

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

Date of decision: 13th July, 2012

+ **LPA No.623/2006**

% **DELHI DEVELOPMENT AUTHORITY** **....Appellant**
Through: Mr. Pawan Mathur, Adv.

Versus

M/S BEDI FOUNDARY WORKS & ANR. **.... Respondents**
Through: Mr. Arvind Minocha, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the order dated 11th August, 2004 of the learned Single Judge allowing W.P.(C) No. 2105/1992 preferred by the respondent no.1 (hereinafter called writ petitioner) by quashing the letters dated 12th February, 1990 and 14th November, 1990 of the appellant DDA and by directing the appellant DDA to execute the necessary conveyance deed with respect to plot no.C-296 *ad-measuring* 400 sq. yds., Rewari Line Group Industrial Area, Phase-II, Mayapuri, New Delhi in favour of the writ petitioner. The appeal also impugns the subsequent order dated 4th March, 2005 of the learned Single Judge dismissing the review petition filed by the

appellant DDA. Notice of this appeal was issued and vide detailed order dated 20th January, 2010 the delay in preferring the appeal was condoned on payment of costs. The counsels have been heard.

2. The writ petition was filed by the writ petitioner pleading:-

- a. that it was carrying on its manufacturing activity at J-136, Motia Khan Dump, New Delhi;
- b. that Shri Inder Singh proprietor of the writ petitioner was a member of the Hind Co-operative Industrial Estate Ltd. and had submitted an application through the said society for allotment of an industrial plot;
- c. that the appellant DDA vide letter dated 22nd March, 1968 allotted plot no.C-296 *ad-measuring* 400 sq. yds. (supra) to the writ petitioner on the terms and conditions contained therein;
- d. that the writ petitioner deposited 50% of the demanded amount and physical possession of the plot was handed over to it;
- e. that the writ petitioner was, vide letter dated 6th April, 1971 of the appellant DDA, directed to deposit the final amount of Rs.9,159.05 against the aforesaid plot, but which could not be deposited owing to an accident met by Shri Inder Singh;

- f. that subsequently when Shri Inder Singh wanted to deposit the said amount, the same was not accepted by the appellant DDA on the ground that the allotment stood cancelled;
- g. that subsequently vide letter dated 24th January, 1975 of the appellant DDA, a warehousing plot no.F-63 *ad-measuring* 92 sq. yds. in Rewari Line, Phase-II, Industrial Area was allotted in the name of the said Shri Inder Singh;
- h. that Shri Inder Singh sought adjustment of the amounts deposited against plot no.C-296 (400 sq. yds.) against the demand for plot no.F-63 (92 sq. yds.);
- i. that in the meantime the possession of plot no.F-63 (92 sq. yds.) was handed over to Shri Inder Singh;
- j. that the writ petitioner on 26.06.1976 also applied for restoration of plot no.C-296 (400 sq. yds.);
- k. that the appellant DDA vide its letter dated 1st May, 1978 informed the writ petitioner of its decision to restore the allotment of plot no.C-296 (400 sq. yds.) on payment of the amounts mentioned thereunder and on surrender of plot no.F-63 (92 sq. yds.);

- l. that vide letter dated 11th September, 1978 the writ petitioner was asked to deposit Rs.24,592/- within one month for restoration of plot no.C-296 (400 sq. yds.);
- m. that the writ petitioner represented against the amount demanded and without prejudice to its contention also deposited sums of Rs.2,000/- on 2nd March, 1971, Rs.4,500/- on 30th July, 1970, Rs.6,600/- on 10th November, 1980 and Rs.13,611/- on 11th August, 1980;
- n. that thereafter the writ petitioner was put into possession of plot no.C-296 (400 sq. yds.) and the House Tax and ground rent with respect thereto is being assessed in its name;
- o. that however notwithstanding the entire demanded amount against plot no.C-296 (400 sq. yds.) having been paid and also being put into possession thereof, the documents with respect thereto were not executed in its favour and on the contrary vide letters dated 12th February, 1990 and 14th November, 1990 its request for restoration of plot no.C-296 (400 sq. yds.), rejected;
- p. accordingly the writ petition was filed impugning the letters dated 12th February, 1990 and 14th November, 1990 and

seeking a direction to the appellant DDA to execute the lease deed of plot no.C-296 (400 sq. yds.) in favour of the writ petitioner.

3. It appears that the appellant DDA inspite of several opportunities did not file counter affidavit to the writ petition. The learned Single Judge vide impugned order dated 11th August, 2004, believing the case of the writ petitioner that the allotment of plot no.C-296 (400 sq. yds.) by virtue of membership of the Hind Co-operative Industrial Estate Ltd. and as a matter of right and the allotment of plot no.F-63 (92 sq. yds.) to the writ petitioner was in lieu of rehabilitation from the non-conforming area of Motia Khan and further holding that the writ petitioner having already been allotted plot no.C-296 (400 sq. yds.) was under Rehabilitation Scheme not entitled to another plot, allowed the writ petition as aforesaid but with a direction to the writ petitioner to hand over possession of plot no.F-63 (92 sq. yds.) to the appellant DDA.

4. The appellant DDA applied for review, pleading the reasons for which counter affidavit to the writ petition though stated to be filed, had not come on record. A copy of the counter affidavit earlier filed was also attached to the review application. In the said counter affidavit though the

membership of the writ petitioner of Hind Co-operative Industrial Estate Ltd. and allotment of plot no.C-296 (400 sq. yds.) was admitted, it was pleaded that the said allotment stood cancelled upon non-compliance (non-payment) by the writ petitioner of the terms thereof. It was denied that the possession of plot no.C-296 (400 sq. yds.) was ever handed over to the writ petitioner. Again, though the offer for restoration of the allotment of plot no.C-296 (400 sq. yds.) was admitted but it was pleaded that the writ petitioner had not complied with the terms thereof also and thus the restoration did not take place. It was thus the case of the appellant DDA that the allotment of plot no.C-296 (400 sq. yds.) stood cancelled and the said plot could not be given to the writ petitioner.

5. The learned Single Judge however vide impugned order dated 4th March, 2005, upon the writ petitioner showing a letter dated 11th August, 1978 and copy of deposit challan dated 16th August, 1980 for Rs.13,611/- and 10th November, 1980 for Rs.6,600/- in the Court, dismissed the review petition observing that the stand of the appellant DDA in the counter affidavit was *prima facie* not borne out from the records of the appellant DDA. It was further observed that no sufficient reasons for not having the counter affidavit to the writ petition placed on record within time had also

been disclosed.

6. We may at the outset observe that the letters dated 12th February, 1990 and 14th November, 1990 of the appellant DDA impugning which the writ petition was filed were of intimation that the request for restoration of plot no.C-296 (400 sq. yds.) stood rejected earlier. The learned Single Judge however even while allowing the writ petition in the absence of the counter affidavit of the writ petitioner has not adverted to the validity of the rejection of the request for restoration of plot no.C-296 (400 sq. yds.) but proceeded on the premise as if the only dispute was as to whether the writ petitioner was entitled to plot no.C-296 (400 sq. yds.) or to plot no.F-63 (92 sq. yds.). On the said assumption, the learned Single Judge held that since plot no.C-296 (400 sq. yds.) was allotted by way of membership of the co-operative society and plot no.F-63 (92 sq. yds.) was allotted under Rehabilitation Scheme in lieu of non-conforming site, the writ petitioner was entitled to plot no.C-296 (400 sq. yds.) and not to plot no.F-63 (92 sq. yds.). This was however, clearly, not the subject matter of the writ petition. The order dated 11th August, 2004 of the learned Single Judge, even in the absence of a counter affidavit by the appellant DDA to the writ petition, cannot be sustained. In spite of review being sought, the learned Single

Judge did not go into the controversy raised in the writ petition.

7. The question which arises is, whether there is any error in the refusal by the appellant DDA of restoring allotment of plot no.C-296 (400 sq. yds.) in favour of the writ petitioner.

8. From the averments of the writ petitioner in the writ petition itself and the documents filed therewith, the following emerges:-

- (i) Allotment on 22nd March, 1968 of plot no.C-296 (400 sq. yds.) was subject to the writ petitioner stopping the non-conforming use of J-136, Motia Khan and making the payments as demanded therein;
- (ii) the writ petitioner did not make the said payments and the allotment of plot no.C-296 (400 sq. yds.) stood cancelled;
- (iii) when the writ petitioner was on 24th January, 1975 allotted plot no.F-63 (92 sq. yds.), he admitted cancellation of plot no.C-296 (400 sq. yds.) and rather sought adjustment of the part amounts paid therefor against plot no.F-63 (92 sq. yds.);
- (iv) this also shows that possession of plot no.C-296 (400 sq.

yds.) was not delivered to the writ petitioner and the writ petitioner was not claiming both the plots in as much as in that eventuality the question of adjustment of the amount paid for plot no.C-296 (400 sq. yds.) against plot no.F-63 (92 sq. yds.) would not have arisen;

- (v) the writ petitioner till then had also not applied for restoration of plot no.C-296 (400 sq. yds.) and applied therefor only on 26th June, 1976 and which request was rejected on 29th October, 1976 and the writ petitioner informed that necessary action to refund the amount deposited after forfeiting 10% was being taken;
- (vi) the writ petitioner vide its letter dated 7th November, 1976 again admitted cancellation of plot no.C-296 (400 sq. yds.) and sought restoration thereof;
- (vii) the appellant DDA vide letter dated 20th January, 1978 refunded earnest money of plot no.C-296 (400 sq. yds.) to the writ petitioner;
- (viii) that the writ petitioner again on 6th March, 1978 approached the Commissioner (Lands) for restoration of

plot no.C-296 (400 sq. yds.);

- (ix) that it was in response thereto that vide letter dated 1st May, 1978 the appellant DDA agreed to restore the same on the condition of payment of amounts demand wherefor was being sent to the writ petitioner 'shortly' and on surrender of plot no.F-63 (92 sq. yds.);
- (x) the appellant DDA vide letter dated 11th September, 1978 demanded Rs.24,592/- for restoration of plot no.C-296 (400 sq. yds.). The said letter also provided as under:-

“It is also made clear to you that in case you accept this allotment of Plot No.C.I-296 in Rewariline Indl. Area, Phase-II measuring 400 sq. yds. you will have to pay the damages for extra 60 sq. yds. also.

You are, therefore, requested to deposit the above said sums within one month from the issue of this letter, failing which the restoration will be withdrawn without making any reference to you. The demand is provisional & subject to verification by the Accounts Branch afterwards.”

- (xi) The writ petitioner however did not deposit the amount within one month but vide its letter dated 6th October, 1978 deposited part of the demand and also returned the

refund received under letter dated 20th January, 1978 (supra). It may also be stated that even the admitted part of the demand was not tendered till then;

- (xi) The writ petitioner ultimately on 16th August, 1980 i.e. after more than two years of the demand dated 11th September, 1978 deposited a sum of Rs.13,611/- with the appellant DDA instead of demanded amount of Rs.24,592/-;
- (xii) After another three months, on 10th November, 1980 a sum of Rs.6,600/- was deposited. After waiting for another 12 years, in the year 1992 the writ petition was filed.

9. The aforesaid would disclose that the restoration offered of cancellation was conditional on the demanded amount being paid within one month of 11th September, 1978. The writ petitioner then neither paid the amount nor challenged the demanded amount. In these facts, in our view, the learned Single Judge could not have allowed the writ petition. No error can be found in the letters dated 12th February, 1990 and 14th November, 1990 intimating to the writ petitioner that his request (which appears to have

been repeatedly made) for restoration of plot no.C-296 (400 sq. yds.) could not be acceded. The writ petitioner had not even made any ground challenging the demand of Rs.24,592/- or any other demand in the letter dated 11th September, 1978. Moreover no challenge to the said demands could be made after 14 years in the writ petition filed in the year 1992. The writ petition was clearly an abuse of the process of the Court. It appears that in the circumstances aforesaid the plot no.C-296 (400 sq. yds.) remained unallotted and vacant and the writ petitioner, taking advantage of the same, illegally grabbed possession thereof and filed the writ petition.

10. The *mala fides* of the writ petitioner are also evident from the fact that the writ petitioner while averring in the writ petition payment of Rs.24,592/-, also referred to payments made earlier. However the amount of Rs.24,592/- was demanded vide letter dated 11th September, 1978 only after taking into consideration all earlier payments and as aforesaid if the writ petitioner had any grievance with respect thereto the writ petitioner ought to have then challenged the same. The writ petitioner did not do so and filed the petition after 14 years, after taking illegal possession of the plot.

11. The counsel for the writ petitioner has during the hearing handed over to us documents to show that the writ petitioner, after the order of the

learned Single Judge has vacated plot no.F-63 (92 sq. yds.) and tendered possession thereof to the appellant DDA; he however states that possession has not been taken. The same is however of no avail. The controversy in the writ petition is qua plot no.C-296 (400 sq. yds.) and not qua plot no.F-63 (92 sq. yds.), though owing to the writ petitioner having abused the process of the Court and having illegally enjoyed possession of both the plots he ought to be disentitled from plot no.F-63 also.

12. The counsel for the writ petitioner has also invited our attention to the counter affidavit where the appellant DDA has pleaded that the writ petitioner is entitled to one plot only. On the basis thereof it is contended that the writ petitioner can have either of the two plots. However a line here and there cannot be picked out of context. A plain reading of the counter affidavit clearly shows the stand of the appellant DDA to be that the writ petitioner is entitled to plot no.F-63 only and not to plot no.C-296 (400 sq. yds.). Even otherwise the allotment of such plots by the appellant DDA is in the form of largesse and much below the market rates. Once the writ petitioner is found to be not entitled to plot no.C-296 (400 sq. yds.), it cannot be delivered the same even on the basis of any loosely drafted pleading of the appellant DDA.

13. We therefore allow this appeal and set aside the orders dated 11th August, 2004 and 4th March, 2005 of the learned Single Judge and dismiss the writ petition filed by the writ petitioner. We also direct the appellant DDA to immediately take steps for recovery of possession of plot no.C-296 (400 sq. yds.) and mesne profits/damages for illegal possession thereof and to forthwith take steps for removing any unauthorized construction or industry/works thereon and for having the supply of electricity, water etc. thereto disconnected. The writ petitioner is also burdened with costs of Rs.25,000/- of these proceedings payable to the appellant DDA within one month hereof.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 13, 2012

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