

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 20695 of 2005

Reserved on: March 17, 2011

Decision on: May 6, 2011

M/S UNITED CUTLERY WORKS Petitioner
Through: Mr. Sanjay Kumar Pathak, Advocate.

versus

DELHI STATE INDUSTRIAL DEVELOPMENT
CORPORATION LIMITED Respondent
Through: Ms. Anusuya Salwan, Ms. Renuka
Arora with Mr. Kunal Kohli, Advocates.

CORAM: JUSTICE S. MURALIDHAR

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

JUDGMENT
06.05.2011

1. The Petitioner, M/s United Cutlery Works ('UCW'), seeks a mandamus to the Respondent, Delhi State Industrial Development Corporation Limited ('DSIDC'), to *inter alia* raise the correct demand for the industrial plot No.1108, DSIDC Narela Industrial Estate. By an order dated 28th October 2005, this Court recorded the submission of learned counsel for the Petitioner that without prejudice to the rights and contentions of the Petitioner, the entire demand raised by the DSIDC

would be paid to it within four weeks. This Court ordered that if such payment was made, the DSIDC would hand over possession of the plot in question to UCW within two weeks of the receipt of the payment. The Petitioner made the payment in terms of the above order and was handed over possession of the plot in question on 20th December 2005.

Background facts

2. In response to an advertisement issued by the DSIDC, UCW, a partnership firm, submitted an application dated 24th January 1977 for allotment of an industrial plot of 400 sq. m. at Narela. This was pursuant to a relocation scheme that was floated to enable industrial entrepreneurs to shift their industrial units from non-conforming areas. It is stated that the rate of the plot as advertised was Rs. 75/- per sq. m. UCW deposited Rs. 6,000/- as earnest money constituting 20% of the cost of the plot in terms of the advertisement.

3. However, in the same year DSIDC unilaterally scrapped the scheme and invited fresh applications for allotment of plots. This led the Petitioner and the other applicants of the 1977 scheme to file a writ petition in this Court challenging the aforementioned action of the DSIDC. In the said writ petition it was agreed by the parties that the DSIDC would consider the applicants of the 1977 scheme for allotment

under the new scheme. They were to make a formal application for allotment under the new scheme. The amount already paid would be adjusted towards the cost of the plot in the new scheme. An order dated 17th December 1987 was passed in the said writ petition to that effect.

4. UCW again applied under the new scheme and was allotted an industrial plot by a letter dated 12th July 1990. The size of the plot was 350 sq. m. Meanwhile, the rate was increased to Rs. 650/- per sq. m. The total premium payable was Rs.2,27,500/-. UCW was called upon to deposit Rs. 99,791.50 being 50% of the premium amount after adjusting the amount already paid by it. UCW deposited the said amount on 13th August 1990.

5. The increase in the rate of the plots to Rs. 650/- per sq. m. was challenged in Writ Petition (Civil) No. 2553 of 1990 in this Court by the DSIDC Narela Old Entrepreneurs Association ('DNOEA'), of which UCW was a member. On 16th August 1990, an interim order was passed that the allotment shall not be cancelled, if it had not already been cancelled. By a further order dated 20th January 1992, this Court recorded that the Petitioners would deposit the amount for the plots at the rate of Rs.650/- per sq. m. which would be subject to the final outcome of the writ petition. The 50% amount was to be deposited within one month.

The DSIDC would give possession of the plots within 15 days of the balance 50% of the amount being paid by the Petitioner.

6. UCW states that it had already deposited 50% of the cost of the plot at the rate of Rs.650/- per sq. m. It further deposited Rs. 99,791.50 on 13th August 1990. The payment of the balance 50% amount was subject to the final orders that would be passed in Writ Petition (Civil) No. 2553 of 1990. Applications were filed in the said writ petition calling upon the DSIDC to give the status of development activity in the area to enable the allottees to make the balance payment and take over possession. It is stated that no development activity was carried out by then.

7. The constitution of UCW changed with one of the partners leaving the firm with effect from 31st March 1997. UCW claims that it gave an intimation to the DSIDC, by a letter dated 5th May 1997, of the change in the constitution of the firm. UCW claims that development activity was completed by the DSIDC only in 2002-03 and it was only thereafter that the plots in question were capable of being used for industrial activity. UCW submitted an application dated 24th June 2002 seeking possession of the plot. All requisite documents and undertakings were enclosed. Three reminders were sent by UCW on 8th July 2002, 19th July 2002 and 25th July 2002 requiring the DSIDC to calculate the correct amount due

and hand over possession of the plot. A partner of UCW then met the officials of the DSIDC on 2nd August 2002 and submitted another set of documents.

8. By a letter dated 5th August 2002, the DSIDC informed UCW that an amount of Rs.4,78,750/- was payable by it. This excluded the amount of unearned increase which was stated to be under calculation. This demand, i.e. principal sum of Rs.1,25,125/- with 18% simple interest, was according to UCW, erroneous. It is stated that while DSIDC was paying only 10% interest to the allottees on the amounts deposited by them, it was charging them 18% on the outstanding amount.

9. UCW claims that it protested against the above demand and wrote several letters on 9th August 2002, 12th March 2004, 14th May 2004, 17th May 2004, 24th May 2004 and 27th May 2004. When no action was taken by the DSIDC, UCW approached the Public Grievances Cell and Chief Minister's Grievance Cell.

10. On 4th June 2004, the DSIDC wrote to UCW stating that since only 50% of the amount had been paid by UCW at the rate of Rs.650/- per sq. m., only 175 sq. m. land was considered as allotted to UCW. For the balance 175 sq. m., UCW was required to make payment at the rate of

Rs.9,330/- per sq. m. Consequently, UCW was called upon to pay Rs. 16,32,750/- towards the cost of the plot, Rs. 1,55,575/- towards the ground rent and maintenance charges and Rs. 7,000/- towards stacking charges. It was further stated that UCW would be liable to pay 50% unearned increase at the rate of Rs.6,710/- per sq. m., the rate prevailing in 2004.

11. UCW wrote to the DSIDC on 22nd June 2004 protesting against the said demand. *Inter alia* it was stated that since a firm allotment was not made, the question of unearned increase on account of change of partnership which took place in 1997 did not arise. UCW offered to pay Rs.650 per sq. m. in terms of the interim order dated 16th January 1992. DSIDC was requested to re-calculate the demand without interest and hand over possession of the plot.

12. On 3rd January 2005, the DSIDC sent another letter granting a final opportunity to UCW to make payment and take possession, failing which the allotment would stand cancelled. UCW thereafter wrote to the Managing Director of the DSIDC on 16th March, 1st April, 16th May and 21st August 2005 asking him to intervene but no action was taken thereon. By a letter dated 6th October 2005, the DSIDC called upon UCW to pay a sum of Rs.17,77,388.286. According to UCW this included 18% per

annum compound interest, unearned increase calculated on 2005 rates on the entire plot as opposed to the proportionate share of the outgoing partner. The Petitioner protested against the above demand. The present writ petition was filed on 25th October 2005.

13. At the first hearing on 28th October 2005 an interim order was passed by this Court recording the statement of counsel for the Petitioner that the entire demanded amount would be paid without prejudice to the rights and contentions of the Petitioner and in that event possession of the plot be handed over to the Petitioner. Pursuant thereto on 25th November 2005 the Petitioner paid the entire amount and possession was given on 20th December 2005. Meanwhile, in a letter dated 2nd December 2005 to the DSIDC, UCW contended that there were huge discrepancies in the calculation of the amount demanded and asked for refund of the excess amount.

Judgment in the DNOEA Case

14. On 18th September 2009, the learned Single Judge of this Court disposed of the Writ Petition (Civil) No. 2553 of 1990 filed by the DNOEA. The operative portions of the said order read as under:-

“9. Learned counsel for the petitioner after some hearing states that five members of the

petitioner association to buy peace of mind and to bring the litigation to an end, which is pending since 1990 are ready and willing to pay the enhanced cost @ Rs.650/- per square metre along with interest. It is stated that the petitioners are ready and willing to pay ground rent and maintenance charges. The prayer made by the petitioner appears to be reasonable as most of the members of the petitioner association have already paid the enhanced cost @ Rs.650/- per square metre along with interest and have also paid ground rent and maintenance charges.

10. The only question that requires consideration is rate of interest, which the petitioner should pay and whether interest should be paid also on maintenance charges and the ground rent. Counsel for the respondent DSIDC states that on or before 15th June, 2005, DSIDC has changed and claimed interest @ 18% per annum and in cases where members of the petitioner association had paid the cost @ Rs. 650/- per square metre along with interest @ 18% per annum on or before 15th June, 2005, possession has been handed over and given to the said members. Learned counsel for the respondent – DSIDC states that on or after 15th June, 2005, interest is being charged in terms of

the resolution passed by the Board of Directors, which stipulates compound annual interest @ 18% interest compounded annually on the principal amount as well as the interest amount as outstanding as on 15th June, 2005 on or after 15th June, 2005.

11. The resolution for charging of compound interest was passed on 15th June, 2005. The petitioner association had filed this writ petition in 1990. Members of the petitioner association were granted interim protection. The interim order was continued. In these circumstances, the statement and suggestion given by the petitioners should be accepted. This will mean that the five members of the petitioner association will be liable to pay simple interest @ 18% on the principal amount upto 14th June, 2005 and thereafter the said interest will be compounded annually @ 18% on sum total of the principal amount and interest upto 15th June, 2005. The petitioners, I feel should also pay 18% simple interest on the ground rent and maintenance charges till 14th June, 2005. Thereafter, the five members of the petitioner association will also be liable to pay compound interest as specified above on unpaid balance ground rent and maintenance charges with interest accrued thereon. The three members of

the petitioner association, who had made payment on the principal amount and interest in 2004, however, will not be liable to pay compound interest on maintenance charges and ground rent with effect from the date they have made payment of the principal amount and interest. This is so because such members have not been handed over possession of the plots in spite of full payment of the principal amount and interest.

12. The respondents will calculate the amount due from the petitioner within four weeks from the date copy of this order is received in their office and the five members of the petitioner association will make payment of the balance amount, if any, within eight weeks thereafter. In case of default, the respondent DSIDC will be entitled to cancel the allotment and take action. In case after calculation any amount is refundable to the five members of the petitioner association, the said amount will be refunded by the DSIDC within eight weeks from the date copy of this order is received.

13. However, this judgment will not have bearing where transactions are already complete in the sense that payments have been made and the possession of the plots have been handed

over. The members of the petitioner association, who had not paid the first installment within time stipulated in the interim order dated 20th January, 1992 will not be entitle to benefit of this order.

14. The writ petition is accordingly disposed of. In the facts and circumstances of the case, there will be no order as to costs.”

Submissions of counsel

15. Mr. Sanjay Kumar Pathak, learned counsel appearing for the Petitioner states that in Writ Petition (Civil) No. 2553 of 1990, a list of the members of the DNOEA, the Petitioner in that case was filed in which UCW was shown at serial No. 34. It is therefore contended that UCW should also be entitled to the benefit of the said order dated 18th September 2009. It is prayed that the present writ petition should be disposed of in terms of the said order. Mr. Pathak further submitted that the basis of the calculation of unearned increase was not correct in as much as it has been charged for the entire plot. It is further submitted that unearned increase should be calculated at the rate prevailing in 1997 when the change in the constitution of the UCW took place and an intimation was given to the DSIDC in that regard. However, the DSIDC had applied the rates of 2005. Referring to certain note sheets of the file of the

DSIDC, copies of which were obtained by UCW under the Right to Information Act 2005 (hereafter 'the RTI Act'), Mr. Pathak submitted that the case of the Petitioner could not be treated differently from the 1789 other allottees whose cases were covered under the resolution dated 15th June 2005 of the Board of Directors of DSIDC.

16. The DSIDC did not file a counter affidavit. However, Ms. Renuka Arora, learned counsel appearing for the DSIDC was permitted to file her written submissions. The case of the DSIDC is that the judgment dated 18th September 2009 in the DNOEA case was inapplicable to UCW. In para 13 of the said judgment it was clarified that "this judgment will not have any bearing where transactions are already complete in the sense that payments have been made and the possession of the plots have been handed over." Moreover, UCW was not a party to the said petition. The decision to charge the interest at the rate of 18% compounded annually was on account of UCW not having paid the balance cost even after 15 years after the allotment. The Board of Directors of DSIDC by the resolution dated 15th June 2005 decided that old applicants who had not paid the full cost of the land would make payment at the rate of Rs. 650/- per sq. m. along with 18% interest compounded annually. Ms. Arora pointed out that unearned increase had been calculated in accordance with an order dated 27th September 2001 issued by the Commissioner of

Industries ('COI'), Government of National Capital Territory of Delhi ('GNCTD'). The unearned increase charges applicable for the year 2005-06 were Rs. 14,08,622/- and 33% share pertaining to the retiring partner was Rs. 4,64,845.26/- and this was recovered from UCW. Despite numerous opportunities, UCW had not made the balance payment till 25th November 2005.

Unearned increase

17. UCW has with its rejoinder written submissions enclosed a photocopy of a letter dated 5th May 1997 intimating DSIDC of change in constitution of UCW and proof of despatch of the said letter Under Certificate of Posting. However, counsel for the DSIDC denies receipt of the said letter by the DSIDC and states that it is not in the DSIDC's record. In a letter dated 21st August 2008 of the DSIDC in reply to the Petitioner's application under the RTI Act dated 21st July 2008 it is stated: "your letter dated 5th May 1997 is not on record". This therefore is a disputed question of fact. Be that as it may, it is evident that for many years thereafter UCW did not follow up on the matter.

18. The demand for unearned increase was first raised on 5th August 2002. The amount was paid by the Petitioner on 25th November 2005 pursuant to the order dated 28th October 2005 passed by this Court. Learned

counsel for UCW has not been able to dispute that the computation of unearned increase is in terms of the communication dated 27th September 2001 of the COI. This stipulates that 50% unearned increase charges should be collected till the time of deposition of transfer charges in full or deposition of complete documents, whichever is later. Further, DSIDC has collected only one-third of the total unearned increase pertaining to the share of the retiring partner. Consequently this Court is unable to find any legal infirmity in the demand of DSIDC for unearned increase.

Is UCW entitled to the benefit of the DNOEA Judgment?

19. The next issue is whether UCW is entitled to be treated at par with five other allottees whose cases would be covered by the judgment dated 18th September 2009 of this Court in the DNOEA case.

20. When UCW filed the present writ petition in 2005, Writ Petition (Civil) No. 2553 of 1990 by the DNOEA was pending in this Court. A list of members of the DNOEA furnished to the Court in the said writ petition pursuant to the order passed on 20th January 1992 included the name of UCW at serial No. 34. While that writ petition was pending, the present writ petition was filed by the Petitioner seeking the quashing of the demand letter dated 6th October 2005. The Petitioner had questioned the said demand and also questioned the charging of compound interest at

18% per annum compounded annually. On 28th October 2005 when the writ petition came up for hearing, the following order was passed by this Court:

“W. P. (C) No. 20695/2005

Rule.

CM No. 13579/2005

Notice. Ms. Anusuya Salwan, Advocate accepts notice on behalf of the Respondent.

Counsel for the Petitioner submits that the area in operation have to be shifted from the non-conforming area. He, therefore, submits that without prejudice to the contentions raised in this Writ Petition, the entire Demand of the Respondent as per Annexure 15 shall be made within four weeks from today. If the payment is so made to the DSIDC, it shall hand over possession of a plot to the Petitioner within two weeks of the receipt of the payment. Formalities be completed by the parties in the interregnum.

The application stands disposed of.

Dasti.”

21. The payment made by UCW pursuant to the above order was without prejudice to its rights and contentions. Prior to the above order dated 28th October 2005 a resolution was passed by the Board of Directors of the

DSIDC on 15th June 2005 in terms of which interest on the outstanding amounts was to be charged at 18% compounded annually. When the DNOEA writ petition was heard on 18th September 2009, the Court was informed that “only five members of the petitioner association are interested in the present writ petition and allotment of plots”. The details of those five persons are set out in para 4 of the order dated 18th September 2009. Three out of five persons had already made a full payment at the rate of Rs. 650/- per sq. m. along with interest. Two of them, i.e., Smt. Khazani Devi and Satbir Tanar & Bros. had paid the first instalment in terms of certain interim orders but had not paid the second instalment. The Court was informed that only five members of the DNOEA were still interested in pursuing the said writ petition as they have not been given possession of the plots. In the above context, the only question that was considered by the Court is set out in para 10 of the judgment dated 18th September 2009 as under:

“The only question that requires consideration is the rate of interest, which the petitioner should pay and whether interest should be paid also on maintenance charges and the ground rent. Counsel for the respondent – DSIDC states that on or before 15th June, 2005, DSIDC has charged and claimed interest @ 18% per annum and in cases where members of the petitioner association had paid the cost @ Rs. 650/- per

square metre along with interest @ 18% per annum on or before 15th June, 2005, possession has been handed over and given to the said members. Learned counsel for the respondent – DSIDC states that on or after 15th June, 2005, interest is being charged in terms of the resolution passed by the Board of Directors, which stipulates compound interest @ 18% per annum. Learned counsel for the petitioner on instructions states that the petitioners are ready and willing to pay 18% interest compounded annually on the principal amount as well as the interest amount as outstanding as on 15th June, 2005.

22. The limited relief granted to the Petitioners as regards payment of interest was that the resolution passed on 15th June 2005 was given prospective effect. This meant that:

“the five members of the petitioner association will be liable to pay simple interest @ 18% on the principal amount upto 14th June, 2005 and thereafter the said interest will be compounded annually @ 18% on sum total of the principal amount and interest upto 15th June, 2005. The petitioners, I feel should also pay 18% simple interest on the ground rent and maintenance charges till 14th June, 2005. Thereafter, the five members of the petitioner association will be

also liable to pay compound interest as specified above on unpaid balance of ground rent and maintenance charges with interest accrued thereon.”

23. Thereafter it was clarified in para 13 as under:

“13. However, this judgment will not have bearing where transactions are already complete in the sense that payments have been made and the possession of the plots have been handed over. The members of the petitioner association, who had not paid the first installment within time stipulated in the interim order dated 20th January, 1992 will not be entitled to benefit of this order.”

24. Although it was stated in the judgment dated 18th September 2009 that the judgment would not have bearing where payments have been made and possession of the plots have been handed over, the fact remains that the payment made by UCW pursuant to the order passed by this Court in the present writ petition on 28th October 2005 was “without prejudice to the contentions raised in the writ petition.” It cannot be therefore said that UCW’s payment was covered by para 13 of the judgment dated 18th September 2009. The DSIDC has not explained why UCW should be treated any different from the five other members of the DNOEA in the matter of payment of interest in terms of the Board Resolution dated 15th

June 2005. This Court accordingly considers it appropriate to extend the benefit of the judgment dated 18th September 2009 in the DNOEA case to UCW. In its written submissions UCW has stated that it is “also ready to abide by the directions contained in the aforementioned judgment dated 18th September 2009”.

25. It is accordingly held that UCW is liable to pay simple interest at the rate of 18% on the principal amount upto 14th June 2005 and thereafter the interest will be compounded annually at the rate of 18% on the sum total of principal amount and interest. The Petitioner would also be liable to pay 18% simple interest on the ground rent and maintenance charges till 14th June 2005 and thereafter liable to pay compound interest on the unpaid balance for ground rent and maintenance charges with interest accrued thereon. The DSIDC will re-calculate the demand on that basis and the excess amount will be refunded to the Petitioner together with simple interest at the rate of 6% per annum from the date of payment, i.e., 25th November 2005 till the date of refund which should be not later than four weeks from today.

26. The writ petition is disposed of with the above directions.

S. MURALIDHAR, J

6th MAY, 2011 -ha