

(2017) 02 DEL CK 0108
In the Delhi High Court
Case No : RSA No. 329 of 2015

Delhi State Industrial & Infrastructure Development
Corporation Ltd.

APPELLANT

Vs

M/s Friends Garments

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2017) 4 ADDelhi 87 : (2017) 238 DLT 73

Hon'ble Judges : Ms. Pratibha Rani, J.

Bench : Single Bench

Advocate : Ms. Renuka Arora and Mr. Kunal Kohli, Advocates, for the Appellant;
Mr. R. M. Sinha, Mr. P.M. Sinha, Mr. A. Srivastav, Ms. Namita Sinha and Mr. A. K.
Shakya, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ms. Pratibha Rani, J.—The appellant ? Delhi State Industrial & Infrastructure Corporation Ltd. (DSIDC) has impugned the concurrent findings of both the courts below; order dated 8th September, 2011 passed by the learned Trial Court and order dated 13th January, 2015 passed by the First Appellate Court, whereby the suit filed by the respondent/plaintiff praying for the decree of permanent and mandatory injunction and declaration has been decreed returning a finding that no allotment letter was ever sent to the respondent/plaintiff by DSIDC before cancelling the allotment on 10th July, 2002 of plot No.58, Pocket-D, Sector-2, Bawana Industrial Area (measuring 100 sq.yds.) allotted to him.

2. After hearing learned counsel for the parties, the following substantial question of law was formulated on 3rd February, 2017:-

"Whether the findings of the Courts below in respect of the allotment letter being not sent by the Delhi State Industrial & Infrastructure Development Corporation Limited to the allottee are perverse?"

3. Ms. Renuka Arora, Advocate for the appellant has submitted that both the Courts below have held that no allotment letter was sent to the respondent/plaintiff ignoring the fact that even time for deposit of the charges was extended from 31st March, 2001 to 1st April, 2002 under orders of the Supreme Court which was widely published in all the leading newspapers. Learned counsel for the appellant has drawn the attention of this Court to Annexure A-5 whereby attention of the allottees of plots/flat/factories under the Relocation Scheme was drawn by DSIDC publishing the following notice:-

"Delhi State Industrial Development Corporation Ltd.

A3/4 State Emporia Building Baba Kharak Singh Marg, Cannaught Place, New Delhi ? 110001 Ph.23369004, 23361759 23368024

(Relocation Division)

Attention

Allottees Of Plots/

Flat/factories Under The

Relocation Scheme

In the Supreme Court hearing held on January 24, 2001 the Hon"ble Supreme Court has accepted the prayer of Delhi Government for extension of time for receipt of 100% payment in the case of allottees of Narela, Badli, Jhilmil and Patparganj Industrial Areas as well as 50% payment in the case of Bawana upto 31st March, 2001.

All concerned may note that those who do not make the payment by the above date will face cancellation of their allotment and no further correspondence in this regard will be entertained. Cancellation letters issues earlier in this regard may be ignored.

(Chief Manager (Relocation))"

4. Learned counsel for the appellant urged that not only allotment letter was sent, by publication in various newspapers also all the allottees were informed about the date of deposit being extended by the Supreme Court and the requirements to be complied with. Learned counsel for the appellant has also drawn the attention of this Court to the proceedings dated 9th September, 2011 by learned Trial Court whereby the additional issues were framed and without any opportunity to the parties to make submissions thereon, judgment was passed on the same day. It has also been contended that in this case, statement of account filed by the appellant/defendant before the Trial Court indicate that Rs. 56938/- was also deposited pursuant to the allotment made. There could not have been any deposit by the respondent/plaintiff had he not been intimated about the allotment in his favour. Thus, both the Courts below mis-appreciated the evidence and wrongly held it to be a case where no allotment letter was sent

to the respondent/plaintiff.

5. Mr. R.M. Sinha, Advocate for the respondent has submitted that this is a regular second appeal and the jurisdiction of this Court is very limited. On instructions from the respondent, who was present in person, learned counsel has submitted that except the initial payment deposited by him which was Rs. 30,000/- he had not deposited any other amount pursuant to the allotment made to him. It has been contended that respondent is a tailor by profession and has not read the newspapers. Thus, he was not aware about any date being extended to deposit the payment under direction of the Supreme Court. He has also contended that except the cancellation letter which was received by him and gave rise to cause of action to file the suit, he did not receive any communication about the allotment and had no occasion to deposit the payment, without receiving communication about the allotment being made to him.

6. Perusal of the Trial Court Record shows that initially the suit was filed for permanent and mandatory injunction as well declaration but subsequently amendment was sought to incorporate the averments highlighting urgency and seeking waiver under Section 80(2) CPC.

7. The amendment was allowed by the Court on 15th November, 2003. Amended plaint was filed but on 13th January, 2014 learned counsel for the appellant/defendant submitted that amended written statement was not required to be filed and the previous written statement may be treated as amended written statement.

8. The undisputed facts are that the respondent/plaintiff had been carrying on the business of ready-made garments under the name and style of M/s. Friends Garments at 5940-B, Shivaji Gali, Subhash Mohalla, Gandhi Nagar, Delhi since 1994. In the year 1996, in respect of the scheme i.e. "Allotment of Industrial Plots under Relocation scheme", the appellant/defendant invited applications for allotment of the industrial plots. The respondent/plaintiff also applied for the same and was found eligible for allotment of the plot. As per appellant/defendant ? DSIDC, plot No.58, Pocket-D, Sector-2, Bawana Industrial Area (measuring 100 sq.yds.) was allotted to the respondent/plaintiff but despite allotment-cum-demand letter and show cause notice being sent, he failed to comply with the same and did not deposit the requisite amount. Wide publicity of the order dated 24th January, 2001 passed by the Supreme Court was also given in the leading newspapers about the extension of the date from 31st March, 2001 to 1st April, 2002 to comply with the requirements. On not getting any response from the respondent/plaintiff, the allotment in favour of the respondent/plaintiff was cancelled. The respondent/plaintiff had denied the receipt of any allotment letter, demand notices or any other communication which may be termed as show cause notice, before the cancellation of the allotment was done. When the respondent/plaintiff received the notice cancelling his allotment, first he took up the matter with the concerned authorities and thereafter filed Civil Suit No.1043/2009.

9. Except the fact whether allotment letter was sent to the respondent/plaintiff or any show cause notice was sent to him before cancellation of the allotment, other facts are not in dispute. Thus, the only question that required determination during trial was whether any allotment letter or demand notice or show cause notice was sent to the respondent/plaintiff before cancelling the allotment in his favour.

10. The learned Trial Court settled the following issues in this case on 15th January, 2004:-

"(i) Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? -OPD.

(ii) Whether the plaintiff has issued notice to the defendant? -OPP

(iii) Whether the plaintiff is entitled to decree of permanent injunction as prayed for? -OPP.

(iv) Relief."

11. The pleadings and prayers made in the suit for decree of permanent and mandatory injunction and declaration were well within the knowledge of DSIDC. Though, issue was framed in respect of the relief of permanent injunction, the Court could have dealt with the prayer made for grant of mandatory injunction and declaration under the head "Relief". Instead of doing that, for purpose of discussion on the prayer made by the respondent/plaintiff for grant of decree of mandatory injunction and declaration, following two issues were also settled on 8th September, 2011 to return the finding on this prayers:-

"(i) Whether the plaintiff is entitled to decree of declaration as prayed for? -OPP.

(ii) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? -OPP.

(iii) Relief."

12. On the above two issues settled on 8th September, 2011 before pronouncing the judgment, the parties had already led the evidence and made submissions. Thus, the DSIDC cannot have any grievance of not being heard on the issues which were nothing but reproduction of prayer clause made in the initial plaint as well the amended plaint filed long back and availing two opportunities to file the written statement i.e. at the initial stage and after the amendment.

13. The second contention raised on behalf of the appellant-DSIDC is that not only the allotment letter but various other communications were sent in addition to the press release directing the allottee to deposit the balance payment upto 31st March, 2001.

14. In para 6 and 7 of the plaint a specific plea was taken by the respondent/plaintiff that he had not received any communication for deposit of 50% of the cost of the plot by 31st March, 2001 or letter for extension of time to deposit the

payment upto 1st April, 2002. He is an illiterate person and does not read newspapers and was not aware of any publication in this regard. In para 7, he stated about visiting the officials of defendant No.3 personally on 19th July, 2002 but his request was not acceded to.

15. The averments made and the evidence led by DSIDC regarding the plea as to whether before cancellation of plot No.58, Pocket-D, Sector-2, Bawana any allotment letter-cum-demand notice or show cause notice was sent/served on the allottee, are incorporated in paras 6 & 7 of the written statement as well in paras 5 to 7 of the affidavit of DW-1 Sh.B.S.Gaur, which are extracted hereunder:-

Written statement

"6 & 7. That the contents of the para No.6 and 7 are wrong and denied. It is submitted that as the letters from defendant were issued time to time following by press release too. It is further submitted that the whole process of relocation of industries were started on the initiative and directions of the Hon"ble Supreme Court of India and which is a time bound programme, hence the whole system of relocation cannot be stopped or delayed by the lethargy of some individuals."

Affidavit of DW-1 Sh. B.S. Gaur

"5. That the defendant issued several press advertisements from time to time for making the balance payment and in case of non-payment, allotment shall be cancelled. Accordingly, the defendant was bound to issue cancellation letter.

6. The plaintiff was informed about the allotment of 100 sq.mtr. Plot No.58,Pocket-D, Sector-2, Bawana through the allotment letter which was cancelled on 16.8.04 and re-allotted to M/s. A.B. Enterprises in the draw of lots held on 26.8.2004. The copy of allotment letter dated 24.9.2004 issued to M/s A.B. Enterprises and Accounts/status statement of both the applicants are annexed at P-8 to P-11 respectively.

7. Also the plaintiff was always informed about his status and payment position and other details in the website of the defendant no.3. So the plaintiff can not deny that he was not informed about the status, payment and allotment position."

16. A bare perusal of the pleadings and the evidence led by DSIDC established that neither any specific date of the communication informing allotment and demand of payment has been pleaded and proved nor any show cause notice prior to cancellation of the allotment has been pleaded or proved. In such circumstance, both the Courts below have rightly held that it was a case of no communication being sent to the respondent/plaintiff to comply with the requirement for obtaining plot of land under the scheme.

17. Learned counsel for the appellant/defendant has attributed knowledge of allotment of plot to respondent/plaintiff contending that the statement of account

shows deposit of Rs. 56,938/- by respondent/plaintiff towards payment made against the plot allotted to him. The learned Trial Court has already noted in para 21 of the impugned judgment that on dismissal of the interim application of the respondent/plaintiff, this plot had been allotted to M/s. A.B. Enterprises. The statement of account referred to by learned counsel for the appellant itself shows that it is in respect of the payment made by M/s. A.B. Enterprises to whom this plot had been allotted after cancellation of allotment in favour of the respondent/plaintiff. Since this amount has been deposited after being financed by Punjab & Sind Bank and the finance is in favour of M/s. A.B. Enterprises with which the respondent/plaintiff had no connection, this contention has no force.

18. Thus, right from the stage of filing the written statement till leading entire evidence the appellant/defendant could not place on record any document showing that the allotment letter was ever dispatched sent to the respondent/plaintiff what to talk of receipt by him and that he failed to comply with its requirement despite opportunities being given and period too extended from 31st March, 2001 to 1st April, 2002 by order of the Supreme Court.

19. Wide publicity in the media about extension of date to comply with the requirements itself does not amount to sufficient notice to the appellant who was not even aware that any allotment has been there in his favour. Otherwise also, as held in the case of Usha Saikia v. DDA in W.P.(C) No.266/2007 decided on 28th January, 2008, public notices are not substitute for individual notices and registrants are not duty bound to scan newspapers, days after days to know the status of their allotments. It was also held that registrants cannot be denied their right of allotment for their failure to respond to the public notices when the scheme itself never envisaged issue of public notice.

20. It is settled legal position that in second appeal, High Court cannot set aside concurrent finding of fact given by the Courts below. The second appeal can be entertained only if a substantial question of law is raised. The rationale behind is that appreciation and re-appreciation of an evidence must come to an end with the first appeal.

21. I am of the considered view that the findings of both the Courts below are based on proper appreciation of facts and evidence adduced before the learned Trial Court and does not suffer from any kind of perversity so as to require interference by this Court in exercise of jurisdiction under Section 100 of Code of Civil Procedure.

22. The substantial question of law is answered against the appellant/plaintiff-DSIDC. RSA No.329/2015 is dismissed.

23. Since the plot allotted to the respondent/plaintiff already stands allotted to M/s. A.B. Enterprises, learned Trial Court vide its judgment dated 8th September, 2011 decreed the suit as under:-

"In view of the above discussion, the suit of the plaintiff stands decreed. The

plaintiff is entitled to allotment of an alternative plot of a similar nature as was allotted earlier on the same terms and conditions. The plaintiff shall also be entitled to adjustment of the amount which he has already deposited with the defendant no.3."

24. The appellant/defendant-DSIDC is directed to comply with the above directions within twelve weeks from the date of this order.

25. No costs.

26. Copy of the order be given dasti to learned counsel for the parties.

27. LCR be sent back along with copy of this order.

28. CM Nos.18530/2015 & 20799/2015.

29. Dismissed as infructuous.