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

Date of Decision: 01.03.2018

+ LPA 593/2016 & CM APPL. 40272/2016 & 40275/2016

S K SEHGAL & ANR Appellants
Through: Mr. Atul Kumar &
Mr. Abhimanyu Sharma, Advs. along with
appellant in person.

versus

DELHI ADMINISTRATION & ANR Respondents
Through: Ms. Renuka Arora with Ms.
Nikita Salwan, Advs. for R-1/DSI IDC.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J.(ORAL)

1. The appellant's grievance is that the learned Single Judge fell into error in rejecting the writ petition which sought direction for restoration of leasehold rights to an industrial plot (No.92, admeasuring 307 sq. yds., in the Functional Industrial Estate for Electronics, Okhla Industrial Area Phase-II, New Delhi – hereafter called “the plot”).

2. The litigation has a chequered history; one Gulshan Lal was allotted the plot. At the time of allotment, the competent authority had taken into consideration the special disability i.e. that he was facially a handicapped person. The plot was

allotted and a perpetual lease deed was executed on 19.04.1984 which contained a stipulation that the construction was to be put up on the plot within two years from the date the lease was entered into. Apparently, after noticing that despite the allotment, no industrial activity was carried out on it, the Commissioner of Industries on 24.02.1992 cancelled the allotment; subsequently, proceedings for eviction were initiated under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (the "PP Act"). This culminated in an adverse order eventually on 30.09.2003. Later, the premises were vacated. The cancellation of the plot, in the meanwhile, became the subject matter of appeal/revision to the competent authority (the Lieutenant Governor) who rejected the request on 16.02.1995. The original allottee had apparently also after the cancellation of allotment, alienated his rights in favour of Ms. Anjana Sehgal, the petitioner's wife, through a General Power of Attorney conveyed in that regard. The transferee, through her Power of Attorney, i.e. the present appellant, pursued the proceedings. A representation was made to the Lieutenant Governor afresh, with respect to the adverse order made earlier on 16.02.1995; this was rejected on 17.05.1996.

3. The order of eviction was sought to be challenged before this Court in CS(OS) 1837/2003 i.e. in a suit for declaration. Initially, an injunction was granted; subsequently, by the final judgment and order dated 31.08.2009, the suit was dismissed by the learned Single Judge as not maintainable.

4. After a lapse of over three years i.e. on 31.10.2012 (on dismissal of the suit), the appellant filed fresh proceedings by way of a writ petition (W.P.(C) 6832/2012). This was disposed of on the first hearing on 31.10.2012, stating that an order made earlier in the intervening period i.e. on 21.05.2010, rejecting the third representation, ought to have been challenged. Pursuant to the rejection order of 31.10.2012, the appellant approached the Lieutenant Governor on 29.11.2012.

5. In the meanwhile, on 31.10.2012 while disposing of a writ petition (W.P.(C) No.6832/2012), the learned Single Judge was of the opinion that the appellant's case ought to be considered by the Industrial Land Management Advisory Committee (ILMAC) which could consider the entire gamut of circumstances and advise the competent authority i.e. the Lieutenant Governor. In the light of these observations, the earlier rejection order was quashed.

6. The appellant represented on 29.11.2012 and 07.01.2013, to the authorities. In these representations it sought to bring to the notice of the DSIIDC, i.e. the concerned land agency that in the case of other parties (who according to him were similarly situated inasmuch as their leases were cancelled for not complying with a clause obliging the lessee to construct upon the plot within a particular period) relief had been given and that had resulted in discrimination. The appellant relied upon the case of M/s Ashish Thyristor Control Corporation v. The Commissioner of Industries & Ors. (W.P.(C) 3720/1997

decided on 17.07.2004) and a couple of other decisions.

7. The Committee (ILMAC) which was directed to examine the matter afresh did so and recommended the rejection of the request (for restoration of the lease). The Lieutenant Governor endorsed the view of the ILMAC. The rejection was then made the subject matter of challenge yet again before this Court in W.P.(C) No.48338/2015. By the impugned judgment, the learned Single Judge rejected the writ petition as not maintainable. The learned Single Judge was of the opinion that the principles of *res judicata* and *constructive res judicata* applied in the overall circumstances.

8. During the course of the appeal, this Court had considered it appropriate to direct the respondent – DSIIDC to produce the relevant records especially the file containing the recommendations of ILMAC and the ultimate decision of the Lieutenant Governor. The ILMAC after considering all the records – including the previous orders of this Court as well as the various representations of the appellant, finally by a detailed and elaborate order did not recommend restoration of the lease. This became the subject matter of consideration by the Lieutenant Governor who did not disagree with the recommendations and rather accepted it.

9. Learned counsel urged that the ILMAC did not take into consideration a relevant fact i.e. that at least in three other cases which were brought to its notice, the allottees were given the benefit of restoration of the lease. It was submitted that like in

other cases the present allotment too ought to have been restored. It was next argued that the original allottee and subsequently the present appellant had constructed upon the plot and therefore facially parity between the present case and in other instances had been established.

10. So far as the first argument urged is concerned, the Court is of the opinion that it is now well recognized that Article 14 of the Constitution of India does not entitle any one to claim what is known as “negative equality” i.e. that if a policy or law does not permit or rather forbids the doing of a certain thing which is in fact condoned or wrongly done by an authority, that instance would not act positively in favour of another individual who can claim parity or complain that enforcement of the norm constitutes discrimination (see *Gursharan Singh v. NDMC*, 1996 (2) SCC 459; *Vikas Sales Corporation v. Commissioner of Commercial Taxes*, 1996 (4) SCC 433 and *Chandigarh Administration v. Jagjit Singh*, 1995 (1) SCC 745).

11. In these circumstances, the argument of the appellant is insubstantial, even otherwise, the Court is of the opinion that the instances brought to the notice in this appeal are not similar in the strict sense of the term; the original allottee alienated the leasehold rights after their cancellation.

12. As far as the other argument with respect to the construction put up is concerned, the Court is of the opinion that production of some house tax receipts or even electricity bills *per se* does not and cannot establish that construction was put

up during the relevant time. The appellant relied upon the record to say that an inspection was carried on by the MCD in 1999 when a building existed on the site. This factor is *per se* irrelevant because the construction ought to have been made within the relevant time. Furthermore, there is nothing on record to show that DSIIDC or any other competent authority or official had sanctioned the plan in any manner known to law.

13. This Court is of the opinion that relief was rightly not granted in this much litigated case by the learned Single Judge. For the above reasons, the appeal is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 01, 2018

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