Super Electricals Vs. Delhi State Industrial Development Corporation Ltd.

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Court : Delhi

Decided On : Sep-22-2005

Reported in : 2005(2)CTLJ225(Del); 124(2005)DLT268

Judge : Vikramajit Sen, J.

Acts : Delhi Development Act, 1957; ;Constitution of India - Article 21

Appeal No. : WP (C) Nos. 13198 and 17089/2004

Appellant : Super Electricals;shri Krishan Lal Khurana

Respondent : Delhi State Industrial Development Corporation Ltd.;The Govt. of Nct of Delhi and ors.

Advocate for Def. : B.C. Gaur, Manager (Relocation Division); ; Monica Sharma and ;

Advocate for Pet/Ap. : Anurag Kr. Agarwal, Advs.

Disposition : Petition allowed

Judgement :

Vikramajit Sen, J.

1. The issues which have arisen in these Petitions are whether it is open to the Respondents to refuse to handover possession of the plots, the total price of which

has already been paid by the Petitioners to the Respondents as per their demand. The stand of the DSIDC is that the applications for allotment of industrial plots were received pursuant to a Public Notice issued in 1996 which notice was a sequel to the Orders passed by the Hon'ble Supreme Court in the M.C. Mehta case. However, it will become obvious that in actual fact the DSIDC relies on a 1999 Order emanating from the Office of the Commissioner of Industries which attempts to over-ride and drastically depart from its 1996 Policy, which was aimed at improving the living conditions in Delhi.

2. In the M.C.Mehta decisions, a Public Interest Litigation had been filed on the deteriorating state of affairs in the metropolis. It is public knowledge that Delhi was expanding in an undeveloped manner, either in the absence of any Regulations, or in breach of them. Various Orders were passed in the said PIL included those titled as M.C.Mehta v. Union of India, : AIR 1996 SC2231 . These Orders can be perused in the following Reports:

1. M.C. Mehta v. Union of India, : AIR 1996 SC2231

2. M.C. Mehta v. Union of India, : (1997)11SCC327

3. M.C.Mehta v. Union of India, : (1998)9SCC149

4. M.C.Mehta v. Union of India, : AIR 1998 SC773

5. M.C.Mehta v. Union of India, : [2001]2SCR234

6. M.C.Mehta v. Union of India, : (2002)9SCC481

7. M.C.Mehta v. Union of India, : (2002)9SCC534

8. M.C.Mehta v. Union of India, : (2004)6SCC588

9. M.C.Mehta v. Union of India 111 (2004) DLT 345

3. In the Orders dated July 8, 1996 the Apex Court had noted that the Master Plan of Delhi 1962 MPD 62 had been enforced under the Delhi Development Act, 1957. Since prices of land had escalated manifold, non-conforming user (largely

commercial user in residential areas) had become rampant and epidemic. As per the Master Plan the hazardous and noxious industrial units [H(a) industries] are not permitted to operate in Delhi. By Orders of the Hon'ble Supreme Court such industries had to relocate outside the boundaries of Delhi in a very short time-span. Apart from these there were other industries which were operating from commercial areas but whose continued existence in those areas were clearly pernicious to the environment and interest of the residents of the metropolis. These industries had perforce also to relocate to areas in the periphery of Delhi, which were specifically developed for this purpose by one of the State agencies. In the third broad category were these industries of a hazardous and noxious character that were being carried out from residential areas, and had to shut down immediately. Other milder polluting industries had to relocate in a phased manner, and in their case a decision had to be taken on whether they should continue to exist in residential areas or not. Till date such household or cottage industries have not been categorized by the Administration.

4. For the purposes of this Petition we need to refer to the Order passed in M.C.Mehta v Union of India, : (2002)9SCC534 . Since there were a series of Orders on the same issue, their Lordships had recapitulated the directions that had been issued for the closing down of industries working in non-conforming and residential areas w.e.f. 1st January, 1997. An exercise had to be taken to identify household industries which should be allowed to function in residential areas. It is of significance that the learned Attorney General of India had submitted that the primary consideration of the Court should be towards the health and well-being of the citizens. Unfortunately, our Administrators harbour different views, for reasons which are totally inexplicable. It was ordered that the health and well-being of the people must be protected and thereforee, ?oit is imperative as a first step that all polluting industries of whatever category operating in the residential areas must be asked to shut down as soon as possible.'

5. As a result of these Orders it was directed that 168 industries, considered hazardous/noxious/heavy/large industries should not be allowed to operate from within Delhi. So far as the others were concerned allotment of plots, construction of factory buildings, issuance of licenses/permissions etc. were ordered to be

expedited and granted on priority basis so that the relocation could be quickly achieved. The Apex Court also ordered that - 'in order to facilitate shifting of industries from Delhi, all the four States constituting the NCR shall set up unified single agency consisting of all the participating States to act as a nodal agency to sort out all the problems of such industries. The single window facility shall be set up by the four States within one month from today. This direction to the four States is through the Chief Secretaries of the States concerned. The Registry shall convey this direction separately to the Chief Secretaries along with a copy of this judgment. We make it clear that no time shall be allowed to set up the single window facility.... The use of the land which would become available on account of shifting/relocation of the industries shall be permitted in terms of the orders of this Court dated 10.5.1996 in M.C. Mehta.'

6. The Governments concerned agreed to appoint DSIDC as the nodal agency. A Public Notice was issued inviting applications for allotment of industrial plots in respect of industries which had to be relocated keeping the M.C.Mehta's directions in perspective. All the Petitioners applied to the Respondents in 1996 itself, and have paid the entire sale consideration. These payments were made in a phased manner over a number of years, which fact would destroy the argument that the acceptance of their payments was 'inadvertent' or 'accidental' or taken in ignorance or violation of the Respondents' Policy, which was itself an implementation of the Orders of the Supreme Court. The Constitution of India prescribes that Orders of the Supreme Court constitute the law of the land.

7. The application Forms along with enclosures are in excess of 25 pages. Eligibility provisions dealing with eligibility are to be found on page 8 of the compendious application which read as follows:-

1. Eligibility:

(i)Non-conforming industrial units working in residential and/or other non-conforming areas which are non-hazardous, non-noxious and non-polluting shall be considered for allotment of flatted factory industrial plot for relocation.

(ii)Non new industrial unit shall be considered for allotment in the Flatted Factory Complexes/Industrial areas proposed to be developed.'

8. The Petitioners have filed a copy of the 'Criteria prescribed for establishing the eligibility of the applicants for allotment of plots/flats under the relocation Scheme.' In the very first line it states that the Scheme applied to a person who had 'stablished his unit prior to 19.4.1996 i.e. the date on which this Hon'ble Supreme Court directed that no industry should come up in the residential areas without the permission of the High Power Committee (HPC) and without obtaining necessary consent from the statutory authorities. Paragraph 2 clarifies that the 'applicant unit should be located in any non-conforming area.' This is of importance since the defense that has been put forward by the DSIDC is that the Petitioners do not fall in Category `H' (168 industries), or were not carrying out noxious activities. It has also been argued by the Respondents that some Petitioners were operating from local commercial areas and thereforee, did not require relocation, as they stood covered by the Relocation Development Scheme under the Delhi Master Plan, 2001. This statement has been strongly contested by the Petitioners, who have submitted that the industries were not being carried out from commercial areas but from residential areas. The fallacy in the Respondents' argument that the Petitioners' were covered by the relocation scheme of the Master Plan, 2001 is that the subject relocation scheme was predicated on the Orders of the Hon'ble Supreme Court passed in 1996 and not on the former. This fallacy is repeated in the further argument of counsel for the Respondent to the effect that there was a change in Policy in 1999. The Respondents are not possessed with powers to alter the law of the land as articulated and pronounced upon by the Apex Court. One of the most important purposes for the existence of the Respondents is the implementation of the law rather than deviation from it.

9. The facts of all the Petitions are similar in substance. I shall only refer to Super Electricals since it clarifies the transactions between the parties. In the Petition it has been asseverated that the Petitioner was carrying on industrial activities prior to 1990 and thereforee in 1996, since the Petitioner was carrying out industrial activity in Anand Parbhat which was a residential area, the user was non-conforming. It had thereforee to relocate its operations in order to honour the

10. The first payment of Rs. 30,000/- was made by it to DSIDC in February, 1996 by a Demand Draft. Thereafter a letter dated 25.4.2000 was addressed to the Petitioner by the DSIDC, Relocation Division of the DSIDC. It confirmed that based on primary scrutiny the Petitioner had been found eligible for allotment of an alternative industrial plot measuring 250 square meters, the tentative costs of which was Rs. 3,000/- per square meters. The Petitioner was requested to deposit a sum of Rs. 1,05,000/- towards the First installment being equivalent of 30% of the total estimated cost of the plot. The next letter from the Relocation Department is 23.10.2000 which mentions that in a draw of lots held on 12th October, 2000, the Petitioner had been found successful for allotment of an industrial plot in Sector 4, Pocket D having Plot No. 59 at Bawana Industrial Complex. The cost was intimated to them to have increased from Rs. 3,000/- per square meters to Rs. 4,200/- per square meters. This communication claimed 50% of the estimated cost of plot being Rs. 5,25,000/-. This amount has been paid. Thereafter, DSIDC addressed a letter dated 25.9.2001 extending the date of payment of 50%. This payment has been made. DSIDC letter dated April 8, 2002, was on the subject of ?oPhysical possession of the plot at Bawana Industrial Area against Application No. 58274.' After having paid the entire sale consideration the Petitioner has addressed several letters to the DSIDC requesting them to hand over physical possession of Plot No. 59, Sector 4, Pocket D at Bawana, but without any success. Thus DSIDC having received full payment of the price of the plots from the Petitioners have made firm allotments to them, but have thereafter taken a somersault.

11. The contention of DSIDC is that there was a shift in Policy as per the decision of the Commissioner of Industries, Govt. of NCT of Delhi. The letter dated 9.9.1999 has been filed on the subject of relocation of industries from residential and non-conforming areas to conforming user zones. The following clarifications were given which read as follows:

I.A review of all the cases in which provisional eligibility letters have been issued is required to be undertaken by the DSIDC immediately so as to identify the following

categories which are not to be considered for allotment under the Relocation Scheme:-

II.Units situated in commercial areas.

III.Units located in Anand Parbat, Samaipur Baadli and Shahdara as these areas are covered by the redevelopment scheme under the Delhi Master Plan-2001.

IV.Service Sector Industries such as Atta Chakkies, Dry-Cleaners, Scooter Repair Centres etc.

V.Eligible units who have applied for allotment of land measuring 400 sq.mtrs. and above will be offered only 290 sq.mtrs. Plots.

12. The law laid down in M.C.Mehta must be followed by the Respondents. They do not possess the power to deviate from that law. In the view of the Hon'ble Supreme Court all commercial activities carried out from residential areas had to be removed. Categorized industrial activities carried out from commercial areas had also to be relocated. It had also been noted that a list of commercial activities which could be viewed as cottage industries was to be drawn up, but no efforts on these lines have been shown to have been taken. On this question there is no lurking doubt remains since Orders passed on 7.5.2004 specifically deals with this question in the following paragraph:

'We make it clear and direct that no industry in any residential area of Delhi/New Delhi shall be permitted unless it has obtained the clearance of the committee and has obtained the necessary license and the consent from the statutory authorities. All those industries which have not obtained necessary permission from the committee shall stop operating in the residential area w.e.f. January 1, 1997. We direct the NCT Delhi to give wide publicity to this order so that the industries are in a position to note that they have to obtain the necessary clearance from the committee. Needless to say that while granting permission to an industry to run in a residential area, the committee shall keep in view all the conditions laid down under the Master Plan including evaluation of impact on municipal services and environment needs of the area....'

The Respondents do not possess the power to change or deviate from the Policy settled by the supreme Court, either in 1999 or on any date thereafter, unless the change receives the imprimatur or approval of the Apex Court. The stand of the Respondents' tantamounts to contempt of the highest Court of India.

13. In paragraph 9, the Supreme Court had observed that 'assuming, for the present that facts stated above by the Government are correct and the plea of INSITU regularization is justified then, the immediate question would be as to what steps were taken by it in respect of remaining illegal and unauthorized industrial units, which number over 50000. The Government has no answer, let alone a satisfactory answer even despite lapse of nearly five years.' Increased regularization on INSITU basis did not find favor with Court. The following paragraphs of these Orders justify reproduction:

52. The growth of illegal manufacturing activity in residential areas has been without any check and hindrance from the authorities. The manner in which such large scale violations have commenced and continued leaves no manner of doubt that it was not possible without the connivance of those who are required to ensure compliance of law and reasons are obvious. Such activities result in putting on extra load on infrastructures. The entire planning has gone totally haywire. The law abiders are sufferers. All this has happened at the cost of health and decent living of the residents of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India. Further, it is necessary to bear in mind that the law-makers repose confidence in the authorities that they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will now have an adverse effect on the industry or the workers cannot be allowed. Within the framework of law, keeping in view the norms of environment, health and safety, the Government and its agencies, if there was genuine will, could help the industry and workers by relocating industries by taking appropriate steps in last about 15 years. On the other hand, it encouraged illegal activities.

59. In respect of household industry belonging to `A' category, it was contended on behalf of the Delhi Government that the number of industries falling in that

category is being expanded and proposal for additional 41 items for being placed in category `A' has been approved by DDA and the matter is pending with the Government of India and, thereforee, the industrial units carrying any activity falling in the proposed expanded category should also not be shifted for the present. It appears that out of 41 items, the Government of India has granted approval in respect of 6 items and, no decision has been taken, one way or the other, in respect of remaining 35 items. We again reiterate that the question is only of stopping unauthorized and illegal activity and not that activity which is permissible

61. Neither on behalf of the Government of India nor on behalf of the Delhi Government nor on behalf of any statutory authority, it could be disputed that the unauthorized and illegal industrial activity has commenced and continued in Delhi in blatant breach of the provisions of Master Plan and no action has been taken by any authority. The responsibility to take action was sought to be shifted. Each blaming the other. While on behalf of Delhi Government, as above noticed, it sought to avoid its obligation on the ground that it is not the function of the State Government to implement the Master Plan. The Government of India avoided its responsibility on the ground that the Central Government is not the implementing agency though the manner in which the Central Government has taken a summersault in its stand already stands noticed. Similarly, the other statutory authorities have also avoided to shoulder the responsibility for inaction for the blatant breach of the legal provisions. Respondents have been taking a convenient stand from time-to-time without any regard for statutory provisions and have at least turned their face on the other side knowing that the blatant breach is being committed, even if we assume that there was no connivance with the industry for extraneous considerations. The Master Plan, 2001 stipulates the shifting of extensive industries (`F' category) to conforming zone within a period of three years after allotment of plots by authorized Government agencies. In respect of light and service industries (`B' to `E' categories), it provides shifting to the industrial use zone within a maximum period of three years after allotment of plots and by providing necessary incentive by various Government Agencies in conforming use zone. This is in respect of all the industrial units within 20 or more workers. In respect of industrial units with 10 to 19 workers, it stipulates review

after five years giving them chance during this period for reallocation in conforming zones. Similarly, industrial units with worker strength up to nine, it provides for review after 10 years after giving them chance during the said period for reallocation in the conforming zones. The suggestion of Delhi Government is that such all industrial units which have come up after 1st January, 1997 shall be directed to be closed in the first instance by giving them some time. In respect of industrial units which have come up between 1st August, 1990 to 31st December, 1996, it was suggested that the bigger units having more than 20 workers may first be directed to be closed, later the units having workers between 10 and 19 and last of all those units which have less than 10 workers be directed to be closed. The suggestion is that the shifting may be directed in a phased manner.

70. In conclusion, having regard to the aforesaid, we issue the following directions:

1. All Industrial Units that have come up in residential/non-conforming areas in Delhi on or after 1st August, 1990 shall close down and stop operating as per the following schedule:

(a) Industrial Units pertaining to extensive industries (`F' category) within a period of four months.

(b) Industrial Units pertaining to light and service industries (category `B' to `F') within five months.

(c) Impermissible household industries (category `A') within six months.

(d) 6,000 industrial units on waiting list for allotment of industrial plots within 18 months.

2. The Central Government is directed to finalise the list of permissible household industries falling in category `A' within a period of three months.3.6,000 industrial units on waiting list shall be allotted industrial plots within one year.

4. The Delhi Government may announce a policy within six weeks giving such incentives as it may deem fit and proper to those industrial units which came to be established after 1st August, 1990 and may close down on their own before the

expiry of the time fixed in this order. The non-announcement of incentives by the Government shall not, however, delay the closure process.

5. The water and electricity connection of the industrial units found operating after the due date of closure shall be disconnected forthwith and in any case not later than a month of the date fixed for closure in Direction No. 1 above. If the industrial activity still continues, the premises shall be sealed within a period of not later than another one month.

The seal shall be removed and water and electricity connection restored only after filing of an undertaking by the industrial units not to recommence any sort of industrial activity before an officer nominated for the purpose by the Delhi State.

6. The Central Government is directed to finalise within six months appropriate steps to be taken for making NCR region a success for industrial activity by removing the hurdles pointed out by the industry. The Governments of the adjoining States of UP, Rajasthan and Haryana are directed to extend full cooperation.

7. The Municipal Corporation of Delhi shall consider within three months the aspect of withdrawal of exemption notification as suggested in the affidavit of its Town Planner filed on 28th October, 2002

8. We appoint a Monitoring Committee comprising (i) Chief Secretary of Delhi (ii) Commissioner of Police, Delhi (iii) Commissioner, Municipal Corporation of Delhi and, (iv) Vice-Chairman of Delhi Development Authority. This Committee would be responsible for stoppage of illegal industrial activity. It would, however, be open to the aforesaid members of the Monitoring Committee to appoint responsible officers subordinate to them to oversee and ensure compliance of the directions contained in the judgment.

9. The first Progress Report by the Committee shall be filed by 31st August, 2004 and thereafter it shall be filed at least once in a period of every two months.'

14. In the present cases the entire sale consideration has been paid. The Policy was that any unit located in any non-conforming areas was bound to relocate its

operations and was thus entitled to apply under the Scheme. Concluded contracts had come into effect which must be implemented and enforced in all respects. Apart from the argument that it is not open to the Respondents to devise a Policy that runs counter to the law laid down by the Hon'ble Supreme Court, the revised Policy of 1999 cannot also be applied to the present contracts for the reasons that it is the extant Policy which has to be implemented. In any event, the 1999 Policy stands overruled by the extracted Orders passed in May 2004. In Sq.Ldr.Kashi Nath Singh v. UOI : 103(2003)DLT349 , the question arose whether a policy that had been drastically altered after the date of application for the grant of an LPG dealership could be enforced. The Court held that the policy that was in force at the relevant time could alone be looked at.

15. Interim Orders have been passed in most of the Petitions to the effect that status quo should be maintained in respect of the allotted plots. Since a concluded and enforceable contract had come into existence, these Writ Petitions are allowed and a direction is issued to the Respondents to hand over possession of the plots in question to the Applicants provided complete payment has been made. The Affidavits and undertakings of the Petitioners to the effect that they will close down their non-conforming commercial activities shall form an integral part of this Order and constitute one of its conditions. If Affidavits/Undertakings to this effect have not been furnished the Respondents shall be within their rights to call upon the Petitioners to file such Affidavits/Undertakings as a pre-condition for handing over possession. Possession be delivered within thirty days from today.

16. The Petitioner had paid large sums of money. There are covenants in the Agreement enabling the Respondents to claim interest at the rate of 18% per annum on delayed payments. There seems to be no reason why these covenants should not be applied against the Respondents themselves. However, if possession is handed over within thirty days from today, I desist from ordering payment of interest at 18%. The DSIDC shall be liable to pay interest only at the rate of 5% per annum from the date on which the entire sale consideration had been paid to them. Mr. Tikku draws attention to the fact that even as per the documents the DSIDC was bound to pay interest at the rate of 7% per annum. This reduction is being given as an incentive to the DSIDC for ensuring that

possession is handed over within thirty days. This is the fulcrum of the whole Relocation Scheme, envisioned to improve the environment and living conditions in Delhi. If possession is not delivered for any reason, DSIDC shall be liable to pay interest at the rate of 7 per cent per annum instead of 5 per cent per annum. Since there is no defense that has been put forward, I would ordinarily have imposed costs quantified at Rs. 10,000/- in each Petition. However, if possession is handed over to the Petitioners within the aforementioned period of thirty days, the Order imposing costs would be deemed to have been withdrawn.

17. The Writ Petitions stand allowed in these terms.

18. dusty.