

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

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Judgment reserved on: 20.03.2013
Judgment delivered on: 02.07.2013

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WP(C) 13580/2009

SUKHAN LAL SINGHAL (Deceased)
Through his L.R.

.....Petitioner

Vs

D.S.I.I.D.C. DELHI

.....Respondents

Advocates appeared in this case:

For the Petitioner: Mr H.C. Mittal & Mr Kamshwar Mishra, Advocates.

For the Respondents: Ms Renuka Arora, Mr Kunal Kohli & Mr Vikas Sood, Advocates
for Respondent/DSI IDC.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

WP(C) 13580/2009 & CM No. 15206/2009

1. This writ petition seeks to assail the order dated 25.01.2008 passed by the Delhi State Industrial and Infrastructure Development Corporation Ltd. (in short DSI IDC). By virtue of this order DSI IDC cancelled the petitioner's allotment qua an industrial plot being: Plot No. 91, Pocket-I, Sector-V, situate at Bawana, Delhi, admeasuring 200 sq. mtrs. (hereinafter referred to as the plot).

1.1 Importantly, the impugned communication of DSI IDC gave liberty to the petitioner to either seek refund of the amount deposited with it, or in the alternative keep the amount with it, to be applied towards allotment of industrial plots, of required sizes, only in the eventuality of such plots being

made available in the future, subject however to the current wait list being exhausted.

2. The petitioner approached this court by way of the captioned writ petition in the background of the following brief facts, most of which are not in dispute. The facts being as follows:

2.1 The Supreme Court in a Public Interest Petition titled M.C. Mehta vs UOI registered as WP(C) 4677/1985, had directed that, industrial units which were operating in residential or non-conforming areas, were required to be shifted out. Accordingly, the Govt. of NCT of Delhi and DSIIDC were initially entrusted with the responsibility of implementing the orders of the Court. Since there was failure on the part of the two entities, the Supreme Court, at some stage, created a special cell under the Ministry of Urban Development in the Government of India (GOI).

2.2 It was in pursuance of orders passed by the Supreme Court, in the aforementioned writ petition, that applications were invited in 1996 by DSIIDC for relocating industrial units. The petitioner was running one such industrial unit, which was located at WZ-572 F, Naraina Village, New Delhi. Accordingly, the petitioner made an application for allotment of an alternative industrial plot. Alongwith the application, the petitioner deposited a sum of Rs. 90,000/-. It is not in dispute that, at this stage, the tentative cost for the plot was notified at the rate of Rs. 3000/- per sq. mtr.

2.3 The Supreme Court, evidently, by an order dated 12.09.2000, passed in the aforementioned writ petition, pending before it, directed DSIIDC to allot specific plots to applicants who were sought to be relocated.

2.4 In line with the aforesaid directions of the Supreme Court, a draw of lots was held on 12.10.2000. The petitioner was declared successful in this draw held by DSIIDC. Accordingly, vide allotment letter dated 23.10.2000,

a specific plot, the details of which are set out hereinabove, was allotted to the petitioner. The tentative cost, though, stood enhanced from Rs. 3000/- per sq. mtr. to Rs 4200/- per sq. mtr. In the allotment letter stages were set out for payment of 50% of the revised estimated cost of the plot; which was set at Rs. 4200 per sq. mtr. The allottees were required to pay 50% of the revised estimated cost by 31.10.2000, alongwith interest, after adjustment of earnest money and part of the first instalment, if any, paid.

2.5 Evidently, several allottees were dithering and hence not adhering to the schedule of payments fixed which, propelled the Supreme Court, to issue a direction on 24.01.2001, for one-time extension of time for payment of balance dues against allotments made. The time, was extended till 31.03.2001. For certain industrial areas, such as, Narela, Badli, Jhilmil and Patparganj, 100% payment was required to be made by the said date, while for Bawana, which is where the petitioner was allotted a plot, 50% of the amount due had to be paid by the very same date.

2.6 In accordance with the order passed by the Supreme Court, public notices were taken out by DSIIDC, on 26.01.2001, in the Times of India and Punjab Kesari, while a similar public notice was taken out in Nav Bharat Times, on 27.01.2001.

2.7 Admittedly, the petitioner paid the 50% of the amount due not by 31.03.2001 but by 30.04.2001. The petitioner, deposited a sum of Rs.3,50,000/- with the designated banker, i.e., the Bank of Baroda on 30.04.2001, on a challan specifically printed for the said purpose. This amount included an element of interest as well. It may be pertinent to note that the photocopy of the challan though, does not bear the endorsement of any officer of the respondent, to the effect that the payment made, ought to be accepted by the aforementioned banker.

2.8 It appears that, on 01.09.2003, the petitioner's account was credited with interest on earnest money equivalent to Rs. 20,475/- bringing the total amount deposited with the DSIIDC, on the said date, to a figure of Rs, 4,60,475/-.

3. The petitioner has averred that when, he approached DSIIDC for being given physical possession of the plot on 15.02.2002, he was told that, his allotment was likely to be cancelled in view of the fact that he had failed to deposit the first 50% of the cost of the plot within the dead line stipulated by the Supreme Court, i.e., 31.03.2001. The petitioner appears to have contested this position by a letter dated 31.03.2002. Though, the copy of this letter is not on record, there is notably no specific denial by DSIIDC as to whether or not it received the said letter, apparently, written by the petitioner to it.

3.1 Evidently, on 29.10.2003, the petitioner applied for refund of the amount deposited with DSIIDC. The original allotment letter was also, apparently, submitted to DSIIDC.

3.2 The DSIIDC, quite strangely, did not act on the petitioner's request for refund made vide communication dated 29.10.2003.

3.3 In the meanwhile, the petitioner, revisited the issue and, evidently, deposited a sum of Rs. 5,30,500/- with the designated banker of DSIIDC, i.e., Bank of Baroda. This time around the said sum was deposited with a challan which bore the endorsement of an officer of the DSIIDC dated 31st May of the said year, (I would assume 2004), to the effect that "*payments may be accepted*".

4. There appears to have been a background to the payment being accepted as the petitioner has placed on record an internal note of the Chief Manager of DSIIDC dated 11.06.2004 in case of one applicant, which had,

according to him, the approval of the Managing Director, to the effect that request for restoring plot should be allowed even though the said applicant had earlier sought refund of his money, albeit after payment of processing charges of Rs. 2500/-; as the same methodology had been employed “*in a few cases after obtaining approval of the competent authority*”. In the note, there is a reference to a proposal to issue a circular on those lines.

5. It is perhaps for this reason that, a circular was issued by DSIIDC, on 05.07.2004. The circular permitted restoration of allotment and taking possession of the plot/flat on usual terms with the approval of the General Manager, after recovery of processing charges of Rs. 2500/-. The circular, made a reference to the fact that, several allottees, who had sought refund of their deposits after surrendering their allotment, had requested for revival of their allotment and/or for taking possession of their plots under the relocation scheme, and that, DSIIDC had decided to consider even these cases even though they had reached the stage at which requests for refund were being processed after cancellation of the allotment.

6. The aforementioned circular dated 05.07.2004, was followed by yet another circular dated 26.08.2004, whereby DSIIDC sought to indicate that, only allottees who had deposited more than 50% of the cost of the plot by 31.03.2001, could be allotted plots, at that stage, in Bawana, since the Supreme Court had ordered cancellation of allotment qua those allottees who had deposited less than 50% of the cost by the said date. Though there was no specific reference to the circular dated 05.07.2004, I would assume that the clarification was directed towards that circular as that is the stand taken before me, by DSIIDC. In the circular of 26.08.2004, DSIIDC indicated that it was maintaining a separate list of such allottees, who had not paid 50% of the cost by 31.03.2001 and that their cases would be

considered after additional land was acquired and developed, and after, complying with the directions of the Supreme Court, which required it to exhaust the request of pending allottees. Such like allottees were advised to allow the prescribed amount of earnest money to be retained by DSIIDC, so that, their eligibility for allotment in future was kept alive. It may be pertinent to note that, in another case, before me DSIIDC has already taken the stand that, as of now, no such regime operates, as additional land, is presently, not available for acquisition.

7. The petitioner, though, in pursuance of the circular dated 05.07.2004 deposited the processing charges amounting to Rs. 2500/-, with the designated banker of DSIIDC, on 13.09.2004. The challan accompanying the deposit, also bears an endorsement of an officer of DSIIDC.

8. For nearly three and a half years there was no movement in the matter. On 25.01.2008, the impugned cancellation letter was issued to the petitioner.

9. Aggrieved by the same, the petitioner moved this court by way of a writ petition under Article 226 of the Constitution. On the very first date, i.e., 04.12.2009, this court while issuing notice stayed the operation of the impugned letter. The DSIIDC, which was represented by a counsel on the said date, was directed to deposit the entire amount for a period of one year, in a fixed deposit. Since then, the interim order passed in the matter, has continued to operate. However, in the interregnum the original writ petitioner expired necessitating an application to be moved to bring on record his legal representative(s). This application was allowed on 17.04.2012. In accordance with the directions issued, an amended memo of parties has been filed.

SUBMISSIONS OF COUNSELS

10. The petitioner was represented by Mr H.C. Mittal, Advocate while, arguments on behalf of the respondent were advanced by Ms Renuka Arora. The counsels for parties argued in line with their respective pleadings.

11. Mr Mittal gave a synoptic view of how payments were made and accepted by DSIIDC beyond 31.03.2001. Reference was made to the challan of 30.04.2001 followed by the challan dated 28.05.2004. It was emphasised that in both instances payments were made alongwith interest, which was accepted by DSIIDC. It was stressed that the payment made on 28.05.2004, was specifically made alongwith a challan bearing an endorsement of the concerned officer of DSIIDC, which authorized the designated banker to accept the payment.

11.1 Mr Mittal argued that, since, in the petitioner's case at the relevant time, no cancellation letter was issued, the petitioner was entitled to recall his request to seek a refund, which was exhibited in petitioner's conduct, in making the entire payment, alongwith interest, on 28.05.2004. It was also submitted that, the circular dated 05.07.2004, was in line with internal decision taken by DSIIDC to restore allotment of plots and possession thereof even in cases where cancellation letters had been issued. It was submitted that, the petitioner's case, stood on a better footing, as not only there was no cancellation letter issued at the relevant point in time but also the processing charges of Rs. 2500/- as stipulated in the circular of 05.07.2004, were paid and duly accepted by DSIIDC.

11.2 Mr Mittal submitted that since the substantive payment towards the plot was made and accepted prior to the issuance of the circular dated 26.08.2004, the same could not affect the case of the petitioner. As a matter of fact, even after the issuance of the circular dated 26.08.2004, processing charges were paid and duly accepted by DSIIDC. Thus, in effect, it was

contended that the DSIIDC had, waived its rights if any under the arrangement subsisting between the parties.

12. As against this, Ms Arora argued that the payment of 50% of the cost of the plot having been made by the petitioner beyond 31.03.2001, the decision to cancel the allotment of the petitioner, ought to be sustained. It was emphasised that the deadline had been fixed in accordance with the order of the Supreme Court dated 24.01.2001, which could not be changed and accordingly a clarificatory circular was issued on 26.08.2004. Ms. Arora in this regard relied upon the Division Bench judgment of this court in the case of *Sunil Dua vs Govt. of NCT of Delhi & Anr.* passed in LPA No. 101/2009, dated 12.11.2009. Ms Arora thus contended that circular dated 05.07.2004 had no application in the petitioner's case.

REASONS

13. Having heard the learned counsels for the parties and perused the record, what emerges is clearly as follows:

- (i) The petitioner, at the time of making an application for allotment of an alternative industrial plot had deposited a sum of Rs. 90000/-.
- (ii) The petitioner, thereafter deposited an additional sum of Rs. 3,50,000/- which was a little more than 50% of the cost of the plot, as obtaining at that point in time. The said amount was deposited on 30.04.2001; a date beyond the date fixed for that purpose, i.e., 31.03.2001.
- (iii) On 01.09.2003 Rs. 20,475/-, being the amount of interest earned, on earnest money deposited with DSIIDC, was credited to the petitioner's account.
- (iv) The petitioner, thereafter, made two significant payments. The first, on 28.05.2004, in the sum of Rs. 5,30,500/-. This was a final payment towards cost of plot, which included an element of interest. The second

crucial amount was paid by the petitioner on 13.09.2004. The amount paid was a nominal sum of Rs. 2500/- towards processing charges.

13.1 Pertinently, the payments made and/or credits referred to in paragraph 13(i) to (iv) above stand reflected in the petitioner's account maintained in the books of accounts of DSIIDC; an extract of which is brought on record and not controverted by DSIIDC.

14. While the payment made on 30.04.2001; albeit with the designated banker of the DSIIDC, did not bear an endorsement of DSIIDC for acceptance of the said amount; the payments made on 28.05.2004 and 13.09.2004, did bear the endorsement of the officer of DSIIDC to the effect that the amounts be accepted. Notably, these payments were made after a communication had been issued by the petitioner on 29.10.2003 conveying his interest to seek refund of the amount deposited by him. Admittedly, the request for refund was not actioned. Clearly, pending action on the request for refund, the petitioner decided to revisit the issue, and thus, continued to press with his request made to DSIIDC for possession of the plot.

15. The circular dated 05.07.2004, sought to restore plots to those persons, who sought restoration of allotment at a stage, when allotments made in their favour had been cancelled and their request for refund of money was under process. As a matter of fact, the internal note of 11.06.2004 of the DSIIDC, which has been brought on to the record by the petitioner, is clearly indicative of the fact that even prior to issuance of the circular dated 05.07.2004, plots had been restored to those who had made such a request, upon payment of processing charges quantified at Rs. 2500/-.

16. By circular dated 26.08.2004, DSIIDC sought to exclude persons like the petitioner from the benefits of the circular dated 05.07.2004 on the

ground that, having not paid 50% of the cost of plot by 31.03.2001, their allotments were liable to be cancelled.

17. While it may or may not be possible to argue that such a distinction could not have been made, what is clearly evident from the facts on record is that, in this particular case, the DSIIDC sought to waive its right to cancel the allotment on the ground that the petitioner had failed to pay 50% of the cost of the plot by 31.03.2001. This is evident from the fact that, not only was the payment made on 28.05.2004 (equivalent to a sum of Rs.5,30,500/-) accepted, (which included an element of interest for delayed payment) but also processing charges equivalent to Rs. 2500/- were accepted, post the issuance of, what purported to be a clarificatory circular dated 26.08.2004. As a matter of fact, this state of affairs continued to operate for nearly three and a half years. It was only on 25.01.2008 that, the impugned letter, was issued, whereby the petitioner's allotment was sought to be cancelled on the ground that he had failed to pay 50% of the cost of the plot by 31.03.2001, by ignoring the fact that this ground, which perhaps invested in DSIIDC, the right to cancel the allotment stood voluntarily waived with explicit endorsements on challans for acceptance of payments which included processing charges, as well.

17.1 What makes the position of DSIIDC all the more untenable is the fact that in the meanwhile the petitioner closed his industrial unit located in Naraina village. The petitioner claims that this act of DSIIDC has resulted in denial of opportunity of carrying on his vocation and deprivation of avenues of employment to those who were engaged by him. DSIIDC has no answer to these issues, as also the fact that neither does it deny the authority of the officer to make endorsement qua payments made on

28.05.2004 and 13.09.2004, nor has it placed anything on record to show any action being taken against the said officer.

18. The reliance by DSIIDC on the Division Bench Judgment in the case of *Sunil Dua*, in my view, would have no applicability as the facts obtaining therein are different from those which obtain in the present case. As a matter of fact, in *Digambar Garments & Anr. vs Govt. of NCT of Delhi & Anr.* WP(C) No. 4688/2002, I had an occasion to apply the judgment rendered in the case of *Sunil Dua*. In another case, in which the facts are somewhat similar to the present case, i.e., *Smt. Omwati & Ors. vs Govt. of NCT of Delhi & Anr.* WP(C) 4593/2012, I had come to the view that the ratio of *Sunil Dua*'s case was not applicable. The position is no different in the present case. In applying precedents, it is well settled that the court should take into account the fact situation obtaining in a case before reliance is placed on the same. Observations of a court are not to be read as Euclid's theorem or as provisions of a statute. The observations made, are to be read in the context of the fact situation obtaining in a case, as one additional or a different fact, may make a world of difference between conclusions arrived in two different cases. [See *Union of India vs Arulmozhi Iniarasu & Ors.* (2011) 9 SCR 1 para 12 C and E]

19. The ingredients of waiver broadly are: intentional or voluntary relinquishment of a known right or such a conduct which warrants inference of relinquishment of such a right by a party. The relinquishment may be express or implied. It is implied when, one party, pursues a course of conduct qua another party which evidences an intention to waive his rights or advantage to which he may be entitled. To infer implied waiver of a legal right, there must be a clear unequivocal and decisive act of the party showing such purpose or acts amount to an estoppel on its part. (See

Black's Law Dictionary VIth Edition page 1580-81). Waiver, in a sense, is distinct from estoppels, in that, in waiver the essential element is of actual intent to abandon or surrender a right, while in a situation involving estoppels, such an intent is immaterial. The necessary ingredient is the detriment of interest of the other party by the conduct of one, who is estopped. An estoppel may result, though the party estopped does not intend to lose an existing right. [See *Provash Chandra Dalui and Anr. vs Biswanath Banerjee & Anr. 1989 Supp. (1) SCC 487*]. Though waiver cannot be invoked where constitutional or statutory right or guarantee of a right is conceived in public interest, it can be invoked when it does not affect the jurisdiction of the authority infringing the said right [See Prem's Judicial Dictionary page 1675 and the judgment of the Supreme court in the case of *Sushil Kumar Mehta vs G.R. Bohra (1989) Supp. 2 SCR 149*].

20. In my opinion, the necessary ingredients to advance a plea of waiver are present. Pleadings, in the present case, substantively eke out a case of waiver though the term by itself does not find a mention in the averments made in that behalf in the petition. The necessary ingredients being there; the issue is really a question of law in the present case. The Supreme Court's view as to how pleadings are to be construed in such like situations, is best illustrated by the following observations in the case of *Ram Sarup Gupta vs Bisun Narain Inter College & Ors. (1987) 2 SCC 555*:

“...It is well settled that the pleadings need not reproduce the exact words or expressions as contained in the statute, nor the question of law is required to be pleaded. The substance of the respondents' pleadings clearly informed that their case was that they had made constructions on the land acting upon the licence which substantially met the requirement of law. Before we discuss the authorities cited by the appellants' counsel we consider it necessary to briefly refer to the provisions of the Act

regulating the grant, revocation of licence and other allied matters and also the evidence available on record....”

21. Having regard to the discussion above, in my opinion, the impugned order deserves to be set aside. It is ordered accordingly. The DSIIDC would restore the petitioner’s allotment and grant him possession of the plot as per allotment letter dated 23.08.2000. The DSIIDC, would be free to utilize the money alongwith interest which has enured thereon, for its own purposes. The DSIIDC shall also take further steps in the matter including execution of a lease deed in accordance with the extant provisions of law as framed in that behalf.

22. The writ petition is, accordingly, disposed of. In the circumstances set out above, the parties shall, however, bear their own costs.

RAJIV SHAKDHER, J

JULY 02, 2013

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