

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1884 of 2007 (M/S)

M/S Qualicare pharmaceuticals Ltd. Through its
Managing Director, Registered Office at 211, Emerald,
Amrutha Hills, Panjagutta, Kalyanpuri,
Hyderabad-550082 ... Petitioner.

Versus

State of Uttanchal through its Principal
Secretary Industries, Dehradun and others ... Respondents.

Mr. S.K. Agarwal, Senior Advocate assisted by Mr. Pradeep Lohani,
Counsel for the petitioner.

Mr. N.P. Shah, Standing Counsel for respondent No.1/State.

Mr. L.P. Naithani, Senior Advocate assisted by Mr. Vipul Sharma,
Counsel for respondents 2 to 4.

(Hon'ble B.S. Verma, J.)

By means of this petition the petitioner has sought a writ in the nature of certiorari for quashing the impugned order dated 08-08-2006, contained in Annexure No.16 to the writ petition, passed by respondent No.3 whereby the allotment of industrial plot bearing no. 34, situated in Salequi Industrial Area Pharma City Dehradun, was cancelled.

Briefly stated the facts, according to the petitioner, giving rise to the writ petition, are that the petitioner is a company incorporated under the Companies Act, 1956, having its head office at 211- Emerald, Amrutha Hills, Panjagutta, Kalyanpuri, Hyderabad. The respondents had introduced a new industrial policy for setting up of new industry by inviting entrepreneurs to set up their manufacturing unit in the different industrial estates so developed by the respondents in the State of Uttaranchal.

The petitioner had applied on 15.4.2005 in the prescribed form for a plot of land measuring about 2000 Square Meters in the Selaqui Industrial Area, Chakrata Road, Dehradun. The petitioner also deposited an amount of Rs. 1,10,000/- as earnest money, processing fees etc. The petitioner was informed by the respondent No.4 about the allotment of plot No. 34 in Selaqui Industrial Area, Pharma City Dehradun by its letter dated 25-05-2005, (Annexure No.3 to the writ petition). The plot (2128 Sq. Mts. approximately),

was allotted to the petitioner on the provisional premium @ Rs. 9,00/- per Sq. Mts. and the petitioner was required to deposit Rs. 8,57,600/-, the 50% of the total cost of the plot as per the calculation sheet enclosed with the aforesaid letter. The respondent No.4 acknowledged the receipt of the aforesaid amount vide receipt dated 1-7-2005 (Annexure No.4 to the writ petition). Thereafter the possession of plot was given to the petitioner on 6-9-2005. The possession certificate is annexed as Annexure No.5 to the writ petition.

On 7-12-22005, a letter was also sent to the petitioner by respondent No.4, requesting execution of lease deed, to take possession and submit building plan of proposed unit within 15 days. Photo copy of above letter is enclosed as Annexure No.6 to the writ petition. Another letter was sent by respondent No.4 to the petitioner on 7.12.2005 demanding the outstanding amount of Rs. 2,91,582-64. Copy of the letter is also enclosed as Annexure No.7 to the writ petition. In reply thereto the petitioner wrote a letter on 21.12.2005 to the respondent No.2, complaining lack of infrastructure, roads, drainage and power apart from other supporting services like pharmacy, security and common avenue lighting etc.

Again letter dated 12.1.2006, Annexure No.9 to the writ petition, was also sent by respondent No.4 to the petitioner termed as final notice, giving seven days time for submission of building plan and project and to start construction by the petitioner. In reply thereto the petitioner sought further one month's time to submit building plan of the project and complete the construction by the end of September, 2006, by sending telegram dated 16-01-2006, (Annexure No.10 to the writ petition). The respondent No.4 further sent letter dated 22-5-2006, (Annexure No.13 to the writ petition), requiring the petitioner to submit necessary documents for executing the lease deed by 26-5-2006 and to deposit the lease rent upto 31-3-2007. A demand notice dated 6-6-2006 was also sent to the petitioner by respondent No.4 demanding Rs. 2,71,453.37 as lease rent upto 31-3-2007 against instalment premium due on 1.7.2006 (Annexure No.14 to the writ petition).

It is pertinent to mention here that thereafter the petitioner sent an e-mail dated 30-6-2006 to the respondent No.4, requesting some time to clear the dues claimed through demand letter dated 6.6.2006 till the permission is accorded by SIDCUL to the petitioner to register the plot under joint venture company. The e-mail has been annexed as Annexure No.15 to the writ petition.

The assertion of the petitioner is that despite request of the petitioner, the respondent No.3 cancelled the allotment of the plot allotted to the petitioner, by cancellation letter reference No. 9027/SIDCUL/ Prj-Selaqui/820 dated 8-8-2006 in reference to utilization notice dated 7-12-2005 and final notice dated 22-5-2006 and also for default in payment of lease rent fallen due on 29-4-2006. True copy of cancellation letter dated 8-8-2006 along with the order is annexed as Annexure No.16 to the writ petition.

The grievance of the petitioner is that the cancellation order is wholly arbitrary and untenable in law. It is contended that the general terms and conditions granted to the entrepreneurs by the SIDCUL for completing the construction of the premises on the allotted plot and to start the production normally is two years from the date of allotment. The possession of the plot was given to the petitioner on 6-9-2005 and as such the aforesaid period of two years would have expired in the first week of September, 2007. According to the petitioner the cancellation of the plot allotted to the petitioner was undoubtedly motivated and made probably to accommodate some one for the reasons best known to the respondents. Further the cancellation order has been made without considering the petitioner's e-mail dated 30-6-2006 seeking permission to register the plot under joint venture company.

A counter affidavit has been filed by the respondent. In para-5 and 6 of the counter affidavit it is stated that the concessional package could be availed, if production commences within a certain period, with certain specific terms of allotment of plot and grant of lease. Even failure to deposit the allotment money, within the stipulated period of allotment shall stand automatically cancelled and processing fee and 50% of earnest money shall stand forfeited to the corporation. The allottee was required to execute license

agreement/ lease deed in the prescribed form and in case the allottee does not execute license agreement/ lease deed when asked by the corporation, the corporation was having the right to cancel the allotment and forfeit the deposits of the allottee and it was obligatory on the part of the petitioner to abide by the terms and conditions of the allotment letter, license agreement/ lease deed. It is further stated in para-7 of the counter affidavit that as per terms and conditions of the allotment letter dated 25-05-2005, in case in Industrial Area Pharma City, Selaqui, Dehradun, a time table is fixed and is not adhered to, SIDCUL may exercise its right to cancel the allotment and forfeit the deposit of the allottee. The respondent has filed the copy of allotment form duly signed by the petitioner along with the terms and conditions of the allotment, as Annexure No. CA-2.

It is further stated in the counter affidavit that the petitioner who was the allottee of the plot, failed to execute a lease deed till 8-8-2006 even after repeated reminders dated 7-12-2005, 29-4-2006, and 22.5.2006, therefore, SIDCUL was left with no other option but to cancel the allotment of the petitioner.

The respondent in para-11 of the counter affidavit has specially mentioned that the petitioner has also given undertaking at the time of allotment of plot on 7-6-2005, wherein it was expressly undertaken by the petitioner that he would execute the lease deed within 60 days and start the construction work on the plot within 90 days of allotment. But no lease deed was executed despite lapse of more than 15 months from the date of allotment and no steps in this regard were taken by the petitioner in spite of several reminders by the SIDCUL.

Rejoinder affidavit has been filed by the petitioner in reply to the averments made in counter affidavit by the respondent and reiterated the averments made by the petitioner in the petition.

I have heard learned counsel for the parties and perused the record.

At the outset it is pertinent to mention here that the allotment of plot to various commercial establishments and companies was made by respondents for speedy industrialisation of the new State of Uttarakhand. One of the conditions on which allotment of plot was

made to the allottee, was that he had to set up an industry and start production within a period of two years from the date of allotment. The allotment Order dated 25-5-2005 has been filed by the petitioner as Annexure No.3 to the writ petition. Perusal of allotment order reveals that petitioner was allotted Plot No.34 for setting up an industrial unit for manufacturing of pharmaceuticals formulations. Condition No. 15 shows that the allottee will be required to execute an undertaking in favour of State Industrial Development Corporation of Uttaranchal as per proforma within with in 30 days of allotment. Non-execution of the undertaking within the stipulated time period will tantamount to cancellation of allotment without any further notice.

The respondents denied any fault on their part as after the allotment of plot, possession of plot was handed over to the petitioner in time. The petitioner himself has admitted these facts that the respondent No.4 had informed him about the allotment of plot No. 34 by its letter dated 25-5-2005 and possession was handed over to the petitioner vide possession certificate dated 6-9-2005. The petitioner further admitted that letter dated 7-12-2005 was sent by respondent No.4 to the petitioner to execute the lease deed, submit building plan for proposed unit within 15 days. Letter dated 12.1.2006, as final notice giving 7 days time to the petitioner for submission of building plan and project and to start construction sent by respondent No.4 is also admitted by the petitioner. Thereafter petitioner sent telegram dated 16-1-2006 requesting one month's time to submit building plan of the project and complete the construction by the end of September 2006, but despite above request the petitioner did not come forward to execute lease deed, to submit building plan and start the construction work. Even thereafter respondent wrote letter dated 29-4-2006 requesting the petitioner to submit the necessary documents for executing the lease deed by 6.5.2006. Again letter dated 22-5-2006 was sent by respondent No.4 to the petitioner requiring him to submit necessary documents for executing the lease deed by 26-5-2006 and to deposit the lease rent upto 31-3-2007. The respondent No.4 also sent demand notice dated 6.6.2006 demanding Rs. 2,71,453.37 as lease rent upto 31.3.2007 against instalment premium due on 1.7.2006. Despite above requests made by respondent No.4, petitioner did not

pay any heed to it and did not come forward to complete the formalities. Therefore, the respondent had no option but to cancel the allotment of plot made in favour of the petitioner due to own faults of the petitioner.

Learned counsel appearing on behalf of the petitioner has tried to contend that the respondent failed to consider the e-mail sent by the petitioner on 30-6-2006 to the respondent No.4 requesting some time to clear the dues claimed against the petitioner and register the plot allotted in favour of the petitioner under joint venture company, and the cancellation of allotment in favour of petitioner by the respondent is arbitrary and against law.

The contention of learned counsel for the petitioner is misconceived. The e-mail sent by the petitioner after lapse of stipulated period for executing the lease deed as well as for submitting the building plan, is against the terms and conditions of the allotment order and seems to be sent in order to delay the execution of lease deed. The petitioner also defaulted payment of lease rent demanded by the respondents. It may also be noted here that if the petitioner failed in formalities of execution of lease deed and submitting the building plan for raising construction of the building, then how he would have started the production within two years of the allotment order. Therefore, in the specific terms and conditions of allotment order and the default on the part of the petitioner, this court does not find any manifest error of law committed by respondent No.4 in cancelling the plot.

So far as the impugned order dated 8-6-2006 is concerned, the respondent has disclosed the reasons for cancellation of allotment order and forfeiting the money deposited by the petitioner with the Corporation. The Corporation has passed the impugned order as per terms and conditions of allotment order and the same does not require interference by this Court.

Reference is also to be made to the undertaking dated 7-6-2005, given by the petitioner, certified copy of which is annexed as Annexure-CA-4. Perusal of above document reveals that the petitioner has undertaken that they have accepted the terms and conditions of the allotment in to-to; they shall take possession of the plot within 60 days

of allotment after executing the lease deed and fulfilling the other requirements; they shall start construction on the plot within 90 days of allotment and comply with all the pre-requisites/rules and regulations for such construction; they shall not transfer this plot to any one before 31st March 2007 and that the violation of the declarations will tantamount to cancellation of the plot and allotment thereof without any remedy, refund and rehabilitation. In this way it is quite clear that the petitioner had to start the construction on the plot within 90 days from the date of allotment order after executing the lease deed and fulfilling the other requirements, but he has failed to comply with the terms and conditions of undertaking given by him.

Therefore, in the above facts and circumstances of the case, as has been discussed in foregoing paragraphs, having considered the submissions of learned counsel for parties and after going through the contents of all sort of documents available on record, this court is not inclined to interfere with the impugned order passed by the respondents.

The writ petition being devoid of any merit, is liable to be dismissed.

The writ petition is dismissed. No order as to costs.

Dated: November 30, 2010.

(B.S. Verma, J.)

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