
(2000) 04 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Petition No. 50/94 and CMs. 5644 and 5645/96

Kamal Pushup Gupta and Others

APPELLANT

Vs

Delhi State Industrial Development Corporation Ltd.

RESPONDENT

Date of Decision : 19-04-2000

Acts Referred:

Citation : (2000) 5 AD 315 : AIR 2000 Delhi 295

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, now fourteen in number and allottees of industrial sheds in 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 in the case of R. Sehgal Vs. DSIDC (CWP No. 3806/92), incorporated in this Court's 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. Initially there were twenty five petitioners but subsequently, either on some of the petitioners moving applications for deletion of their names from the array of parties or on the statement of their counsel, to the effect that they had settled the matter with the DSIDC and were not interested in further pursuing the petition, by various orders their names were deleted from the array of parties. In the final memo of parties' name, filed on 30th September, 1997, the names of only fourteen petitioners figure. However, it is stated at the Bar by Mr. P.K. Jain,

learned counsel for the petitioners, that we are required to deal with the cases of petitioners No. 1, 2, 3, 6, 9 and 12 (as per the said amended memo of parties) because the remaining eight petitioners have either filed independent petitions or have settled the matter with the DSIDC. We may note that the names of petitioner No.1 - K.P. Gupta and Petitioner No. 6 - B.S. Bhatia were also ordered to be deleted vide order dated 12th August, 1996, but they have moved applications (C.M. 5644/96 & CM 5645/96) for recall of the said order. These two cases are also being dealt with along with remaining four cases.

4. The sheds in question, constructed during the period 1973-74, were originally allotted on license basis. However, since inception of the license deeds there were defaults in payment of the rent by the allottees and, Therefore, on the request of entrepreneurs, a scheme for transfer of ownership of the sheds to the allottees on hire purchase basis was floated sometime in March 1977 but despite requests and threats of cancellation of allotment, by means of various letters, by and large, entrepreneurs did not make the payment. In January, 1987, the DSIDC came out with new proposals for transfer of sheds. 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 announced, 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 petitioners did not accept any of the offers in as much as they failed to make full payments in terms of either of the offers.

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 August, 1994. The petitioners, grievance is that the DSIDC had not only failed to circulate this offer to them, 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 resisted by the DSIDC, inter alia, on the ground that the petitioners were in default not only in payment of rent since inception of the license deeds, they failed in even accepting offers made in June, 1987, April, 1989 and November, 1989 in as much as full payments in terms of any of the options exercised were not made. 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 account even as directed in the case of Pushp Lata (supra).

7. When the case came up for hearing on 19th December, 1994, while staying the dispossession of the petitioners, they were permitted to pay the arrears with interest at 10% per annum calculated with effect from 1st April, 1989. As per the statements of account of the petitioners, placed on record by the respondents, though some amounts were paid but full payment of arrears in terms of the said order were not made.

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 places than Pushp Lata and other allottees, whose writ petitions, seeking similar relief, already stand dismissed.

10. Moreover, the petitioners have even failed to make full payment in terms of the interim orders passed on 19th 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 DSIDS's letter dated 28th September, 1994 and make 100% cash down payment, without and 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 account 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. We may now consider the plea of the petitioners, orally urged by their counsel, that they, having made substantial payments, 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 on 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 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 any of the offers made nor in terms of order passed by this Court on 19th 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 14th 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.

15. There will, however, be no order as to costs.

CMs No. 5644 & 5645/96

16. By these two applications, petitioners No.1 and 6 seek recall of order dated 12th August, 1996 whereby their names were deleted from the array of parties for want of instructions by their counsel.

17. Since we have already dealt above with the cases of the applicants on merits and have held that they are not entitled to any relief, the present applications are rendered infructuous and are disposed of accordingly.