

Court No. - 21

Case :- WRIT - C No. - 31219 of 2024

Petitioner :- Kalyan Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Dilip Kumar Goswami,Himanshu
Pandey,Sunil Kumar Pandey

Counsel for Respondent :- Akhilesh Kumar Sharma,C.S.C.

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Anish Kumar Gupta,J.

1. By means of the instant petition filed under Article 226 of the Constitution, the petitioner has challenged the order dated 04.04.2024 passed by respondent no.2, Yamuna Expressway Industrial Development Authority (for short 'YEIDA'), forfeiting the allotment money of Rs.3,98,520/- in respect of Plot No.104, Block-E, Sector-16, area 162 sq. mtrs. allotted in favour of the petitioner under the 'farmers category'.

Background Facts:

2. The facts in brief are that YEIDA acquired, *inter alia*, Khasra no.531 area 1.2840 hectare belonging to Jagpal Singh, father of the petitioner. The compensation for the acquired land was duly paid to the father of the petitioner. The father of the petitioner died on 21.03.2017 leaving behind widow Smt. Nirmala, two married daughters and five

sons including the petitioner herein. The YEIDA advertised a scheme in the year 2023 for allotment of residential plots of different sizes. The scheme contemplated reservation of 17.5% of the total plots for persons whose land had been acquired/purchased by YEIDA for planned development or for constructions of Jewar Airport. As the land of the father of the petitioner was also acquired by YEIDA for planned development but he had died on 21.03.2017 before launch of scheme on 08.08.2023, therefore, the petitioner claiming right through him, applied for allotment under the 'farmers category'. Clause 15D prescribes eligibility for allotment under this category and the same is extracted below:

"D. Eligible Farmers whose land has been acquired/purchased by YEIDA or in Jewar Airport.

The detailed eligibility conditions and the procedure for allotment under this category are enumerated as follows:

- (i) Only those farmers are eligible to apply under this scheme, whose land has been acquired/purchased and unhindered/without encroachment possession has been taken by YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY or in Jewar Airport before closing date of this scheme. (Undertaking-I on Stamp Paper of Rs. 100/- is to be given by the applicant farmer as per Performa given in the Brochure)
- (ii) In case a land owner has been already allotted residential plot/built up flats in his/her name or his/her spouse/dependent children, in any of the residential schemes of the Authority, he/she shall not be eligible to apply under this scheme.
- (iii) The applicant farmer should have received the compensation of his/her acquired land on or before closing date of this scheme. Those farmers who have encroachment on any acquired land of authority or have filed any writ/suit against authority are not eligible for allotment in this scheme.
- (iv) In case there is more than one joint-khatedar, all joint khatedar can apply under this scheme. Draw between all such eligible joint

khatedar of a khata shall be made and one successful applicant, out of all joint-khatedars, shall be selected and will be included in the final draw of lots.

(v) Under this category, successful applicant/allottee cannot transfer the allotted plot up to five years from the date of allotment.

(vi) No encroachment should have been done by the applicant on land acquired/purchased by Yamuna Authority irrespective of acquired land or any other land against which the application for allotment is being made in this Scheme. A declaration to this effect shall have to be given on Stamp Paper of Rs. 100/- by the applicant farmer as per Performa given in the application form (Undertaking-II).

(vii) The applicant has received entire compensation of the land acquired without any contest/litigation. The applicant has to submit Form-11/certified Benana Copy issued by the Competent Authority with the application.

(viii) The applicant farmer and all Khatedars, shall submit an affidavit stating that they shall not file a legal case in any court for enhancement of compensation or claim of additional land.

(ix) If, on verification or at any stage it is found that there is a violation of any of the above mentioned conditions then the application will be rejected and registration money will be refunded without any interest.

(x) If under this category the applicants are less than the number of plots reserved, then the leftover plots shall be included in the draw for general category."

3. The procedure for submitting application by online mode was, *inter alia*, as follows:

"16. PROCEDURE TO APPLY

(i) The application can be Only submitted online on the website of the Yamuna authority i.e. www.yamunaexpresswayauthority.com through payment gateway/net banking.

(ii) The application form can be collected on payment of Rs. 500/- +18% GST from online on the website of the Yamuna authority i.e. www.yamunaexpresswayauthority.com through payment gateway net banking.

(iii) The application form duly completed and signed along with the required registration money and all the required annexures shall be submitted to online i.e. www.yamunaexpresswayauthority.com

through net banking on the page of this brochure on any working day during the period between the date of opening and the date of closure of this scheme.

(iv) If the application is incomplete in any respect whatsoever or if any column is left blank or if the photo is not pasted at the designated place or mentioning an incomplete or untrue address or no signature or thumb impression found on the declaration or entered wrong details in application form, the application shall not be considered at all."

4. In terms of the stipulations in the scheme, the petitioner submitted online application alongwith registration money of Rs.3,98,520/-. The application was duly accepted and was allocated distinct number. It was included in the draw of lots in which, the petitioner was successful and, accordingly, allotment letter dated 01.11.2023 was issued in favour of the petitioner. It reveals that the petitioner was allotted Plot no.104 of Block-E of Sector-16 having an area of 162 sq. mtrs. Vide letter dated 08.11.2023, the petitioner was required to submit indemnity bonds on affidavit of Rs.100 alongwith copy of Form No.11(2) of the Land Acquisition Act to establish that the land was acquired by YEIDA and compensation was paid before the closing of the Scheme and thus he was eligible to apply under the 'farmers category'. The petitioner, accordingly, submitted two indemnity bonds alongwith copy of Form No.11. It is relevant to mention that footnote to letter dated 08.11.2023 stipulated that where the applicant had applied after death of original tenure holder (farmer), the applicant shall also file succession certificate and no-objection certificate from other heirs. It seems that two brothers of the petitioner namely, Rakesh Kumar and Amit Kumar did not give no-

objection to the petitioner. Therefore, the petitioner filed a representation before YEIDA on 28.11.2023 bringing to its notice the said fact and also requested it to issue notice to his brothers and, in case, they do not file any objection, to execute lease deed in favour of the petitioner. On 05.12.2023, the Manager (Property), YEIDA issued a letter to the petitioner once again requiring him to submit no objection certificate and indemnity bonds on prescribed format and Form No.11 to support the claim under the 'farmers category', by 31.12.2023, failing which, the allotment would be cancelled.

5. At this stage, the petitioner approached this Court seeking quashing of the letter dated 05.12.2023 but the said petition was got withdrawn with liberty to pursue the grievance before the Authority. Accordingly, the writ petition was dismissed vide order dated 17.01.2024. The petitioner, thereafter, again made representation to the Authorities on 21.02.2024 stating that while other brothers have given no objection, his two brothers are not ready to sign the no objection certificate. The petitioner also stated that he even offered the plot to his brothers but that was also not accepted. Therefore, once again he prayed for issuing notice to his two brothers. However, when no action was taken in the matter, the petitioner realizing that he would not be able to furnish no-objection by his two brother, made applications on 28.02.2024 and 15.03.2024 for refund of the allotment money. The application of the petitioner dated 28.02.2024 seeking refund of

allotment money has been rejected relying upon Clause 18 (iv) of the brochure.

Submissions of counsel for the petitioner:

6. Learned counsel for the petitioner submitted that the impugned order is wholly illegal and is a result of arbitrary exercise of power. There was no condition in the brochure to furnish no objection certificate. The said condition was introduced illegally for the first time vide letter dated 08.11.2023. It is urged that the respondents could not have introduced any such condition after draw of lots. In alternative, it has been submitted that the said condition, even if valid, would not bring the case of the petitioner under Clause 18(iv) of the brochure. The said clause would apply only to a case of surrender and not to a case like the present one. Even if the Authority was competent to cancel the allotment, it should have returned the allotment money and could not have fortified the same.

Submission of counsel for the respondent:

7. On the other hand, learned counsel for YEIDA submitted, placing reliance on the counter affidavit, that although in the brochure there was no specific condition for submitting no-objection but, under Clause 28, the Chief Executive Officer was competent to add/alter/modify the terms and conditions of allotment and the additional condition imposed by YEIDA was in exercise of the said power. He submits that since, the petitioner failed to submit no-objection certificate, therefore, the

Authority has rightly proceeded under Clause 18(iv) of the brochure. He further submits that the petitioner in his application and affidavits stated that he has received compensation whereas the compensation was paid to his father. According to the policy, only original tenure holder (farmer) was entitled to apply. As the petitioner had applied on basis of rights claimed through his father, therefore, he was rightly required to submit no objection certificate from other heirs and as he failed to submit no objection certificate, therefore, the allotment money has been rightly forfeited under Clause 18(iv) of the brochure.

Analysis:

8. Under Clause 15D, as already noted, farmers whose land had been acquired/purchased by YEIDA for planned development or for Jewar Airport were entitled to apply. The indemnity bond in Form 1 was for verifying the claim that the land was acquired/purchased by YEIDA. Indemnity bond no.2 was in shape of a declaration that the applicant was not in illegal possession of any land of YEIDA or Jewar Airport and would not cause any hindrance in the development work. The petitioner had given undertaking in Proforma nos.1 and 2 as required and there is no dispute about it. The petitioner in his online application mentioned his name as the applicant and also duly mentioned the name of his father Jagpal Singh as the farmer whose land was acquired.

9. Under Clause 16(iv), the YEIDA was having power to decline to consider any application, which was incomplete in any respect or if any

column was left blank or any wrong fact was mentioned therein. The YEIDA duly accepted the application, allotted a unique number to it and also included it in the draw of lots. Thus, it can safely be inferred that the application was complete in all respects.

10. Obviously, the purpose of reservation in favour of farmers was to rehabilitate them. In absence of any specific bar in the brochure for heir of original tenure holder to apply, the eligibility of the petitioner to apply under the said category cannot be doubted. However, in the impugned order, there is an observation that as per brochure, only farmer whose land was acquired could have applied, but in that event, sub-clause (ix) of Clause 15D would apply, whereunder, at the stage of verification of the eligibility, if any violation is noticed, the application was liable to rejection and the registration money refunded without any interest.

11. The controversy can be examined from another angle, which leads to the same conclusion. The brochure is completely silent as regards submission of no-objection certificate. The said condition was introduced for the first time vide letter dated 08.11.2023 much after the petitioner had deposited the registration money and was declared successful in the draw of lots. Apparently, the said condition was introduced to avoid future disputes between the heirs of the original land holder (farmer), which is also understandable but at the same time, if the same would have been part of brochure and known to the petitioner, he may not have applied. So, while we find no illegality or arbitrariness on

part of YEIDA in requiring the petitioner to furnish no objection certificate from other heirs, YEIDA also cannot be held entitled to forfeit the entire application money on the said ground.

12. Here, it is worthwhile to notice that action purports to be taken under Clause 18(v) but in the impugned order as well as the counter affidavit reliance has been placed on Clause 18(iv). Clauses 18(iv) and 18(v) are as follows:

"(iv) In the case of surrender at any time after allotment but before expiry of due date and deposit of allotment money then after deducting 10% of registration amount the balance shall be refunded without any interest thereon.

(v) In case of surrender at any time after due date of deposit of allotment money but before execution of lease deed then after deduction of amount equivalent to registration money, the balance if any shall be refunded without any interest thereon."

13. Clauses 18(iv) and 18(v) applied to different situations as is evident from bare reading of the said clauses. The common feature was that these would apply to case of surrender of the allotment by the allottee. In the instant case, as we have noted, the petitioner, all through, was interested in making payment of the allotment money and obtaining lease deed in his favour. He repeatedly requested YEIDA to issue notice to his two brothers, who were not ready to sign on the no objection certificate and in case there was no valid objection, to execute lease deed in his favour. However, when no action was taken by YEIDA on the said applications, the petitioner realizing that now, it would be futile exercise to pursue the application any further, applied for return of the registration money. Thus, it cannot be said to be a case of surrender as envisaged

under Clauses 18(iv) and 18(v) of the brochure. It is a case where the petitioner got compelled to request for cancellation of the allotment and return of registration money, in view of a condition not specifically provided for in the brochure but imposed subsequently vide letter dated 08.11.2023 i.e., ten months after the issuance of allotment letter. It seems that YEIDA also never contemplated a situation, which has emerged in the present case and, therefore, no provision was made to deal with such applications. In its subsequent residential scheme floated on 05.07.2024, YEIDA has specifically provided for filing of no-objection certificate, in such a situation. The condition is as follows:

"If the farmer (whose land has been acquired/purchased) has died, then all the legal heirs will give consent in favor one legal heir and will also provide the death certificate and legal heir certificate of the farmer. Only one plot will be allotted by the authority"

14. Had any such condition been part of the Brochure and the petitioner would have failed to comply with the same, YEIDA may be justified in forfeiting the registration money. However, in the instant case, as already noted, in the absence of any such condition in the brochure, the petitioner cannot be made to suffer by way of forfeiture of the registration money nor his case would fall under Clause 18(iv) or 18(v) of the brochure.

15. Accordingly, the impugned order forfeiting the allotment money is hereby quashed. Respondent no.2 is directed to refund the registration money to the petitioner within three weeks from the date of

communication of the instant order alongwith the account details and upon completion of other formalities, if any.

16. The writ petition is **allowed** accordingly.

(Anish Kumar Gupta, J.) (Manoj Kumar Gupta, J.)

Order Date :- 18.3.2025

Ankit.