

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 25726 of 2014

Date of Decision: 25.5.2015

Satish Kumar and others

....Petitioners.

Versus

State of Haryana and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE REKHA MITTAL.**

PRESENT: Mr. Vikram Singh, Advocate for the petitioners.

Mr. Sudeep Mahajan, Addl. Advocate General, Haryana.

Mr. Deepak Manchanda, Advocate for respondent No.2.

AJAY KUMAR MITTAL, J.

1. Prayer in this writ petition filed under Articles 226/227 of the Constitution of India is for quashing the orders dated 16.12.2003 and 26.11.2014 (Annexure P-1 Colly) passed by respondent No.3 vide which the allotment of a residential plot under R & R Policy dated 7.12.2007 (Annexure P-2) has been declined. Further, a prayer has been made for directing the respondents to allot the residential plot under R & R Policy, Annexure P-2, to the petitioners.

2. Put shortly, the relevant facts necessary for adjudication as narrated in the petition are that the petitioners were owners of the land measuring 2 bigha 17 biswas which was acquired by the respondents vide notification dated 11.7.2006 issued under Section 4 of the Land

Acquisition Act, 1894 (in short "the Act") followed by notification dated 16.7.2007 under Section 6 of the Act. The respondents had invited the applications for allotment of plots and the petitioners have applied for the same. In pursuant thereto, the petitioners had received a letter dated 16.12.2013 wherein it was mentioned that since the condition whether 75% or more land of the total land of owners has been acquired cannot be confirmed by the revenue authorities and, therefore, they have invited the objections. Thereafter, respondent No.3 vide orders dated 16.12.2013 and 26.11.2014 (Annexure P-1 Colly) rejected the claim of the petitioners for the allotment of plot under R & R Policy dated 7.12.2007 (Annexure P-2) as the land acquired was less than 75%. Respondent No.3 vide order dated 6.11.2013 (Annexure P-3) held one of the co-sharers to be entitled for the allotment of a plot. The petitioners filed CWP No. 4216 of 2014 which was disposed of by this Court vide order dated 28.3.2014. In pursuance thereto, respondent No.3 again rejected the claim of the petitioners. Hence, the present writ petition. Respondent No.1 controverted the averments made in the writ petition by filing affidavit of Shri Parvesh Kumar, Joint Secretary to Government of Haryana, Industries and Commerce Department, Haryana, Chandigarh.

3. Learned counsel for the petitioners submitted that respondent No.3 vide orders dated 16.12.2013 and 26.11.2014 (Annexure P-1 Colly) had declined the claim of the petitioners without affording an opportunity of hearing to them. It was also urged that the impugned order does not satisfy the test of being a reasoned and speaking order and was, thus, liable to be quashed.

4. On the other hand, learned counsel for the respondents

supported the order passed by respondent No.3.

5. After hearing learned counsel for the parties, we find merit in the contentions raised by the learned counsel for the petitioners.

6. The order impugned herein (Annexure P-1) reads thus:-

“Refer to your application for allotment of plot under the R & R Policy dated 07.12.2007 of the State Government.

After scrutinizing the application and objections filed by you, subsequently by the committee, it is found that you are not eligible for the allotment of plot under R & R Policy since the land acquired is less than 75%.”

7. A perusal of the above order shows that it is neither speaking nor has been passed after considering the objections raised by the petitioners. Once the respondent was holding that the petitioners were found not entitled to the allotment of plot under R & R Policy dated 7.12.2007 (Annexure P-2), the same required to be specifically dealt with by respondent No.3 by passing a speaking order and after affording an opportunity of hearing to the petitioners.

8. Delving into the issue relating to the passing of the speaking order by an authority whether administrative, *quasi judicial or judicial*, it was laid down by the Hon'ble Supreme Court in **M/s Kranti Associates Pvt. Ltd. and another v. Sh. Masood Ahmed Khan and others, (2010) 9 SCC 496** as under:-

“17. The expression `speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the

ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report).

18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

19 to 50 XX XX XX

51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been

exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision

making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future.

Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

9. In view of the above, the impugned orders (Annexure P-1 Colly) which do not satisfy the requirements of being a reasoned order as enunciated by the Apex Court in **M/s Kranti Associates Pvt. Ltd's case (supra)**, as noticed hereinabove, are quashed. Accordingly, the matter is remitted to respondent No.3 to pass a fresh speaking order after affording an opportunity of hearing to the petitioners in accordance with law within a period of three months from the date of receipt of a certified copy of this order.

10. Writ petition stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

May 25, 2015
gbs

(REKHA MITTAL)
JUDGE