(2008) 04 SC CK 0155

Supreme Court of India

Case No: Civil Appeal No. 5514 of 2001

New Okhla Industrial Development Authority and Another	APPELLANT
Vs	
Arvind Sonekar	RESPONDENT

Date of Decision: April 10, 2008

Acts Referred:

- Monopolies and Restrictive Trade Practices Act, 1969 - Section 10, 13, 2, 36A

Citation: AIR 2008 SC 1983 : (2008) AIRSCW 2833 : (2008) 2 CompLJ 466 : (2008) 1 CTLJ 395 : (2008) 6 SCALE 229 : (2008) 11 SCC 31 : (2008) 84 SCL 217 : (2008) 2 Supreme 836

Hon'ble Judges: Tarun Chatterjee, J; H. S. Bedi, J

Bench: Division Bench

Advocate: Rabindra Kumar, for the Appellant; L.K. Pandey, for the Respondent

Final Decision: Allowed

Judgement

Tarun Chatterjee, J.

This appeal by way of special leave is filed against an order dated 27th of March, 2001 passed by the Monopolies and Restrictive Trade Practices Commission (in short ''the MRTP Commission'') in Restrictive Trade Practices Enquiry No. 82/97 by which the MRTP Commission has directed the appellants (hereinafter referred to as ''the Noida Authorities'') to refund to the respondent the excess amount charged from him for allotment of a plot within 6 months from the date of the order passed by the MRTP Commission. Feeling aggrieved, the Noida Authorites have come up by way of a special leave petition, which on grant of leave was heard in the presence of the learned Counsel for the parties.

2. In 1993, applications for registration for allotment of plots to institutions including Nursing Homes and Hospitals were invited by a general scheme by the Noida Authorities. In the scheme itself, it was specifically mentioned that the rate

shall be the one as prevailing at the time of allotment. The registration money to be deposited along with the application in case of a Nursing Home was Rs. 1,00,000/-. Pursuant to such advertisement for allotment of plots by the Noida authorities, the respondent submitted an application for allotment along with the registration money. By a letter dated 21st of December, 1993 issued by the Noida authorities to the respondent, the respondent was required to deposit certain amount within seven days so that steps could be taken to make the allotment. However, the respondent made no payment pursuant to the letter dated 21st of December, 1993. The Town Planning Department of the Noida authorities, while scrutinizing the proposed site did not clear the same and accordingly, by a letter dated 13th of January, 1995, the entire amount deposited as registration money with the Noida authorities was refunded. It is an admitted position that the refund was accepted by the respondent by encashing the account payee cheque without any reservation.

3. On 20th of April, 1996, on the basis of a request made by the respondent in his letter dated 29th of January, 1996, a fresh allotment letter was issued and in this allotment letter, it was specifically made clear that the allotment rate would be Rs. 3600/- per sq. mtr. From this letter, it would also be clear that the allotment money was required to be deposited within sixty days and the balance 80% in sixteen equal half yearly installments together with interest. The respondent by his letter dated 6th of June, 1996 deposited 20% of the allotment money of Rs. 3,61,800/- by a pay order. This deposit confirmed that the rate of allotment was Rs. 3600/- per sq. mtr., i.e. the rate offered by the Noida authorities stood accepted. On 16th of August, 1996, the respondent submitted an affidavit before the Noida authorities stating, inter alia, as under:

(i) That the allotment of Nursing Home Plot No. 243, Block A, Sector 31 has been made in favour of the respondent for Rs. 18,09,000/- only. Out of the said amount, 20% had been deposited and the respondent had to deposit the balance 80% in sixteen half yearly installments.

(ii) Omitted (because not required in this case).

(iii) That the respondent had read and understood all the terms and conditions of allotment and the respondent shall comply with the terms and conditions of allotment.

A plain reading of this undertaking filed by way of an affidavit before the Noida authorities would indicate that the respondent had accepted the terms and conditions of the offer letter, including the condition regarding the rate at which the allotment was to be made.

4. After the affidavit was filed by the respondent, on 17th of August, 1996, a lease deed was executed by the Noida authorities in favour of the respondent. This lease deed also contained the terms and conditions of allotment, more particularly the rate of the land, i.e. Rs. 3600/- per sq. mtr. After executing the lease deed, accepting

the rate of the land at Rs. 3600/- per sq. mtr. and depositing the consideration money at the aforesaid rate with the Noida authorities, a petition was filed before the MRTP Commission by the respondent against the Noida authorities under Sections 10(a)(i)(1), 36A and 13 of the MRTP Act praying for instituting an enquiry and thereafter passing the cease and desist order and demanding the excess amount paid by him. In the said petition, the respondent had also alleged that he was discriminated inasmuch as one Dr. Bhardwaj who was allotted a bigger plot in 1997 was charged the rate that prevailed in the year 1993. Therefore, the respondent had prayed that the benefit of the old rate i.e. Rs. 2750/- per sq.mtr. should be extended to the respondent also as it was done in the case of Dr. BhardwaJ.

5. An affidavit of evidence was filed by the Noida authorities in which it was brought on record that as per the terms of the scheme, the rate applicable was the one prevailing at the time of issuance of the allotment. In the affidavit of evidence, it was alleged by the Noida authorities that the letter dated 21st of December, 1993 was only a proposal for allotment and that the said letter could not be treated as an allotment letter. It was further alleged that it was only in April 1996 that the allotment was first made by them. Accordingly, they alleged that the question of applying the old rate i.e. the rate of the year 1993 could not arise at all. The MRTP Commission by the impugned order held that the action of the Noida authorities directing the respondent to pay at the rate prevailing in the year 1996 was discriminatory for the simple reason that different rates were charged from the applicants who were similarly placed and deserved similar treatment. Therefore, it was held that this action of the Noida authorities was a "restrictive trade practice" within the meaning of Section 2(o)(ii) of the MRTP Act. It was further held by the MRTP Commission that the offer of the Noida authorities to allot a plot in the year 1993 became a concluded contract between the Noida authorities and the respondent as the respondent had accepted the offer of the Noida Authorities and in pursuance thereof, an amount of Rs. 1,00,000/- was deposited with them within the time specified in the offer letter. Accordingly, it was held that the same, being a concluded contract, could not be terminated unilaterally and without the consent of the other party to the contract. It was further held by the MRTP Commission in the impugned order that in the facts and circumstances of the case, the doctrine of legitimate expectation should be brought into force because the respondent had legitimate expectation from the Noida authorities to implement the public policy laid down for the allotment of sites for nursing homes and clinic fairly and justly and accordingly, the action of the Noida authorites had fallen within the meaning of "unfair trade practices" as provided in Section 36A of the MRTP Act. Accordingly, the Noida authorities were directed by the MRTP Commission to refund the excess amount paid by the respondent, that is to say the difference of money between Rs. 3600/- per sq.mtr. and Rs. 2750/- per sq.mtr., to him. It is this order of the MRTP Commission, which is under challenge before us.

6. Having heard the learned Counsel for the parties and after examining the impugned order of the MRTP Commission and other materials on record, we are unable to sustain the impugned order of the MRTP Commission for the reasons stated hereinafter. It is true that in the year 1993, a letter was issued by the Noida authorities, offering a plot of land for starting a nursing home, to the respondent in respect of which the consideration money was fixed at Rs. 2750/- per sq.mtr. It is an admitted position that this offer of the Noida authorities was not accepted by the respondent as we find from the record that the amount under the offer letter was not deposited by the respondent. On the other hand, the Noida authorities also could not allot the plot offered in the said letter of 1993 and the amount of Rs. 1,00,000/-, which was deposited by the respondent with them was refunded by account payee cheque and the same was duly encashed by the respondent without raising any objection. Therefore, the respondent, having accepted the refunded money without raising any objection could not turn around and say that the offer letter of 1993 was an allotment letter and therefore, it was a concluded contract between the parties. Furthermore, a perusal of the said letter would not show that it was an allotment letter. In our view, by this letter, a plot of land was only offered to the respondent and there is nothing on record to show that the said offer letter had culminated into an allotment letter. Therefore, in view of the discussions made herein above, it is difficult to conceive that the earlier offer letter @ Rs. 2750/- per sq. mtr. had culminated into a concluded contract and the lease deed ought to have been executed @ Rs. 2750/- per sq.mtr. as that was the offer of the Noida authorites in the year 1993. That apart, after accepting the rate of the land at Rs. 3600/- per sq. mtr. and executing the lease deed at the accepted rate and after having already paid in terms of the offer letter, it is not open to the respondent now to allege that in view of the earlier concluded contract, he was liable to pay @ Rs. 2750/- per sq. mtr. in respect of the plot in question and therefore, the Noida authorities were liable to refund the excess amount paid by him. It will not be out of place to mention here that in the scheme itself, one of the conditions was that the rate would be charged at the prevailing market price on the date of allotment of the plot in question which, in this case was done only in the month of April, 1996 and not in the month of December, 1993. In view of the foregoing reasons, it would be clear that the offer letter of 1993 for allotment of a plot made by the Noida authorites could not be treated as a concluded contract and therefore, it was not at all an allotment letter.

7. We are also of the view that the question of acceptance of the proposal of allotment did not arise because the entire money which was deposited with the Noida authorities in the year 1993 was admittedly, as noted herein earlier, refunded by them and the same was also encashed by the respondent without raising any objection. Secondly, the allotment that was made in the year 1996 was @ Rs. 3600/- per sq.mtr. which was accepted by the respondent on deposit of the money. In our view, since the contract was concluded by execution of the lease deed from which it appears that the rate was to be given as per the market value of the plot on the date

of allotment, it was not open to the respondent to approach the MRTP Commission and say that the allotment must be made at the old rate, i.e. @ Rs. 2750/- per sq.mtr. and not @ Rs. 3600/- per sq. mtr. We are, therefore, unable to accept the impugned order of the MRTP Commission on this count.

8. A further submission was made by the learned Counsel for the respondent that the respondent was discriminated against because one Dr. Bhardwaj was allotted a plot of 500 sq. mtr. in 1997 @ Rs. 2750/- per sq. mtr. which rate was also offered by the Noida authorities to the respondent in the year 1993. In our view, this submission of the respondent cannot also be accepted. In the year 1997, Dr. Bhardwaj was given a bigger plot of 800 sq.mtr. in place of the old plot of 500 sq. mtr. at the same rate of Rs. 2750/- sq.mtr. but it is also an admitted position that for the excess area of 300 sq. mtrs., the market rate on the date of allotment was charged from him i.e. Rs. 3600/- per sq. mtr. was charged for the excess area of 300 sq. mtrs. That apart, it appears from the record that the fact of discrimination to the respondent in respect of allotment of plot for the Nursing Home was not even raised in evidence by the respondent. Such being the position and in view of the concluded contract after execution of the lease deed, it must be held that the respondent had agreed to pay at the rate prevailing on the date of offering the plot in question i.e. @ Rs. 3600/- per sq.mtr. and in fact the respondent had even deposited the amount @ Rs. 3600/- per sq.mtr.

9. In 260258 , this Court had taken into consideration an affidavit filed by the respondent and observed at Paragraph 14 as follows:

It is to be noted that the respondent herself had accepted in the undertaking that she accepted the allotment of the house and undertook to abide by all the terms and conditions of the allotment letter. It is not in dispute that in the allotment letter the figure as demanded has been reflected. That being so, the respondent was liable to pay the amount as stipulated in the allotment letter.

(Emphasis supplied)

In so far as the present case is concerned, as noted herein earlier, there is no dispute that the respondent had in fact filed an affidavit clearly accepting the amount shown as the price of the plot in question and he had also given an undertaking to abide by the terms and conditions of the allotment letter. It is, therefore, not open to the respondent to claim the rate prevailing in the year 1993.

10. Before parting with this judgment, we may deal with the doctrine of legitimate expectation as was the ground taken by the MRTP Commission to allow the petition of the respondent. According to the respondent, this doctrine comes into play because the respondent had legitimately expected the Noida authorities to implement the public policy laid down for the allotment of sites for Nursing Homes and Clinics fairly and justly. In our view, the doctrine of legitimate expectation, in the facts and circumstances of the present case, cannot at all be applicable. It is not in

dispute that the plot has been allotted by the Noida authorities to implement the public policy laid down for the allotment of sites for starting nursing homes and clinics. The only question is that to implement such policy, what should be the rate at which the allotment of the plot should be made. In view of the discussions made herein above, we do not feel that the Noida authorities acted either unjustly or in an unfair manner by charging the rate of Rs. 3600/- per sq. mtrs. Therefore, we do not find any ground on which we can hold that this doctrine is at all applicable to the facts of this case.

11. For the reasons aforesaid, we are unable to sustain the order of the MRTP Commission, which was clearly in error in granting relief to the respondent. Accordingly, the impugned order of the MRTP Commission is set aside and the petition filed before the MRTP Commission by the respondent stands rejected. The appeal is thus allowed. There will be no order as to costs.