

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.04.2014

LPA 409/2013

**DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED**

..... Appellant

versus

OMWATI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Ms Renuka Arora.

For the Respondents : Mr Arvind Kumar and Mr Vikas Kumar for respondent Nos.1 to 6.

Mr Nawal Kishore Jha, for respondent No.7.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The instant appeal has been filed challenging the order dated 23.01.2013 passed by a learned Single Judge of this court in WP(C) No.4593/2012 directing the appellant to handover possession of the plot in issue to the respondent subject to fulfillment of necessary formalities.

2. Relevant facts for effective adjudication of the present appeal are contained in the succeeding paragraphs.

3. The late husband of respondent No.1 was running an industrial unit for manufacture of wire cables. This activity was brought to an end pursuant to orders of the Supreme Court in public interest litigation being WP(C) No.4677/1985 titled **M.C. Mehta v. Union of India and Ors.** Pursuant to directions of the Supreme Court, industrial units situated in residential and non-conforming zones within the National Capital Territory of Delhi were to be relocated. Applications were invited by the appellant and in accordance with the relocation scheme, the husband of respondent No.1 applied on 13.12.1996 with a deposit of Rs.30,000/- as earnest money.

4. A letter dated 25.04.2000 was received by the husband of respondent No.1, wherein it was communicated that he was provisionally eligible for allotment of an alternate industrial plot admeasuring 100 sq mtrs. The tentative cost of the plot as indicated in the communication was Rs 3,000/- per sq mtrs. It is averred that accordingly a sum of Rs 60,000/- was deposited by the husband of respondent No.1 towards first installment. It is also the case of respondent No.1 that another sum of Rs 60,000/- towards the first installment was deposited on 12.06.2000, the challan in respect of which was deposited with the appellant under cover of a letter of even date, i.e., 12.06.2000.

5. Admittedly, on 10.10.2000, the husband of respondent No.1 was issued a formal letter of allotment indicating that pursuant to draw of lots held by the appellant on 03.10.2000 he had been found successful for allotment of an alternative industrial plot admeasuring 100 sq mtrs. The

location of the plot as indicated in the said letter was Sector-5, Pocket L, Bawana Industrial Complex.

6. In the aforementioned allotment letter the appellant indicated that the tentative cost of the plot would be Rs 4,200/- per sq mtrs. In compliance with this allotment letter, the husband of respondent No.1 was called upon to deposit 50% of the revised estimated cost at the rate of Rs 4,200/- per sq mtrs after due adjustment of earnest money along with interest. The said sum was to be deposited by 31.10.2000.

7. Meanwhile, the Supreme Court passed directions in the proceeding held on 24.01.2001 in *M.C. Mehta's* case in IA No.1330-385 that, the time for depositing the payment for the alternative allotment of plot is extended to 31.03.2001. It was also directed that no cancellation would be effective or made on account of non-payment of money till 31.03.2001.

8. Admittedly, the respondent paid a sum of Rs 1,20,000/- on 15.05.2001 to the authorized agent of the appellant, i.e., Bank of Baroda (BOB) along with a challan specially printed for receiving monies for relocation scheme. The agent (BOB) was required to accept the payment subject to certain conditions.

9. The appellant issued a letter thereafter on 25.09.2001 to the husband of respondent No.1 to make payment of the balance 50% by 31.10.2001 at Rs 4,200/- per sq mtrs. Pursuant to the said letter the husband of respondent No.1 deposited a sum of Rs 2,10,000/- with the appellant through its authorized agent i.e. BOB on 29.10.2001.

10. Admittedly, there is no correspondence on record between September 2001 to October 2008.

11. On 28.01.2008 the appellant issued a letter cancelling the allotment of the plot on the ground that the first 50% of the payment was not deposited prior to 31.03.2001. It was also mentioned that he is at liberty to seek refund of the amount deposited by him.

12. On 27.03.2010 the husband of respondent No.1 died and therefore the respondent approached this court by way of a writ petition.

13. It was argued that since the cut-off date of 31.03.2001 was fixed pursuant to the order of the Supreme Court, it could not have been relaxed in the absence of any enabling direction to that effect. It was also argued that the amount deposited by the husband of the respondent No.1 in Bank of Baroda was required to be a conditional acceptance and since the said Bank did not have any authorization of the appellant, the said acceptance has no legal efficacy.

14. The learned Single Judge has observed that in view of the follow up letter dated 25.09.2001, calling for deposit of balance payment, the appellant loses the right to enforce the date of 31.03.2001. The argument that the bank accepted unauthorized payment also loses effect when the appellant accepted the second installment of 50% of total consideration on 29.10.2001 and continued to retain the amount for a period of over 7 years. It was observed as follows:-

“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 installment 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 2011, 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.”

15. We have heard counsel for the parties. The Supreme Court in the proceeding held on 24.01.2001 in **M.C. Mehta’s case** in IA Nos. 1330-385, Writ Petition No.4677/1985, passed the following directions:- “...*After hearing learned counsels for the parties, time for depositing the payment for the alternate allotment of plot is extended by 31.03.01. The effect of this would be that no cancellation will be effective or made on account of non-payment of money till 31.03.01. The IAs are allowed in the aforesaid terms...*” As observed by the learned Single Judge, this was done in the background that the delinquent industrial units were neither closing down their existing industrial units nor were they taking requisite steps for relocation. The scheme was a No-profit No-loss venture which had to be financed with the funds received by the applicants as the State was only providing the area where the units were to be relocated. It was therefore, important that the requisite payments were received at the earliest.

16. Reliance was placed on the case reported as **Sunil Dua v. Govt of NCT of Delhi & Anr.** (LPA No.101/2009) wherein the allotment was cancelled due to non-compliance with the date of 31.03.2001.

17. The Supreme Court has observed that no cancellation would be effective or made on account of non-payment of money within the prescribed time. As rightly pointed out in **Sunil Dua’s case (supra)**, the allottees who defaulted in payment by the prescribed date would incur the risk of cancellation of their allotment. That cannot be extrapolated to mean that

defaulter's allotment automatically stood cancelled after 31.03.2001. In the facts of *Sunil Dua* (*supra*), while the payment on behalf of defaulting allottees was accepted, however there was no formal record of their allotment being considered beyond the prescribed date. The case of *Sunil Dua* (*supra*) is therefore, distinguishable on facts. Consequently, the argument regarding non-compliance with the prescribed date also fails.

18. In the instant case, as rightly pointed out by the learned Single Judge, not only did the appellant duly accept the payment made by the husband of respondent No.1 on 15.05.2001, in pursuance thereof, it also issued a second letter demanding balance payment thereby evidencing constructive acceptance and consequent ratification of a duly deposited first installment beyond the prescribed date by the authorized bank. Further, the fact that the letter of cancellation was issued after a gap of 7 years demonstrates the lackadaisical attitude of the appellant and does not justify grant of any equitable relief in its favour.

19. The guiding principle as laid down by the Supreme Court in *Wander Ltd v. Antox India Pvt. Ltd.*: 1990 (Supp) SCC 72 justifies interference only when the exercise of discretion is palpably perverse.

20. In view of the foregoing discussion, in our view, the instant appeal does not merit interference and is accordingly dismissed. There shall be no order as to costs.

21. The appellant is directed to handover possession of the plot in issue to the respondent within a period of two weeks from today subject to fulfillment of necessary formalities.

SIDDHARTH MRIDUL, J

APRIL 22, 2014
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BADAR DURREZ AHMED, J

