2023:PHHC:155138

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

117 **CWP-27287-2023**
Date of Decision: 05.12.2023

LOKESH CHAND GUPTA

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Aman Pal Advocate and
Mr. Rishabh Chaudhary, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Vivek Saini, Advocate
for respondents No.2 and 3.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the Award dated 23.08.2023 passed by the Permanent Lok Adalat (Public Utility Services), Faridabad, whereby application filed by the applicant for granting possession of the dairy plot was dismissed even though Awards in favour of similarly placed persons had earlier been passed by Permanent Lok Adalat (Public Utility Services), Faridabad. A further prayer has been made for directing respondents to deliver possession of the plot to the petitioner, being successful allottee of dairy plot No.126 under Chaudhary Devi Lal Dairy Plot Scheme, as per allotment letter dated 03.05.2013 issued by the respondents.

Learned counsel for the petitioner contends that the State Government, vide its memo No.13/66/94-3C dated 12.01.1995 had approved the

Chaudhary Devi Lal Dairy Scheme at village Baselwa on the land of Municipal Corporation, Faridabad measuring 4.5 acres consisting 50 numbers of plots for shifting the dairies operating in the residential areas of old Faridabad zone to the outskirts so as to avoid the problem of foul smell; sewage and uncleanliness etc. For the purpose of identification of the existing dairy owners, a Committee under the Chairmanship of Joint Commissioner of Old Faridabad and other officials was constituted vide Memo dated 29.04.1999. The above said Committee was to make a list of the existing functional dairies in the old city. Since the available survey of diary units in old Faridabad Zone was of the year 1995, hence, it was decided by the Committee in its meeting held on 05.05.1999 to conduct a fresh survey. Hence, a Sub-Committee was constituted for fresh survey of existing dairies in old Faridabad Zone. Department was also directed to advertise invitation for applications in the newspapers as well alongwith proclamation by beat of drum.

The Sub-Committee submitted its survey list on 26.05.1999 identifying 260 dairies in the old Faridabad Zone. However, no advertisement or proclamation by beat of drum was carried out despite the decision. Even though 50 dairy owners were identified in the survey list but no one applied for the plot under the scheme due to high price, under-development etc. The matter was put up before the higher authorities. Vide order dated 09.04.2003, the Government reduced the price from Rs.1800/- per sq. yard to Rs.1200/- per sq. yard and carried out certain changes in the payment module and that plots were to be allotted on “first come first serve” basis. The revised policy was thus adopted. A provision for additional 98 plots was approved by the Government, on the request of the Joint Commissioner, M.C. Faridabad, vide order dated

01.07.2004.

The petitioner claims to have applied on 21.09.2005 being a dairy owner with 2 cows and 8 buffaloes as his dairy was running in a populated area. The petitioner was asked to deposit Rs.62,000/- as earnest money, which was done on 10.05.2006. No development, however, was carried out till 2013. M.C. Faridabad, however, demanded full payment on 04.02.2013, which was deposited on 19.03.2013 for a sum or Rs.1,81,600 vide receipt No.22, diary No.17551. A letter of allotment for plot No.126 measuring 203 Sq. Yards was, thereafter, issued. Cases were, thereafter, filed before Permanent Lok Adalat where M.C. Faridabad sought undertaking from allottees and possession certificate on the "As is where is" basis was issued to the applicants. The similar request of the petitioner was, however, not considered. The application filed before Permanent Lok Adalat was also dismissed. Hence, the present petition.

Learned counsel for the petitioner has additionally argued that the Permanent Lok Adalat (Public Utility Services), Faridabad failed to take into consideration that a letter of allotment had actually been issued in favour of the petitioner. He further contends that the Permanent Lok Adalat (Public Utility Services), Faridabad had earlier passed Awards directing allotment of plots in favour of the respective applicants. Some of such Awards have been attached as (Annexure P-14 and P-15). It is contended that the case of the petitioner is similar to those allottees and that the respondents have taken a different stand in the reply filed by them so as to cause prejudice to the petitioner. He further argues that even the names of the applicants therein were not found in the list of dairy owners prepared by the Committee, however, their claims have been accepted and the respondent-MC, Faridabad has chosen not to further challenge the said Awards and has accepted the same. The said Awards have attained finality.

A pointed query was put to the petitioner as to whether the policy in question was confined to the dairies already operating in the Old Faridabad Town and as to whether the petitioner fulfilled the terms and conditions of eligibility as prescribed in the said policy. Counsel for the petitioner fairly submits that the petitioner does not fulfill the terms and conditions and submits that the policy was for re-allocation, rehabilitation and resettlement of the dairy owners as identified. He, however, submits that since the respondents have accepted the application form as well as the earnest money deposited by the petitioner, hence, he is entitled to the allotment and the respondents would be estopped from denying the entitlement of the petitioner for allotment of the dairy plot. The plea of parity is raised again during the course of arguments.

Since the advance copies of the petitioner had already been served on the respondents, the counsel entered appearance and made a statement that being a quasi judicial order under challenge and no new fact being alleged, there is no need for a separate reply. Parties were accordingly heard without a formal reply.

Counsel for respondents No.2 and 3 submits that no conveyance deed was ever executed with the petitioner, hence, there is no right created in favour of the petitioner. Moreover, the scheme was only for dairies in the old Faridabad Zone and there is no record to establish that the petitioner had any dairy in the old Faridabad Zone or that name of the petitioner featured in the survey list submitted by the Sub-Committee. Applicant was given opportunity to submit documents and proof of dairy business but he failed to do so, hence, he was not held entitled to the sought relief.

He also submits that it is evident from a perusal of the abovesaid Award that the MC, Faridabad had filed its reply before the Permanent Lok Adalat (Public Utility Services), Faridabad wherein it was averred that the State Government had approved the aforesaid policy over a land measuring 4.5 acres consisting of 50 number of dairy plots for shifting the dairies operating in the residential areas of old Faridabad Zone. The Committee under the Chairmanship of Sub Divisional Magistrate, Faridabad comprising of Joint Commissioner, MCF, District Dairy Development Officer, Deputy Director, Animal Husbandry and District Town Planner, M.C. Faridabad as Members thereof decided to conduct survey of the available dairy units in old Faridabad Zone in the year 1995. As per the survey conducted by the Sub Committee, it identified 260 numbers of dairies operating in old Faridabad Zone. Since the numbers of plots available were only 50, hence, the Committee decided to shift the dairies from old Faridabad Town first and in case there are chances to accommodate additional dairies, then existing dairies at Baselwa colony, in continuity to old Faridabad Town, were to be shifted. Subsequently, the 50 numbers of existing dairies operating in the thickly populated residential area of old Faridabad Town were identified for allotment of dairy plots. The identified dairy owners were thereafter asked to deposit 25% of the cost of the dairy plots alongwith their applications. It was also decided that the plots were to be allotted on 'first come first serve' basis. The Joint Commissioner of Old Faridabad also requested for providing 100 additional dairy plots in Chaudhary Devi Lal Dairy Scheme vide memo No.469 dated 06.05.2004 so that the dairy owners who have already deposited the token money in the Zonal Office could also be accommodated alongwith the other dairy owners of the Old Faridabad Zone. As against the abovesaid request, 98 additional plots were provided in Phase –II of the Chaudhary Devi Lal Dairy Scheme and conveyed to the Joint Commissioner vide memo dated 01.07.2004. The necessary approval from the Government was to be obtained in terms of Section 164 (b) of the Haryana Municipal Corporation Act, 1984. The applications alongwith token amount of 25% were accepted from the applicant without the approval of the Government. Money was also accepted from certain others persons who were not included in the list of 260 dairy owners, that had been identified by the Sub Committee, who were not eligible and were not found to be operating the dairies at the time of surveys in connivance by the employees. Finding that the same was contrary to the object and the applicants did not fulfill the eligibility conditions as per the scheme, the Commissioner, vide his order dated 24.06.2013 directed to refer the cases, where irregularities and violations had taken place, to the Government with a recommendation to take further necessary action. An inquiry was ordered to be conducted by the Addl. Deputy Commissioner, Faridabad vide order dated 08.10.2015, however, the same could not be concluded. The said inquiry was then referred to the Vigilance Department vide order dated 18.03.2016. Hence, a stand has been taken that as the petitioner did not fulfill the requisite conditions of the eligibility and a decision has taken and approved by the Competent Authority to refer the case to vigilance, hence, acceptance of money and/or the subsequent allotment letter in favour of the petitioner, without ensuring that he fulfilled the eligibility conditions as per the policy document is bad and creates no right being an outcome of fraud. The same is under inquiry by the Vigilance Department.

The conciliation proceedings between the parties failed to fructify in any amicable resolution of the dispute whereupon adjudication in terms of Section 22-C(8) of the Legal Services Authorities Act, 1987 was carried out.

I have heard the learned counsel for the parties and have gone through the documents and record available on case file with their able assistance. The Award passed by the Permanent Lok Adalat (Public Utility Services), Faridabad in Petition No.2566 of 2015 titled as 'Lokesh Chand Gupta Vs. M.C. Faridabad and others' has also been perused.

After hearing the counsel appearing on behalf of the respective parties, it is evident that the Permanent Lok Adalat (Public Utility Services), Faridabad specifically recorded a finding that there was no allotment of plot in favour of the applicant-petitioner. The process of allotment was yet to be initiated and the allotment of the plot in question had not happened. Even though the petitioner had deposited money regarding the plot on different dates, however, the letter issued by the respondents records as under:

> *"Jis par nigam prashasan dwara vichar karte hue apko plot abandit karne bare pratikriya shuru kar di gyi hai"*

It is also written in the said letter, which is claimed to be a letter of allotment:

> *"Taki apko plot abandit krane bare karvayi ki ja sake."*

It was thus held that acceptance of money was only tentative and conveyed that the process of allotment of plot may be initiated. The same cannot be construed as an actual allotment of plot in favour of the petitioner and the same is at best a letter of intent. Relevant extract of the Award passed by the

Permanent Lok Adalat (Public Utility Services), Faridabad is reproduced hereinafter below:

> *"15. We have heard arguments from both the parties and perused the record. The applicant has requested that respondent should be directed to handover the possession of the plot with all basic facilities in a time bound manner and to execute conveyance deed. It is pleaded that the applicant has deposited money for the dairy plot to the respondent in 2006. But the respondent has not executed the conveyance deed in favour of the applicant. Several requests have been made to the respondent for this purpose. So the applicant is in the Court for above relief. While the respondent's case is the dairy plot at the new site was meant for only those persons who were doing dairy business in the old Faridabad zone. A committee was formed to identify the persons who were doing dairy business at the old site. The committee has prepared a list of those persons. That list is filed in record as Annexure R-4 by the respondent. The respondent has in their reply (Para no 6) specifically pleaded that the scheme was launched to shift only those persons who were running their dairy business in old, Faridabad Zone to village Baselwa The applicant failed to produce any documentary evidence to prove regarding running of his diary in old Faridabad Zone at the time of the Sanctioning of the said scheme. The applicant was given an opportunity by the respondent to produce the licence of dairy business, but he failed to produce the same. So the applicant is not a suitable candidate for the allotment of dairy plot.*
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> *15. It is also pleaded and argued by the respondent that with connivance and manipulation of the staff of respondent, the applicant managed anyhow in depositing the price of the plot to the respondent. For which a vigilance enquiry is being conducted against the erring persons. The progress report of the enquiry is filed by the respondent which is paper no 79 to 83. It shows that the above enquiry is still going on. But we have nothing to do with this*

inquiry or its report. We are only concerned only to the question of whether the applicant is entitled for the dairy plot or not.

16. The applicant has asserted that he has deposited the entire amount for the plot. It is also said that the respondent has allotted the dairy plot in favour of the applicant in 2013. That so-called allotment letter is also on record. In. this letter the plot has not been properly allotted to the applicant. But it is contained in the letter that the process for allotment has been initiated

"jis par nigam prashashan dwara vichar karate hua aap ko plot abantit karane bare pratikriya shuru kar di gayi hai."

It is also written in the letter that

"taki aap ko plot abantit karane bare karwayi ki jaa sake."

The above wordings in the letter clearly, establishes that there was no allotment of the plot in favour of the applicant. The respondent was to initiate the process of allotment. The allotment of the plot has never happened. But it is proved on record that the applicant has deposited money regarding the plot to the respondent on different dates. But the applicant is not a suitable candidate for allotment of the dairy plot. According to the policy only those persons were entitled to get a dairy plot at the new site, whose names appeared in the list prepared by the committee. The government plots, properties can't be distributed like toffee/chocolate. There must be a definite procedure to allot the plots etc by the government/authorities /MCF etc in an equitable manner. Hon'ble Supreme Court has opined that view in so many cases. The applicant is not entitled to get the dairy plot in an arbitrary manner. According to the policy of the government only those persons were to get the dairy plot at the new site, who were already doing dairy business at the old site. The applicant is not entitled for the allotment of the plot. No conveyance deed can be executed by the respondent in his favour. But the applicant may get refunded the deposited amount (in lieu of plot) from the respondent *without any interest. The applicant was not bona fide while depositing the money for the plot.*

17. The respondents have pleaded and argued that the case is time barred so it must be rejected. From the perusal of record it is clear that the applicants deposited 25% money IN 2005 to 2006. In 2013 they filed applications to the respondent for favourable action. In 2015 they issued legal notice to the respondent. This case was filed in May 2015. So we can't say that the case is time barred. The argument of the respondent is not acceptable.

18. The respondents have also pleaded and argued that this Court has no jurisdiction to decide this case because of the complexity of the matter. But we are not in favour of the above argument. There is nothing complex in the matter. This Court has jurisdiction to decide this case."

Having heard learned counsel for the petitioner and after going through the documents available on record and also noticing that a specific finding had been recorded by the Permanent Lok Adalat (Public Utility Services), Faridabad that the petitioner was not eligible for allotment of a dairy plot in terms of the Chaudhary Devi Lal Dairy Scheme and that various irregularities were noticed by the Commissioner of the MC, Faridabad, qua which a vigilance inquiry is already pending, I fail to find myself in agreement with the petitioner.

For claiming any benefit under the scheme, a claimant is required to establish that he fulfilled the essential eligibility conditions for the benefit and that he is being wrongly denied the same while other similarly placed persons have been given such benefit. No person can claim perfection of a title for an act which is illegal and is an outcome of nexus with the employees. Such an act would rather be an act of fraud on State largesse and conferring benefit on a violator. It amounts to approving and validating an illegality. The law as well as Courts need to deal such attempts firmness. Any display of undue indulgence to violation permeates in the society a signal that no harm will come even if one commits an illegality and that the Courts as well as law shall eventually condone such violations. The cascading effect is that a Court of law compromises what it is supposed to protect i.e. Rule of Law. Court should not, though its judgments and order, promote or seem to promote, directly or by direct consequences, what is illegal, unlawful or is an outcome of fraudulent nexus between the Government employees and the beneficiaries.

It is undisputed that the scheme was for dairies in "old Faridabad Zone" and was to be allotted on "first come first serve" basis. The petitioner does not even plead that he operates a dairy in the "old Faridabad Zone" and rather uses the phrase "petitioner's dairy was running in narrow streets and densely populated area of the City." He also does not plead that his name figured in the survey list. A right to apply would have accrued only subject to the above conditions and payment thereafter. No such fact can be presumed for want of pleading and equity would not accrue merely because payment was deposited mischievously.

Merely because the Permanent Lok Adalat (Public Utility Services), Faridabad had passed certain Awards in favour of other ineligible persons cannot be basis to claim that the petitioner is also entitled to a similar parity. The same would amount to giving premium to a violator. Since the petitioner does not fulfill the eligibility conditions, he cannot be further allowed to reap fruits of an illegal act in his favour.

Counsel for the petitioner is not in a position to controvert that the finding recorded by the Permanent Lok Adalat (Public Utility Services), Faridabad was contrary to record. The law is well settled and there can be no negative parity.

It is well established that no benefit can be given to the petitioner on the basis of negative parity. A wrong order passed in favour of some does not confer any legal right on the petitioner to claim the same relief. In this regard, it would be apt to refer to the judgment rendered by Hon'ble Apex Court in ***"State of Orissa and another Vs. Mamata Mohanty"*** reported as ***(2011) 3 SCC 436***. Relevant part of the judgment reads as under:-

> *"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Administration & Anr. v. Jagjit Singh Yogesh Kumar v. Government of NCT Delhi, Anand Buttons Ltd. v. State of Haryana, K.K. Bhalla v. State of M.P. Krishan Bhatt v. State of Jammu & Kashmir, Upendra Narayan Singh and Union of India & Anr. v. Kartick Chandra Mondal)*
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> *57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P., observed as under: (SCC p.551, para 12)*
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>> *"12….2. To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter at p.18:*

> *"a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors".*

The Hon'ble Apex Court in the case of ***R. Muthukumar & Ors v. The Chairman And Managing Director TANGEDCO & Ors*** reported as ***2022 SCC Online SC 151***, has held in para 24 as under:-

> *"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality.*

In ***"Basawaraj and Anr. v. Special Land Acquisition Officer"*** reported as ***(2013) 14 SCC 81***, the Hon'ble Apex Court has held in para 8 as under:

> *"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier date, it cannot be perpetuated."*

Similarly, in the case of ***"The State of Odisha v. Anup Kumar Senapati"*** reported as ***2019 SCC Online SC 1207***, it has been held that:

> *"If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been*

passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision."

Considering also that the issue is already subjudice in the inquiry pending with the Vigilance Department, I do not deem it appropriate at this juncture to delve any further into the said matter more so when other Awards are not challenged before this Court and the facts thereof are not before this Court. It is expected that the respondent-Authorities shall take appropriate action, as is required to be done, as per law against the violators including the beneficiaries thereof.

At the same time, taking into consideration that the respondents accepted the money from the petitioner way back in the year 2013 and have retained the same, the Permanent Lok Adalat (Public Utility Services), Faridabad merely directed the refund of the said principal amount, however, no interest has been awarded thereupon. Hence, the petitioner would be entitled to interest on the amount already deposited by him as he cannot be faulted for the receipt of amount by the respondents and retention thereof. The Award passed by the Permanent Lok Adalat (Public Utility Services), Faridabad is accordingly modified to the extent that the refund ordered by the Permanent Lok Adalat (Public Utility Services), Faridabad be made alongwith interest @ 6% per annum from the date of institution of the application before the Permanent Lok Adalat (Public Utility Services), Faridabad till its final disbursement. The M.C.

Faridabad shall be entitled to recover the said loss from the erring official(s) as per law.

Further, this Court has also noticed that the reference to the Vigilance Department about the inquiry was made way back in the year 2016 and that a period of nearly seven years has elapsed even thereafter, however, the inquiry proceedings have not been concluded by the Vigilance Department. Let a copy of this order be also sent to the Director General, State Vigilance Bureau for ensuring an expeditious conclusion of the pending vigilance proceedings against the misconduct of the officials as well as the beneficiaries of wrongful allotment under the Chaudhary Devi Lal Dairy Scheme so that the ineligible persons do not take the benefits away from the eligible persons, for whose welfare such scheme had been notified.

Petition stands partly allowed.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 05, 2023
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No