HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.4934 OF 2012 & W.P.No.2894 OF 2014

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COMMON ORDER:

W.P.No.4934 OF 2012

M/s Hotel Sri Guru Raghavendra, represented by its Proprietor, B.Jagan Mohan Rao prays for Mandamus declaring allotment of plot measuring 225 sq. mts covered by Phase-II of IDA, Cherlapally by 1st respondent to third parties ignoring the petitioner's claim, as illegal, arbitrary and unconstitutional and consequently direct respondents to allow petition plot to petitioner.

W.P.No.2894 OF 2014

The petitioner prays for Mandamus declaring the action of respondents 2 and 3 in not executing lease-cum-sale agreement in favour of petitioner in respect of plot allotted to him in Phase-II, IDA, Cherlapally vide allotment orders Lr.No.6484/IDA/CHP/PH-IV/2005 dated 15.10.2009 in an extent of 301 sq.mts in spite of receiving consideration and not handing over possession, as arbitrary, illegal and unsustainable. The petitioner prays for consequential direction to respondents to execute lease-cum-sale agreement pursuant to allotment Lr.No.6484/IDA/CHP/PH.IV/2005 dated 15.10.2009 and handing over possession of the same.

Heard Mr.P.R.Prasad for petitioner in W.P.No.4934 of 2012 and Mr.A.Rajendra Babu for petitioner in W.P.No.2894 of 2014 and Mr.L.Prabhakar Reddy for TSIIC/respondents.

The subject matter of these two writ petitions is same and the prayer in W.P.No.2894 of 2014 can be considered subject to the outcome of W.P.No.4934 of 2012. Hence, both the writ petitions are disposed of by this common order.

The allegations in W.P.No.4934 of 2012 are as follows:

The petitioner alleges that on 03.01.2006, Telangana State Industrial Infrastructure Corporation Limited (TSIIC) allotted 300 sq.mts at the rate of Rs.900/- per sq.mtr to him and he had complied with the conditions of allotment. The petitioner is running canteen at the allotted plot. Vacant plot admeasuring 225 sq.mts is available adjacent to the plot allotted through proceedings dated 03.01.2006. The petitioner requested for allotment of said plot as well. On 11.05.2009, the TSIIC demanded Rs.10,000/- per sq. mtr and on 05.08.2009, the petitioner requested for reducing the cost of allotment of additional land. The request of petitioner was turned down. The allotment

of adjoining plot was cancelled
for the petitioner did not pay the amount demanded by TSIIC.
The petitioner made representations for re-consideration of his request and offered to pay at Rs.6,000/- per sq. yard for adjoining plot and the offer was also rejected on 11.08.2011. The petitioner submits that he is entitled for allotment of neighbouring plot and
the rate quoted by TSIIC is arbitrary, illegal and exemplary. According to petitioner, TSIIC on 03.01.2006 allotted 300 sq. mts at Rs.900/- per sq. mtr and by 05.08.2009 demanded exorbitant amount of Rs.10,000/-

The petitioner realizing the incremental enhancement of
land rates offered Rs.6,000/- per sq. yard and the same ought to have been accepted by TSIIC. The petitioner complains that establishing a canteen in the immediate neighbourhood leads
to unhealthy competition and results in loss to petitioner.
The establishment of a canteen in the adjoining plot affects the livelihood of several workers engaged by petitioner. The allotment of subject plot to third party who has been running the canteen in Phase-IV, without considering the request of petitioner, is illegal and arbitrary.

The allegations in W.P.No.2894 of 2014 are as follows:

B.Ramachandra Reddy/petitioner complains against the inaction of respondents in executing lease-cum-sale agreement
in his favour in terms of Lr.No.6484/IDA/CHP/PH-IV/2005 dated 15.10.2009 as illegal and arbitrary. The petitioner refers to a few introductory circumstances leading to allotment and cancellation of plot by respondents at Cherlapally. Briefly stated, on 23.05.2005, TSIIC allotted plot measuring 301 sq. mtrs in Phase-IV, IDA, Cherlapally on lease at upfront value of Rs.900/- per sq. mtr.
The petitioner paid the upfront value determined by TSIIC.
On 20.01.2006, TSIIC entered into lease-cum-sale agreement with petitioner and physical possession was also handed over to him. The petitioner by paying a sum of Rs.12,732/- applied for building permission to the Industrial Development Authority and on 11.10.2006, permission was granted. The petitioner, when was about to undertake construction of canteen, faced opposition and obstruction from local people for construction of a building at the subject plot. The petitioner made representation between 14.11.2006 and 06.10.2008 either for extending aid while the construction activity is undertaken by him or remove encroachments on the plot allotted to petitioner. TSIIC did
not take action on either of the requests of the petitioner.
On 28.04.2009, the petitioner requested for allotment of alternate land in Phase-II, Cherlapalli in the place of the plot allotted through allotment order dated 23.05.2005. On

15.10.2009, TSIIC allotted alternate land to petitioner in Phase-II of IDA Cherlapalli in an extent of 301 sq. mts and demanded from petitioner a sum of Rs.29,450/-. On 20.10.2009, petitioner claims to have paid the amount demanded towards excess land cost. On 05.02.2010, TSIIC called upon the petitioner to pay a sum of Rs.4,59,102/- towards cost of constructions available at site. On 30.11.2010, the petitioner paid the amount. TSIIC without reason returned the said amount. Hence, the instant writ petition for execution of lease-cum-sale agreement in terms of allotment dated 15.10.2009.

The Zonal Manager, Shamshabad Division, TSIIC filed counter-affidavit. The allegations of initial allotment, inability to construct canteen thereon and subsequent alternate allotment are not disputed. The opposition of M/s Hotel Sri Guru Raghavendra, petitioner in W.P.No.4934 of 2012, is stated as one of the reasons for not executing the lease deed in favour of petitioner. It is also stated that in spite of allotment of plot, the petitioner did not establish a canteen and prayed for dismissal of the writ petition.

Learned counsel appearing for the parties have substantially reiterated the allegations made in their respective pleadings.
For brevity, I am not referring to these contentions.

Now, the points for considerations are –

(A) whether the petitioner in W.P.No.4934 of 2012 is entitled for Mandamus declaring the allotment in favour of third parties, without considering his claim, as illegal, arbitrary and unconstitutional?

(B) whether the petitioner in W.P.No.2894 of 2014 is entitled for a writ of Mandamus directing TSIIC to execute lease-cum-sale agreement in terms of allotment Lr.No.6484/IDA/CHP/PH-IV/2005 dated 15.10.2009? and

(C) To what relief?

POINT A:

The petitioner in W.P.No.4934 of 2012 through letter dated 03.01.2006 was allotted an extent of 300 sq. mts at the rate of Rs.900/- per sq. mtr. The petitioner has established a canteen and carrying on business. The petitioner applied for allotment of neighbouring vacant plot at the same rate as was allotted to petitioner in 2006. It is a matter of record and undisputed circumstance that the request of petitioner herein was rejected through letters dated 10.06.2010 and 11.08.2011. The said rejection letters have become final. Now, the basis of instant prayer is that without considering the case of petitioner herein, allotment of subject plot to third party is illegal and arbitrary. This Court is of the view that the request of petitioner herein was considered and rejected. The petitioner has allowed the said cancellation letters to become final and they are not challenged in the instant writ petition. Therefore, the factual basis on which the instant prayer is made, in the considered view of this Court, is untenable and erroneous. Once the claim of petitioner herein was rejected, TSIIC is entitled to allot the plot according to its exigencies and priorities. In the case on hand, the allotment order was made on 15.10.2009 in favour of petitioner in W.P.No.2894 of 2014. There is no challenge to the said allotment in favour of petitioner in W.P.No.2894 of 2014.

The challenge to allotment to neighbouring plot for canteen business on the ground that it diminishes the chances of petitioner is merely noted to be rejected. This Court is of the view that TSIIC is well informed and equipped to take appropriate decisions in the larger administration of an industrial area according to its priorities and policies. The circumstances prevailing in 2005-06 cannot be said to be prevailing even as on date and due to changed circumstances, the necessity of more than one canteen could have been felt by TSIIC. Added to it, the establishment of a canteen encourages quality food to the workers in the industrial area. On the ground that the establishment affects the livelihood of the petitioner, the allotment made by TSIIC to a third party cannot and could not be interfered. In the ultimate analysis, this Court is of the considered view that both the grounds are without merit and liable to be rejected. Therefore, the point is answered against the petitioner and in favour of the respondents.

POINT B:

At the first instance, the petitioner was allotted a plot in Phase-IV, IDA Cherlapally on 05.03.2005. The petitioner complied with all the conditions and lease-cum-sale agreement was entered between the petitioner and the TSIIC. Admittedly, the locals have objected to the petitioner establishing a canteen at the allotted plot and the petitioner was prevented by circumstances beyond his control to establish a canteen and do business. TSIIC received representations from petitioner for appropriate help and aid to establish a canteen. TSIIC though not admitting that it was rendered helpless in giving aid to petitioner in removing encroachment but does not dispute the fact that on account of factors beyond the control of petitioner herein, the canteen could not be constructed. It appears that it is because of this reason the representation dated 28.04.2009 for allotment of alternate site was entertained and allotment letter dated 15.10.2009 was issued to petitioner. The said allotment letter is subsisting as on date. It is not the case of TSIIC as well that the petitioner failed to comply with the conditions imposed by TSIIC vide letter dated 15.10.2009.

The reason stated in the counter affidavit for not entering into lease-cum-sale agreement is pendency of W.P.No.4934 of 2012 and the interim order obtained by M/s Hotel Sri Guru Raghavendra. In view of dismissal of the said writ petition through this common order, the difficulty pleaded by TSIIC ceases to exist. On the other hand, the petitioner paid amount to TSIIC several years back, but still is unable to do business on account of circumstances beyond the control of petitioner. This Court is of the view that the prayer of petitioner for Mandamus to direct the respondents to execute lease-cum-sale agreement in terms of letter dated 15.10.2009 is tenable and justified. Accordingly, the point is answered in favour of petitioner.

POINT C:

W.P.No.4934 of 2012 is dismissed.

W.P.No.2894 of 2014 is ordered. TSIIC/Respondent Nos.5 and 6 are directed to take up further steps for entering into lease-cum-sale agreement with petitioner herein within four weeks from the date of receipt of a copy of this order. The petitioner may be informed of compliance of conditions if any and reasonable time be given to petitioner for complying with those formalities and thereafter respondents 5 and 6 are directed to execute lease-cum-sale agreement within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

Consequently, pending miscellaneous petitions in these writ petitions, if any, stands closed.

S.V.BHATT, J

Date: 18.08.2016
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