

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

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Date of Decision: 11.11.2013

+ W.P.(C) 3867/2012

BR PACKAGING INDUSTRIES

..... Petitioner

Through: Mr Arun Aggarwal, Adv.

versus

DELHI STATE INDUSTRIES DEVELOPMENT
CORPORATION LTD.

..... Respondent

Through: Ms Anusuya Salwan, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

M/s B.R. Packaging Industry, a partnership firm, applied to the respondent-DSIIDC for allotment of an industrial plot under its scheme for relocation of industries running in the non-conforming areas to various industrial estates. A plot bearing No. 225, Pocket-E, Sector 3, Bawana, came to be allotted to the aforesaid firm on 24.09.2004. At that time, there were two partners in the firm, namely, Raj Kumari Sharma and late Smt. Rajeshwari. The partnership firm had deposited a sum of Rs 1,08,245/- with DSIIDC on 29.07.2000. It appears that some disputes arose between the legal heirs of Smt. Raj Kumari Sharma and

the other partner of the firm, Smt. Rajeshwari Devi, who was alive at that time. One Gaurav Sharma, grandson of late Smt. Raj Kumari, claimed title to the aforesaid plot by virtue of a Will alleged to have been executed by late Smt. Raj Kumari in his favour. Smt. Rajeshwari, the other partner of the firm, claimed to have become solely entitled to the aforesaid plot on the death of Smt. Raj Kumari, and both Gaurav Sharma as well as Smt. Rajeshwari requested DSIIDC to transfer the aforesaid allotment in their respective names. Thereupon, a civil suit came to be filed by Shri Gaurav Sharma in District Courts impleading DSIIDC as well as Smt. Raj Kumari as defendants in the said suit. The aforesaid suit has now been withdrawn on 07.11.2013.

2. Clause 5 of the Provisional Eligibility Letter dated 20.04.2000, issued by DSIIDC read as under:-

“5. The allottee is required to make the payment within three weeks time from the date of issue of this letter. Interest @ 18% would be charged thereafter for the delayed payment. In case payment is not made within the period of 60 days from the date of issue of the letter, the plot is liable to be cancelled and the amount already deposited shall be forfeited.”

The aforesaid clause has been reiterated in the allotment letter dated 24.09.2004, which the learned counsel for the respondent has

brought to the Court and has produced before the Court for its perusal during the course of arguments.

3. It would thus be seen that the balance payment was required to be made by the allottee within three weeks from 20.04.2000, failing which it was liable to pay interest at the rate of 18% per annum. In case the payment was not made even within 60 days from the date of issue of the letter, the allotment was liable to be cancelled and the amount deposited by the allottee was liable to be forfeited. It appears from the communication sent by DSIIDC to the petitioner that the aforesaid time for making balance payment was extended by DSIIDC up to 30.06.2008 for all those who had failed to deposit the balance amount in time, but they were required to pay interest as well as penalty on the arrears towards DSIIDC. The learned counsel for the respondent DSIIDC states that it was made clear in the public notice dated 09.05.2008 that no further extension thereafter will be given and in fact DSIIDC has not granted any extension after 30.06.2008 for making the balance payment. However, the allottee of the aforesaid plot did not make balance payment even by 30.06.2008. Presumably, it happened on account of *inter se* dispute between Gaurav Sharma and Smt. Rajeshwari/her legal heirs. Vide letter dated 01.03.2011, Shri Gaurav Sharma informed

DSI IDC that the legal heirs of both the partners, namely, Smt. Raj Kumar and Smt. Rajeshwari had constituted a new partnership with mutual consent. A copy of the partnership deed of the newly constituted firm was also annexed to the said letter. However, despite the aforesaid communication, DSI IDC did not proceed further in the matter, as a result of which this writ petition came to be filed.

4. It would thus be seen that neither the allottees nor their legal heirs made balance payment to DSI IDC either in terms of the eligibility letter/allotment letter or in terms of the public notice dated 09.05.2008, issued by DSI IDC in this regard. Therefore, in view of the terms contained in the eligibility letter/allotment letter, the allottee forfeited its right to obtain the aforesaid plot from DSI IDC and the earnest money deposited by them was liable to be forfeited. The learned counsel for the petitioner had drawn my attention to a communication dated 10.01.2012, whereby Shri Gaurav Sharma with reference to his RTI application, was informed that since the file had remained in movement to the authorities and advocate to defend the Court case filed by him, the action of change of ownership could not be initiated. It was further stated that as per record, the said unit had failed to deposit the full cost of plot by the due date stipulated in the allotment-cum-demand

letter issued to it, or by the last date, which was extended in general from time to time up to 30.06.2008, along with interest and penalty as applicable in terms of the press advertisement dated 09.05.2008, a copy of which was annexed to the said communication.

Vide communication dated 07.02.2012 and responding to a letter informing DSIIDC of the demise of Smt. Rajeshwari Devi, Shri Gaurav Sharma was informed that no such intimation has been received from all the legal heirs of Smt. Rajeshwari Devi and since the matter was already sub judice, no action could be taken at their end at that stage. The aforesaid communications, in my view, do not, in any manner, advance the case of the petitioner. Even if the respondent were to process further the request for proceeding with handing over possession of the aforesaid plot, nothing could have been done since the balance amount was not paid by the allottee even by 30.06.2008, which was the last date given by DSIIDC to such allottees to make the balance payment along with interest and penalty. The allottee, in my view, forfeited all its rights to obtain possession of the aforesaid plot from DSIIDC by not making the balance payment on or before 30.06.2008. Irrespective of dispute *inter se* amongst the partners/their legal heirs, the persons claiming title to the aforesaid plot ought to have deposited the balance amount payable to

DSI IDC, within the time stipulated by DSI IDC in this regard. No equity, therefore, flows in favour of the petitioners who failed to deposit the balance amount and have approached the Court after four years from expiry of the last date for making the aforesaid payment.

5. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. There shall be no order as to costs.

V.K. JAIN, J

NOVEMBER 11, 2013
BG