

(2000) 04 DEL CK 0007
In the Delhi High Court
Case No : Civil Writ Petition No. 1497/94

Harsh Wardhan Bajaj and Another

APPELLANT

Vs

Delhi State Industrial Development Corporation Ltd.

RESPONDENT

Date of Decision : 19-04-2000

Acts Referred:

Citation : (2000) 04 DEL CK 0007

Hon'ble Judges : D.K. Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. P.K. Jain and Mr. M.A. Khan, for the Appellant; Ms. Gita Mittal and Ms. Shobhna Takiar, for the Respondent

Judgement

D.K. Jain, J.—Rule D.B.

2. By this petition under Article 226 of the Constitution of India, the petitioners, transferees of sheds No. 203 and 204, New Okhla Industrial Complex, Phase-I, New Delhi , seek a direction to the Delhi State Industrial Development Corporation Limited (for short "the DSIDC") to offer to them the same concessions which were offered by the DSIDC (CWP No. 3806/92), in the case of R. Sehgal Vs. DSIDC incorporated in this Courts order dated 15th September, 1993 and accept the balance amount, with interest at 10% per annum with effect from 1st April, 1989, in full and final payment due from the petitioners in terms of the said offer and also grant a rebate of 15% on the cost of each of the sheds as per the DSIDC's letter dated 27th April, 1989.

3. The sheds in question were originally allotted in March, 1987 to Smt. Saloni Kaushal and Shri Avinash Kaushal on license basis. However, on the request of entrepreneurs, a scheme for transfer of ownership of the sheds to the allottees on hire purchase basis was floated. The offer under the Scheme was made to the original allottees sometime in the year 1987. The allottees were given options to pay the cost of the sheds either by 100% or a percentage thereof on cash down and the rest in installments. Since there was not much response to the said offer,

on 29th April 1989, further benefits were given to the allottees in that special rebates and discounts were offered in case the payment plan was adhered to and a 15% special rebate was offered in the event of unconditional acceptance and payment as per one of the options. Within thirty days of receipt of the offer. The original allottees did not accept any of the offers and failed to make payments. On 15th September, 1989 a show cause notice was issued to the original allottees for illegally sub-letting the sheds. In response thereto, on 8th December, 1989, the petitioners made a request for transfer of the sheds in their favor on the ground that they had purchased the rights of the original allottees in the sheds.

4. Petitioners request for transfer of the sheds was acceded to and vide letters dated 19th February, 1990 they were given a hire purchase offer in respect of the sheds. The cost of the sheds and the terms and conditions of the hire purchase were mentioned in the said letters. The stand of the petitioners is that the said offer was accepted by them and they made initial payments in terms of the said offer but stopped making payments after March, 1994 when they learnt that some concessions had been offered to other allottees and filed the present petition seeking the aforementioned reliefs.

5. According to the petitioners, the DSIDC had voluntarily offered various concessions to other allottees, in particular to R. Sehgal and Chander Prakash, who had filed writ petitions, and that even after the filing of the said writ petitions, in April, 1994, the DSIDC had made yet another revised offer, reducing the interest from 10% to 9% on payment of 100% cash down, which offer was initially open up to 31st July 1994 but was subsequently extended up to 31st August, 1994. The petitioners' grievance is that the DSIDC not only failed to circulate this offer to the petitioners, they also did not supply the statement of accounts to them, depriving the petitioners from the same benefit which was granted to other allottees, and, thus, their action in not treating the petitioners at par with R. Sehgal and Chandra Prakash's cases, is arbitrary, illegal and unconstitutional and, as such, the statement of account issued to the petitioners, demanding the outstanding amount with interest at 17.74% instead of 9%, offered in June, 1994, deserves to be quashed.

6. The petition is opposed by the DSIDC, inter alia, on the ground that the offer made to the petitioners vide letter dated 19th February, 1990, acceding to their request for regularisation of the allotment of sheds in their favour, clearly stipulating that no rebates or discounts were permissible to the transferees; the letter contained the cost of the shed as well as the schedule of installments; admittedly the offer was accepted by the petitioners, who after January, 1994 failed to make payments of installments in breach of the accepted offer. It is maintained that the petitioners' case is fully covered by the decision of this Court in the case of Pushplata Vs. Delhi State Industrial Development Corporation Ltd., and that the petitioners had failed to clear their accounts even as directed in the case of Pushp Lata (supra).

7. When the case came up for hearing on 5th December, 1994, while issuing notice to the respondents, the petitioners were directed to pay the balance amounts with interest at 10% per annum calculated with effect from 1st April 1989. No amount in terms of the said order has been deposited by the petitioners, who, during the pendency of the petition, filed an additional affidavit to place on record an additional fact to the effect that in a similar matter being CWP 4770/94, entitled Madhu Jatty Vs. DSIDC, this Court, vide order dated 6th November 1996, has directed the DSIDC to give to the said allottee June, 1994 offer. The petitioners claim that they also are entitled to the same relief as their case is squarely covered by the said decision.

8. We have heard Mr. P.K. Jain on behalf of the petitioners and Ms. Gita Mittal for the DSIDC.

9. In our view, the issue whether the petitioners are entitled to the same concessions which were offered to R. Sehgal (CWP No. 3086/92) and Chander Prakash (CWP No. 4446/92) having been examined threadbare in Pushp Lata's case (supra), to which one of us (D.K. Jain, J.) was a party, we deem it unnecessary to reconsider the issue all over again. In Pushp Lata's case, speaking for the Court, Y.K. Sabharwal, J. (as his Lordship then was) rejected the argument that the denial of the same concessions to the petitioner as was given in R. Sehgal and Chander Prakash cases was arbitrary and illegal. It was observed that the offer contained in the order, dated 15th September, 1993, in the case of R. Sehgal, was not in the nature of a judgment". It was a case of offer given in a specific case and accepted and cannot be treated as a dispensation of general concession to everyone creating any enforceable right. The said order could not be said to be a binding precedent. It was also observed that the entrepreneurs were not entitled to the same concessions and benefits, being rank defaulters and if for some reason some concession is given to one defaulter, it does not follow in law that same concession must be given to other defaulters. In our view the petitioners are not in any manner better placed than Pushp Lata and other allottees, whose writ petitions, seeking similar relief, already stand dismissed.

10. As noticed above, in the instant case, in the letter dated 19th February, 1990, accepting petitioners' request for transfer of the sheds in their favour, the cost of the sheds and other terms and conditions for regularisation of allotments in their favor were clearly stated. Admittedly, payments in terms of the said letter were not made after January, 1994. Having accepted the said offer in the year 1990 the petitioners are estopped from disputing the amounts due from them in terms of the said offer merely on the ground that some concessions were offered to other allottees in the year 1993 and the same concessions should have been offered to them. The petitioners have even failed to make payment in terms of the interim directions issued by this Court on 5th December, 1994 and the petition could be dismissed on this ground alone. It is pertinent to note that while dismissing a batch of similar petitions along with Pushp Lata's case, the

entrepreneurs were granted one last opportunity to make payment in terms of the DSIDC's letter dated 28th September, 1994 and make 100% cash down payment, without any concession in regard to the rate of interest or 15% rebate or cash discount, with interest at 17.74% quarterly compounded up to the date of payment and all the entrepreneurs were directed to collect their statement of accounts from the office of the DSIDC and make payment on or before 19th February, 1996. Admittedly, the petitioners have not availed of this opportunity as well.

11. The only other issue which now requires consideration is whether the petitioners are entitled to the same relief and concession as was given to Mrs. Madhu Jatti (CWP 4770/94) in terms of the orders passed by this Court in that case on 6th November, 1996, whereby the benefit of June, 1994 offer was granted to her on her making payment of the balance amount within the extended time, on the ground that the DSIDC had failed to inform her of the amount due from her on the basis of the said offer, despite demand.

12. In the instant case, apart from the fact that it was never the case of the petitioners in the writ petition that they had accepted the June, 1994 offer or had made payment in terms thereof and, Therefore, entitled to claim relief on the basis of June, 1994 offer, the facts of the present case are not in pari materia with the facts in Madhu Jatti's case wherein, while noting the various amounts paid by her and observing that no fault could be attributed to her for non-payment, as having failed to receive any response from the DSIDC on her letter she voluntarily made payment of the amount which she had got calculated with the help of the Chartered Accountant, which is not the case here. On the contrary the petitioners have neither made full payments in terms of 19th February, 1990 letter nor in terms of June, 1994 offer or in terms of order passed by this Court on 5th December, 1994.

13. We are, Therefore, of the view that the facts of the instant case not being akin to the facts in Madhu Jatti's case, no relief can be granted to the petitioners in terms of that case. The present case is fully covered by the decision of this Court in Pushp Lata's case (supra). We may also note that vide order dated 15th February, 1996, it was clarified that in case the petitioners do not make payment within the period fixed in the case of Pushp Lata, they would be doing so on their own risk and peril. Admittedly, payments in terms of Pushp Lata's case have not been made.

14. For the foregoing reasons, no relief can be granted to the petitioners. The writ petition is accordingly dismissed and the rule is discharged. There will, however, be no order as to costs.