

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

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Date of decision: 10th September, 2015

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W.P.(C) NO. 8109/2011

**PUR POLYURETHANE PRODUCTS PVT. LTD
& ANR.**

..... Petitioners

Through: Ms. Surekha Raman & Mr. Anuj
Sarma, Advs.

Versus

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

Through: Ms. Sangeeta Chandra, Adv. for
DSI IDC.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petition seeks mandamus to the respondents No.1&2 Delhi State Industrial & Infrastructure Development Corporation Ltd. (DSI IDC) to pay to the petitioner No.1 Company (the petitioner No.2 is the Director of the petitioner No.1) interest accrued on the amount of Rs.14,25,000/- from 3rd September, 1993 to 12th May, 2010. The petition was entertained and counter affidavit, additional affidavit and another short affidavit have been filed by the respondents DSI IDC. The counsels have been heard.

2. The position which emerges is as under:-

- (i) One Mrs. Geeta Bhargava was the allottee under the respondents DSIIDC of Shed No.22, Phase-II, Scheme-II, New Okhla Industrial Complex, New Delhi and had inducted the petitioner No.1 Company into possession thereof.
- (ii) The petitioner No.1 Company, under some Scheme introduced by the respondents DSIIDC, applied for transfer of the rights in the said shed in its favour.
- (iii) Disputes and differences arose between the petitioner No.1 Company on the one hand and the aforesaid Mrs. Geeta Bhargava on the other hand.
- (iv) The respondents DSIIDC also took proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) for eviction of Mrs. Geeta Bhargava from the said shed and an eviction order was passed in the said proceedings.

- (v) The petitioner No.1 Company filed W.P.(C) No.3916/1990 in this Court impugning the order of the Appellate Authority of dismissal of the appeal against the order of eviction and seeking a direction for allotment and transfer of the said shed in its name.
- (vi) Vide order dated 3rd September, 1993 in the said writ petition, the petitioner No.1 Company was directed to pay a sum of Rs.14,25,000/- to the respondents DSIIDC, without prejudice to the rights and contentions of the parties.
- (vii) The said W.P.(C) No.3916/1990 was finally dismissed vide judgment dated 25th July, 2006 of the Division Bench of this Court and para 11 of the said judgment is as under:

“11. Mr. Munjal next contended that on account of an order dated 3.9.1993, whereby this Court permitted the petitioner to pay the DSIIDC a sum of Rs.14,25,000, the petitioner’s claim to be allotted a shed still survived. We do not agree. The order dated 3.9.1993 clearly indicates that the payment would be “without prejudice to the rights and contentions of the parties.” Further, the counsel for DSIDC informs that the said amount of Rs.14,25,000 has been kept in the separate account and can be returned to the petitioner at any time the petitioner so desires. Mr. Munjal, on instructions, stated that the petitioner was not interested in the return of the said sum. Be that as it may, we are of the

view that the mere fact that by an interim order, the court permitted the petitioner to pay a sum of Rs.14,25,000 to the DSIDC cannot create any right in the petitioner to be allotted the shed in question. It is always open to the petitioner to seek return of the said sum and we have no doubt that as and when the petitioner does so, DSIDC will return it to the petitioner.”

(viii) That the disputes between the petitioner no.1 Company and Ms. Geeta Bhargava supra reached the Supreme Court by way of Special Leave to Appeal (Civil) No(s).3283-3284/2009 and where a compromise was arrived at and in terms of which compromise the petitioner no.1 Company gave up the rights in the said Shed and it was *inter alia* agreed that the petitioner no.1 Company will be at liberty to withdraw the sum of Rs.14,25,000/- supra.

(ix) Thereafter, the petitioner no.1 Company approached the respondents DSIIDC for withdrawal of the said amount which is stated to have been refunded soon thereafter on 12th May, 2010.

Thereafter this petition has been filed seeking interest thereon as aforesaid.

3. The counsel for the petitioner no.1 Company has contended that, (i) the respondents DSIIDC having enjoyed the money for nearly 17 years, ought to pay interest thereon; (ii) the respondents DSIIDC before the Court in W.P.(C) No.3916/1990 supra having stated that it has kept the said amount in a “separate account”, must necessarily be earning interest thereon and ought to pay the same to the petitioner no.1 Company; (iii) the respondents DSIIDC inspite of repeated directions including under Right to Information (RTI) Act, 2005 has failed to give and has failed to disclose to this Court also the Statement of the Bank Account where the said money was kept; even if it were to be believed that the said money was kept in a Current Account not yielding any interest as is contended by the respondents DSIIDC, unless the respondents DSIIDC show that at all times it had a balance of more than Rs.14,25,000/- in the said account, it would follow that respondents DSIIDC has utilised the said monies for its own purposes and ought to, on this ground also, pay interest thereon; (iv) the respondents DSIIDC being a State within the meaning of Article 12 of the Constitution of India cannot unjustly enrich itself at the expense and to the prejudice of the petitioner no.1 Company; and, (v) the respondents DSIIDC itself charges interest from its allottees and has charged interest from Ms. Geeta Bhargava

also on the amounts due from her towards the purchase of the said Shed and on parity should pay interest on the amounts admittedly retained by it.

4. Per contra, the counsel for the respondents DSIIDC has contended that, (a) a writ petition for monetary claim is not maintainable; (b) the respondents DSIIDC in its various affidavits filed in this Court has categorically stated that the money was kept in a non-interest bearing Current Account and always remained in the said Current Account and the respondents DSIIDC has not earned anything thereon; (c) what was meant by stating before the Court in W.P.(C) No.3916/1990 that the money had been kept “in a separate account” was only to convey that it was being retained in the Current account without utilising the same and no separate account was opened for keeping the said money; (d) payment of interest is by way of compensation and the petitioner no.1 Company having refused to take back the money inspite of dismissal of W.P.(C) No.3916/1990, cannot now turnaround and claim interest.

5. Having considered the pleadings, documents and the rival contentions, I am of the view that no case for grant of a mandamus to the respondents

DSI IDC to pay interest on the amount of Rs.14,25,000/- to the petitioner is made out, for the reasons hereafter appearing.

6. The counsel for the respondents DSI IDC is right in her contention that a claim in the nature of interest on money cannot be enforced by a writ of mandamus. Article 226 of the Constitution of India confers 'extraordinary' jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purposes. However what is being found is that the remedy of a writ petition rather than being invoked as an extraordinary remedy is being invoked as an ordinary remedy to bypass the ordinary remedies available under the civil and general law. Though the Supreme Court as far back as in ***Rashid Ahmed Vs. Municipal Board, Kairana*** AIR 1950 SC 163 and ***Nain Sukh Das Vs. The State of Uttar Pradesh*** AIR 1953 SC 384 held that prerogative writs are extraordinary remedies intended to be applied in exceptional cases in which the ordinary legal remedies are not adequate but in the last over half century, the said principle appears to have been forgotten, with the writ remedy being considered as a cure for all ordinary ailments also and for which the ordinary legal remedies under the civil law are adequate. The same has resulted in the High Courts being inundated with writ petitions, the disposal whereof

axiomatically is found to be taking, in most cases as much time as the disposal of an ordinary civil lis, and which has resulted in the High Courts facing difficulty in providing immediate relief even in deserving cases in writ jurisdiction and / or being left with little time to ponder over the important constitutional issues coming before it in the writ jurisdiction. In my humble view, a time has thus come for the High Courts to send out a clear message of the writ remedy being an extraordinary remedy not available as an alternative to the remedy already available under the civil and general laws.

7. The present is a clear case of a writ remedy having been invoked for a pure and simple civil claim of recovery of money claimed to be due on account of interest to the petitioners. Merely because the claim is against an authority which falls in the definition of State within the meaning of Article 12 of the Constitution of India would not entitle the claimant to invoke the writ remedy when ordinary remedies under the civil and general law are available. It was held by a five Judge Bench of the Supreme Court as far back as in *Suganmal Vs. State of Madhya Pradesh* AIR 1965 SC 1740 that writ petitions solely praying for refund of money against state are not to be entertained.

8. Supreme Court in *Godavari Sugar Mills Ltd. Vs. The State of Maharashtra* (2011) 2 SCC 439, on a conspectus of the earlier dicta in this regard reiterated, i) normally a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimants; the aggrieved party will have to agitate the question in a civil suit; but an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or its officers; ii) only if a fundamental right or a statutory right has been infringed and the aggrieved party comes to the Court for enforcement of the right, the writ Court while declaring the existence of such right or infringement thereof has the power to give consequential reliefs by ordering payment of money realized by the Government without the authority of law; iii) a petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right; the aggrieved party seeking refund has to approach the Civil Court for claiming the amount, though the High Courts have the power to pass appropriate orders in the exercise of power under Article 226 for payment of money; iv) there is a distinction between cases where a claimant approaches

the High Court seeking a relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment etc.; while a petition praying for mere issue of a writ of mandamus to the State to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected were without authority of law, the High Court has the power to direct refund in a writ petition; v) it is one thing to say that the High Court has no power under Article 226 to issue a writ of mandamus for making refund of money illegally collected and yet another thing to say that such power can be exercised sparingly depending on the facts and circumstances of the cases; vi) where the lis has a public law character or involves a question arising out of the public law functions, access to justice by way of a public law remedy under Article 226 will not be denied.

9. Applying the aforesaid principles, invocation of the writ remedy by the petitioners is totally misconceived.

10. Though the respondent DSIIDC is a State as aforesaid but its action of allotment of plots in an industrial area was merely as a developmental

agency of the State and the allotment contractual. The petitioners in fact are not even the allottee under the DSIIDC and were merely occupants of the said plots / sheds under the allottee thereof from the DSIIDC. Though the petitioners in their capacity as such occupants sought some right including against the DSIIDC but their said claims were denied by dismissal of W.P.(C) No.3916/1990 *supra*. Whatever other rights they claimed in the said plot / shed were withdrawn upon entering into a compromise with Mrs. Geeta Bhargava as aforesaid in the Supreme Court. The petitioners thus, at the time of invocation of the writ remedy did not have any contractual relationship also with the DSIIDC.

11. The claim of the petitioners made in the form of a mandamus was / is monetary simplicitor and for which writ was not the remedy. Notwithstanding the same and the clear position of law, writ remedy was invoked. Though ordinarily when a claim is pursued *bona fide*, this Court while relegating the parties to the appropriate remedy makes allowance in the law of limitation, but the petitioners are found to have invoked the writ remedy not *bona fide*, but to avoid the ordinary civil remedy available under the general law and thus the petitioners are not found entitled to the said

allowance qua the law of limitation for the said reasons as well as other reasons mentioned herein.

12. Recently also, in *Joshi Technologies International Inc. Vs. Union of India* (2015) 7 SCC 728 it was held that normally the Court will not exercise discretion to maintain a writ petition when monetary claim is made unless the action has some public law character attached to it.

13. The claim of the petitioners for interest is on the amount of money deposited by the petitioners with the respondents DSIIDC under an order of this Court in a writ petition earlier filed by the petitioners with respect to deciding the order of their eviction from the said plot / shed under the provisions of the PP Act. Though it is not very clear from the documents on record but it can safely be inferred that the order for such deposit of money by the petitioners must have been made as a condition for some interim order which the petitioners must have enjoyed in the said writ petition which was filed in the year 1990 and remained pending for 16 years till its dismissal on 25th July, 2006. In such circumstance, when the money was ordered to be returned to the petitioners on the dismissal of the writ petition, the claim if any of the petitioners for interest thereon ought to have been

made in that writ petition only and cannot be made by way of an independent legal proceeding. It is only the Court, which by an interim order has directed deposit or payment of money, which can while finally disposing of the matter and ordering refund, determine whether the said monies are to be refunded with interest or not. After all, the payment was under orders of the Court and without prejudice to the rights and contentions of the parties and thus in those proceedings only it could have been decided whether the equities demanded refund of the amount with interest or not. It is well nigh possible that in those proceedings, a view would have been taken that since the petitioners by making such a deposit had enjoyed the benefit of stay of their dispossession from the premises, they are not entitled to any interest.

14. The aforesaid reasoning in fact also takes care of the argument of the counsel for the petitioners of the respondents DSIIDC as State being not entitled to enjoy any person's money for their own use. If the petitioners, in turn enjoyed the stay of their dispossession from the premises, it cannot be said that the petitioners in equity also are entitled to any interest.

15. Not only so, the petitioners when ultimately before the Supreme Court withdrew all their claims in the said property, even then did not claim any interest on the said amount. The petitioners did not claim any interest on the said amount from Mrs. Geeta Bhargava also as they very well could have since the benefit of the stay of dispossession had enured to her benefit as well.

16. I do not find any merit in the contention of the petitioners being entitled to interest on account of the statement of the counsel for the DSIIDC of the amount paid by the petitioners being kept in a separate account. I also do not find any reason to disbelieve the unequivocal statement made by the respondents DSIIDC on oath, of the money having been kept in a non-interest bearing Current Account and therefore having not earned any interest thereon. There is no need to call for the statements of the bank account of the respondents DSIIDC in which the said amount was kept, as is contended by the petitioners.

17. It is significant that when the respondents DSIIDC, on dismissal of W.P.(C) No.3916/1990, offered to refund the money to the petitioners, the petitioners refused to take back the same. The petitioners obviously were

attempting to derive some advantage from keeping the said money deposited with the respondents DSIIDC and now cannot turn around and claim interest thereon.

18. There is another aspect of the matter. A claim for interest is essentially in the nature of compensation payable on account of denial of right to utilise the money due which has in fact been used by the person withholding the same. Reference in this regard can be made to *Thazhathe Purayil Sarabi Vs. Union of India* (2009) 7 SCC 372. A claim for interest lies either for money unauthorizedly retained or under a contract for payment of interest. In the present case, the petitioners while complying with the direction of the Court to deposit the said amount with the respondents DSIIDC, did not seek a direction that the same would incur interest. There was no contract between the petitioners and the respondents DSIIDC as aforesaid. It also cannot be said that the money was retained by respondents DSIIDC unauthorizedly. The money was retained by respondents DSIIDC from 1993 till 2006 under orders of the Court and remained with respondents DSIIDC from 2006 till refund in 2010 at the discretion of the petitioners. The petitioners for this reason also are not entitled to any interest.

19. Thus, not only the writ petition is found to be not maintainable, but the petitioners on merit also are not found to be having any claim for interest against the respondents DSIIDC.

20. The writ petition is thus dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 10, 2015

‘gsr/pp’

Foot Note: I had at the beginning of the hearing reminded the counsel for the petitioners of having appeared as a counsel for Mrs. Geeta Bhargava aforesaid and had suggested to recuse from the matter. However the counsel for the petitioners in the best tradition of the bar said that since the disputes of the petitioners with Mrs. Geeta Bhargava have nothing to do with the present petition, there was no need for the undersigned to recuse. After having heard the counsel for the petitioners and being not inclined to agree with the petitioners, again an option was given to the counsel for the petitioners but to her credit, she again declined to accept the same.