

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.10.2014

+ **W.P.(C) 1504/2011**

M/S VITA INDUSTRIES

..... Petitioner

versus

THE GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr S.K. Sharma and Mr Prayas Aneja.

For the Respondents : Ms Renuka Arora for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. This petition has been filed by the petitioner *inter alia* seeking that a direction be issued to respondent no.2 (hereafter 'DSIIDC') to hand over the possession of the plot No.3/L/2, admeasuring 250 sq. mtrs. situated at Bawana Industrial Complex, Delhi on receiving the amount for the excess area in terms of paragraph no.10(1) of the order dated 16.02.2010 passed by the Supreme Court in SLP(C) No.20462/2008 titled '***Delhi State Industrial & Infrastructure Development Corporation Ltd. & Anr. v. Skylark Engineering Works & Anr..***'

2. Briefly stated, the relevant facts are that the petitioner was running a small scale industrial enterprise from premises No.11/219, Geeta Colony, Delhi, which was a non-conforming area. In the year 1996, DSIIDC invited applications from the industries in the non-conforming area for shifting to

the conforming area in pursuance of the decision of the Supreme Court in MC Mehta's case. The petitioner applied for a plot of land measuring 400 sq. mtrs. (Application No.26756) under the relocation scheme, however, he was allotted a plot measuring 250 sq. mtrs. in Bawana Industrial Complex. On 03.04.1998, the said allotment was communicated by DSIIDC to the petitioner and on 23.10.2000 the allotment cum demand letter was also issued to the petitioner. On 30.04.2001, a No Objection Certificate was issued by DSIIDC in favour of the petitioner to mortgage the allotted plot of 250 sq. mtrs. to Delhi Financial Corporation (DFC) from whom the petitioner had sought a loan and for that purpose a tripartite agreement dated 15.05.2001 was also executed between the petitioner, DSIIDC and DFC.

3. In the meantime, a meeting of the High Power Implementation Committee was held on 07.06.1999 wherein a decision was taken that the size of the plot recommended should not exceed double the area presently occupied by the unit and maximum size of plot offered would be 250 sq. mtrs. However, in some cases, the allottees were allotted plots larger than their entitlement under the policy and therefore, the said allotments were cancelled and allottees were offered downsized alternative plots. DSIIDC stated that the petitioner was allotted a plot of size more than its entitlement as - on the basis of the area occupied by the petitioner - he was eligible for a plot measuring only 100 sq. mtrs. Therefore, the earlier allotment was cancelled and a downsized plot bearing no.103 situated at pocket H, Sector 3, measuring 100 sq. mtrs. was allotted to the petitioner. An allotment cum

demand letter dated 24.09.2004 for the said plot of 100 sq. mtrs was also issued to the petitioner.

4. The allottees who did not accept downsized plots challenged the decision of DSIIDC before this court in writ petitions, which were disposed of by a Single Judge of this court in terms of its judgment dated 08.12.2005 reported as: ***PVC Compound & Footwear Manufacturers Association (Regd) & Others v. Govt. of NCT of Delhi & Ors: 125 (2005) DLT 616.*** This Court set aside the decision of downsizing of plots allotted to applicants who had been allotted larger plots in excess of their entitlement; this court held that a concluded contract had come into effect and a direction was given to the respondents to restore the allotment in favour of the applicants. It is to be noted that the petitioner had not challenged the downsizing of his plot before this court, but, it is contended that the petitioner, had protested against the said downsizing.

5. The said decision of the Single Judge was challenged before a Division Bench of this Court in LPA No.168-169/2006 and other connected matters. By an order dated 18.03.2008, the Division Bench upheld the decision of the Single Judge. The order of the Division Bench was challenged before the Supreme Court in ***Skylark Engineering (supra)***. By an order dated 16.02.2010, the Supreme Court upheld the order of the Division Bench but modified the rate to be charged for the excess area of the plot. In addition, the Supreme Court also issued other directions for effective implementation of the order passed by the division bench of this Court.

6. According to the petitioner, the petitioner neither accepted the downsized plot nor sought any refund of the amount paid to DSIIDC. It is further asserted that the plot allotted to the petitioner has not been allotted to any third party. It was contended that therefore, in terms of paragraph no.10(1) of the order dated 16.02.2010 passed by the Supreme Court in ***Skylark Engineering (supra)***, the petitioner would fall under the category of 106 allottees who did not accept the offer of downsized plot and the petitioner is ready and willing to pay the amount for the excess area of the plot allotted, that is, 150 sq. mtrs.

Submissions

7. It was submitted by the petitioner that with the acceptance of the allotment of the plot of 250 sq. mtrs., the contract between DSIIDC and petitioner was concluded and DSIIDC could not unilaterally modify the terms and conditions of the contract by reducing the size of the plot by its letter dated 24.09.2004.

8. The learned counsel for DSIIDC submitted that the decision of the Supreme Court passed in ***Skylark Engineering (supra)*** is not applicable to the present case as the petitioner falls in the category of people who had accepted the downsized plot and did not challenge the downsizing of plot. It was submitted that requests of the petitioner, for considering allotment of plot of 250 sq. mtrs., were rejected by DSIIDC and the said rejections were not challenged by the petitioner at any point of time.

9. It was submitted that the allotment of plot of 250 sq. mtrs. to the petitioner was cancelled in 2002 and the petitioner had filed the present

petition in the year 2011, that is, after a lapse of about nine years. Therefore, the petition was barred by time and laches. It was contended that even in the present petition, the petitioner had not challenged the downsizing of the plot in question and, thus, had waived its right, if any, to challenge the cancellation of plot measuring 250 sq. mtrs. Further, the entire amount towards the plot measuring 250 sq. mtrs. was not paid by the petitioner and there was no concluded contract between the petitioner and DSIIDC.

Reasons and Conclusion

10. Admittedly, the petitioner was allotted a plot measuring 250 sq. mtrs.. Allotment cum demand letter was also issued and subsequently, a No objection Certificate was also issued to enable the petitioner to obtain loan from DFC. The petitioner had applied for a loan and was also sanctioned one by DFC. However, before the loan could be disbursed, the allotment of the plot was cancelled by a letter dated 12.12.2002. Subsequently, on 24.09.2004 an allotment of a plot measuring 100 sq. mtrs. in lieu of the originally allotted larger plot was made in favour of the petitioner. Apparently, 521 persons had been allotted plots which were larger in size than their entitlement as per the policy of DSIIDC. These allotments were subsequently cancelled (the petitioner's allotment included). A Single Judge of this Court examined the question as to the legality of the action of DSIIDC in cancelling the allotments that were stated to have been made inadvertently in excess of the entitlement. This Court came to the conclusion that a concluded contract had come into existence and it was not open for DSIIDC to unilaterally cancel the said

allotments. This Court also noted that prior to cancellation, no show cause notice had been issued to the allottees and thus, the action of DSIIDC in cancelling the allotments was not sustainable. A Division Bench of this Court sustained the said decision. DSIIDC preferred a Special Leave Petition before the Supreme Court which was allowed. The Supreme Court noted that out of 521 allottees, 387 allottees had accepted the downsized plots in lieu of the originally allotted larger plots. Further, out of remaining 134 allottees, 28 allottees had, subsequently, accepted possession of the downsized plots. The others, in all 106 allottees, had not accepted the offer of downsized plots. After considering the facts, the Supreme Court did not interfere with the decision of the Division Bench of this Court except made certain modifications including directing that the area in excess of the entitled allotment to be paid at twice the stated rate.

11. In view of the decision of this Court in ***PVC Compound & Footwear Manufacturers Association*** (*supra*) as well as the Supreme Court in ***Skylark Engineering*** (*supra*), it cannot be disputed that with the issuance of the allotment letter and its acceptance, a concluded contract was arrived at between the petitioner and DSIIDC. However, it is settled law that any action for enforcement of a contract ought to be taken within the period of limitation as specified and the Courts would not aid a litigant who has approached the Court belatedly and has not been diligent in pursuing his remedies. The question that needs to be now addressed is whether the petitioner is entitled to the benefit of the decision of the Supreme Court in ***Skylark Engineering*** (*Supra*).

12. DSIIDC has considered the petitioner to be one of 387 allottees who had accepted the downsized plot in view of the originally allotted larger plot; the petitioner was not considered as one of the 106 allottees who had reportedly not accepted the allotment.

13. Although the petitioner has contended that he had not accepted a downsized plot, the facts indicate that the petitioner had not raised any protest at the material time. The petitioner had arranged for a loan to pay for a larger plot from DFC. The documentation in this regard was also completed. However, before the loan could be disbursed, the petitioner received a letter dated 12.12.2002 informing the petitioner that the plot in its favour stood cancelled. Accordingly, the loan was not released in favour of the petitioner and the amount was also not disbursed by DFC to DSIIDC. Apparently, the petitioner took no steps to impugn the cancellation of the allotment at the material time. Subsequently, the petitioner was allotted a plot measuring 100 sq. mtrs. This was communicated to the petitioner by a letter dated 24.09.2004. There is nothing on record to indicate that this was objected to by the petitioner. Even, if it is accepted that the petitioner did not want to approach the courts, the least that is expected of a person objecting to an action is lodgment of his protest; if the petitioner was seriously aggrieved he would have protested against the action of DSIIDC. But, no contemporaneous communication has been presented by the petitioner which would indicate that he was dissatisfied with the alternative allotment at the material time.

14. In response to the cancellation notice of 12.12.2002, the petitioner – after a lapse of nearly four years – sent a letter on 15.02.2006 requesting

that allotment of a plot of 250 sq. mtrs. be considered. This was rejected by DSIIDC by its letter dated 18.08.2006 and the petitioner was confirmed that its case could not be considered as per the policy. No further steps were taken by the petitioner thereafter and the petitioner rested content.

15. The Supreme Court delivered the decision in *Skylark Engineering (supra)* on 16.02.2010. Even after the decision, the petitioner did not immediately approach DSIIDC. In the meanwhile, DSIIDC invited all allottees to accept possession of the plots allotted; DSIIDC also issued advertisement in leading newspapers on 22.10.2010 inviting the allottees to take possession within 16 days thereof subject to deposit of the requisite watch and ward charges as well as penalty for delayed construction. Despite the aforesaid notice, the petitioner neither raised any objection nor came forward to accept the possession of the allotted plot. Finally on 20.01.2011, DSIIDC issued a letter calling upon the petitioner to show cause why the allotment in its favour not be cancelled for failure “*to take possession, construct factory and relocate a unit at the allotted premises*”. The said notice further gave a final opportunity to the petitioner to take possession by paying the requisite charges. This, apparently, prompted the petitioner to approach this Court by filing this petition in March 2011. Indisputably, the petitioner has been lax in pursuing his remedies but more importantly, the petitioner had clearly not protested against the downsizing of the plot and in that sense was rightly considered as an allottee who had accepted the decision to allot a smaller plot in lieu of the original allotment.

16. Although it is well settled, that there is no period of limitation prescribed for filing a petition under Article 226 of the Constitution of

India, however, the Courts have refrained from exercising jurisdiction in favour of the litigants who have not been diligent in pursuing their remedies. The Supreme Court in the case of **Bangalore City Coop. Housing Society Ltd. v. State of Karnataka: (2012) 3 SCC 727** explained the said principle in the following words:-

“45. We have considered the respective arguments. The Framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution and it is only one of the several rules of self-imposed restraint evolved by the superior courts that the jurisdiction of the High Court under Article 226 of the Constitution, which is essentially an equity jurisdiction, should not be exercised in favour of a person who approaches the Court after a long lapse of time and no cogent explanation is given for the delay.”

17. In **Delhi Admn. v. Kaushilya Thakur: (2012) 5 SCC 412**, the Supreme Court set aside the decision of this Court in directing allotment of a plot of land pursuant to a writ petition that was preferred after a delay of more than three years. The relevant extract of the said decision is quoted below:-

“10. We have heard Shri H.P. Raval, learned Additional Solicitor General and Shri Rishikesh, learned counsel for Respondent 1 and perused the record. In our view, the impugned order [Delhi Admn. v. Ranjodh Kumar, LPA No. 25 of 2004, order dated 22-9-2010 (Del)] as also the one passed by the learned Single Judge [WP (C) No. 4450 of 1993, order dated 13-3-2003 (Del)] are liable to be set aside because while granting relief to the husband of Respondent 1, the learned Single Judge overlooked the fact that the writ petition had been filed after almost 4 years of the rejection of an application for allotment of 1000 sq yd plot made by Ranjodh Kumar Thakur. The fact that the writ petitioner made

further representations could not be made a ground for ignoring the delay of more than 3 years, more so because in the subsequent communication the authorities concerned had merely indicated that the decision contained in the first letter would stand.

11. It is trite to say that in exercise of the power under Article 226 of the Constitution, the High Court cannot entertain belated claims unless the petitioner offers tangible explanation (State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261]).”

18. In the given facts, the benefit of the decision of the Supreme Court in *Skylark Engineering (supra)* cannot be extended to the petitioner: the petitioner’s prayer for a direction to DSIIDC to handover possession of the Plot No. 3/L/2 (250 sq. mtrs.) situated at Bawana Industrial Complex, Delhi cannot be accepted. However, in the given facts, it would be only fair, if the petitioner is granted the opportunity to take possession of the Plot No. 103/3/H (100 sq. mtrs.) at Bawana Industrial Complex, Delhi on payment of the requisite charges. Accordingly, the present petition is disposed of with a direction to DSIIDC to handover the possession of Plot No. 103/3/H at Bawana Industrial Complex to the petitioner if the petitioner deposits the requisite charges, if any are due, within a period of 60 days.

VIBHU BAKHRU, J

OCTOBER 31, 2014
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