
(1994) 08 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 273 of 1992

Prushottam Traders Pvt. Ltd. and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 55 DLT 619

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : Kirti Uppal and Dilip Vasudevan, for the Appellant;

Judgement

Devinder Gupta, J.

(1) In this petition filed under Article 226 of the Constitution of India, the petitioner has sought directions against respondent No.2 for handing over vacant and peaceful possession of plot No. A-187, Okhla Industrial Area, Phase-I, New Delhi.

(2) The background in which this writ petition came to be filed is that the petitioner was having a plot of land measuring 2161 sq. yards in Anand Parbat Industrial Area, New Rohtak Road, New Delhi (hereinafter referred to as the "earlier plot ") which belonged to Ramjas Foundation. "The petitioner was having its industrial unit/warehouse. In the year 1965, the respondents announced a policy of shifting of industrial units/warehouses from non-conforming areas to conforming areas. In accordance with the policy, the petitioner applied and participated IN a draw of lots held on 30/03/1970 and 14/09/1970. The petitioner was allotted Plot No. A-187, Okhla Industrial Area, Phase I, New Delhi (hereinafter referred to as the "plot in question"). On 21.4.1979 the petitioner surrendered the possession of the earlier plot. However, he did not deposit the premium of the plot allotted to him in Okhla Industrial Area but took up the matter with respondent No.2 for reduction in the amount of premium by sending

repeated representations. Due to the non-payment of the premium amount, the allotment was cancelled, but on petitioner's representation, the Vice Chairman of respondent No. 2 made an order of restoring the allotment of the same plot in Okhla Industrial Area to the petitioner on levying a penalty of 20% on the total premium along with restoration charges @ Re.1.00 per sq. yard. Thus, the demand of premium, penalty and restoration charges amounting to Rs. 82,926.00, according to the petitioner, was duly paid by him on 5.10.1987. Simultaneously the petitioner prayed for being put in possession of the allotted plot. It is the petitioners' case now that despite repeated requests possession has not been delivered. Reference has been made to number of representations made from time to time in this behalf and a reply which was received on 12.7.1991 Stating that the matter was under consideration and final decision would be intimated in due course. Since neither intimation was received or was possession given, he had no option but to prefer this writ petition on 20.1.1992.

(3) On 23.1.1992, while issuing show cause notice, an ad-interim order was made directing respondent No. 2 not to allot the plot in question to any person other than the petitioner.

(4) In response to the show cause notice, respondent No. 2 filed its reply dated 27.4.1992 on the affidavit of Shri A. Srivastava, Director of Delhi Development Authority, in which it was admitted that though the petitioner deposited the sum of Rs. 82926.00 in the year 1987 but possession was not delivered to him since he was not entitled to it. Petitioners' case that it had its industrial unit/warehouse on a plot of land measuring 2161 sq. yards at Anand Parbat Industrial Area, New Rohtak Road was not disputed. It was also not disputed that the petitioner was allotted the plot in question. A specific stand was taken that case of the petitioner was one of large number of 40 cases of Delhi Steel Dealers Association out of which 20 had paid full premium and had been delivered possession of the plots allotted to them but for the remaining 20 or 22 cases it was decided that their cases be put up before Land Allotment Advisory Committee (for short the Committee) for decision. The Committee took a decision that in the first instance all these cases be referred to the Director of Industries, Delhi Administration for checking the old sites which were occupied by the said industrial units/warehouse of Delhi State Dealers Association to ascertain whether or not the said industrial units/warehouses were still functioning at the old sites. About 20 units had taken up the matter to Courts of law but petitioner did not take out any legal proceedings. After receipt of the report of Director of Industries, decision was taken and 22 cases were cleared. The Committee was of the opinion that three cases, including that of the petitioner which had not been referred to Director of Industries, Delhi Administration earlier, be now sent to Director of Industries which was accordingly done but till date no report had been received from the Director of Industries.

(5) In view of this stand taken by the respondents in their reply, rule was issued

on 17.7.1992 and the interim stay was confirmed.

(6) In the counter dated 3.11.1993 on the affidavit of Shri Ashok K. Acharya, Director of D.D.A. filed after rule was issued, it has been stated by respondents that on 3.2.1993 the Committee had decided to drop the petitioner's case because Director of Industries had reported about the non-existence of petitioner's ware-house at the old site and thus irrespective of the fact that the petitioner had been allotted the plot in question and also paid the premium including 20% extra premium and restoration charges, it was not entitled to possession of the plot in question .

(7) Since decision of the Committee was taken on 3.2.1993, during the pendency of the writ petition, the same is also under challenge now by the petitioner on number of counts.

(8) When the matter was taken up today, none appeared on behalf of the respondents .I have heard the learned Counsel for the petitioner who has also taken me through the affidavits exchanged as also various documents on record.

(9) Action of respondents is not delivering possession is under challenged on the ground that in pursuance to the policy decision taken by the respondent under which the industrial units/warehouses existing in small and densely populated non-conforming areas had to be shifted to conforming areas, the petitioner had made an application for allotment of an industrial plot and was duly allotted a plot of land in Okhla Industrial Area. On 12.7.1991 a communication was received from the Joint Director, Dda, addressed to the petitioner that the matter was under consideration and the final decision would be intimated in due course. The petitioner also surrendered possession in the year 1979 under the hope and expectation that the petitioner would be put in possession of the allotted plot. Now after a period of more than 20 years, the act of respondents in denying possession of the plot of land on the ground that the petitioners' warehouse is not now in existence at the old site is not only unjustified but also arbitrary since in a number of cases where possession had not been surrendered, not only allotment was made but also possession of new plots was handed over. The petitioner had complied with the requirements of the terms of the letter of allotment by making payment and vacating/surrendering the possession within the non-conforming area. Thus, the respondents deserve to be directed to hand over the possession of the allotted plot to the petitioner.

(10) Annexure R-1 is the letter of allotment through which the petitioner was informed about the allotment of plot on certain conditions. One of the conditions was the surrendering of possession of the old site in non-conforming location, which reads:

"WITH reference to your application for allotment of an industrial plot, I am directed to inform you that it has been decided to allot you the above plot measuring 1210 sq. yds. approximately on perpetual lease-hold basis for shifting of your industry/warehouse from the present non-conforming location. The

allotment is on the specific condition that you will, within 12 months from the date of possession of the plot stop the use of the present premises 31 /3B, Anand Parbat Indl. Area, (ii) 459/60, Khari Baoli, Delhi-6 for the purpose of warehouse and for any manufacturing process or running of any industry whatsoever nor will you let out or sub-let the so vacated premises to be used for an industrial purpose or any other purpose in contravention of the provisions of the Master Plan for Delhi or the Zonal Development Plan of the Area "

(11) Annexure A is a Certificate by the Ramjas Foundation certifying that the petitioner was a lessee of the Foundation of land measuring 2161 sq. yds. at AnandParbat Estate, New Rohtak Road, New Delhi which was vacated on 21.4.1979. In almost all the representations addressed by the petitioner to the respondents there is reiteration of the fact by the petitioner that it had already surrendered possession of the industrial unit/warehouse in non-conforming area in the year 1979 and that he put in possession of the allotted plot of land in Okhla Industrial area. There is no denial by the respondents to this averment either in the counter affidavit filed on 27/04/1992 or in the affidavit dated 3.11.1993 or in any of the communications addressed to the petitioner.

(12) Annexure E is a communication dated 17.9.1987 from deputy Director(Industries) of D.D.A. to the petitioner enclosing therewith an attested copy of demand letter dated 11.10.1979, which includes premium of the plot in question at the rate of Rs. 58.00 per sq. yd., restoration fee at the rate of Re.1.00 per sq. yd. and 20% of the total premium amounting to Rs.14,036.00 after deducting a sum of Rs.2,100.00 the premium already paid. The petitioner was required to pay Rs.82,926.00. This amount, the petitioner deposited vide receipt-cum-challan on 26/09/1987. This amount has been retained by respondent No. 2 and not returned till date to the petitioner.

(13) RESPONDENTS" case in the counter affidavits has been that the demand was raised on 11.10.1979 when the petitioner was called upon to make the payment but the petitioner deposited this amount only after a lapse of almost eight years. The case of the petitioner along with others was sent to the Committee who took a decision that in the first instance the matter should be referred to Director of Industries for checking the old sites which were occupied by the industrial units/warehouses as to whether the said industrial units/warehouses were functioning at the old site. Since it was found that the petitioners" warehouse was non-existent at the old site, the petitioner was not entitled to allotment of plot. This stand of respondents is totally understandable. In fact the basic question that was required to be seen, when the matter was referred to Director of Industries, was as to whether the possession of the industrial unit/warehouse in the non-conforming area had or had not surrendered which also was one of the conditions in the letter of allotment. Since it has been the case of the petitioner throughout that he had already surrendered the site in 1979 after the allotment had been made, there was no question of petitioner continuing any industrial activities at the old site. In case the petitioner acted on

the policy announced by respondent No. 2 and changed his position to its detriment by surrendering possession of the earlier plot in the year 1979 and made payment in the year 1987, in pursuance to a demand notice, respondent No. 2 now cannot be heard to say that since in the year 1992-93 the petitioner was not functioning at the old site, Therefore, the petitioner was not entitled to possession of the allotted plot. In case the respondent No. 2 had to verify the fact of petitioners functioning at the old site, it had to be with reference to the point of time either when the allotment was made, namely, in the year 1970 or immediately thereafter. Only in case the petitioner was having his warehouse in the year 1970 or was having an industrial unit/warehouse in a non-conforming area that he would have been entitled to participate in the auction and not otherwise. In case, in pursuance to the condition which was imposed by respondents in the letter of allotment, the petitioner ceased to carry on any activity at the old site after allotment of the new plot of land in Okhla Industrial Area, the petitioner cannot be penalised or deprived of allotment on the ground that the petitioner now after a lapse of 23-24 years was not having any industrial unit/warehouse at the old site. Entitlement to the allotment of plot had to be at the time of participation in auction and not 24 years thereafter, when the respondents have already realised the premium etc. This action of the respondent in not delivering possession is wholly unjustifiable. In fact after the respondents had accepted the amount of the plot allotted in Okhla Industrial Area, there is no reason for not putting the petitioner in possession of the said plot. The decision taken vide item No. 6 in the minutes of the 10th meeting of the Committee is neither reasonable nor rational.

(14) As noticed above, the enquiry which ought to have been made was whether or not the petitioner was functioning or carrying on any industrial activity at the old site in non-conforming area at the time of allotment of plot of land and not whether still it was in existence now. In this view of the matter, respondents are not justified in depriving the petitioner of the possession of the allotted plot in question.

THE writ petition accordingly deserves to be allowed.

IN the result, the writ petition is allowed. Respondent No. 2 is directed to hand over and deliver peaceful and vacant possession of plot of land No. 187, Block A in Okhla Industrial Area, Phase I, New Delhi measuring 1210 sq. yards to the petitioner within a period of three months from the receipt of this order. IN the circumstances of this case I make no order as to costs.