IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 399 of 2015 (O&M)
Date of Decision: 28.08.2015

Suresh Kumar --Petitioner

Versus

Chandigarh Administration & others --Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR.
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Shekhar Chaudhary, Advocate for the petitioner.

Mr. Vivek Chauhan, Advocate for the respondents.

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TEJINDER SINGH DHINDSA,J.

1. The Estate Officer, U.T., Chandigarh has issued letter dated 22.7.2014 in terms of which a built-up booth has been allotted to the petitioner on lease hold basis. Challenge in the instant writ petition is confined to clause 2 of the allotment letter dated 22.7.2014 (Annexure P-10), whereby the total premium i.e. Cost of land as also cost of structure has been fixed as Rs.43,65,181/-.

2. Brief facts that may be noticed are that father of the petitioner Sh. Ram Chander was running a small time business at Rehri Parking Site No.86 in Rehri Market, Sector 22, Chandigarh against a Hand Cart License No.974, issued by the Chandigarh Administration. Father of the petitioner expired on 27.2.2005. Petitioner applied for transfer of Hand Cart License in his favour and in support of such request submitted all the requisite and supporting documents. Inspections were carried out under the instructions of the duly constituted Screening Committee and the petitioner was found to be a genuine Rehri Worker. Accordingly, as per policy framed by the administration for allotment of built-up booth in respect of registered Hand

Cart/Hawker License Holders, name of the petitioner was included in a draw of lots held on 29.4.2010 and in which he was declared successful.

3. Formal allotment letter of the built-up booth was not issued in favour of the petitioner on account of a complaint dated 21.5.2010 having been lodged jointly by one Smt. Seema, Shambhu Nath and Ashok Kumar alleging that the petitioner was not eligible for such allotment as he was already owning a 10 marla industrial plot in Timber Market, Phase XI, Mohali. This led to the initiation of a verification process, whereby the Estate Officer, Chandigarh, respondent no.3 issued a number of letters to the Administrator, PUDA, Mohali as also Greater Mohali Area Development Authority (GMADA). Vide memo dated 25.3.2013 the Superintendent, GMADA informed respondent no.3 that as per records there is no property in the name of the petitioner. Respondent no.3 vide memo dated 18.6.2013 called upon the petitioner to submit a liability affidavit and indemnity bond to the effect that there is no commercial property/10 marla plot allotted in his name or in the name of any family member in Chandigarh, Mohali and Panchkula. The requisite documents were furnished without any delay. Vide communication dated 25.11.2013, respondent no.3 called upon the petitioner to submit yet another affidavit in the form of an undertaking that if any commercial/industrial property is found to be owned by him or in the name of any family member, the same would lead to cancellation of the proposed allotment of the built-up booth. Even such affidavit and undertaking was duly furnished.

4. On 19.5.2014 a Letter of Intent for allotment of a built-up booth on lease hold basis in Rehri Market, Sector 22, Chandigarh was

issued to the petitioner. In terms thereof the petitioner was required to deposit a sum of Rs.1,49,985/- towards the one quarterly installment of premium of the land as also to make a payment of Rs.7,206/- towards one quarterly installment of the cost of the super structure. As per clause 10 of the Letter of Intent the petitioner was called upon to furnish an undertaking in the form of an affidavit with regard to acceptance of such offer of allotment within a period of 30 days along with the payment as afore noticed. The petitioner deposited the requisite amount along with an affidavit dated 27.5.2014 (Annexure P-7) stating clearly therein that the offer of allotment is being accepted under protest as regards the premium being charged for the booth. Estate Officer, U.T., Chandigarh issued letter dated 8.7.2014 informing the petitioner that acceptance of offer of allotment under protest is not in order and an unqualified undertaking is to be furnished by filing a fresh affidavit. Petitioner is then stated to have sworn the affidavit dated 14.7.2014 as per the format desired.

5. It is against such brief factual backdrop noticed herein above that the petitioner prays for the issuance of a Writ of Certiorari for quashing the condition no.2 contained in the allotment letter dated 22.7.2014 (Annexure P-10) fixing the premium of the built-up booth as Rs.43,65,181/-. Further prayer is for the issuance of a Writ of Mandamus directing the respondent authorities to charge from the petitioner the same premium as has been charged from the other allottees of the same allotment process i.e. who had been declared successful in the draw of lots conducted in the year 2010. To buttress such claim and prayer petitioner has relied upon allotment letter dated 24.4.2008 in respect of the adjoining built-up booth in Sector 41, Chandigarh itself, whereby the total premium has been

fixed as Rs.5,90,900/- (Annexure P-13). Reliance has also been placed upon yet another allotment letter dated 18.12.2012 in respect of a built-up booth in the same very market at Annexure P-14 and in which the total premium fixed is Rs.6,85,096/-.

6. In the written statement filed by the Assistant Estate Officer, U.T., Chandigarh on behalf of the respondents, broad facts have not been disputed. However, the claim of the petitioner has been resisted by contending that the petitioner has accepted the offer of allotment as per the conditions contained in the Letter of Intent dated 19.5.2014 with regard to booth no.25, sector 41, Chandigarh and even an affidavit to such effect has been filed. As such, it has been argued that the petitioner having accepted the offer of allotment and having taken the physical possession of the built-up booth cannot now resile and question the premium that has been so fixed. Learned counsel appearing for U.T., Chandigarh would further argue that since the Letter of Intent as also the subsequent formal allotment letter were issued in the year 2014, as such, it would be the prevailing market price at the relevant point of time that has to apply. In support of such contention even a Division Bench judgement dated 1.12.2011 rendered in CWP No.1203 of 1983 (M/s Monarch Industries Vs. U.T., Chandigarh and others) has been placed reliance upon.

7. The short question that would arise for our consideration is as to whether the action of the respondents in demanding the premium of the built-up booth at current market price from the petitioner would satisfy the basic test of reasonableness and fair play?

8. The Chandigarh Administration had framed a policy for allotment of built-up booths on lease hold basis towards settlement and

rehabilitation of registered Hand Cart/Hawker License Holders. Such policy took a formal shape in the form of framing rules called the Allotment/Transfer of Built-up Booths in any sector on Lease/Hire Purchase basis in Chandigarh Rules, 1991 (herein after to be referred as the 1991 rules). Rule 5 governs eligibility for allotment of a built-up booth and reads as under:-

> *"5. Eligibility:- The competent authority may allot a built up booth in the market in any sector to a person if:*
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> *(a) he hold a valid hand cart license as well as driving license and owns a hand cart on the date of issue of the notification or the date as may be prescribed for the purpose.*
>
> *(b) He does not own a commercial site/shop in Union Territory of Chandigarh, Mohali or Panchkula in his own name or in the name of any member of his family dependent upon him and the total family income from all sources does not exceed (Rs.7,500/- per mensum (Rupees seven thousand and five hundred only) for which he shall have to furnish an affidavit duly attested by the Executive Magistrate, Chandigarh to this effect.*
>
> *(c) He does not suffer from any contagious disease for which he shall furnish a medical certificate of fitness."*

9. Undisputedly, the petitioner was eligible and was permitted to participate in a draw of lots conducted on 29.4.2010. He was declared successful and booth no.25, Sector 41, Chandigarh was to be allotted to him. Formal allotment was kept in abeyance on account of a complaint dated 21.5.2010 having been filed alleging that the petitioner was already owner of an industrial plot in Mohali. The complaint upon verification from the concerned authorities in GMADA has been found to be false. It has also gone uncontroverted that during the process of verification before the Estate Officer, Chandigarh the complainants had been summoned but they had

failed to appear and as such, no evidence had been adduced in support of the allegations contained in the complaint. It has taken the respondent authorities a time frame of 4 years to complete such process of verification. It is not the case of the respondents that there was any delay attributable to the petitioner pertaining to such verification process. To the contrary pleadings on record would demonstrate that the petitioner was called upon twice over to furnish affidavits/indemnity bonds as regards him not owning any other industrial plot in Chandigarh, Mohali or Panchkula and such documents were furnished forthwith.

10. Under such circumstances, the petitioner cannot be penalized for any delay that has occurred in the issuance of a formal Letter of Intent followed by allotment letter on account of the lodging of a complaint and which has been found to be false. The petitioner is entitled to be treated at par with the other allottees, who had participated in the same very allotment process i.e. in the draw of lots conducted on 29.4.2010.

11. The basic purpose and objective while framing the 1991 rules was towards rehabilitation of Rehri Workers, who had been running a small time business within the city of Chandigarh over a considerable length of time. As per eligibility defined under the rules, only a valid Hand Cart License Holder could participate in the allotment process. Furthermore, such person was not to own a commercial site/shop in U.T., Chandigarh, Mohali or Panchkula in his name or in the name of his family dependent upon him. Further his total family income from all sources was not to exceed Rs.7500/- per mensum. Clearly in the light of the objective sought to be achieved, eligible persons could participate in an allotment process to be allotted built-up booths on lease hold basis at concessional rates.

12 Eligibility of the petitioner is not in question. He was declared successful in a draw of lots conducted in the year 2010. It has gone uncontroverted that other allottees pertaining to the same very allotment process have been allotted built-up booths at a premium of Rs.6 lacs approximately i.e. the concessional rate. There can possibly be no justification in demanding from the petitioner a premium in excess of Rs.43 lacs for the built-up booth i.e. the prevailing market price in the year 2014 only on account of a verification process having remained pending.

13. The Constitution of India lays down the basic standards for governmental action. Unjustifiable differentiation is barred. Procedural fairness and propriety in State action is a must. Executive action must not be arbitrary. In the present case the action of the respondent authorities in demanding premium from the petitioner at the market price has created an unreasonable differentiation. Those similarly placed have been treated differently. Demanding of a premium at the market price would also defeat the very objective for which the allotment was made under the 1991 rules in favour of eligible Hand Cart License Holders at concessional rates. Clause 2 of the allotment letter dated 22.7.2014 (Annexure P-10) fixing the premium of the built-up booth at market price as such, cannot sustain.

14. The submission raised on behalf of U.T., Chandigarh as regards the petitioner having accepted the offer of allotment and as such, being bound by the conditions contained in the letter of allotment is also being noticed only to be rejected. The Letter of Intent dated 19.5.2014 (Annexure P-5) having been issued, the petitioner at the very threshold submitted an affidavit dated 27.5.2014 categorically deposing that the offer of allotment as regards premium being demanded is being accepted under protest.

However, the Estate Officer responded by informing the petitioner that such acceptance is not in order and as such, an unqualified acceptance/affidavit has to be furnished. Faced with such a predicament, the petitioner furnished an affidavit accepting the offer of allotment. The sequence of facts furnish a classic instance of the might of the State Govt. and the unequal bargaining power between the State and the citizen. The petitioner had been pushed against the wall and was left with no other option but to furnish the affidavit as per desired format or else he would have lost the allotment itself. Intent of the petitioner had been made clear at the very outset when he had conveyed acceptance of the offer under protest. We are not inclined to accept the objection raised by counsel for U.T., Chandigarh in this regard.

15. Even the reliance placed by learned counsel appearing for the respondents on the Division Bench judgement in **M/s Monarch Industries** (supra) is wholly misplaced. In the facts of such case the writ petition had been filed seeking quashing of allotment of plots made in favour of the private respondents therein and further seeking directions for allotment of an industrial plot in favour of the petitioner. The Screening Committee that had been constituted for purposes of allotment had rejected the claim of the petitioner for allotment on the basis of Govt. of India letter dated 13.11.1980 which banned further registration and expansion of wire drawing produce or wire based industries as the petitioner firm was engaged in manufacture of wire drawing. Ultimately, while disposing of the writ petition on 1.12.2011 the Division Bench had issued directions to consider the claim of the petitioner firm against vacant and available plots upon permitting change of nature of business/industry. Under such circumstances, it was observed that the petitioner firm would be bound to pay the present

market price, if, U.T., Chandigarh finally allots a plot. The facts of the case are clearly distinguishable and the judgement would have no applicability in the present case.

16. In view of the above, the present writ petition is allowed. Clause 2 of the allotment letter dated 22.7.2014 (Annexure P-10) charging premium of the built-up booth at market price prevailing in the year 2014, is set aside. Respondents are directed to treat the petitioner at par with other allottees, who had participated in the same very process of allotment i.e. in the draw of lots held on 29.4.2010 and charge the premium at the concessional rate. The Estate Officer, U.T., Chandigarh, respondent no.3 would now serve upon the petitioner a fresh demand with regard to premium of the built-up booth within a period of three weeks from the date of receipt of a certified copy of this order. Petitioner in turn would be obligated to make good the payment as per revised amount of premium within a period of eight weeks thereafter.

Petition is allowed in the aforesaid terms.

(S.J. Vazifdar)
Acting Chief Justice

(Tejinder Singh Dhindsa)
Judge

28.08.2015
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Whether to be referred to Reporter? Yes.