

(2010) 07 DEL CK 0340

In the Delhi High Court

Case No : Writ Petition (C) No. 4814 of 2008

Darbara Singh and Sons

APPELLANT

Vs

The Commissioner of Industries and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 07 DEL CK 0340

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Brajesh K. Srivastava, for the Appellant; Amiet Andlay, for R-1 and 2 and Anshum Jain, for Suparna Srivastava, for MCD, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner in or about the year 1996 applied to the respondent No. 1 Commissioner of Industries of the Government of NCT of Delhi (impleaded as respondent No. 2) for allotment of an industrial plot under the Relocation Scheme framed in compliance of the order of the Supreme Court in M.C. Mehta case. The said application of the petitioner was rejected. Neither the petitioner nor the respondents are in a position to give the date of the order of rejection. However, it appears that the petitioner applied for review of the said order and which review was entertained and was disposed of vide communication of the respondent No. 1 to the petitioner filed as Annexure ?C? to the petition. Though the date of the said communication also is not apparent but both counsels agree that the same is of later part of the year 1999. In the said communication, it was stated that opportunity had been given by advertisement in newspaper to all the applicants whose applications for alternate plot had been dismissed, to file an appeal. It appears that the petitioner did not choose the remedy of appeal also. The respondent No. 1 dismissed the review application of the petitioner on the ground that the Name of the Applicant Unit/Property/ Partner/Address differs from the one mentioned in M.C.L./S.T Regn./S.S.I. Regn.

etc. The petitioner was also advised to approach Delhi State Industrial Development Corporation for refund of the earnest money deposited by him along with his application.

2. The petitioner claims to have written two letters to the respondent No. 1 thereafter and copies whereof have been annexed to the petition. The said letters however are of September, 1999 i.e. of before the rejection aforesaid of the review application of the petitioner. The petitioner after rejection of his review application remained quiet for seven years till September, 2006. The petitioner has annexed to the petition copies of the letters purported to have been written in the later part of the year, 2006. However again there is no proof of the said letters having been sent or served on the respondents. The petitioner ultimately in December, 2006 applied under the Right to Information Act, 2005 and in June, 2007 got issued a legal notice and ultimately in or about July, 2008 preferred this petition. In response to the RTI query, the petitioner in December, 2006 was informed that because of various deficiencies, his review application and the file had been sent to DSIDC for refund of EMD amount and as per the website of DSIDC, EMD amount had been refunded to the petitioner on 4th April, 2002. The petitioner was also directed to approach DSIDC for any further information.

3. The petitioner has in the writ petition besides claiming allotment of plot sought to restrain the respondents from sealing his unauthorized industrial unit till the allocation of alternative plot. The petitioner has also sought compensation of Rs. 10 lacs.

4. In spite of the petitioner having been asked to approach DSIDC, the petitioner neither approached DSIDC nor impleaded it as a party hereto. Besides the Commissioner of Industries and the Government of NCT of Delhi, only the MCD has been impleaded as respondent No. 3.

5. The respondent No. 3 MCD in its counter affidavit before this Court has stated that it is not concerned with the allotment of industrial plot to the petitioner under the Scheme aforesaid. It has however disclosed that an ad-hoc licence had been issued to the petitioner at the address of 7/7 Ashok Nagar, New Delhi for manufacturing small radio parts with half K.W. in the non-conforming area and another ad-hoc licence was issued to the petitioner at the address of WZ-55-A Minakshi Garden, New Delhi for radio parts (Transformers and laminators) with 5 H.P. in the non-conforming area and that both the licences were cancelled/revoked vide Notification dated 17th November, 2000 as per directions of the Supreme Court in the M.C. Mehta case.

6. The counsel for the respondents No. 1&2 has contended that after the rejection of the application for allotment under the Relocation Scheme, the files were sent to DSIDC and the respondents No. 1&2 are now not possessed of any records and can only state that the application of the petitioner was rejected and the review there against also rejected for the reason of discrepancy in the address of the applicant as given in the application and as appearing in the

documents filed in support thereof. The counsel for the respondents No. 1&2 has also contended that the present petition is liable to be dismissed on the ground of laches alone. It is contended that even the review of the petitioner was dismissed way back in the year 1999 and the petition was filed after nine years therefrom in the year 2008. It is further contended that the earnest money was also refunded to the petitioner way back in 2002 i.e. six years prior to the institution of this petition.

7. The petitioner admits the receipt of refund of earnest money; however attempts to explain the same by contending that the said refund was obtained directly in his bank account and he did not come to know of the same. The said explanation is not convincing. The petitioner has not filed any document in support thereof. Even if the refund had been received directly in the bank account, the petitioner if not immediately, at least at the end of the financial year while preparing accounts would have come to know of the said refund. There is thus merit in the contention of the counsel for the respondents No. 1&2 of the petition being liable to be dismissed on the ground of laches. The petitioner is not found to have acted earnestly. The facts of the case required the petition to act expeditiously. The Relocation Scheme was launched to rehabilitate the industries functioning in non-conforming areas. Such industries were required to immediately shut down their operations in the non-conforming areas and to shift to the alternate/relocated site. The petitioner however has not shown any such urgency. From the reliefs aforesaid claimed in the petition, it is clear that the petitioner continued to run its industry in the non-conforming area and was not interested in relocating the same. The present petition appears to have been filed only when the unauthorized industry of the petitioner in the non-conforming area was sought to be sealed. From the said facts, a case of waiver and abandonment of the rights by the petitioner is also made out.

8. Long time has elapsed since. The respondents before allotting alternate industrial plot were required to investigate the claims. The said investigation also may not be possible now after such long lapse of time.

9. It appears that the petitioner was operating two non-conforming industries, as also borne out from the counter affidavit of the MCD. The counsel for petitioner contends that it is possible that the petitioner may have given one address in the application and documents filed of the other address. It is urged the same ought not to disentitle the petitioner from the benefit of the Scheme.

10. The petitioner was required to explain the said position in or about the year 1996 or latest in 1999, and cannot be permitted to do so now. Rather the petitioner by his action of continuing the industry in the non-conforming area has disentitled himself from any discretionary relief under Article 226 of the Constitution.

There is no merit in the petition, the same is dismissed.

No order as to costs.