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

\+ W.P.(C) 7071/2018

M/S DIGAMBER GARMENTS AND ANR. ..... Petitioners
Through: Rakesh Malhotra, Mr Bharat Malhotra and Ms Garima Gupta, Advocates.

versus

GOVT. OF NCT OF DELHI AND ANR. ..... Respondents
Through: Mr Rizwan, Advocate for R-1/GNCTD.
Mr Sumit Rana, Advocate for DSIIDC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **10.07.2018**

<u>CM No. 26891/2018</u>

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) 7071/2018</u>

3. The petitioners have filed the present petition impugning a communication dated 18.05.2018 (hereafter "the impugned letter") sent by the Delhi State Industrial and Infrastructure Development Corporation Limited (hereafter "DSIIDC"). By the impugned letter, DSIIDC had reiterated that petitioner no.1 was ineligible for allotment of a plot under the Relocation Scheme and the allotment made earlier stood cancelled by the letter dated 24.07.2001. The petitioners were further informed that DSIIDC had erroneously called upon the petitioners to deposit further funds. The

petitioners also impugn a letter dated 29.05.2018 under the cover of which a sum of ₹27,12,758/- was refunded to the petitioners. The said sum comprised of ₹1,20,000/- deposited as earnest money (EMD); ₹24,502/- as interest on the EMD; and ₹25,68,256/- as amounts paid upto 23.03.2018.

4. The petitioners claim that there has been no error on the part of the DSIIDC and a valid allotment of plot was made in favour of petitioner no.1. The petitioners further state that DSIIDC had retained the sum of ₹1,80,000/- (being the EMD of ₹1,20,000/- and ₹60,000/- deposited on 06.05.2000) deposited by the petitioners towards the allotment to be made in future. The petitioners claim that thereafter they had received a letter dated 29.01.2018 calling upon the petitioners to make further deposits in the specified accounts by generating challans online from the "Allottee Friendly Portal" of Kotak Mahindra Bank. This was followed by further letter dated 08.03.2018 requiring the petitioners to deposit a further amount of ₹25,00,550/- , being ₹6,35,198/- as the balance cost and ₹18,60,352/- as interest from 20.04.2002 to 28.02.2018. The petitioners claim that this clearly establishes that an allotment was made in favour of the petitioners and the impugned letter, *inter alia*, claiming that the said communications were sent to the petitioners erroneously is not sustainable.

5. The present controversy arises in the backdrop of a scheme of allotment of plots for relocation of industrial units. The said scheme was floated by the Government of NCT of Delhi pursuant to the decision of the Supreme Court in ***M.C. Mehta v. Union of India: W.P.(C) 4677/198***5, whereby the Supreme Court had directed relocation of industrial units being run in residential/non-conforming areas.

6. The petitioner no.1 firm was also engaged in running an industrial unit in a non-conforming area and was, therefore, entitled to apply for an industrial plot pursuant to the relocation scheme.

7. On 27.12.1996, petitioner no.1 filed an application for allotment of an industrial plot measuring 400 sq. meters. Petitioner no.1 also deposited the earnest money of ₹1,20,000/- being 20% of the then estimated cost of the plot computed at ₹3,000/- per sq. meter. Petitioner no.1 firm thereafter made an additional deposit of a sum of ₹60,000/- on 06.05.2000. Thereafter, DSIIDC issued an allotment letter dated 23.10.2000 allocating a plot in favour of petitioner no.1 and further calling upon petitioner no.1 to pay 50% of the revised estimated cost calculated at the rate of ₹4200/- per sq. meter, within a period of three months. In terms of the said letter, petitioner no.1 was required to pay a sum of ₹2,39,700/- after adjusting the amounts already paid. However, the petitioners failed to pay the same. The last date for making the payment for an alternative plot was extended by the Supreme Court upto 31.03.2001. However, the petitioners did not make the necessary payment by the said date as well.

8. Since the petitioners had failed to make the payment as required the allocation of the industrial plot made in favour of petitioner no.1 was cancelled. The petitioners challenged the letter dated 10.07.2002 issued by DSIIDC cancelling the allotment made in favour of the petitioner no.1 by filing a writ petition (being ***W.P.(C) 4688/2002*** captioned ***M/s Digamber Garments and Anr. v. Govt. of NCT of Delhi & Anr.***). The petitioners also filed another petition (being W.P.(C) 6198/2010) challenging the show cause notice dated 26.05.2010, whereby petitioner no .1 was called upon to

show cause why the allotment not to be cancelled.

9. The aforesaid writ petitions were dismissed by a Coordinate Bench of this Court by a judgment dated 05.12.2012. The Court held that the petitioners' challenge to the cancellation of the allotment of the industrial plot was unmerited. Further the show cause notice dated 26.05.2010 issued by DSIIDC was unnecessary.

10. It is relevant to note that in the aforesaid proceedings (relating to W.P.(C) 4688/2002), DSIIDC had filed an additional affidavit placing an advertisement issued by it on 26.08.2004. The said advertisement indicated that those applicants who had not deposited 50% of the requisite cost by 31.03.2001 would be placed in a separate list and their case for allotment of industrial plots would be considered after exhausting the list of pending allottees and after acquisition of new land. This was also noticed by this Court in the judgment dated 05.12.2012.

11. The petitioners state that in view of the above, the petitioner no.1 did not seek refund of its money deposited by it and the same continued to be retained by DSIIDC. It is stated that the communication dated 29.01.2018, led the petitioners to believe that an allotment in their favour had fructified. The petitioners received a demand notice dated 08.03.2013 calling upon the petitioners to pay a sum of ₹25,00,550/-. The said communication also indicated that a further interest at the rate of ₹321.08 per day was required to be added to the aforesaid amount after 28.02.2018.

12. Thereafter, the petitioners proceeded to make a payment of ₹25,07,956/- including interest and penalty on 23.03.2018. The petitioners

also filed an application for seeking possession of the plot allotted.

13. As noticed above, DSIIDC had explained that the above communications were issued erroneously and the allotment in favour of petitioner no.1 firm stood cancelled much earlier. DSIIDC further proceeded to refund the amount paid by petitioner no.1.

14. The learned counsel appearing for DSIIDC further states, on instructions, that DSIIDC is not maintaining any separate list of persons who had paid less than 50% of the cost by 31.03.2001 for being considered for future allotments. He submits that the scheme of retaining names of such persons to be considered for allotment to be made in future is not being implemented.

15. Indisputably, the industrial plot allotted to petitioner no.1 firm on 23.10.2000 stood cancelled. The petitioners' effort to challenge the same also did not meet any success. There is no material on record which would indicate that any fresh allotment have been made in favour of petitioner no.1. It is also difficult to accept that the letter dated 29.01.2018 (which the DSIIDC claims was sent erroneously) creates any indefeasible rights in favour of seeking allotment of an industrial plot. The petition is unmerited and is, accordingly, disposed of.

VIBHU BAKHRU, J

JULY 10, 2018
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