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

+ **W.P.(C) 7670/2016 & CM No.37590/2016**

T K SABHARWAL

..... Petitioner

Through: Mr Manish Makhija, Advocate.

versus

NCT OF DELHI & ORS

..... Respondents

Through: Mr Arun Birbal, Standing counsel for
DDA.

Ms Renuka Arora and Ms Nikita
Salwan, Advocates for DSIDC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

05.01.2018

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VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“It is, therefore, most humbly prayed to issue appropriate writ/order/ direction commanding the respondents not to charge any other price except the price charged from the persons who were listed alongwith the present petitioner [Annexure P-1] i.e. @ Rs. 4,200/- per sq. m. and by mischief at serial No. 38 the petitioner’s application form No.12263 was stuck down and illegally application form No. 11263 was written their by staff of respondents.

Any other relief which the petitioner be deems fit and proper in the facts and circumstances of the case.

Award the cost of the present petition to the petitioner against the respondents.”

2. The respondents had, in the year 1996, launched a scheme for relocating the industrial units from residential/non-confirming areas to developed industrial areas (hereafter 'the said scheme') and had invited applications for eligible units of eligible persons.

3. At the material time, the petitioner was engaged in the manufacture of Transformers & Stereo Deck in a residential/non-confirming area and was, thus, eligible for allotment of a plot under the said scheme. Accordingly, the petitioner applied under the said scheme for allotment of an industrial plot and also deposited earnest money of ₹60,000/- along with his application (application no.11263).

4. On 24.04.2000, respondent no.2 (hereafter 'DSI IDC') informed the petitioner that on scrutiny of his application, he was found to be "*provisionally eligible for allotment of an alternate industrial plot measuring 150-00 Sq. Mtr*". The petitioner was also informed that the tentative cost of the plot would be ₹3,000/- per Sq. Mtr., which was subject to change depending upon the actual cost of development. On the aforesaid basis, the petitioner was called upon to pay a sum of ₹75,000/-, which along with ₹60,000 paid earlier would constitute 30% of the total estimated cost of the plot. The said amount was deposited by the petitioner on 20.06.2000.

5. DSI IDC claims that, subsequently, the petitioner's case for allotment of a plot was rejected by the office of the Commissioner of Industries, which was the competent authority to decide the eligibility of industrial units for allotment of alternate plots. DSI IDC was informed of the same by the

Commissioner of Industries by a letter dated 20.12.2001. Accordingly, DSIIDC processed the case of the petitioner for refund of the money deposited and the same was refunded to the designated bank.

6. On an inquiry made by the petitioner, it was revealed that the list of the applicants that were found as not eligible by the Commissioner of Industries did not include the application of the petitioner but of another person. At Sl. no.38 of the said list, the application no.12263 was mentioned (thereby indicating that that application was rejected); however, the number 12263 had been struck off and 11263 (which was the petitioner's application) was written in hand. The petitioner alleges that this alteration was made mischievously by the one of the staff of the DSIIDC at the instance of the applicant where application had been rejected. The effect of the said alternation was that even though the petitioner's unit was eligible, the petitioner's application was considered as rejected and the amount deposited by the petitioner was refunded.

7. On the petitioner pursuing a matter, DSIIDC sought clarification from the office of Commissioner of Industries and on 25.01.2006 the petitioner's case was referred to the Chairman of the Appeal Committee. The petitioner appeared before the Appeal Committee on 30.01.2006 along with all the necessary documents.

8. Thereafter, the petitioner filed an application under the Right to Information Act, 2005 seeking certain information regarding the matter and was informed that the Appellate Committee had recommended the case of the petitioner for allotment of a plot measuring 150-00 Sq. Mtrs. The

petitioner was further informed that the matter had been placed before the Land and Flat Allotment Committee, but the said matter had been deferred.

9. Aggrieved by the same, the petitioner filed a writ petition being W.P.(C) 2260/2010 captioned '*T. K. Sabharwal v. NCT of Delhi and Ors.*'. In the counter affidavit filed in the said petition, respondent no. 1 (Commissioner of Industries) acknowledged that the striking off the application no.12263 from the list of ineligible persons and replacing the same with the petitioner's application no.11263, was erroneous. In the said proceedings, the respondents also drew the attention of this Court to a communication dated 13.03.2013 addressed to Vikas Industries (which the Court noted is the proprietorship concern of the petitioner) informing that the unit had been declared provisionally eligible for allotment of an alternate plot measuring 150 Sq. Mtr. under the said scheme. In view of the above, writ petition preferred by the petitioner (W.P.(C) 2260/2010) was disposed of as the petitioner's grievance was substantially satisfied.

10. Thereafter, the petitioner's application was included in the draw of lots held on 22.03.2016. The petitioner's application was selected by the draw of lots and a specific plot - plot no.346, Sector B, Bawana-II (Bhorgarh) - was allotted to the petitioner. An allotment-cum-demand letter was issued to the petitioner on 06.05.2016, which was received by the petitioner on 16.05.2016.

11. The limited dispute that falls for consideration before this Court relates to the price of land being charged by DSIIDC. In terms of the allotment-cum-demand letter dated 06.05.2016, the total cost of the plot

allotted to the petitioner is fixed at ₹23,34,900/- which is computed at the rate of ₹15,566/- per Sq. Mtr. The petitioner claims that he is entitled to allotment of the plot at the rate as prevailing in 2002, when his application was incorrectly rejected by being wrongly included in the list of rejected applications.

12. Mr Makhija, learned counsel appearing for the petitioner contended that since the petitioner's name had been incorrectly entered into the list of ineligible applicants, the petitioner could not be penalised for the default of respondent no.1 or DSIIDC. He submitted that it is apparent that the petitioner's application had been mischievously included in the list of ineligible applicants and the applicant whose application had in fact been rejected, was allotted an industrial plot in the first phase.

13. He relied upon the decision of the Coordinate Bench of this Court in ***Surender Kumar Mehta v. Delhi Development Authority: W.P.(C) 19095/2004***, decided on **16.12.2004** and the decision of the Supreme Court in ***Haryana Urban Development Authority v. Vijay Aggarwal: (2005) 9 SCC 446*** in support of his contention.

14. Mr Birbal, the learned standing counsel who appears for the Delhi Development Authority (DDA) and whose assistance was requested by this Court, contended that insofar as allotments made by the DDA are concerned, this Court had in several cases directed that the allotments be made at the rate prevailing on the date when such allotments ought to have been communicated to the concerned party. He referred to the decision of this Court in ***Vipin Suri v. DDA: W.P.(C) 6109/2012***, decided on **27.01.2014**,

whereby the Coordinate Bench of this Court had taken the aforesaid view. He also submitted that taking into account that an allottee would have not made the payment for the allotment at the material time, the Court had also directed the allottee to pay interest on the amount due to the DDA. He referred to the decision of a Coordinate Bench of this Court in ***Parwati v. DDA & Anr.: W.P.(C) 7163/2009, decided on 09.05.2013*** and a decision of the Division Bench of this Court in ***Delhi Development Authority v. Mohinder Singh: LPA 1067/2011, decided on 14.02.2012***.

15. Mr Birbal also pointed out that there was a material difference between the method of allotment as followed by the DDA and DSIIDC. The DDA issues seniority numbers to the applicant and allotments are made on that basis. The draw of lots are held by the DDA only for the purposes of allotment of particular flats to the applicants whose turn has matured and are, therefore, included in the draw of lots. In other words, draw of lots is held amongst limited number of applicants for limited number of flats. Thus, all applicants are offered allotment of specific flats based on the draw of lots. DSIIDC, on the other hand, considers all eligible applicants who have paid the initial deposit as allottees and includes them for draw of lots as and when plots of land are made available. Thus, it is a matter of chance whether an eligible applicant, included in the draw of lots, would be successful in securing an allotment of a plot of land in a particular draw of lots. He submitted that in the circumstances, the decisions rendered by this Court in matters relating to the DDA may not be applicable in the facts of the present case.

16. Ms Renuka Arora, learned counsel appearing for DSIIDC also

adopted the arguments advanced by Mr Birbal. She further contended that DSIIDC was only an implementing agency and the question, whether an applicant was eligible or not could only be determined by the Commissioner of Industries or the Appellate Authority. She stated that DSIIDC had no role in the said process. She further contended that no applicant had been allotted an industrial plot located in Bawana-II (Bhorgarh) at a price less than that demanded from the petitioner; that is ₹15,566/- per Sq. Mtr.

17. I have heard the learned counsel for the parties.

18. There is now no dispute that the petitioner's named application had been incorrectly excluded from the list of eligible applicants. Thus, undisputedly, the petitioner was eligible for being included in the draw of lots for allotment of industrial plots in 2004. However, that would not necessarily lead to the conclusion that the petitioner would have been allotted a specific industrial plot in the draw of lots held at the material time as that would be a matter of chance.

19. The affidavit filed on behalf of the DSIIDC indicates that 51,851 units from residential/non-confirming areas had applied for allotment of the industrial plots/flatted factories under the said scheme. Out of the above, 27,905 applicants were found eligible for such allotment. Subsequently, 4582 of eligible applicants opted out of the said scheme and thus, only 23,323 eligible applicants remained in the fray. As and when the industrial plots were developed and were made available for allotment, draw of lots were conducted amongst the eligible candidates and those who were successful were allotted developed industrial plots by DSIIDC. The prices

of the plots allotted to the applicants were determined on cost basis and DSIIDC asserts that it did not make any profit from such allotment.

20. Ms Renuka Arora also submitted that more than five thousand (5,000) number of eligible applicants were not successful in securing allotment in the draw of lots held prior to 2006. These applicants were included in the draw of lots held subsequently and Industrial plots were allotted to them were at the same price as is demanded by the petitioner. In view of the above, it is clear that although the petitioner was deprived the opportunity of participating in the draw of lots held prior to 2006, the same does not necessarily mean that the petitioner would have been successful in securing allotment of an Industrial plot in those draw of lots. Thus, the fundamental premise on which the petitioner's claim rests, is flawed. The petitioner's claim is based on the assumption that had his application not been included in the list of ineligible applicants, he would have been allotted an Industrial plot in the year 2004 because the applicant whose application had been struck off (and who ought to have been considered ineligible) and replaced by the petitioner's, was allotted an Industrial plot in the year 2004. It is at once clear that there is co-relation between the applicant (application no.12263) being successful in a draw of lots and the assumption that had this applicant not been included in the draw of lots in place of the petitioner, the petitioner would have been successful in draw of lots. Plainly, the draw of lots is matter of chance and it is not possible to assume that the petitioner would have been successful in securing the allotment of an Industrial plot if the application no. 12263 was not included in the draw of lots.

21. As pointed out, there are several eligible applicants whose names

were included in the draw of lots held prior to 2006 but were unsuccessful in being selected for allotment of an Industrial plot since all eligible applicants were included for the draw of lots for limited number of industrial plots.

22. The decision of this Court in *Surender Kumar Mehta case (supra)* – which was heavily relied upon by Mr Makhija – is not applicable in the facts of the present case. The said case pertains to allotment of residential flats by the DDA. As per the scheme originally notified by the DDA, names of all the applicants that were registered with DDA were included for draw of lots for allotment of limited number of flats as and when the same were available. This is quite similar to the procedure followed by DSIIDC. However, the DDA realised that this was creating administrative problems as well as inconvenience to the applicants. Accordingly, in the year 1986, the DDA decided to allot priority numbers to all persons, who were then registered with the DDA. Priority numbers were allotted by computerised draw of lots. Thereafter, as and when flats became available, equivalent numbers of applicants based on their priority numbers were considered for allotment of specific flats. In *Surender Kumar Mehta's* case, the petitioner did not receive the demand-cum-allotment letter as the same was dispatched to an incorrect address. In such circumstances, the petitioner did not have an opportunity to pay the amount demanded and consequently, the allotment made in his favour was cancelled. It is in the aforesaid context that this Court, by referring to earlier decisions, concluded that the petitioner therein could not suffer due to default on the part of the DDA. Accordingly, it was directed that the residential flat would be allotted to the petitioner at the price as applicable at the time when the petitioner's allotment had matured.

The Court also directed that a suitable adjustment be made on account of delay on the part of the petitioner in pursuing the matter.

23. In *Vipin Suri case (supra)*, the Coordinate Bench of this Court took a similar view.

24. As noticed above in the facts of the present case, there is no certainty that the petitioner would have been allotted an Industrial plot at the of ₹4,200/- per Sq. Mtr. (as claimed by the petitioner) if the error in including his application in the list of ineligible applicants had not occurred. Thus, this court is unable to accept that the Industrial plot allotted to the petitioner should be at the rate of ₹4,200/- per Sq. Mtr; as, admittedly, a large number of applicants have been allotted industrial plots after 2006 at the same rate, which is being charged to the petitioner. This Court is informed that as recently as last year about seventy eight eligible applicants were allotted Industrial plots at Bawana-II (Bhorgarh) at the same rate as charged by the petitioner, which in turn is based on the cost incurred in acquiring land and developing plots at Bhorgarh.

25. In view of the above, the relief as prayed for by the petitioner cannot be granted. The petition is, accordingly, dismissed. The pending application is also disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JANUARY 05, 2018
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