

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

WRIT PETITION Nos.5876 & 7581 of 2004 & 17077 of
2005

COMMON ORDER:

These three writ petitions arise out of common issue and hence they are being disposed of by this common order.

2. Brief facts leading to the filing these three writ petitions are as follows:

The Andhra Pradesh Industrial Infrastructure Corporation Limited (for short "APIIC"), initially, on the request of M/s.Sree Krishna Mutually Aided Co-operative Housing Society Limited (for short "the Society"), petitioners in WP Nos.5876 & 7581 of 2004, vide letter, dated 13.03.2003, has allotted an extent of 5.40 acres of land at IDA, Cherlapally Phase-II for purpose of construction of houses for its members, @Rs.500/- per square meter, subject to the condition that the members of the Society should have an industrial unit at IDA, Charlapally, and directed to pay the sale consideration of Rs.109.24 lakhs within 90 days. The Society made three representations to the APIIC on 28.05.2003, 18.07.2003 and 03.02.2004 duly making part payment of Rs.25.00 lakhs and requested APIIC to reduce the land cost, in view of 40% of land would go towards roads and would be kept unutilized for residential plots, but the same was not considered by APIIC. Further, APIIC, vide letter dated 12.03.2004 cancelled the allotment made in favour of the Society on the ground that the Society failed to fulfill the conditions stipulated in letter dated 24.04.2003. Challenging the said cancellation order, the Society filed

W.P.No.5876 of 2004. At the stage of admission of the writ petition, this Court granted interim order of *status quo*.

3. In the meanwhile, APIIC, vide letters dated 20.03.2004 & 06.04.2004 allotted the same land of an extent of Ac.5.40 gts in favour of the Indian Railway Welfare Organization (for short "IRWO") for an amount of Rs.1,99,26,361/-. Questioning the said allotment, the Society filed W.P.No.7581 of 2004 and in that writ petition also, this Court granted interim order of *status quo*.

4. The Indian Railway Welfare Organization, New Delhi filed W.P.No.17077 of 2005, stating that on their request, the APIIC allotted land of an extent of Ac.5.40 gts for construction of houses for railway men both for serving as well as retired on outright sale basis for an amount of Rs.1,99,26,461/- and in terms of the allotment letters, dated 20.03.2004 and 06.04.2004, the IRWO paid the entire sale consideration, as agreed. But surprisingly, vide letter dated 06.06.2005, the APIIC cancelled the said allotment without assigning any reasons and refunded the amount. Questioning the said cancellation proceedings, the IRWO filed the writ petition.

5. In all three writ petitions, the APIIC filed similar counters denying the contentions of the writ petitioners, supporting their decision of cancellation of allotment in favour of the Society and IRWO, and stating that it is a policy decision and no judicial review can be called for.

6. This Court vide order, dated 17.09.2014, allowed W.P.No.17077 of 2005, filed by IRWO, setting aside the cancellation of allotment order in favour of IRWO on the ground that the impugned order does not contain any reasons for cancellation of allotment.

7. Simultaneously, this Court, on the same day i.e., on 17.09.2014 dismissed the writ petitions filed by the Society in W.P.Nos.5876 & 7581 of 2004 on the ground that no agreement was entered into between the Society and APIIC and the Society had no right to claim the land.

8. The Society carried the matter in appeal, vide W.A.Nos.1442, 1454 and 1480 of 2014 on a technical ground that by the date of passing orders in the writ petitions, bifurcation was effected, APIIC had no interest in the matter and the newly incorporated Telangana State Industrial Infrastructure Corporation Limited to be impleaded and heard in the matter. On the same ground, the Division Bench of this Court, allowed the three writ appeals filed by the Society and remitted the matter for adjudication afresh of the three writ petitions, after impleading all proper and necessary parties.

9. Heard the learned counsel on either side and perused the material available on record.

10. The points for consideration are:

- 1) Whether the action of the Industrial Infrastructure Corporation in firstly allotting the land to M/s.Sree Krishna Mutually Aided Cooperative Society Limited on 13.03.2003 and subsequently cancelling the same on 12.03.2004 on the ground that the society failed to adhere to the terms and conditions of the allotment letter in not making the payment within the stipulated time and allotting the same land to the Indian Railway Welfare Organization (IRWO) is justified?; and

2) Whether the allotment of the land to IRWO on 20.03.2004 and subsequently cancelling the same on 06.06.2005 is liable to be set aside since it is cancelled without assigning any reason or giving any show cause notice?

11. Point No.1:- This point is the subject matter of Writ Petitions No.5876 and 7581 of 2004 filed by M/s.Sree Krishna Mutually Aided Cooperative Society Limited. The admitted facts which outweigh the contentious aspects, are as hereunder.

12. The Industrial Infrastructure Corporation had vast extents of lands at Cherlapalli meant for industrial establishments, intended to encourage the entrepreneurs so as to create several avenues to the people at large. The land in question is in Sy.No.184/part and it is admeasuring about Ac.5.40 guntas. Some of the entrepreneurs who had their industrial units in the neighbourhood have approached the Corporation for allotment of the land for constructing dwelling units for its members. In pursuance to the request made by the entrepreneurs, the Corporation allotted the said land and determined the total value of the land admeasuring about 21,853 Sq.Mts., as Rs.1,09,24,000/-. As per the allotment letter, dated 24.04.2003, the society was required to pay the consideration within ninety days, that they should file the application in the prescribed *pro forma* by remitting a sum of Rs.250/- towards process fee, that the society should submit the list of members to the society for having industry in the industrial area, Cherlapalli, that the society should obtain the layout approval of HUDA for the land, that the society should submit the registration number and its by-laws and that the said allotment

is subject to the terms and conditions to be communicated and the sale agreement to be executed.

13. The Cooperative Society vide its letter dated 20.05.2003 has set out various reasons and ultimately requested the Corporation to reduce the cost of the land to the actual land available to plot holders after earmarking the land for various purposes as per the rules of layout. The society further requested that as against the land allotted admeasuring 21,853 Sq.Mts., the plotted area is only 14,086 Sq.Mts., and requested the Corporation to charge for the said extent only. Before addressing the said letter, the society has deposited a sum of Rs.25 lakhs with the respondent/Corporation which was acknowledged on 22.07.2003.

14. The request of the society to reduce the cost was considered by the Corporation and rejected and the society was informed on 18.12.2003 that they are required to make the payment as the land cost as per the allotment letter dated 24.04.2003 and also fulfil the remaining conditions.

15. Instead of complying with the conditions and making the payments as required in the allotment letter, the society has once again addressed a letter to the respondent/Corporation on 03.02.2004 reiterating their previous request and further agreed to pay Rs.750/- per square metre for the actual plotted area as against Rs.500/- per square metre for the total extent of land.

16. The respondent/Corporation did not accept the said request and by the impugned letter dated 12.03.2004 cancelled the allotment and returned the amount of Rs.25 lakhs which was deposited by the petitioner/society.

17. It is manifest from the above that the petitioner/society failed to comply with the terms and conditions of the allotment and even though they were required to remit nearly a sum of Rs.1.09 crores within ninety days from 24.04.2003, they did not pay the entire amount till 12.03.2004 and were negotiating and bargaining with the respondent/Corporation. As against the required payment and fulfilment of the other conditions, the petitioner/society has only remitted a sum of Rs.25 lakhs as against the total consideration of about Rs.1.09 crores, even though it is more than ten months since the allotment was made. The respondent/Corporation therefore cancelled the allotment for violation of the conditions.

18. This action of the respondent/Corporation is challenged on the ground that the respondent/Corporation has illegally and arbitrarily cancelled the allotment without affording further opportunity to the petitioner/society to make the payment.

19. A perusal of the above facts clearly show that the petitioner/society has violated the terms and conditions of the allotment not only in the matter of payment of the cost of the land within the stipulated time but also the other conditions imposed in the letter of allotment.

20. The competence, authority and right of the respondent/Corporation to cancel the allotment if the terms and conditions are not complied with within the stipulated time is well settled. There are catena of authorities which lay down that the allotment can be cancelled if the allottee fails to comply with the terms and conditions.

21. In *INDU KAKKAR v. HARYANA STATE INDUSTRIAL DEVELOPMENT CORPN.LTD*¹ in para 17 laid down as under:-

“All that Section 32 of the Transfer of Property Act provides is that “in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest”. If the condition is invalid, it cannot be set up as a condition precedent for crystallization of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the agreement between the parties is, therefore, valid and is binding on the parties thereto.”

22. In *A.P.INDUSTRIAL INFRASTRUCTURAL CORPN.LTD. v. SHIVANI ENGG.INDUSTRIES*², the Supreme Court in paras 24 and 25 held as under:-

“We have to consider the relevant clauses of the provisional allotment letter, which are extracted as above, particularly, the original allotment of plot was made in favour of the Respondent on 20.6.2006 subject to payment of Rs. 72,00,000/- within 90 days from the date of receipt of the allotment letter. Further, Clause 7 of the said provisional allotment letter provides if the above said plot cost is not made within 90 days of receipt of the allotment letter the allotment of plot shall stand cancelled and the EMD paid shall remain forfeited by the Corporation. It is an undisputed fact that on 22.9.2006 the allotted plot in favour of the Respondent was found to be more than the area mentioned in the provisional allotment letter and the area was revised as 14046 sq. mtrs. as also the cost payable was revised at Rs. 84,27,600/- and despite the Corporation extending time for making payment by the Respondent till 30.11.2006, the same was not paid. Therefore, the provisional allotment was cancelled by the Corporation for not making the payment within stipulated time.

¹ (1999) 2 SCC 37

² (2015) 7 SCC 241

The representation was given on 3.2.2007 by the Respondent for restoration of allotment of the plot and the same was accepted by the Corporation by informing the Respondent that the restoration of the provisional allotment of plot will be done subject to the payment of total cost of plot with interest on belated payment and penalty of 10% of the land cost at the prevailing rate. The same is the concession given by the Corporation to the Respondent as it could not have restored the provisional allotment of the plot as the said restoration of allotment was totally impermissible in law. The concession was made in favour of the Respondent by executing the agreement of sale of the plot on 13.3.2007 and the possession of the plot was also given on the same day and within two years from the date of possession of the said plot the project should have been implemented by the Respondent. Despite the change of manufacturing activity from mosquito coil to heavy engineering project and bus-body manufacturing unit, the project was not implemented by the Respondent within the said period. Therefore, the terms and conditions of the provisional allotment letter and the agreement of sale executed on 13.3.2007 are violated by it, therefore, the Corporation was entitled to cancel the allotment of plot and resume the land from the Respondent, instead of doing so, the Corporation has again made concession by calling upon the Respondent to pay the condonation fee at 3% which is totally impermissible in law.”

23. In SRI KIRAN AUTO SERVICE v. A.P.INDUSTRIAL INFRASTRUCTURE CORP.LTD.³, the learned Single Judge of our High Court in para 4 held as under:-

“The issue raised is no longer res Integra. Validity of the cancellation of allotment of a plot on the ground of non-implementation of the project and the consequential nullification of the allotment order/agreement of sale by the APIIC fell for consideration before this Court in ECI Engineering and Construction Co. Ltd. V/s. Andhra Pradesh Industrial Infrastructure Corporation Limited MANU/AP/0902/2012 : 2013 (1) ALT 634 : 2013 (2) ALD 466. Upon a detailed consideration of all the issues, a learned Judge of this Court

³ 2013 (5) ALD 510

held that the action of the APIIC in canceling the allotment of land was perfectly in order and could not be interfered with. The question as to whether an allottee was entitled to any refund of the sale consideration and if so, to what extent, was left open to be considered by the APIIC in accordance with the terms and conditions of the agreement of sale. This Court finds no reason to take a different view in the matter. However, as some of the learned counsel appearing for the petitioners in this batch of cases argued that certain aspects were not considered in ECI Engineering and Construction Co. Ltd. MANU/AP/0902/2012 : 2013 (1) ALT 634:2013 (2) ALD 466, this Court deems it proper to deal with the same.”

24. In SRI VENKATESWARA WAREHOUSING PRIVATE LIMITED v. A.P.INDUSTRIAL INFRASTRUCTURE CORPORATION LIMITED⁴ another single Judge of our High Court in para 7 laid down as under:-

“Admittedly, the petitioner was allotted the land to an extent of Ac. 208.07 at Industrial Park, Ballavolu, Chillakur Mandal, SPSR Nellore District vide letter dated 27-01-2011 and the petitioner paid ` 2,54,68,400/- and the petitioner entered into an agreement with the respondent on 28-01-2011 and having agreed to the terms and conditions of the agreement dated 28-01-2011, the petitioner signed the same. The only dispute raised by the petitioner is that the petitioner company was not being put in possession of the subject land in pursuance of the agreement, as such, the project work was not commenced. The respondent categorically stated that as per the possession certificate dated 29-01-2011 duly signed by the Director of the petitioner company, the possession was handed over to the petitioner and the same is disputed by the respondent and the allotment of land was cancelled vide proceedings in Lr.No. ZO/APIIC/NLR/IP-Ballavolu/Sri Venkateswara/09/1021, dated 22-09-2012 on the ground of violation of clause 9(c) of the agreement, which reads thus:

⁴ 2015 (2) ALT 6

"The party of the Second Party shall within six months of being put in possession of the said land and commence construction of factory buildings after securing necessary clearances from the competent authorities, like building plan approvals, filing application with APTRANSCO, other permissions/clearances etc., the party of the second part shall go into commercial production duly erecting machinery and obtaining regular power supply connection within two years of being put in possession of the allotted land

Any extension of time, if considered, will be subject to levying of penalty at 10% on the land cost at the prevailing rates. No extension for more than 2 years can be entertained."

25. The above authorities which have direct bearing to the facts of the case in hand clearly laid down that if the allottee fails to comply with the terms and conditions of the allotment letter, the respondent/Corporation is competent to cancel the allotment which cannot be challenged.

26. In the instant case, as already stated, the land was allotted to the petitioner/society on 24.04.2003 and for nearly ten months instead of making the payment of about Rs.1.10 crores, the petitioner/society requested the Corporation to reduce the cost of land and started negotiations and bargaining on the grounds which were not open to them. In spite of the request being rejected by the Corporation and society being called upon to fulfil the terms and conditions of the allotment letter, the petitioner/society has once again reiterated their previous request by offering a different rate per square meter as against the rate fixed by the Corporation. Therefore, the impugned order cancelling the allotment in favour of the petitioners/society cannot be interfered with.

27. Once the cancellation made by the respondent/Corporation in favour of the petitioner/society is held to be valid, they cannot question the allotment of the self-same land to another organization as has been done in the instant case. After cancelling the allotment in favour of the petitioner/society, the respondent/Corporation allotted the same land to IRWO for a total consideration of about Rs.1.99 crores, which was also subsequently cancelled and which is the subject matter of W.P.No.17077 of 2005. In view of the above, there are no merits in the writ petitions filed by the petitioner/society and therefore W.P.Nos.5876 and 7581 of 2004 are liable to be dismissed.

28. Point No.2:- As noticed from the above discussion, after cancelling the allotment of the land to the Cooperative Society, the self-same land was allotted to IRWO for a total consideration of Rs.1.99 crores. This was also subsequently cancelled by the respondent/Corporation vide letter dated 06.06.2005 which is challenged on the ground that the said cancellation is without any notice and the order cancelling the allotment do not specify the grounds on which the allotment is cancelled.

29. A perusal of the record shows that right from the year 2002, the petitioner/IRWO had been requesting for the allotment of the land in Sy.No.184 which is abutting the land that was allotted to the IRWO where they have already constructed 151 dwelling units for the benefit of the in-service and retired employees of the Indian Railways. Since there is some more demand for house sites, IRWO had been requesting the respondent/Corporation to allot the land so that more than 110 dwelling units can be constructed for the benefit of the employees. Right from

September, 2002, IRWO had been requesting the Corporation to allot the land which was however allotted to the Cooperative society which was subsequently cancelled. The respondent/Corporation after cancelling the allotment in favour of M/s.Sree Krishna Mutually Aided Cooperative Society Limited, has allotted the self-same land to IRWO on 20.03.2004. The cost of the land was determined at Rs.1,80,29,385/- @ Rs.825/- per sq.mtr. Subsequently, on measuring the land, the total cost of the land allotted to IRWO was enhanced to Rs.1,99,26,461/-. This was informed to the petitioner/IRWO on 06.06.2004. In pursuance to the original allotment letter, dated 20.03.2004, IRWO has paid a sum of Rs.1,80,29,385/- to the respondent/Corporation which was acknowledged on 02.04.2004 i.e., within ten days of the allotment the entire amount was paid by the petitioner/IRWO. But, subsequently, additional amount was demanded on 06.04.2004 and the petitioner/IRWO has paid the said difference of amount also which was acknowledged by the respondent/Corporation on 21.04.2004. It is manifest that even though the petitioner/IRWO was given ninety days time to pay the amount from 20.03.2004, within one month they remitted the entire amount of nearly Rs.2 crores to the respondent/Corporation. After about a year, abruptly the respondent/Corporation issued a letter on 06.06.2005 which reads as under:-

“With reference to the subjected cited, the allotment of 5.40 acres of land made in favour of M/s.Indian Railway Welfare Organisation at IDA – Cherlapally for construction of houses is hereby “CANCELLED”. The amount paid by you will be refunded in due course.”

30. As per the terms and conditions of the provisional allotment letter, the allottee was required to pay the consideration within ninety days but the same was paid within one month. No other terms and conditions of the allotment appeared to have been violated by the petitioner/IRWO.

31. Even though in the order cancelling the allotment, no reasons whatsoever are mentioned but in the detailed counter that is filed by the respondent/Corporation in the writ petition it is stated that the respondent/Corporation has taken a policy decision that the vacant land earmarked for housing in the industrial areas should be put to industrial use only, in view of the growing demand for industrial land. As per the terms and conditions of the allotment letter dated 20.03.2004, no such condition is mentioned that the respondent/Corporation is reserving the right to cancel the allotment on the ground which is mentioned in the counter affidavit.

32. Without issuing any show cause notice, for no reasons, whatsoever, the respondent/Corporation has cancelled the allotment by a cryptic three line letter which is arbitrary and cannot be countenanced. Even though the respondent/Corporation is having authority to cancel the allotment, but the same should be for the reasons to be stated in the order, but it cannot be an arbitrary cancellation. Therefore, the order cancelling the allotment in favour of IRWO, dated 06.06.2005, cannot be sustained and the same is liable to be set aside. The writ petition filed by IRWO is therefore to be allowed.

33. In the result, Writ Petitions No.5876 and 7581 of 2004 filed by M/s.Sree Krishna Mutually Aided Cooperative Society Limited are

dismissed and W.P.No.17077 of 2005 filed by IRWO is allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand cancelled in consequence.

M.S.K.Jaisw al, J

Date: 4th October, 2017
Dsr/smr

