

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

Judgment reserved on: 30.10.2012
% Judgment delivered on: 05.12.2012

+ WP(C) No. 4688/2002 & 6198/2010

M/S. DIGAMBER GARMENTS & ANR Petitioners

Vs

GOVT. OF NCT OF DELHI & ANR. Respondents

Advocates who appeared in this case:

For the Petitioners: Mr. Manoj Goel with Mr. Jagmohan Sharma,
Mr. Gopal Verma and Ms. Viparna Gaur, Advocates.
For the Respondents: Ms. Renuka Arora with Mr. Kunal Kohli and
Mr. Vikas Sood, Advocates

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J

WP(C) No. 4688/2002 & WP(C) No.6198/2010 & CM No.12267/2010

1. These writ petitions have been filed to essentially challenge the communication dated 10.07.2002 issued by the Delhi State Industrial Development Corporation Limited (in short DSIDC) i.e. Respondent No.2. The petitioners are aggrieved by the impugned communication as their allotment to plot No.8 (Pocket-F) Sector-5, situate at Bawana Industrial Area, Delhi, admeasuring 200 sq. mtrs., stands cancelled (hereinafter referred to as the plot in issue). The allotment, as a matter of fact, had been made in favour of the Petitioner No.1 company.

1.1 Specifically in WP(C) 4688/2002 challenge is laid to communication dated 10.07.2002, while in WP(C) 6198/2010 challenge is laid to the show cause notice dated 26.05.2010, which seeks explanation as to why the plot in issue allotted in favour of the petitioner ought not to be cancelled.

2. The background facts, based on which, challenge has been laid are, broadly as follows:

2.1 The Supreme Court issued orders in Writ Petition (Civil) No.4677/1985, titled *MC Mehta v. Union of India*, to close down industrial units which were being run in residential/non-conforming areas. Consequently, the Government of NCT of Delhi (in short GNCTD), invited applications from persons who were interested in relocating their industrial units, provided they closed down their existing units, which were being run in residential/non-conforming areas.

3. The petitioner, who was one such person running an industrial unit, at X/402/A/3 Jain Gali, Raghubar Pura, Gandhi Nagar, Delhi, filed an application, in 1996, for allotment of an industrial plot admeasuring 400 sq. mtrs. This application which bore the number: 55248, was dated 27.12.1996.

3.1 I would be referring to the industrial unit of the petitioners located at the address given hereinabove, as "the old address" in the remaining part of my judgment as a major part of the submissions veer around the address at which the communications were sent by DSIDC, and the effect of the same.

3.2 Apparently, the GNCTD/DSIDC received 51,581 applications, out of which 23,948 applicants were found eligible for allotment of plots, at that particular point in time.

3.3 Continuing with the narrative; insofar as the Petitioners are concerned; with their application, a sum of Rs.1,20,000/- was deposited towards earnest money by them being 20% of the then estimated cost of the plot, fixed at the rate of Rs.3,000/- per sq. mtr.

3.4 On 06.05.2000, an additional sum of Rs.60,000/- was deposited by the petitioners. In all, by this date, the petitioners had deposited a sum of Rs.1,80,000/- towards allotment of a plot under the scheme of relocation formulated by the GNCTD i.e. respondent No.1.

3.5 It appears that the Supreme Court by an order dated 12.09.2000 directed the GNCTD/DSIDC, to allocate specific plot numbers to the eligible allottees, within three weeks of the said order.

3.6 It is not in dispute, that a letter of allotment was issued to the petitioners dated 23.10.2000, allocating the plot in issue. The allotment was, however, subject to certain conditions. The essential ingredients of the letter of allotment were that the estimated cost, which was also tentative, was calculated at Rs.4,200/- per sq. mtr. The petitioners were required to pay, within three (3) months of the issuance of letter of allotment 50% of the revised estimated cost calculated at Rs.4,200/- per sq. mtrs. after making due adjustment qua the money already deposited.

3.7 The balance 50% of the revised estimated cost was to be paid in a staggered manner, as indicated herein below :

- | | | |
|----|-------------------|---|
| 1. | Second Instalment | 20% of the revised estimated cost after 6 months of the issue of the allotment letter. |
| 2. | Third Instalment | 20% of the revised estimated cost after next six months. |
| 3. | Fourth Instalment | The balance actual cost at the time of handing over possession along with difference of the estimated cost of this plot if any. |

3.8 The net result was that, DSIDC demanded of the petitioner 50% of the revised estimated cost (at the rate of Rs.4,200/- per sq. mtrs.), which worked

out to Rs.4,20,000/- after adjusting the sum of Rs.1,80,000/- paid along with interest in the sum of Rs.300/-, calculated upto 31.10.2000. Therefore, the amount demanded within three months of the issuance of the letter was a sum of Rs.2,39,700/- (Rs.4,20,000 - Rs.1,80,300). The balance 50% of the revised estimated cost was to be paid within the time frames as indicated therein.

3.9 Consequently, the time lines were broadly as follows: by 23.01.2001, Rs.2,39,700/- had to be paid. The first instalment of the balance 50%, which is referred as the second instalment, in the letter, equivalent to 20% of the revised estimated cost, was to be paid by April, 2001. The next instalment of 20% of the revised estimated cost by October, 2001. The last instalment, which was in effect the balance cost, was required to be calculated, based on the difference between the actual cost and the estimated cost of the plot in issue. This last instalment was to be paid at the time when, possession of the plot in issue was finally handed over.

4. The petitioners were, however, as per letters of allotment, required to close down their existing industrial units as soon as they shifted to the allotted alternate industrial plot or by 31.03.2001, which was earlier.

4.1 It appears that both GNCTD/DSIDC were having a difficult time in persuading persons to come forth, to relocate themselves, at the newly allotted sites. The difficulty was such that, even the persons who had initially applied in 1996 were reluctant to deposit even the first 50% of the revised estimated cost of the plots allotted to them. Consequently, the Supreme Court, by a direction issued on 24.01.2001, drew up a deadline, by issuance of the following short but crisp directions in IA No.1330 and 1365 filed in the aforementioned Writ Petition i.e. WP (C) No.4677/1985.

"After hearing the learned counsel for the parties, time for depositing the payment of the alternative plot of land is extended

up to 31.03.2001. The effect of this would be that no cancellation will be effective or made on account of non-payment of money till 31st March, 2001..."

(emphasis supplied)

4.2 There was a further direction issued on the same date that, where an industry was in non-conforming/residential area irrespective of whether it had put up an Effluent Treatment Plant (ETP) or other device, it would have to close down based on the schedule set out by the concerned agency. The concern of the Supreme Court in bearing down strictly, on persons running their industrial units in prohibited areas, came through quite clearly in these directions issued by it, in its order dated 24.01.2001.

4.3 Based on the aforesaid directions of the Supreme Court, the DSIDC carried a public notice, in the Times of India and Punjab Kersari datelined 26.01.2001, which read as follows:

"In the Supreme Court hearing held on January 24th, 2001 the Hon'ble Supreme Court has accepted the prayer of Delhi Government for extension of time for receipt of 100% payment in case of allottees of Narela, Badli, Jhilmil and Patparganj Industrial Area as well as 50% payment in the case of Bawana upto 31st March, 2001.

All concerned may note that those who do not make the payment by the above date will face cancellation of their allotment and no further correspondence in this regard will be entertained. Cancellation letters issued earlier in this regard may be ignored."

(emphasis supplied)

4.4 Despite, the petitioners being aware of the timelines provided in the letter of allotment of 23.10.2000, and I would assume the public notice issued thereafter, admittedly did nothing to pay the deficit amount qua the first 50% of the revised estimated cost of the plot in issue, which is the sum of Rs.2,39,700/-. If the petitioners were to stick to the timeline provided in the

letter of allotment, the said sum had to be paid by 23.10.2000 and, if they were to adhere to the public notice of 26.01.2001, issued pursuant to the Supreme Court direction of 24.1.2001, the said sum had to be deposited by 31.03.2001.

4.5 Admittedly, the petitioners did neither, and instead, on 06.06.2001 wrote a letter to DSIDC stating therein that they were unable to deposit the said amount in time, which was really the second part of the first instalment, "***due to some unavoidable circumstances***". The petitioners requested for permission to deposit the said amount. The copy of the demand letter was ostensibly enclosed, which I would assume, for the moment, was the letter of 23.10.2000, as contended by the petitioners before me.

4.6 Importantly, the petitioners letter of 06.06.2001, was written on its letterhead, which at the foot of the letter carried the following address: X/380/, First Floor, Lane No.6, Ram Nagar Market, Gandhi Nagar, Delhi - 110031, (hereinafter referred to as the new address).

4.7 It is pertinent to note that, there was no indication in the letter of 06.06.2001 that future correspondence with the petitioners should be made at the new address, as against, the old address (to which I have made a reference above), which was obviously available on the record of the DSIDC.

4.8 The DSIDC, vide a letter dated 24.07.2001 wrote back that in respect of the plot in issue (which was located at Bawana Industrial Area), 50% of the cost had to be deposited by 31.03.2001, whereas their record showed that payments had not been made by the due date. DSIDC, thus, required the petitioners to give proof of payment, if monies were so deposited, by the due date. This information was to be provided by 10.08.2001, failing which, the petitioners were put to the notice that their allotment would stand cancelled, without further correspondence. A crucial line appears in the DSIDC's letter of 24.07.2001, which is that intimation with regard to the payment of the 50% of

the cost of the plot by 31.03.2001 had been made "*through a demand letter followed by various press notifications*". The petitioners' claim that, they received no such letter, while DSIDC is not able to locate a specific letter in that behalf, though as indicated hereinabove, public notices in newspapers were issued.

4.9 This fact would require examination in the background of the stand of the petitioners, in the pleadings that, while they had closed their industrial unit at the old address, they continued with the possession of the property at the relevant point of time, which was visited by them off and on. An averment to this effect is found in the rejoinder filed by the petitioners.

4.10 Apropos to the letter dated 24.07.2001 issued by DSIDC, the petitioners by their letter of 08.08.2001, responded by taking the stand that they had not received any letter stipulating 31.03.2001, as due date for payment of 50% of the cost of the plot, which was the second part of the first instalment and, thus, requested permission to deposit the balance amount along with interest.

5. The DSIDC, however, by its letter dated 10.07.2002, stuck to its stand, which was that through various communications and press advertisement, it had been indicated that 50% of the cost of the plot had to be deposited by 31.03.2001. It further adverted to the fact that, yet another opportunity had been given to those applicants, who had not paid 50% of cost of the plot in full and their payments were short by 10% due to difference in the calculation of interest qua earnest money deposit etc., - by allowing them to deposit the shortfall by 01.04.2002 along with interest at the rate of 18% with effect from 01.04.2001. Consequently, it proceeded to cancel the plot in issue allotted to petitioner No.1. It is this letter, as indicated above, which is impugned in the present writ petition.

5.1 Before I conclude the facts, I may also point out that DSIDC, with its additional affidavit filed on 09.03.2005 has brought to fore the fact that, an advertisement dated 26.08.2004 was issued wherein it was indicated that those applicants who had not deposited the 50% of the cost by 31.03.2001, their names were maintained in a separate list, and in that case these applicants would be considered for allotment after acquisition of new land and on exhausting the list of pending allottees, in compliance with the orders of the Supreme Court. The said advertisement also indicated that, such like, applicants were free to seek refund of their deposits made except the prescribed earnest money deposit, in the event they were desirous of their eligibility being kept alive. This move was made at that point in time by the DSIDC, apparently to assist the industry and various entrepreneurs. Pertinently, this affidavit was filed by DSIDC pursuant to the order of this Court dated 29.09.2004.

5.2 At this juncture, I must point out that in another case, I was informed that, DSIDC has now given up even on this list as the scheme of relocation has been given a go by, having not proved successful.

5.3 Being aggrieved by the cancellation of their allotment, the petitioners filed the captioned writ petition which was moved before this Court on 05.08.2002. The said order records the submission of the counsel for the petitioners, to the effect that they had committed a default in payment, which apparently arose on account of the petitioners shifting premises. The counsels for the petitioner offered to pay the enhanced amount demanded together with interest alongwith restoration charges as applicable.

5.4 The counsel for the respondents who was obviously appearing on advance notice sought time to obtain instructions. However, on the counsel for the petitioners handing over a cheque in the sum of Rs.7,00,000/-, counsel for the respondents accepted the same without prejudice to the respondents' rights

and contentions subject to instructions to be obtained by the counsel for the respondents. In these circumstances, the Court directed that the possession of the plot in issue, would not be handed over to a third party.

5.5 The interim order dated 05.08.2002 was continued, which was made absolute on 04.02.2004. By an order dated 29.09.2004, GNCTD and DSIDC were directed to file an affidavit to place on record an affidavit and a copy of the policy to establish the fact that those who had deposited less than 50% of the cost of the plot, had their allotment cancelled.

5.6 In narrating the facts, I have already adverted to this aspect of the matter and, as a matter of fact, to two public notices, to which I have made a reference above i.e. the first dated 26.01.2001, and the second dated 26.08.2004, are part of the additional affidavit filed pursuant to the said order of the Court.

5.7 The writ petition was admitted on 12.01.2006, whereupon it came up for hearing on 28.07.2010 (with two intermittent dates), when it was dismissed for non-prosecution. On an application being moved, the writ petition was restored to its original number by an order dated 11.01.2011. Thereafter, the matter came up on several dates. The arguments in the matter were heard and judgment was reserved on 30.10.2012.

5.8 In the second writ petition, i.e., WP(C) 6198/2010, as indicated above, challenge is laid to the show cause notice dated 26.05.2010. It is relevant to note that a reply to the said show cause notice was filed on 22.07.2010. It is in this letter, for the first time, the petitioner made a distinction between their old address and the new address, and furthermore, requested the DSIIDC to correspond with them at their new address. It may also be noticed that in the show cause notice dated 26.05.2010, the DSIIDC adverted to the fact that the petitioner had failed to make 100% of the payment against the plot in issue, as per the allotment letter, from time to time, upto 30th June, 2008. Arguments in

the said writ petition were also heard with WP(C) 4688/2002 and the judgment was reserved on the same date, i.e., 30.10.2012.

Submissions of counsels

6. On behalf of the petitioner, arguments were addressed by Mr. Manoj Goel, assisted by Mr. Jagmohan Sharma, while on behalf of the respondents, arguments were addressed by Ms. Renuka Arora.

6.1 Mr. Manoj Goel briefly stated that the impugned letter cancelling the allotment of the Petitioner No.1 company is bad in law for the following reasons:

(i) There was no intimation to the petitioners with regard to the last date for deposit of the balance amount, which would take their deposit to 50% of the revised estimated cost of the plot in issue.

(ii) That fact that no communication was received by the petitioner is evident from the circumstance that the letter of DSIDC dated 24.07.2001 and the impugned letter dated 10.07.2002 were despatched to the old address of the petitioner. This, according to the learned counsel, was done despite the fact that the petitioners letter of 06.06.2001 was issued on a letterhead which, indicated the new address of Petitioner No.1 company i.e. the allottee.

6.2 It was thus submitted that having no notice of the facts that the payments in issue had to be made by 31.03.2001, the cancellation of allotment was bad. In any event, petitioners had offered to pay the balance amount with interest on the first date of hearing itself which is, reflected in the Court's order of 05.08.2002.

6.3 In support of his submission that, lack of specific notice would result in the impugned letter being set aside, reliance was placed on the judgment of the

Supreme Court in the case of ***V.N. Bharat v. Delhi Development Authority & Anr. (2008) 17 SCC 321.***

6.4 It was further argued and quite vehemently, that having handed over the cheque which was accepted by the respondents at the hearing held on 05.08.2002, the petitioners had fulfilled their obligation, since the payment, even by a cheque, takes effect from the date of delivery, which can only be defeated on happening of a condition i.e. non-payment on the date of maturity in the case of a bill exchange or non-payment on the date of presentation, in the case of a cheque.

6.5 Mr. Manoj Goel submitted that, the fact that, the cheque handed over at the hearing held on 05.08.2002, was not presented for payment by DSIDC, could not be construed as non-payment by the petitioners and therefore, non-fulfilment of their obligation to make payment towards the cost of the plot in issue. In this regard, reliance was placed on the judgment of the Supreme Court in the case of ***Income Tax Commissioner v. Ogale Glass works Ltd., AIR 1954 SC 429.*** Reliance was also placed by the learned counsel on orders passed by a Single Judge of this Court in different writ petitions being WP(C) Nos.1093/2002, 1533/2003, 13277/2004 and 13281/2004.

7. On the other hand, Ms. Renuka Arora, who appeared for DSIDC, submitted that no case of inference by this Court was made out. Her contentions, briefly in that regard were as follows:

- (i) The petitioners were aware of the timelines for making payments, as contained in the allotment letter dated 23.10.2000.
- (ii) The timeline for making payment of the second part of the first instalment was shifted from January, 2001 to 31st March, 2001 pursuant to the orders of the Supreme Court dated 24.01.2001.

(iii) The DSIDC, gave wide publicity to the shifting of date to 31.03.2001, by issuing public notices in both English and vernacular language, within two days of the order dated 24.01.2001, that is, on 26.01.2001.

(iv) The petitioners claim that they were unaware of the due date expiring on 31.03.2001, is incorrect, as in their very first letter of 06.06.2001 they sought to make deposit of the additional amount and the reason indicated therein for delay was that the deposit had not been made due to unavoidable reasons. There was no assertion as regards lack of notice . As a matter of fact, the letter enclosed the ***demand notice***, which would show that, the petitioners had notice of the due date expiring on 31.03.2001. In any event, in matters like these where there are large number of applicants, public notices should and ought to suffice.

(v) DSIDC, by itself had no liberty to relax the cut off date as, it was fixed pursuant to a specific order of the Supreme Court. As regards acceptance of payment, it was contended that proceedings of 05.08.2002 would show that the cheque offered was accepted by the counsel subject to instructions and without prejudice to the rights and contentions of parties. The cheque in issue, has not been deposited by DSIDC for encashment.

7.1 Reliance was placed by the learned counsel on the judgment of Single Judge of this Court in case of ***Dinesh Lalwani vs DSIDC*** passed in writ petition No.14629/2004 dated 13.11.2007 and the judgment of the Division Bench of this Court in ***Sunil Dua v. Govt. of NCT and Anr.*** passed in LPA No.101/2009 dated 12.05.2009. Reliance was also placed on the judgment of a Single Judge of this Court in a batch of writ petitions, wherein the lead writ petition was numbered as WP(C) No.14753/2004. The Single Judge, yet again, dismissed

the writ petition. The Single Judge's attention was drawn to the judgment of the Division Bench of this court in *Sunil Dua's case*. The Single Judge in his judgment distinguished the judgment rendered in the case of M/s *Padmawati Metals v. Govt. of NCT of Delhi*, which was incidentally cited by the petitioners before me.

REASONS

8. Having heard the learned counsel for the parties and considered the record of the case, in my view the following clearly emerges.

8.1 A letter of allotment was issued whereby, timelines were fixed both for the *second part* of the *first instalment* of 50% of the revised estimated cost of the plot in issue and, the second instalment of 50% of the revised estimated cost of the plot in issue.

8.2 The total revised cost of the plot in issue, as indicated in the letter of allotment of 23.10.2000 was a sum of Rs.4,20,000/-, out of which the petitioners were required to deposit a sum of Rs.2,39,700/- towards the *second part of the first allotment of the 50% of the cost of the plot in issue by 23.01.2001*.

8.3 There is no dispute about receipt of the letter of allotment dated 23.10.2000, by the petitioners.

8.4 The petitioners for the first time wrote on 06.06.2001 that, they were willing to deposit the second instalment (which was really the second part of the first instalment) in line with the demand letter issued by DSIDC, a copy of which was enclosed. The reason for delay given was that the instalment had not been paid "*due to some unavoidable circumstances*".

8.5 The contents of this letter require examination along with the averments made in the writ petition. Crucially, it is averred by the petitioners that: "in June, 2001 the petitioners learnt that, respondents had sent a letter by which

they demanded the second instalment of Rs.2,39,700/- being the balance of 50% of the cost of the plot which was to be deposited by 31st March", 2001.

8.6 Therefore, four things emerge when the pleading made in this behalf, is read along with the documents: first, there was no assertion that the delay was on account of lack of notice. Second, there is no disclosure in the pleadings, as to the basis of the petitioners knowledge acquired in June, 2001 that Rs.2,39,700/- had to be paid by 31.03.2001. Third, a copy of the demand letter was enclosed. Fourth, there was nothing to suggest that petitioners required DSIDC to now correspond with them at their new address. This aspect was adverted, as noticed hereinabove, for the first time on 22.07.2010, in the reply to the show cause notice dated 26.05.2010.

8.6 The DSIDC by their return letter dated 24.07.2001, insisted that communications directly as well through public notices had been issued with regard to the due date expiring on 31.03.2001.

8.7 For the first time, on 08.08.2001, the petitioners took the stand that they had not received any letter indicating that the due date expired on 31.03.2001.

9. In my view, what has emerged from the record, is that, respondents had knowledge of the fact that the due date for making payment of the second part of the first instalment expired on 31.03.2001. This inference would have to be drawn for the reason that, in the very first communication of 06.06.2001, the stand taken for explaining delay in payment was not that they had no notice of the due date but was attributed to unavoidable circumstances, in which they were evidently put, at that point in time.

9.1 Since, DSIDC was not able to produce a copy of the specific letter issued to the petitioners, the receipt of which the petitioners deny despite contents of the letter dated 06.06.2001 and the averments made in the writ petition (of which I have grave doubts), I will assume for the moment that no such letter

was issued. Even so, the fact that there was a public notice issued on 26.01.2001, to which wide publicity was given, it cannot be said in cases like this, that this aspect, the Court should not give weightage to, while exercising powers under Article 226 of the Constitution of India. It was solely on account of the directions issued by the Supreme Court on 24.01.2001, that timelines were extended for making payment till 31.03.2001. If one were to go strictly, by the terms of the letter of allotment, then petitioners were required to deposit the second part of the first instalment i.e. Rs.2,39,700/- by 23.01.2001 and the first tranche equivalent to 20% of the revised cost of the plot in issue, by April, 2001.

9.2 DSIDC, in my view, is right in its stand that, it had no leeway to relax the cut off date, which was fixed pursuant to the orders of the Supreme Court. A *de minimus* rule was perhaps applied where, due to difference in calculation qua the interest on EMD being short by 10%; time was extended till 01.04.2001. The petitioners case, even according to them, did not fall within this limited exception. The judgment of the Supreme Court cited by learned counsel for the petitioners would not help as in this particular case the distinguishing factor, is that, the cut off date of 31.03.2001, was fixed, and thereafter, widely publicised pursuant to the order of the Supreme Court. The principle enunciated in *V.N. Bharat's case*, would not apply, therefore, to the present facts. It is trite to say that, the judgments are not like *euclid's theorem*. One singular fact can make all the difference. This is true also for the judgments of the Single Judge cited by the learned counsel for the petitioner.

9.3 On the other hand, the Division Bench of this Court in *Sunil Dua's* case deals directly with the point in issue wherein, the Court after noticing the facts pertaining to fixation of the cut off date by the Supreme Court, and thereafter issuance of public notice by the DSIDC, went on to observe that no interference

was called for under Article 226, by this Court, while exercising extraordinary writ jurisdiction.

9.4 Learned counsel for the petitioner has also sought to make an argument, based on the show cause notice dated 26.05.2010, that the due date for payment of the monies against the plot in issue, had got extended to 30.06.2008 as against 31.03.2001. According to me, this argument seeks to take advantage of the fact that it does not advert to the timelines referred to in the allotment letter issued to the petitioner on 23.10.2000. The fact of the matter is, as discussed above, 50% of the payment had to be made by the petitioner by 31.03.2001, as per the deadline fixed by the Supreme court, and having not done so, the DSIIDC issued the letter dated 10.07.2002 cancelling the allotment. The show cause notice dated 26.05.2010 was, in that sense, unnecessary.

10. Having perused the record of this case, I am not persuaded to hold that the GNCTD/DSIDC acted in a manner which was either illegal or, in a manner, which fell foul of the principles enunciated by the Court from time to time under Article 14 of the Constitution of India. In other words, it cannot be said that their action was unreasonable, irrational or capricious.

11. Before I conclude, the argument of the learned counsel for the petitioner that they had discharged their obligation by delivering a cheque on the first date of hearing, i.e., on 05.08.2002, in my view, is completely untenable as the proceedings of the day would show that the cheque was delivered and, therefore, accepted by the counsel appearing for DSIDC subject to instructions and without prejudice to DSIIDC's rights and contentions. It is not disputed that DSIDC did not encash that cheque; a fact which could not have escaped the petitioners. As a matter of fact, all this while, the petitioners did not bring this fact to the notice of the Court even though they continued to enjoy the

protection of the interim order passed on the said date. Therefore, the judgment of the Supreme Court in the case of ***Income Tax Commissioner v. Ogale Glass works Ltd.***, would in my view, have no applicability. The issue involved in the present case is not: whether a payment made by cheque would amount to a conditional payment. The issue is: whether the payment in issue, was made before the due date.

12. For the aforesaid reasons, I find no merit in these petitions. Accordingly, the same are dismissed. Interim orders dated 05.08.2002 passed in WP(C) No. 4688/2002 and dated 14.09.2010 passed in WP(C) 6198/2010 are vacated. However, in the facts and circumstances of this case, the parties shall bear their own costs.

RAJIV SHAKDHER, J

DECEMBER 05 , 2012

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