

\$~5.

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

%

Date of decision: - 21.07.2015

+ LPA 810/2014 & C.M.No.21201/2014 (*stay*).

DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED Appellant
Through: Ms.Renuka Arora, Adv.

Versus

HARI PRAKASH BANSAL & ANR Respondents
Through: Mr.K.C.Mittal, Adv. with
Ms.Ruchika Mittal, Adv. for R-1.
Mr.Satyakam, Adv. for R-2/GNCT of Delhi.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

JAYANT NATH,J (Oral)

C.M.No.21202/2014 (delay in filing)

Heard learned counsel for the parties. For the reasons stated in the application, the delay of in filing the appeal is condoned and the application is disposed of.

LPA No.810/2014

1. This appeal is filed seeking to impugn the judgment dated 04.08.2014 passed by the learned Single Judge in W.P.(C) 1251/2010.
2. The brief facts of the case were that respondent No. 1 was said to be operating a mill since 1980 under the name of M/s Rishi Industries. The Supreme Court in its judgment in the case of *M.C.Mehta vs. Union of India*

& Ors. in W.P.(C) 4677/1985 directed that the industrial unit operating in a non-conforming and residential areas be shifted to conforming areas in conformity with the Master Plan of Delhi 2000-01. To facilitate shifting of such industrial units, Government of NCT of Delhi floated a scheme for relocation of industrial units affected by the directions passed by the Supreme Court. The appellant was made the implementing agency of the scheme. The appellant issued a public notice and invited applications for allotment of industrial plots. In terms of the scheme, only working units existing in non-conforming/residential areas prior to 19.04.96 were eligible for allotment of sites in conforming areas.

3. Respondent No.1 submitted an application on 24.12.1996 for allotment of an industrial plot of approximately 400 sq.meters to respondent No.2. Vide letter dated 16.12.1998, respondent No.2 requested respondent No.1 to show documentary evidence to prove the existence of the industrial unit prior to 19.04.96. On 15.02.2001, respondent No.1 submitted a photocopy of the MCD License renewed up to 31.03.1996 as well as the electricity bills.

4. As the matter was not sorted out to the satisfaction of respondent No. 1, an appeal was filed before the Appeal Committee. Respondent No. 1 appeared before the Appeal Committee on 28.02.2002 and submitted the MCD license renewed up to 31.03.1996 and the electricity bills. The Appeal Committee rejected the documents submitted by respondent No.1 as the unit was said to be not functional as the electricity bill produced by respondent No. 1 indicated that the premises was locked at the relevant time. 15 days time was granted by the Appeal Committee to respondent No.1 to submit such documents to prove the power consumption exceeding 5 KW and that

the unit was functional prior to 19.04.96. Respondent No. 1 failed to again appear before the Appeal Committee and the representation of respondent No. 1 was rejected on 02.07.2002 and the earnest money was refunded.

5. It was the case of respondent No. 1 that an application was made under the RTI Act. Respondent No. 1 received a letter dated 26.07.2007 informing that his application was recommended for rejection due to the applicant/respondent No.1 being located in a local commercial area. A second application was filed under the RTI Act seeking the complete file from DSIIDC. On perusal of the file that was received, respondent No.1 saw that his application had been rejected as he had failed to submit documents to prove that the power demand was exceeding 5KW and that the unit was functional prior to 1996. Hence, it is contended that different authorities are given different reasons for rejection of the application of respondent No. 1.

6. Reliance was also placed on a cabinet decision dated 26.6.2006 which permitted allotment of alternate plots to those who were running industries from confirming areas. The cabinet decision reads as follows:-

“CABINET DECISION NO.1087 DATED 26.06.2006

Sub : Relocation of industries functioning in local commercial areas to the new industrial Estate in NCT of Delhi

The proposal submitted by Secretary (Industries) regarding relocation of Industries functioning in local commercial areas to new industrial estate in the NCT of Delhi, the details of which are given below was approved by the Council of Ministers.

- (i) The existing 407 eligible applicants from the residential non confirming land be given allotment from the 664 industrial plots available with DSIIDC.
- (ii) The remaining 257 vacant plot be allotted to applicants from local commercial areas.
- (iii) The balance of 82 applicants belonging to local commercial areas would be eligible for allotment in case any other

industrial plots become available due to cancellation or otherwise.

- (iv) The eligible applicants belonging to local commercial areas who have already paid 100% cost of the allotted plot may be handed over possession of the allotted plot.
- (v) Eligible applicants who have been successful in draw of lots and specific plot numbers were earmarked but the allotment letters have not issued to them as their existing industries were located in local commercial areas, may be issued allotment letters.
- (vi) As regards the 82 applicant of such reduced number as a result of (iii) above, eligible applicants belonging to local commercial areas be considered for allotment of alternative industrial plot, alongwith fresh applicants to be invited for relocation of industries from local commercial areas. These applicants would, however, have the option to get the payment made by them refunded except for earnest money deposit.”

7. The respondent No.1 filed the writ petition which resulted in the impugned order in the year 2010 seeking a writ in the nature of mandamus for directing the respondents therein for allotment of an industrial plot. Other reliefs were also sought. The delay in approaching the court was explained by respondent No. 1 stating that respondent No. 1 came to know about the rejection by the Appeal Committee only in 2004 and that on 26.06.2006, a Cabinet decision was taken by the Government of NCT of Delhi to consider units in local commercial areas for allotment of alternative plots.

8. In the light of the explanation for delay offered in the writ petition, the objection raised by the Appellant regarding delay and laches was rejected by the learned Single Judge in the impugned order observing that respondent No.1's case is primarily based on the Cabinet decision of 26.06.2006 and

hence the petition cannot be considered as delayed by 8 years as the said Cabinet decision has been taken in 2006.

9. On merits the impugned order notices that the decision had been taken by the High Powered Project Implementation Examination Committee in its meeting held on 22.06.1999 which had agreed that the units located in commercial areas should not be considered for allotment of alternative industrial accommodation. Hence, in view of the said decision of the Committee, respondent No.1 could not be considered for allotment of an alternative plot as its unit was located in a local commercial area. The impugned order however notices that the applications of certain units who were similarly placed as respondent No. 1 and functioning in local commercial areas were not rejected and were kept pending when the Cabinet decision dated 26.06.2006 was taken. In terms of the said Cabinet decision, even the units that were functioning in local commercial areas would be considered for allotment of alternative industrial plot. As other similarly placed units as respondent No.1 had been given the benefit of allotment of alternative plot, the impugned order held it to be just and equitable that respondent No.1 be treated at par with such applicants. The impugned order also noted the judgment of the learned Single Judge of this court in the case of ***Rajinder Prasad Gupta vs. GNCTD & Ors., 2013 (IX) AD Delhi 354*** which was a case relating to similar facts which had been allowed. Hence the writ petition was allowed and it was directed that respondent No.1 be treated at par with other applicants whose units were functioning in Local Commercial Areas, as per the Cabinet decision dated 26.06.2006 i.e. at par with 82 applicants as mentioned in para (iii) of the Cabinet decision dated 26.6.2006.

10. We have heard the learned counsel appearing for the parties and gone through the record.

11. Learned counsel for the appellant has contended that the impugned order has erroneously directed that respondent No.1 be treated at par with the other 82 applicants as mentioned in para (iii) of the Cabinet decision dated 26.06.2006. Reliance is placed on the eligibility criteria which was applicable for allotment of an alternative plot to contend that respondent No. 1 was functioning from a conforming area and not eligible for allotment of an alternative plot. It is urged that a Cabinet decision cannot be the basis for making the case of respondent No. 1 as an eligible contender.

12. In our opinion there are no reasons to interfere with the impugned order dated 04.08.2014.

13. Firstly, it appears from the record that different reasons have been given by different functionaries for rejection of the application of respondent No.1. On 26.07.2007, respondent No.2 had in reply to an RTI application stated that the application of respondent No. 1 was recommended for rejection due to its being located in a Local Commercial Area. On 13.03.2009, the appellant in response to an RTI application sent certain papers which showed that the application of respondent No.1 was rejected as he failed to submit the documents to prove that the power was exceeding 5 KW and the unit was functional prior to 1996.

14. Different grounds being stated to reject the application of respondent No.1 has continued in the pleadings filed before this court. The appellant in its counter affidavit before the learned Single Judge has stated that the electricity bill produced by respondent No.1 pertains to a period prior to 19.04.96 which shows that the premises was locked from October 1995 to

July 1996. Hence the Appeal Committee, it is said, came to a decision that the unit had a license but was not functional on the relevant date and hence rejected the case. In the grounds of appeal, the grounds for rejection of the application of respondent No.1 as stated in the counter affidavit are reiterated, but a new ground is taken stating that the unit of respondent No.1 is situated in a Local Commercial Area and its power load does not exceed 5 KW as prescribed in MPD 2001.

15. Apart from the above fact that different reasons are being given by different functionaries as the grounds for rejection of the application of respondent No.1, it is also apparent that there is no uniformity in implementation of the Cabinet decision dated 26.06.2006. The impugned order notices that certain units which were functioning in local commercial areas were considered for allotment of alternative plots as per the Cabinet decision dated 26.06.2006. It was on this account that the impugned order concludes that it is just and equitable that respondent No.1 be treated at par with the other applicants whose units were also functioning in local commercial areas. In the grounds of appeal, there is no denial of the fact that the applicants who are functioning from a local commercial area are being considered for or have been allotted alternative industrial plots. Therefore, respondent No.1 cannot be treated differently from those applicants who were operating from a Local Commercial Area.

16. Another relevant fact is that the impugned order relies on an earlier judgment of the learned Single Judge in the case of ***Rajinder Prasad Gupta vs. GNCTD & Ors. (supra)***. That was also a case where the petitioner therein had applied for re-location of its unit and the Appeal Committee rejected the application of the petitioner therein on the ground that he was

functioning from a Local Commercial Area and would not be eligible for allotment of a plot under the re-location scheme. This court relying upon the said Cabinet decision dated 26.06.2006 had noted that the petitioner therein was entitled to be considered at par with the 82 applicants mentioned in clause (iii) of the said decision dated 26.06.2006 and allowed the writ petition issuing a direction to the said effect. It appears that the appellant has not filed any appeal against the said judgment in that case. The facts of that case are broadly identical. Respondent No. 1 therefore cannot be treated differently.

17. In view of the above, we see no merit in the present appeal and the same is dismissed.

18. No orders as to costs.

C.M.No.21201/2014 (stay)

The application stands dismissed in view of the dismissal of the appeal.

JAYANT NATH, J

CHIEF JUSTICE

JULY 21, 2015

rb