Hari Parkash Bansal Vs. Delhi State Industrial and Infrastructure Developme

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Court : Delhi

Decided On : Aug-04-2014

Judge : Vibhu Bakhru

Appellant : Hari Parkash Bansal

Respondent : Delhi State Industrial and Infrastructure Developme

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

04. 08.2014 W.P.(C) 1251/2010 & CM No.2630/2010 HARI PARKASH BANSAL ..... Petitioner versus DELHI STATE INDUSTRIAL & INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED & ANR. ..... Respondents Advocates who appeared in this case: For the Petitioner : Mr K.C. Mittal and Mr Vishal Bansal. For the Respondents : Ms Renuka Arora. Mr Devendra Kumar and Mr Anjum Javed for R-2. CORAM:HONBLE MR JUSTICE VIBHU BAKHRU

JUDGMENT
VIBHU BAKHRU, J1 The present petition has been filed by the petitioner seeking direction against the respondents to allot an alternate industrial plot to the petitioner under the relocation scheme in lieu of closure of his unit.

2. Briefly stated the relevant facts of the case are as under:

2. 1 The petitioner was carrying out the work of oil expeller and operating a mill, since 1980, under the name of M/s Rishi Industries. The petitioner was carrying out the said activity in a non-conforming area under a licence issued by the Municipal Corporation of Delhi which was renewed from time to time and was valid upto 31.03.1996. The Supreme Court in M.C. Mehta v. Union of India and Ors.: W.P.(C) No.4677/1985, directed that industrial units operating in non-conforming and residential areas be shifted to conforming areas in conformity with Master Plan for Delhi 200001.

3. Consequently, the industrial units existing in the non-conforming area had to cease operations. In order to facilitate shifting of industrial units from non-confroming area, the Government of NCT of Delhi floated a relocation scheme for all industrial units affected by the directions passed by the Supreme Court and respondent no.1/DSIIDC was made the implementing agency for implementing the said scheme. The respondents issued a public notice and invited applications for allotment of industrial plots. In terms of the scheme, only working units existing in the nonconfirming/residential areas prior to 19.04.1996 were eligible for allotment of sites in the conforming area and new industrial units were ineligible to be considered for such allotment.

4. The petitioner submitted an application (Application No.37231) dated 24.12.1996 along with requisite application fee to the Commissioner of Industries/ respondent No.2 for allotment of an industrial plot of approximately 400 square meters under the relocation scheme. Thereafter, by a letter dated 16.12.1998, the Commissioner of Industries requested the petitioner to show documentary evidence to prove the existence of the industrial unit prior to 19.04.1996. By a letter dated 15.02.2001, the petitioner submitted photocopy of MCD licence renewed upto 31.03.1996, as well as the electricity bills.

5. As the petitioners application was not being considered favourably, the petitioner preferred an appeal before the Appeal Committee (Appeal No.642 dated 15.02.2002). By a letter dated 06.02.2002, the petitioner was called upon to appear before the Appeal Committee on 26.02.2002 along with the requisite documents. However, the petitioner appeared before the Appeal Committee on

28.02.2002 and submitted the MCD license renewed upto 31.03.1996 and the electricity bills. The Appeal Committee rejected the documents submitted by the petitioner after considering the fact that, the petitioner had the license, however, the unit was not functional as the electricity bill produced by the petitioner indicated that the premise was locked. The Appeal Committee, however, granted 15 days to the petitioner to submit any such document that proved that the power consumption was exceeding the limit of 5 K.W. and unit was functional prior to 19.04.96. The petitioner failed to appear before the Appeal Committee and the representation of the petitioner was rejected on 02.07.2002, thereafter, the earnest money was also refunded.

6. The petitioner made a claim that the petitioner was not intimated about the rejection of the application and came to know only in the year 2004 and made various representations to the Commissioner of Industries as well as to Minister of Industries, Government of NCT of Delhi. Subsequently, the Government of NCT of Delhi in a Cabinet Decision No.1087 dated 26.06.2006 also decided to consider units at Local Commercial area for the allotment of alternative plot.

7. The petitioner then made an application under Right to Information Act, 2005 as to the complete file of his application. In response to the said application, the petitioner received a letter dated 26.07.2007 informing the petitioner that its application was recommended for rejection due to the applicant being in a Local commercial area. The relevant extract of the said response is quoted below:

Application No.37231 was recommended for rejection due to it being in Local commercial area and the file was sent to SDIIDC for refund of earnest money as per record of computer cell of this vide letter No.ADI/22/CI/REFUND/471Dt. 25.

7.

2002. As per website of DSIIDC, the earnest money has already been refunded on 16.08.2002. Since your relocation file is with DSIIDC, the desired documents may be obtained from DSIIDC

8. The petitioner then filed another application under RTI Act, seeking the complete file from DSIIDC. After perusal of the file, the petitioner found out that the application had been rejected as he had failed to submit documents to prove that power demand was exceeding 5 K.W. Aggrieved by the rejection of application, the petitioner has preferred this writ petition.

9. It is contended by the learned counsel for the petitioner that the petitioner was not aware of the rejection of his application at the material time. It is also asserted that the petitioner had no knowledge of its earnest money being refunded as the same was refunded directly to the Bank. It is stated that the petitioner continued to make representations and copies of certain representations made in the year 2004 have also been placed on record, however, the petitioner did not receive any satisfactory response to the said representations. Finally, on 19.07.2007, the petitioner applied for the complete file relating to its application and became aware about the reasons for the rejection of the application from the letter dated 26.07.2007 received in response thereto.

10. The learned counsel for the petitioner submitted that the file obtained by the petitioner subsequently, indicated that Appeal Committee had rejected petitioners application on account of the petitioner failing to provide documents to prove that the petitioner was consuming power exceeding 5 K.W.

11. The learned counsel argued that there was a discrepancy between the reasons for rejection communicated in response to his RTI application in 2007 and that as indicated in the file. Whereas the reply received from the Office of Commissioner of Industries indicated that petitioners application was rejected due to it being in a local commercial area. The file obtained by the petitioner subsequently, indicated that the petitioners appeal had been rejected as the Appeal Committee had presumed the petitioners unit to be non-functional, because the petitioner had failed to produce documents to prove that it was drawing power in excess of 5K.W.

12. The learned counsel also submitted that on 26.06.2006, the Cabinet had decided that even applicants having unit in a local commercial area would be available for allotment. He submitted that since the petitioners application had

been rejected only on the ground that the unit was in a local commercial area, the rejection was liable to be set aside because the Cabinet had decided on 26.06.2006, that units in a local commercial area were also eligible for being considered for alternative plots in the conforming area. The learned counsel relied upon the decision of this Court in Rajinder Prasad Guta v. GNCT and Ors.:

2013. IX AD (Del.) 354, whereby this Court had extended the benefit of the cabinet decision to an applicant whose application had been rejected on the ground that the unit in question was located in a local commercial area.

13. The learned counsel for the respondent disputed the claim of the petitioner and submitted that there was no discrepancy between the reasons for rejection as furnished to the petitioner by letter dated 26.07.2007 and the noting of the Appeal Committee. She submitted that the Appeal Committee had rejected the petitioners application, since the petitioner had failed to prove that it was drawing power exceeding 5K.W. during the period prior to 19.04.1996 and was a functional unit prior to the said date. She stated that the reason for requiring proof of electricity consuming exceeding 5K.W. was to determine whether the unit was within the parameters prescribed for a local commercial area. Since, the petitioner failed to produce any evidence that it was drawing power in excess of 5KW, it was presumed that the petitioners unit was not violating the parameters of local commercial area and was thus excluded from being considered for an alternative plot as per the then prevailing policy. The petitioner had also been unable to prove that it was functional immediately prior to 19.04.1996 14. It was next submitted by the learned counsel for the respondent that the petition is highly belated and is barred by time as well as by latches. She stated that the petitioner was informed on 25.02.2002 that its earnest money had been refunded by a cheque dated 14.02.2002. The respondent had again, by a letter dated 21.08.2002, informed the petitioner that the amount of earnest money deposited by the petitioner had been refunded to M/s Delhi State Cooperative Bank Ltd., because the earnest money had been financed by the said bank. She further stated that the petitioners application, at his instance, was placed before the Appeal Committee and after hearing the petitioner on 28.02.2002, the Committee had granted the petitioner 15 days time to submit the requisite documents to establish that petitioners unit was

functional prior to 19.04.2006. Since the documents as required were not forthcoming and the petitioner had failed and neglected to appear after 28.02.2002, the Appeal Committee decided not to recommend the case and closed the proceedings on 02.07.2002. Subsequently, the earnest money had also been refunded and, therefore, the petitioner cannot claim ignorance of rejection of its application.

15. In my view, the question whether any discrepancy between the reasons for rejecting the petitioners application as furnished by the Office of Commissioner of Industries by the letter dated 26.07.2007 and the notings in the Appeal Committee furnished subsequently, are not material. And, as submitted by the learned counsel for the respondent the only reason for rejecting the petitioners application was that it was functioning from a local commercial area within its parameters. The controversy in the present petition can be addressed, essentially, by considering whether the petition is barred by time and latches; and if not whether the petitioner was entitled for being considered for an alternative plot in a conforming area.

16. The petitioner had applied for an alternate industrial plot/flatted factory for relocation of the industrial unit on 24.12.1996. Evidently, a sum of `1,20,000/- , computed at `300/- per sq. meter, was furnished by the petitioner as earnest money. This apparently had been paid by a bank, which had provided financial assistance to the petitioner for applying for the alternative plot. Although, the petitioner had asserted that he was not aware of the earnest money being refunded, this is not acceptable because even though the earnest money was financed through a bank, the petitioner being the borrower would be aware of the debt payable by him and in any event have constructive knowledge of his outstanding with the bank. Thus, even if it is assumed that petitioner did not receive the letters which were stated to have been sent by the respondent on 25.02.2002 and 21.08.2002, the petitioner cannot claim ignorance of the refund of earnest money.

17. The respondent had also produced the original file which contains the notings of the Appeal Committee on 28.02.2002 and 02.07.2002. The original file was produced by the respondent in court and indicates that the petitioner had attended

the hearing on 28.02.2002 and also signed the proceedings/notings on that date. In this view, the petitioner was fully aware that he was required to submit the requisite documents showing proof that he was drawing power exceeding the limit of 5K.W. and was functional prior to 19.04.2006 within a period of 15 days from the date of hearing. Concededly, the petitioner had not reverted back with these documents. In this view, the petitioner would be fully conscious that his appeal was liable to be rejected. The Appeal Committee decided to close the appeal on 02.07.2002 on account of non-appearance of the petitioner after 28.02.2002 and reject the petitioners application.

18. In the given circumstances it is apparent that the petitioner had, if not actual definitely constructive, knowledge of rejection of its application. The petitioner has filed the present petition after a lapse of almost eight years, after its application was rejected.

22. However, the petitioners case is primarily based on the cabinet decision of 26.06.2006. The petitioner is essentially seeking to be treated in the same manner as other similarly placed persons have been treated. At the material time when the petitioners application was rejected, respondents had decided not to consider applications from units situated in local commercial areas, however certain applications were accepted and certain others were pending, which were subject matter of a decision in 2006. In the given circumstances, the petitioner can always seek parity with other similarly placed units. In the given circumstances, the petition cannot be considered as delayed by eight years, as the decision to extend the benefits to units from the local commercial areas was taken only on 26.06.2006.

23. The second question to be addressed is whether the petitioner was eligible for allotment of an alternative plot under the scheme framed by the respondents. Apparently, a decision had been taken by High-Powered Project Implementation Examination Committee in its meeting held on 22.06.1999. The relevant extract of the said decision has been quoted in Rajinder Prasad Guta (supra) and reads as under:

Allotment of plots/flats to units situated in commercial areas: The Committee agreed with the suggestion that the units located in commercial areas should not be considered for allotment of alternative industrial accommodation. It was felt that the only way to identify such units was to seek the help of MCD. It was, therefore, decided that the names and addresses of eligible units and units whose cases had been kept pending for decision because of their location in commercial areas, may be supplied to MCD with the request to identify if these units are located in commercial areas or not.

24. Thus, by virtue of the decision of the Committee on 22.06.1999, the petitioner could not be considered for allotment of an alternative plot as its unit was located in a local commercial area. Thus, the decision of the Appeal Committee to reject the application of the petitioner was in conformity with the policy at the material time.

25. However, it appears that applications of certain units, who were similarly placed and functioning in the local commercial area, were not rejected and kept pending which is also apparent from the Cabinet decision taken on 26.06.2006. The said Cabinet decision is quoted below:

(i) The existing 407 eligible applicants from the residential non-conforming land be given allotment from the 664 industrial plots available with DSIDC. (ii) the remaining 257 vacant plot be allotted to applicants from local commercial areas. (iii) the balance of 82 applicants belonging to local commercial areas would be eligible for allotment in case any other industrial plots become available due to cancellation or otherwise. (iv) the eligible applicants belonging to local commercial areas who have already paid 100% cost of the allotted plot may be handed over possession of the allotted plot. (v) eligible applicants who have been successful in draw of lots and specific plot numbers were earmarked but the allotment letters have not issued to them as their existing industries were located in local commercial areas, may be issued allotment letters. (vi) as regards the 82 applicants of such reduced number as a result of (iii) above, eligible applicants belonging to local commercial areas be considered for allotment of alternative industrial plot, along with fresh applicants to be invited for relocation of industries

from local commercial areas. These applicants would, however, have the option to get the payment made by them refunded except for earnest money deposit.

26. In terms of the aforesaid Cabinet decision, even units that were functioning in local commercial areas would be considered for an allotment of alternative industrial plot along with fresh applicants to be invited for relocation of industries from the said areas. Since the petitioners application had already been rejected, the benefit of the Cabinet decision of 26.06.2006 was not extended to the petitioner and to that extent the petitioners grievance appears to be justified. There is no justifiable reason to consider other units of local commercial areas while rejecting the petitioners application.

27. This Court in Rajinder Prasad Guta (supra) had considered a case where although in the first instance the application of a similarly placed unit had been accepted, but subsequently was rejected on the ground that the said unit was functioning in a local commercial area. This Court held that by virtue of the Cabinet decision of 26.06.2006 even the units functioning in local commercial areas were eligible for allotment of alternative plots and accordingly, directed the petitioner (therein) to be considered for allotment of alternative plot along with fresh applicants. The relevant extract is quoted below:-

6. It would thus be seen that in view of the aforesaid Cabinet decision dated 26.06.2006 even those units which were situated in local commercial areas became eligible to be considered for allotment of alternative industrial plots, meaning thereby that the decision taken by the High-Powered Committee in its meeting held on 22.06.1999 got superseded by the aforesaid Cabinet decision dated 26.06.2006. Since the petitioner is running a unit situated in a local commercial area and he does not possess a valid municipal licence, he also becomes eligible to be considered for allotment of an alternative industrial plot along with 82 applicants mentioned in clause (iii) of the cabinet decision dated 26.06.2006 as also the applicants, if any, in terms of the fresh applications, if any, invited for relocation of industries from local commercial areas.

28. In the given circumstances, it is only just and equitable that the petitioner be treated at par with other applicants whose units were functioning in local

commercial areas. However, since the earnest money had been refunded to the petitioner in 2002, it would be appropriate that the petitioner deposit the earnest money along with interest @12% per annum from the date of refund till date with the respondent. Subject to the said deposit being made within a period of four weeks from today, it is directed that the petitioner shall be treated at par with 82 applicants as mentioned in para (iii) of the Cabinet decision dated 26.06.2006.

29. The petition is disposed of with the aforesaid directions. The parties are left to bear their own costs. VIBHU BAKHRU, J AUGUST04 2014 RK