

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

% *Judgment Reserved on: 17th November, 2009*
Judgment Delivered on: 20th November, 2009

+ **LPA No.41/2004**

M/S. CHOPRA ENTERPRISES Appellant

Through: Mr.Keshav Dayal, Sr. Adv. with
Mr.Arun Beriwal and Mr.Gagan
Mathur, Advocates

Versus

DDA Respondent

Through: Mr.Bankey Bihari Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. Claim for entitlement to an alternative industrial plot was laid by the petitioner when he filed WP (C) No.1781/1998; the claim was predicated on a policy decision taken to rehabilitate all those who were carrying on industrial activity on the land which was acquired requiring DDA to allot an industrial plot to the person affected.

2. It was pleaded in the writ petition that the petitioner was a tenant under Mr.S.S.Gill, Managing Partner of M/s.Alloys

Foundary Company and was running a manufacturing unit at Khasra No.733/1, Village Madipur since 1979 and that on the acquisition of land comprised in Khasra No.733, the petitioner was displaced and that there being a policy to allot an industrial plot to all those who were affected by the acquisition, the case of the petitioner was considered for allotment of an alternative plot and a decision dated 26.5.1981 was taken to allot a plot to the petitioner but for reasons best known, none was allotted. It was pleaded, that another unit M/s.S.S.Plastics also functioning from the same land was allotted an industrial plot and thus it was urged that the petitioner had been discriminated against. It was pleaded that for unexplainable reasons case of the petitioner was referred to the Land Allotment Committee, while no such reference was made in the case of M/s.S.S.Plastics. Asserting that even under the Nazul Land Rules 1981, the petitioner was entitled to an alternative industrial plot, stating that after making repeated representations till the year 1995 yielding no results, the petitioner was constrained to file the writ petition.

3. It is apparent that the claim of the petitioner was predicated on two distinct pleas and that the second plea had two limbs. The first plea was of entitlement under the policy to give an industrial plot to all those who were running manufacturing units upon land on which the unit was running being acquired. The second was the plea of discrimination vis-à-

vis M/s.S.S.Plastics being allotted an industrial plot; the second limb pertained to the discriminatory procedure adopted in considering the case of the petitioner differently than that of M/s.S.S.Plastics; the discrimination being referring the case of the petitioner to a Land Allotment Committee while no such route being adopted in the case of M/s.S.S.Plastics.

4. The response of DDA was that the writ petition was highly belated inasmuch as vide letter dated 16.4.1992 the rejection letter was served upon the petitioner and that the writ petition being filed in the year 1998 suffered from inordinate delay. The letters written by the petitioner were wished away by pleading that one cannot extend time by merely sending representations. With reference to the claim of parity with M/s.S.S.Plastics it was pleaded that the allotment to M/s.S.S.Plastics was before the Nazul Land Rules 1981 came into force. It was urged that on 9.12.1991 a policy guideline was framed with reference to the Nazul Land Rules, para 8.04 whereof reads as under:-

“8.04 Policy for allotment of industrial plots in lieu of acquisition of land in urban areas.

Resolved that

“The allotment of an alternative industrial plot to the person whose land is acquired or proposed to be acquired may be considered only in such cases where an industrial unit was functioning on the acquired land, on a case-to-case basis with due regard to provisions of the Master Plan, Industrial policies in force, availability of alternative industrial plots and

other relevant factos. Provided that the size of the alternative plot would be determined as follows:-

(a)	Area under occupation by the unit on the acquired land	Recommended Maximum Size
(i)	50 to 300 sq. mtr.	100 sq. mtr. subject to the size of the alternative plot at pre-determined rates not exceeding the size of the land under occupation of the unit that has been acquired. Where marginally excess land is allotted for on rational reasons, it shall be charged at prevalent market rates.
(ii)	300 to 500 sq. mtr.	200 sq. mtr.
(iii)	501 to 900 sq. mtr.	300 sq. mtr.
(iv)	901 to and above	500 sq. mtr.

As alternative plot which would be considered only if the industrial unit satisfied the following conditions:-

- (a) All industrial approvals have been obtained;
- (b) Land title is clear;
- (c) Conforming land use, or who were functioning since prior to coming into force of Master Plan and were rendered non-conforming as a result of Master Plan provisions.”

5. It was further pleaded by DDA that the petitioner had no proof of carrying on any manufacturing activity at the site in

question since the year 1979 as claimed by the petitioner, much less when the lands were acquired in the year 1981.

6. It is apparent that all those who were affected by acquisition of land in the form of industrial units being run by them were eligible to be considered for allotment of an industrial plot contingent upon three conditions being satisfied. The three conditions are as listed in sub-paras a, b and c noted hereinabove i.e. the unit affected was having industrial approvals, land title was clear and either the land use conformed to the prescribed land use under the Master Plan if the unit came up after the Master Plan for Delhi was enforced or was carrying on industrial activity prior to the enforcement of the Master Plan in Delhi.

7. It may be noted at the outset that the so-called policy decision on which the writ petition was founded, being the policy decision in vogue when the lands were acquired was not filed before the learned Single Judge and from the pleadings in the rejoinder affidavit, it is apparent that the writ petitioner chose to litigate the battle by pleading that its entitlement be considered under the policy guideline afore-noted. The same is evidenced from the pleadings in the rejoinder affidavit and the documents annexed therewith. The petitioner filed certain orders issued by the Sales Tax Officer pertaining to assessment of sales tax for the year 1979-80 as per which the place of business of the petitioner was the site in question; registration certificate issued by the

Sales Tax Authorities evidencing that the petitioner was registered as a manufacturing and sale unit with it. The petitioner also filed a photocopy of a Municipal Trade License issued on 22.5.1986 evidencing that from the site in question the petitioner was granted a license to manufacture goods. The petitioner also filed a letter dated 20.10.1999 issued by the licensing department of the Municipal Corporation of Delhi informing that while granting the license, the license fee was received with effect from 1.4.1979.

8. In view of the pleadings in the rejoinder affidavit and evidenced by the impugned decision it is but obvious that the petitioner did not urge that the policy guidelines issued in the year 1991 did not have a retrospective operation and that its claim needs to be considered with reference to the policy in force in the year 1981 when the land was acquired. Thus, the learned Single Judge decided the issue with reference to the entitlement under para 8.04 of the policy framed and notified in the year 1991.

9. We may note that even in appeal the issue was fought with reference to the policy of the year 1991. We may note that for the reason the petitioner fought the battle with reference to the policy decision of the year 1991, the existing policy in force in the year 1981 was not ever brought on record.

10. On the issue of the writ petition being highly belated, the learned Single Judge has held as under in paras 19 and 20 of the impugned decision:-

“19. It will be appropriate to first consider the plea of delay and laches raised on the part of the respondent. There is no doubt that the case of the petitioner was rejected vide letter dated 16.4.1992. The petitioner thereafter continued to make representations. It will be seen that these representations were made periodically each year and admittedly there was no response from the respondent. Once the decision was taken in the case of the petitioner and the petitioner was receiving no response to his further representations, the petitioner should have approached the appropriate forum for redressal of the grievances, which the petitioner did not do and continued to make yearly representations.

20. In my considered view, such unilateral representations made after the decision has been taken in the case of the petitioner cannot really extend the time period for filing of the writ petition. A long gap of 6 years is unexplained other than the periodic representations made every year. I have, thus, no hesitation in holding that there is delay and laches on the part of the petitioner in approaching this Court for redressal of the grievances.”

11. Save and except to urge that the officers of DDA did not respond to the letters written by the petitioner and hence the petitioner was justified in sending reminders, learned counsel for the appellant/petitioner could take the argument no further.

12. It has to be noted that on 16.4.1992 DDA intimated rejection of the claim in unequivocal terms. It has to be further noted that the correspondence between the parties was going on since the year 1981 and thus the petitioner was not justified to

continue to write on the issue for further 6 years when DDA closed the issue at its end. It is true that it is not expected that at the first sign of trouble a party should rush to Court and for said reason Courts have been lenient on the issue of cause of action, but the inaction to take resort to a judicial remedy cannot spread spanning 6 years.

13. Affairs of the state are normally conducted with reference to budgets framed on yearly basis. With respect to rehabilitation of persons, alternative lands have to be acquired and normally the Government functions by framing composite schemes and allocating budget. If a person's entitlement to the land is in the year 1990 and the claim is predicated 5 years later, satisfaction of the claim would require the Government to procure land 5 years later thereby upsetting the budget of the Government. It is in this context that it becomes important that claims to alternative lands be enforced with promptness.

14. Concurring with the learned Single Judge that the writ petition merited dismissal on account of undue delay and laches, we need speak no more, but do so for the reason the learned Single Judge has dealt even with the merits of the writ petition.

15. On the issue of parity with M/s.S.S.Plastics, the learned Single Judge found that it could not have been allotted the plot as the case of M/s.S.S.Plastics was not referred to the Advisory

Committee which has been constituted. The learned Single Judge has found that the procedure of law required was to screen the applicants before an Advisory Committee which committee later on came to be known as the Land Allotment Committee. So holding, with reference to the decision of the Supreme Court reported as 1999 (3) SCC 494 Jalandhar Improvement Trust Vs. Sampuran Singh, it was held that an action contrary to law with respect to one party would furnish no ground for claim of parity by another party.

16. We concur with the view taken by the learned Single Judge and that takes care of the second limb of the second submission before the learned Single Judge that a different procedure was followed while considering the claim of the petitioner. Needless to state the illegal procedure followed while considering the claim of M/s.S.S.Plastics could not form the claim for foundation of similar illegal procedure to be followed qua the petitioner.

17. At the heart of the matter was the germane issue whether the petitioner had a Municipal Trade License in the year 1979 as claimed, for the reason the policy guideline required as an eligibility condition, the unit affected, to have all industrial sanctions. Needless to state in the areas under the control of the Municipal Corporation of Delhi in the Union Territory of Delhi the requirement of law is that the unit engaged in the manufacturing

activity should have a municipal trade license; it not being in dispute that the site in question fell within the jurisdiction of the MCD.

18. The pleadings and the applicable documents filed by the petitioner along with the rejoinder affidavit have been noted by us in para 7 above.

19. Noting that the land in question was earmarked under the Master Plan for Delhi as agricultural land, but not taking the issue any further, dealing straight with the issue of Municipal License, the learned Single Judge concluded the issue in paras 37 to 40 of the impugned decision which reads as under:-

“37. The land is stated to be agricultural land and thus, not capable of being put to industrial use as per the prescribed user. However, the most material aspect and which formed basis of the decision even on reconsideration is whether the petitioner had all the industrial approvals. This would require a valid municipal licence.

38. The documents filed by the petitioner with the rejoinder do show that the activity of dealing with iron and steel being carried out for the assessment year 1979-80 in terms of the orders under the Sales Tax Act and the petitioner was also registered on 31.10.1979. However, to carry on the manufacturing activity, the municipal licence is mandatory. This becomes relevant since the party should have been carrying on the activity at the time prior to the acquisition. No fault can be attributed to such a policy decision, especially in view of the observations of the Supreme Court in M/s. Ambitious ENTERPRISES'S case (supra). Thus, this document becomes the most material one for determining the controversy in the present case.

39. The municipal license itself has been issued on 22.05.1986, which is much after the acquisition

proceedings. However, the petitioner seeks to draw strength from this licence on the basis of the letter issued by MCD on 20.10.1999 stating that the licence fee received was w.e.f. 01.04.1979. The question, which would, thus, arise is whether the licence issued in 1986 which sought to recover fee from 1979 could amount to grant of a licence, which was valid as on the date when the notification was issued.

40. Other than the letter dated 20.10.1999, there is nothing else to show as to why the licence fee was taken retrospectively. The letter only states that "*the licence fee was received w.e.f. 01.04.1979 as per record.*" The licence is dated 22.05.1986. Thus, admittedly the petitioner did not have a licence in 1981. In my considered view, the mere fact of payment made in 1986 retrospectively would not amount to a qualification within the parameters laid down since the petitioner did not hold a valid municipal licence as in 1981, the same having been issued only in 1986."

20. The learned Single Judge noted that in the decision reported as AIR 1997 SC 3263 DDA Vs. M/s.Ambitious Enterprises & Anr., the Supreme Court had held that for industrial units to be shifted from non-conforming to conforming areas, the condition of the applicant holding a valid Municipal License was held to be neither arbitrary nor irrational.

21. We concur with the reasoning of the learned Single Judge. We reinforce the findings by noting that evidence which is created or is given birth to after a dispute has surfaced is always treated with suspicion because of an opportunity available to create self-serving evidence. Unless corroborated, such evidence is treated as suspect.

22. Admittedly, the petitioner did not have any Municipal Trade License till one was obtained on 22.5.1986. Wherefrom could MCD claim to have received the fee with effect from 1.4.1979 has remained a mystery. No provision under the MCD Act has been shown to us empowering MCD to grant licenses with effect from retrospective dates. That apart, the license in question does not record anywhere that it has retrospective validity. Thus, the letter dated 20.10.1999 issued by the Administrative Officer (Factory) of the MCD, which we note is not even on the official letter head of the MCD and does not even bear the stamp of the said organization, is highly suspect.

23. It is settled law that where a view taken by the Primary Adjudicator of Facts is a reasonable probable view on questions of fact, the Appellate Court would not interfere with the finding returned.

24. It was vehemently urged that the rent receipts filed, the sales tax registration certificate and the sales tax assessment order for the year 1979-80 showed the presence of the appellant at the site in question and conduct of business. But, the same begs the basic issue; the issue being whether the petitioner was carrying on manufacturing activity. It was not in dispute that the appellant was in possession of the site in question. The sale tax assessment order shows sale of some goods. Now, even a trader can engage in the business of sale. The sales tax registration

certificate is a composite certificate registering the petitioner as a manufacturer as well as a seller. It could well be that the petitioner engaged only in the business of sale. We note that no document pertaining to payment of excise duty has been produced. Further, the issue had not to be resolved only with reference to the carrying on of a manufacturing activity, if at all, from the site. The requirement of the law was having industrial sanctions i.e. a Municipal Trade License to carry on manufacturing business.

25. Looked at from any angle, the reasoning of the learned Single Judge is legal and valid and calls for no interference.

25. The appeal is dismissed with cost assessed at Rs.5,000/- to be paid by the appellant to DDA.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

November 20, 2009
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