IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5639 of 2016 (O&M)
Date of Decision: December 15, 2017

Ganpat Lal Thakur ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM:HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. S.S. Dinarpur, Advocate and
Mr.Subhash Godara, Advocate
for the petitioner.

Mr. Ayuwan Singh, AAG, Haryana.

Mr. Lokesh Sinhal, Advocate
for respondents No.3 to 6.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order dated 05.07.1990 (Annexure P-1) passed by the Estate Officer, HUDA, Panchkula- respondent No.6 withdrawing the provisional allotment letter dated 31.01.1983 and the order dated 22.07.2014 (Annexure P-3) passed by the Financial Commissioner-cum-Principal Secretary, Department of Town and Country Planning, Haryana - respondent No.2, whereby, the order of the Appellate Authority dated 30.09.1997 setting aside the order of Estate Officer dated 05.07.1990 was quashed.

In the year 1981, Haryana Urban Development Authority (HUDA) floated a scheme for allotment of industrial plots in Phase-II, Industrial Area, Panchkula. The petitioner along with his partner Sh. Braham Parkash had formed a firm under the name and style of 'B & G Instruments'. On behalf of the said firm, they applied for allotment of industrial plot measuring 1000 sq. meters. The application form dated

12.03.1981 was accompanied by a demand draft of ₹5,500/- being 10% of the tentative price of the plot as earnest money. The plot was to be used to set up an industry for manufacture of electronic instruments. The petitioner and his partner Braham Parkash were called for interview before the Technical Committee on 22.04.1982. As they were found eligible for allotment of plot measuring 2 Kanal in Phase-II, Industrial Area, Panchkula, respondent No.6 issued a letter dated 31.08.1982 intimating that a plot measuring 1000 sq. meters had been earmarked for them in Industrial Estate, Panchkula. It was stated that before a formal letter of allotment is issued certain conditions were required to be complied with within a period of 180 days. The said conditions are as under:

> *"i) You may please get yourself registered with the concerned General Manager, District Industries Centre in the case of a small scale unit or in the case of a large & Medium scale unit you should get Director General of Technical Development (DGTD) registration or letter of intent.*
>
> *ii) You are also requested to send us your implementing schedule. A format for guidance is enclosed. Normally the unit should got into production within two years from the date of possession of the plot.*
>
> *iii) You are requested to get the drawing of your unit prepared from a qualified/registered Architect and submit the same to the undersigned (Extract of the zoning regulations is enclosed).*
>
> *iv) Simultaneously, you may, if necessary, approach the Haryana Financial Corporation/ a Schedule Bank for sanction of loan required to meet the cost of land, building and machinery.*
>
> *v) You may also supply the complete list of plant and machinery to be installed in your proposed unit for scrutiny.*
>
> *vi) In case you accept this offer, please send us Rs.8250/- to complete the amount equal to 25% of the total tentative price within 30 days from the issue of the letters."*

By a further letter dated 31.01.1983, with reference to the earlier letter dated 31.08.1982, respondent No.6 informed that plot No.38 in Industrial Area Phase-II had been earmarked. The original applicants were requested to complete the formalities connected with the implementation of the project within the time as specified in the letter dated 31.08.1982.

It is the case of the petitioner that all the conditions as specified in the letter 31.08.1982 were complied with within time. This has been outlined in the petition in the form of a chart as under:

i) You may get your unit registered with the concerned General Manager, District Industries Centre.	*i) Submitted a request for registration of unit on 28.12.1982.*
ii) You are requested to send us your implementation schedule.	*(ii) Submitted on 28.12.1982*
Iii) You are requested to get the drawings of unit prepared from qualified/registered Architect and submit the same.	*(iii) Drawings were submitted by the petitioner and his partner and Scrutiny fee was also deposited. The said drawings were ultimately approved by concerned authorities o 02.09.1983.*
(iv) you may submit the list of plant and Machinery to be installed at your proposed unit for scrutiny.	*(iv) List of plant and Machinery to be installed submitted on 28.12.1982.*
(v) In case offer is acceptable a draft of Rs. 8250/- to complete the amount equal to 25% of the tentative price was to be deposited within 30 days of the issuance of allotment letter.	*(v) This amount was deposited vide draft No.C-15 877802/660/82 along with forwarding letter dated 29.9.1982 (which was received vide Diary No.2159/56 dated 30.9.1982) and entry to this effect is available at Sr. No.3267 on 5.10.1982.*
(vi) You may, if necessary, approach the Haryana Financial Corporation/Schedule Bank for sanction of loan required to meet cost of land, building and machinery.	*(vi) On 28.12.1982, it was undertaken in writing that the project will be self financed by the petitioner. It was further clarified vide letter dated 30.5.1985 that Project will be a Self Financed Project and petitioner do not want to ask for loan from any Financial institution and had taken steps for execution of the project by getting the site plan approved. However, later on due to changed circumstances, petitioner intimated that he would be approaching HFC for loan.*

As Braham Parkash, the partner of the petitioner was selected to the post of Lecturer in IIT, Delhi, and consequently was unable to continue as a partner, hence he addressed a letter dated 11.10.1983 along with an affidavit that his right and interest in the plot be transferred to his wife Ms. Anita Parkash. In response to this application, respondent No.6 addressed a letter dated 06.01.1984 to the Director, Industries for examining the matter. Subsequently Braham Parkash expressed his intention to transfer his share in the name of the petitioner and thereafter the case for transfer was pursued by the petitioner. The petitioner addressed a letter dated 30.05.1985 to respondent No.6 requesting that the share of Braham Parkash be transferred in his name. He also gave an undertaking that he would finance the project from his own sources. He also pointed out that he had already taken certain steps for execution of the project and had got the site and building plan approved on 02.09.1983 and was in the process of getting the unit registered as small scale industry with the Industries Department. The petitioner also forwarded a letter from Braham Parkash that he had no objection if the plot was allotted in the name of the petitioner. Respondent No.6 vide his communication dated 4.7.1985 forwarded the case of transfer of ownership in favour of the petitioner to the Chief Administrator HUDA. Vide separate letter dated 30.07.1985 he asked Braham Parkash to submit certain documents namely indemnity bond, affidavit etc. The Chief Administrator, HUDA vide his letter dated 30.07.1985 (Annexure P-18) addressed to the respondent No.6 asked the latter to give permission to transfer of share of Braham Parkash in the plot in favour of the petitioner after completing the formalities as contained in the guidelines.

It is the case of the petitioner that some time was taken in completing the formalities as Braham Parkash was out of India. Immediately on arrival in India, he submitted indemnity bond dated 21.12.1987. The petitioner vide his letter dated 14.03.1988 requested respondent No.6 to issue regular letter of allotment. It is further the case of the petitioner that despite all the formalities having been completed, the share of Braham Parkash was not transferred in favour of the petitioner nor was any transfer letter issued to him. Respondent No.6 addressed letter dated 17.08.1988 to Chief Administrator, HUDA seeking approval for transfer of share in the name of the petitioner and affirming that all formalities in this regard have been completed by the petitioner. The Chief Administrator, HUDA responded vide his letter dated 06.09.1988 that the petitioner should be advised to apply afresh in accordance with existing industrial policy and deposit the requisite transfer fee, graded fee and extension fee etc. The petitioner vide his letter dated 03.10.1988 (Annexure P-24) requested the Estate Officer to transfer the plot in his name. He also deposited the transfer fee. On 03.10.1988 respondent No. 6 through a letter addressed jointly to the petitioner and his partner Braham Parkash informed that the allotment letter of the plot may be got issued from the office. The letter also conveyed that after issuing the Regular allotment letter further action will be taken according to the new transfer policy. However, no such letter of allotment was issued. Instead the Estate Officer vide order dated 05.07.1990 (Annexure P-1) withdrew the offer of allotment on the ground that the petitioner had not completed the formalities specified in the letter dated 31.08.1982 within specified period of 180 days despite number of opportunities having been afforded to him. The petitioner filed an appeal against that order before the Administrator, HUDA. The appeal remained pending for about seven years and it was only on 30.09.1997 that order was passed whereby the order dated 05.07.1990 was set aside on the ground that no opportunity of hearing had been given to the petitioner before passing the order withdrawing the provisional letter of allotment (PLA). The case was remanded to the Estate Officer, Panchkula with a direction to decide the same afresh after giving opportunity of hearing to the petitioner.

After the remand, the petitioner appeared before respondent No. 6 along with the entire record on 29.01.1998. It is the case of the petitioner that even though the petitioner produced before him the entire record regarding fulfilment of the terms and conditions of the letter dated 31.01.1982, yet he did not decide the matter. The petitioner even submitted an undertaking dated 28.03.2011 that he would complete the construction and start the production within specified period and deposit all the dues and penalties as per HUDA Policy and that the allotment of plot be issued to him. He further undertook to indemnify HUDA and its employees for any loss that may occur due to allotment of plot to him. A letter dated 20.04.2011 was issued by respondent No. 6 calling upon the petitioner to appear for personal hearing, in response to which, the petitioner appeared on 22.04.2011. Thereafter the case was adjourned to 16.05.2011. On 16.05.2011, respondent No. 6 recorded that the petitioner had completed all the conditions as required by letter dated 31.08.1982 and observed that his case be considered for regular allotment at the current rate. The petitioner was willing to accept the allotment at the said rate. But once again there was a lull and no further proceedings were taken by him. Exasperated, the petitioner was constrained to file revision petition before respondent No.2 for directing respondent No. 6 to pass an order. The said petition having been dismissed and the order dated 30.9.1997 passed by the appellate authority in favour of the petitioner having been set aside, the petitioner has filed the present writ petition.

Sh. S.S. Dinarpur, learned counsel for the petitioner submitted that the petitioner had fulfilled all the conditions as per the provisional letter of allotment dated 31.08.1982. Further despite complying with all the formalities as required, the share of Braham Parkash was not transferred in his name and regular letter of allotment was not issued. Instead the matter was kept pending without any order being passed by the Estate Officer after the matter was remanded to him for fresh decision. Ultimately, on a revision petition filed by the petitioner seeking a limited relief to direct to the respondent No. 6 to decide the case, the revisional authority chose to pass an order setting aside the earlier order dated 30.9.1997, which was not even the subject matter of revision.

Mr. Lokesh Sinhal, learned counsel for the respondent- HUDA on the other hand contended that the application for allotment was submitted by Braham Parkash and Ganpat Lal Thakur (petitioner) on behalf of B&G Instrument, a partnership firm. Vide letter dated dated 31.08.1982, applicants were informed that it was decided to earmark a plot measuring 1000 square meters in Panchkula Industrial Estate, Phase-II. They were asked to complete certain formalities concerned with the implementation of the project within a period of 180 days from the date of issue of letter. It was made clear in the letter itself that on failure to complete the formalities within the stipulated time, the authorities would be constrained to withdraw the offer. Subsequent letter dated 31.01.1983 informing about earmarking plot No.38, Phase-II, Panchkula for allotment was issued only to facilitate and ensure the completion of formalities expeditiously. Thus only a provisional offer of allotment was made which was subject to fulfilment of certain conditions. However the conditions were not fulfilled within the specified period of 180 days. Elaborating, he stated that the provisional registration with the industries department was not obtained within time. In the implementation schedule submitted on 03.01.1983, the applicants had submitted that they would file application with the Financial Institutions for loan within three months from the date of possession and at the same time submitted that no loan is required as funds will be arranged from own sources. However, the said sources were not explained. Thereafter vide letter dated 24.08.1983 they were asked regarding their source of investment. Vide letter dated Nil received on 21.02.1984, the applicants informed that the loan application is being submitted with Haryana Financial Corporation. Vide letter dated 23.01.1984 (Annexure P-12-A) the applicants were intimated about the formalities that still remained to be complied with which were (i) submission of building plan, (ii) getting the unit registered with the industries department (iii) submitting the loan application with any financial institution and (iv) submitting list of completed plant and machinery to be installed. They were asked to complete the formalities within thirty days which they failed to do.

The request of the petitioner for transfer of the share of Braham Parkash in the name of the petitioner was forwarded by respondent No. 6 to the Director of Industries on 06.01.1984 to examine the same and send his recommendations. In response, Director of Industries vide his letter dated 06.07.1985 informed that the petitioner had appeared before the Selection Committee of the department on 01.07.1985. The Committee had observed that the provisional allotment letter was issued to them long back but they had not taken any effective steps till then for the implementation of project so much so that even provisional registration had not been done. The provisional letter of allotment had not been got converted into regular allotment letter. It was concluded that the entrepreneur was not serious in setting up the project. As such, case was not recommended.

He further argued that there was inordinate delay on the part of the petitioner in submitting documents with regard to his request for transfer of the share of Braham Parkash in his name. On 30.07.1985 he was asked to submit certain documents which were submitted only on 10.05.1988. The matter was, thereafter referred by respondent No.6 to the Chief Administrator, HUDA for approval. The Chief Administrator, HUDA vide Memo dated 30.05.1989 intimated that the transfer of the above said plot in sole name of the petitioner instead of the joint name of Braham Parkash and Ganpat Rai Thakur could not be allowed. He further recommended cancellation of the offer of allotment as applicants had failed to complete the formalities within time. It was thereafter that the offer of allotment was withdrawn vide letter dated 05.07.1990.

Justifying the order dated 05.07.1990 Ld. Counsel argued that at that stage there was only an offer of allotment dated 30.08.1982 in favour of the original applicants. It had been withdrawn as the conditions stipulated therein had not been complied with. He argued that as there was no allotment in favour of the applicants there was no question of giving any opportunity of hearing to the petitioner. The provisions of Section 17 of the Haryana Urban Development Authority Act, 1977 (for short "1977 Act") were not attracted. The petitioner had no statutory remedy of appeal either under that section or any other provision. Hence, the order of the Administrator HUDA dated 30.09.1997 purporting to be the order of the Appellate Authority was rightly set aside by the Respondent No.2 as being without jurisdiction and hence null and void.

We have heard learned counsel for the parties and perused the record.

It is clear from a plain language of the letter dated 31.8.1982, that it was in the nature of an offer of allotment. The applicants were required to complete the formalities specified therein within a period of 180 days. It was only thereafter that a formal letter of allotment would be issued which would contain the terms and conditions governing the allotment. As the applicants defaulted in completing the formalities within the time specified therein, the Estate Officer was justified in withdrawing the offer vide letter dated 05.07.1990. The conditions not complied with that were pointed out by Sh. Sinhal have been referred to earlier and are also listed in the letter 23.01.1984 (Annexure P-12-A). The report of the Director of Industries Haryana dated 6.7.1085 which was sent to respondent No.6 also fortifies this claim regarding the defaults:

"*Sh. Ganpat Lal Thakur appeared in person before the Selection*

Committee of this Depat on 01.07.85. The committee has observed that the provisional allotment letter was issued to them long back but they have not taken any effective steps so far to implement the project and even provisional registration has not been got done. The provisional letter of allotment has not been converted into final allotment letter. The entrepreneur does not appear to be serious in setting up the project. As such the case is not recommended."

As at that stage here existed no binding contract between the parties, and there was no regular allotment in favour of the applicants, hence the provisions of Section 17 of the 1977 Act which prescribes the procedure for resumption for breach of the conditions of transfer and the remedies thereagainst did not come into play. Therefore there was no question of issuing any notice before withdrawal of the provisional offer of allotment. Consequently there was no question of any appeal being filed before the Administrator.

In this context, we may usefully refer to a decision of this Court in **Rita Jindal v. State of Haryana, 2016(2) PLJ 541,** wherein, it was held that if there is a breach of the terms of the Letter of Intent, the authorities could decline to enter into a binding relationship with the party and the doctrine of *audi alteram partem* was not attracted in such a situation. The relevant observations are as under:

"13. We are reminded to point out, at this juncture, that no binding contract was entered into between the parties, and it was only a Letter of Intent that was issued to the petitioner. Once there was a brazen and wilful breach of the terms of LOI, the authorities could always decline to enter into any binding relationship with the petitioner. The observations recorded by the Hon'ble Supreme Court in ***Rajasthan Cooperative Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service Pvt. Ltd. and others, 1996(10) SCC 405****, fortify this position:*

> *"7. The High Court was also not right in importing the doctrine of audi alteram partem in these circumstances. If the conduct of Respondent 1 was such that it did not inspire any confidence in the appellant, the appellant was entitled to decline entering into any legal relationship with Respondent 1 as its selling agent. The Letter of Intent merely expressed an intention to enter into a contract. If the conditions stipulated in the Letter of Intent were not fulfilled by Respondent 1, and if the conduct of Respondent 1 was otherwise not such as would generate confidence, the appellant*

> *was entitled to withdraw the Letter of Intent. There was no binding legal relationship between the appellant and Respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not."*

Thus, in our view Respondent No.2 rightly set aside the order dated 30.09.1997 passed by the Administrator HUDA holding it to be without jurisdiction.

Respondent No.2 in the impugned order noticed the petitioner filed the revision petition on 30.09.2013, for seeking implementation of the orders of the Appellate Authority dated 30.09.1997 i.e., after about sixteen years. Though, he had made two representations on 29.01.1998 and 31.12.1998 but thereafter he slept over the matter. It is only after steep increase in the prices of the industrial plots and the real estate sector that he woke up from his slumber in 2011 when he submitted an unsolicited undertaking to the Estate Officer dated 28.03.2011 (Annexure P-28).

We are also of the view that there was no reason to entertain any claim on behalf of the petitioner at such a belated stage, even assuming the direction remanding the case to the Estate Officer for decision was valid, which as observed earlier it was not.

Thus, we find no infirmity in the impugned orders.

The writ petition is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

December 15, 2017
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No