

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

%

Date of decision: 18th March, 2015

+

LPA No.253/2014

ROSHAN LAL

..... Appellant

Through: Mr. Mithilesh Kumar Singh, Adv.

Versus

**DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD.**

..... Respondent

Through: Ms. Anusuya Salwan, Adv with Ms.
Renuka Arora, Adv.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the order dated 17th January, 2014 of the Single Judge of this Court of dismissal of W.P.(C) No.308/2014 preferred by the appellant.

2. The writ petition from which this appeal arises was filed by the appellant impugning the cancellation dated 19th August, 2013 of the allotment in his favour of an industrial plot under the Scheme of Re-location of Industries and seeking a direction to the respondent to handover possession of the allotted

industrial plot No.68, Pocket-I, Sector-2, measuring 100 sq. mtrs. at Bawana Industrial Complex, Delhi to the appellant.

3. The Single Judge found, i) that on 24th July, 2001, the appellant was issued a notice for cancellation of the allotment on the ground that the appellant had not deposited 50% of the cost; ii) that on 8th April, 2002, the appellant was informed that in the event he had made payment of the entire consideration, he would be eligible to take physical possession of the plot in question; it was however clarified that those allottees who had not deposited 50% of the cost before 31st March, 2001, their allotment was liable to be cancelled; iii) that in 2006, a letter was issued by the respondent to the appellant directing the appellant to take possession of the plot allotted to him; iv) that vide letter dated 25th January, 2008, the respondent cancelled the appellant's allotment for the reason of the appellant having not paid 50% of the cost by 31st March, 2001 as per direction dated 24th January, 2001 of the Supreme Court in W.P.(C) No.4677/1988 titled ***M.C. Mehta Vs. Union of India*** published in leading newspapers in the month of January, 2001; v) that the appellant however again applied for possession and the respondent vide its letter dated 19th August, 2013 informed that the ground of cancellation had already been communicated in the year 2001 and 2008 and the appellant was thus not entitled to possession. The

Single Judge, in these facts held that the cancellation of the plot had taken place in January, 2008 and not vide letter dated 19th August, 2013 and the writ petition filed in the year 2014 was thus clearly barred by laches.

4. Notice of this appeal was issued on the contention of the appellant that though he had not deposited 50% of the cost by 31st March, 2001 but the respondent having issued letter dated 10th March, 2006 to him offering possession of the plot after receiving 100% of the cost of the plot along with interest, his case was different.

5. A counter affidavit has been filed by the respondent and to which rejoinder has been filed by the appellant. We heard the counsels on 10th February, 2015 and reserved judgment.

6. The counsel for the appellant has not disputed that qua the subject Scheme of Re-location of Industries, vide order supra of the Supreme Court, 50% of the tentative cost of Rs.4,20,000/- i.e. Rs.2,10,000/- was to be paid by 31st March, 2001. The counsel for the appellant has also not disputed that before 31st March, 2001, the appellant had deposited only Rs.1,20,000/- on 24th January, 2001. He however states that a further sum of Rs.65,000/- was deposited on 7th August, 2001 and the balance of the total price of approximately Rs.2,35,000/- was deposited on 16th December, 2002. It is also

the admitted position that without payment of 50% of the tentative cost and which the appellant had admittedly not paid, the appellant was not entitled to allotment or possession.

7. The appellant has however pegged his case on two letters. The first is the letter dated 8th April, 2002 supra offering possession. However the counsel for the respondent points out that the said letter itself provides that those allottees who had not deposited 50% of the cost by 31st March, 2001 were not eligible. It thus appears that the respondent, without verifying as to which allottees had paid 50% of the cost by 31st March, 2001, sent a general letter to all. The appellant cannot take any advantage thereof. Moreover, the same is a conditional letter and which condition the appellant admittedly had not fulfilled. The second is the letter dated 10th March, 2006 supra and by which date the appellant, though not within the prescribed time, had paid the entire cost. By the said letter again, the appellant was offered possession and further informed that if he did not take possession within 20 days, watch and ward charges at the rate of Rs.5/- per sq. mtr. per month would be levied on him.

8. Though the counsel for the appellant has not so spelt out but the case of the appellant appears to be that notwithstanding the default in payment on the part of the appellant and on which default the allotment was to stand cancelled,

the respondent having offered possession to the appellant, the appellant is entitled to possession.

9. The counsel for the appellant in this regard places reliance on order dated 22nd July 2005 of a Single Judge of this Court in W.P.(C) No.1093/2002 titled ***Prem Kishore Vs. The Lieutenant Governor of Delhi*** and on the order dated 7th August, 2008, again of a Single Judge of this Court, in W.P.(C) No.483/2007 titled ***Ram Karan Dass Vs. State of Delhi***.

10. In ***Prem Kishore*** (supra) though the allottee had tendered 50% of the cost by 31st March, 2001 but in cash and which was not accepted. In this circumstance and considering that the allottee had immediately approached the Court and the plot till then had not been allotted to anyone else, the allottee was held entitled to possession on payment of the balance amount with interest. ***Ram Karan Dass*** (supra) was decided following ***Prem Kishore***, even though the allottee in that case had not even tendered 50% payment by 31st March, 2001.

11. The counsel for the respondent has however drawn our attention to the order dated 12th May, 2009 of the Division Bench of this Court in LPA No.101/2009 titled ***Sunil Dua Vs. Government of NCT of Delhi*** where it was held that where as per the policy of the respondent formulated in terms of order

dated 12th September, 2000 of the Supreme Court, the allottee had not deposited the required amount of 50% by the cut off date, no equity could be shown. Attention in this regard is also invited to the subsequent judgment dated 27th August, 2010 also of the Division Bench in LPA No.615/2010 titled ***P.K. Jain Vs. Government of NCT of Delhi*** and other connected petitions where also ***Sunil Dua*** was followed. We may also notice that the case of the allottees therein also was, of the delay in payment being attributable to Delhi Finance Corporation (DFC) in sanctioning the loan. Attention is yet further invited to the order dated 18th March, 2013 of the Division Bench in LPA No.166/2013 titled ***Digamber Garments Vs. Government of NCT of Delhi*** also taking the same view.

12. In the light of the aforesaid judgments of the Division Bench, the reliance by the counsel for the appellant on the orders / judgments of the Single Judges of this Court is of no avail. We may notice that earlier also the Division Bench of this Court in order / judgment dated 1st February, 2008 in LPA No.48/2008 titled ***Dinesh Lalwani Vs. DSIDC*** had taken up the same view. The same remained to be noticed in the order dated 7th August, 2008 of the Single Judge in ***Ram Karan Dass*** (supra).

13. The counsel for the respondent has fairly placed before us the copy of the order dated 28th May, 2012 of the Division Bench of this Court of which one of us (Rajiv Sahai Endlaw, J.) was a member in LPA No.20/2012 titled ***Delhi State Industrial and Infrastructure Development Corporation Vs. Sudhir Makhija*** where the default of the allottee in payment was condoned. However, it is specifically mentioned in the said order that the allottee in that case had died leaving a young widow and two small children and the view taken therein was being taken to provide a source of livelihood to the bereaved family.

14. Though the aforesaid is sufficient for dismissal of the appeal but we would also like to state our reasons with respect to the letter dated 10th March, 2006 (supra) offering possession to the appellant and on account whereof this appeal was entertained.

15. We are of the view that once the allotment in favour of the appellant stood cancelled on non-payment by the appellant of 50% of the tentative cost by 31st March, 2001, the subsequent unilateral deposit by the appellant of the balance cost and the issuance of the letter dated 10th March, 2006 by the respondent are of no avail. The contractual obligation of the respondent to allot the plot to the appellant had come to an end on 31st March, 2001. A Division Bench of this Court as far back as in ***Uttam Chatterjee Vs. Union of India*** AIR

1986 Delhi 291 held that such unilateral payments do not create any right and cannot nullify the cancellation. The same view was taken by a Division Bench of Punjab High Court recently in *Kasturi Devi Vs. State of Haryana* MANU/PH/0631/2012 (SLP(C) No. 18645/2012 whereagainst was dismissed on 20th July, 2012). It is not the case of the appellant that any fresh contract was arrived at thereafter and in pursuance to which the payments were made or the letter dated 10th March, 2006 was issued. Without such fresh contract being pleaded and established, the action of the appellant of deposit of the balance cost after the stipulated date and of the respondent of issuance of the letter dated 10th March, 2006 have but to be treated as stray incidents which would not confer any right on the appellant to get possession. It is common knowledge that such payments to the respondent are made by making a deposit in the designated bank or in the treasury of the respondent. The appellant has not filed any challans for such payment. The appellant has also not pleaded as to how the said payments were made. The respondent / its banker was admittedly receiving the balance payments from the allottees who had paid 50% of the cost by 31st March, 2001. It is not the case of the appellant that he made any application to the respondent for permitting him to make delayed payment or that such payment was authorized. A Division Bench of this Court

in ***Wazirpur Bartan Nirmata Sangh Vs. Union of India*** MANU/DE/9428/2006 held that without there being any bilateral or consensual arrangement, no right can be claimed or conferred. In the absence of any such thing, the payment remains a unilateral one. It cannot be lost sight of that the respondent is a State agency of which different functions / duties are performed by different persons with very often one not knowing what the other is doing. The reasoning as applicable to a natural person, if in a similar situation receiving, accepting and retaining payment, would not apply to the respondent.

16. Similarly, the mistake of or collusion with the appellant of any official of the appellant in issuing the letter dated 10th March, 2006 cannot also be made binding on the respondent. A Division Bench of this Court in ***Santosh Kumar Meena Vs. GNCT of Delhi*** MANU/DE/2202/2010 held that the doctrine of promissory estoppel also requires a valid promise and not a promise based on a mistake. It was further held that a petitioner well aware of the fact that he was not eligible, cannot claim to be an innocent victim. The appeal against the said judgment was dismissed in the order reported in MANU/SC/0820/2013 relying on ***Rakesh Kumar Sharma Vs. GNCTD*** (2003) 11 SCC 58 where an appointment made without the candidate possessing the requisite qualification on the prescribed date had been terminated; it was held that the authority

issuing the advertisement is bound by the representation made therein and cannot act contrary to it *inter alia* because if it were known that persons who obtained qualification after the prescribed date would be considered, other similarly placed persons could have also applied. It was further held that the person who was not eligible cannot approach the Court for any relief for the reason that he does not have a right which can be enforced through the Court. Mention may also be made of ***Jit Ram Shiv Kumar Vs. State of Haryana*** (1981) 1 SCC 11 approved in ***Hira Tikkoo Vs. Union Territory of Chandigarh*** (2004) 6 SCC 765 laying down that when a person acting on behalf of State, exceeds his authority, rule of *ultra vires* becomes attracted and the State would not be bound by such action. (We may notice that ***Jit Ram Shiv Kumar*** supra, to the extent holding that the plea of estoppel is not available against the State in the exercise of its statutory functions was disapproved in ***Union of India Vs. Godfrey Philips India Ltd.*** (1985) 4 SCC 369, as discussed in ***State of Punjab Vs. Nestle India Ltd.*** (2004) 6 SCC 465. However on the legal point on which we have relied on ***Jit Ram Shiv Kumar***, the same continues to be good law.) The respondent after all is State and for which reason, the writ petition is maintainable. The respondent cannot selectively condone default of the appellant. It is on record that default as committed by the appellant was

committed by a large number of other allottees. If it were to be held that the default of the appellant is to be condoned, the same cannot be done without giving an opportunity to all other allottees also. It is settled position in law that governmental agencies cannot be bound by such illegal acts of their officials.

17. In fact we have wondered that if the possession was offered to the appellant vide letter dated 10th March, 2006 and was not delivered, why the appellant waited for eight years i.e. till the year 2014 to file the writ petition. That brings into play the reasoning given by the learned Single Judge, of which there is no explanation.

18. The appeal is thus thoroughly misconceived and is dismissed with costs of Rs.10,000/- payable to the respondent.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MARCH 18, 2015/‘gsr’