

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

+ LPA 166/2013
DIGAMBER GARMENTS & ANR.

..... Appellants

Through: Mr. Manoj Goel with Mr. Jagmohan
Sharma and Mr. Gopal Verma, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ANR.

..... Respondent

Through: Mr. Anusuya Salwan, Ms. Renuka
Arora and Mr. Vikas Sood, Advs. for
DSIDC

Ms. Ferida Satarawala and Ms.
Suman Kukrety, Advs. for R-1

And

+ LPA 167/2013
DIGAMBER GARMENTS & ANR.

..... Appellant

Through: Mr. Manoj Goel with Mr. Jagmohan
Sharma and Mr. Gopal Verma, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ANR.

..... Respondent

Through: Mr. Anusuya Salwan, Ms. Renuka
Arora and Mr. Vikas Sood, Advs. for
DSIDC

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

ORDER

18.03.2013

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CM 4642/2013 & 4645/2012 (exemption) in LPA 166/2013
&
CM 4647/2013 & 4651/2012 (exemption) in LPA 167/2013

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

CM 4641/2013 (stay), 4643/2012 (delay of 6 days in filing the appeal),
4644/2013 (delay of 50 days in refilling the appeal) in LPA 166/2013
&
CM 4646/2013 (stay), 4648/2012 (delay of 6 days in filing the appeal),
4648/2013 (delay of 50 days in refilling the appeal) and CM 4650/2013
(for placing on record Annexure L1/7 and L1/8) in LPA 167/2013

These appeals are directed against the common order dated 5.12.2012 whereby W.P(C) Nos.4688/2002 and 6198/2010 filed by the appellants were dismissed.

2. The appellant No.1 M/s Digamber Garments which was running an industrial unit at X/402/A/3, Jain Gali, Raghubar Pura, Gandhi Nagar, Delhi applied to the respondent no.2 DSIDC for allotment of an industrial plot and deposited the earnest money amounting to Rs.1,20,000/- followed by a further payment of Rs.60,000/- on 6.5.2000. Vide allotment letter dated 23.10.2010, a plot of land was allotted to the appellants which was required to deposit 50% of the revised estimated costs calculated @ Rs.4,200/- per sq. metre within three months of the issue of the said letter. The balance 50% of the revised estimated cost was required to be deposited in three instalments as specified in the allotment letter. After adjusting the amount which the appellants had already deposited, along with interest which had

accrued on that amount, DSIDC had required the appellants to deposit a sum of Rs.2,39,700/- within three months from the date of issuance of the said letter. The aforesaid amount was payable by 23.1.2001, the second instalment was payable by 23.4.2001 and the third instalment was payable by 23.10.2001. The last instalment was to be paid at the time of handing over of possession of the flat.

3. Vide order dated 24.1.2001, the Supreme Court by way of a general direction, extended the time for payment upto 31.3.2001 and also directed that no cancellation could be effected on account of non-payment of money till that date. In compliance of the aforesaid directions of the Supreme Court, DSIDC inserted public notice in the newspapers requiring all those who had not made the payment to make payment of all the allottees of Bawana who had not made payment, to make 50% payment by 31.3.2001. It was also stated in the public notice that in case the payment was not made by that date, the allottees would face cancellation of their allotments and no further correspondence in this regard would be entertained.

4. The appellants did not pay 50% of the estimated costs of plot either by 23.1.2001 in terms of the demand letter dated 23.10.2001 or by 31.3.2001 in terms of the general directions issued by the Supreme Court. More than two months after expiry of the deadline fixed by the Supreme Court, the appellants, vide letter dated 6.6.2001, sought permission of DSIDC to deposit the aforesaid amount. However, instead of extending the time, DSIDC, vide letter dated 24.7.2001 informed the appellants that as per their

record it had failed to deposit 50% of the costs of the plot by 31.3.2001. He was required to give proof in case the aforesaid amount had been deposited by him and was further informed that on his failure to do so, the allotment shall stand cancelled and no correspondence in this regard would be entertained. Since admittedly the appellants had not deposited 50% of the costs of the plot by 31.3.2001, this letter was to be treated as letter cancelling the allotment made to it.

5. Being aggrieved from the cancellation of the allotment, the appellants filed W.P(C) No.4688/2002. When the aforesaid writ petition came up for hearing, the learned counsel for the appellants handed over a cheque of Rs.7 lac to the counsel for DSIDC who accepted the same without prejudice to their rights and contentions and subject to instructions to be obtained by him. The aforesaid cheque, however, was never got encashed by DSIDC. It appears that during the pendency of W.P(C) No.4688/2002, a show cause notice dated 26.5.2010 was issued to the appellants by DSIDC. In the aforesaid show cause notice, it was stated that the appellants had failed to make 100% payment against the cost of the plot by the due date extended from time to time up to 30.6.2008 through press advertisements and it was required to show cause as to why its eligibility and allotment of the flat should not be cancelled. The appellants filed reply to the aforesaid show cause notice on 27.7.2010 stating therein that they had made 100% payment and seeking withdrawal of the said notice. In this regard, the appellants, in their reply dated 27.7.2010, referred to the interim order dated 5.8.2002 passed by the learned Single Judge. W.P(C) No.6198/2010 was then filed by the appellants challenging the aforesaid show cause notice. The factum of

cheque of Rs.7 lac having been accepted by the learned counsel for DSIDC without prejudice to the rights and contentions and subject to instructions by her had been recorded in that order.

6. The learned Single Judge vide the impugned order dated 5.12.2012 dismissed both the petitions. Being aggrieved, the appellants are before us by way of these two separate appeals.

7. It is an admitted position that the appellants had received demand letter dated 23.10.2000 requiring it to deposit a sum of Rs.2,39,700/- within three months from the date of issue of the aforesaid letter. It was clearly stated in the aforesaid letter that in case the payment was not made within the stipulated time, the allotment was likely to be cancelled without any further notice in this regard. Admittedly, the appellants did not deposit the aforesaid sum of Rs.2,39,700/- by 23.1.2001 which was the last date for making the aforesaid payment in terms of demand letter dated 23.10.2000. This is also not the case of the appellants that they had at any point of time before 23.1.2001 made a request to DSIDC for extension of time to make the aforesaid payment. Therefore, by not making payment of the aforesaid amount by 23.1.2001, the appellants forfeited their right to the allotment of the plot in question. On expiry of the aforesaid deadline, DSIDC was very much entitled to cancel the allotment made to the appellant M/s Digamber Garments without any show cause or any other notice.

8. It is not in dispute that vide order dated 24.1.2001, the Supreme Court had extended the time for payment of 50% of the costs of the plots, in case of allotment in Bawana upto 31.3.2001 and a notice in this regard was published in the leading newspapers viz. “Times of India” and “Punjab Kesari” both dated 26.1.2001 followed by the public notice in “Navbharat Times” on 27.1.2001. It is also not in dispute that the appellants did not make payment of the aforesaid amount of Rs.2,39,700/- even by 31.3.2001 nor did they apply to DSIDC at any time prior to 31.3.2001, for extension of time for making the aforesaid payment. Therefore, the appellants cannot take any advantage of the general order passed by the Supreme Court on 24.01.2001.

9. The issue involved in these appeals came to be considered by a Division Bench of this Court in **Dinesh Lalwani vs. DSIDC**, **LPA No.48 of 2008** decided on 1.2.2008 and noticing that the appellant before the Court had not deposited the requisite amount of 50% of the costs by the cut-off date, it was held that no equity could be shown to him. This issue again came to be considered by another Division Bench of this Court in **Sunil Dua vs. Govt. Of NCT of Delhi & Anr.** [LPA No.101/2009, decided on 12.5.2009], in this case also, the appellant before this Court had failed to deposit 50% of the costs of the plot by 31.3.2001. Being aggrieved from the cancellation of the allotment made to him, the appellant filed a writ petition which came to be dismissed by the learned Single Judge of this Court vide order dated 13.1.2009. Being aggrieved, he filed an appeal challenging the aforesaid order. Rejecting the appeal, the Division Bench of this Court, *inter* **LPA 166/2013 & 167/2013**

alia, held as under:

“3. There is no dispute that the Supreme Court’s order dated 12th September, 2000, desired that allotment of those who did not make substantial payment should be cancelled. As per the DSIDC, according to the directions of the Supreme Court, the draw of plots was held on 3rd October, 2000 and eligible allottees held successful in the draw were issued allotment letters. Under the allotment letters, 50% of the demand was to be made immediately on issuance of the allotment letters. The last date for payment of 50% was extended upto 31st March, 2001 by press notification. It was also stated on behalf of the DSIDC that by a public notice dated 21st January, 2001, published in “Times of India”, allottees were informed that the Supreme Court of India in its hearing dated 24th January, 2001, had extended time for receipt of 100% payment in the case of allottees at Narela, Badli, Jhilmil and Patparganj as well as 50% payment in case of Bawana upto 31st March, 2001. A number of allottees did not deposit 50% payment within the stipulated time, however, keeping in view the hardship faced by the allottees, it was decided by the DSIDC that all those allottees who did not make the first 50% payment on time would be given an option to withdraw their amounts deposited and keep only the security deposit amounts with the Corporation and DSIDC would maintain a separate list of these allottees and their cases may be considered after new land was acquired and developed and after complying with the Supreme Court’s order for exhausting the pending allottees. A copy of the notice dated 26th August, 2001 is annexed at page 109 of the paper book, a copy of the public notice dated 26th January, 2001 published in the newspaper is annexed at page 121 of the paper book and a copy of the order dated 12th January, 2000 passed by the Supreme Court is

annexed at page 101 of the paper book.

4. It is thus clear that the intimation pursuant to the Supreme Court's orders was published in the newspaper informing the allottees of the cut-off date of 31st March, 2001. Despite this, admittedly, the appellant did not make the stipulated payment as required by the orders of the Supreme Court and the public notice of 26.01. 2001. Thus the allotment was liable to be cancelled in terms of the orders of the Supreme Court and the public notice.

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6. The learned Single Judge has rightly held that pursuant to the Supreme Court's order dated 12th September, 2000, DSIDC formulated a policy which would give wide publicity in the press stating that those who did not deposit 50% of the cost on or before 31st March, 2001 would incur the risk of cancellation of their allotment and the appellant was not unaware of this position and thus was clearly ineligible for allotment as he had failed to make the payment by 31st March, 2001.

7. We are in agreement with the conclusion reached by the learned Single Judge that the grounds urged by the appellant do not justify interference with the decision of the DSIDC as the appellant has not made out a case for exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The appellant has not challenged the policy but has contended that notwithstanding the policy, the DSIDC took long time in processing his case and indicating his ineligibility. This cannot be a ground for interference under Article 226 of the Constitution of India....”

10. Considering the above referred two decisions by coordinate Benches,

the learned Single Judge has rightly dismissed the writ petitions filed by the appellants.

11. It was contended by the learned counsel for the appellant that tender by way of cheque being a valid tender, the appellants made payment to the respondent DSIDC on 5.8.2002 and having accepted the aforesaid payment DSIDC cannot now cancel the allotment. We, however, find no merit in the contention. It is quite clear from a perusal of the order dated 5.8.2002 passed in W.P(C) No.4688/2002 and CM 7993/2002 that when the learned counsel for the appellants expressed willingness to pay the earnest amount along with interest and restoration charges, the learned counsel for the respondent expressed desire to obtain instructions. When the learned counsel for the appellants handed over a cheque of Rs.7 lac to the counsel for DSIDC, it was accepted by her without prejudice to the rights and contentions and subject to instructions by the counsel from the respondent. The aforesaid acceptance being conditional and without prejudice to the contention that could be raised by the respondent DSIDC in reply to the writ petition, it cannot be said that DSIDC had accepted the payment of Rs.7 lac from the appellants. We would like to note here that the aforesaid cheque of Rs.7 lac was not encashed by DSIDC at any point of time.

12. The learned counsel for the appellants relied upon the decision of the Supreme Court in V.N. Bharat vs. DDA and Anr. [AIR 2009 SC 1233]. In the aforesaid case, the appellant before the Supreme Court had applied for registration of a flat with DDA. On allotment letter being issued to him, the

appellant made payment on four instalments, but he could not make payment of 5th and final instalment within 15 days of the receipt of the allotment letter, which resulted in issuance of a show cause notice to him asking him to explain why he had failed to make payment of 5th and final instalments. Thereupon, the appellant informed DDA that he had not received any demand letter for payment of the 5th and final instalment and he requested DDA to issue allotment letter indicating the amount of 5th instalment. Subsequently, he received a letter from DDA informing him that a letter was earlier issued to him demanding the amount of 5th and final instalment. The appellant claimed that the aforesaid letter demanding 5th and final instalment was never tendered to him and in fact in a letter dated 22.4.1998 sent to him, DDA had stated that another demand letter was in process and would be issued in due course. The appellant paid the 5th and final instalments by way of pay order on 6.5.1998 even prior to receipt of the aforesaid letter dated 22.4.1998. Thereafter, the appellant filed a complaint before MRTP Commission alleging unfair practices by DDA and sought registration of the sale deed in his favour along with compensation. The learned Commission, however, was of the view that the allegations of unfair trade practices on the part of DDA had not been proved and accordingly discharged the notice of inquiry. Being aggrieved, the appellant approached the Apex Court by way of an appeal. The Court noted that the real controversy between the parties was as to whether the demand letter dated 10.9.1996 for payment of 5th and final instalment had in fact been received by the appellant or not and whether non-compliance of the said letter had resulted in termination of the appellant's allotment. The Apex

Court came to the conclusion that the notice of demand for 5th and final instalments had not been received by the appellant and, therefore, the consequential automatic termination of the allotment could not follow.

However, in the case before us, it is not in dispute that demand letter dated 23.10.2000 was actually received by the appellant. In fact, the receipt of the aforesaid letter is acknowledged in the letter dated 6.6.2001 written by the appellant to DSIDC. Therefore, this judgment is of no help to the appellants.

13. For the reasons stated hereinabove, both the appeals are dismissed.

CHIEF JUSTICE

V.K. JAIN, J

MARCH 18, 2013

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