

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 11.12.2007

Date of decision : January,07,2008,

+ **W.P.(C) 6447-49/2004**

Bawana Industrial Plot owners Welfare Association,
through its Office Bearers

.....Petitioners.

Through: Petitioner's representative in person

versus

Government of NCT of Delhi and Another

.....Respondents.

Through Ms. Anusuya Salwan with
Ms. Monika Sharma, Advocates
for respondent No.2.

CORAM:

Mr. Justice S. Ravindra Bhat

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| 1. | Whether reporters of local papers may be allowed to see the judgment.? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat:

1 . The petitioners seek a direction to the respondents that the letters issued by them, should be withdrawn and that the respondents should be directed to comply with the orders of court dated 17th December, 2002 in WP No. 7155/2001.

2 . The Supreme Court through a number of directions, required closure of industrial and manufacturing units which were operating in areas which did not conform to the norms described by the existing master plan. Such units were closed down on 31st December, 1996. As a measure to rehabilitate the owners of such irregularly operating units, directions had been issued to the respondent authorities to acquire land and develop it for

suitable reallocation on the basis of appropriately evolved criteria. Therefore, the respondents acquired lands in different places and developed them, and Bawana was one such locality. In terms of the scheme formulated by the respondents, the tentative land cost was declared as Rs.3000/- per square metre. This was later enhanced to Rs.4200/- per square metre. Subsequently, a large number of eligible applicants were allotted plots.

3 . In terms of the scheme evolved by the respondent, a time schedule for payment of consideration for the plots had been prescribed. Several allottees, however, could not pay these amounts within time. These issues were considered by this Court as well as the Supreme Court which directed that, as a final opportunity, the allottees should be granted time till 31st March, 2001 to deposit 50% of the amount.

4. On 25th September, 2001 the Delhi State Industrial Development Corporation (DSIDC) wrote to the allottees informing them that the balance 50% of the cost of the plot had to be paid by 31st October, 2001. This decision, and the increase in the cost were challenged in a batch of cases before this Court being CW 7150/01 and connected cases. The Court had by its interim order dated 12.8.2002, directed all those allottees who had not paid 70% of the cost of land on the revised basis, to do so within two weeks from that order and that the 3rd installment of the 20% of the cost be paid six months thereafter. The Court also directed that the balance of the actual cost was to be paid at the time of handing over of the possession of the plot.

5. The writ petition was disposed of on 17.12.2002 inter alia in terms of the following directions :-

After hearing counsel for the parties, the order which commends to the court for accelerating the development of the Project and bringing finality to the matter as also fair to the parties, is as follows:-

“Allottees who have paid 50% of the estimated cost

by March, 2001, but fell in default thereafter, may make the payment of the 20% instalment due together with interest at 18% PA from 6th December, 2002 on or before 31st December, 2002;

Payment of the next instalment of 20% by 31st December, 2002 without payment of interest.

Allottees who have been sent/received intimation with regard to the possession being handed over, may take possession upon payment of the balance 10% of the estimated cost.

It is clarified that if the second installment of 20% which was payable by 6.12.2002 is paid by 31.12.2002, no interest would be charged.

Mr. Tulsi States that the DSIDC would accept payments in accordance with the above directions without insisting upon copies of the orders or certified copies of the orders in individual cases.”

6. The petitioners claim to be members of the Bawana Industrial Plot Owners Welfare Association. They represented on 26.11.2002 alleging that the DSIDC had failed to develop this site for reallocation and refused to hand over the possession. They also submitted that their members should not be charged with any interest for the old payment of the installments. This representation was dealt with by the DSIDC in its letter dated 8.1.2003. The relevant part of the said letter reads as follows:-

“As far as the request of the association for not charging the 18% interest on the delayed payment is concerned, it may not be out of place to state that since the allottees did not come forward to make the payment of the cost of plots up to the due dates given to them free of interest from time to time, the DSIDC was left with option to charge interest on late payments with the approval of Govt. of Delhi. This step was considered necessary to step up the response of payment/funds required to carry on the developmental work of land acquired for relocation of industries. Further, the other request of association to provide the benefits of court decision to all orders passed by the hon'ble court where restricted to the petitioners only after hearing their writ petitions. “

7. It is averred that the respondents, including the DSIDC are indulging in

discriminatory treatment, depriving the petitioner association and its members of the rightful benefit accruing in terms of the order of this court. It is claimed that the benefit of payment directed by the court was applicable to one and all; therefore, the respondents could not single out those who did not approach the court but awarded its decision. It is claimed that all the petitioners paid the instalment of 20% by 31st December, 2002 and indeed deposited all the amounts, in tune with the orders of this court, and therefore, should not be charged any interest.

8. In the light of the above facts, this court has to decide whether the interim orders made on 24.5.2002 and 17.12.2002 were all universal or general application or whether they would be confined to the petitioners and parties before the Court.

9. It is not in dispute that all the petitioners were allottees of the plots which they got by virtue of their having irregularly operated manufacturing units in places which ought not to have been there. According to the scheme for the development of such plots, the allottees were to deposit installments according to a schedule. A large number of allottees did not comply with the schedule. The Supreme Court intervened and fixed 31st March, 2003 as the deadline by which the 50% of the plot cost had to be deposited. In the meanwhile the DSIDC increased the cost of the plot from Rs.3000/- to Rs.4200/- per square metre. It also required the allottees to deposit a 7.5% security deposit and in addition, rescheduled the payment of balance 50%. According to the new stipulation that amount had to be paid by 31st October, 2002. These events triggered the round of litigation by which WP No. 7155/2001 was filed in this court. The records of that case were called for in these proceedings. The writ petition was finally disposed of by a judgment dated 31.3.2003. It was heard along with a batch of 32 other cases. WP No. 7155/2001 had been preferred by the Bawana Relegated Industrial Plot Owners Association with a declared membership of 1101 plot owners. The

other 32 petitioners who filed similar cases were individual plot owners. This then was the broad context of the previous litigation.

10. The first interim order relieved all allottees from the obligation to deposit security deposit. Secondly, it made a distinction between those before the court and the allottees who had not approached. This apparent from the following extract which forms the last part of the order dated 12.8.2002 :-

“Civil Writ Nos. 1150/2001, 7155/2001, 7361/2001, 7819/2001 and 7918/2001 has been filed by the Associations on behalf of their members. Order passed today will apply not only to the Associations but also to the members of the Associations whose list is stated to have been furnished by the Associations to the DSIDC. In case the list of the members has not been furnished, the Association will furnish the list of members both to the DSIDC as well as to the DGC within one month from today. The associations will also pay the proportionate court fee @ Rs.50/- for each of the member of the Association.

With these directions, the applications stands disposed of.”

12. The order dated 17.10.2002 has to be seen in the context of the above circumstances. It is no doubt true that the order explicitly states at two places that allottees who paid 50% of the estimated cost by 31st March, 2001 but fell in default could make the payment of the 20% installment together with interest on or before 31.12.2002 and that payment for next 20% installment by 31.12.2002 would be without interest. However, this order cannot be read in isolation of the previous order.

13. The final judgment of the Court negated the challenge made by the petitioners to the revised costing and upheld the enhanced cost of Rs.4200/- per square metre. The present petitions were preferred on 19.4.2004.

14. While examining any complaint of discrimination, the court has to not only focus itself on the basis of the alleged discrimination, but also be alive about all the

surrounding factors. Here these facts assume some importance and are as follows:-

(i) The petitioners have not approached the Court along with the others who challenged the costing in 2001.

(ii) The petitioners nowhere alleged that interim orders of the court regarding low payment of installments without interest were made universally applicable and accepted by the DSIDC as a modification of its earlier scheme, in all cases.

(iii) The first order of this court in WP 7155/2001 consciously was made applicable only to the petitioners whose names were supplied as members of the association.

(iv) The writ petition ultimately failed; final judgment was rendered on 31.3.2003.

15. The stipulation of a time schedule in the context of development of flats and allotment is a significant factor. It operates as a condition for payment of the prescribed condition and also binds the allottee and a public agency if such stipulation are not prescribed, the scheme itself would be rendered uneconomical; besides the public agency would be left with unaccounted discretion to accept payment from some and revised from others. To avoid such chaotic consequences these time contracts are built into such schemes. The stipulation of payment of interest as a condition for accepting delayed installments is a mechanism for enforcement of these conditions. While the plea of non-discrimination is no doubt an unshakable value which every public agency has to comply, nevertheless its infraction will have to be seen in context. If the nature of the interim orders in the previous proceedings had been consistently couched in universal terms, undoubtedly the petitioners could have succeeded. Yet, the broad context can simply not be ignored now. The order dated 24.8.2002 consciously confined its operation to the petitioners before the court and eventually the final judgment negated the plea of the writ petitioners on merits. Besides these, one of the most important factors, i. e., details of the total number of allottees who paid in time and

those who did not are not available with the court. In the absence of these, the allegation of discrimination without any other foundational effect regarding the universal obligation of the allottees under the previous order, relating to the burden of depositing interest cannot be upheld. It is not disputed that the petitioner had deposited the amounts without any interest on 30.12.2002. However, those were not accepted because they had not paid the interest amounts. It is open to them to pay interest within a period of six weeks in case they have not done so.

16. The writ petition is dismissed but subject to the direction contained in the preceding paragraph.

January 07, 2008
pkv

(S. RAVINDRA BHAT)
JUDGE