



\$~31

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

%

Date of Decision: 10.03.2025+ **W.P.(C) 11609/2019 & CM Appl.47701/2019****M/S CHAWLA INDUSTRIES AND ORS.Petitioners****Through: Mr. Manik Dogra, Sr. Adv. with Mr.
Sanjeev Panda, Adv.****versus****DELHI STATE INDUSTRIAL DEVELOPMENT
CORPORATION****.....Respondent****Through: Mr. Adv. [appearance not given]****CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The grievance of the Petitioners as articulated in the present Petition is set out in the prayers which read as follows:

“a) issue appropriate writ, order or directions in the nature of mandamus to the respondent thereby directing the respondent to revoke the Cancellation Order dated November, 2018 of the Industrial Plot No. 57, Pocket - M, Sector - 5, Bawana, DSIDC Industrial Complex, Delhi allotted to the petitioners;

b) issue any other appropriate writ, order or direction to the respondent as this Hon'ble Court may deem fit and proper.”

2. Learned Senior Counsel for the Petitioners submit that the impugned cancellation order dated 19.11.2018 [hereinafter referred to as “Cancellation Order”] has been issued by the Respondent cancelling a perpetual lease deed which was executed by the Respondent on 24.06.2011 in favour of the Petitioners [hereinafter referred to as “Lease Deed”] without following the principles of natural justice.



2.1 Learned Senior Counsel for the Petitioners submit that the Cancellation Order was never served on the Petitioners nor did the Petitioners receive any show cause notice prior to the Cancellation Order. Thus, it is submitted that the Cancellation Order(s) is bad in law.

2.2 Learned Senior Counsel for the Petitioners draws attention of the Court to an Order dated 18.11.2019 passed by a Coordinate Bench of this Court, wherein it is stated that the Petitioner is ready and willing to pay the compensation if at all may be demanded by the Respondent for reinstatement of the Lease Deed.

3. Learned Counsel for the Respondent submits that the affidavit in terms of order dated 25.02.2025 has since been filed on 07.03.2025. The despatch register has also been brought to the Court today. The affidavit is not on record. On steps being taken, let the same be brought on record. A hard copy of the same has been handed across to the Court today.

3.1 Learned Counsel for the Respondent fairly concedes that although the original despatch register is available, the actual registered post receipts cannot be produced, as is required in terms of the Lease Deed.

4. Learned Senior Counsel for the Petitioners submits that given the admission of the Respondent, the impugned Cancellation Order cannot be sustained.

5. It is apposite to briefly set out the undisputed facts in the present case. The Petitioners had applied for an industrial plot under a relocation scheme of the Respondent. The perpetual Lease Deed was executed by the



Respondent in favour of the Petitioners on 24.06.2011. On 22.02.2011, the Petitioners were informed that no construction could be carried out at the industrial plot site. The Petitioners, thereafter, filed a Petition before this Court being W.P.(C) 9725/2019 captioned *Sita Chawla & Ors v. Delhi State Industrial Development Corporation* [hereinafter referred to as “First Writ Petition”]. During the proceedings of the First Writ Petition, the Petitioners were handed over the cancellation orders dated 16.11.2018 and 19.11.2018 which set out that the Lease Deed had been cancelled by the Respondent. The First Writ Petition was thereafter withdrawn by the Petitioners with liberty to challenge the orders cancelling the allotment of the Petitioners and the present Petition was filed.

6. It is the case of the Petitioners that the Cancellation Order was not served upon the Petitioners, and that the Petitioners got to know about the same when it was produced before the Court in the First Writ Petition.

7. The Petitioners have relied upon the Lease Deed to submit that the Respondent has not complied with the terms of the Lease Deed. It is stated that in terms of Clause IV, no forfeiture re-entry or re-entry will be affected until the lessee has been served a notice in writing specifying the breach and also giving an opportunity to the lessee to remedy the breach if such breach is capable of remedy. Reliance is also placed on Clause VII of the Lease Deed, which states that all notices, orders, directions, consent or approvals are to be given in writing and are to be delivered or sent by post to the residence, office or place of business of the lessee. The relevant extract of Clauses is set out below:

“IV. No forfeiture or re-entry shall be effected until the Lessor has served



on the Lessee a notice in writing

a) **Specifying the particular breach complained of; and**

b) **if the breach is capable of remedy, requiring the Lessee to remedy the breach.** And the Lessee fails within such reasonable time as may be mentioned in the notice to remedy the breach if it is capable of remedy; and in the event of forfeiture or re-entry the Lessor may in his discretion, relieve against forfeiture on such terms and conditions as he thinks proper.

Nothing in this clause shall apply to forfeiture or re-entry.

(a) For breach of covenants and conditions relating to sub-division or amalgamation erection and completion of building within the time provided and transfer of the Industrial plot as mentioned in Clause II, or

(b) In case this lease has been obtained by suppression of any fact, mis-statement, Mis-representation or fraud.

xxx

xxx

xxx

VII. All notices, orders, directions, consents or approvals to be given under this lease shall be in writing and shall be signed by such officer as may be authorised by the Lt. Governor and shall be considered as duly served upon the Lessee or any person claiming any right to the industrial plot if the same shall have been affixed to any building or erection whether temporary or otherwise upon the industrial plot Or shall have been **delivered at or sent by post to the then residence, office or place of business or usual or last known residence, office or place of the business of the Lessee or such person.**”

[Emphasis Supplied]

8. As can be seen from the above, it is requisite on the Respondent to serve a notice in writing on a lessee in the event of a breach. The notice in writing is also required to be delivered or sent by post to the current or last known residence, office, or place of business of the lessee.

9. It is the case of the Respondent that a show cause notice was sent on 02.11.2017, and thereafter, the Cancellation Order was issued in respect of the Lease Deed. Both these documents have been placed on record by the



Respondent.

10. A perusal of the record reflects that the show cause notice dated 02.11.2017 was sent to an address which is different from the address of the Petitioner and it is also different from the address where the Cancellation Order was sent. The record also reflects that there are two cancellation orders, one is, order no. DSIIDC/RL/Apl. No. 19642/2018/2213 dated 16.11.2018 and the second is, order no. DSIIDC/RL/Apl. No. 19642/2018 dated 19.11.2018. While one of the orders is signed, the other is not, however, the contents are *para materia* to each other.

11. The affidavit filed by the Respondent also reflects that the proof of service of either the show cause notice or the Cancellation Order could not be located. It further states that the Cancellation Order was dispatched by a registered post. It is apposite to extract paragraphs 3, 4 and 5 of the affidavit dated 07.03.2025 filed by the Respondent which is set out below:

“3. I state that a show cause notice dated 02.11.2017 was issued by the Respondent. However, the Respondent after all the efforts have not been able to locate the proof of service of the said Show Cause Notice dated 02.11.2017. However, it reiterated that after issuance of the show cause notice dated 02.11.2017 to the Petitioner, the Respondent had also given press release dated 17.12.2017 in Hindi and English cause notices dated 02.11.2017 were issued to those allottees who have failed to carry out construction within the allowed period. Vide the said press release, the allottees were duly informed that show cause notice dated 02.11.2017 has already been issued by DSIIDC. The Petitioner was again called upon to submit the proof of construction of the factory building latest by 15.01.2018. It was made clear that, in case no proof of construction is provided, the allotment of plot/lease deed will be cancelled.

4. That since the Petitioner failed to reply to the said Show Cause Notice dated 02.11.2017, the Respondent vide order dated 16.11.2018 cancelled the allotment of the Petitioner and called upon the Petitioner to hand over the physical possession of the said plot to the Estate Manager/Executive Engineer.



5. The said cancellation order was sent to the Petitioner through Registered Post as can be seen from the Dispatch Register of the Respondent Corporation. Copy of the Dispatch Register is attached as Document-A.

[Emphasis Supplied]

12. As stated above, it is the case of the Petitioners that the Cancellation Order was never received. Clause IV of the Lease Deed provide for an opportunity to be granted to the party in breach of the Lease Deed to make good the breach. The show cause notice relied upon by the Respondent was concededly never delivered on the Petitioners given the fact that it was sent to an address which did not belong to the Petitioners. No proof of service of such show cause notice has also been produced. The Petitioners thus had no opportunity to rectify or remedy the breach that the Respondent complained of. In view thereof, the Cancellation Order was thus issued without an appropriate show cause notice and, as stated above, while the Petitioners have disputed receiving any Cancellation Order, the Respondent has contended that it has been served.

13. The Respondent being an instrumentality of the State has an obligation to ensure compliance of the principles of natural justice to enable the parties to respond. The failure of the Respondent to ensure service of the show cause notice and the Cancellation Order cannot be countenanced.

13.1. A Coordinate Bench of this Court in the case of ***SP Kureel v. Delhi Development Authority***¹, while relying on the judgement passed in the case of ***Dhani Ram Kapoor v. DDA***², has held that show cause notice has to be

¹ 2013 SCC OnLine Del 4504

² 1997 SCC OnLine Del 1053



issued before taking the drastic action of the cancellation of the flat/allotment, and principles of natural justice have to be followed. The relevant extract of the ***SP Kureel case*** is reproduced below:

“9. In Dhani Ram Kapoor this Court held as under:-

“3. Mr. Saini, learned counsel appearing for the petitioner, has contended that the amount raising from Rs. 1,29,400/- to Rs. 2,15,600/- in the facts and circumstances of the case is illegal and arbitrary. Mr. Saini has further contended that the cancellation of the flat by the respondent Authority after allotment without giving an opportunity of being heard, is totally arbitrary and illegal, more so, when the petitioner had deposited the full amount as demanded by the respondent and was also paying regular instalments. Mr. Saini has also contended that the respondent adopted double standards in treating the petitioner as in other cases where even the amount demanded by the respondent has not been deposited, the respondent Authority had issued show cause notices to them whereas in the case of the petitioner, even after the amount has been deposited and monthly instalments for two months have also been paid, without giving any notice the respondent has cancelled the allotment of the petitioner, which is against the principles of natural justice. Learned counsel has contended that even the cancellation order was not communicated to the petitioner. Mr. Saini in support of his contentions has cited the case of Kanta Raju v. DDA C.W.P. No. 587/1990 decided on 18.12.1990, in which it is held that:-

“.....When a flat is allocated by a State Authority to a private citizen then that private citizen, like the petitioner, gets an interest therein. If the State authority wants to cancel such allotment or allocation, then the principles of natural justice will come into play. It will be contrary to the principles of natural justice if an allotment made is sought to be cancelled without any show cause notice.”

xxx

xxx

xxx

11. Thus, on the basis of law laid down in Dhani Ram Kapoor, the DDA was required to follow the principles of natural justice and to issue a show cause notice before taking the drastic action of the cancellation of the flat.

[Emphasis Supplied]

13.2. In addition, a Coordinate Bench of this Court in the case of ***Wills***



*John v. DDA*³, while relying on the *SP Kureel case* has held that cancelling the allotment without following the principles of natural justice is bad in law and cannot be sustained. The relevant extract of the *Wills John case* is reproduced below:

“30. Hence, the impugned action of the respondent cancelling the allotment of the petitioner without following the principles of natural justice is bad in law and cannot be sustained. In my opinion, the petition needs to be allowed on this ground alone, however, I am also proceeding to decide the case on merits.”

[Emphasis Supplied]

14. In view of the foregoing, the cancellation orders dated 16.11.2018 and 19.11.2018 and the show cause notice dated 02.11.2017 are set aside. The Respondent is however not precluded from taking appropriate steps in accordance with law, and in terms of the Lease Deed, with respect to the breaches complained of by the Respondent. All rights and contentions of the parties are left open in this regard.

15. The Petition and pending Application stand disposed of, in the foregoing terms.

16. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MARCH 10, 2025/r/ ha

[Click here to check corrigendum, if any](#)

³ 2023 SCC OnLine Del 6782