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

+ **LPA No. 2121/2006**

Reserved on: 25.04.2013

Pronounced on: 06.05.2013

PUNJAB MOTOR WORKSHOP

..... Appellant

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Akshay Makhija, Ms. Sanjugeeta
and Ms. Mahima Bahl, Adv.

VERSUS

DDA AND ANR.

..... Respondents

Through: Mr. Arjun Birbal, Adv. for DDA.
Ms. Rajiv Nanda, Additional
Standing Counsel for GNCTD/R-3.
Ms. Suparna Srivastava, Standing
Counsel for MCD/R-4.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present Appeal the appellant impugns the Judgment dated 05.10.2006 passed by the learned Single Judge dismissing the Writ Petition of the Appellant.

2. It is the contention of the appellant that he is carrying business of machine shop, reconditioning motor parts, using big machines, lathes, grinders etc. in a non-conforming area at Nicholson Road, Delhi.

3. It is further contended that in 1970 DDA came up with a scheme for allotment of industrial plots to persons carrying on business in non-conforming areas. In terms of the policy, the appellant is stated to have deposited Rs.25,000/- as application money. On 01.02.1977, DDA sent a letter to the appellant sanctioning a one acre plot of land and asking the appellant to deposit a sum of Rs.2,33,193.80. The appellant contends that as DDA gave no description of the plot or its location, the appellant deposited a sum of Rs.1,06,600/- being 50% of the total cost of the plot with an undertaking to deposit the balance amount as and when the plot is made available on a term basis.

4. Thereafter on 8.4.1981 the appellant received another communication from DDA whereby the size of the plot was proposed to be reduced from 4840 sq.yards to 2000 sq.meters. An opportunity was given to the appellant to justify as to why the bigger size plot should be given to him. The appellant on 19.08.1981 protested against the act of DDA in seeking to reduce the size of the plot and gave several reasons to try and argue that the appellant is entitled to the plot as originally allotted.

5. On 22.02.1988, DDA conveyed to the appellant that the appellant was being considered for allotment of an industrial plot in Okhla Industrial Area, Phase-I, Delhi by bifurcating plot No.B-20, Okhla Industrial Area, Phase-I, Delhi at the current market rate. It is also stated that this was with the approval of the Land Allotment Advisory Committee. The appellant again protested vide letter dated 24.03.1988 pointing out that the demand for payment of the plot at current market price was unfair. Thereafter on

31.01.1989, the appellant received a letter from DDA rejecting the application of the appellant for allotment of industrial plot on two separate grounds, firstly that 50% of the payment has not been made by the appellant and secondly that the industry of the appellant was a service industry, the Committee felt that no purpose will be served by shifting the industry from its present premises. By present Writ Petition, the appellant challenged the said communication dated 31.01.1989 issued by DDA and, now seeks a Writ of Mandamus to be issued to DDA to allot an industrial plot to the appellant.

6. On the first ground taken by DDA for cancellation of the allotment i.e. non payment of the 50% of the price of the land the learned Senior Counsel for the appellant submits that the contention of DDA is erroneous as DDA itself vide letter dated 08.04.1981 had offered that instead of 4840 sq.yards, the appellant would only be offered 2000 sq.,mtrs of land. Keeping in account that the size of the plot had been reduced to almost half, it is contended that the payment already made by appellant of the sum of Rs.1,06,600/- plus application money of Rs.25,000/- would cover the cost of the reduced plot being offered by DDA. He argued that in view thereof cancellation of the plot on the grounds of non payment of 50% of the cost of the unit is an illegal act of DDA. The learned senior counsel further contends that the impugned order dated 05.10.2006 accepts the said submission of the appellant. He relies on paragraph 14 of the impugned judgment. He further submits that the only issue that was held against the appellant in the impugned order was whether the view taken by the Land Advisory Committee to cancel the allotment is tenable and justified.

7. On the second issue raised by DDA in the communication dated 31.01.1989 issued on the decision of the Land Allotment Advisory Committee, the learned senior counsel submits that the act of DDA is entirely illegal and erroneous as respondent MCD and Govt. of NCT of Delhi do not dispute that the factory of the appellant is in a non-confirming area. For the said purpose, he relies on an order dated 14.07.2008 passed by this Court whereby it was noted that the only question in this appeal is whether the appellant is permitted to operate his unit/factory from the existing location in view of the New Master Plan. This Court noted the contradictory stand of DDA and Chief Inspector of Factories and directed that in view of the contradictory stand taken by the said two functionaries, the Government of NCT of Delhi through Office of Chief Inspector of Factories be added as a party.

8. Learned senior counsel further relies on Order dated 17.02.2009 passed by this Court whereby MCD was granted time to file an Affidavit which would contain a reasoned decision in respect of the issue as to whether the appellant is carrying out its activities in a non conforming area or not. It was his contention that based on the said order of this Court, MCD filed a Counter-Affidavit where it is stated that two stretches of Nicholson Road have been declared as commercial street provided they have a ROW (Right of Way) highest of which is 13.6 meters. The Affidavit also points out that for repair shops and workshops in case of automobiles the ROW cannot be less than 30 meters. As there is no right of way of 30 meters at Nicholson Road, it is argued that the MCD Affidavit clearly brings out that the factory of the appellant is in a non-confirming area.

9. The learned senior counsel for the appellant also relies upon a notesheet of DDA dated 08.06.1988 where it is stated that the DDA had come to a conclusion that the unit of the appellant is doing trade with the help of 17 HP power and employing 50 workers and hence the location of the unit may be taken as non-conforming.

10. In view of the above affidavit of MCD and note of DDA, it is the contention of the learned senior counsel for the appellant that the factory premises of the appellant at Nicholson Road, Delhi are in a non-conforming area. He further submits that the stand of respondent DDA, as stated in its impugned communication dated 31.01.1989, that the appellant is a service industry and that because mixed land use is in vogue, no purpose will be served by shifting the industry from the present premises, is a false and incorrect stand. He submits that DDA could not cancel the allotment of the appellant on the said erroneous basis. Factually, he submits that the factory of the appellant is in a non-confirming area and in accordance with the policy of the DDA the appellant was entitled to alternative plot as it had applied for, at the then prevailing land rates of 1977.

11. The learned senior counsel for the appellant also submits that the impugned Order erroneously relies upon the judgment dated 27.11.2003 in the case of ***Gopa Wanti –vs- DDA (CW 1372/1988) and Golcha Hosiery Mills –vs- DDA, 63(1996) DLT 9 (DB)***. He submits that the said two judgments have been wrongly relied upon in the impugned order and that they are based on facts of those cases inasmuch as in those cases the DDA

was not insisting on the appellant for shifting from the place where the appellant is having its business.

12. The learned counsel appearing for respondent DDA has submitted that the appellant has no vested right for allotment of an alternative industrial plot. He further contends that despite two opportunities given to the appellant, the appellant failed to deposit 50% of the amount demanded by DDA. It is stated that on 01.02.1977 the appellant was asked to deposit a sum of Rs.2,33,193.80 but it failed to deposit the full amount. He further submits that second opportunity was granted to the appellant on 08.04.1981 where he was offered a smaller plot of 2000 Sq.meters. He submits that the appellant again failed to make the payment or accept the offer of the respondent/DDA. Hence, it is his submission that there was no obligation on the part of DDA to allot a plot to the appellant.

13. Learned counsel for DDA further submits that the appellant was functioning from Nicholson Road, Delhi which was a confirming area. He further submits that subsequently the appellant had closed its factory/manufacturing process and had shifted out of Delhi. He relied upon an inspection report dated 02.09.2008 of GNCT of Delhi which is an inspection carried out of the factory of the appellant. In the inspection, it is stated that no manufacturing process is observed, there are only four persons on the Roll of the appellant and no supply of water. The report further states that no plant and machinery is found in the premises and it is being used for storage of furniture. The report is duly signed by the concerned person from the appellant. He also relies on the Affidavit of

Government of NCT of Delhi where it is stated that the factory license of the appellant was valid till 2004 and that the appellant has since 2004 not applied for renewal of his factory license. He further states that the appellant has in his Writ Petition falsely claimed that it is functioning with 80 machines and 100 persons are working. He hence contends that on both counts the communication issued by DDA dated 31.01.1989 is legal and valid.

14. Learned counsel for NCT of Delhi has reiterated the contentions of the counsel for DDA. He points out that the Government of NCT of Delhi had intimated DDA that the appellant has closed down its factory and no manufacturing activity was found at the site during inspection on 12.06.2008.

15. We are of the view that the appellant has failed to make out any case for interference with the judgment of the learned Single Judge. Pursuant to the policy of the respondent, the appellant had applied for a plot of one acre and paid Rs.25,000/-. On 01.02.1977 DDA, pursuant to the said application, directed the appellant to deposit a sum of Rs.2,33,983.80. Admittedly, the appellant on its own without any basis has deposited only Rs.1,06,600/- apart from Rs.25,000/- deposited earlier. A communication was addressed by the appellant on 02.03.1977 where the appellant protested stating that a demand could not be raised without the draw of allotment for the plot and further no plot number has been mentioned. It, however, agreed to pay 50% of the amount of total payment demanded and sent a cheque for Rs.1,06,600/-. Hence, the appellant failed to comply with the demand of

DDA dated 01.02.1977.

16. On 08.04.1981 the DDA again wrote to the appellant pointing out that in view of the recent resolution of the Land Allotment Advisory Committee where plots are more than 2000 sq.meters, the plot holders will be offered land upto 2000 sq.meteres and refund of the premium of the surrendered land would be made. An opportunity was given to the appellant that in case he wishes to retain the bigger size plot, he may give justification for the same. Vide letter dated 19.08.1981 the appellant again did not accept the offer of the respondent DDA and wrote a communication protesting the reduction in the size of the plot and also sought to justify their requirement for a large plot.

17. On 22.02.1988 respondent DDA informed the Appellant that they were being considered for allotment of an industrial plot in Okhla Industrial Area, Phase-I by bifurcating plot B-20, Okhla Industrial Area, Phase-I at current market rate and that the communication is issued with the approval of the Land Allotment Advisory Committee. Again, the appellant did not accept the said offer of the respondent and on 24.03.1988 protested against allotment of a bifurcated plot at current market rate. The appellant protested that grave injustice has been caused to them as they have been offered a plot at current market rate whereas a substantial amount of Rs.1,31,600/- was held by DDA for a long time. This was of course followed by the communication dated 31.01.1989 issued by respondent DDA which rejected the request of the appellant for allotment of alternative industrial plot.

18. A perusal of the above facts shows that at no stage a binding allotment came to be made by respondent DDA to the appellant. Whatever offers have been made by the respondent DDA to the appellant have been rejected by the appellant for one reason or the other. Hence, no binding allotment has been made by the respondent DDA in favour of the appellant. Hence, no vested right accrued in favour of the appellant.

19. No doubt, as urged by learned counsel for the appellant, there has been considerable delay on the part of the DDA in dealing with the request/application of the appellant. However, in view of the facts mentioned, in our opinion the position regarding allotment does not change.

20. The matter may also be looked at from another perspective. Whenever DDA made an offer to the appellant, the appellant has always come up with a counter offer. The legal position regarding contract is that a proposal must be accepted unconditionally. A counter offer is not an acceptance of the offer. Normally a counter offer destroys the original offer. Reference may be had in this context to the judgments of the Division Bench of Allahabad High Court in *U.P.State Electricity Board and another –vs- M/s.Goel Electric Stores, Chandigarh*, AIR 1977 Allahabad 494 and Division Bench of the Kerala High Court in the case of *Moolji Jaitha and Co. –vs- Seth Kirodimal*, AIR 1961 Kerala 21.

21. Similarly, regarding the contention of the appellant that it is operating from a non-confirming area, none of the respondents have admitted that the factory of the appellant is situated in a non-confirming area. In fact

Government of NCT of Delhi and DDA have categorically stated that the appellant was working in confirming area. MCD in its Affidavit concludes that DDA should be in possession of necessary documents in terms of site plan/location plan of the premises in question, that are required to identify the land use and ROW of abutting roads as per the layout plan/zonal development plan and hence leaves it on DDA to determine the issue. In the light of this, we see no infirmity in the conclusions drawn by the learned Single Judge in the impugned Order regarding the conclusion of DDA in this regard not being arbitrary.

22. We would also like to take note of the fact that it appears that the appellant has already shifted his factory out of Nicholson Road, New Delhi. His factory license, trade license have all expired. As per inspection reports of Government of NCT of Delhi, the premises at Nicholson Road which was a tenanted premises appears to be run for storage purposes.

23. In view of the above, we see no reason to interfere in the impugned order. The said order also meets the ends of justice inasmuch as it directs refund of the amount paid by the appellant alongwith 12% compound interest for the period 01.04.1977 till 31.01.1989. The principal alongwith interest was to be paid by the respondent DDA within six weeks from the date of the order. Neither party has made any submissions regarding as to whether the said amount was paid to the appellant. We would only like to add that in case the said amount as directed by the learned Single Judge has not been refunded by the DDA, it shall immediately refund the amount alongwith simple interest at the rate of 9 % per annum w.e.f. 01.02.1989 till

the date of receipt by the appellant. The present petition is accordingly disposed of.

JAYANT NATH, J.

CHIEF JUSTICE

May 06, 2013
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