

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA No. 764 of 2010**

Vishwa Nath Gupta Appellant
Through Mr. Rajesh Tyagi, Advocate.

VERSUS

M.C.D. & Ors. Respondents
Through Mr. Gaurang Kanth, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether 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 ?

ORDER
% **01.02.2011**
CM NO. 19104/2010 (for exemption)

Allowed, subject to all just exceptions.

CM NO. 19105/2010(condonation of Delay)

Having heard the learned counsel for the parties, we feel sufficient ground for condonation of delay of 18 days in filing the appeal is made out. The applicant/appellant had earlier filed a Review Application within the limitation period which has been dismissed.

Thereafter, the present composite appeal against the judgment dated 6th August, 2010 and the review order dated 31st August, 2010 has been filed. Accordingly, the delay in filing the appeal is condoned. The application stands disposed of accordingly.

LPA 764/2010

By the impugned order dated 6th August, 2011, the learned Single Judge has dismissed the writ petition filed by the petitioner Vishwanath Gupta for allotment of alternative plot/shop at Sanjay Gandhi Transport Nagar in lieu of shop numbers 14-15 Sanjay Market, Gulabi Bagh, Delhi. Learned Single Judge has held that the appellant was carrying on dry-cleaning business and no fault can be found in the action of the respondent MCD in rejecting the application for allotment of alternative plot/ shop. Learned Single Judge has observed that the appellant had concealed facts and therefore, was not entitled to discretionary relief under Article 226 of the Constitution of India.

2. After filing the present appeal, copy of memorandum of appeal was served on the counsel for the MCD and vide order dated 6th December, 2010, learned counsel appearing for the MCD was asked to

file an affidavit of Commissioner, MCD, explaining whether there was a scheme or circular for allotment of alternative plots/shops of Sanjay Gandhi Transport Nagar. Additional affidavit has been filed by the Commissioner, MCD. In the additional affidavit, the Commissioner, MCD has stated that in 1976, with a view to de-congest the City, especially Gulabi Bagh and Roshnara Road areas, a proposal was mooted to establish a transport nagar and to shift transporters, their godowns, workshops and other allied business establishments. Initially the proposal was to shift and establish a transport nagar near Wazirabad but due to objection from Air Force authorities, the scheme could not materialize. Subsequently, a proposal was made for setting up transport nagar near Sameypur Badli, G.T. Karnal Road. This proposal was approved by the Lt. Governor in the year 1980. Thereafter, a project report was prepared and approved by DDA in 1983 and land was provided in 3 phases.

3. In 1984, fresh applications were invited for shifting of transporters, workshops and other allied business establishments. An

advertisement was published in the newspaper on 14th March, 1984.

The said advertisement reads as under:-

“THIS is to notified for information of transporters, workshop owners, spare-parts dealers etc. functioning in Gulabi Bagh area and Roshanara Road and other congested areas in the city who could not apply for allotment in the year 1976 but who may be now willing to register the themselves for allotment of plots in Sanjay Gandhi Transport Nagar, that the MCD will be in a position to provide 225 plot of 200 and 400 sq. meters for godowns purposes another 235 plots of 110, 220 and 400 sq meters for workshop purposes and another 100 small plots for shop etc. after satisfying the needs of those registered in the year 1976. The allotment will be made through draw of lots from among persons who may, now register themselves.

2. The Registration will be open on 19th March, 1984 and will close on 31st March, 1984, both days inclusive. The registration forms will be available in the office of Addl. Deputy Commissioner, R.P. Cell, during these days and will also be accepted with the registration amount between 10. 00 A.M. to 3.00 P.M. during these days.

3. Persons who are bonafide transporters, workshop-owners, spare-parts dealers etc. and who are functioning in Gulabi Bagh or Roshana Road area and other conzested(sic) areas of the city and are desirous to get themselves registered, may do so within the stipulated dates and deposit their forms along with a Bank Draft of Rs.25000/- for godowns and workshop plots and Rs.15,000/- for small plots meant for shops etc. In case a person is not declared successful. In the drew his deposit will be refunded within one month of the date of draw.”

4. Paragraph 3 of the advertisement is the most relevant and prescribes the criteria. It stipulates the persons who were bonafide transporters, workshop owners, spare-part dealers etc. and who were functioning in Gulabi Bagh or Roshnara Road area and other congested areas of the city could register themselves by depositing the relevant form and money in the form of Demand Draft of Rs.25,000/- for godowns and workshop plots and Rs.15,000/- for small plots meant for shops. It was further stipulated that in case the person was not successful in the draw of lots, the money deposited would be refunded.

5. The case made out by the appellant in the writ petition and before us is that he had filed an application in terms of the advertisement dated 14th March, 1984 and had deposited Rs.15,000/-. Subsequently, vide letter dated 10th October, 1985, the respondent called upon the appellant to deposit Rs.15,000/- with interest @ 18% p.a. for development of the site. This amount of Rs.15,000/- along with interest of Rs.650/- was also deposited by the appellant 22nd October, 1985.

6. The case of the appellant is that he was earlier dealing in old transport tyres and tubes and, therefore, is covered and meets the eligibility criteria mentioned in the advertisement dated 14th March, 1984. According to him, he was a bonafide spare part dealer who was functioning in Gulabi Bagh and therefore, he is eligible for allotment of plot/shop.

7. Learned Single Judge has proceeded on the basis that the appellant was doing dry-cleaning business since the year 1985 and this fact was mentioned and admitted by the appellant in the hearing on 17th February, 2001 before the concerned authority of MCD, accordingly the petitioner does not meet the eligibility norms. The case of the appellant is that after the shops at Sanjay Market, Gulabi Bagh were removed in 1984, he had to stop the old tyre business and thereafter in 1985, he started doing business of dry-cleaning.

8. As per the advertisement and the terms stipulated therein; what is relevant and material is the activity of the applicant on the date when the advertisement was published i.e. 14th March, 1984. What has to be examined and seen is the nature of business activity of the applicant on

the said date and not on a subsequent date i.e. after 31st March, 1984 which was the last date for receiving the applications. The respondent, it is apparent, was influenced by the fact that 1985 onwards the appellant has been doing dry-cleaning work/business. This is not relevant for determining whether or not the appellant is entitled to a shop/plot as per the eligibility norms. Eligibility has to be determined on the basis of the nature and activity of the business of the appellant on the date of advertisement i.e. 14th March, 1984 and till the last date of receipt of application i.e. 31st March, 1984. Even if the appellant was earlier carrying on the said business in Gulabi Bagh but his shop was acquired/ removed between 1979-1984, he would be eligible.

9. However, from the documents placed on record, it is not clear whether the appellant had in fact old tyre business at shop Nos. 14-15, Sanjay Market, Gulabi Bagh, Delhi-7. The registration certificate under the Shop and Establishment Act, 1954 is dated 22nd November, 1985. This certificate is not relevant and does not show that the appellant had old tyre shop on the relevant date. It appears that both parties had misunderstood and misconstrued the eligibility norms which are clearly

spelled out and mentioned in the advertisement quoted above. The appellant had proceeded on the basis that he had deposited the money in 1984 and then another amount of Rs.15,000/- along with interest of Rs.650/- in 1985 and therefore, he is entitled to allotment. His contention is that he has been made to wait for nearly 25 years but no allotment has been made.

10. Keeping the factual matrix in mind, we feel that it would be fair to grant one opportunity to the appellant to produce relevant documents and material to show that he was carrying on business of spare part dealer at Gulabi Bagh area as per the eligibility criteria. For this purpose, the appellant will appear in person or through authorized representative along with relevant documents before the Director, MCD, Sanjay Gandhi Transport Nagar on 1st March, 2011 at 2.30 PM. This time is being given to enable him to trace out necessary documents and to produce them. On the basis of the documents produced, the respondent will examine the case of the appellant and decide whether or not he meets the eligibility norms or not. In case the appellant is eligible, he will be allotted plot/shop in terms of the policy. In case he

does not meet the eligibility norms, the amount paid by the appellant would be refunded/returned to him in accordance with the policy. The aforesaid exercise will be completed within a period of one month w.e.f. 31st March, 2011. The appeal is accordingly disposed of.

SANJIV KHANNA, J.

CHIEF JUSTICE

February 1, 2011
KKB