

HARYANA URBAN DEVELOPMENT AUTHORITY & ANR.

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v.

ER. HARSH JAIN & ORS.

JULY 19, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

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*Industrial Plot—Price escalation—Permissibility of—Allottee issued provisional letter of allotment—Stipulation that if allottee seeks extension of time for completion of pre-requisite formalities the rates prevalent at the time of issue of final allotment letter would be charged—Allottee allowed extension of time subject to payment of extension fee—In the meanwhile rates of land increased—Thereafter final letter of allotment issued to allottee calling upon him to pay enhanced price—Challenge by allottee—High Court directing to collect the price as mentioned in the provisional letter of allotment—Appeal by Development Authority—Allottee relying on policy decision of Government which provided that cost of land mentioned in the provisional letter of allotment should remain unchanged during the extended period—Held Government policy was to operate prospectively—Directions for unchanged prices during extended period were applicable to those cases where the extension was to be completed after the prescribed date and not to those cases which have already been finalised—Allottee held liable to pay the cost of land as given in the final letter of allotment.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9893 of 1996.

From the Judgment and Order dated 15.12.95 of the Punjab & Haryana High Court in C.W.P. No. 7486 of 1995.

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Sunil Gupta and Puneet Dutt Tyagi for the Appellants.

Anit Mital and K.K. Gupta for the Respondents.

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The following Order of the Court was delivered :

We have heard learned counsel on both sides.

Leave granted.

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A This appeal by special leave arises from the order of the Division Bench of the Punjab and Haryana High Court at Chandigarh made on December 15, 1995 in Writ Petition No. 7486/95. The undisputed facts are that the first respondent was given a provisional letter of allotment dated October 29, 1991 (for short, 'P.L.A.')

B in respect of an industrial plot at Roz-ka- Meo, Industrial Estate, Gurgaon admeasuring 4000 sq. yard at tentative price of Rs. 2,42,000 worked at the rate of Rs. 60.50 per sq. yard. The respondent had deposited a sum of Rs. 25,000. In the P.L.A. the respondent was called upon to deposit a further sum of Rs. 35,500 within the stipulated period towards 25% cost of the land. The balance 75% was required to be paid in six annual equal instalments with interest at 10%

C per annum subject to compliance of the conditions enumerated thereunder. The conditions as envisaged are :

- D "(i) To get the registration with the Directorate of Industries (GM/DIC) of the concerned Distt. or registration with DGTD/Ministry of Industry, Govt. of India, depending upon the size of the Industrial undertaking i.e. small, medium or large.
- (ii) To get the building plan approved from the competent authority.
- E (iii) to get sanction letter from the Financial Institution/ banks for financing the project.
- (iv) To supply list of plant and machinery alongwith quotations.
- F (v) To supply to Haryana State Electricity Board of release of an electric connection to the proposed site."

Para 3 provides that the first respondent was to communicate his acceptance of the provisional allotment within the time specified therein. In case of non-receipt of acceptance it was treated to have been withdrawn.

G In case the acceptance was received within 30 days from the date of the receipt of the provisional allotment, the PLA would be valid for a period of 90 days in case the project is under self-financing and 180 days in case he proposes to raise loan from HFC/Banks/All Indian Financial Institutions. In that event, he was required to furnish proof of having completed required formalities listed in para 2 to the satisfaction of the Authority. He

H was also required to deposit security equivalent to 10% of the cost of the

land which would be refundable on implementation of the project. The security shall also stand forfeited if the construction was not started within three months from the date of the production of sanction or of two years after issue of the allotment letters. Clause 5 is relevant which is as under :

"In case the pre-requisite formalities as envisaged in para 3 are completed within the stipulated period, the price mentioned in para 2 will be charged at the time of issue of final letter of allotment. However, in case an extension of time-has been sought for completion of formalities the rates prevalent at the time of issue of final letter of allotment shall be charged."

Clause 8 says that PLA shall stand withdrawn automatically after expiry of period mentioned in para 4 above without any further reference and no correspondence in this regard will be entertained.

It is not in dispute that the first respondent had proposed to start an industrial unit on obtaining finance from Industrial Financial Corporation. It would appear that he had submitted his application to the Financial Institution for sanction of the land on the last date of 180 days, namely, April 5, 1992 and he sought for extension of time. The appellant had granted extension subject to the respondent paying at the rate of Rs. 1. per sq. yard per month by proceedings dated May 14, 1992. The respondent did not pay the extension fee. The appellant, therefore, had declined to accept the request of the respondent by proceedings dated July 7, 1992 for further extension of time to pay the extension fee. In the meanwhile, the rates of the land had increased to Rs. 192.45 per sq. yard as on July 31, 1992. The final letter of allotment had thereafter came to be issued to the first respondent on November 23, 1992 calling upon him to pay at that rate in a sum of Rs. 9,20,680.80. The respondent had challenged the legality of the demand made by the appellant in filing the above writ petition. The High Court has directed the appellant to collect at the rate of Rs. 60.50 as per the PLA. Thus, this appeal by special leave.

Shri Gupta, learned counsel for the appellants, contended that in terms of para 5 of the PLA, the respondent was bound to pay since he had not complied with the formalities under PLA in paras 2 and 3. Consequently, the High Court was wrong in directing the appellant not to collect the rate prevailing as on the date of the final letter of allotment. The learned counsel for the respondents contended that the Government had changed

- A its policy as on September 21, 1991 directing that even in case of non-compliance of the conditions in paras 2 and 3, the authorities should collect at the rates prevailing as on the date of issue of PLA since the plots remained not allotted and re-cycling of the finance gets stagnated and, therefore, the necessary allotment should be made only at the rate as on
- B dated of issue of PLA. In support thereof, the learned counsel sought to place reliance on two letters, one by the Commissioner, Industries, Haryana and another letter addressed by the Deputy Director, Land Acquisition to the Director of Industries, Haryana. We have carefully scanned through the above two letters. These two letters were also relied upon by the High Court to conclude that the appellant is bound by the
- C direction issued by the Government. A reading of the order passed by the Commissioner of Industries, Haryana dated June 15, 1993 would show in para 5 that the cost of the land communicated to the applicants in the LOI/PLA should remain unchanged during the extended period given to any applicant. In other words, it would mean that the order came to be
- D passed on June 15, 1993 with the above direction. It was endorsed to the authorities on June 21, 1993. Therefore, the directions to charge at the unchanged prices during the extended period would be applicable to those cases where the extension was to be completed after the aforesaid date but not to those which have already been finalised. It is not in dispute that final
- E letter of allotment was issued to the first respondent on November 23, 1992 by which date the prices of the land had been increased as on June 30, 1992 at the rate of Rs. 192.45 per sq. yard. Under these circumstances, the High Court was not right in directing the appellant to collect the prices of plot at Rs. 60.50 per sq. yard.

- F The appeal is accordingly allowed. Time is extended for payment of the amount with interest at 10% as given in the final letter of allotment for a period of 5 months from today. In case the first respondent does not pay the amount within the time specified, the writ petition would stand dismissed without further reference. No costs.

T.N.A.

Appeal allowed.