

(2005) 09 DEL CK 0149
In the Delhi High Court
Case No : LPA 948 of 2002

Sangam Iron and Steel Company		APPELLANT
	Vs	
Delhi Development Authority		RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 125 DLT 662

Hon'ble Judges : B.A. Khan, Acting C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Ravinder Sethi and Nandini Sahni, for the Appellant; Anil Sapra, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Appellant is aggrieved by the judgment and order dated 7th November, 2002 passed by a learned Single Judge dismissing WP (C) No.1246 of 1987 filed by the Appellant.

2. The Appellant is an iron merchant and was earlier operating from premises bearing No.T-885, D.B. Gupta Road, Pahar Ganj, New Delhi.

3.The Appellant was asked to shift from the site in its occupation and in lieu thereof, on an application made by it on 16th October, 1971 the Appellant was allotted Plot No.80, Loha Mandi, Naraina Warehousing Scheme, New Delhi. The allotment letter is important and reads as follows:-

"M/s. Sangam Iron and Steel Co.

T-885, Desh Bandhu Gupta Road,

New Delhi.

With reference to your application dated 16.10.71, I am directed to inform you that since you have voluntarily agreed to vacate the premises under your

occupation at No.T-885, D.B. Gupta Road and started shifting, it has been decided to allow you to occupy plot No.80 measuring 250 sq. yds. Appx. in Naraina ware housing Scheme determined in your presence by draw of lots.

Further, your request to accommodate you at the place where other iron dealers of Motia Khan will be given plots, will be favorably considered.

Received Sd/-

Sd/- Land Sales Officer

(Rishi Raj) DDA

16.10.71"

4.It appears that the size of Plot No.80 was actually 432.50 sq. yds. but as mentioned in the allotment letter, only 250 sq. yds. out of this plot were allotted to the Appellant and one Rishi Raj, a partner of the Appellant, received possession of the allotted area.

5.According to the Appellant, it was under the impression that it had been allotted the entire Plot No.80 and, Therefore, 432.50 sq. yds. and not 250 sq. yds. as mentioned in the allotment letter. Accordingly, the Appellant made constructions on the entire plot and has been in possession of 432.50 sq. yds. since October, 1971.

6.The Appellant says that it was surprised to receive a letter dated 20th November, 1985 from the Deputy Director (Industrial) of the Respondents (Respondent No.2) demanding from the Appellant premium at the rate of Rs.56/- per sq. yds. for the allotted area of only 250 sq. yds. The Appellant paid the amount demanded without any immediate demur on 29th November, 1985.

7.It was pointed out by learned counsel for the Appellant that on 7th January, 1987 (that is, more than a year later), a protest letter was sent to Respondent No.2 submitting that Plot No.80 measuring about 450 sq. yds. was allotted to the Appellant and not only 250 sq. yds. As such, premium should have been demanded for about 450 sq. yds. and not only 250 sq. yds. A perusal of the letter dated 7th January, 1987 shows that there is a reference to earlier letters sent by the Appellant but none of these earlier letters were placed on record before the learned Single Judge or before us.

8.In the meanwhile, on 28th July, 1986 Respondent No.2 issued a letter to the Appellant in which it was mentioned that what was allotted to the Appellant was a plot measuring 250 sq. yds. but the Appellant is reported to have occupied 432.50 sq. yds. Instead of 250 sq. yds. Accordingly, the Appellant was told that it had unauthorizedly occupied area in excess of 250 sq. yds. which may be vacated, failing which action for cancellation of plot would be taken against the Appellant. It appears that the letter dated 7th January, 1987 sent by the Appellant was in response to this letter dated 28th July, 1986.

9. According to the Appellant, since no favorable action was taken by the Respondents, it was compelled to file a writ petition seeking quashing of the letter dated 28th July, 1986 and for execution of a lease deed in respect of the entire Plot No.80, Loha Mandi, Naraina Warehousing Scheme, New Delhi and a direction to the Respondents to charge from the Appellant balance premium for land over and above 250 sq. yds.

10. The Respondents filed their counter affidavit in which they denied the allegations made by the Appellant. A rejoinder affidavit was filed by the Appellant in which it was alleged, for the first time, that four other similarly placed persons had been charged premium for excess land occupied by them and their names and plot numbers were disclosed in the rejoinder affidavit. It appears that no issue was made out of this before the learned Single Judge because there is no reference to the facts averred in the rejoinder affidavit in the impugned order passed by the learned Single Judge.

11. Be that as it may, the writ petition filed by the Appellant was dismissed and it was held that what was allotted to the Appellant was 250 sq. yds. and that the Appellant had no right to occupy the balance portion of Plot No.80 which was public land. Accordingly, it was held that no case was made out for any interference under Article 226 of the Constitution.

12. Before us, learned counsel for the Appellant reiterated the contentions made in the writ petition.

13. We are of the view that on a reading of the allotment cum possession letter there can be no doubt, as held by the learned Single Judge, that what was allotted to the Appellant was only 250 sq. yds. out of Plot No.80, Loha Mandi, Naraina Warehousing Scheme, New Delhi. It may be that Plot No.80 actually measures 432.50 sq. yds. but the entire plot was not allotted to the Appellant and only 250 sq. yds. thereof was allotted.

14. At the time of taking possession of the plot, the allotment letter made it clear that it had "been decided to allow you to occupy plot No.80 measuring 250 sq. yds. Appx. in Naraina ware housing Scheme determined in your presence by draw of lots."

There was no protest lodged by the Appellant that Plot No.80 actually measures much more than 250 sq. yds. or that the Appellant should be allowed to occupy the entire plot. As has been held by the learned Single Judge, with whom we agree, a partner of the Appellant received the allotment without any demur.

15. To make things worse for the Appellant, no protest was lodged at any subsequent time that even though the Appellant was allotted the entire plot, the allotment letter mentioned only 250 sq.yds. Even when a demand was made against the Appellant on 23rd November, 1985, the Appellant did not make any protest but simply deposited the demanded amount on 29th November, 1985. Even thereafter, the Appellant raised no objection until the letter dated 7th

January, 1987 which was in response to the letter/notice sent by Respondent No.2 on 28th July, 1986.

16.It is quite clear from these facts that the Appellant all along proceeded on the basis that it had been allotted only 250 sq. yds. and had also paid for only 250 sq. yds. The balance portion of the plot seems to have been encroached upon by the Appellant or in any case the Appellant took illegal possession thereof. This does not vest the Appellant with any right to continue to hold land in excess of 250 sq. yds.

17. Under the circumstances, we are in complete agreement with the view of the learned Single Judge that there is no merit in the writ petition.

18.Learned counsel for the Appellant pressed into service the contention that the Appellant was being discriminated against because four other similarly situate persons had been given the benefit of payment of premium for excess land occupied by them under similar circumstances. It was submitted that the learned Single Judge had failed to consider this aspect of the matter. Learned counsel for the Appellant also brought to our notice an order dated 29th September, 2004 passed by a Division Bench of this Court in this appeal. It was submitted that the Division Bench had directed the Respondents to produce the original records in respect of the four similarly placed persons and that the Respondents had not produced the records despite orders of this Court. It was submitted that the Respondents were trying to hide facts and, Therefore, benefit thereof must be given to the Appellant. It was submitted that the reason why the files were not being produced is because the Respondents had taken premium from the four similarly situate persons for the excess land occupied by them and that the records would have shown this to the advantage of the Appellant and it is for this reason that the records were being withheld by the Respondents.

19.Subsequent to the order dated 29th September, 2004, the Respondents filed an additional affidavit on 6th January, 2005 in which it is stated that the original records/files pertaining to the four properties are lying with the CBI. The Respondents say that they had made efforts to obtain the files from the CBI but they had not been made available. Accordingly, the files pertaining to these four properties, that is, X-48, X-46, X-16 and Y-173 of Loha Mandi, Naraina Warehousing Scheme, New Delhi were inspected and the owners/allottees of these properties were requested to attend a public meeting in the office of Respondent No.2 along with relevant documents.

20. It is explained in the additional affidavit that as regards property No.X-48, only 250 sq. yds. was found to be in possession of the allottee M/s Radha Ram Shiv Charan and that the allotment made was also of 250 sq. yds.

21. As regards Plot No.X-16, it measured 300 sq. yds. and an allotment was made in favor of M/s Chandar Singh Manohar Lal for 300 sq. yds..

22.As regards Plot No.Y-173, allotment was made in favor of M/s Subhash

Machinery of only 167 sq. yds. At the time of allotment to M/s Subhash Machinery, it was charged premium for only 92 sq. yds. and for the balance 75 sq. yds. it was stated that the demand would be raised at the average auction rate later on as per the allotment-cum-demand letter dated 19th September, 1975. It is not clear when the demand for the balance 75 sq. yds. was raised in respect of M/s Subhash Machinery.

23. As regards Plot No.X-46, the occupant did not allow the Respondents to inspect the plot for purposes of measurement and also refused to produce any documents before the Respondents. As such, the Respondents were unable to comment on the status of Plot No.X-46.

24. The Appellant has filed a reply affidavit denying the contents of the additional affidavit, but the denial is of a general nature. We are, Therefore, not persuaded to disbelieve the contents of the additional affidavit filed on 6th January, 2005.

25. Based on the solitary example of Plot No.Y-173, it was submitted by learned counsel for the Appellant that his client should also be permitted to pay the average auction rate or the market value of the excess land occupied by it. We are of the view that the request of the Appellant is completely unjustified and not warranted in fact. M/s Subhash Machinery, allottee of Plot No. Y-173, was told at the initial stage in 1975 itself that the total land allotted is 167 sq. yds. out of which premium was demanded for 92 sq. yds. and premium for the balance 75 sq. yds. would be demanded later on at the average auction rate. There is no allegation of any encroachment by M/s Subhash Machinery on land in excess of 167 sq. yds. In so far as the Appellant is concerned, the offer for payment of market price is being made now before us. Moreover, the Appellant has encroached upon excess land and is seeking to have that regularized on the basis of the average auction rate or market price as on date.

26. These facts disclose a qualitative difference between the case of M/s Subhash Machinery and the Appellant. M/s Subhash Machinery is not an encroacher unlike the Appellant and M/s Subhash Machinery was told way back in 1975 that it would be charged the average auction rate on 75 sq. yds. at a later date. The Appellant is seeking to use this information today to regularize or validate its illegal encroachment, which cannot be permitted. We do not see any reason to treat the Appellant in a manner similar to M/s Subhash Machinery.

27. It was finally contended by learned counsel for the Appellant that the building plans on Plot No.80, Loha Mandi, Naraina Warehousing Scheme, New Delhi were sanctioned by the Delhi Municipal Corporation and as such the Appellant was entitled to occupy the entire plot. This contention is stated only to be rejected. First of all, there is no such ground raised by the Appellant either in the writ petition or in the appeal before us. This contention has been orally made without any foundation or any material on record. Therefore, we cannot even entertain such a plea raised by learned counsel for the Appellant.

28. Even if it is assumed that the building plans were sanctioned by the Delhi

Municipal Corporation, even then the submission would not help the Appellant. Mere sanctioning of building plans cannot confer a right in favor of the Appellant vis-a-vis Respondent No.1. After all, the land belongs to Respondent No.1 and if someone constructs thereon with the permission of some other authority, it cannot bind Respondent No.1. We, Therefore, find this contention to be misconceived and hold that mere construction on the plot in question, even if permission was granted for that by the Delhi Municipal Corporation, would not confer any right on the Appellant to occupy the entire plot.

29. For the reasons mentioned above, we find no merit in this appeal and it is dismissed.