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

+ W.P.(C) 4593/2012

SMT.OMWATI AND ORS

..... Petitioners

Through: Mr Arvind Kumar & Mr Vikas Kumar, Advs.

versus

GOVT. OF NCT OF DELHI AND ANR

..... Respondents

Through: Ms Renuka Arora & Mr Kunal Kohli, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **23.01.2013**

1. In this writ petition following substantive prayer is made:

“Issue a writ of mandamus or a writ in the nature of mandamus against the Respondents directing them to hand over the possession of the plot no. 152 Pocket-L, Sector-5 Bwana Industrial Complex, Delhi to the petitioners.”

2. The above prayer is made in the background of the following brief facts:

2.1 The late husband of petitioner no.1, i.e., late Sh. Mr Prahlad Singh, was running an industrial unit whereby he engaged himself in carrying out the job work for manufacture of wire cables at M-7-8, Jagat Ram Park, Laxmi Nagar, Delhi – 110 092. This activity had to be brought to an end due to the orders of the Supreme Court passed in a public interest litigation being *WP(C) No. 4677/1985 titled MC Mehta vs UOI & Ors.*

2.2 Consequently, industrial units situated within the National Capital Territory of Delhi, which were in residential and non-conforming zones were required to be

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relocated to a designated place.

2.3. It is in pursuance of this direction of the Supreme Court, that applications were invited by the respondents, in particular respondent no. 2, for relocation of industrial plots of such like entities/persons. The basic condition for allotment of an industrial plot, under the relocation scheme was that, industrial activity in the existing plot had to be brought to an end.

2.4 The husband of petitioner no.1, in accordance with the relocation scheme and the directions of the Supreme Court, made a requisite application with respondent no. 2, on 13.12.1996. The application was given the number 38255. As was required, alongwith the application, a sum of Rs.30,000/- was deposited as earnest money.

3. It is the case of petitioners that, on 15.01.1999 the petitioner no. 1's husband received a communication from the Commissioner of Industries, GNCT of Delhi, calling upon him to remove certain deficiencies which had come to light. The petitioners claim that those deficiencies were removed.

3.1 Consequent to removal of deficiencies, a letter dated 25.04.2000, was received by the husband of petitioner no.1, wherein he was communicated that on a preliminary scrutiny carried out qua the existing industrial unit, he was found to be provisionally eligible for allotment of an alternate industrial plot admeasuring 100 sq. mtrs.

3.2 The tentative cost of the plot, as indicated in the said communication, was Rs.3000 per sq. mtrs. It is averred that, accordingly, a sum of Rs.60,000/- was deposited by the husband of the petitioner towards first installment. It is also the case of the petitioners that another sum of Rs.60,000/- towards first instalment

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was deposited on 12.06.2000; the challan in respect of which was deposited with respondent no. 2 under a cover of a letter of even date, i.e., 12.06.2000.

3.3 Admittedly, on 10.10.2000, petitioner no. 1's husband was issued a formal letter of allotment, which was indicative of the fact that, pursuant to a draw of lots, held by respondent no. 2, on 03.10.2000, he had been found successful for allotment of an alternative industrial plot admeasuring 100 sq. mtrs. The plot allotted to him was clearly identified in the said allotment letter. The location of the plot, as indicated in the said letter, was as follows: Sector 5, Pocket-L, Bawana Industrial Complex (in short the plot in issue).

In the aforementioned allotment letter respondent no. 2 indicated that the tentative cost of the plot would be Rs.4200 per sq. mtrs. To be noted, the cost had increased from Rs.3000 to Rs.4200 per sq. mtrs. By this allotment letter the petitioner was called upon to deposit 50% of the revised estimated cost at the rate of Rs.4200 per sq. mtr. after due adjustment of the earnest money deposited and the monies evidently deposited towards the first instalment alongwith the interest. The said sum was to be deposited by 31.10.2000.

4. It is averred in the petition that, in order to finance the payment of money demanded by respondent no. 2, on 12.02.2001, a loan was taken from the Delhi State Co-operative Bank Ltd.

4.1 It may be borne in mind that by this stage some matters had reached the Supreme Court. The Supreme Court in the proceeding held on 24.01.2001 in M.C. Mehta's case in IA Nos. 1330-385 passed in Writ Petition No. 4677/1985 the following directions: "*...After hearing learned counsels for the parties, time for depositing the payment for the alternative allotment of plot is extended by*

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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 31.03.2001. The IAs are allowed in the aforesaid terms..”.*

4.2 In view of the above, de hors the terms of the allotment, the allottee was required to pay the first 50% of the total consideration by 31.03.2001. Admittedly, the petitioner paid a sum of Rs.1,20,000/- beyond 31.03.2001. The said payment was made on 15.05.2001 to the authorized agent of respondent no. 2, i.e., Bank of Baroda (BOB), alongwith a challan especially printed for receiving monies for relocation scheme. It would be crucial to note that the challan, under which the said payment was made, is titled as: ‘RELOCATION OF INDUSTRIAL SCHEMES PAYMENT FOR ALLOTMENT OF PLOTS/FLATTED FACTORIES’.

4.3 I may also note at this stage that there are conditions subject to which the agent (i.e., BOB) was required to accept the payment. I will deal with this aspect in the latter part of my judgment. Suffice it to say that respondent no.2 issued, a letter thereafter, on 25.09.2001, to the petitioner’s husband calling upon him to make payment of the balance 50%, i.e., second tranche, by 31.10.2001 at the rate of Rs. 4200 per sq. mtrs.

4.4 To be noted, the said communication was signed in the hand of the Assistant Manager of respondent no. 2 and was addressed specifically to the husband of petitioner no. 1.

4.5 In consonance with the same, admittedly, the petitioner no. 1’s husband deposited a sum of Rs. 2,10,000/- with respondent no. 2, once again, with its duly authorized agent, i.e., the BOB, on 29.10.2001.

4.6 Admittedly, there is no correspondence on record, at least none has been shown to me, between September-October, 2001 to 2008 which would show that respondent no. 2 had mistakenly, as is sought to be contended in their return filed with the court and in the arguments advanced by the learned counsel, accepted the money.

4.7. Respondent no. 2, for the first time, after a gap of nearly seven (7) years on 28.01.2008, proceeded to cancel the allotment letter issued to petitioner nos. 1's husband dated 10.10.2000 on the ground that the first 50% of the payment had not been deposited by him prior to 31.03.2001. By this letter respondent no. 2 informed the husband of the petitioner that his allotment to the aforementioned plot had been cancelled, and he was at liberty to seek refund of the amount which lay deposited with respondent no. 2. It was also indicated that the petitioner was at liberty to leave the earnest money with respondent no. 2 if, he was interested in keeping his eligibility alive for a further consideration of allotment of a plot in the category of waitlisted applicants. This leeway was given subject to the earnest money not earning any interest.

4.8 I may only note here, in several cases respondent no. 2 has taken the stand that even this facility of keeping the eligible applicants on a wait list, has now been withdrawn as the Government of NCT of Delhi has taken a stand that the scheme is no longer workable. Ms Arora, learned counsel for respondent no. 2, does not dispute this aspect of the matter.

5. Sadly, on 27.03.2010, the husband of petitioner no. 1 died and, therefore, the petitioners have had to approach this court by way of the present writ petition. This petition was moved before this court on 01.08.2012 when notice was issued.

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Briefly, on that date the substratum of the controversy was recorded by me. I had called upon respondent no. 2 to bring the record to court. Opportunity was also granted to the respondents to file their reply within one week. The matter was made returnable on 03.09.2012.

5.1 On 03.09.2012, once again opportunity was sought to file a reply. At request, the matter was adjourned to today. Even uptill today, the return is not filed by the respondents. Learned counsel for respondent no. 2, however, submitted that this was on account of difficulty at her end and, therefore, the delay should be condoned. Having regard to the difficulty of the counsel, the delay is condoned and the reply is taken on record in court. Learned counsel for the petitioner says that he does not wish to file a rejoinder to the same. Accordingly, I proceed to hear the matter and pass appropriate orders.

6. Having regard to the controversy, as sketched out above by me, the only ground on which the petitioners are being denied the allotment of plot is the fact that the entire amount towards the first 50% of the total consideration, which is, Rs.4,20,000/- was not paid before the cut-off date, i.e., 31.03.2001. There is no dispute raised before me by learned counsel for respondent no. 2 that the balance 50% was paid in time in accordance with respondent no. 2's letter dated 29.10.2001.

7. Ms Arora, learned counsel for respondent no. 2, therefore, makes following submissions in opposition of the relief sought in the writ petition:

- (i) The cut-off date of 31.03.2001 was fixed pursuant to the order of the Supreme Court, therefore, she contends that there can be no relaxation of the said date.

(ii) The challan, by which the sum of Rs. 1,20,000/- was deposited by the petitioner, made it clear that the acceptance of payments were conditional. In other words, she says that since there was no authorization of respondent no. 2, the acceptance of payment by the bank, i.e., the Bank of Baroda, can have no legal efficacy.

8. As noted by me above, it is quite true that the Supreme Court has fixed the cut-off dated of 31.03.2001. The fixation of cut-off date had a background: since the delinquent industrial units were neither closing down their existing industrial units nor were they taking requisite steps for relocation, therefore, while making it clear that these units had to be shut down, the Supreme Court in its wisdom had given time to the delinquent units to make requisite payments by 31.03.2001 as the relocation scheme was pivoted on a self financing model. As correctly pointed out by learned counsel for respondent no. 2 that this was a No-profit No-loss venture, which had to be financed with the funds made available by the applicants; the State was only providing the area, where the units were to be relocated.

9. Therefore, while respondent no. 2 is right in its stand that the cut-off date had to be adhered to, this is a case which turns on its own peculiar facts. The husband of petitioner no. 1 evidently paid a sum of Rs.1,20,000 on 15.05.2001, which when added to the earlier payments of Rs.90,000/-, would fulfill the component of 1st 50% payment of the total consideration. The argument of respondent no. 2 that the payment had no legal efficacy, for the reason that it was beyond the cut-off date and it was without authorization, would have had merit if respondent no. 2 had not followed it up by a letter dated 25.09.2001 when it

called upon the husband of the petitioner to make the payment towards the balance 50%. By virtue of this one singular act, respondent no. 2 waived its legal rights vis-à-vis the husband of the petitioner, i.e., the original applicant/allottee.

9.1 That apart, in my view, the argument that the banker (i.e., BOB) could not have accepted the amount without due authorization of respondent no. 2 also lost much of its significance as respondent no. 2 accepted the second instalment of 50% of total consideration on 29.10.2001 and continued to retain the amount for a period over seven (7) years, without demur. It is pertinent to note that letter dated 25.09.2001 was not a format letter, which was issued to one and all. I had called for the original record. The original record clearly shows that it was a communication specifically addressed to the petitioner in the hand of responsible officer, i.e., the Assistant Manager of the respondent.

10. Having regard to the above, I am of the view that respondent no. 2 could not have cancelled the allotment having once accepted the money, without demur. In this respect the conduct of the respondent in not writing a single communication since 2001, attains significance. There is a complete waiver of any rights which inhered to respondent no. 2.

10.1 The argument of the respondents, which finds a reflection even in the counter affidavit that public notice with regard to cut-off date were issued pursuant to the orders of the Supreme Court dated 26.01.2001, would in my view not impact this particular case.

10.2 It is also for this very reason that judgment of the Division Bench in the case of *Sunil Dua vs Govt. of NCT of Delhi & Anr. dated 12.05.2009 passed in LPA No. 101/2009*, on facts, is clearly distinguishable. On reading the judgment

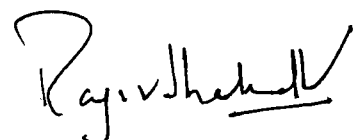
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of the Division Bench of this court in *Sunil Dua vs Govt. of NCT of Delhi & Anr.*, I do not find any such overt act on the part of the respondent as in the present case whereby the applicant was called upon to deposit the balance 50% of the amount after the first instalment had been received post the cut-off date, i.e., 31.03.2001. It is well settled that a judgment cannot be read like a Euclid's theorem. The ratio of the judgment has to be understood in the context of the facts obtaining in a particular case. Judgments are not to be construed like statutes. [see *Haryana Financial Corporation & Anr. vs Jagdamba Oil Mills (2002) 3 SCC 496 at page 508 para 19*].

11. As indicated above, in this particular case, not only the respondent no. 2 by way of an explicit communication called upon the petitioner to pay balance sum of Rs.50% but waited for seven (7) long years to issue a letter of cancellation.

12. For all these reasons, I am of the view that the petitioner ought to be granted the relief prayed for. It is ordered accordingly. It may also be noted that it has been confirmed by learned counsel for respondent no. 2 that the plot in issue has not been allotted or auctioned. The plot is available presently with respondent no. 2. Accordingly, a writ is issued to respondent no. 2 to hand over the possession of the plot in issue to the petitioner within two weeks from today subject to fulfillment of other formalities.

13. The writ petition is, accordingly, disposed of.



RAJIV SHAKDHER, J

JANUARY 23, 2013

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