

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.5390 of 2018

Date of Decision: August 01, 2018

Upvan Properties Private Limited

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

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

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Surya Kant, J. (Oral)

The petitioner is a Builder-cum-Developer Company. It submitted three applications on 01.01.2016, 24.05.2016 and 01.01.2016 for the grant of licence for its land measuring 3.342 acres, 0.50 acres and 0.50 acres, situated within the revenue estate of village Wazirabad, Tehsil and District Gurugram. The land falls in Sector-43, Gurugram under the 'Gurgaon-Manesar Development Plan-2031'. The petitioner applied for grant of licence to develop its commercial projects on the land. The licence was to be granted in accordance with the provisions of Haryana Development and Regulation of Urban Area Act, 1975 and the Rules/Policy framed thereunder.

[2] It is also a matter of record that soon before the petitioner had applied for the grant of licence in January and May, 2016, this Court vide judgment dated 26.08.2015 rendered in CWP No.21942 of 2013 (Pawan Bhatia and others versus State of Haryana and others) strongly deprecated the practice of granting licences on first come first serve basis and opined

that the licence which is a public property, should be granted by adopting

some transparent, non-discriminatory and fair mechanism.

[3] It appears that the State Government has been contemplating to re-visit its policy in the light of the observations made by this Court in Pawan Bhatia and others' case (supra) and eventually, the State Government notified a revised policy vide notification dated 10.11.2017 (P-11). Under the new policy, the bid system has been introduced for the grant of licence.

[4] On the basis of new policy, the pending applications of the petitioner have been returned by the Directorate of Town and Country Planning, Haryana, vide communications dated 12.01.2018, 29.12.2017 and 12.01.2018 (P-8, P-9 & P-10), respectively alongwith 'process fee' deposited by the petitioner with liberty to submit fresh application(s) in accordance with the new policy notified on 10.11.2017.

[5] The petitioner assails the above-stated communications on the grounds that (i) the new policy decision dated 10.11.2017 cannot be applied retrospectively and applications moved in January and May, 2016 deserve to be decided as per the policy prevalent at that time; (ii) return of the application amounts to rejection thereto and such rejection is contrary to Rule 9 of the Haryana Development and Regulation of Urban Areas Rules, 1976; (iii) the petitioner is the sole applicant who had applied for the grant of licence in the subject area before the new policy came, hence, it has a vested right for the grant of licence and (iv) the respondents have acted arbitrarily in keeping the petitioner's applications pending for two years.

[6] We have heard learned counsel for the petitioner in support of the contention and gone through the record.

[7] We, however, do not find any substance in any of the contentions. We say so for the reasons that mere submission of application does not clothe the petitioner with a vested or indefeasible right to claim licence. Much before the petitioner had applied for grant of licence, the practice prevalent in the State of Haryana could not stand to the test of judicial scrutiny of this Court, hence any action taken thereunder was liable to fall flat. The said policy used to promote the culture of pick and choose and had no transparent criteria to examine the *inter-se* merit of the applicants. No right thus can be said to have accrued in favour of the petitioner under that policy.

[8] It stands out from the preface of the new policy notified on 10.11.2017 that the State Government has been contemplating to formulate a new policy after the decision of this Court in Pawan Bhatia and others' case (supra). It is not the case of the petitioner that the respondents continued to grant licences to other similarly placed developers under the old policy or that its applications alone were kept pending in a discriminatory manner. It thus appears that authorities kept the old policy in abeyance till a new policy was notified whereunder the petitioner or other competitors can bid for the grant of licence. The licence is principally granted under the provisions of 1975 Act. The policy regime merely facilitates the authorities to give effect to the statutory scheme. Such policy *per se* does not confer a right on an applicant. Hence, the petitioner cannot rely upon the old policy to seek a mandamus that its applications for the grant of licence must be considered as per the old policy.

[9] For the reasons afore-stated, we do not find any merit in this writ petition which is accordingly dismissed.

[SURYA KANT]
JUDGE

August 01, 2018
mohinder

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No