

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 744/2006

Pronounced on: - 31.01.2024

Bansi Lal Gupta

.... Petitioner/Appellant(s)

Through:- Mr. R. S. Thakur, Sr. Advocate with
Mr. Ashwani Thakur, Advocate

V/s

State of J&K and others

.....Respondent(s)

Through:- Ms. Monika Thakur, Advocate vice
Mr. S. S. Nanda, Sr. AAG
Mr. Adarsh Sharma, Advocate

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT

01. The petitioner seeks quashing of order No.VC/742-50/PS dated 21.09.2006, issued by respondent No. 2, whereby, the allotment of petitioner's land in Khasra No. 62, measuring 6 kanals and 13 marlas situated at village Deeli, Tehsil and District Jammu, has been cancelled.
02. The Jammu Development Authority allotted land measuring 6 kanals and 13 marlas bearing Khasra No. 62 in village Deeli, Tehsil and District Jammu to the petitioner vide order No. JDA/DLH/647 dated 11.12.2002. Pursuant to the said order dated 11.12.2002, the petitioner deposited the cost of total land determined at the rate of Rs. 1 lac per kanal i.e. Rs. 6,65,000/- before the Authority, which was duly accepted vide receipt dated 11.12.2022. Thereafter, the petitioner remained in continuous

possession of the allotted land and has also made improvements on the same.

03. The allotment of land made in favour of the petitioner was cancelled by the Jammu Development Authority in view of the decision of the Board of Directors as the plots/commercial sites were allotted by the then Vice Chairman Shri Mohd. Aslam Qureshi, without following norms.
04. The contention of the respondents is that the allotment of the land was made in favour of the petitioner without adopting the guidelines fixed for such allotment and also without approval of the competent authority. It is also submitted that vide Government Order No. 104-HUD of 2003 dated 05.05.2003, all the allotments made by the then Vice Chairman, were ordered to be kept in abeyance. Thereafter, all these issues regarding allotment matters were placed before the Board of Directors of the Authority and considered in number of Board meetings and in its 63rd meeting held on 19.01.2004, it was decided to cancel all these allotments and accordingly, in pursuance to the same, vide order dated 21.09.2006, the irregular allotment made in favour of the petitioner was cancelled.
05. It is further submitted that in pursuance to the above referred decision taken in different Board meetings, the Jammu Development Authority issued the order dated 21.09.2006, whereby, the irregular allotments made in favour of the petitioner was cancelled. The respondents have admitted the allotment of land measuring 6 kanals and 13 marlas to the petitioner and also

deposit of amount of Rs. 6,65,000/-, as determined vide allotment order dated 11.12.2002, but submit that the order of allotment in favour of the petitioner was irregular and passed without adopting the norms, as such, the same was cancelled.

06. The decision regarding cancellation of the allotment of land of the petitioner is assailed on the ground that the same is arbitrary, unfair and unjustified. It is submitted that the allotment made in favour of the petitioner has not been found fault with, on any ground. The allotment in favour of the petitioner has raised a legitimate expectation and the same cannot be defeated by cancelling the same without providing him any opportunity of being heard. The petitioner, admittedly, was not provided any opportunity of hearing either by the Board of Directors or by the Vice-Chairman before cancellation of the allotments. There is also no justification for cancelling the allotment of the plot of the petitioner who was already in possession since long without following due process and giving him any opportunity. There is no basis for cancellation of allotment of the plot allotted to the petitioner after more than four years of its allotment, without following due procedure.

07. Thus, the grievance of the petitioner is that the respondents have cancelled the allotment at his back without providing any opportunity of hearing. Similar issue has already been considered by the Division Bench in “**Jagdish Raj Vs. Jammu Development Authority and others**”, whereby, this Court has held as under: -

“9. It is, therefore, a clear case of violation of Article 14 of the constitution of India because the order dated 12th September, 2015 has been passed at the back of the appellant without affording any reasonable opportunity of being heard and it attracts application of para-23 of judgment reported as State of U.P vs. Sudhir Kumar Singh, AIR 2020 SC 5215, which is reproduced below;

“23. It may be added that every case in which a citizen/person knocks at the doors of the writ court for breach of his or its fundamental rights is a matter which contains a “public law element”, as opposed to a case which is concerned only with breach of contract and damages flowing therefrom. Whenever a plea of breach of natural justice is made against the State, the said plea, if found sustainable, sounds in constitutional law as arbitrary State action, which attracts the provisions of Article 14 of the Constitution of India – see Nawabkhan Abbaskhan v. State of Gujarat (1974) 2 SCC 121 at paragraph 7. The present case is, therefore, a case which involves a “public law element” in that the petitioner (Respondent No.1 before us) who knocked at the doors of the writ court alleged breach of the audi alteram partem rule, as the entire proceedings leading to cancellation of the tender, together with the cancellation itself, were done on an ex parte appraisal of the facts behind his back”

08. In view of the aforesaid, this petition is allowed. The impugned order of cancellation of allotment of plot is quashed. The respondents are, however, free to consider the issue of irregular allotment of plot made and pass appropriate orders in this behalf as per law, after providing reasonable opportunity of hearing to the petitioner.

09. **Disposed of** in the aforesaid terms.

(SINDHU SHARMA)
JUDGE

Jammu
31.01.2024
Vishal

Whether the judgment is reportable ?
Whether the judgment is speaking ?

Yes/No
Yes/No