

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 2nd March, 2010
Decision on : 15th April, 2010

W.P.(C) No. 242 of 2007 & CM 407/2007

SMALL INDUSTRIES WELFARE ASSOCIATION
& ORS.

..... Petitioners

Through: Mr. P. Chakaborty, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Raman Oberoi, Advocate for UOI
Ms. Anusuya Salwan, Advocate for
DSIDC.

WITH

W.P.(C) No. 9224 of 2007 & CMs 17357/07, 4711/08

DELHI PRADESH DSIDC CWC UDHYAMI SAMITI REGD.
& ORS.

.... Petitioners

Through: Mr. P. Chakaborty, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Raman Oberoi, Advocate for UOI
Ms. Anusuya Salwan, Advocate for
DSIDC.

W.P.(C) No. 2956 of 2008 & CM 5725/2008

NEW SEEMAPURI DSIDC (CWC) MANUFACTURER'S
WELFARE ASSOCIATION

..... Petitioner

Through: Mr. P. Chakaborty, Advocate.

versus

LT. GOVERNOR, DELHI THROUGH : PRINCIPAL
COMMISSIONER DIRECTORATE OF INDUSTRIES &
ANR

..... Respondents

Through: Ms. Raman Oberoi, Advocate for UOI
Ms. Anusuya Salwan, Advocate for
DSIDC.

AND

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared
the digital data is as per the physical
file and no page is missing.

W.P. (C) 242/2007 etc.

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SMALL INDUSTRIES WELFARE ASSOCIATION
& ORS.

..... Petitioners

Through: Mr. P. Chakraborty, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Raman Oberoi, Advocate
for UOI

Ms. Anusuya Salwan, Advocate for DSIDC

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be referred in the digest?

} No

J U D G M E N T

1. These four petitions seek similar relief and accordingly are being disposed of by this common judgment.

2. The challenge in these petitions is to a circular dated 31st July, 2006 issued by the Delhi State Industrial Development Corporation ('DSIDC'), Respondent No. 3 herein enhancing the licence fee payable by the allottees of DSIDC sheds at the Community Centre in Nand Nagri Resettlement Colony from Rs. 2.30 paise per square feet to Rs. 2.65 paise per square feet with effect from 1st July, 2006. The Petitioners claim to be association of such allottees.

3. In the year 1976, the members of the Petitioner associations were allotted portions measuring 12 x 12 feet and 12 x 25 feet each

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according to the requirement of their household (cottage) industries in a hall of DSIDC sheds in the Community Centre of Nand Nagri Re-settlement Colony under the 20 Point Programme. These spaces were demarcated by the DSIDC with the condition that allottee will not raise walls or lay a roof. Initially, the allotment was made on a licence fee of 20 paise per month per square feet. The Municipal Corporation of Delhi ('MCD') is stated to have granted the requisite licence to the allottees. The charge of 20 paise per square feet was, however, termed as 'service charges'.

4. It is stated that in the year 1978, the DSIDC abolished the service charges and asked the allottees to pay licence fee @ 40 paise per square feet per month and also execute the licence deed in the format provided by the DSIDC. According to the Petitioners, the allottees had no choice at that stage and the licence deeds were executed incorporating, inter alia, the said condition.

5. In 1984-85, the DSIDC enhanced the licence fee from 40 paise to Rs. 1 per square feet per month. Thereafter, when the Petitioners protested it was reduced to 80 paise per square feet per month. The DSIDC started recovering the licence fee at the aforementioned rates with effect from 1st April 1986. It is stated that on 5th November 1986, a meeting was held in the office of Chief Executive Councillor, Delhi, at the request of the representatives of the Petitioners. In the said meeting, the DSIDC agreed that accommodation in the sheds would be allotted on hire purchase basis and the amount already paid as

licence fee to the DSIDC would be adjusted towards the disposal cost which would be payable in instalments. According to the Petitioners, allotments were made on a regular basis and made under the 20 Point Programme. It was contended that in any event the allottees were entitled to allotment of an alternative site under hire purchase or leasehold basis.

6. It is stated that on 18th August 1988, the DSIDC decided to formally allot the Petitioners the portions occupied by them on hire purchase basis at the disposal cost of Rs. 100/- per square feet. It appears that the said decision was not implemented. In July 2000, the DSIDC increased the licence fee from 80 paise to Rs. 5/- per square feet per month. This was more than a six-fold increase over the earlier rate. The Petitioners were further required to pay 60 months' licence fee in lumpsum for converting their licence into an allotment on hire purchase basis. There was no mention of set off of the licence fee already paid against the disposal cost on hire purchase basis. Consequently, the Petitioners did not accept the aforementioned offer.

7. In the year 2001, the licence fee was reduced from Rs. 5/- to Rs. 2/- per square feet per month. In July 2003, the licence fee was enhanced to Rs. 2.30 per square feet from the rate of Rs. 2/- per square feet as fixed in the year 2001. Thereafter in July 2006, the licence fee was further increased to Rs. 2.65 from Rs. 2.30 per square feet per month. It is stated that the Petitioners did not pay the enhanced licence fee as

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it was “erratic, unfair and arbitrary”. In the circumstances, the present petitions were filed.

8. In its reply to the first mentioned petition by the Small Industries Welfare Association, the DSIDC raised a preliminary objection that the membership of the said Association was not disclosed. Even otherwise, the Petitioners did not pay the requisite court fee payable by the each member. The DSIDC denies that Rule 6 (ii) & (v) of the Nazul Land Rules apply to it or that space in question was required to be allotted at pre-determined rates. It is stated that the question of revising the licence fee and levying a transfer fee was considered by the Board of Directors of the DSIDC at a meeting held on 26th December 2001 where it was decided that the transfer fee would be as follows:

- | | | |
|-------|---------------|-------------------------------|
| (i) | East Delhi : | Rs. 45/- per sq. ft. |
| (ii) | West Delhi : | Rs. 100/- - 270/- per sq. ft. |
| (iii) | North Delhi : | Rs. 85/- - 100/- per sq. ft. |
| (iv) | South Delhi : | Rs. 120/- - 170/- per sq. ft. |

9. Further, it is submitted that Rs. 2805/- per square feet being charged as transfer fee was based on ‘no profit no loss’ basis and that in such event the rate already paid by the allottees from the date of allotment would be adjusted. The letter dated 10th September, 1987 addressed to the President, DSIDC Community Works Centre Welfare Association is denied. It is averred that said letter is forged and fabricated and that Shri S.M. Ahmed (the officer who signed the said letter) had clarified that no such letter had been written by him.

10. In para 15 of its reply the DSIDC contends:

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“15.....It is further submitted that the cost structure of the transfer scheme was on the basis of no profit no loss basis in view of the present market value of the area. The allottees in the present case who were defaulters and sold their licence spaces but still want to enjoy the benefits of unauthorized occupation of the premises. It is submitted that the answering respondent cannot consider the pre-determined rate of allotment. Therefore, the reliance of the petitioner on the pre-determined rates issued by the Govt. of India for residential colonies/commercial land in the year 1977-78 has no relevance to the present case. The reliance of the petitioner on the costing pattern of the Community Centres constructed in the year 1977-78 cannot be relied at this stage....”

11. The above pleadings and the oral submissions by counsel for the parties have been considered. As regards the preliminary objection, at the hearing on 24th September 2009, the following order was passed by this court:

“The petitioner will file list of their members and undertaking given by the members that they will be bound by the decision of this Court along with affidavit of the Secretary of the petitioner Association. List will also indicate whether the said person is an original licensee or a subsequent purchaser. The said affidavit will be filed within a period of four weeks.

Learned counsel appearing for the respondents states that counter affidavit was filed yesterday.

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Rejoinder affidavit will be filed within four weeks.
Copy of counter affidavit has been given to the
counsel for the petitioner today in the court.

List on 25th January, 2010”

12. Thereafter, a further opportunity was given to the Petitioners on 25th January 2010 when it was found that no such affidavit as required by this court had been filed. Again on 18th February 2010 following order was passed:

“1. None appears for the Petitioner. On 24th September 2009 it was specifically directed that the petitioner should file the list of its members along with an undertaking by each of the members that they will be bound by the decision of this Court. The affidavit of the Secretary of the Petitioner Association was also to be filed. The list was to indicate whether the member was an original licensee or a subsequent purchaser.

2. Even on the next date i.e. 25th January 2010 the said affidavit was not filed and a further adjournment was sought. As a last opportunity, the matter was listed today.

3. Today again none appears for the Petitioner and no affidavit has been filed.

4. In the order dated 12th January 2007, this Court recorded the submission of learned counsel for the Petitioner that the prayer was confined to the relief of seeking transfer/regularization of the work places of the members of the Petitioner Association under the earlier scheme of DSIDC which was open from 15th March till 12th June 2001. Ms. Salwan, learned counsel for the DSIDC states that she will seek instruction on whether an

application under the said scheme can still be entertained
by the DSIDC.

5. List on 2nd March 2010.”

13. The aforementioned orders not complied with by the Petitioners, it has not been possible to ascertain who the members of the Small Industries Welfare Association are.

14. Ms. Salwan, learned counsel for the DSIDC, stated on instructions that even though the scheme had closed, given the pendency of these petitions the Petitioners could be considered for regular allotment of the spaces subject to fulfillment of all the requirements including payment of the revised licence fees. However, the learned counsel for the Petitioners insisted that this court should return a finding on merits as according to him the Petitioners would not be able to afford the increased licence fee. Accordingly, this Court proceeds to deal with the merits of the petitions.

15. These writ petitions raise a challenge to the enhancement of the licence fee by the DSIDC. Given the limited scope of judicial review under Article 226 of the Constitution, this Court is not expected to sit in appeal over the decision of the authority to fix licence fees. It lacks the expertise to determine what should be the appropriate licence fee that should be charged from time to time. That exercise will involve accounting for several factors which are best left to the decision of the authority itself. The limited scope of this Court's interference is examining whether the impugned increase in licence fee by the

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DSIDC can be said to be irrational or arbitrary. Although there are no judicially manageable standards for deciding such an issue, what is possible is to examine the comparable rates being charged for commercial spaces in similar areas. In that event it might be possible to determine whether in comparison thereto, the impugned increase is excessive or arbitrary and therefore unaffordable. However, that is not the basis on which the impugned rates are assailed by the petitioners. No such comparative rates have been placed on record to enable the court to appreciate if the impugned increase in the licence fee is unconscionably excessive.

16. A perusal of the scheme for transfer/regularization of work spaces in the community work centres managed by the DSIDC, a copy of which is enclosed with the petition reveals the following:

- “1. The scheme covers the following work spaces under CWC
 - a. All work spaces allotted to individuals by draw of Lots on outright basis.
 - b. All the work spaces allotted to individuals by draw of Lots on Hire-Purchase Basis.
 - c. All work spaces allotted to individuals on licence fee basis.
2. The scheme provides for opportunity to present occupants and the original licencees/allottees to get the work space transferred in their name on outright basis on payment of cost of work space and regularisation charges. It would be compulsory for all present occupants (other than original allottee) to avail of this scheme or face eviction and the scheme shall be optional for original allottee who may continue to pay the revised licence fee w.e.f 1st July, 2000, if they so desire but will have to apply in writing and shall enter into fresh deed. One time Transfer/Regularisation charges are given in ANNEXURE “A”.

3. The scheme for conversion is open from 15th March, 2001 till 12th June, 2001. An incentive of 10% of the total cost of the work space shall be given to allottees/occupants for making full payment in 30 days and 5% in another 30 days from the date of commencement of this scheme.”



17. Admittedly, the Petitioners are all defaulters and some of them have sold the spaces allotted to them to third parties. This is a factor to be considered in determining if the impugned increase in licence fee and the levy of transfer fees is fair and reasonable. No ground has been made out by the petitioners for invoking the doctrine of legitimate expectation. It was urged that the Petitioners belong to the economically weaker sections of society and therefore an arbitrary and excessive increase in licence fees would cripple their activity and destroy their livelihood.

18. The question of fixation of appropriate licence fees for commercial space in areas controlled by public authorities should be a matter best left to the discretion of the authority. This Court would like to draw a distinction between persons who had to face displacement from their means of livelihood as a hawker or trader on account of State policy and were given alternate spaces for reviving their means of livelihood and those displaced persons who have been offered alternate residential premises as part of a scheme of rehabilitation. In determining the reasonableness of the licence fees charged for commercial spaces or occupancy charges for residential spaces, the same yardstick cannot obviously be adopted. Also, those allotted commercial spaces cannot possibly have a legitimate

expectation that the licence fees charged would remain unchanged for over two decades. Viewed from the above perspective, it cannot be said that the enhancement of licence fees for the commercial spaces allotted to the members of the Petitioner associations for their livelihood is *per se* arbitrary or unreasonable.

19. It was earnestly pleaded by the counsel for Petitioners that the allottees could not afford the enhanced licence fee and, therefore, a lenient view should be taken. While this Court is of the view that the impugned enhancement of licence fees for spaces allotted for commercial purposes is not *per se* arbitrary, whether there should be a reduction in licence fees and to what extent is for the DSIDC to decide. There is precedent for such reduction in licence fees by the Respondents on at least two occasions in the past.

20. The DSIDC has already informed the court that it is prepared to consider extending the scheme to the petitioners as a one time opportunity. It is accordingly directed that those allottees who seek regularisation of their allotments should exercise their option under the scheme within a period of two weeks from today and subject to their complying with all conditionalities their cases will be considered by the DSIDC for regularization in terms of the scheme within a period of six weeks thereafter. However, it will be open to the DSIDC to consider the representations, if any, made by the Petitioners and/or individual allottees for reduction in licence fees or for payment of the arrears of licence fees in instalments if DSIDC decides to regularise

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their allotments. It is further directed that till such time the DSIDC takes a decision in respect of such applications for regularisation in accordance with the scheme, status quo will be maintained. In respect of those whose allotments are not regularised, it will be open to the DSIDC to proceed in accordance with law.

21. The writ petitions and pending applications are disposed in the above terms with no orders as to costs.



S. MURALIDHAR, J.

15th APRIL, 2010
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- Fresh cm 7698/10 for delay (P-111)
- " " 7699/10 for exemption (P-115)
- Review petition no' 247/10 filed (P-118)