced as per notification made only in the year 2019 while the impugned order is of the year 2017, thus on the date of passing of the order impugned, the land in question was beyond the development limits and the layout as sanctioned by the Keshatrya Panchayat cannot be *prima facie* found to be incorrect. The State could not point out any provision to indicate that Kshtrya Panchayat could not approve the said layout plans. Thus, the first ground that the petitioner had not got a sanctioned approved layout has no legs to stand. The other ground taken in the impugned order that there was no provision also stands falsified in light of the Govt. Order of 1984 which continued to hold the field and was further reiterated with a slight change in terms in the Govt. order dated 20.11.2015 though overall preserving the intent of the policy relating to allotment of government lands after resumption.

23. In view of the aforesaid, coupled with the fact that now it is well settled to be disputed that an impugned order is to be tested on the reasons contained therein and the same cannot be improved by supplanting by reasons, subsequently. Accordingly this Court has no hesitation to hold that the impugned orders are bad in the eyes of law and suffer from the vice of non-application of judicious mind and being arbitrary. This Court is of the clear view that the impugned orders dated 14.06.2017 and 03.03.2018 which is the

consequential order cannot be sustained.

24. Consequently, the writ in the nature of certiorari is issued quashing the impugned orders dated 14.06.2017 and 03.03.2018 contained in annexures no.1 and 2 respectively with the writ petition. The Competent Authority i.e. Principal Secretary Revenue, Govt. of U.P. shall reconsider the proposal of the petitioner dated 22.05.2011 in light of the material available on record including the Govt. Orders dated 09.05.1984 and 20.11.2015 after affording an opportunity of hearing to the petitioner and decide the same afresh, in a positive manner, by passing a reasoned and speaking order preferably within a period of eight weeks, from the date, a copy of this order is placed before the Authority concerned strictly in accordance with law. In the facts and circumstances, there shall be no order as to costs.

25. Accordingly, the writ petition is allowed in the above terms.

Order Date :- 27.10.2023

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(Jaspreet Singh, J.) (Pritinker Diwaker,C.J.)