The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition No.14811 of 2012

Dated 30.07.2015

Between:

M/s.Sri Balaji Garment Industry

Hyderabad, rep. by its Proprietrix

Smt.S.Umavathi

... Petitioner

and

The A.P.Industrial Infrastructure

Corporation Ltd.,

rep. by its Zonal Manager and 2 others.

...Respondents

Counsel for the petitioner: Mr.O.Manoher Reddy

Counsel for the respondents: Mr.L.Prabhakar Reddy,
SC for TSIIC

The Court made the following:

Order:

This Writ Petition is filed for a Mandamus to declare Letter No.M(D)/APIIC/IP-BNG/2008-359, dated 21-04-2012, issued by the Zonal Manager of respondent No.1- Corporation, as illegal and arbitrary. The petitioner sought for a consequential direction to the respondents to restore the industrial plot to the petitioner.

I have heard Mr.O.Manohar Reddy, learned Counsel for the petitioner, and Mr.L.Prabhakar Reddy, learned Standing Counsel for the Telangana State Industrial Infrastructure Corporation Limited (TSIICL).

Before proceeding further, it needs to be noted that with the formation of the State of Telangana and incorporation of the TSIICL, the latter has succeeded respondent No.1. Mr.L.Prabhakar Reddy, learned Standing Counsel, has appeared on behalf of TSIICL and also on behalf of respondent Nos.2 and 3, who are its functionaries, fairly without raising the technical objection that the successor has not been impleaded.

The petitioner- a proprietary concern has approached respondent No.1 for allotment of an industrial plot at Industrial Park, Bhongir, for setting up a garments' Industry, on an outright sale basis. On such allotment, the petitioner has paid a sum of Rs.3,09,236/-, which was fixed as the cost of the plot. The petitioner pleaded that due to gyneac problems of its proprietrix, she could not approach the respondents for taking further steps; that she made a representation, on 17-01-2012, to respondent No.1 for issuing final allotment letter and permitting her to enter into the required deeds of conveyance; and that instead of acceding to her request, respondent No.1 has issued the impugned letter, cancelling the allotment made to the petitioner.

A perusal of the impugned letter reveals that the cancellation of allotment was based on non-compliance with condition

Nos.3 and 17 (a) of the provisional allotment, which envisage execution of sale agreement within one month of provisional allotment and commencement of construction within six months from the date of taking physical possession.

At the hearing, the learned Counsel for the petitioner, has placed reliance on Regulations 11 and 12 of the APIIC Allotment Regulations, 1998 (for short 'the Regulations'), which read as under:

> "Regulation 11:
>
> The Zonal Manager shall issue final allotment letter in prescribed proforma in form-7 within seven days from the date of payment of the entire cost of the plot/shed/godown/shop along with other dues, execution of undertaking in form-6 and fulfillment of other formalities as stipulated in the provisional allotment orders."
>
> Regulation 12:
>
> Agreement of sale in the prescribed format in form No.8 shall be executed by the allottee and the Zonal Manager/Deputy General Manager on behalf of the Corporation within one month from the date of receipt of final allotment letter of payment of land/shed cost in full.
>
> The original sale agreement shall be got registered and the expenses towards stamp duty, registration charges and incidental shall be borne by the allottee. Copies of sale agreements shall not be registered.
>
> Notice shall be issued to the allottee immediately after expiry of 30 days from the date of issue of final allotment letter for execution of agreement and for taking possession."

In the instant case, the petitioner has complied with the basic condition of payment of entire cost of the plot. Thereafter, the burden is on the Zonal Manager to issue final allotment letter within seven days from the date of receipt of the payment of the entire cost. Under Regulation 12, the agreement of sale shall be entered into within one month from the date of receipt of final allotment letter by the petitioner. Thus, these Regulations make it clear that the issue of final allotment letter is a condition precedent for commencement of further obligations on the part of the petitioner such as entering into an agreement of sale and commencement of construction. It is not the pleaded case of the respondents that final allotment was ever made. Therefore, the Zonal Manager of respondent No.1 has committed fundamental breach of the obligation imposed on him under Regulation 11 by failing to issue the final allotment letter despite receipt of full sale consideration from the petitioner. As noted above, the further obligations on the part of the petitioner would not commence without receipt of final allotment letter. Hence, the respondents cannot take advantage of their own default for penalising the petitioner by cancelling the allotment.

It needs to be further noted that though more than three years had elapsed after receipt of the entire cost of the plot, the respondents have neither issued final allotment letter nor initiated any steps for cancellation of the provisional allotment till the proprietrix of the petitioner has herself approached them with a request to take further steps. The respondents seem to have woken up from slumber on receipt of the representation from the petitioner and cancelled the provisional allotment without even issuing a show cause notice. In my considered opinion, on the facts of the case, the respondents are not justified in cancelling the provisional allotment without giving the petitioner an opportunity of establishing the industry.

For the above mentioned reasons, the impugned proceeding in Letter No.M(D)/APIIC/IP-BNG/2008-359, dated 21-04-2012, issued by the Zonal Manager of respondent No.1-Corporation, is set aside and TSIICL is directed to restore the subject plot to the petitioner. After such restoration, TSIICL is directed to proceed in accordance with Regulations 11 and 12 of the Regulations. Liberty is, however, given to the respondents to take action in accordance with the Regulations, in the event the petitioner fails to perform its part of obligations under the Regulations in future.

The Writ Petition is, accordingly, allowed.

As a sequel to disposal of the Writ Petition, WPMP.Nos.18892 & 18893 of 2012 and WVMP.No.1617 of 2013 are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 30th July, 2015

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