

Before M.M. Kumar & Jora Singh, JJ.

M/S ACFOLI INC,—Petitioner

versus

**HARYANA URBAN DEVELOPMENT AUTHORITY AND
OTHERS,—Respondents**

C.W.P. No. 971 of 2008

11th December, 2008

Constitution of India, 1950—Art. 226—Policy for shifting of Dyeing units—Board recommending allotment of plot measuring 15000 Sq. mt. to petitioner and 5000 sq. mt. to another—Failing to communicate acceptance along with payment of prescribed amount—Cancellation of plots—Fresh applications invited giving last chance—Petitioners defaulters—Object is to provide pollution free atmosphere in residential/non-conforming areas and carving out a “Dyeing Zone”—Petitioners although defaulter earlier could also be given a chance because it would advance the basic object of shifting the polluting dyeing and printing units from residential/non-conforming areas—Offer made by petitioners for reallocation of plots of sizes of the 2100 square meters and 5000 square meters respectively at current price accepted.

Held, that the recommendation made by the Board for allotment was for a plot measuring 15000 square meters and 5000 square meters respectively in respect of both the petitioners. A legitimate argument could have been raised by them that they are entitled to the allotment of a plot equivalent to the size recommended by the Board. It is pertinent to notice that the Board has recommended allotment of plot measuring 15000 square meters to M/s Acfoli INC and 5000 square meters to the other petitioner, namely, M/s Gupta Textiles. It was in the aforementioned situation that the Chief Administrator, taking notice of the grievance made by other allottees had directed on 23rd March, 2006 to the concerned Estate Officer that the plot of the same size as recommended by the Board should be allotted to all the units mentioned in the survey list as the plots have been carved out in accordance with the

recommendation made by the Board. On that basis, the petitioners could have impugned the allotment earlier made. Moreover, the respondent State has taken a policy decision dated 26th February, 2002, which is aimed at re-locating these polluting units engaged in the dyeing and printing activities, which are found to have contaminated the ground water. The object is to provide pollution free atmosphere in the residential/non-conforming areas and accordingly a "Dyeing Zone" in Sector 29 Part II has been carved out. A time bound action plan to decongest the town has been finalized and all these units are to be shifted to the 'Dyeing Zone'. It is also undisputed that the names of the petitioners figure in the list of 494 units which have been identified. We are further of the view that the advertisement dated 11th July, 2007 indicate that a number of entrepreneurs who figures in the list of 494 units and identified for allotment of plots in the 'Dyeing Zone' do not come forward for allotment of plots and one last chance has been given to them. If that be so, then the petitioner, although defaulter earlier could also be given a chance because it would advance the basic object of shifting the polluting dyeing and printing units from the residential/non-conforming areas of the Town to the newly carved out 'Dyeing Zone'. It is in the light of the aforementioned factual position that we are persuaded to accept the offer made by the petitioners that they may be re-allotted the plots of the sizes of the 2100 square meters and 5000 square meters respectively at the current price. Therefore, we are inclined to accept that offer.

(Para 12)

Ashwani Talwar, Advocate, *for the petitioner.*

Arun Walia, Advocate, *for the respondents.*

M.M. KUMAR, J.

(1) This order shall dispose of C.W.P. Nos. 971 and 1469 of 2008 as common question of law have been raised. However, the facts are being referred from C.W.P. No. 971 of 2008. The petitioner has approached this Court with a prayer for direction to the respondents to allot it a plot measuring 15000 square meters for setting up a dyeing unit in the earmarked 'Dyeing Zone' Sector 29 Part-II, Panipat, as per

the list of identified units prepared by the Haryana Pollution Control Board-respondent No. 3 (for brevity, 'the Board').

(2) Brief facts of the case are that the matter regarding contamination of ground water being caused by in-discriminate discharge of polluted effluent by small and tiny units engaged in dyeing and printing activities in Panipat Town was considered in various meetings of the Environment Protection Council, Haryana. It was noticed that out of 500 units of Panipat, about 300 tiny units, which were employing 5-6 persons, were operating from residential and non-conforming areas of the Town. Thus, in principle it was decided to formulate a time bound action plan for relocation of small scale industrial units working in the congested areas of the Town in a separate industrial estate so that their effluent could be treated in a common effluent treatment plant.

(3) In the meeting of the Environment Protection Council, held on 19th September, 2001 it was decided that Sector 29 Part-II and Sector 30, Panipat, being developed by the HUDA, would be suitable site for relocating the aforementioned units. The issue with regard to cost of sites for relocating the units was also considered and it was decided that cost of the plot may be realised as per the following formula :—

- “(i) 5% of the price along with the application form.
- (ii) 10% within 30 days of issue of allotment letter.
- (iii) Balance 85% in half yearly installments payable over a period of 10 years.”

It was further decided that the HUDA will carry out an exercise to work out a scheme in which the larger units would be charged more, so that the price payable by the tiny units could be reduced further i.e. less than Rs. 1,428 per square yards.

(4) In the meeting held on 26th February, 2002 as per item No. A-84(2) Suppl. A-84 the matter regarding shifting of dyeing units in Panipat Town was considered. It was decided that the units involved in the dyeing and printing activities in the Town which were functioning from residential and non-conforming zone, should be shifted to the new

industrial area and land be given to them on 'no profit no loss basis' by the HUDA in Sector 29 Part-II, Panipat. Thereafter, a survey was conducted by the Survey Team of the Regional office of the Board at Panipat to identify the units which were involved in the dyeing and printing activities and operating from the residential and non-conforming zones in the Town for their relocation to the new sites in Sector 29 Part-II, Panipat. A survey list of 494 units was prepared, which were found existing in the non-conforming zone in Panipat Town. In the list complete information was incorporated viz. name of the unit, address, name of the owner, type of industries, total area of plant in square meters, total area of dyeing section in square meters, total investment, quantity of effluent discharged, point of discharge, status of effluent treatment plant whether installed or not, proof of ownership, status of air pollution and land recommended by team in square meters. The policy decision dated 26th February, 2002 has been placed on record as Annexure P-4 in another petition, namely, CWP No. 11819 of 2007.

(5) The petitioner is a partnership concern and had been transacting the dyeing business in the non-conforming zone and its name in the survey list appears at Sr. No. 12 (P-2). Likewise, the name of the other petitioner firm (in CWP No. 1469 of 2008) figures at Sr. No. 144. As per the recommendations made by the Survey Team of the Board for allotment of plot to the identified 494 units, in the case of the petitioner (in CWP No. 971 of 2008) it was recommended that a plot of the size of 15000 square meters be allotted in the Dyeing Zone in Sector 29, Part-II, Panipat, which was earmarked by the Haryana Urban Development Authority for rehabilitating Dyeing and Printing units, as per decision dated 26th February, 2002, for shifting such units, whereas in the other case recommendation for allotment of a 5000 square meter plot was made.

(6) The petitioner (in CWP No. 971 of 2008) applied for allotment of an industrial plot of the size of 2100 square meters in Sector 29 Part-II, Panipat. It was allotted a plot, measuring 2100 square meters in terms of policy decision dated 26th February, 2002, for a tentative price of Rs. 24,88,500,—*vide* allotment letter dated 28th November, 2003, which is on the original record. As per condition No. 4 of the allotment letter, the petitioner was to communicate its acceptance

through registered post alongwith an amount of Rs. 2,48,850 within 30 days from the date of issue of allotment letter, which together with an amount of Rs. 1,24,425 already paid by it, was to constitute 15% of the total tentative price. According to clause 5, the balance 85% amount of Rs. 21,15,225 of the tentative price could be paid in lump-sum without interest within 60 days of the issuance of the allotment letter or in half yearly instalments payable over a period of 10 years alongwith interest @ 11% per annum. The interest was to accrue from the date of offer of possession and first instalment was to commence from the date of offer of possession. The petitioner had deposited only a sum of Rs. 1,24,425, which represent 5% of the tentative price of the plot, however, it did not deposit any further amount in terms of clause 4 to make it 15% of the total amount nor any further amount of the tentative price was paid. Consequently, the allotment was cancelled on 11th March, 2005 (P-3). The appeal preferred to the petitioner before the Administrator, HUDA, Panchkula, was also dismissed on 29th November, 2005/8th February, 2006. The request made by the petitioner for restoration of the plot, which was made to the Chairman, HUDA, Panchkula, has also not evoked any response.

Similarly in the case of the other petitioner (in CWP No. 1469 of 2008) Plot No. 239, 'Dyeing Zone' Sector 29, Part-II, Panipat, measuring 5000 square meters, was allotted to it,—*vide* allotment letter dated 17th November, 2003. However, the allotment was cancelled on the ground that the petitioner had failed to give acceptance of the allotment in terms of clause 4 of the allotment letter within 30 days from the date of its issuance (Annexure P-4 with CWP No. 1469 of 2008). The appeal preferred in the matter was also rejected,—*vide* order dated 27th September, 2005/7th November, 2005 (P-5).

(7) On 11th July, 2007, the HUDA issued an advertisement in the newspapers, including 'The Tribune', for allotment of industrial plots in Dyeing Zone, Sector 29, Part-II, Panipat. It was mentioned in the advertisement that in the 84th meeting of the Authority, held on 26th February, 2002, the policy for shifting of Dyeing units, functioning from Panipat Town/non-conforming zone, as identified by the survey conducted by the Board in the year 2001, in Dyeing Zone, Sector 29, Part-II,

Panipat, was approved but despite lapse of 5 years, some of the entrepreneurs who had been identified for the allotment of plots in the zone have not come forward till that date seeking allotment of plot. Since the plots could not be left as such for an indefinite period, therefore, a last chance was again given to such entrepreneurs and applications were invited upto 10th August, 2007. It was further mentioned that the applicants who had already made an application should apply afresh alongwith the difference of earnest money and other required documents (P-1). The petitioner again submitted its application alongwith earnest money of Rs. 14,43,750 through two demand drafts dated 9th August, 2006 (P-6), which were duly received in the office of the Chief Administrator at Panchkula on 10th August, 2007 (P-7).

(8) On 21st September, 2007, the Board issued a notice to the petitioner for shifting their unit to Sector 29, Part-II, Panipat, within 45 days under the 'Shifting of dyeing Units Project'. The notice was replied to by the petitioner on 3rd October, 2007 by stating that they had applied again for allotment of plot in response to fresh advertisement dated 11th July, 2007 and as soon as the plot is allotted they would shift the unit (P-10). On 10th December, 2007, again a closure notice under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974, was issued by the Board to the petitioner to show cause within 15 days as to why their unit be not closed for not shifting to the Dyeing Zone Sector 29, Part-II, Panipat (P-11). The petitioner again sent a reply on 13th December, 2007 taking the same stand that plot has not been allotted by the HUDA in response to the advertisement dated 11th July, 2007 (P-12). On 4th December, 2007, the petitioner sought clarification from the Estate Officer, HUDA, Panipat mentioning that plots were allotted on 1st December, 2007 but name of their unit was not included in the allotment list (P-13). On 14th December, 2007, again a request was made by the petitioner to the Administrator, HUDA, Panchkula (P-14).

(9) In the written statement filed on behalf of respondent Nos. 1 and 2, the stand taken is that the petitioner has no legal vested right for another chance for allotment of plot in the Dyeing Zone Sector 29, Part-II, Panipat, since the petitioner is a defaulter when plot was allotted to it earlier. It has been asserted that the petitioner was earlier

allotted a Plot No. 190, Sector 29, Part-II, Panipat, measuring 2100 square meters,—*vide* allotment letter dated 28th November, 2003. However, the petitioner failed to comply with clause No. 4 of the allotment letter and ultimately the allotment was cancelled,—*vide* order dated 11th March, 2005. The appeal filed by the petitioner was also rejected. It has been further pointed out that the application alongwith earnest money in response to the advertisement dated 11th July, 2007 deposited by the petitioner has already been returned,—*vide* Memo. No. 2156, dated 8th January, 2008, because the allotment of plot made earlier in favour of the petitioner was cancelled due to its failure to comply with the conditions of the allotment letter and no fresh opportunity could be afforded to the petitioner.

(10) Mr. Ashwani Talwar, learned counsel for the petitioner has argued that the position of the petitioner cannot be worst than those from whom now applications have been invited by issuing advertisement dated 11th July, 2007 (P-1). Learned counsel has submitted that the unit of the petitioner has been working at the old site and a notice for shifting was issued by the Board on 21st September, 2007 (P-9) followed by another closure notice, dated 10th December, 2007 (P-11). The aforementioned notices were duly replied with a request that the petitioner may be permitted to apply in response to the advertisement dated 11th July, 2007. He has emphasized that without its rehabilitation the Board cannot direct the petitioner to stop its activity and pass an order directing closure of the unit. Learned counsel has also drawn our attention to the letter of the Chief Administrator, HUDA, which has been addressed to the Estate Officer, HUDA, Panipat, dated 23rd March, 2006 (Annexure P-10 in the connected C.W.P. No. 1469 of 2008) stating that plot of the same size as recommended by the Board should be allotted to all the units mentioned in the survey list because the plots have been carved out in accordance with the recommendations made by the Survey Team of the Board. Learned counsel then submitted that the petitioner would be satisfied if Plot No. 190, Sector 29, Part-II, Panipat, already allotted to the petitioner's unit is re-allotted and it would not insist for allotment of a plot measuring 15000 square meters, as per the recommendations made by the Survey Team. Learned counsel also gave an undertaking on behalf of the petitioner that they will not

insist for refund of 5% amount, which stand already forfeited and plot be re-allotted at the current allotment price.

(11) Mr. Arun Walia, learned counsel for the respondents on the other hand has contended that since the petitioner is a defaulter, it cannot seek parity with those who do not come forward earlier. The petitioner was given a chance to avail the allotment of plot, which was availed by them but it has defaulted in making payment and the plot was rightly resumed. They have further argued that once the petitioner is a defaulter it cannot be put at even-keel with those who have not been given a chance.

(12) After hearing learned counsel for the parties at a considerable length, perusing the paper book and original record with their able assistance we are inclined to examine the offer made by the petitioner in the light of the facts and circumstances of the case. The recommendation made by the Board for allotment was for a plot measuring 15000 square meters and 5000 square meters respectively in respect of both the petitioners. A legitimate argument could have been raised by them that they are entitled to the size allotment of a plot equivalent to the size recommended by the Board. It is pertinent to notice that the Board has recommended allotment of plot measuring 15000 square meters to M/s Acfoli INC and 5000 square meters to the other petitioner, namely, M/s Gupta Textiles. It was in the aforementioned situation that the Chief Administrator, taking notice of the grievance made by other allottees had directed on 23rd March, 2006 (P-10 in C.W.P. No. 1469 of 2008) to the concerned Estate Officer that the plot of the same size as recommended by the Board should be allotted to all the units mentioned in the survey list as the plots have been carved out in accordance with the recommendation made by the Board. On that basis, the petitioners could have impugned the allotment earlier made. Moreover, the respondent State has taken a policy decision dated 26th February, 2002, which is aimed at re-locating these polluting units engaged in the dyeing and printing activities, which are found to have contaminated the ground water. The object is to provide pollution free atmosphere in the residential/non-conforming areas and accordingly a 'Dyeing Zone' in Sector 29 Part-II has been carved out. A time bound action plan to decongest the town has been finalised and all these units are to be

shifted to the 'Dyeing Zone'. It is also undisputed that the names of the petitioners figure in the list of 494 units which have been identified. We are further of the view that the advertisement dated 11th July, 2007 indicate that a number of entrepreneurs who figures in the list of 494 units and identified for allotment of plots in the 'Dyeing Zone', did not come forward for allotment of plots and one last chance has been given to them. If that be so, then the petitioners, although defaulter earlier could also be given a chance because it would advance the basic object of shifting the polluting dyeing and printing units from the residential/non-conforming areas of the Town to the newly carved out 'Dyeing Zone'. It is in the light of the aforementioned factual position that we are persuaded to accept the offer made by the petitioners through their counsel that they may be re-allotted the plots of the sizes of the 2100 square meters and 5000 square meters respectively at the current price. Therefore, we are inclined to accept that offer.

(13) As a sequel to the above discussion, both the petitions are disposed of with the following directions :—

- (i) Within a period of one month from the date of receipt of a certified copy of this order, respondent Nos. 1 and 2 shall re-allot Plot No. 190, Sector 29, Part-II, Panipat, measuring 2100 square meters to the petitioner (in CWP No. 971 of 2008) and Plot No. 239, Sector 29, Part-II, Panipat, measuring 5000 square meters, to the other petitioner (in CWP No. 1469 of 2008) at the current rates as approved by the respondents. We make it clear that the petitioners would not be permitted to ask for plot of a bigger size irrespective of the recommendation made by the Board ;
- (ii) Letter of demand issued by respondent Nos. 1 and 2 shall clearly mention the cost of the plot, area of the plot and other usual terms and conditions ;
- (iii) The petitioners shall pay 50% of the total price in lump-sum within a period of two months from the date of receipt of demand raised by respondent Nos. 1 and 2 ;

- (iv) The Regular Letter of Allotment shall be issued on deposit of 50% price of the plot price in lump-sum by the petitioners. The needful shall be done within a period of one month from the date of deposit, subject to further condition to make payment of balance amount as per usual terms and conditions of respondent Nos. 1 and 2 ;
- (v) If the petitioners fail to deposit the 50% of the price in lump-sum as per the demand raised by respondent Nos. 1 and 2 within the stipulated period then the writ petitions shall be deemed to be dismissed without entertaining any further correspondence in that regard.

R.N.R.

Before M.M. Kumar & Jora Singh, JJ.

SHAM LAL & ANOTHER,—*Petitioners*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

C.M.P. NO. 6023-C OF 2008

11th December, 2008

Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 & 11—Acquisition of land by invoking urgency provisions of S.17(2)—Acceptance of 80% of estimated compensation cost of land by landowners—Collector assessing market value of land—Ministry of Defence not accepting market value of land—Central Government not approving draft award—Punjab Govt. approving draft award—Approval of award—Appropriate Government—Whether Central Government or State Government—Central Government passing delegation order in favour of Punjab Government entrusting with all powers—High Court directing Collector to announce award—No appeal against such order of High Court by Union of India—Issue with regard to seeking prior