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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA No.973/2006

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Date of Decision : 23.05.2008

M/s Superex Steel Products (P) Ltd. ... Appellant
Through : Mr.K.C. Mittal with Mr.Sumit Bansal,
Advocates

Versus

DESU and others ... Respondent
Through:Mr.Rohit K. Aggarwal, Advocate
for respondent No.3.
Ms.Anusuya Salwan, Advocate for
respondent No.2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether reporters of the local papers be allowed to see the judgment ?
yes
2. To be referred to the Reporter or not ? no
3. Whether the judgment should be reported in the Digest ? no

AJIT PRAKASH SHAH, CJ:

1. The appellant obtained perpetual leasehold rights in respect of plot No.F-89/24, Okhla Industrial Area, Phase I vide perpetual lease dated 7th December, 1986 and obtained a sanction to construct a building thereon and completed the same by April, 1988. DDA granted the requisite completion certificate on 30th May, 1988. After setting up a factory in the building in January, 1991, the appellant applied for a load of 30 HP for industrial use and 5 K.W. for non industrial use and paid

a sum of Rs.1350/- and Rs.6700/- for the two connections on 24th January, 1991.

2. The permanent electricity connections, which were sanctioned by DESU, were however not energized. In the proceedings before the Bijli Adalat which was registered as Case No.147 on 27th July, 1992, DESU informed the appellant that the area was not permanently electrified and, therefore, a permanent connection cannot be granted. The appellant was informed that if it desired, a temporary connection could be availed of.
3. Having no choice, the appellant obtained a temporary connection. The tariff prescribed for a temporary connection was much higher than the tariff applicable to permanent connections.
4. The appellant had hoped that the issue will be resolved between DESU and DDA within a short span of time, but the matter lingered on over four years and eight months.
5. Ultimately, the appellant filed the present writ petition praying that DESU be directed to energise the permanent connection which was sanctioned and raise bills as per tariff applicable to a permanent connection. The appellant also sought a direction

that the DESU should adjust the excess amount paid by the appellant under the tariff applicable to a temporary connection after revision of the past bills, applying tariff applicable to a permanent connection.

6. Taking note of the appellant's plight, the learned single Judge issued directions that the General Manager, DESU, Vice Chairman, DDA and Commissioner, MCD should put their heads together and find a solution to the problem.
7. Finally, electrification of the area was completed in the month of December, 1996, and effective from 20th December, 1996 permanent connection was energised.
8. The question before the learned single Judge was whether the appellant is entitled to refund of the excess amount paid, for the reason that the appellant is not at fault. The appellant has claimed refund of the excess amount with effect from January, 1991 till 20th December, 1996 together with a reasonable interest.
9. The learned single Judge came to the conclusion that the electrification of the area was delayed solely due to the negligence, carelessness and inefficient working of the DDA and DDA failed to ensure that the electricity connection is

allotted within a reasonable period of time. The learned single Judge held that the excess amount paid by the appellant for the electricity consumed with effect from 14th September, 1995 till 20th December, 1996 as per tariff applicable to temporary connections vis-à-vis tariff applicable to permanent connection has to be refunded to the appellant. Consequently, the learned single Judge directed the DDA to pay the differential amount to the appellant together with interest @ 7% per annum w.e.f. 21st December, 1996 till date of payment. DDA accepted the said order of the learned single Judge and the amount for the period from 14th September, 1995 till 20th December, 1996 has been paid to the appellant with interest @ 7% per annum w.e.f. 21st December, 1996. The appellant has preferred this appeal seeking a direction to the respondents to refund the entire amount paid in excess from January, 1991 along with interest @ 18% per annum and to pay adequate compensation as may be determined by this Court.

10. Mr. K.C. Mittal, learned counsel appearing for the appellant submitted that the appellant had completed all the legal formalities and obtained a completion certificate and municipal

licence for the factory with 30 HP industrial power load and the respondent No.1 – DESU sanctioned the load for which payments had been duly made by the appellant. As such there was no justification legally for the respondent No.1 for charging double the rate for the said period. It is submitted that the dispute, if any, was between the respondents themselves, but because of their negligence and failure, the appellant cannot be made to suffer and pay at double the rate to respondent No.1. He also submitted that it would be appropriate to grant 12% interest.

11. In reply, learned counsel appearing for the respondents submitted that the learned single Judge in his discretionary power has granted refund for the period from 14th September, 1995 till 20th December, 1996 with interest @ 7% per annum and there is no ground to interfere with the order of the learned single Judge.

12. The learned single Judge has held that primary liability is that of DDA to ensure that when land is sold or allotted, occupants of buildings constructed on the land are able to meaningfully use their buildings within a reasonable time and for an industrial complex, 1 to 2 years time is a reasonable time

within which all services should be made available. The learned Single Judge also noted that the project was delayed solely on account of the negligence and inefficient working of DDA.

13. The learned single Judge further observed as under:

“23. Inter alia, General Manager, DESU informed to this Court that electrification ran into a problem because the industrial estate as originally conceived had large size plots. At the planning stage, DESU indicated the land requirement for electrification, taking into account the number of industrial units which would have come up. As per original plan, four sub-stations were conceived of and for which DESU did the requisite planning. Thereafter, DDA revised the lay out of the industrial estate. It carved out smaller plots. This required the planning to be reworked. Revised estimates showed that as against 4 sub-stations earlier conceived of, 5 sub-stations were required. The site of the 5th sub-station fell within a plot of land handed over to ESI. Part land had to be taken over from ESI.

24. It is unfortunate that DDA works obliviously of the ground realities. It appears that it hardly matters to DDA as to what would be the consequential effect of planning changes effected by it.

25. Instant case shows that as per original development, certain plots were handed over to third parties. Thereafter, plans were revised. Amenities has to be augmented. This require additional sites for setting up sub-stations. Additional site fell on a parcel of land handed over to ESI.

26. Why should citizens suffer because of negligence, carelessness and inefficient working of DDA?"

14. The learned single Judge also held that as far as DESU is concerned, he does not find any conduct of DESU which can be called blameworthy.

15. It is thus seen that the learned single Judge has recorded a categorical finding that the electricity connection ought to have been provided within a reasonable period and according to the learned single Judge, the reasonable period for an industrial complex is 1 to 2 years. The appellant applied for the electricity connection and paid charges in January, 1991. Thus the electricity connection ought to have been granted latest by January, 1993. In any event there is no justification for charging double the rate after January, 1993. Therefore, in our opinion, the appellant would be entitled to refund of the excess amount with effect from 1st January, 1993 instead of 14th September, 1995. DDA has already paid the amount with effect from 14th September, 1995 till 20th December, 1996 with interest @ 7% per annum. DDA is directed to pay the differential amount for the period from 1st January, 1993 to 13th September, 1995 with interest @ 7% per annum with effect

from 21st December, 1996 within a period of eight weeks from today.

16. In terms of the above order the appeal is allowed.

CHIEF JUSTICE

MAY 23, 2008
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S.MURALIDHAR
JUDGE