

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

**CWP No. 5673 of 2015 (O&M)
DECIDED ON : 20.04.2017**

Hisar City Shopkeeper Welfare Society
...Petitioner

versus

Haryana State and others
...Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. Amit Jain, Advocate,
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana .

Mr. R. S. Longia, Advocate,
for respondent No.4.

AMIT RAWAL, J.

The petitioners known as Hisar City Shopkeeper Welfare Society (for short "the petitioner society") have sought indulgence of this Court for issuance of an appropriate writ in the nature of Certiorari/Mandamus or such other appropriate writ, order or direction, on the premise that respondent authorities have not implemented the scheme/policy decision in the letter and spirit in allotting the shops/lands to the members of petitioner society; and for quashing of order dated 05.05.2014 (Annexure P-13), being illegal, arbitrary and violative of Article 14 and 19 (1)(g) of the Constitution of India.

Learned counsel appearing on behalf of the petitioner society submits that petitioner society, being registered one under the Haryana Registration and Regulation of Societies Act, 2012, consists of members who are sitting as tenants over the shops/land allotted to them by the Municipal Corporation, Hisar on monthly rent less than Rs.500/- and few of the members are tenants since 1956.

Vide letter dated 01.02.2006 (Annexure P-2), the Financial Commissioner and Principal Secretary to government of Haryana, Urban Development Department, while writing a letter to all the departments, notified that some land, buildings and shops of Municipal Committees/Municipal Councils have been given on lease/Teh Bajari/rent and nominal income derived from such property, has not been decided till 31.12.1996 and therefore, the government while considering the said matter, had taken a decision to the effect that the land, building and shops whose monthly rent is less than Rs.500/-, be sold to the persons presently in possession and while determining the sale price of the aforesaid properties, a committee be constituted by each Municipal Committee/Municipal Council under the Chairmanship of the concerned Deputy Commissioner.

It is further contended that though the petitioner society was not required to apply for the same, as status of the petitioner society being tenants on the municipal land, is a conceded position. It was further desired that after constituting

committee for determining the sale price of the concerned properties, a proposal was required to be sent to the State Government for approval. In fact, no report was submitted by the respective committees and the State Government through respondent No.2-The Director, Urban Local Bodies Department, Haryana, vide communication dated 01.04.2010 (Annexure P-3), sent a reminder to submit the report as early as possible. The respondent-Corporation, vide its letter dated 01.02.2011 (Annexure P-4), intimated the Deputy Commissioner, Hisar that the proposal had already been sent to his office and necessary action may be taken for seeking the approval of Government, but the Deputy Commissioner did not take any decision and thereafter, another reminder, vide letter dated 10.03.2011 (Annexure P-5), was sent. The Deputy Commissioner, vide letter dated 24.03.2011 (Annexure P-6), directed the respondent-Corporation that before convening the meeting, the value of each shop be assessed by the Executive Engineer, PWD (B&R), Hisar. Accordingly, a meeting was sought to be convened on 20.04.2011 under the Chairmanship of Deputy Commissioner, which fact is evident from the letter dated 13.04.2011 (Annexure P-7), but the same was postponed to 29.04.2011 vide communication dated 26.04.2011 (Annexure P-8). Thereafter, the matter was adjourned number of times as none of the parties took up the matter. The matter was also reported in various newspapers. A detailed representation dated 08.03.2013

(Annexure P-10) mentioning that the petitioner society was ready to deposit the price to be determined by the respondent authorities, was sent yet nothing was heard from the respondents. The petitioner society was again constrained to send reminders on 15.05.2013 and 26.06.2013. The members of the petitioner society submitted their applications along with the affidavits conveying their willingness and readiness for the purchase of shops/buildings or land under their tenancy as per the policy. The copy of one such application along with the affidavit was annexed as Annexure P/11 and P/11 (colly). Since the respondents did not budge or make any headway, the petitioner society was constrained to approach this Court vide CWP No. 28073 of 2013 and this Court vide order dated 19.12.2013 (Annexure P-12), disposed of the said writ petition with a direction to respondent No.4-Municipal Corporation, Hisar, to take decision on the representation dated 08.03.2013. However, the petitioner approached the concerned authority for considering the case of the petitioner society but the same has erroneously been rejected vide impugned order dated 05.05.2014 (Annexure P-13), on the premise that Government of Haryana, Urban Local Bodies Department, Haryana, vide memo dated 19.02.2014, had withdrawn the instructions dated 01.02.2006. He submits that the respondents have not been able to make out a difference between the word "Instructions/Policy", whereas Annexure P-2 did not envisage any instructions but it was

technically a policy/decision for allotment and even the memo dated 18.12.2007 (Annexure R-3) interpreted by the Director, Urban Local Bodies, Haryana, is also a misnomer. He submits that it is not the fault of petitioner society and an obligation was enjoined upon the respondents for determining the sale price, as valuable right had accrued. Even the impugned decision is against the Doctrine of "Legitimate Expectation". The respondents had caused great hardship to the members of petitioner society by withdrawing the policy. The policy cannot take away valuable rights of the petitioner society. Therefore, prayer was made for protecting their rights by passing appropriate directions.

In support of his contention, he has relied upon order dated 31.01.2017 passed in CWP Nos. 9790 of 2008 and 14998 of 2004 with regard to rates, whereby the Municipal Corporation, was directed to allot such types of shops, buildings and land at the rates which were prevailing at the time when the applications were in vogue or submitted.

On the contrary, learned counsel for Municipal Corporation-respondent No.4, at the very outset, has taken preliminary objection with regard to maintainability of the writ petition on the premise that no cause of action has accrued in favour of the petitioner society. In fact, letter dated 01.02.2006 (Annexure P-2) is not a policy but the instructions, which were withdrawn vide letter dated 19.02.2014 (Annexure R-1). Another

objection regarding maintainability had been taken on the ground that it is a matter of State Policy of Government being beneficial legislation welfare State, therefore, the petitioner cannot implore upon them in the manner and mode indicated above by filing the writ petition. He has emphatically relied upon the order dated 18.12.2007 and urges for dismissal of the writ petition. He further submitted that vide notification dated 17.03.2010, the area of Municipal Council, Hisar was upgraded as Municipal Corporation, Hisar and therefore, disposal of such properties could only be made possible according to the provisions of Section 164 of the Haryana Municipal Corporation Act, 1994 but not under the aegis of Deputy Commissioner.

I have heard learned counsel for the parties and appraised the paper-book. I find merit and force in the submissions of Mr. Amit Jain, learned counsel for the petitioner as from the perusal of letter dated 01.02.2006 (Anexure P-2) and letter dated 19.02.2014 (Annexure R-1), it appears that the Director, Urban Local Bodies Department, had misinterpreted the instructions contained in letter dated 01.02.2006 (Annexure P-2), as it does not envisage, that at any point of time it was a proposal or instructions. In fact it has emanated from the office of Financial Commissioner-cum-Principal Secretary to Government of Haryana, Urban Development Department, to all the Deputy Commissioners, Haryana State, whereby a decision had been taken to allot the shops, buildings and land to the

tenants whose monthly rent is less than Rs.500/-. The only exercise which the respondents had to do jointly was that the Municipal Council/Municipal Corporation and the Deputy Commissioners had to determine the rates. The matter was kept pending for sufficient long time, without any rhyme and reason. The said act of respondents, in my view, certainly entitles the petitioner society to file judicial review as the petitioners had accepted that the respondents would charge the obligation in the letter and spirit of the decision taken in letter Annexure P-2. Having failed to do so and the stand taken in letter dated 01.04.2010 (Annexure P-3), a relevant para of which is reproduced as under, leaves no manner of doubt that it was taken after the decision taken in the letter in abrogation of previous policy :-

“ After careful perusal of the relevant record. It is found that in this case, the proceedings for fixation of valuation of properties has been completed and the valuation of the properties proposed to be sold is available on the record file. The perusal of the report prepared by the Committee constituted for fixation of the valuation of the shops shows that all the properties are value of more than Rs.20,000/- of each property and the same cannot be disposed of according to the provisions contained in Section 164 of the Municipal Corporation Act, 1994. The representation of the petitioners/applicants dated 08.03.2013 does not fulfill the requirements of the provisions of Section 164 of the Municipal Corporation Act 1994. So far as the demand of the petition/applicant (?) to sell the shop

according to the instructions of Haryana Government issued vide Memo No.8/156/88-6K-T dated 01.02.2006 is concerned, the said instructions have been withdrawn by the Principal Secretary, Govt. of Haryana, Urban Local Bodies Department vide his Memo No.8/156/1988-1A-1 dated 19.02.2014. Therefore, the representation dated 08.03.2013 has no force in the eyes of law. Therefore, the representation dated 08.03.2013 is hereby rejected accordingly.

The petitioners/applicants are free to file fresh application according to the provisions contained in Section 164 of Municipal Corporation Act, 1994."

Such a stand, in my view, is wholly erroneous, illegal and arbitrary and cannot stand on the touch stone of reasonability or fall within the purview of doctrine of "Legitimate Expectation". The petitioners kept on waiting for permission despite their willingness and readiness to deposit the amount. In a welfare State, Government authorities are expected to come out with beneficial decision or policy which have to be regarded and respected and cannot be ignored or the authorities cannot be prevented to deny its benefit in the manner and mode as noticed above.

For the reasons recorded above, the decision rendered in Annexure P-3 is not sustainable and is hereby set-aside. The respondents are directed to allot the shops/buildings and land underneath the business premises strictly as per provisions of letter dated 01.02.2006 (Annexure P-2) at the rates prevailing at

the time when the petitioner society had submitted their willingness and readiness to deposit the amount. The view of mine with regard to rate is derived from the judgment passed in CWP No. 28073 of 2013 (supra). Let this exercise be done within a period of three months. In these circumstances, the writ petition stands disposed of in the aforementioned terms.

(AMIT RAWAL)
JUDGE

APRIL 20, 2017
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Whether speaking/reasoned	YES/NO
Whether reportable	YES/NO