

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CWP No.22542 of 2011
Date of Order: 09.02.2016**

Ashok Kumar and Ors.

....Petitioners

Versus

State of Haryana and Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. S.K. Monga, Advocate for the petitioners.

Mr. Brijeshwar Singh Kanwar, Standing Counsel
for UOI/respondent No.1.

Mr. Deepak Balyan, Advocate for respondent No.3.

RAKESH KUMAR JAIN, J

The petitioners have assailed the validity of order dated 25.10.2011 passed by respondent No.2 and prayed for the issuance of directions to the respondents to deliver possession of the shops allotted to them in Civil Hospital boundary at Rohtak.

In nutshell, six shops, which were located at the junction of Hisar-Bhiwani road, were let out by the Municipal Council, Rohtak-respondent No.3 on rent by way of an auction out of which four shops were let out on 25.8.1999 and two on 10.1.2000. Petitioner No.1 was allotted shop No.1, petitioner No.2 was allotted Shop No.2 and 5, petitioner No.3 was allotted Shop No.3, petitioner No.4 was allotted Shop No.4 and petitioner No.5 was allotted Shop No.6. Petitioners deposited ₹30000/- for each shop as security.

The Department of PWD (B&R) decided to construct a Railway Over Bridge on Rohtak-Bhiwani road on Delhi Bathinda Railway line at 61 KM near Ramlila Ground with the assistance of Railways to fulfil the long standing demand of the people of Rohtak. Before the construction site was surveyed, it was found that some additional land was required for the construction of Railway Over Bridge to provide service road on both sides of Railway over Bridge and decision was taken to acquire additional land on both sides of the road for which a Notification under Section 4 of the Land Acquisition Act, 1894 (for short "the Act") was issued on 07.07.2007. It was mentioned in the Notification that there are three shops bearing No.107/2, 107/2/1 and 107/3/2, which were constructed by the Municipal Council (now Municipal Corporation, Rohtak) but the Notification dated 07.07.2007 was de-notified on 19.5.2008 pertaining to aforesaid three shops, as the land on which shops were constructed by the M.C, was belonging to the department of PWD (B & R), which was unauthorizedly encroached upon by the M.C.

According to the petitioners, respondent No.3 served a notice on 10.7.2006 to vacate the shops because the road was to be widened and the shops were causing an obstruction. Respondent No.2, allegedly visited the site and assured the petitioners that they would be allotted some other place in Rohtak City if they vacate the said premises without any protest. It is further alleged that other tenants from Jhajjar road were also

to be up-rooted because the said road was also to be widened. On the oral assurance given by respondent Nos.2 & 3, the petitioners vacated the shops. Thereafter, respondent No.3 allotted shop Nos.54,50,53,52,55 & 51 respectively to the petitioners within the boundary of Civil Hospital, Rohtak and asked the petitioners to pay the enhanced security as well as rent with 25% increase. Petitioners paid the enhanced security i.e ₹20000/-over and above the amount of security already paid to the tune of ₹30000/-. It is alleged that in the receipts issued to the petitioners, of the security amount, it was specifically mentioned that the deposit has been made on account of shifting from the earlier shops because of the construction of the over bridge on Hisar-Bhiwani road and new allotment has been made in the Civil Hospital boundary. Since the possession was not delivered of the new shops to the petitioners, therefore, they preferred a writ petition bearing No.16888 of 2007 but the said petition was dismissed by a Division Bench of this Court on 09.4.2008 on the ground that the proposal sent by respondent No.3 to respondent No.2 on 21.9.2007 for allotment of the shops within the boundary of Civil Hospital, Rohtak has been rejected by respondent No.2 on 07.2.2008 but liberty was granted to the petitioners to challenge that order in accordance with law.

Petitioners then filed another writ petition bearing CWP No.6615 of 2008, which was disposed of on 18.11.2009 by a learned Single Bench of this Court, directing respondent No.2 to grant an opportunity of hearing to the petitioners before passing

a fresh order in accordance with law. Apropos, respondent No.2 passed the impugned order dated 18.10.2011 and rejected the request of the petitioners on the ground that though it is clear from the record that six shops were given on rent by respondent No.3 to the petitioners but it is nowhere mentioned that respondent No.3 would be bound to provide shops to the petitioners in lieu of the shops vacated by them. It is observed that respondent No.3 had also failed to prove that the said shops were constructed on the property of Municipal Council, Rohtak and when the shops were vacated by the petitioners on a notice issued by respondent No.3, it was nowhere mentioned that respondent No.3 would allot the shops at some other place to the petitioners in that situation. It was further observed that the petitioners were tenants of respondent No.3 and due to the reasons of demolition of shops, the petitioners were not entitled to get the shops at some other place.

Petitioners have averred that in similar manner, 48 shops of respondent No.3, situated at Jhajjar road, Rohtak were demolished for widening of said road and up-rooted persons were allotted new shops in the Civil Hospital Boundary at Rohtak. Respondent No.3 after making allotment of 48 shops, sent proposal to respondent No.2, through letter dated 26.3.2007, which was promptly accepted and approved by respondent No.2 on 30.4.2007 but in the case of the petitioners, the approval has been declined and thus the respondents have acted discriminately. It is also averred in the petition that in

Rohtak city, some of the shops at Bhiwani Bus Stand were also demolished for widening of the road. The shopkeepers, namely, Naresh Batra, Rakesh Kumar and Prem Kumar Dhall were up-rooted and have been allotted shop Nos.58,59 and 60 respectively within the boundary wall of Civil Hospital, Rohtak though they are not paying rent for the last one year of the newly allotted shops.

In reply to para 20 of the writ petition, the respondent No.2 has averred that the case of the occupants of 48 shops was genuine one because they were doing small business in those shops rented out in the year 1975 but the case of the petitioners is different because these shops were illegally constructed on the land of PWD (B&R) department. It was denied that the shops have been allotted to Naresh Batra, Rakesh Kumar and Prem Kumar Dhall. In the reply filed by respondent No.3, it is though admitted that all these shops were auctioned by it to the petitioners but it was denied that any promise or assurance was given to them at the time of vacation of shops. It is further averred that had there been any such assurance given to the petitioners, then it would have been mentioned in the notice served upon them. It is also alleged that the petitioners have converted these shops into three in which no commercial activity was going on as no electricity or water supply connection was attached to these shops nor sale tax/income tax number was obtained by the petitioners. In regard to 48 occupants of the shops at Jhajjar Road, it is stated that they were doing small

business in those shops, rented out in the year 1975 and their case is different from the petitioners.

Learned counsel for the petitioners has argued that the petitioners were not concerned with the title of the land underneath the shops in question, which were allotted to them in an open auction in which the petitioners were highest bidders. They had deposited security money of ₹30000/- as demanded and had been paying the rent regularly. It is further submitted that the said shops were never acquired by respondent No.2, rather it is admitted that the shops were earlier acquired but later on the said notification was de-notified. It is submitted that the petitioners had vacated the said shops on the assurance given by respondent Nos.2 & 3 that they would be adjusted and rehabilitated in Rohtak City, in case, they vacate the premises in their possession without any protest. Being good citizens, sensing the importance and urgency in the matter of construction of the over Bridge, the petitioners offered to vacate their shops and because of their good gesture, they were allotted six shops by respondent No.3 in the Civil Hospital Boundary, Rohtak though on enhanced security of ₹50000/- as well as 25% increase in the rent. It is further argued that when the security was deposited by the petitioners of ₹20,000/- to make up ₹50,000/-, specific endorsement was made by respondent No.3 that “ depositer has been shifted from the earlier shop on account of construction of bridge on Hisar-Bhiwani Road and has been allotted new shops in Civil Hospital

Boundary, Rohtak". Respondent No.3 made a request to respondent No.2 on 21.9.2007 for allotment of new shops, which was rejected on 07.2.2008 on the ground that they cannot be allowed to be allotted shops at prime locations. Said order was set aside and de novo proceedings were held, in which petitioners were also associated and also led evidence that they had been doing business in the said shops. A new reason has been adopted by respondent No.2 to reject their claim that there was no written assurance of allotment of shops on their vacation. It is submitted that though there is nothing on record in writing but the facts and circumstances of the case would suggest that the petitioners had vacated the shops in question only on the oral assurance of respondents, who cannot be allowed to withdraw their assurance only because of the reason that the shops, which are allotted to the petitioners could carry more rent than offered by the petitioners, as demanded by respondent No.3. It is also submitted that the petitioners are similarly situated with 48 shopkeepers situated at Jhajjar road, who have similarly been allotted the shops in the same premises in which the petitioners had been allotted. He has relied upon judgment of Hon'ble Supreme Court in the case of **M/s Motilal Padampat Sugar Mills Co. Ltd Vs. The State of Uttar Pradesh and others, AIR 1979 Supreme Court 621.**

Learned counsel for the respondents has argued that the petitioners are not entitled for allotment for the reason given by respondent No.2 in his order as there was no written

assurance of their re-settlement and rehabilitation.

I have heard learned counsel for the parties and examined the paper book with their able assistance.

The facts narrated hereinabove are not much in dispute. The aforesaid six shops were allotted by way of auction to the petitioners, who were in possession before vacating at the asking of respondent Nos.2 & 3 for the purpose of widening of road and construction of over Bridge. Shops have been allotted to the petitioners at the new address but the possession has not been delivered. Respondent No.3, who is now supporting respondent No.2 had earlier been supporting the petitioners for the purpose of allotment, and wrote a letter dated 21.9.2007 for delivery of possession of the shops. As a matter of fact, the whole issue is of the commitment, even if it was an oral one because from the facts and circumstances, emerging from the record, it transpires that during the period, when over Bridge was constructed, there was fast paced development of the Rohtak City and as a result thereof various roads got widened including the road where the petitioners were located earlier and the Jhajjar Road from where 48 persons were removed. Respondents have allotted, delivered possession of the shops to said 48 persons, who were located at Jhajjar road on the ground that they were small businessmen and were there for last many years but it is nowhere mentioned that there was any such agreement with them of their re-location after being uprooted from the Jhajjar road.

Since there was no written agreement by respondent No.2 with those persons, who have been allotted the shops and delivered possession, then respondent No.2 cannot discriminate, in the case of the petitioners and violate clause of equality while refusing to deliver the possession of shops to the petitioners. It appears that the reason assigned by respondent No.2 in his impugned order is only to deny the relief asked for by the petitioners otherwise it has been specifically mentioned by respondent No.3 in the receipt of the additional security that the said security is being charged on account of shifting of the petitioners to a new place. The respondents are, thus, bound by their promise, which, however, may be oral as has been established from the facts and circumstances on which the petitioners have acted to the detriment of their interest while vacating their premises, which otherwise would have been a difficult task for the respondents to get possession from the petitioners.

Thus, in view of the facts and circumstances discussed hereinabove, present writ petition is hereby allowed, impugned order dated 25.10.2011 passed by respondent No.2 is set aside and a direction is issued to the respondents to deliver the possession of the allotted shops to the petitioners, as early as possible, preferably within one month from the date of receipt of certified copy of this order.

February 09, 2016
manoj

(RAKESH KUMAR JAIN)
JUDGE

