

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

+ LPA 615/2010

P.K. JAIN Appellant
Through: Mr. S.S. Lingwal, Advocate

versus

GOVT. OF NCT OF DELHI
& ORS. Respondents
Through: Ms. Ruchi Sindhwani, R-1 and 2.
Ms. Renuka Arora, Advocate for
R-3.

WITH

+ LPA 618/2010

M/S. PUNEET INDUSTRIES Appellant
Through: Mr. S.S. Lingwal, Advocate

versus

GOVT. OF NCT OF DELHI
& ORS. Respondents
Through: Ms. Ruchi Sindhwani, R-1 and 2.
Ms. Renuka Arora, Advocate for
R-3.

AND

+ LPA 620/2010

S.C. JAIN Appellant
Through: Mr. S.S. Lingwal, Advocate

versus

GOVT. OF NCT OF DELHI
& ORS. Respondents
Through: Ms. Ruchi Sindhwani, R-1 and 2.
Ms. Renuka Arora, Advocate for
R-3.

% Date of Decision : 27th August, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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

J U D G M E N T

MANMOHAN, J

CM 15339/2010 in LPA 615/2010
CM 15353/2010 in LPA 618/2010
CM 15368/2010 in LPA 620/2010

Allowed, subject to all just exceptions.

CM 15340/2010 in LPA 615/2010
CM 15354/2010 in LPA 618/2010
CM 15369/2010 in LPA 620/2010

These are the applications for condonation of delay in re-filing the appeals.

For the reasons stated in the applications, delay in re-filing the appeals is condoned.

Accordingly, applications stand disposed of.

LPA 615/2010 & CM 15338/2010
LPA 618/2010 & CM 15352/2010
LPA 620/2010 & CM 15367/2010

1. The present three Letters Patent Appeals have been filed challenging a common judgment dated 27th April, 2010 whereby the learned Single Judge has been pleased to dismiss the three writ petitions filed by the Appellants. It is pertinent to mention that by way of the

writ petitions, the Appellants-Petitioners had challenged the cancellation of allotment of industrial plots under the Relocation Scheme. Since in the present appeals a common judgment has been challenged, they are also being disposed of by a common judgment and order.

2. The relevant facts of the present appeals are that the Appellants claim that they had been running factory units in a non-conforming area in Delhi. However, in accordance with the judgment of the Supreme Court directing closure of industries which did not conform to the Master Plan of Delhi, the factory units of the Appellants were closed. A scheme was introduced by the Government of NCT of Delhi for allotment of alternative plots to such industrial units that were functioning as on 19th April, 1996. Pursuant to the said rehabilitation scheme, the Appellants were allotted alternative plots by the Delhi State Industrial & Infrastructure Development Corporation Ltd. (for short “DSIDC”). As per the said scheme, all applicants were to immediately deposit the earnest money/down payment of ₹ 60,000/- and 50% of the cost of the plots were to be deposited within three months from the date of the said allotment. The last date for payment of 50% of the demand was extended by the Supreme Court upto 31st March, 2001.

3. It is the case of the Appellants that after making payment of earnest money/down payment, the balance amount constituting 50% of the cost was to be financed by the respondent no. 4, namely, Delhi Financial Corporation (for short “DFC”). It is further the case of the Appellants that they had executed all documents and completed all

formalities with respect to the issuance of loan by DFC.

4. However, since 50% of the cost was not deposited within the time stipulated by the Supreme Court, the DSIDC cancelled the allotment of plots made in favour of Appellants. Aggrieved by the said cancellation, the Appellants filed the writ petitions which have been dismissed by the impugned judgment dated 27th April, 2010. The relevant portion of the impugned judgment is reproduced hereinbelow:-

“16. If the DFC had closed the loan accounts and therefore did not make remittances to the DSIDC and then no fault can be found with the DSIDC for cancelling allotments. There is nothing unreasonable in the action of the DSIDC in cancelling the Petitioners’ allotments on the ground that the 50% of the revised cost was not paid by 31st March, 2001.

17. In the circumstances, this Court is unable to find any ground having been made out by the Petitioners for setting aside the cancellation orders issued by the DSIDC.

18. Whether in fact the Petitioners complied with the stipulations set by the DFC and whether the DFC was justified in closing their loan accounts, are disputed question of facts which cannot possibly be examined in these petitions. It is also beyond the scope of these proceedings. This Court is only called upon to examine whether the DSIDC was justified in cancelling the allotment. In the considered view of this Court, the answer to the question must be in the affirmative.

19. Consequently, there is no merit in any of these writ petitions. They deserve to be dismissed. It is, however, clarified that if any of the Petitioners approaches the DSIDC for being included in the waiting list under the recent policy of the DSIDC then it will be open for them to do so provided they informed the DSIDC within a period of one month from today.”

5. Mr. S.K. Lingwal, learned counsel for Appellants submitted that the Appellants have been crushed between the two government agencies, namely, DFC and DSIDC. According to him, the Appellants had executed all the documents and submitted all original documents with DFC but the DFC did not release the loan due to its own

negligence. Mr. Lingwal further submitted that the DFC had undertaken to deposit the loan amount directly with the DSIDC, but the DSIDC has taken the stand that it has not received the payment.

6. It is pertinent to mention that the DSIDC has in the counter-affidavit filed before the learned Single Judge has taken the stand that as the Appellants did not make payment of 50% of demanded amount by 31st March, 2001, their allotments were cancelled in accordance with the specific direction given by the Supreme Court.

7. The DFC in its counter-affidavit filed before the learned Single Judge has taken the stand that since the Appellants after repeated advice failed to submit all documents and comply with all formalities, it could not sanction the loan to the Appellants and as a consequence of which money could not be remitted to DSIDC.

8. In our opinion, since admittedly 50% of the cost of plots was not deposited by 31st March, 2001, the action of DSIDC in cancelling the allotments cannot be faulted with. In fact, a Division Bench of this Court in *Sunil Dua Vs. Govt. of NCT of Delhi & Anr., LPA No. 101/2009* decided on *12th May, 2009* has held that in the event 50% of the amount was not deposited by 31st March, 2001, DSIDC was bound to cancel the allotment of plots in accordance with the direction of the Supreme Court. The relevant observations of the Division Bench in *Sunil Dua* (supra) are reproduced hereinbelow:-

“3. There is no dispute that the Supreme Court’s order dated 12th September, 2000, desired that allotment of those who did not make substantial payment should be cancelled. As per the DSIDC, according to the directions of the Supreme Court, the draw of plots was held on 3rd October, 2000 and

eligible allottees held successful in the draw were issued allotment letters. Under the allotment letters, 50% of the demand was to be made immediately on issuance of the allotment letters. The last date for payment of 50% was extended upto 31st March, 2001 by press notification. It was also stated on behalf of the DSIDC that by a public notice dated 21st January, 2001, published in "Times of India", allottees were informed that the Supreme Court of India in its hearing dated 24th January, 2001, had extended time for receipt of 100% payment in the case of allottees at Narela, Badli, Jhilmil and Patparganj as well as 50% payment in case of Bawana upto 31st March, 2001. A number of allottees did not deposit 50% payment within the stipulated time, however, keeping in view the hardship faced by the allottees, it was decided by the DSIDC that all those allottees who did not make the first 50% payment on time would be given an option to withdraw their amounts deposited and keep only the security deposit amounts with the Corporation and DSIDC would maintain a separate list of these allottees and their cases may be considered after new land was acquired and developed and after complying with the Supreme Court's order for exhausting the pending allottees. A copy of the notice dated 26th August, 2001 is annexed at page 109 of the paper book, a copy of the public notice dated 26th January, 2001 published in the newspaper is annexed at page 121 of the paper book and a copy of the order dated 12th January, 2000 passed by the Supreme Court is annexed at page 101 of the paper book.

4. It is thus clear that the intimation pursuant to the Supreme Court's orders was published in the newspaper informing the allottees of the cut-off date of 31st March, 2001. Despite this, admittedly, the appellant did not make the stipulated payment as required by the orders of the Supreme Court and the public notice of 26.01.2001. Thus the allotment was liable to be cancelled in terms of the orders of the Supreme Court and the public notice."

9. As far as the action of DFC is concerned, this Court is of the opinion that in view of the averments made by the DFC in its counter-affidavit, it is apparent that disputed question of facts arise for consideration in the present cases. Admittedly, the same cannot be adjudicated upon in a writ petition.

10. Consequently, leaving open the right of the Appellants to take

action in accordance with the law against the respondents, we reiterate the direction given by the learned Single Judge that if any of the Appellants approach DSIDC within one month from today for being included in the waiting list, then DSIDC would do so and depending upon the availability of plots after clearance of the waiting list, DSIDC would allot plots to the Appellants. With the aforesaid observations, present Letters Patent Appeals and the applications disposed of.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 27, 2010
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