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Court : Delhi

Decided On : Sep-22-2003

Reported in : 2003VIIIAD(Delhi)259; 107(2003)DLT555; 2003(70)DRJ766

Judge : Sanjay Kishan Kaul, J.

Acts : Delhi Municipal Corporation Act, 1957 - Sections 416; Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 - Rule 6; Central Excise Rules; ;Central Excise Act

Appeal No. : C.W.P. No. 1701 of 2003

Appellant : Ajit Singh

Respondent : Delhi Development Authority and anr.

Advocate for Def. : J.M. Sabharwal, Sr. Adv. and ; Bankey Bihar Sharma, Adv.

Advocate for Pet/Ap. : Pramod Ahuja and; Ruchika Ahuja, Advs

Disposition : Writ petition dismissed

Judgement :

Sanjay Kishan Kaul, J.

1. The petitioner applied in the year 1976 to the respondent Delhi Development Authority (DDA) for allotment of an industrial plot under the scheme for shifting of

industry from non-conforming areas and deposited the earnest money of Rs. 250/- . The application of the petitioner was rejected vide letter dated 22.09.1981 on account of non- deposit of 30% of the premium required for vide the advertisement. The petitioner represented against the same and thereafter filed a civil writ petition being CWP No.1212/1982 before this Court.

2. The said writ petition was disposed of on 08.08.2002 on the statement of learned senior counsel for the respondent that since no personal notice was served on the petitioner before a decision was taken to reject the application of the petitioner for allotment of plot for non- payment of 30% premium, the petitioner would be given an opportunity of being heard and fresh orders will be passed giving reasons. The impugned letter dated 22.09.1981 was accordingly quashed.

3. The petitioner thereafter appeared before the respondent Authority and submitted a representation on 27.08.2002 claiming to have fulfilled all the requirements. The petitioner was, however, held not entitled for allotment of an alternative industrial plot vide order dated 28.01.2003 on account of the fact that he was not having a valid municipal license at the relevant point of time.

4. The respondent Authority considered the plea of the petitioner that MCD was granted a lenience to his industry on 06.06.1983, but the license would relate back to 1976 onwards as even charges for the same were recovered by the MCD. The Authority relied upon the judgment of the Supreme Court in Delhi Development Authority v. Ambitious Enterprises & Anr. 67 (1997) DLT (SC) 774. The Authority also rejected the plea of the petitioner that in view of the Order of remand dated 08.08.2002, the only issue to be considered was the non- payment of 30% of the premium for which no notice was issued.

5. The petitioner has filed the present writ petition seeking quashing of the Order dated 28.01.2003 and for a writ of mandamus directing the respondents to allot an industrial plot to the petitioner.

6. The submissions made by learned counsel for the parties are the same as contained in the impugned order.

7. Insofar as the plea of the petitioner that the issue of eligibility of the petitioner could not have been gone into in view of the Order dated 08.08.2002 in CWP No. 1212/1982 is concerned, I am unable to accept the said submission of learned counsel for the petitioner.

8. The impugned letter dated 22.09.1981 in CWP No. 1212/1982 was quashed on a concession of learned senior counsel for the respondent that since the petitioner was not given any personal notice regarding non- payment of 30% premium, the petitioner would be given an opportunity of being heard. This does not preclude the respondent from considering the issue of eligibility of the petitioner.

9. Learned counsel for the petitioner's plea is based on the fact that at the stage of submission of application in the year 1976, there was no mandatory requirement of a municipal license. In this behalf, learned counsel has referred to clause (8) of the application, which is as under :-

8) Number and date of Municipal license held, if any, and date up to which it is valid.'

Learned counsel has, thus, contended that only if a municipal license was available, details of the same were to be given. Learned counsel has submitted that the petitioner had incorporated in the application that the petitioner had applied for a license. This license was applied soon before submitting the application. It was submitted that the license dated 06.06.1983 would show that the same is with reference to receipt No. 240040 dated 03.06.1983 for a sum of Rs. 640/-. A copy of the said receipt was produced and the receipt deals with the payment from period 1976-77 onwards. It was submitted that in the alternative, the license granted to the petitioner by MCD would relate back to the date of application of the license, which would be prior to the application for allotment of the plot and, thus, the petitioner must be deemed to have a valid license on the relevant date.

10. Both learned counsel for the parties, in fact, relied upon the same judgment of the Supreme Court in Ambitious Enterprises & Anr.'s case (supra). It may be noticed that this judgment arose out of a judgment of the Division Bench of this

Court dated 29.07.1994 and it is not disputed that if the judgment of the Division Bench had held fort, the petitioner would have been eligible. In this behalf, I am unable to accept the plea of learned counsel for the petitioner that because the judgment came subsequently, the same would not apply to the case of the petitioner, especially since the lis was already pending when the judgment was delivered.

11. The Supreme Court in the judgment of Ambitious Enterprises & Anr.'s case (supra) considered the plea of DDA that rejection of the request of plots was principally on two grounds, which are as under :-

(i) The applicants were not having license under Section 416 of the Delhi Municipal Corporation Act, 1957; and

(ii) Rule 6(v) of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 also required the applicants to be possessed of municipal license.

It may be noted that both the aforesaid pleas did not find favor by either learned Single Judge or Division Bench of this Court.

12. It may also be noted that insofar as the present case is concerned, learned senior counsel for the respondent submits that there is no dispute insofar as the petitioner being in non- conforming area and the only reason for rejection of the request of the petitioner is the absence of municipal license in favor of the petitioner on the date when the application was made. On scrutiny of the applications filed for allotment of these plots in November, 1980, all the applicants were asked to furnish a legible photocopy of the MCD license pertaining to their respective units and location and only those applicants, who had such valid license as on the date of application and the industries were found to be in non-conforming areas, were ultimately allotted the plot. A number of applicants were rejected on either of the two grounds.

13. It may be relevant to note that the plea raised by the petitioner in respect of column 8 of the application was also raised before the Supreme Court. In this

behalf, the Division Bench of this Court was of the view that the municipal license could not be said to be the mandatory condition in view of the words `if any' in the said column. The Division Bench also noted the fact that the petitioners, whose writ petitions have been allowed by the learned Single Judge, had applied for industrial licenses from MCD and the same were granted to them with retrospective effect covering the dates when applications were made by them for allotment of plots and, thus, the absence of municipal license could not be a criterion which merited consideration.

14. The Supreme Court, however, took a contrary view and held that the condition imposed by DDA for allotment of an industrial plot to a person who is having a valid license under the DMC Act was neither arbitrary, unreasonable or irrational. The Supreme Court observed in para 10 as under :-

' 10. ... To us it appears that the condition imposed by the DDA for allotment of industrial plot to a person who was having a valid license under the MCD Act was neither arbitrary, unreasonable or irrational. A person who is running a trade without a valid license under Section 416 of the MCD Act is committing an offence which is a continuing offence and he cannot be put at the same pedestal with a person who is law abiding and is having a valid license. Otherwise, it will be putting a premium on illegality. That condition of holding of valid MCD license imposed by DDA would be legal even if the number of plots available is more than the applicants. It is not material if the notice inviting applications was silent on this aspect of the matter and the application form which was prescribed used the words `if any' as mentioned above. ... ...'

Insofar as the issue of eligibility conditions is concerned, the Supreme Court noted in para 11 as under :-

'11. ... The eligible conditions as we find from the record were, (1) the prospective allottee should have a valid municipal license under Section 416 of the MCD Act on the date of the application for allotment of plot; and (2) the industry should be existing in a non-conforming area. On these basis the applications were scrutinised on representation being made.'

The Supreme Court concluded in para 13 as under :-

' 13. It is not disputed that the parties who were not having municipal license on the date of their respective applications have been barred from getting an industrial plot altogether. They are, however, left to fend for themselves either by buying an industrial plot in public auction or by a private purchase. As per the policy the DDA does not want to allot the industrial plots to them on pre-determined rates as they fell outside the policy made by it. In terms of this policy it is also not material as to from what time in fact an industrial unit had been working and may be much prior to the date of application for allotment of industrial plot. An argument was also advanced that the Nazul Rules came into force only on September 26, 1981 but the public advertisement for allotment of plots had been issued much earlier and, thereforee, the Nazul Rules would not be applicable. This argument does not appear to be sound. No plots had been allotted prior to the coming into force of the Nazul Rules and once these rules, which are statutory, came into force no allotment could have been made outside and in contravention of those Rules. If we see the relevant part of Rule 6(v) it will apply to those industrialists who are required to shift their industries from non-conforming areas to conforming areas under the Master Plan. It is correct that some of the respondents were granted municipal licenses under ad hoc licensing policy, 1982 from a retrospective date and it would appear, license fee has also been charged from the back date. DDA has not accepted these ad hoc licenses as per condition of its policy there should be a valid municipal license on the date of the application.'

15. In the said judgment, however, the relief was granted in three cases. Two of the cases do not relate to the eligibility in issue in the present case as they were on the ground of an industry being run in the non-conforming area. However, in one of the cases, in Kimat Baldev Chhiber, it was observed in para 16 as under :-

' 16. In the case of Kimat Baldev Chhiber, we find that he was granted L-4 license in 1968 Central Excise Rules framed under the Central Excise and Salt Act, 1944 for the ' manufacturing of goods liable to Central duty of excise'. It is claimed in the affidavit filed by Mr. K.B. Chhiber that he was granted municipal license to run his

industry with effect from 18.6.1975 which was in pursuance of application dated 17.10.1975. There is a letter of February 24, 1977 of the MCD to M/s. Saraswati Cable Corporation (Proprietor Mr. K.B. Chhiber) requiring it to deposit a sum of Rs. 5,569/- on or before February 28, 1997 toward the license fee with a warning that legal action would be taken and sanction withdrawn in case any default was made. This letter would justify the stands of Mr. Chhiber that MCD had issued a license under Section 416 of the MC with effect from June 18, 1975. The appeal of the DDA against M/s. K.B. Chhiber also does not merit consideration and it has to be dismissed.'

16. A reading of the aforesaid judgment, in my considered view, makes it absolutely clear that the Supreme Court has considered as valid two criteria adopted by DDA in approving the applications. The first criterion was of the industry running in the non- conforming area and the other is the valid municipal license on the date of the application for allotment of the plot. The plea that such a valid license was not a requirement in terms of column 8 of the application was rejected and so was the license relating back to the date of the application where it was subsequently granted. Thus, assuming the contention of the petitioner to be correct that the license would relate back to 1976, still the petitioner would not qualify as the requirement was to have a valid municipal license on the date when the application was made. The mere fact that in order to specify the requirements of the application, the petitioner applied just before making such application for a municipal license would, thus, not come to the aid of the petitioner.

17. The case of Kimat Baldev Chhiber is different since though the license would relate back to the application, in the said case, both the dates were prior to the date of the application in 1976. Though the application was made on 17.10.1975, it related back to 18.06.1975; both dates being prior to the date of the application. Thus, in the said case, the person was held to have a valid municipal license as on the date of the application.

18. The Supreme Court did not even accept the claims of persons who were granted ad hoc municipal license, since as per the policy, DDA had not accepted the same to be a valid municipal license on the date of the application. This is

apparent from the observations made in para 13 of the judgment of Ambitious Enterprises & Anr.'s case (supra). Repeatedly, the Supreme Court has emphasised in the said judgment on the requirement of the municipal license as on the date of the application, as would be apparent from the portions of the said judgment quoted above.

19. The impugned order dated 28.01.2003 has, in fact, followed the principles set down by the Supreme Court in the aforesaid judgment in Ambitious Enterprises & Anr.'s case (supra), especially taking into consideration the fact that findings of eligibility of the learned Single Judge in the Division Bench was specifically overruled.

20. In view of the aforesaid, I am of the considered view that the respondents cannot be faulted with for holding that the petitioner was not entitled to a plot under the scheme and, thus, the impugned order dated 28.01.2003 is in accordance with the judgment of the Supreme Court as aforesaid.

21. The writ petition is consequently dismissed leaving the parties to bear their own costs.

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