

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 25907 of 2014

Date of Decision: 25.5.2015

Sachin Singla

....Petitioner.

Versus

State of Haryana and others

...Respondents.

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

PRESENT: Mr. Rishabh Gupta, Advocate for the petitioner.

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 impugned order dated 26.11.2014 (Annexure P-10) passed by respondent No.3 vide which the allotment of a residential plot under R & R Policy dated 7.12.2007 (Annexure P-3) has been declined. Further, a prayer has been made for directing the respondents to allot the residential plot under R & R Policy, Annexure P-3, to the petitioner.

2. Put shortly, the relevant facts necessary for adjudication as narrated in the petition are that the petitioner was owner in possession of the land measuring 11 biswas out of total land of 5 bigha 11 biswas situated at Kasba, Karnal. He sold 8 biswa of land out of his total land measuring 11 biswa by dint of three agreements dated 9.4.2008.

Respondents No.2 and 3 vide notification dated 11.7.2006 (Annexure P-2) issued under Section 4 of the Land Acquisition Act, 1894 acquired the land of the petitioner for the development of Industrial Sector 37, Karnal. The award was announced on 23.4.2009. State of Haryana framed R & R Policy dated 7.12.2007 (Annexure P-3), according to which the land owners whose land has been acquired shall be entitled to a residential plot and where 1/2 acre to 3/4th acres of land was acquired of the landowner, he shall be entitled to 8-Marla plot. Since the land of the petitioner measuring 3 biswas was acquired, therefore, he applied for a residential plot of 8 marlas under R & R Policy by completing all the formalities. Respondent No.2 vide letter dated 15.7.2013 (Annexure P-4) informed the petitioner that he was not eligible for the residential plot and directed the petitioner to file objections, if any, within thirty days from the date of letter dated 15.7.2013. The petitioner submitted objections, Annexure P-5. Respondent No.3 vide order dated 19.11.2013 (Annexure P-6) informed the petitioner that he is not eligible for the allotment of plot under R & R Policy since the court case is pending. The petitioner filed reference, Annexure P-7, before the Land Acquisition Collector-cum-District Revenue Officer, Karnal for enhancement of the compensation which was referred to the Additional District Judge, Karnal. Respondents No.2 and 3 filed reply, Annexure P-8, to the said reference. The petitioner filed CWP No. 1237 of 2014 challenging the order dated 19.11.2013 (Annexure P-6). This Court vide order dated 27.8.2014 (Annexure P-9) disposed of the writ petition with a direction to the respondents to consider the claim of the petitioner for allotment of a plot in light of LPA No. 2096 of 2011 (Haryana Urban Development Authority v. Sandeep and others). Respondent No.3 vide impugned

order dated 26.11.2014 (Annexure P-10) rejected the claim of the petitioner. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that respondent No.3 vide order dated 26.11.2014 (Annexure P-10) had declined the claim of the petitioner 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-10) reads thus:-

“This is reference to your request on the above subject for allotment of Residential Plot of 3 Marla.

After the re-scrutinize of application form and eligibility criteria as determined by the screening committee you are not eligible for the residential plot, since the case is pending before the Hon'ble High Court and the condition whether 75% or more land of total land of owner has been acquired is not complied with.”

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. Further, it was noticed that since the case is pending before this Court, the condition of 75% or more land of total land of owner acquired is not complied with. Once the respondent was holding that the petitioner was found not entitled to the allotment of residential

plot of 3 marla, 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 petitioner.

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'.

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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 order (Annexure P-10) 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, is quashed. Accordingly, the matter is remitted to respondent No.3 to pass a fresh speaking order after affording an opportunity of hearing to the petitioner 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