

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.27695 OF 2012

ORDER:

Heard Mr.A.Jagan for petitioner and Mr.L.Prabhakar Reddy for respondents.

The petitioner challenges letter No.146/APIIC/ZO:KRMR/IP-NRML/87/185 dated 23.08.2012 of 2nd respondent as illegal, arbitrary and in violation of the principles of natural justice.

The circumstances relevant for the disposal of the writ petition are as follows:

The father of petitioner viz., M.A.Jaffer Ahmed applied for allotment of plots at Industrial Area, Nirmal. The 2nd respondent through proceedings dated 13.10.1987 allotted plot Nos.8D and 8E in an extent of 2030 square metres to Jaffer Ahmed. According to petitioner, his father paid 25% of the land cost amounting to Rs.2,500/-.

It is alleged that his father was manufacturing cement products and plastic goods at subject plots. On 16.04.1989, the father of petitioner died. The petitioner alleges that there

have been, in fact, intermittent payments amounting to Rs.28,945/-.

The petitioner, after the demise of his father, was doing manufacturing activity at subject plots. It is alleged that the family of petitioner consists of two sisters, his mother and all of them are dependant on the industry run at subject plots. According to petitioner, the total consideration together with interest is paid and there was no occasion to take steps for cancellation of subject plots or disturb possession of the petitioner. The proceedings

dated 23.08.2012 was received by the petitioner. On 28.08.2012, a representation was made for continuation of the allotment.

The grounds of challenge are that the cancellation of allotment

is in violation of principles of natural justice and unavailable in the peculiar facts and circumstances of the case. The original cancellation referred to in the proceedings dated 23.08.2012 is against a dead person and the respondents having accepted the explanation given by the petitioner have allowed the petitioner to continue to run the industry at subject plot. Before issuing the impugned proceeding, there is no notice or demand from the respondents either for payment of balance of sale consideration together with interest or calling upon the petitioner

as to why the cancellation order be not passed and possession resumed from him. Before concluding the narration, I find it convenient to excerpt the operative portion of the order impugned in the writ petition:

“On 03.04.2002 the legal heirs of the deceased have attended the site and informed that they have already constructed a shed without roof and will be complete the factory buildings soon after receipt of restoration orders and transfer orders from APIIC in favour of Sri M.A.Zubair Ahmed, who is the son of late Sri Zaffar, Prop: M/s Zaffar Industries and to this effect Smt.Shaheen Begum w/o late M.A.Zaffar Ahmed has filed an affidavit to transfer the said plots in favour of her elder son Sri M.A.Zubair Ahmed.

The above request made by you was considered by this Corporation and you were requested to pay the restoration charges, and produce certain documents evidencing your intention to continue the above firm. However, in spite of giving several reminder notices, there was no response from your side.

In the reference 8th cited, you have once again informed that the proprietor of the firm has expired on 16.04.1989 and requested to restore of allotment and transfer the name allotment in the name of Sri M.A.Zubair Ahmed, the son of the deceased allottee.

In this connection, it is to inform that your request for restoration of allotment and transfer of allotment in favour of Sri Zubair Ahmed has been examined in detail and is not considered as you have not complied with the terms and condition of the

allotment.

Consequent upon cancellation of allotment of the plot/land, you are hereby called upon to surrender vacant possession of the plot/land admeasuring 2030.936 sq. mtrs in plot Nos.D-8 & E-8 at Industrial Park, Nirmal to the Corporation within (15) days from the date of receipt of this order in any case before 5th Sept., 2012 failing which the possession of the plots will be resumed by exercising the right of re-entry reserved to the corporation.

Please note that consequent upon cancellation of allotment of plot/land, occupation/possession of the same by you is unauthorized and you are liable to be evicted there from. Further you are also liable for damages from the date of cancellation till eviction for the premises. The refund of amounts paid towards land cost, if any, will be refunded separately as per Allotment Regulations of the Corporation”.

On 05.09.2012, this Court granted the following order:

“Pending further orders, no coercive steps shall be taken in respect of plot Nos.8D and 8E admeasuring 2030 sq. meters situated in industrial area of Nirmal in pursuance of letter dated 23.08.12 of respondent No.2”

The 2nd respondent filed petition to vacate the interim order.

The 2nd respondent though has raised a few objections on the maintainability of the writ petition, but having regard to the nature of disposal of this writ petition, these objections are not pressed at the time of hearing. It is admitted that vide proceedings No.146/APIIC/RDNZB/NRML/87 dated 13.10.1987, the respondents allotted subject plots on lease-cum-sale basis in favour of one Jaffer Ahmed. It is also admitted that the original allottee paid Rs.2,500/- towards part payment of land cost. On 31.03.1988, possession was handed over. The respondents admit that the allottee/Jaffer Ahmed died on 16.04.1989. It is stated that the allotment has been cancelled vide proceedings dated 23.10.1997. Therefore, the payments made on 15.11.1997 and 06.12.1997 do not create any right in the legal representatives of late Jaffer Ahmed. It

is further averred that on 15.12.2001 the respondent Corporation called upon the petitioner to submit legal documents within 15 days to formalize the transaction, but the communication was returned with endorsement "no such addressee". It is denied that huge investments are made by the petitioner either for establishing industry or running it. The substantive objection against the writ prayer is that the cancellation order was passed on 23.10.1997 and the order impugned in the writ petition merely calls upon the petitioner to handover possession of the premises.

Learned counsel appearing for the parties have substantially reiterated the stand taken by them in their respective pleadings. For brevity, the same is not reiterated. Before considering the writ prayer, the stand of Mr.L.Prabhakar Reddy, learned standing counsel is placed on record. He admits that the order cancelling allotment was against the dead person but according to him the legal representatives of original allottee though were given sufficient time, they did not fulfill the legal requirements to formalize the transaction. It is for this reason the respondent corporation by placing reliance upon the order of cancellation dated 23.08.2012 issued the impugned proceedings.

On the other hand, Mr.A.Jagan contends that through the representation dated 29.08.2012, the petitioner requested to consider allotting the land in his favour and has agreed to pay total land cost at the present rate i.e., as on 29.08.2012.

Now the point for consideration is – whether the order impugned in the writ petition is sustainable or not.

The admitted circumstances are that the allotment was in favour of one Jaffer Ahmed. He died on 16.04.1989. The respondents had knowledge of the death of original allottee. The cancellation proceedings were passed against the dead

person and the Corporation by giving a go bye to the proceedings already issued permitted the petitioner to carry on the manufacturing activity or stay in possession of the subject plots. While matters stood thus, the impugned proceeding is issued on the representation given by petitioner on 10.12.2011. In the considered view of this Court, having regard to the admitted position, the impugned proceeding is arbitrary and is substantially based on the cancellation order passed against dead person and the reasons stated by the respondents are not convincing to sustain the impugned proceedings. The impugned proceeding is set aside as illegal, arbitrary and violative of principles of natural justice.

The 2nd respondent is directed to consider the representation dated 29.08.2012 filed by the petitioner in accordance with the extant policy of the Corporation and impose such other further conditions as are necessary to formalize the allotment in favour of petitioner. No other contention is urged by the parties.

The writ petition is ordered as indicated above. There shall be no order as to costs.

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

S.V.BHATT, J

Dt.04.07.2016

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