

(2017) 10 DEL CK 0460

In the Delhi High Court

Case No : Civil Writ Petition No. 5566 Of 2015

M/S. Prem Ice Factory

APPELLANT

Vs

Delhi State Industrial Development Corporation

RESPONDENT

Date of Decision : 10-10-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80

Citation : (2017) 10 DEL CK 0460

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : K. S. Kashyap, Arun Monga, Surya Joshi, Kudrat

Final Decision : Disposed Of

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, impugning the communication dated 04.12.2001 (hereafter referred to as "the impugned communication"), whereby the amount of Rs. 60,000/- deposited by the petitioner's predecessor (the petitioner's deceased husband) for allotment of an alternate plot was refunded. The petitioner further prays that the respondent be directed to allot an industrial plot to the petitioner as per the scheme framed in terms of the judgment of the Supreme Court in M. C. Mehta v. Union of India And Others (1996) 4 SCC 750.
2. The petitioner is the widow of Late Shri Suresh Chand, who was the owner/occupier and proprietor of M/s Prem Ice Factory, which it is stated was located in Khasra no.339, Village Dindarpur, Najafgarh, New Delhi. It is stated that as the said industry was located in a non confirming area, it was required to be relocated in terms of the decision of the Supreme Court in M. C. Mehta (supra).

3. The petitioner claims that her husband filed an application (application no.45021) along with the relevant annexures to establish that the ice factory was being run by him prior to April 1996 and further seeking allotment of an industrial plot. The petitioner further states that although all relevant documents had been submitted, yet the petitioner's late husband received a letter dated 12.11.1998 informing him that the necessary evidence showing existence of his industry prior to 19.04.1996 had not been furnished and he was called upon to furnish the same. The petitioner claims that in accordance with the directions, the petitioner's husband once again deposited the necessary documents as demanded by the respondents on 19.11.1998.

4. Thereafter, the petitioner's husband became aware that his application for allotment of an alternate plot had been rejected; this is reflected in the letter dated 18.12.2000, which was sent by the petitioner's late husband to respondent no.1 seeking reconsideration of his application. The petitioner claims that, thereafter, the petitioner's husband furnished the requisite documents yet again.

5. By a letter dated 04.12.2001 (which is impugned in the present petition), the petitioner's husband was informed that the earnest money deposited by him had been refunded in his bank account "Punjab & Sind Bank. However, nothing was mentioned as to the reasons why his application for allotment of an alternate plot had been rejected or why he had been found to be ineligible for allotment of an alternate plot.

6. It is stated that, thereafter, the petitioner's late husband filed a suit, inter alia, seeking a direction that the defendant /respondent be directed to allot an industrial plot under the Relocation Scheme, 1996. During the pendency of the said suit (suit no.238/2011), the husband of the petitioner expired. The said suit was decreed in favour of the petitioner on 31.10.2011 and the respondent was directed to allot an industrial plot under the Relocation Scheme. The respondent appealed against the said order (RCA No.133/2011), inter alia, on the ground that the petitioner's husband had not complied with the provisions of Section 80 CPC. The said contention was accepted and by an order dated 24.08.2013 passed by the Appellate Court, the judgement dated 31.10.2011 passed by the Trial Court was set aside and the matter was remanded for non compliance of Section 80 CPC.

7. On remand, the Trial Court accepted the respondent's contention that the suit was not maintainable for want of compliance of the provisions of

Section 80 CPC. The appeal preferred by the petitioner against the said decision (RCA No.30/2014) was rejected by an order dated 05.11.2014. In

the said order, the Appellate Court also observed that the petitioner had not approached the Courts with clean hands inasmuch as the petitioner's

husband had not disclosed that he had accepted the refund of Rs. 60,000/-being the earnest money deposited along with the application for allotment

of plot.

8. The petitioner filed the Second Appeal against the said decision (RSA No.26/2015) before this Court which was subsequently withdrawn. The

petitioner has, thereafter, preferred the present petition, inter alia, claiming similar reliefs.

9. The present petition was moved on 28.05.2015 and on that date the learned counsel for the respondent accepted notice and sought time to file a

counter affidavit. Four weeks time was granted to the respondent to do so and the matter was listed on 27.11.2015. The matter was once again taken

up on 15.03.2016 and the respondent was granted further time to file a counter affidavit. However, no such affidavit was filed. It is seen that further

time was sought by the respondent on 13.02.2017 to file an affidavit and was granted, but the respondent did not file the counter affidavit. In the given

circumstances, the petition was taken up without any opposition to the same.

10. Notwithstanding that the respondent has not filed the counter affidavit challenging the averments made in the present petition, the learned counsel

for the respondent has opposed the present petition essentially on three grounds. First he submitted that the present petition is barred by limitation as

the petitioner's application had been rejected as early as in the year 2000. Second, he submitted that the petitioner had exhausted her remedies by

continuing with the suit and had withdrawn the second appeal without any liberty. Lastly, he submitted that the petitioner has also not produced

sufficient evidence to indicate that the purchaser had established an industry in non conforming area.

11. This Court is of the view that the petitioner cannot be precluded from agitating her grievance only for the reason that the petitioner had

preferred/pursued the suit. It is seen that the said suit was rejected for non

compliance of the provisions of Section 80 CPC and not on merits. It is also seen that initially the petitioner's predecessor had succeeded on merits in his claim for an alternative plot. The contention that the petitioner has exhausted her remedies is also not persuasive. Undeniably, the petitioner exhausted her remedies against an order holding that the suit filed was not maintainable; however, the issue as to the merits of the petitioner's claim has remained undecided.

12. There is little doubt that the petitioner had been pursuing her remedy diligently and thus, the time taken for the same has to be excluded. Thus, the petition cannot be dismissed on the grounds of delay.

13. It is seen that the petitioner's late husband had filed an appeal before the respondent which was accepted and by a letter dated 03.08.2001 the petitioner's husband was called upon to appear before the Appeal Committee on 09.08.2001. It was further stated in the said letter that in the event the petitioner did not appear, the appeal would be decided ex parte. Although, the respondent is maintaining that the petitioner was found ineligible for allotment of a plot, it is seen that there is nothing on record to indicate that any such order was passed by the respondent and in any event no such order was communicated to the petitioner or her predecessor. The learned counsel for the petitioner had submitted that in fact no order was passed by the respondent or the Appeal Committee and the said contention remains uncontroverted.

14. This Court is of the view that it is incumbent upon the respondent to pass a speaking order indicating the reasons for rejection of the claim for allotment of an alternative plot.

15. The petitioner has filed certain documents to establish that the petitioner's husband was running an industry in the non-conforming area. However, this court is of the view that the same are required to be examined by the respondent in the first instance.

16. In the given circumstances, this Court is of the view that it would be apposite to direct the respondent to reconsider the petitioner's appeal and pass a speaking order. It is so directed. The petitioner would be at liberty to file documents to establish that her late husband was operating an industry in the non conforming area as claimed, within a period of four weeks from today. The respondent shall consider the same and pass a speaking order

after affording the petitioner an opportunity to be heard within a period of six weeks thereafter.

17. The petition stands disposed of with the aforesaid directions.