

(2011) 10 DEL CK 0119

In the Delhi High Court

Case No : Regular Second Appeal 177 of 2011

Surender Singh

APPELLANT

Vs

Govt of NCT Delhi and Another

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2011) 10 DEL CK 0119

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : C.B. Garg, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J

1. The challenge by means of this Regular Second Appeal is to the impugned judgment dated 2.8.2011 of the Appellate Court by which the Appellate Court allowed the appeal of the respondent no.2 herein, and which respondent no.2 was the defendant no.2 in the Trial Court. The appeal was allowed by setting aside the judgment dated 15.1.2011 of the Trial Court, and by which judgment the Trial Court had decreed the suit of the appellant/plaintiff by holding that the appellant was eligible for allotment of an alternative plot under the relocation scheme of industries sponsored by the defendants/respondents.

2. The facts of the case are that the appellant is carrying on the business of PVC wires and cables at premises no.519/1B/2, Gali No.1, Vishwas Nagar, Shahdara, Delhi-32. These premises are indubitably situated in a local commercial area. The appellant applied for allotment of an industrial plot on 18.4.2000 in terms of the relocation scheme of industries, and which scheme was formulated pursuant to the direction of the Hon'ble Supreme Court in WP(C) No.4677/1985 titled as M.C. Mehta v. Union of India. Since the appellant even after deposit of money was not allotted an industrial plot, the subject suit came to be filed.

3. The defence of the respondents before the Courts below was that the scheme for relocation of industries, under which allotment of an industrial plot can be applied, is only applicable where the unit of a person is situated in a non-confirming area. Non-confirming area has been uniformly interpreted by the respondents to be an area which is not otherwise a designated commercial/industrial area. At the time of implementation of the scheme, this issue cropped up as to whether a unit situated in a local commercial area should or should not be given an industrial plot, and the authorities arrived at a decision that only units located in non-confirming areas/residential areas, and not units in designated commercial areas, will only be entitled to allotment of an industrial plot. The claim of the appellant for industrial plot was therefore denied by the respondents.

4. The Appellate Court in para 7 of the impugned judgment has culled out the admitted facts. This para 7 reads as under:

7. I have heard the arguments and perused the record. Few facts are admitted i.e. the relocation scheme was floated by the appellant as well as cross objectors in terms of direction given by Hon"ble Supreme Court in WPC No.4677/85 titled as MC Mehta v. Union of India. Secondly, the defendants/appellants floated the scheme under specific head i.e. the scheme was for the allotment of industrial plot under relocation scheme as sponsored by defendant no.1 for relocation of the alternative plot to such persons who were having their industries in non confirming/residential area to the confirming zone/industrial area. Thirdly, the scheme at all did not cover and included shifting of industries which were situated at local commercial areas and lastly that the respondent had been running the industrial unit in the local commercial areas and his application was rejected only on this ground.

5. The arguments raised on behalf of the respondents before the Appellate court are contained in para 8 of the judgment and which reads as under:

8. The contention of Ld. Counsel for appellant and cross objector in nutshell is that scheme which was floated by the defendant was only for such industries which was situated in non confirming/residential areas and since the area where the manufacturing unit of plaintiff/respondent nno.1 is situated does not come within the ambit of scheme as the same was situated in local commercial area it was decided by the high power committee dealing with the subject that the unit which are situated in local commercial area are not entitled for getting alternative industrial plot under this scheme, as floated by the government and therefore, the respondent no. 1 was not entitled for such allotment of the industrial plots and the order of Ld. Trial Court is, therefore, not in accordance with law or in accordance with the policy of the government. Second contention of Id. Counsel for appellant as well as the cross objector is also common that the respondent no.1 had applied for industrial plot and his application was rejected on 21.8.02 and file was sent to defendant no.2/cross objector for refund of earnest money on the same day and the present suit was filed by the respondent

no.1 in the year 2008 i.e. 20.5.2008 and, therefore, the suit of the plaintiff is barred by law and therefore, the Id. Trial Court has not even framed this issue and as such the order of Id. Trial Court is liable to be set aside.

(Emphasis added)

6. The Appellate Court has crystallized the issue being whether there is no difference between a non-confirming residential area and a local commercial area, i.e. Appellate Court addressed itself to the issue as to whether the appellant was entitled to have an industrial plot considering the fact that his industry was already in a local commercial area and the notification/advertisement of the respondents, along with the clarification issued by the department, shows that the scheme only applied to those persons whose factories were running in non-confirming/residential areas. 7. After crystallizing the issue as stated above, the Appellate Court has given the following conclusion:-

The question again comes as to whether local commercial area falls within the ambit of non confirming area or whether it can be duly regularized as an industrial area & unit may be allowed to be run within the same premises/local commercial areas i.e. where the factory is situated.

There is no clear cut explanation of these words either in the petition or in the scheme rather it has been explained that a non confirming area is an area where a unit is being run without any sanction or without any confirmation by an y authority and against the rules, law and bylaws whereas local commercial area inter alia means and include that a place where commercial activities can be run and where all the facilities with respect to water, sanitation, electricity and such other requirements which are necessary to run the commercial complex are being provided by the government in accordance with law.

Definitely in non confirming area the government cannot allow such facilities to be provided to a factory as the same is not being run with the permission of the competent authority. In the present case admittedly, the petitioner is running his factory in a local commercial area. The appellant had been able to prove on record that the government has decided not to relocate the industrial accommodation to such units which are situated in local commercial area and even the advertisement which was initially circulated was also to the effect that the person who were entitled to getting an accommodation under the scheme for relocation are only such persons/units who are running their factories in residential area or non confirming area. The appellant in the present case has not been able to prove that his industrial unit is being run either in non confirming area or in residential areas. Therefore, the order of the Id. Court to that extent is not in accordance with the scheme floated by the government.

13. Now, coming to the second part of the judgment. The Id. Trial Court has gone through certain circulars of the government from its official website and has come to the conclusion that appellant should have been considered for the

appellant for industrial unit as far as the policy of the government to remove the industrial unit from the non confirming area to the industrial zone is concerned. This court is of the opinion that the opinion of the Id. Trial court is not in consonance with the scheme as floated by the government. What the government has done or what the government is required to do or should do are two different things. As far as the proceedings in the court are concerned the court has to decide the matter only in view of the facts which are brought to this court. Once the scheme itself is not for the purpose of allotment of the industrial unit/industrial plot to those who are running their industrial activities in the local commercial area the question of bringing local commercial area indirectly into the definition of residential/non confirming zone in the considered opinion by this court amounts to traveling beyond the schemes. Therefore, this court is of the opinion that the order of Id. Trial Court on this ground is not sustainable and there appears to be material irregularity in reading the words "local commercial area" into the words "non confirming area" by the Id. Trial Court. The order of the Id. Trial court to that extent is set aside.

(Emphasis added)

8. A reading of the aforesaid discussion of the Appellate Court shows that as per the stated policy (with its clarification), the respondent no.1 had been able to prove on record that the Government had decided not to relocate such industrial units which are existing in a local commercial area and that the scheme was also circulated only to such units which were running their factories in residential area or non-confirming area. Since admittedly the unit of the appellant was not being run in a non-confirming area/residential area therefore, the Appellate Court arrived at a finding that the scheme in question which was floated by the Government did not apply to the appellant. The Appellate Court has also held that what the Government has done and what the Government is required to do or should do are two different things. Once the scheme itself is not for the purpose of allotment of an industrial plot to those persons who are running the industrial activity in local commercial areas, to include such units running in local commercial areas in a scheme would be to re-write the scheme, i.e. travel beyond the scheme, which is not permissible to the Courts. Accordingly, the Appellate Court has rightly come to the conclusion that the appellant's unit being not in a non-confirming/residential area, he was not entitled to benefit of the scheme.

9. Learned counsel for the appellant argues that the respondents are adopting a policy of pick and choose and are allotting the industrial plots even to persons who are running the units in a local commercial area. However, when I put it to counsel for the appellant as to whether the appellant has at all specifically pleaded as to which are those alleged persons/units in the local commercial areas who/which have been given plots under the relocation scheme and whether this has been proved by the appellant in its evidence led in the Trial Court, the learned counsel for the appellant said that there is no record/evidence

before the Trial Court with respect to any units/persons, who have got plots under the relocation scheme although they are situated in a local commercial area.

10. A second appeal u/s 100 CPC can only be entertained, if there arises a substantial question of law. The aforesaid findings of the Trial Court are findings of facts that the appellant's unit is not situated in a residential area/non-confirming area and therefore he is not entitled to an industrial plot in terms of the scheme and which has been applied by the authority uniformly only to those units situated in non-confirming/residential area, but not situated in a local commercial area. In view of the aforesaid facts no substantial question of law arises. This appeal being without merits is accordingly dismissed.