In the High Court of Punjab and Haryana at Chandigarh

CWP No. 9723 of 2014
Date of Decision: 14.7.2015

Vijay Kumar Sabharwal

---Petitioner

versus

Union of India and others

---Respondents

Coram: Hon'ble Mr. Justice Ajay Kumar Mittal
Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Arun Jain, Senior Advocate
with Mr. Chetan Salathia, Advocate
for the petitioner

Mr. Jaivir Chandail, Advocate
for respondent No. 1

Mr. Amit Arora, Addl. Standing Counsel
for UT Administration.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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Rekha Mittal, J.

The petitioner has invoked Articles 226/227 of the Constitution of India for issuance of writ of certiorari quashing order dated 6.5.2014 (Annexure P-7) whereby the respondents have issued allotment letter to the petitioner at the current market price in place of at the price fixed in the year 2001.

2. Counsel for the petitioner would argue that the Chandigarh Administration launched a scheme to rehabilitate the auto mechanics and auto spare parts dealers. Accordingly, a survey was conducted by Administration in the year 1985. The Chandigarh Administration floated a scheme in the year 1996 namely 'Allotment of Sites on Leasehold Basis to Auto Spare Parts Dealers and Auto Mechanics in Chandigarh Scheme 1996'. The scheme was challenged in Civil Writ Petition No. 5720 of 1996 and was declared unconstitutional vide order dated 10.12.1996 with a direction to the respondents to conduct a fresh survey. A new scheme called 'The Allotment of Sites on Leasehold Basis to Auto Spare Parts Dealers and Auto Repair Mechanics Scheme in Chandigarh 1999' was formulated. The petitioner applied for consideration of his name for allotment of such site but his name was not included in the list of 1307 candidates shortlisted for allotment of shops in the survey conducted by the respondents. The petitioner filed CM No. 16804 of 2001 in Civil Writ Petition No. 5720 of 1996 for issuance of direction to the respondents to consider his name for allotment of booth but the same was disposed of by giving liberty to the petitioner to approach respondent No. 2 but his request was rejected. The petitioner submitted a representation to the Finance Secretary and as per report dated 1.1.2003(Annexure P-1) submitted by the Estate Officer, UT Chandigarh, the petitioner was reported to be working at first floor of Plot No. 20, Industrial Area, Chandigarh. Respondent No. 1 recommended name of the petitioner for allotment of booth vide letter dated 26.2.2003 (Annexure P-2). Later, the Screening Committee in its meeting dated 12.5.2003, rejected case of the petitioner. The petitioner filed Civil Writ

Petition No. 14505 of 2003 which was disposed of by this Court on 11.7.2006 relegating the petitioner to avail remedy before the Civil Court. The petitioner filed Civil Suit No. 2479 of 2006 in the Court at Chandigarh which was decided on 6.5.2008 directing the defendants to reconsider claim of the plaintiff for allotment of site at any suitable place by ignoring the orders Exs. D-9 and D-10. Thereafter, the Estate Officer again rejected case of the petitioner on 4.8.2008. The petitioner preferred appeal before the Joint Secretary, Finance exercising powers of Chief Administrator, UT Chandigarh. The appeal was accepted, the impugned order was set aside and the case was remanded to the Estate Officer for passing a fresh order vide Annexure P-4. The Estate Officer passed order dated 3.2.2010 (Annexure P-5) holding that the petitioner be considered for allotment of site under the scheme. The appeal against order dated 3.2.2010 filed by the Estate Officer was dismissed vide order dated 7.10.2013(Annexure P-6). It is further argued that though the Chief Administrator, UT Chandigarh (Appellate Authority) dismissed the appeal filed by the Estate Officer by holding that the appeal is not maintainable but still the said authority has committed an error rather illegality by holding that the allotment will happen at current market price. It is further argued that as the petitioner was found eligible for allotment of site as he fulfilled all the requisite qualifications and terms and conditions under the scheme of 1999, he was entitled to allotment at the price fixed in the year 2001 i.e. at par with the allottees of booths under the said scheme. However, as the petitioner was found eligible for allotment in the year 2010 vide order dated 3.2.2010 passed by the Estate Officer, UT Chandigarh, he has got no objection if the allotment in favour of the petitioner vide allotment letter dated 6.5.2014 (Annexure P-7) is allowed at the price prevalent in the year 2010.

3. Counsel for the respondents, on the other hand, would urge that the Estate Officer, UT Chandigarh vide order dated 3.2.2010 simply made an order that case of the petitioner be considered for allotment of site under the Scheme but the allotment was made in his favour in May 2014, therefore, he is liable to pay the price stipulated in the allotment letter in compliance with the order passed by the Appellate Authority dated 7.10.2013 whereby it was held that the allotment, if any, will happen at current market price.

4. We have heard counsel for the parties and perused the records.

5. The short question that falls for determination is whether action of the respondents to charge price of the allotted shop at the rate fixed in the allotment letter dated 6.5.2014 is lawful and justified?

6. The petitioner remained pursuing his claim diligently for allotment of shop/booth under the scheme of 1999. In the process, he had to move from one office to another in pursuit of his claim. The Assistant Estate Officer while exercising the powers of Estate Officer, on a detailed consideration of the matter, passed order dated 3.2.2010 holding in favour of the petitioner. A relevant extract from the order dated 3.2.2010 (Annexure P-5) reads thus:-

> "I have carefully considered the arguments and have perused the record. The documents produced by the appellant includes the copies of loan documents dated 10.6.1997 of Allahabad Bank, document dated 26.9.1986 of the sale tax department, copies of returns filed in the sales tax department which support

> the claim of the appellant that he was engaged in auto spare parts business at Plot No. 20, Industrial rea, Phase I, Chandigarh. This fact has also been concealed by the Screening Committee in its meeting held on 12.5.2003. The claim of the appellant was basically rejected on the ground that he was not found by the survey team to be working at the given address. Undue reliance has been placed on the survey report in preference to the documentary evidence to the effect that the appellant was engaged in the auto spare parts business, is not justified. To believe that there cannot be any lapse on the part of the survey team and that the survey report was 100% correct, will not be justified. The evidence in the form of copies of documents and finding of the Civil Court in civil Suit filed by the appellant are sufficient to prove that the appellant was working as a auto spare parts dealer at the given premises and was entitled to allotment under the scheme of 1999.
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> In view of the above, it is ordered that Sh. Vijay Kumar Sabharwal be considered for the allotment of site under the scheme i.e. "The Allotment of Sites on Lease Hold Basis to Auto Spare Parts Dealers & Auto Repair Mechanics in Chandigarh in the year 1999"

7. Concededly, the appeal preferred by the Estate Officer against order passed by another Estate Officer was dismissed by the Chief Administrator, UT Chandigarh and it was held to the following effect:-

> I have carefully considered the arguments of both the parties and perused the record. The claim of the respondent viz Sh. Vijay Kumar Sabharwal was basically rejected on the ground that he was not found by the survey team to be working at the give address. The Estate Officer however, gave undue reliance on the survey report in preference to the documentary evidence to the effect that the applicant was engaged in auto spare parts business was not justified, on the basis of evidence which were

put forth in the Civil Court by the respondent. There was sufficient reason to prove that the respondent was working as an auto Spare Parts Dealer at the given premises viz. M/s Ved Sons autos, 20, Industrial Area (1st floor)Phase-1, Chandigarh and was entitled for allotment under the scheme of 1999. The appeal filed by the Estate Officer is against his own order or the order of his predecessor which is not a justified one. I, therefore, dismiss the appeal filed by the Estate Officer UT Chandigarh. He will implement the order of his predecessor. The allotment if any happens now will happen at current market price."

8. The Appellate Authority i.e. the Chief Administrator, UT Chandigarh clearly held that the respondent (petitioner herein) was working as an auto spare parts dealer at the given premises with M/s Ved Sons Autos, 20, Industrial Area(Ist floor) Phase-I, Chandigarh and was entitled for allotment in the scheme of 1999. The appeal filed by the Estate Officer against his own order or the order of his predecessor is not justified one. Despite holding that the petitioner was eligible for allotment of a shop under the scheme of 1999, the Appellate Authority without recording any reason much less cogent and well founded proceeded to hold in the concluding line of order dated 7.10.2013 that the allotment, if any, happens now will happen at current market price. Counsel for the respondents is not in a position to justify the direction made by the Appellate Authority particularly in the circumstances that it had agreed with the findings of the Estate Officer that the petitioner was working as an auto spare parts dealer at a particular place rendering him eligible for allotment under the scheme of 1999.

9. This apart, it is not plea of the respondents that delay in allotment of a shop to the petitioner, in any manner, can be attributed to the petitioner. The respondents have miserably failed to substantiate their plea that the petitioner is liable to pay the price determined in the year 2014. If such a plea of the respondents is accepted, it would be nothing short of putting premium over the lapse of the respondents. The petitioner cannot be put to disadvantage for failure of the authorities to decide the matter promptly.

10. As has been notice hereinbefore, the petitioner pursued his claim vigorously and moved from pillar to post for redressal of his grievance which eventually got fructified in the year 2014.

11. In view of the above, the offer given by counsel for the petitioner that he is ready to pay the price prevalent in the year 2010 appears to be reasonable and genuine. The respondents are accordingly directed to issue a fresh allotment letter to the petitioner at the rate prevalent in the year 2010 and the amount already paid by the petitioner shall be adjusted out of his liability incidental to the fresh allotment.

12. For the reasons aforesaid, the petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

(Ajay Kumar Mittal)
Judge

14.7.2015
PARAMJIT