

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.40530 OF 2012

ORDER:

Heard Mr.K.Goverdhan Reddy for petitioner and Mr.P.Roy Reddy for respondents 2 and 3. None appears for 1st respondent.

The petitioner challenges letter No.ZM(P)/SPZ/VSP/IT-HUB/EPL/2005 dated 24.09.2010 and the consequential impugned orders passed by the 1st & 2nd respondents vide Lr.No.1957/IT & C/Prom2/2004 dated 03.04.2012 and Lr.No.CE-I/APIIC/IT park/Ph-1-03-2005 dated 27.04.2012, as illegal, arbitrary and unconstitutional.

The petitioner was allotted Plot No.9 at I.T.Industries Layout Hill-3, Madhurawada (V), Visakhapatnam Rural Mandal.

Learned counsel appearing for the parties have drawn my attention to all the annexures filed along with pleadings in support of their respective contentions. *Prima facie*, I am of the view that a few of the introductory admitted facts need not be adverted to for disposing of the writ petition, more particularly having regard to the view I am proposing to take in this matter. It is sufficient to excerpt the letter dated 24.09.2010 for appreciating the grievance of petitioner:

"The company was issued a notice vide reference 8th cited for non-implementation of unit and a show cause notice vide reference 9th cited calling for explanation for non-adherence of terms of lease. The response of the company to the notice and show cause notice is false and baseless and clearly indicted the company's violations in honouring the terms of contract. Hence the company is liable for cancellation of the allotment and redeem the possession of the plot to the corporation.

As such the allotment of Plot No.9 made in favour of M/s Etisbew.com Private Limited in the reference 1st cited is hereby cancelled.

M/s Etisbew.com Private Limited are requested to hand over vacant possession of Plot No.9 to the Corporation within 15 days from the date of receipt of this order and Notice and in any case before 12.10.2010 failing which the possession of the premises along with structures, if any, will be resumed by the Corporation after expiry of the period stipulated herein in exercise of the right of re-entry under the lease allotment terms dated 9.4.2008 without any further notice to the company.

Please note that consequent upon the cancellation of allotment, the company's occupation and possession of the premises has become unauthorized and a trespass and therefore the Company will be liable for mesne profits."

On 06.10.2010, the petitioner represented to the 2nd and 3rd respondents and requested for revoking the order dated 24.09.2010, cancelling allotment of subject plot. On 24.10.2011, the petitioner made another representation for revoking the cancellation order and restoring possession to petitioner. It is matter of record that in the mean time, the 2nd respondent attempted to allot Plot No.9 to M/s Vensoft India Private Limited and M/s Vensoft India Private Limited did not comply with the allotment terms and conditions. Therefore, the 2nd respondent through letter No.CE-I/APIIC/IT Parks-Ph-I/03/2005 dated 25.02.2012 forwarded the following information to 1st respondent for necessary action:

"In the meanwhile, M/s Etisbew.com Pvt Ltd vide letters dated 26.11.2010, 7.12.2010 & 10.12.2010, 22.01.2011 had again requested to revoke the cancellation. Their request was not considered and they were informed vide letters dated 24.12.2010 and 15.9.2011 that, "the allotment was cancelled as per advise of IT & C Dept., and the said plot is allotted to a needy entrepreneur". M/s Etisbew.com Private Limited was advised to approach Govt., for allotment of another plot subject to availability.

Now that, M/s Vensoft India Pvt Ltd failed to comply with the allotment terms and conditions within the stipulated time and therefore the allotment of Plot No.9 stands cancelled.

In view of the above it is to inform that, as the Plot No.9 is vacant, the request of M/s Etisbew.com Pvt Ltd may be examined for allotment on usual terms & conditions."

On 03.04.2012, the 1st respondent called upon the 2nd respondent to indicate categorically whether the request for allotment of Plot No.9 to petitioner is to be treated as a fresh allotment or restoration and indicate the guidelines thereon

for taking appropriate action at the end of Government.

On 27.04.2012, the 2nd respondent replied as follows:

"In the reference 1st cited, Government had cancelled for a report on certain issues including opinion of this office for giving a chance to M/s Etisbew.com Pvt Ltd with a time base permission.

In reply this office had submitted a detailed report covering all points on allotment of land/cancellation thereof for non-implementation of project by them even within the extension time granted to them and, it was recommended to examine the request of M/s Etisbew.com Pvt Ltd for allotment of land in usual terms and conditions. Thus the request of the company may be examined for allotment of land afresh once again as it cannot be treated as restoration, as the plot allotted earlier has been resumed and allotted to others.

In view of the above, it is requested for necessary orders for taking necessary action in the matter."

The important communication is covered by letter No.1957/IT&C/Prom2/2004 dated 28.06.2012 and it reads thus:

" Vide reference second cited, APIIC informed that the request of M/s Etisbew.com Pvt Ltd can be examined for allotment of land afresh, as it cannot be treated as restoration, as the plot allotted earlier has been resumed and allotted to others.

In view of the above, M/s Etisbew.com Pvt Ltd is informed to accordingly approach APIIC for allotment of land at Visakhapatnam afresh, as per the existing procedure of APIIC."

On 12.09.2012, the petitioner has represented for revoking cancellation order of allotment and has also given firm commitment for establishing an IT industry on subject plot. The respondents did not take further decision on the representations referred to above. Hence, the writ petition for the twin reliefs referred to above.

I am, *prima facie*, satisfied that no exception to impugned order is made out by the petitioner and I propose to consider the alternative submission of petitioner. The counsel for petitioner made alternative prayer to direct respondents to consider the case for allotment of Plot No.9 to petitioner, for such allotment would save the development charges incurred by the petitioner and other amounts paid to the authorities, as Government/1st respondent has accorded.

Mr.P.Roy Reddy submitted that if request for fresh allotment of Plot No.9 is made, respondents 2 and 3, being the promoters of industries/infrastructure companies, will consider and pass appropriate orders. This Court is satisfied that there is sufficient material to show that the 1st respondent, in fact, accepted the recommendation of 2nd and 3rd respondents for allotment of Plot No.9 to petitioner as fresh allottee.

What weighs with the Court to call upon the respondents to consider allotment of Plot No.9 to petitioner, *prima facie* appears that the petitioner has spent substantial sums towards development charges and payment of development charges to statutory authority. The 1st respondent allowed respondents 2 and 3 to consider the case of petitioner for allotment of Plot No.9.

Having regard to the correspondence on the topic, the writ petition is disposed of as follows:

"The petitioner is given four weeks time from the date of receipt of a copy of this order to approach the APIIC/respondents 2 and 3 for allotment of Plot No.9 as noted in letter dated 28.06.2012.

Upon such application being made, the 2nd respondent considers and firstly passes appropriate orders for allotment of Plot No.9 to petitioner. Secondly, the amounts viz., upfront costs etc., are adjusted towards amount payable upon fresh allotment of Plot No.9 to petitioner.

The allotment process shall be considered and completed as per procedure and norms within three months from the date of receipt of the application from petitioner.

There shall be no order as costs”

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J _____

Date: 22.03.2016
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