

(2013) 07 DEL CK 0574

Delhi High Court

Case No: LPA 3 of 2013

Delhi State Industrial and
Infrastructure Development
Corporation Limited

APPELLANT

Vs

Ashok Kumar Madan

RESPONDENT

Date of Decision: July 24, 2013

Citation: (2013) 7 AD 590 : (2013) 202 DLT 717

Hon'ble Judges: Badar Durrez Ahmed, Acting C.J.; Vibhu Bakhru, J

Bench: Division Bench

Advocate: Revika Arora, for the Appellant; R.S. Kela, for the Respondent

Final Decision: Dismissed

Judgement

Vibhu Bakhru, J.

This is an appeal filed by the Delhi State Industrial & Infrastructure Development Corporation Limited against the order dated 03.07.2012 passed by a learned Single Judge of this Court in Writ Petition being W.P.(C) 8478/2010. The learned Single Judge allowed the writ petition filed by the respondent and quashed the letter dated 30.01.2008 issued by the appellant canceling the allotment of a plot in favour of the respondent. The respondent was engaged in the business of manufacturing photo albums at the premises bearing no. 153, Rishi Nagar, Rani Bagh, Delhi-110034. This premises was located in a residential/non-conforming area.

2. In 1996, the Delhi Government introduced a scheme for relocation of industries carrying on business in non-conforming areas or by misusing residential properties. The respondent, who was running a commercial/industrial establishment in a residential premises, made an application dated 23.12.1996 for an allotment of a plot under the relocation scheme and also furnished a sum of Rs. 60,000/- along with the application. The application made by the petitioner was accepted and the respondent was found to be eligible for allotment of a plot measuring 150 square meters. The appellant issued a demand letter dated 25.04.2000 informing the

respondent that the tentative cost of a plot of measuring 150 square meters would be Rs. 4,50,000/- calculated at the rate of Rs. 3,000/- per square meter. The respondent was also required to make a deposit of 30% of such tentative cost after deducting the earnest money paid along with the application. In accordance with this demand, the respondent was required to pay a sum of Rs. 75,000/- which was duly deposited by the respondent on 9.05.2000. Thus, the respondent deposited an aggregate of 30% of the cost of a plot as indicated by the appellant.

3. A draw of lots was held on 12.10.2000. The respondent was successful in the draw of lots and the appellant issued the allotment letter dated 23.10.2000 to the respondent allotting a plot measuring 150 square meter bearing no. 57, Pocket-I, Sector-2, Bawana Industrial Area Delhi. The appellant also informed the respondent that cost of the plot stood revised from Rs. 3,000/- per square meter to Rs. 4,200/- per square meter and the respondent was required to deposit 50% of the revised estimated cost which amounted to Rs. 3,15,000/- within a period of three months. The date for depositing the requisite amount was subsequently extended to 31.03.2001 pursuant to an order dated 24.01.2001 passed by the Supreme Court of India in WP (C) 4677/1985 titled as M.C. Mehta v. Union of India.

4. Since the respondent had already deposited Rs. 1,35,000/-, the respondent was required to deposit a further sum of Rs. 1,80,000/- to complete the payment of 50% of the cost of the plot. The respondent failed to make the required deposit within the specified time. The appellant sent a letter dated 24.07.2001 calling upon the respondent to furnish the proof of payment of 50% of the cost of plot. After receipt of the letter dated 24.07.2001, the respondent deposited a sum of Rs. 1,80,000/- on 27.11.2001. Although, admittedly there has been a delay on the part of the respondent in making the payment but it is not in dispute that the respondent had deposited 50% of the cost of the plot amounting to Rs. 3,15,000/- as on 27.11.2001. It has been asserted by the respondent that he did not receive any further communication from the appellant with regard to the balance payment. However, in the year 2004, the respondent approached the appellant and an officer of the appellant corporation calculated the amount required to be paid by the respondent which comprised of the balance payment of 50% of the cost of the plot as well as the interest for the delay in making the payments. It is not disputed that an officer of the appellant company prepared the challan calculating the amount payable by the respondent which was computed as Rs. 4,27,117/- which included Rs. 1,24,368/- as interest for the period of delay in making the deposit. This amount was admittedly deposited by the respondent on 27.07.2004. The respondent has, thus, paid an aggregate sum of Rs. 7,42,117/- which includes the cost of the plot allotted as well as interest on the delayed payment.

5. The respondent received no communication thereafter from the appellant corporation indicating any proposed action to cancel the allotment of the plot. Admittedly no show cause notice was issued by the appellant in this regard. On the

contrary, the respondent received a communication dated 14.11.2006 demanding certain documents to facilitate handing over the possession of the plot to the petitioner. The said letter dated is extracted hereunder:-

M/s. Stickline Aluminium Indus.

153, Rishi Nagar, Rani Bagh, DELHI - 9.

Sub: Possession of the plot under Relocation Scheme

Sir,

Kindly refer to the above, the following documents, papers urgently required for processing your case for handing over the possession letter for the plot allotted to you:

1. Copies of payments/challans deposited with DSIDC.
2. Copy of the allotment letter.
3. Submit "legal documents" which includes indemnity Bond, Affidavits and Undertakings. The matter of these documents could be obtained from our Website address: www.dsidc.org.
4. NOC/No Due Certificate from Bank (in new format) in case you have taken loan against EMD from DSC bank.
5. Proof of EMD/Acknowledgment Receipt of 1996.
6. Affidavit regarding clarification of land use as mentioned by you in the original application.
7. Attested copy of the Ration Card.
8. No default certificate from DFC.
9. Deposit Rs. _____ towards 10% extra for corner plot.
10. Deposit Rs. _____ towards interest on delayed payment.
11. Bring MCL/STRC IN original for verification along with its photocopies.

Yours faithfully,

sd/-

(S.C. DUBEY)

MANAGER (RL)

6. The documents as demanded by the appellant were furnished by the respondent under cover of his letter dated 16.12.2006. The appellant thereafter, issued a letter dated 30.01.2008 informing the respondent that since he had failed to deposit 50%

of the cost of the plot amounting to Rs. 3,15,000/- before 31.03.2001, the allotment of plot in his favour stands cancelled.

7. The respondent made several representations against cancellation of the plot in his favour but the same were in vain. The respondent, thus preferred a writ petition in this Court.

8. The learned Single Judge examined the matter and concluded as under:-

As it transpires, in this case, the crucial aspect is whether the respondent gave the petitioner to believe that they had adopted a relaxed norm in his favour. In this regard, I have already referred to the fact that the payments from the petitioner were accepted as late as on 24.07.2004, based on a representation of the officer of the respondent. It is not the case of the respondent that the officer colluded with the petitioner. On the other hand, it is the case of the respondent that the officer concerned committed a mistake. I fail to understand that if it was a mistake committed by its officer, why was it that the respondent did not seek to correct its course, for a period of four years and that, it was only after a delay of four years that it proceeded to issue a letter of cancellation dated 30.01.2008.

The fact that the petitioner was out of pocket for a period of four years, and that it had also paid interest on the delayed payment, which was accepted by the respondent, turns the equity in his favour. The respondent appears to have taken no action at its end, either against the officer concerned or, for return of money between the period 2004-2008.

Learned counsel for the respondent says that the amount along with interest was sought to be refunded vide cheque dated 07.05.2010, which was returned by the petitioner.

In my view, in the absence of any cogent or reasonable explanation as to why the respondent chose to enjoy the money of the petitioner for those crucial period of 4 years without any recourse to him, can safely lead to the conclusion that the respondent chose to adopt the action of Mr. R.K. Bhatia.

In these circumstances, I am of the opinion that the cancellation letter dated 30.01.2008 deserves to be quashed.

9. We are in agreement with the manner in which the learned Single Judge has balanced equities between parties. We find no infirmity with the conclusion of the learned Single Judge that the conduct of the appellant in accepting the balance payment with interest and retaining the same for a considerable period of time did lead the respondent to believe that the appellant had relaxed the time period for making payment in favour of the respondent. We may also add that the letter dated 14.11.2006 sent by the appellant also indicates that the appellant had countenanced the delay on the part of respondent. Admittedly the challan for making the payment along with interest had been prepared by an officer of the appellant and there was

no allegation that the concerned officer of the appellant had colluded with the respondent or acted in a mala fide manner. The explanation given by the appellant that the concerned officer had committed a mistake neither impressed the learned Single Judge nor do we find the same acceptable as the appellant had continued to retain the funds deposited by the respondent for about six years and had made no attempts to return the same till 07.05.2010.

10. For the reasons stated above, we dismiss the present appeal. The parties are left to bear their own costs.