(2011) 07 DEL CK 0248

In the Delhi High Court

Case No : L.P.A. No. 436 of 2010

DLF Ltd. APPELLANT

Vs

Kimsuk Krishna Sinha and others RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 170 CompCas 20

Hon'ble Judges : Dipak Misra, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Soli Sorabjee and H.L. Tiku, s, Bikash Mohanty, Ms. Mandeep Kaur, Ms. Yashmit Kaur and S. Kashyap in L.P.A. No. 436 of 2010, Arvind Kumar Nigam, Ms. Ranjana Roy Gawai and Shailesh Suman in L.P.A. No. 441 of 2010, Neeraj Malhotra and Shourjyo Mukherjee in L.P.A. No. 488 of 2010, for the Appellant; Amit Sibal, Gaurav Mitra, Saurabh Seth, Anirudha Mitra, Ms. Neha Khurana, Vinay Khurana, Vinay Tripathi and Jayant Bhatt in L.P.A. Nos. 436, 441 and 488 of 2010, Neeraj Malhotra and Shourjyo Mukherjee for SEBI in L.P.A. Nos. 436 and 441 of 2010, Arvind Kumar Nigam , Ms. Ranjana Roy Gawai and Shailesh Suman for Sudipti Estates P. Ltd. in L.P.A. Nos. 436 and 488 of 2010, for the Respondent

Judgement

1. Heard Mr. Soli Sorabjee, learned senior counsel for the appellant in L.P.A. No. 436 of 2010, Mr. Arvind Kumar Nigam, learned senior

counsel for the appellant in L.P.A. No. 441 of 2010, Mr. Neeraj Malhotra, Learned Counsel for the appellant in L.P.A. No. 488 of 2010 and

Mr. Amit Sibal, Learned Counsel for the respondents in all the appeals. It is urged by Mr. Soli J. Sorabjee, learned senior counsel appearing for

the appellant that the learned single judge See Kimsuk Krishna Sinha v. Securities and Exchange Board of India [2010] 155 Comp Cas 295

(Delhi) could not have entered into a roving enquiry and contrary to the concept of judicial review under articles 226 and 227 of the Constitution of

India, since a writ court is not to enter into the justifiability of the decision, as an appellate court. Learned senior counsel would submit that the

scope is limited to find out whether the decision has been taken adhering to correct principles that are pertinent and applicable to the decision

making process.

2. On a perusal of the order passed by the learned single judge, we find that he has accepted number of additional affidavits on record, recorded

observations and issued certain directions, though the solitary grievance was that the Securities and Exchange Board of India has failed to act

appositely on the complaints filed by the writ petitioner.

3. In course of hearing of the appeals, it is accepted that two complaints were made to the Securities and Exchange Board of India on June 4,

2007 and July 19, 2007, but no decision or outcome was communicated to the respondent. Thus, in obtaining the factual matrix the only

mandamus that could have been issued to the Securities and Exchange Board of India is to take a decision on the basis of the complaints filed and

communicate the decision to the complainant-respondent. Needless to say, an appeal would lie from such a decision. In view of the aforesaid, the

order passed by the learned single judge is set aside in entirety. The Securities and Exchange Board of India shall examine the complaints and take

a decision and communicate it to the parties. Needless to emphasise, the Securities and Exchange Board of India, if so advised in law, can always

call for documents. We hope and trust, the Securities and Exchange Board of India shall act with utmost objectivity regard being had to the law in

the field and without being influenced by the counter affidavit filed by it in the writ petition. The decision shall be taken after hearing the parties

within a period of three months from the date of receipt of the order passed today. It needs no special emphasis to mention that we have not

expressed any opinion, even remotely, on the merits of the case. The appeals are accordingly disposed of without any order as to costs.