

inderjit Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Aug-30-1996

Reported in : 1996IVAD(Delhi)202; 65(1997)DLT70

Judge : Mohd. Shamim, J.

Acts : [Delhi Development Act, 1957](#) - Sections 14

Appeal No. : Civil Writ Petition No. 71 of 1982

Appellant : inderjit

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Mr. Bansal

Advocate for Pet/Ap. : V.K. Makhija,; B.N. Soni and; Sumeet Bansal, Advs

Judgement :

Mohd. Shamim, J.

(1) The petitioner through the present writ petition has sought a direction from this Court directing the respondents to allot him an industrial plot in an industrial area in Delhi.

(2) Brief facts which gave rise to the present petition are as under: that the petitioner is running an agricultural industry at 902/290, Village Shalimar, Delhi

since the year 1974-75. He is manufacturing over there agricultural instruments such as pipes, pipe fittings, tube-well parts etc. The above said area where the petitioner is running his factory is a non-conforming area. The respondent No. 1 announced their decision to give an opportunity to the industries functioning in the non-conforming areas or areas which were under acquisition for different public purposes to secure a plot of land in conforming industrial areas which have been developed by the respondent No. 1 in different localities of Delhi in accordance with the provisions of the Master Plan. The applications were required to be made on the prescribed form containing detailed terms and conditions with regard to the allotment, including the rates. The applicants seeking allotment of plots of sizes more than 840 sq. mtrs. were required to deposit Rs. 2,000.00 by way of earnest money. The payment in respect of plots of land allotted to the applicants were to be made in four quarterly installments i.e. 25% at the time of taking possession, 25% after three months, another 25% after three months and final payment of the remaining 25% was to be made within yet another three months. The last date of receipt of application was March 31,1976. Later on the above said date was extended through an advertisement up to April 15,1976.

(3) The petitioner moved an application in the prescribed form on April 15,1976 for allotment of an industrial plot of more than 840 sq. mtrs. and deposited a sum of Rs. 2,000.00 by way of earnest money vide receipt dated April 14,1976. The petitioner through an application dated July 20,1976 requested for allotment of a plot preferably in Wazirpur Industrial Area, G .T. Karnal Road and Haiderpur as the same happened to be nearer to his residence. The petitioner has been enquiring from the office of the Dda with regard to the allotment of the plot to him but he was always informed that the plot had yet not been allotted and he would be informed later on.

(4) The petitioner received a letter dated August 6,1981 whereby he was informed that his request for allotment of an industrial plot had been rejected as he failed to deposit 30% of the premium as per their advertisement in a newspaper in October, 1976. A cheque for Rs. 2,000.00 was also sent to the petitioner Along with the said letter. The petitioner was neither informed by any letter whatsoever, that he was required to deposit 30% nor he received any such newspaper informing him with

regard to the deposit of the said amount. Consequently the petitioner returned the said cheque to the respondent. He further requested the respondent No. 1 to keep the said amount with them by way of earnest money to be adjusted later on towards the price of the plot. The petitioner has always been ready and willing to pay whatever was demanded from him. The petitioner was never aware of the fact that the authorities had demanded from him 30% of the cost of the plot. He never came into contact with any such paper which contained any such advertisement. The petitioner requested the authorities for allotment of a plot and informed them that he would deposit the amount on hearing from them. In this connection he wrote a letter dated September 14, 1981. The petitioner made every possible effort in order to find out as to when and where he was allotted a plot and in which newspaper the advertisement was published with regard to the deposit of the amount of 30% of the premium. The respondent never disclosed to the petitioner the said facts. Thus the rejection of the application of the petitioner by the respondents is illegal, without jurisdiction and arbitrary. The petitioner is thus entitled to an allotment of a plot.

(5) The respondents have opposed the present petition through their counter affidavit sworn by Ms. Janak Juneja, Secretary, DDA. According to the said affidavit the case of the petitioner did not fall within the domain of the scheme which is the subject-matter of the present writ petition. The factory of the petitioner is situated within the Lal Dora area. Thus it cannot be called a non-conforming area by any stretch of imagination. Hence the petitioner is not entitled to a plot. The earnest money deposited by the petitioner was refunded to him in the year 1981 itself. The advertisement made in April, 1976 was modified by a subsequent advertisement made on September 29, 1976 whereby all the applicants were required to deposit 30% of the premium of the plot which they intended to be allotted to them. Admittedly the petitioner took no steps for the deposit of the said amount of the premium. Thus the right, if any, to have a plot under the said scheme stood waived. The petitioner thus having failed to perform his part of the obligation cannot seek the aid of this Court. The scheme under which the allotment was made has since elapsed. The petitioner having lain by cannot seek the remedy under Art. 226 of the Constitution of India.

(6) It is manifest from the facts canvassed above that only two points have been raised by the respondents by way of defense in their counter affidavit, (a) that the petitioner is not entitled to a plot since his factory is situated at 902/290, Village Shalimar, which is not a non-conforming area; and (b) that the petitioner is not entitled to a plot since he failed to deposit 30% of the premium which was a condition precedent for the allotment of the plot as per the advertisement given in the newspaper dated September 29,1976.

(7) Learned Counsel for the petitioner, Mr. V.K. Makhija, Senior Advocate, has vehemently contended that it is false and preposterous to allege that the petitioner is not entitled to a plot as his factory was not situated in a non-conforming area. According to the learned Counsel, this had never been the case of the respondents that the factory of the petitioner was not in a non-conforming area. Learned Counsel has contended that the respondents had themselves admitted that this is not so. The learned Counsel in support of his argument has relied upon the official record contained in file No. F.6A(49)/W-76/LSB(1) pages No. 8/N-16/N and reproduced in his rejoinder dated July 28,1995. He has in this connection reproduced pages 8/ N to 16/N from the above said file where an inquiry sent by DD(1) dated February 8, 1983 to DD(NL) has been reproduced.' DD(NL) may kindly see the note of JD(UVC) dated 8.2.1983 on prepare and is requested to intimate this section whether the industry of M/s. Shoor Industries which is functioning in Shalimar Village may be treated conforming area or non-conforming as the same is under Lal Dora as per licence. This may please be treated as most urgent and the file must be returned to this Section by 14.2.1983 positively.' The reply of the DD(NL) dated 25.2.1983 is as under :

'This area is non-conforming area. This factory falls in Non. 902/290 of Haiderpur which is notified under Section 6 vide notification No. F.5 / 63-L & H (II) dated 2.1.1969.'

(8) The respondents have filed an additional affidavit sworn by Mrs. Asma Manzar, Director (Lands), Dda, New Delhi. However, she has not denied the said fact, averred in the said rejoinder affidavit. Thus the averment of the petitioner goes uncontroverted and remains un-rebutted. She has not challenged the veracity of the

rejoinder on the said issue. There is absolutely nothing on record placed by the respondent to show to the contrary. Thus they will be deemed to have acquiesced in and admitted the said facts.

(9) This brings me to the next point. The learned Counsel for the respondent Mr. Bansal has vehemently contended that the respondents issued an advertisement on September 29, 1976 in the Hindustan Times, Delhi where through they informed all the applicants that those who want a plot must pay in advance 30% of the premium in respect of the said plot. Since the said advertisement was published in a newspaper which is widely circulated in every nook and corner of Delhi, a Metropolitan city. hence it can be safely concluded there from that the petitioner was aware of the same. Yet he failed to perform his part of the obligation inasmuch as he never cared to deposit the 30% of the premium. Thus he must drink as he has brewed. According to the learned Counsel he cannot be permitted to take advantage of a situation on which he is himself responsible for bringing about. therefore, the petitioner is not entitled to a plot.

(10) Learned Counsel for the petitioner Mr. Makhija while counter-availing the said argument has urged that the petitioner was never aware of any such advertisement at any point of time. Thus, how he could have deposited the money which was demanded through the said advertisement. According to the learned Counsel the claim of the petitioner thus cannot be defeated on the said score. The petitioner by depositing a sum of Rs. 2,000.00 for allotment of a plot measuring more than 840 sq. mtrs. as per advertisement dated March 19, 1976 became entitled for the allotment of a plot. The remaining consideration in case of allotment of a plot was to be paid in four quarterly installments i.e. 25% at the time of possession, 25% after three months, 25% three months thereafter and final payment of another 25% after three months. Thus the respondent by the subsequent advertisement dated September 29, 1976 changed the terms and conditions of the allotment of the plots. Hence the respondents were under an obligation to serve the petitioner with an individual notice. Admittedly, the day the petitioner deposited the earnest money in response to the advertisement dated March 19, 1976 a right accrued in favor of the petitioner. Thus he could not have been deprived of the said right stealthily by publishing an advertisement in a

newspaper. Unless and until the petitioner was apprised of the fact that he was required to pay 30% of the premium on account of the change in the terms and conditions of the allotment no liability can be fastened on his shoulders on the said score and the right accrued to him cannot be snatched away from him. The learned Counsel in support of his argument has led me through Section 43 of the Delhi Development Act, 1957 ('D.D. Act' for short), which deals with the service of the notices. It envisages : (1) 'All notices, orders and other documents required by this Act or any rule or regulation made there under to be served upon any person shall, save as otherwise provided in this Act or such rule or regulation, be deemed to be duly served -

(A).....

(B).....

(C).....

(D) in any other case, if the document is addressed to the person to be served and -

(I) is given or tendered to him, or

(II) if such person, cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within the Union territory of Delhi is or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates,

(III) is sent by registered post to that person.'

(11) Admittedly, the petitioner was never served individually inasmuch as this is not the case of the respondent.

(12) However, the respondent chose the second mode as envisaged under Section 44 of the D.D. Act i.e. through a public notice by way of advertisement in a newspaper (Hindustan Times dated September 29, 1976). Now the question which comes to the tip of the tongue is as to whether the said mode can be said to be a proper service in the present case?

(13) Admittedly, as I have already observed above that a certain right accrued in favor of the petitioner when he moved the application for allotment of a plot pursuant to the advertisement dated March 19, 1976. He in response to the said advertisement deposited a sum of Rs. 2,000.00 by way of earnest money. He continued to make enquiries with regard to allotment of plot as is fully manifest from his affidavit which has been placed on record. However, subsequently he was informed through a letter dated August 6, 1981 that no plot could be allotted to him as he failed to deposit 30% of the premium in response to the advertisement dated September 29, 1976. To my mind, the question of the deposit of the 30% could have arisen only when the petitioner was informed with regard to the said fact. It would not be out of place to make a reference over here to the provisions of Section 44 of the D.D. Act. It is in the following words :

'44. Public notice how to be made known.-Every public notice given under this Act shall be in writing over the signature of the Secretary to the Authority and shall be widely made known in the locality to be affected thereby by affixing copies thereof in conspicuous public places within the said locality or by publishing the same by beat of drum or by advertisement in local newspaper or by any two or more of these means, and by any other means that Secretary may think fit.'

(14) A close scrutiny of the provisions of law, alluded to above, reveals that to effect service by a public notice the authorities are required to adopt any two or more of those means i.e. either they are required to take recourse to the publishing of the notice in some paper and Along with it to adopt any other mode of service such as by beat of drum. In case the service is proposed to be effected by affixing at some conspicuous place in that eventuality some other mode of service such as by publishing has to be adopted. The underlying idea is to have the service effected by two modes. Thus it can be safely concluded that the service of public notice would not be deemed to be sufficient in the eyes of law unless and until the authorities have got it effected by two modes as envisaged under Section 44 of the D.D. Act.

(15) I am fortified in my above view by the observations of their Lordships of the Supreme Court as reported in : AIR 1991 SC711 , Syed Hasan Rasul Numa and

Others v .Union of India and Others. Their Lordships while interpreting Section 44 of the D.D. Act observed as under :

'An analysis of Section 44 providing for publication of notice would show that the emphasis is on the words 'these means' which plainly mean any two or more of the three alternative means provided in the section. The authorities will have to follow any of the two methods and this is mandatory.'

(16) Admittedly, this is not the defense of the respondent that they got the service effected by following two or more alternative modes as contemplated under Section 44 of the D.D. Act. The defense as set up in their counter is that the service was effected by publication in the Hindustan Times.

(17) Further more, a reference to the Resolution No. 50 dated September 23,1980, a photocopy whereof has been placed on record, can also be made with advantage. I am inclined to reproduce a few lines from paras 7 & 8 of the said Resolution. '... It was also mentioned that the public notice issued by D.D.A. on 29.9.76 requiring payment of 30% of the premium had not been seen by a large number of applicants and as such they have been deprived of the opportunity to deposit the said amount of 30%.

(18) It was emphasised that individual notice should have been issued by the D.D.A. to each of the 15,000 and odd applicants....' However, the notices were not issued individually as per the suggestion in the said Resolution as the number of the applicants was quite large. To my mind, it can hardly be a sufficient reason for not issuing the notices to the applicants.

(19) Mr. Bansal, learned Counsel for the respondents, has strenuously argued that the noticed published on September 29,1976 was not a notice within the domain of the D.D. Act. Hence he contends that the petitioner cannot be allowed to take advantage of the provisions of Sections 43 and 44 of the D.D. Act. Curiously enough the learned Counsel while advancing the said novel argument has failed to substantiate the same by any provision of law. I feel the said argument to say the least is puerile. It has got no force. Thus, I am of the view that the said argument is of no avail to the respondents and does not come to their rescue. Admittedly, the

Dda is a 'State' within the meaning of Art. 12 of the Constitution of India. It came into being after the enactment of the [Delhi Development Act, 1957](#). Thus, it is but natural, it must be governed by the provisions of the said Act. Hence the argument of the learned Counsel that the scheme which was floated by the respondents for the allotment of plots to the citizens of this country was not to be governed by the D.D. Act is devoid of any force. .

(20) In the circumstances stated above, I am of the view that the petitioner is entitled to the allotment of an industrial plot.

(21) Now the question which falls for decision is as to at what price the petitioner is entitled to a plot? Admittedly, the respondents while announcing the above said scheme for allotment of plots invited applications in connection therewith in April, 1976. The price as given in the Resolution No. 50 dated September 23, 1980 shows that the plots which were measuring more than 1000 sq. mtrs. were to be allotted at Rs. 160.00 per sq. mtr. Thus the petitioner would be entitled to a plot at the said rate. However, he would be liable to pay interest at the said price from the date his application was rejected. Admittedly the application of the petitioner was rejected on August 6, 1981. Thus the petitioner would be liable to pay interest at the rate of 18% per annum on Rs. 1,60,640.00 from August 6, 1981 for the plot measuring 1200sq.yards and bearing No. B-14, G.T.Karnal Road, Delhi, which was reserved for him as per reply affidavit dated October 31, 1984 filed by the respondent in C.C.P. No. 154/84.

(22) The above view is also supported by the observations of a Single Judge of this Court as reported in : AIR1995 Delhi115 , Chopra Dyeing Industries v. Delhi Development Authority. 'Since the petitioners are now required to pay the balance of the price, it is proper that they should pay interest on the balance amount payable with effect from the respective dates of the letters rejecting their claims. The rate of interest shall be 18% per annum.'

(23) In the above stated circumstances the petition is allowed. The petitioner is directed to make payment of Rs. 1,60,640.00 as the price of the plot bearing No. B14, G.T.Karnal Road, Delhi, together with interest at the rate of 18% per annum from August 6, 1981 till payment. The petitioner is directed to deposit the same

within a period of one month from today. On receipt of the payment the possession over the above said plot would be handed over to the petitioner within a month thereafter.

The parties are left to bear their own costs.

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