

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

+ LPA 50/2008 and CM Nos.1618-1619/2008
(stay) (delay)

% **Date of decision: 19.2.2008**

SAVITA DEVI Appellant
Through Mr.R.P. Bansal, Sr. Advocate with
Mr.Rakesh Mahajan, Mr.Prabhat
Ranjan and Mr.Sheetesh Khanna,
Advocates

versus

D.S.I.D.C. & ANR. Respondents
Through Ms.Monica Sharma, Adv. for R-1.
Mr.Amiet Andely, Adv. for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers 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

DR. MUKUNDAKAM SHARMA, CJ (oral)

1. This appeal is directed against the order dated 6th August, 2007 passed by the learned Single Judge dismissing the writ petition filed by the appellant and also the order dated 18th September, 2007 whereby a review application filed by the appellant was dismissed.

2. While dismissing the writ petition, it was held that there is no cogent and sufficient evidence brought on record by the appellant to

indicate that the unit of the appellant was functional in the true sense of the term till the relevant cut off date i.e. 31st December, 1996 in order to get the benefit of allotment of alternative land.

3. The appellant herein alleged that she was having a unit functioning at the premises and that she had to close the said unit pursuant to the orders of the Supreme Court some time in April and July, 1996. The orders of the Supreme Court passed in April and July, 1996 indicate that all the units / premises carrying on industrial and impermissible activities in residential and non-conforming areas were required to cease operations w.e.f. 31st December, 1996 and that they were eligible to industrial plots / premises to be allotted by Government agencies including the DSIDC.

4. In order to implement the aforesaid orders of the Supreme Court, a scheme was evolved by the DSIDC in terms of which the existing units, which were not conforming with the Master Plan and other controlling norms, but desired to have allotment, were required to stop their activities while applying for an alternative plot. The appellant submitted an application and as it appears the said request was also processed by the DSIDC. Our attention is also drawn to the letter dated 23rd October, 2000, whereby the DSIDC had informed the appellant about the allotment of a plot of land to her unit measuring 100 sq. mtrs. at Bawana. Pursuant to the aforesaid order of allotment,

the amount required to be deposited was also deposited by the appellant. Subsequently, however, the appellant was informed that the allotment of land had been cancelled because the said unit was not functional on the relevant date. The aforesaid order was challenged before the Appellate Committee, who rejected the appeal of the appellant, consequent to which the writ petition was filed, which was heard and disposed of by the learned Single Judge under the impugned order dismissing the writ petition. Being aggrieved by the said order, a review application was filed, which also met the same fate, and consequently, the present appeal is filed on which we have heard learned counsel appearing for the parties and have also gone through the records, which were placed before us.

5. Our attention was drawn by the counsel appearing for the appellant to the letter of allotment dated 23rd October, 2000. He has also drawn our attention to the licence given to the unit of the appellant and relying on the same it was submitted that the appellant's unit was functional in 1996 and thereafter it closed its operations from the said area in view of the orders passed by the Supreme Court. It is also submitted that the inspections carried out in 1998 and 2005 were only an eye wash and such reports of inspection carried out in 1998 and 2005 cannot determine as to whether or not the unit of the appellant was functional upto 1996. Accordingly, it is submitted that

the order of the learned Single Judge should be quashed and the respondent should be directed to allot the aforesaid plot of land to the appellant.

6. Counsel appearing for the respondents, however, placed before us the original records in support of their contention that even the records show that the unit of the appellant was not functional and operational during the year 1995-96. The letter, which is strongly relied upon by the counsel for the appellant, which is the allotment letter issued on 23rd October, 2000, does show that the application of the appellant for allotment of industrial plot was accepted and she was informed that the said unit is successful for allotment of an alternative industrial plot measuring 100 sq. mtrs. By the said letter the appellant was also directed to deposit the amount. It was, however, made clear in the said letter that the Delhi Financial Corporation had agreed in principle to finance the cost of the plot and that the final decision of financing the plot rests with Delhi Financial Corporation subject to completion of formalities. It was also indicated in the said letter particularly in paragraph 11 to the following effect:

“11. In case if it is found at a later stage that you have misrepresented the facts and/or the DSIDC has issued an allotment letter wrongly inadvertently, this letter should be treated as void ab-initio and your allotment will stand cancelled

automatically.”

7. It is also indicated from the records that pursuant to the aforesaid allotment letter, the amount demanded was also deposited by the appellant. Subsequently, however, the appellant was informed that the allotment of the aforesaid plot in favour of the appellant was cancelled by the respondent on the ground that the unit of the appellant was not functional and non-operational on the relevant date. The appellant was given opportunity to submit documentary evidence in support of her contention that the said unit was functional around the relevant date. The respondents also on their own carried out inspection at the site. The reports of the inspection are placed on record. One of the said inspection reports is dated 24th July, 1998. In the said reports it is stated that the premises where the aforesaid unit is supposed to carry on its activities was then being occupied by one Mr. Shyam Sunder, who stated that he was residing in the said plot for the last one year. The said report also stated that no unit in the name and style of M/s Jai Durga Industries existed at the aforesaid site. The statement of the occupier, namely, Mr. Shyam Sunder is a part of the said report. Mr. Shyam Sunder has stated that he is residing in the said house for one year and that there is no firm by the name of M/s Jai Durga Industries for the last 4-5 years. He also stated that according to his knowledge there is no plot or shop in the name of M/s Jai Durga

Industries at the aforesaid address. The said statement is also dated 24th July, 1998 and if the period of 4-5 years, as stated in the said statement, is computed from the said date, it will be possible to presume that the said firm did not exist at the site from 1993 onwards.

8. Be that as it may, the appellant was also given an opportunity to produce evidence including documentary evidence in support of her claim that the said firm was functional somewhere around 1995-96. What was produced in support of the said contention was the licence of the firm.

9. The learned Single Judge, on examination of the records, found that the said licence was renewed only upto 1995. Now the original licence is produced, which shows that it was renewed upto 31.3.1996. However, renewal of the licence would not prove that the unit was functional and operative from the said place even in 1996. There could have been other relevant documents placed by the appellant to show that the said unit was functional till 31.12.1996. The appellant has also produced before us certain records before the Appellate Committee showing profit and loss account even for the subsequent period, i.e. the year 1999. Now, if according to them, they were not functional at all after 1996, how are the said profit and loss accounts being produced for the purpose of establishing that they were operational even in 1999.

10. Therefore, in our considered opinion the records are being created to establish that the appellant has all along been functioning from the said premises even upto 2000. However, it is the stand of the appellant herself that the said unit stopped its functioning and operation from the said place some time in 1996 pursuant to the orders of the Supreme Court. These are disputed questions of fact, and as rightly observed by the learned Single Judge, there is no conclusive evidence placed on record either in the nature of documentary evidence or otherwise to show and indicate that the said unit was functional some time in 1995-96 in the aforesaid area so as to entitle the appellant's firm to have allotment of an alternative plot of land.

11. We find no merit in this appeal, which is dismissed.

CHIEF JUSTICE

REVA KHETRAPAL, J

FEBRUARY 19, 2008
nm