

(1996) 01 DEL CK 0090

In the Delhi High Court

Case No : Civil Writ Appeal No"s. 1623, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1682, 1683, 1684, 1685, 1686, 1687, 1689, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 17

Pushplata

APPELLANT

Vs

Delhi State Industrial Development Corporation Ltd.

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Evidence Act, 1872 — Section 15

Citation : (1996) 1 AD 398 : (1996) 61 DLT 818 : (1996) 37 DRJ 41

Hon'ble Judges : Y.K. Sabharwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : R.K. Anand, Mahendra Rana, Geeta Mittal and Shobhana Takiar, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) The Government of India placed certain lands at the disposal of the Delhi State Industrial Development Corporation ("DSIDC" for short) for construction of industrial sheds in different areas in Delhi which included Rohtak Road, Okhla Phase I & II, Jhilmil Colony, Lawrence Road, Narela and Wazirpur Industrial Area. The sheds were constructed during the period 1973-74. Dsidc advertised a scheme which provided for training to unemployed engineering degree-holders who alone were entitled to be considered for allotment of sheds. The allotment of the sheds was made on- execution of a lease deed which, inter-alia, stipulated payment of monthly rent by the Lessee Entrepreneurs.

(2) Since inception of the lease deed there have been defaults in payment of the rent by the entrepreneurs. Dsidc issued a circular dated 15th March 1977 giving broad outlines for transfer of the sheds in favor of the entrepreneurs on hire purchase basis. The circular also provided that the entrepreneurs would be required to clear the arrears of rent due to be paid to Dsidc before any hire

purchase agreement is entered into. The outlines in the circular were stated to be only provisional and subject to change in the light of further discussions with the bankers and other concerned authorities. By various letters issued by Dsidc from time to time, the entrepreneurs were requested to pay outstanding amount towards rent etc and they were informed that the payments would be adjusted against the hire purchase installments when decided. In this regard reference may be made to letters of Dsidc dated 18th September 1978, 23rd January 1979 and 1st May 1982. The entrepreneurs were also informed that failure to make the payment would result in initiation of proceedings under Public Premises(Eviction of unauthorised occupants) Act (for short "the Act") for recovery of the rent and possession of the shed. The petitioner was so informed by a legal notice of Dsidc dated 2nd July 1983. However, by and large, entrepreneurs did not make the payment. The petitioner is also one of those who did not make the payment.

(3) By letter of Dsidc dated 8th January 1987 option was asked from the petitioner in respect of her shed No.63 situate in Wazirpur Industrial Complex. The petitioner was informed that Dsidc proposed to transfer the shed to her on cash down basis / hire purchase basis. The area mentioned in that offer was 1400 sq. ft. It was proposed to be transferred at the cost of Rs.2,81,218.00 at the rate of Rs.200.83 per sq. ft. It provided that in the event of 100% cash down payment, a discount of 2% on the total cost will be allowed; in the event of 75% cash down payment and balance payment of 25% by monthly installments, a cash discount of 1-1/2 % will be allowed and on payment of 50% cash down and 50% by monthly installments, discount of 1% of the total cost will be allowed. The cash down payments were required to be made within one month from the date of issue of the offer. The monthly equated installments were calculated after charging interest at the rate of 18% p.a. The entrepreneurs were requested to exercise one of the options and send it to Dsidc in writings Along with demand draft equivalent to the amount payable according to the option that may be exercised.

(4) The petitioner like many other entrepreneurs before us did not respond to aforesaid offer. It seems that representations were received from entrepreneurs in respect of price, terms and mode of payments. By letter of Dsidc dated 7th May 1987 further concessions were given to the entrepreneurs. The entrepreneurs were informed that Dsidc cannot wait indefinitely and if revised terms were not accepted within 30 days of the issue of the letter, Dsidc may be left with no option but to take action to resume possession of the sheds besides recovery of rent and other arrears. The Corporation also gave another option of making 25% cash down payment and balance in equated monthly installments, but in that event allottee was not entitled to any discount. There was no response to even this by the petitioner.

(5) Once again by letter dated 7th May 1989 additional concessions were given to the entrepreneurs. The concessions now given were: additional Far, property

tax rebate, assistance in respect of common services and Ssi registration and 15% rebate on the up to date cost of shed excluding the impact of property tax. The offer stipulated that the allottee should not only accept the hire purchase offer but also make payment as stipulated in terms of the offer and all installments should be paid regularly by 10th of following month failing which compound interest at the rate of 18% would be charged. If the allottee was to be in default of payment of any three installments at any given point of time it was stipulated that the offer shall be withdrawn without any notice and the Corporation shall have the right to cancel the allotment, re-enter the shed and take possession from the allottee in addition to recovery of such amounts as may be payable to the Corporation. The offer was valid for 30 days. It stated that no extension shall be allowed under any circumstances and that if the allottee fails to accept the offer and deposit the money within the stipulated period it shall be deemed that the allottee has not accepted the offer. It further stipulated that on expiry of a period of 30 days from the date of issue of the letter the offer shall stand withdrawn. The rate as per this offer was Rs.235.52p per sq.ft.

(6) The petitioner accepted fourth option i.e. payment of 25% cash down and balance 75% by monthly installments. The petitioner paid to Dsidc 25% cash down amount of Rs.18,718.13 which is reflected in the receipt dated 10th June, 1989. The monthly installments of Rs.3787.54 were to run for 10 years and were payable by 10th of each calendar month commencing from April 1989. Petitioner in the beginning itself committed default in the payment of monthly installments and was informed by Dsidc that hire purchase installments for the month of April, May and June 1989 had become due and was requested that the payment may be made failing which penal interest would be charge. The petitioner was reminded that Installment for the month of July 1989 was to be deposited by 10th July 1989. The petitioner was further informed that according to the offer if the allottee was in default for payment of any 3 installments at any given point of time then the offer could be withdrawn without any notice to the allottee and the Corporation could proceed to cancel the allotment and resume the shed and take possession in addition to the recovery of the amounts payable. Admittedly, neither the petitioner responded nor made the payment. By still another letter dated 12th June 1991 the petitioner was informed that she has not been paying hire purchase installments in terms of her option and was requested to make the payment which as on 31st March 1991 was to the tune of Rs.35,676.66p. Since the payment was still not made, by notice dated 2nd December 1991 sent to the petitioner by the counsel for the Dsidc the petitioner was called upon to make payment of Rs.65,839.44 which was due as on 31st October 1991 within 15 days. It was also stated that petitioner was liable to pay interest at 17.74% quarterly compounded on the defaulted installments of the hire purchase offer. The notice further stated that hire purchase offer in fact stood terminated by virtue of the petitioner committing defaults, however ,last and final opportunity to pay the amount was being given and in the event of failure to pay, the hire purchase offer shall stand withdrawn and appropriate action taken under the Act

and the petitioner will be treated as unauthorised occupant. It was also stated that on failure to make the payment the petitioner will be liable to pay damages at the market rate. This legal notice resulted in petitioner making payment of Rs.20,000.00 to DSIDC. Petitioner stated in her letter dated 3rd January 1992 while enclosing cheque of Rs.20,000.00 , that balance payment will be deposited shortly. Petitioner, however, did not make the further payment and has been a persistent defaulter. The position in other cases before us is almost similar. A batch of writ petitions were listed before us for hearing but arguments were addressed on the basis of facts of the present case and learned counsel for the petitioners submitted that other cases being almost similar, the same result may follow. Admittedly all entrepreneurs before us committed various defaults in making payments.

(7) We may also notice the concessions given to entrepreneurs by Dsidc as contained in its letter/offer dated 10th November / 5th December 1989, They were as follows:-

1A) Nrent would be charged from the allottees for the period prior to 1st March 1977;

B)Interest at 50% maintenance charges (rebate already given for the other 50% in the earlier offer) would be included in the costing of the sheds on the basis of the investment by Dsidc on year to year basis.

2. Weighted average rate of interest should be paid to the entrepreneurs by Dsidc with reference to the date of payments.

3. The amount paid as security deposits by the allottees would be treated as payment towards the hire purchase cost and weighted average rate of interest should be allowed to them.

4. DSIDC shall charge weighted average rate of interest on future installments with effect from 1st April 1989 compounded quarterly as against 18% monthly compounded stipulated in the last offer.

5. The Corporation shall not charge any arbitrary charges except the cost of the sheds, water and electricity charges actually paid/payable by the Corporation on behalf of the allottees.

(8) The allottees were informed that aforesaid was the final offer valid for a period of 30 days from the date of the issue or the date of publication in the newspapers whichever is later and failure to convey acceptance Along with payment within the stipulated period the offer shall be deemed to have been withdrawn. The offer of additional benefits was to be read mutates mutants to the terms and conditions stated in the scheme/offer of hire purchase and issued vide letter of May 1989. The revised schedule of payment plan was also enclosed with this letter. It was further stated that in case of any discrepancy in the accounts the entrepreneurs are requested to approach Dsidc Along with the original documents/receipts for clarification.

(9) Now we come to more recent letters / offers of DSIDC. By letter dated 20th January 1994, after referring to the concessions already given including the one in December 1989 and after making a mention of the mounting bank liabilities and to the observations made by this court in the case of Kimtilal Rahi and Chander Parkash, Dsidc informed the entrepreneurs that it has no option but to take strict action such as selling of sheds, eviction, cancellation of hire purchase offers in those cases where allottees are not paying installments and adjustment of amount already paid against use of sheds as rent, arrears and damages etc. The entrepreneurs were thus requested:-

A)To make payment of all overdue hire purchase installments within 30 days as per your own option and thereafter continue paying in due time failing which legal action for recovery and possession will be initiated. For installments becoming due in future please deposit post-dated cheques covering up to last and final installments.

B)If you have not opted for the hire purchase scheme make payment of rental arrears including interest thereon within 30 days and continue to make payment on monthly basis as per lease deed. Post dated cheques may be deposited for next 5 years also within 30 days.

C)You may now at your wish make 100% payment of the cost of the sheds at the actual cost including interest till date of payment within 30 days. In that case, the shed will be conveyed in your name. Those who had opted for hire purchase agreement, can also make full payment now for the balance amount and their amount already paid will be adjusted.

(10) This letter also did not result in any payment forthcoming from the entrepreneurs before us including the petitioner.

(11) We may now notice the decision taken in 148th meeting of Board of Directors of Dsidc held on 27th July 1994. In this meeting the Board, inter- alia, decided as under:-

"AFTER detailed discussions, the Board resolved that the benefit secured from various banks as a result of final negotiations may be passed back to the allottees after with-holding expected lax liability, if any, and after making full charge of other dues and final offers be issued accordingly. The amount so withheld against expected tax liability, may be refunded to allottees, if tax is not levied. The Board was appraised that out of 364 allottees under Hire-purchase scheme hardly any allottee has paid the future installments of hire purchase in time. Further about 333 still remained as renters most of the H.P. allottees have defaulted more than 3 installments and the offer is treated as cancelled and have reverted on the rental scheme as per terms and conditions of the hire purchase offer of the year 1989. Board, therefore, noted that the allottees do not seem to be willing to make payment even after substantial discounts offered to them in earlier offers. Board, Therefore, resolved that the revised offer now being issued should be considered as final and the allottees who do not accept the present

offer and make 100% payment of the cost of the shed as per offer should not be given any further chance and the Corporation should file. cases for eviction as well as recovery of rent. If any allottees after the expiry of the last date of offer approaches the Corporation for acceptance of the scheme the shed .may be offered to such allottee on making 100% payment of the market value of the shed to be ascertained by the Corporation. For renters the scheme as proposed was also approved."

(12) By letter dated 28th September 1994, the petitioner was informed that she did not make payment of the quarterly installments in stipulated time and more than 3 installments were in default and as per Para 8 of offer dated April 1989 the said offer stands withdrawn. The Corporation further stated that it has, however ,been decided to give last chance on her making full payment on cash down basis. The petitioner was asked to make payment by 31st October 1994. Statement of account was enclosed. The letter further stated that no extension shall be allowed and if the allottee failed to accept the offer and deposit the entire amount within the stipulated period it shall be deemed that the allottee has not accepted the offer and after expiry date i.e. 31st October 1994 the offer shall stand withdrawn without any further recourse. It is not disputed that payment as demanded was not made.

(13) By letter dated 19th October 1994 the petitioner was informed that hire purchase offer of 1989-1990 has been withdrawn due to non performance on her part and she had become unauthorised occupant and amount paid by her had been adjusted against rent/damages. She was requested to handover possession of the shed by 14th November 1994 failing which, the letter stated, legal suits will be filed for eviction under the Act and she would be liable to pay the present market rate of damages for the period of illegal occupation of the shed. An argument has been raised by learned counsel for the petitioner that Dsidc acted illegally in issuing the letter dated 19th October 1994 before the expiry of 31st October 1994 since up to that time the petitioner could make the deposit in terms of letter dated 28th September 1994. We do not find any substance in the argument since it seems that the letter under reference was issued for the default committed in making payment pursuant to 1989-90 offer and in any case the letter would have become inoperative in case of payment by 31st October 1994. The point raised is also of an academic interest only as it is not the case of the petitioner that the payment was made by 31st October 1994.

(14) The period for cash down payment in terms of letter dated 28th September 1994 was extended up to 30th November 1994. This was done by letter of Dsidc dated 7th November 1994. The letter, however ,stated that the allottees will not be entitled to the benefit of hire purchase scheme of 1989. The period of 30th November 1994 was further extended till 9th December 1994 by Public Notice issued in the newspapers which stated that there will be no further extension and thus allottees who were interested in ownership should clear all dues by 9th December 1994. The petitioner did not make the payment. We may,

however ,notice that in the statement of account benefits of rebate and discount was given to some of the allottees which according to Dsidc was on account of lapse and clerical overlooking for which the Explanation of the official was called for. Be that as it may, this aspect is again of no consequence since the petitioner and other entrepreneurs like her did not make payment even as per the statement of account .which statement of account may be wrong according to DSIDC. They did not make any payment even by stating that according to their calculation the amount was not as claimed but was as being sent by them. The price of sheds in terms of the statement of account was Rs.264.17 per sq.ft.

(15) The reliefs prayed for by the petitioner in the writ petition are these:-

A)Issue a statement of account clearly indicating the payments received by them from the petitioner and the dues, if any, after adjusting the amount received by them in respect of Shed No. 63, New Wazirpur Industrial Complex, Delhi-12 in accordance with the offer made by Dsidc in Court on 15.9.1993 in C.W.P. No.3086/92 and Cwp No-4446/92, Dsidc Versus Chander Prakash and accept payment of their dues for executing conveyance deed etc in favor of the petitioner. That the petitioner is filing a Chartered Accountant's Certificate indicating the balance amount payable to the respondent by the petitioner Along with interest and the respondent be directed to accept the same or indicate the amount due to the petitioner and accept the balance amount in full and final payment of costs of the shed as per area allotted in the allotment letter/lease-deed and Scheme and not otherwise for passing title deed to the petitioner within three months as in the case of other entrepreneurs;

B)accept the balance full and final payment of the petitioner as per their revised offer in Civil Writ Petition by the respondent No.1 with interest at the rate of 10% w.e.f. 1.4.1989 Along with offer of additional concessions stipulated in the case of Dsidc versus Chander Prakash and another and in Cwp No. 4446/92 and Cwp No. 3086/92 and not to add any other dues and the sole basis should be shed costs as per the allotted area and not otherwise. Five additional concessions set out in the above judgment are as follows:-

I)The allottee entrepreneurs who accept the present offer in time as stipulated shall be permitted to put up additional constructions as per relaxed Far standards.

II)The allottees entrepreneurs shall be entitled to a special rebate of 15% on the up-to- date cost of the shed excluding the impact of property tax, if they accept the offer.

iii) Mcd shall be asked to levy the property tax from the individual entrepreneurs from the deemed dates of their ownership i.e. 1.3.1977 and accordingly, work out its demand afresh taking the individual to be owner with effect from 1.3.1977;

IV)For taking over the common services of these industrial estates the amount required as per the deficiencies estimates would be provided by the government

out of plan funds;

V)The industries department would assist the entrepreneur in getting Ssi registration if applied for and in securing assistance from financial institutions for additional constructions, additional power load etc.

C)Grant 15% special rebate on the cost of the shed as on 31.3.89 and discount of 2% as per the order of April/May 1989 of the respondents to the petitioner to whom the same has not been given in calculating balance payments and should be in accordance with the stipulations/conditions as indicated in the order dated 26.11.1993 passed in Cwp No-4446/92 granting equal status to all original allottees.

d) accept the admitted costs as per the Chartered Accountants' Certificate, annexed with this petition.

E)To confirm the statement of account of the petitioner with regard to their balance payment after giving due special rebates of 15% and 2% discount and equal status to all the entrepreneurs as per 1989 offer and as per Chartered Accountant's statement annexed herewith.

F)to direct the respondent No.2 not to proceed with the eviction proceedings under the Public Premises Unauthorised Occupants' Act, 1971 pending disposal of the writ petition.

G)to direct the respondent No.1 not to charge/claim Rs.6.00 per sq. ft. as per the allotted area payable by 1st of April 1995 as per public notice dated 4.4.1995 and to stay the operation of the public notice dated 4.4.95.

H)direct the respondent to charge amount with respect to the petitioner's shed as per the allotted area in accordance with the original letter of allotment/lease deed/possession, other criteria be adopted by the DSIDC;

i) direct the respondent that the amount paid by the petitioner from the date of allotment till the date be ordered to be adjusted towards

the hire-purchase amount Along with interest and the Dsidc be directed to give adjustment of the said amount to the petitioner against the payments to be made by the petitioner to the Dsidc towards the hire-purchase offer and towards the satisfaction and fulfillment of the terms and conditions, as stipulated in order dated 15th of September, 1992 in Cwp No.3086/92 and 26th of November 1993 passed in Cwp No.4446/1992;

J)to execute deeds of conveyance in favor of the petitioner on fulfillment of the five stipulations/conditions, in respect of the shed in question;

K)to allow the original allottee to dispose of the additional area due to Far after paying the balance full amount."

(16) Before us, price of shed, has not been questioned. However, the main contention of Shri R.K. Anand, learned counsel for the petitioner which has been

argued with vehemence is that the petitioner is entitled to same reliefs and concessions as were given to R. Sehgal in terms of the orders made by a Division Bench of this court on 15th September 1993 in Cwp 3086/92 (R. Sehgal Vs. DSIDC) and Cw 4446/92 (DSIDC Vs. Chander Prakash). Learned counsel submits that the action of Dsidc in not treating the petitioner similar to R. Sehgal and Chander Prakash is violative of Article 14 of the Constitution. The argument is that the petitioner is better placed than R. Sehgal and Chander Prakash and thus she cannot be treated differently and denial of same benefits as given to them would be arbitrary, illegal and unconstitutional being violative of the equality clause. Let us, therefore, examine the offers made by Dsidc in the said cases and also the orders passed.

(17) In the case of R. Sehgal (CW 3086/92) a Division Bench of this court on 15th September 1993 passed the following orders:-

"COUNSEL for the respondents submits that he has taken instruction and according to him, the respondent will be willing to extend the offer of 1989 on the terms and conditions contained in the said offer. The said offer of 1989 gives four options to the allottees for purchase of the sheds. The first was 100% cash down payment. The 2nd was 75% cash down payment and 25% by installments, the 3rd was 50% cash down payment and 50% by installments and the 4th was 25% cash down payment and 75% by installments. If an allottee exercised the first option he was required to pay 10% p.a. interest but in respect of other options, the rate of interest which was payable was stated to be 18% p.a. Mr. Swatantra Kumar states that as a further concession the rate of interest will be reduced to 17.74% in the case of options, 2,3 & 4. This interest will be paid with quarterly rests and the installments worked out on this basis. The offer also entitles the allottees to make additional construction on the F.A.R. having increased. Mr. Swatantra Kumar will take instructions with regard to the fact whether the allottee will be free to dispose of the extra area which is constructed because such disposal will help the allottee in making the payment by the respondents. Further instructions are sought by him with regard to time as to when the first Installment is to be paid. Counsel for the petitioner request that he would be permitted to make the payment of 25% within 3 months of the issue of the revised DD. Mr. Swatantra Kumar further states that arrears w.e.f. 1989 will have to be paid and Along with 25% amount the arrears of is acceptable to the petitioner.

To come up for further orders on 22.9.1993. A copy of this order given dusty to counsel for the respondent."

(18) The contention is that the Dsidc ought to have circulated the offer given to R. Sehgal to all the entrepreneurs and they should have been offered the concessions given by Dsidc as noticed in the aforesaid order. In support of the contention, reliance is placed on the decision of the Supreme Court in the case of U.P. Avas Evam Vikas Parishad and another Vs. Ravi Kumar Anand and others, . We may briefly notice the facts of this decision. In 1980 different types of flats in

different income groups were allotted to the respondents but possession could not be handed over as construction was not complete. When possession was delivered the appellant demanded extra amount from respondent as the price had escalated in the meantime. This demand was challenged by filing the writ petitions. The escalation was upheld. Demand of interest at 18% was, however, held to be excessive. The High Court had observed that brochure issued by the appellant relating to a scheme empowered the Commissioner to grant relaxation from various conditions for valid reason or for delay due to slackness of official machinery. The High Court, therefore, directed that since the delay was caused as the appellant did not discharge initial responsibility the Commissioner may consider granting relaxation in interest and penalty. The Special Leave Petitions filed by the respondents were dismissed by the Supreme Court on 22nd March 1990. While dismissing the petitions the Supreme Court clarified that fate of the Special Leave Petitions will not, however, stand in the way of the allottees moving the High Court for clarification of certain observations in the impugned judgment which according to them are in their favor and in regard to which the Supreme Court did not express any view. In this view the High Court was approached by filing Review petitions.

SOME of the allottees filed writ petitions as well claiming same benefits as were given by the High Court in its order dated 7th February 1990 in respect of which Special Leave Petitions were dismissed on 22nd March 1990. When these were pending in the High Court, the Board decided that certain benefit / concessions be given to allottees who withdraw their case from the court. The concessions which the Board resolved to grant to allottees were enumerated in a letter. This letter was produced before the High Court. The High Court after perusing the letter observed that the benefits may be extended to every petitioner. The Board had extended the benefits only to those who had agreed to withdraw their petitions. The decision of the High Court was challenged in Supreme Court. The question before the Supreme Court was whether the High Court was justified in extending the benefits to all those allottees who had approached the High Court since the Board extended it to only those who agreed to withdraw their petitions. The Supreme Court held that the effect of the resolution and its implementation was to grant concession to those allottees who had committed defaults. The Supreme Court held that it was not fair. It opined that if the Commissioner had relaxed the condition in pursuance of the judgment of the High Court, then the benefit of it could not be denied to those who were more law abiding and deposited the entire amount demanded by the Board. The Apex Court further said that those allottees who had deposited the entire amount could not be worse than those who were defaulters. It was directed that all those allottees who had filed the review petitions or writ petitions and to whom no intimation was sent shall also be extended the same concessions. We fail to understand how this decision helps the petitioner. The petitioner cannot be held to be more law abiding. 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. They

have to show what legal right they have to claim concessions. The main argument has been that as concessions were given to seghal, they are entitled to same concessions. The petitioner says she is prepared to make payment of 100% cash down and is thus entitled to pay it with 9% or at the most with 10% interest and not more as demanded by DSIDC. The petitioner, soon after the decision in R. Sehgal's case, did not offer to Dsidc the entire amount. She did not make payment inspire of repeated opportunities. She did not send to Dsidc any intimation soon after decision in Seghal or Chander Prakash's case stating that she was willing to make the payment in terms of the order in these cases. This stand has been taken now when the petitioner has been pushed to the wall and no other avenue is left for her, with a view to somehow protect her rights, if any, in the shed allotted and this is the purpose, for which the writ petition was filed. Payments were not made by the petitioner within time which was stipulated in Seghal or Chander Prakash's case. It was on the facts and circumstances of the particular case the Supreme Court was dealing that it was directed that the intimation had to be sent to the allottees individually. Here number of litigations were pending and it can be safely presumed that other entrepreneurs knew about the orders made in cases of R. Sehgal's and Chander Prakash. Their association was taking active interest in the matters of payment and even stereotype cyclostyled replies were being sent by them to the DSIDC. Even otherwise, on the facts of the case in hand, we do not find any substance in the contention that after the decision in R. Sehgal's case, the Dsidc was required in law to give any individual intimation calling upon the entrepreneurs to make payment on the same lines as was agreed to be accepted from R. Sehgal. Further, the Dsidc has explained how offers of R. Sehgal. and Chander Prakash etc were accepted and why such offer could not be accepted now. It has been explained that the petitioners including R. Sehgal. whose matters were listed expressed before the court the desire and their willingness to accept the transfer of ownership on cash down basis if certain relief was given in respect of rate of interest for the period between last date of hire purchase offer and the date of full payment. This is stated to have transpired in hearing on 8th September 1993 in the case of R. Sehgal. and other connected writ petitions. Dsidc has further explained that on account of various litigations no recovery was being effected from the entrepreneurs. The recovered amount was stated to be negligible. The allottees were directed by orders dated 23rd September 1992 passed by Anil Dev Singh, J. to make payment as interim measure on the basis of letters dated 1977 and 1982 with simple interest at the rate of 10%. Even these orders were not complied with. Dsidc says that in another case (Hakam Singh's case) the interim directions were made for payment of interest at 12%. Dsidc says that the position was highly uncertain. It was not certain as to what rate of interest would be awarded in favor of banks. The suits of the banks were pending with whom Dsidc was negotiating for lowering the rate of interest. Under these circumstances the Corporation accepted the offer of 10% interest in the case of R. Sehgal on making of 100% down payment. It has further explained that if now the same concession is given to others it will lead to loss of Crores of rupees to

Dsidc and as such it was decided to restrict the offer only to cases where the same had already been made. In this regard reference has also been made to the orders made in Cw 1221/92 on 10th December 1993. On 10th December 1993 the following order was passed by the same Bench which passed the order on 15th September 1993:-

"COUNSEL for the petitioner agrees to pay 100% amount within two weeks. The amount to be paid will be communicated to the petitioner by counsel for the respondent within a week from today. . It is made clear by Mr. Swatantra Kumar that the offer of reduced interest at the rate of 10% are only to be availed by all those persons whose matters are listed today in Court before this Bench provided they make a 100% payment within two weeks from today. Even in those cases which are listed today but are adjourned to some other day, this offer would be applicable provided they make the 100% payment within 2 weeks from today. Petition stands disposed of in the aforesaid terms. Copy of the order be given dusty to counsel for the parties."

(19) The offer of Dsidc as contained in the aforesaid order makes it clear that it was applicable to only those who made 100% payment as stated in the order. The offer stipulates that it will be applicable to even those cases which were listed but were adjourned to some other date provided the said allottees make 100% payment within two weeks. Here it is not the case of the petitioner that any payment was made after January 1992. Admittedly the payment as stipulated in the aforesaid order was neither made nor offered.

(20) There is no substance in the contention of the petitioner based on plea of discrimination and in this regard we may also refer to a decision of the Supreme Court in the case of Chandigarh Administration and another Vs. Jagjit Singh and another, holding:-

"WE are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favor of the petitioner on the plea of discrimination. The order in favor of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favor of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order can not be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again

and again. The illegal/ unwarranted action must be corrected, if it can be done according to law- indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favor of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion such a course- barring exceptional situations- would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises).

(21) Reliance has also been placed on behalf of the petitioner on directions contained in the judgment of a Division Bench of this court in the case of Dsidc Vs. Chander Prakash (CW 4446/92) decided on 26th November 1993. In this case, after noticing the terms of the offer as contained in the order dated 15th September 1993 in the case of R. Sehgal the court directed as under:-

"ON 4th October 1993 this court again directed that any party who wish to accept the aforesaid offer of hire purchase should file an undertaking with Dsidc before the next date of hearing. Mr. Francis informs us that the respondent has exercised the option in terms of the aforesaid order dated 15th September 1993 and an undertaking, as envisaged, has been filed with the petitioner and substantial amount also paid. This being so, while the writ petition is allowed and the impugned order quashed, the respondent shall, however, be bound by the terms and undertaking given by him vide letter dated 12th October 1993 and if the respondent abides by the said undertaking and complies with the said order

dated 15th September 1993 then no action of dispossession of the respondent shall be taken. If the respondent does not comply with the terms of the offer now made and accepted by him then the petitioner will be entitled to take recourse to law."

(22) It is not the case of the petitioner that any payment was made or undertaking given as was given in the case of Chander Prakash.

(23) It would also be useful to notice certain observations made in Chander Prakash's case. In that case court was dealing with the writ petition preferred by Dsidc against the order of learned Additional District Judge passed in appeal filed by the allottee against the order of Estate Officer. The Dsidc had initiated proceedings against Chander Prakash under the Act. The order of eviction was passed by the Estate Officer. In appeal the learned Adj came to the conclusion that the premises in question were not public premises. One of the reason given by the Adj was that Dsidc having made the offer for hire purchase and having received some amount or on even asking the allottee to pay the amount as per the hire agreement, the shed ceased to be the property of Dsidc for the purpose of Section 2 of the Act. The order of learned Adj was under challenge before this court. The court allowed the writ petition and quashed the impugned order of the learned Adj but in view of undertaking furnished by Chander Prakash as noticed in the order reproduced above, it was directed that action of dispossession shall not be taken. Some of the observations made in Chander Prakash's case may be reproduced as follows:-

"SOME of the entrepreneurs apparently believed in the maxim "eating their cake and having it too." They neither paid the rent nor the hire purchase installments but continued to retain the sheds and used them for the purpose of their business, they having frustrated the efforts by the petitioner, with the help of stay orders when the petitioner wanted to recover the hire purchase money.

"HERE also we find that the offers relating to hire purchase were made by the Dsidc, from time to time, but they were never accepted. The said offers would have been binding only on the acceptance and payment in terms thereof and as this was not done the question of principle of promissory estoppel applying does not arise. We may also here notice that this court in Rawatra's case (supra) also held that in matters of allotment of plots by the Government price fixation of plots is a matter of policy and not within the province of the courts. In coming to this conclusion, the court relied upon the decision of the Supreme Court in the case of M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, . Moreover, in this connection the decision of the Supreme Court in the case of Bareilly Development Authority Vs Ajay Pal Singh and others, Ji Air 1989(1) 368 puts the legal position beyond any doubt. It was held by the Supreme Court that where the allottees had accepted the conditions of allotment which, inter-alia, envisaged enhancement of the cost of flats and where the contract entered into between the State and the person aggrieved is a non-statutory one and purely contractual and the rights are governed only by the

terms of the contract, no writ or order can be made so as to compel" the authorities to refix the price at which the property is to be sold. In other words, it is for the petitioner herein to determine as to at what price it is willing to sell the sheds to the entrepreneurs. Once this price has been fixed it is open to the entrepreneurs either to accept or to reject the same. If the entrepreneurs accept the price then they can enter into hire purchase agreement or purchase the shed by paying 100% of the price. If the entrepreneurs felt that the price was exorbitant or high they were under no obligation to accept the same and their rights under the terms of the lease executed by Dsidc in their favor would remain unaffected.

THE petitioner is a public sector undertaking. One expects efficiency from such undertakings and they are required to maintain higher standards comparable with those of the private enterprises. If that be so they must act in accordance with the known commercial principles. It will be unfair and not just to place fetters in their functioning and still expect them to deliver the goods. The petitioner is a commercial organisation which, at the same time, is required to serve the cause of the industrial growth in Delhi.

THE agreements which are entered into by the petitioner with various constituents or clients are purely commercial in nature. When a case comes to Court these agreements have to be judged in that light. Can it be said, taking an overall view of the present case, that the petitioner was not entitled to fix the price at which it was prepared to sell the sheds or could the price which it fixed be regarded as unreasonable."

" We, therefore ,do not find any legal justification for the challenge by the proposed purchase to the price fixed by the proposed seller. At the cost of repetition it is observed that the transaction between the petitioner and the respondent is purely commercial in nature and has to be examined in its proper perspective. Commercially speaking it is for the seller to fix the price, and for the purchaser, either to accept or to reject the same. The seller cannot be compelled by the purchaser to re-fix the parties had taken place even with regard to determination of price but when the price has been fixed and a firm offer made there is no legal justification for claiming any right, in a Court of Law, to the lowering of: the price. In other words, it would not be proper for the Court to direct the seller to decrease the price unless of course the Court comes to the conclusion that the action of the seller is arbitrary. There is no reason for us to come to such a conclusion in the present case, even assuming that such a principle can be involved in a transaction of commercial nature."

(24) It is evident that the entrepreneurs like the petitioner were not interested in making the payment of the shed as was demanded from them. Those who made the payment in terms of offer in court as contained in the order dated 15th September 1993 got the relief. The entrepreneurs before us do not fall in that category. They did not make payment within time stipulated in Seghal"s case or Chander Prakash"s case.

(25) They were disputing the cost of the shed demanded by Dsidc even after orders were made in Seghal or Chander Prakash's case. A writ petition (CW 2874/87) filed by Delhi State Enterprises Association and others Along with number of other writ petitions were dismissed by a learned single Judge of this court on 24th August 1994. The challenge in the said petitions was to the fixation of price of land and sheds by the Corporation. Various legal pleas including that of estoppel and legitimate expectation were raised unsuccessfully by the Association in the said case. We may notice with advantage certain observations of the learned single Judge dismissing the writ petitions as under:-

"IT was contended by Mr. Mahajan that Dsidc changed its policy frequently and increased the rate exorbitantly .It is unnecessary to go into this contention, because, ultimately what matters, is the price fixed for Hire Purchase, and the limitation on the judicial review of the said price fixation. Further, when a large number of lessees defaulted and persisted in these defaults, Dsidc came forward to accept rents at a reduced rate and this reduced rate, offered as a concession cannot be relied upon by the petitioners to compare them with the rates applied to fix the hire purchase price.

WHEN an organisation like that of Dsidc has to fix the sale price of its property, even assuming that it should not exceed the actual cost, there will be several factors contributing to the cost - original cost of acquisition, interest on borrowings, establishment charges, developmental costs, litigation expenses, the need to have some reserve for its other welfare measures, the financial trouble/burden occasioned by the failure of those who derived benefit from the organisation to make prompt payments of the amounts payable by them, the unanticipated and unforeseeable losses and expenditure caused or likely to be caused due to events on which the organisations may not have any control are some of the major factors."

"DSIDC has placed sufficient material to show that almost all the petitioners did not pay the rents under the leases, and the payments if any are only by virtue of the interim order of this Court. " Vast arrears got accumulated; they have been enjoying the industrial sheds for several years; some of them, since atleast for about 10 years have not paid the rents."

"I do not think the petitioners are entitled to rely on the weaker points in the functioning of Dsidc, as a source of strength for their case. As the Division Bench pointed out in Chander Prakash's case, the relationship between the petitioners and Dsidc is purely commercial."

(26) The appeal against the aforesaid judgment (LPA 99/94) was dismissed by this Court on 15th February 1995. It seems that the allottees of sheds were not prepared to make the payment even .at the appeal stage on the rates demanded as is evident from the following observations in the judgment:- "It was stated before us by the appellants counsel that the appellants were prepared to pay at the rate of Rs.175.00 per sq. ft but not at Rs.378.45 per sq. ft as demanded.

Appellants counsel brought demand drafts for a few lakhs of Rupees and said that the amounts should be directed to be received. So far as the suits said to have been filed against the Dsidc as referred in to the Counter/Judgment, it was said that for Rohtak Road constructions, the suits were by state Bank of India and Punjab & Sind Bank. In some cases, suits Filed by the allottees were pending. After interim order dated 18.10.1989 by a Division Bench, some petitioners paid, while some did not."

(27) It is clear that entrepreneurs like the petitioner were not interested in making payment of the cost of the shed as demanded and having failed in various attempts have now come forward with these petitions praying that they are entitled to same treatment as was given to R. Sehgal and Chander Prakash. We cannot permit this game of hide and seek. From what we have noticed above it is clear that the cases before us are in no way similar to the cases of R. Sehgal or Chander Prakash. Special Leave Petitions filed against the decision dated 15th February 1995 was dismissed by the Supreme Court. At the cost of repetition it may again be stated that the petitioner did not make payments pursuant to the offers again given by letter of Dsidc dated 20th January 1994 and June 1994. While dealing with the injunction application of one of the allottees in Suit No.2369/88 and various connected suits a learned single Judge of this court by decision dated 23rd September 1992 in Kimti Lal Rahi Vs. Union of India and Others, directed the plaintiffs in those suits-to pay the arrears and future rent in accordance with the rates mentioned in the letters dated 23rd January 1979 and 1st May 1982 with interest at 10% p.a. from the date the plaintiffs were put in possession of the sheds till payment. Even those payments were not made and the order was challenged in appeal and as late as in 1995 the applications were being filed for extension of time to make the payment which the learned single Judge had directed to be paid within 10 days of the order i.e. 23rd September 1992. In our view it is too late in the day for the petitioner to claim parity with R. Sehgal or Chander Prakash. As noticed above, from 1989 only two payments were made by the petitioner, one of Rs.18,718.13p in June 1989 and another of Rs.20,000.00 on 9th January 1992 Along with the letter dated 3rd January 1992 stating that balance payment will be deposited "shortly". The "short period" has still not expired. It may also be noticed that the petitioner and others like her have set up industries in the sheds in question.

(28) Moreover, the offer contained in the order dated 15th September 1993 is not in the nature of a "Judgment". It was a case of offer given in a specific case and accepted and cannot be termed as a dies pension of general concession to everyone creating any enforceable right. The order dated 15th September 1993 cannot be held to be a binding precedent. Further, the Dsidc has explained the enormous financial loss it would suffer in case the benefit of interest as claimed is given to the petitioner on the basis of the order dated 15th September 1993. It would not be in public interest to direct Dsidc to grant such concession to the petitioner and other writ petitions who are rank defaulters. There is no equity in favor of the petitioners. Those who seek equity must do equity. None of the

equitable considerations weigh in favor of the petitioners. Lastly, we may notice what is stated in the letter dated 24th February 1994 (Annexure H/1). It reads:-

"IT is also relevant to mention a SLP is being filed against order dated 26.11.1993 in C.W.No.4446 of 1993 passed by Hon"ble Mr. Justice Arun Madan. You are aware that the matter is already subjudice in various courts and your contention that the matter stands decided is totally wrong and erroneous.

PLEASE note that I am willing to sort out the matters on just, equitable and reasonable basis and I cannot be treated differently. I am prepared to pay the balance price if any, to the cost of construction of sheds calculated on the basis of actual cost on the basis of Cpwd rates prevalent in that year. This alternative of Cpwd rates is being suggested since the Corporation has failed to disclose the cost of construction incurred by it in construction of shed.

I am also willing to pay reasonable simple rate of interest on the said cost although the delay in determining the prices is entirely on your part.

I have already accepted and again accept the Hire Purchase offer in principle. The dispute, however, is as regards the price/cost and interest only and I am ready and willing to arrive at a settlement of the same in terms of the order of Lt.Governor dated 9.3.1977 and your letter dated 15.3.1977 and am ready to pay the balance, if any, in terms thereof. I request you once again to have the cost determined accordingly."

(29) The receipt of the aforesaid letter has been denied by DSIDC. Be that as it may, the letter shows that even in February 1994 the entrepreneur expressed willingness to pay cost of construction calculated on Cpwd rates and not as per directions on which reliance is being placed before us. Regarding Chander Prakash's case (CW 4446/93) the Dsidc was told in aforesaid letter that the matter is subjudice as SLP was being filed against that judgment.

(30) In view of the aforesaid discussion, we do not find any substance in the main contention of learned counsel for the petitioner that the entrepreneurs are entitled to same concessions and benefits as were given to R. Sehgal and Chander Prakash.

(31) Having dealt with the main contention now we will consider the other contentions. It was contended that the area mentioned in the lease deed is 1200 sq.ft whereas the petitioner is being asked to make payment for 1400 sq. ft. We,however, find that during last many years in statements of accounts sent to the petitioner the area has been mentioned as 1400 sq. ft. It has not been objected by the petitioner. It is,therefore, not necessary to go into the question whether the petitioner has made any unauthorised additions and whether the alleged additions can be taken into consideration while calculating the cost on the basis of 1400 sq. ft. We may also notice that the Dsidc has explained that so far as the costing of the scheme is concerned the Wazirpur has been treated at par with other areas and the same basis has been adopted by arriving at the cost of

the scheme and the shed. It is, however, not necessary to go into this question. It may also be noted that while accepting the offer of 1989 the petitioner did not object to the area being 1400 sq. ft. We thus cannot permit the reopening of this matter at this stage.

(32) It was further contended that Dsidc had no justification for withholding any amount towards the tax liability. The amount of tax liability in the case of the petitioner was Rs.40704.24. Dsidc has not been able to explain the principles of law under which any amount could be withheld for possible tax liability. But at the same time it is not the case of the petitioner that she offered to make payment less the tax liability. If according to the petitioner there was no justification for withholding any amount for possible tax liability then the balance amount should have been paid to DSIDC. This was not done.

(33) The scheme of 1989 came to an end by issue of the letter of September 1994. The petitioner has to thank herself for not getting the concessions in respect of rate of interest, 15% rebate and discount on making 100% payment as she did not make the payment. Under the letter of September 1994 the sheds could be transferred only on cash down payment of 100% at the interest of 17.74% quarterly compounded. It does not postulate any bank concession, rebate or discount. Even the last extended date was up to 9th December 1994. The petitioner did not make the payment.

(34) In the light of conclusion reached by us as aforesaid, we could have straightaway dismissed this and other connected writ petitions. Having regard, however, to the fact that large number of entrepreneurs are involved; period for making payment was being extended by Dsidc from time to time; terms and mode of payment were also varied from time to time and lastly but most vitally, with a view to avoid uprooting of the entrepreneurs, we feel it would meet the ends of justice if we give a final opportunity to the entrepreneurs to make the payment without giving them any concession in respect of rate of interest, rebate and cash discount.

(35) Accordingly, we grant to the petitioner and other entrepreneurs one last opportunity to make the payment in terms of letter of Dsidc dated 28th September 1994. To avail this opportunity, cash down 100% payment as demanded by Dsidc would have to be made without any concession in regard to rate of interest, 15% rebate or cash discount. The interest would be paid at 17.74% quarterly compounded up to date of payment. The Dsidc, would not be entitled to withhold any amount towards the tax liability. It would be for the entrepreneurs to collect their statements of account from the office of the Corporation after a period of two weeks. The payment shall have to be made on or before 19th February 1996.

(36) This writ petition and other connected writ petitions are, accordingly, missed except to the extent of aforesaid relief in regard to last opportunity for payment. This petitioner and other writ petitioners would pay a sum of Rs.5,000.00 each as

cost of these proceedings to Dsidc which amount Dsidc is at liberty to include in statement of account.