Before K. Kannan, J.

GURCHARAN SINGH AND OTHERS,—*Petitioners*

versus

SECRETARY URBAN DEVELOPMENT, GOVERNMENT OF HARYANA, CHANDIGARH AND OTHERS,—*Respondents*

C.W.P. No. 21758 of 2008

3rd February, 2010

Constitution of India, 1950—Art. 226—Land of petitioners acquired—Claim for allotment of commercial plots as 'oustees'—Government withdrawing instructions restricting allotment only to residential plots—Withdrawal of benefit for non-residential plots only on ground of change of policy—Decision to withdraw allotment of commercial plots not reasonable based on flimsy, lame, untenable and arbitrary grounds—Petition allowed, respondents directed to consider application for allotment of plots.

Held, that the only ground taken for rejection is an alleged change in policy in the year 2003 restricting allotment only to residential plots. I have already held the basis for such restriction is flimsy, lame, untenable and arbitrary. The oustee policy from the year 1987 does not spell out any economic criterion for allotment. It is certainly relevant, but this has not been the basis in the policy considerations so far. The State may pursue such a policy and restict it to persons who are poor and who are displaced but the documents filed into court detailing the policy of oustees do not suppot the pleas that consideration for allotment is not available for persons who have received a large compensation amount.

(Para 11)

D.S. Chanan, Advocate *for the petitioners.*

Ravi Dutt Sharma, Deputy Advocate General, Haryana.

Ms. Preeti Khanna, Advocate, *for respondents 2 and 3.*

K. KANNAN, J.

I. The Lis

(1) The petitioners, who are persons, having lost the property in acquisition proceedings of the Government as early as in the year 1971, are still waiting with bated breath for consideration for allotment of commercial plots as 'oustees'. The expectations have been by virtue of some policy statements under which the Government of Haryana had assured to the persons, who had lost the properties in acquisition to be favoured with consideration for fresh allotments at a special reserved price, when the development of the property acquired takes place and the exercise of distribution through allotments comes to fruition.

(2) The petitioners' lands were acquired through awards issued under the Land Acquisition Act on 25th June, 1975 and 15th November, 1976. Compensation amounts for the lands acquired had also been received by the petitioners. The Government of Haryana through Haryana Urban Development Authority issued circulars/instructions at various times from the year 1987 where persons, who had been ousted from the land, were assured of allotment of residential/commercial plots at reserved price. Various instructions made on 10th September, 1987, 9th May, 1990, 18th March, 1992, 12th March, 1993, 22nd October, 1997, 28th August, 1998, 27th March, 2000, 10th July, 2002 and 8th December, 2003 have all been filed into Court. The petitioners' grievance was, since their entire lands had been acquired, they had been deprived of their sole means of livelihood and the policy of the Government that made possible a modicum of restoration of the source of livelihood was ultimately sought to be withdrawn by the last instruction dated 8th December, 2003 when the authority stated that consideration for allotments could be made only for residential plots and not for non-residential plots. The reference to non-residential plots in all the previous communications were purported to have been done inadvertently. On a rejection of the request for consideration for allotment of a commercial plot when advertisements had been issued, the petitioners have come by means of writ petition to quash the letter rejecting the plea and the policy that gave the basis for rejection of the request.

II. Examination of how the oustee policy considerations were formulated

(3) In order to examine the issue whether the consideration of allotment of commercial plots had been done by inadvertence, it becomes necessary to appraise how the policy evolved over a period of time. The policy statements commencing from the year 1987 onwards referred to various criteria about how the claims for allotments shall be addressed. On the first occasion, when the policy had been issued in the year 1987, it is observed that the allotments would be made only if 75% of the total land owned by the landowners is acquired. Amongst such eligible candidates again persons, who owned lands up to 500 sq. yards would be offered 100 square yards and persons, who owned lands more than 500 square yards to 1 acre, would be offered plot of 250 square yards and onwers of larger lands should be offered plots of 350 square yards. If there were a number of owners for particular land, the policy spelt out that efforts should be made to accommodate them subject to a limit of one plot of 250 square yards for every acre of land acquired. Such an allottee should also give an affidavit to the effect that he did not hold any shop or plot in the town. In partial modification of the scheme laid down in the year 1987 came the subsequent scheme released on 9th May, 1990. The scheme again spells out the extent of land that could be allotted and the persons who are eligible for such allotment. The scheme specifically stated that as regards the allotment of commercial sites to oustees, the matter was under re-examination and as and when a decision was taken, affected parties would be informed. Some more modifications were effected on 1982 while still retaining the eligibility of persons to be confined to the category who had lost more than 75% of the total land held by them. The policy made in the year 1993 makes further restrictior in stating that the benefit of the policy would not be extended to oustees, who had residential/commercial plots from HUDA in other urban estates and the benefit itself would be restricted only to one plot according to the size of holding irrespective of the number of co-shares. The policy statement of 1997-98 envisages the scheme of allotment of both residential and non-residential plots and stated that if a plot could not be offered to oustee in the same sector, they would be offered in the next residential sector of the urban estate. The 2000 Policy dated 27th March,

2000 was made as a sequel to the decision of this Court in **Smt. Suman Aneja** *versus* **the State of Haryana and others** referred to below. It specifically laid down that when the plots were floated for sale, the claims of oustees shall be invited and that they should have a prior right for allotment of plots. The policy statement dated 10th July, 2002 addresses the problem of the demand by oustees outstripping the supply and directed that when full sectors were floated and advertisements were issued, oustees should specifically be requested to apply and take the benefit and that it should also be mentioned in the advertisement that after adjusting the oustees' claim the balance plots should be available for allotment as per the reservation policy. If only there was a surplus after settling the claims of the oustees, such surplus would be offered under the general category. The modification dated 8th December, 2003 of the policy statement is the last expressed policy restricting it only for allotment of residential plots and making unavailable commercial or industrial plots. The policy statement of the year 2002 specifically lays down that even at the time when the advertisement is issued, the oustees shall be informed and the offer shall first be generated to them before making the offers available for general category.

III. If the policy recognizes a scheme of allotment, an infraction will give rise to an enforceable right

(4) The learned counsel appearing for the petitioners would state that the policy of enlisting persons, who had lost the property in acquisition proceedings and characterizing them as oustees, was done with a lofty object of not merely assuaging the frayed temperaments of persons, who had lost the properties but to provide them the means of livelihood, such as, if a productive land is acquired for establishing a residential colony, the person ousted, namely the oustee must be offered at least a residential plot and in the same way, if the acquisition had been for a commercial purpose, the oustee shall be offered at least one commercial plot to support a new living. According to the learned counsel, a productive land survives for generations to feed the family but a financial recompense through monetary awards for the value of the property lost would soon get dissipated. According to the learned counsel, the policy of allotment of both residential and non-residential plots was taken in the context of directives from the Hon'ble Supreme Court in certain judgments and the benefit obtained both to residential and non-residential plots. The withdrawal of the benefit for

non-residential plots on the ground that there was an inadvertent mistake, according to him, was a lame excuse. The learned counsel refers to serveral decisions of this Court and the Hon'ble Supreme Court to contend that the right to obtain an allotment envisaged under the State policies, could be mandated by directions of the Court, as have been done in the several instances in the past. On the issue that an oustee is entitled to demand as a right for allotment, the learned counsel appearing for the petitioners relies on a decision of the Division Bench in **Ishwar Singh and another** *versus* **State of Haryana and others in Civil Writ Petition No. 17506 of 1996, dated 6th February, 2002,** where the Hon'ble Court was considering the issue of allotment, in the face of denial by the State authority that the property had been acquired for establishment of an industrial estate and that under the oustee policy, the persons would be entitled to an allotment of a plot only, if it had been acquired for setting up of a residential colony. The Bench reproduced the policy statement but that made reference as under :–

> *"The Hon'ble Supreme Court has also decided in a number of cases that land should be allotted for a house/shop to all those persons whose land had been acquired. legally it becomes the responsibility of Haryana Urban Development Authority to allot/reserve some commercial sites for oustees. The commercial sites/buildings are sold by auction and under these circumstances, sites/buildings could be considered for allotment for oustees on reserved price as and when the auction for the same is held." (underline mine)*

Referring to the same, the Bench observed that the stand of the Government in restricting the claim only if the acquisition had been made for residential purposes as unreasonable and in contravention of the decisions of the Hon'ble Supreme Court in **Savitri Devi** *versus* **State of Haryana and others (1)** and **Jalandhar Improvement Trust** *versus* **Sampuran Singh (2).** In a still later ruling of the Division Bench of this Court in **Siriya Devi** *versus* **State of Haryana and others in Civil Writ Petition No. 17565 of 2003, dated 6th July, 2004,** this Court held that irrespective of the purposes for which the land was acquired, the oustees shall be allotted residential plots in the oustees' quota.

(1) 1996 P.L.J. 449
(2) AIR 1999 S.C. 1347

(5) In all these above decisions, it could be noticed that the purpose of acquisition was irrelevant and the claims were all for allotment of residential plots. The Court was not examining the issue of allotment of an industrial plot or a commercial plot. On the other hand, the Courts were dealing with the situations of when even if the acquisition of the property and development was for commercial or industrial purpose, allotment shal be made of residential plots when a scheme and development of such residential colonies were put in place. In **Dharampal** *versus* **State of Haryana and others (3),** a Division Bench of this Court held that once there was a compulsory acquisition of land by the State, the landowners were entitled to be consdiered for allotment in terms of oustees policy. In all the above decisions, the policy itself was not put in challenge. The existence of a term of a policy, the Courts held, created a right for allotment at a reserved price.

(6) Learned counsel appearing for the respondents relies on a decision in **Smt. Ramo Bai and others** *versus* **State of Haryana and others (4),** to contend that when a land is acquired and compensation is paid, the oustee/rehabilitation policy is purely a welfare overture and it could not be claimed as a matter of right. The decision was stated in the context of a policy of one plot per co-sharer had been changed to one plot jointly for all co-sharers. It is one thing to seek for an enforcement of a right declared under the policy but quite another to say that the policy is not well grounded. In that case, the Court held that a demand for a ground for each co- owner was not justified since the Government had changed the policy for a valid reason. In this case, the position is slightly different. All along the Government had been issuing policlies of allotment on both residential and non-residential plots till the year 2002 and for the first time, they had purported to adopt a change in policy of considering allotments only for residential purposes and termed the earlier statements as regards allotment of commercial plots as inadvertent. The learned counsel for the respondent also relies on **Amit Bakshi and another** *versus* **Union Territory of Chandigarh and others (5),** when the Court held that no oustee had a vested right to claim allotment in very plot that was acquired. No such claim is made in this petition. He does not demand that he gets the very same

(3) 2006 (1) PLJ 249
(4) 2007 (3) RCR (Civil) 711
(5) 2006 (3) RCR (Civil) 685

property which is acquired from him. **Chander Kanta** *versus* **State of Punjab (6),** laid down a statement of law that the oustee policy could be changed and scrapped at any time. This decision will apply if the oustee policy itself had been scrapped. A right is certainly created through a policy statement but the issue here is whether the policy has been withdrawn for a valid reason.

IV. Reference to allotment of commercial plots as stated in the policy was no inadvertent act

(7) Restriction of allotment only for residential plots finds expressed in the communication dated 8th December, 2003, and it is reproduced here :

"Sub : Allotment of plots to the oustees in the various Urban Estates set up by HUDA—clarification thereof.

This is in continuation of this office memo No. A-II-P-98/24402–22, dated 28th August, 1998 on the subject cited as above.

The amendment in the oustees policy approved by the Authority, for allotment of plots to the oustees in the various Urban Estates developed by HUDA, as circulated vide memo/ circular referred to above specifically states that if the plot under the oustees policy cannot be offered to the oustees in the same sector (developed as "Non-residential") then they shall be offered only a residential plot, in the next residential sector of the Urban Estates which may be floated and developed by HUDA. Meaning thereby, the land owner whose land is acquired for the development of a sector shall be entitled for a residential plot only, as per laid down eligibility/entitlement criteria. The word 'commercial' wherever figured in the circular dated 28th August, 1998 referred to above, inadvertently, may be treated as withdrawn".

I have no doubt in my mind that the choice of making available a commercial allotment could never have been an inadvertent decision. Such inadvertence could not have persisted this long and could not have been omitted to be

(6) 1996 (1) RRR 374

noticed even when they were presenting a scheme before the Hon'ble Supreme Court. If they had different policy consideration in the year 2003 to think of rehabilitation only by allotment of residential plots and not offering at a reserved price a commercial or industrial plot and such policy consideration had been on a rational basis, there could have been still no legal objection. It is invariably the executive that frames the policy and puts them in execution. Courts normally do not dictate to the executive matters of policy. The judicial function would traverse within the realms of law to examine whether a particular policy is reasonable or not whether it stands the test of the constitutional guarantees of equality, non-discriminatory character, want of arbitrariness, etc. or whether the source of authority is laid out on sound legal basis. In **Dila Singh** *versus* **State of Punjab (7),** this Court lent primacy to a State to change its policy without effecting anyone adversely. In such a case, the Court held the principle of promissory estoppel does not apply. Presently, the petitioner is not founding his claim on the principle of estoppel. On the other hand, his contention is that the restriction of application of oustee policy was only to residential plots and excluding the non-residential plots or commercial plots, is challenged as arbitrary for the policy decision does not spell out how the change has come about from the year 1987 when it was extended both for residential as well as commercial plots and with no definite details revealed beyond an expression of an inadvertent error, it became necessary for the Government to withdraw from offer any commercial plots. The arbitrarinees is writ large in the manner expressed in the impugned letter. The consistent line of expression made in each one of the policy statements commencing from the year 1983 making the policy applicable both for commercial as well as for residential plots cannot change overnight on a flimsy consideration of an inadvetent error. The decision taken in 2003 is as whimsical as a statement that it mistook cheese for chalk. There is no reference anywhere in the impugned communication dated 2003 that there was any conscious decision to exclude commercial plots. There is a casual withdrawal of the scheme on an untenable basis of inadvertence. Human fallibilities would admit of a careless mistake but a policy presented to a court ought to have been the result of a conscious decision. It could not have been a cavalier approach and if it ever was, it is deprecatory and liable for strict judicial admonition, which in the nature in which judicial interventions are made, shall be by quashing the same for lack of application of mind.

(7) 1983 P.L.J. 417

V. Are the petitioners guilty of laches ?

(8) The contention in defence by the State authorities was that for a property which is acquired in the year 1976, the writ petition is filed in the year 2008 more than 32 years after the incident and hence the writ petition is barred by laches. The contention of the learned counsel for the petitioners is that the cause of action would arise only when the property that is acquired is made fit for allotment and offered for sale to the public. The properties were offered through sale by auction only in the year 2005 and the demand for allotment by the petitioners was done soon thereafter. To this position, the learned counsel for the petitioners refers to **Smt. Suman Aneja** *versus* **The State of Haryana and others (8),** where the Devision Bench of this Court held that the relevant date for determining the eligibility of oustees would be the date on which the sectors delineated after development are floated for sale.

(9) It is also contended that between the years 2002-2003, there had been a change in policy and the petitioners had not applied under the scheme in 2002 itself and they had applied only subsequent to the change of the policy. This contention will have to be rejected on two grounds : one, more than an oustee applying for allotment, the authority itself shall offer to an oustee at a reserved price before putting it in auction for public. The learned counsel appearing for HUDA relied on the decision in **Smt. Bhagwanti** *versus* **The Haryana Urban Development Authority (9),** to contend that Authorities are not expected indefinitely for consideration of the petitioners' claims. In the above case, this Court was considering the claims of persons, who had made their applications beyond the prescribed time stated in the policy. The Court held that the authority was not expected to wait for more than four years for an oustee to apply at his convenience. The rejection was made on that ground. We have already seen that the petitioner was not breaching any particular period prescribed for application. On the other hand, they had applied before the auction date. The decision therefore cannot apply. In this case, I find the petitioners have been clamoring for allotment for all these years through various supplications. The property had been put up for auction on 10th October, 2005 through an advertisement in 'Amar Ujala' and the petitioners had submitted application on 5th October,

(8) 1993 P.L.J. 623
(9) 2002 (4) RCR (Civil) 21

2005 and entered in diary No. 19126 and 19125, dated 5th October, 2005. The petitioners also filed a Civil Writ Petition No. 17265 of 2005, which was dismissed by this Court holding the application to be premature. It is a well known axiom that *actus curiae neminem gravabit,* which means that an act of Court could do no harm. If at one stage, the Court found the application was premature, at the next round when a writ petition is filed, a defence cannot be taken that it was belated. Two, the attempt of the State to reject the contention of the petitioners would be bad also by the fact that the restriction of allowing the allotments only for residential plots is not supported by any conscious policy decision to that effect. I have already held that the decision to withdraw the allotment of commercial plots was not taken on any reasonable statement of policy. The reason proffered for its withdrawal, I have already held to be untenable.

(10) In this case, the petitioners' dis-entitlement for consideration has been on the basis that the policy does not avail to commercial plots and that the claim is belated. Both the grounds of rejection, we have seen already to be untenable. **Savitri Devi** *versus* **State of Haryana and others (10),** lays down that a mere non-utilization of a land does not entitle the oustees to seek the Government to release the property from acquisition. The right to seek for allotment would be available only if the relevant scheme or rules. This decision does not detract from the line of reasoning that we have adopted in finding that the petitioner is entitled to a consideration for allotment.

VI. Petitioners who have received a large compensation, not oustees ?

(11) The learned counsel appearing for the respondents contends that the petitioners have obtained a huge compensation of more than 3 crores and the oustee policy itself is to rehabilitate persons, who are marginalized and who are put to immense hardship by the acquisition. This contention in rhetoric is akin to a political statement but has no basis. It is not even a ground mentioned in the impugned proceedings rejecting the plea of the petitioners. The only ground taken for rejection is an alleged change in policy in the year 2003 restricting allotment only to residential plots. I have already held the basis for such restriction is flimsy, lame,

(10) 1996 (3) R.C.R. (Civil) 199

untenable and arbitrary. The oustee policy from the year 1987 does not spell out any economic criterion for allotment. It is certainly relevant, but this has not been the basis in the policy considerations so far. The state may pursue such a policy and restrict it to persons who are poor and who are displaced but the documents filed into court detailing the policy of oustees do not support the pleas that consideration for allotment is not available for persons who have received a large compensation amount.

VII. Conclusion

(12) The writ petition is allowed and the respondents are directed to consider the application for allotment of the plots and the size and the number of plots shall be assigned to the petitioners depending on the oustee policy extant keeping out of view the restriction sought to be imposed by the impugned proceedings of 2003 which is quahsed by this writ petition. The writ petition is allowed with cost assessed at Rs. 10,000.

R.N.R.

Before Mukul Mudgal, C. J & Jasbir Singh, JJ.

SUDESH RANI AND OTHERS—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

C.W.P No. 6801 of 2008 &

CONNECTED WRIT PETITIONS

20th April, 2010

Constitution of India, 1950—Arts.14, 16, 38(2) & 226—Recruitment to posts of Educational Services Providers—State Government providing weightage of 5 marks to candidates who had passed their middle and matric examination from rural schools—Government supporting rural weightage on basis of study conducted by Punjabi University demonstrating severe disadvantage suffered by rural students by virtue of their geographical location and deprivation of equal opportunity of principles—Weightage to a rural candidates far from promoting inequality, infact seeks to restore equality between unequals, thus, fulfills mandate of Article 14 of Constitution—However, such weightage is based upon a proper, objective and data based study by a reputable university—Petitions dismissed.