

Bhagwati Plastics Industries

Vs

Union of India and Others

Civil Appeal No. 2701 of 1989

(Rangath Misra, M. N. Vankatachaliah JJ)

05.05.1989

ORDER

1. Special leave granted.

2. The appellant carries on business in the name and style of Bhagwati Plastics Industries which was located in a tenanted premises at 11, Gadodia Road, Anand Parbat area within New Delhi and has not been shifted to 17 Gadodia Road. The appellant contends that this is a non-conforming area for purposes of business according to the Master Plan and he was, therefore, entitled to the benefit of the scheme of the Delhi Development Authority (a respondent herein) under which the benefit of shifting of the factory from a non-conforming area to an alternate site to be allotted was permitted. The appellant made such an application in April 1976 and in due course deposited a part of the price. He also submitted a certificate from the Municipal Council of Delhi to the effect that his factory was located in a non-conforming area. The appellant was intimated of allotment of a plot in Mangol Puri area but since the allotment was not specific the appellant again applied for specification thereof. Ultimately on January 14, 1988, the respondent directed refund of the money and on March 22, 1988, the appellant received a cheque for the sum. Thereupon he applied to the Delhi High Court under Article 226 of the Constitution for a mandamus to the respondents that the appellant be allotted a suitable plot under the scheme on the basis of his application. The High Court by order dated May 2, 1988, dismissed the petition saying :

On October 26, 1987 (Annexure 1) the DDA had informed the petitioner that the Anand Parbat area is conforming area. The petitioner states that a part of the area in Anand Parbat where his factory is located is not conforming area. We cannot accept this submission in the face of the DDA's statement that this is a conforming area. The petition is dismissed.

3. The appellant has produced certain documents which show that the factory of the appellant is located in a non-conforming area. The municipal authorities have tried to explain their own document wherein the admission is contained. We are satisfied that this is a case which should have been examined on merit by the High Court. We accordingly set aside the order of dismissal of the writ petition and remit it to the High Court for a fresh disposal in accordance with law. The writ petition shall be taken to have been admitted. The appeal is allowed. There shall be no order for costs.

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