Delhi Development Authority etc.

Vs

Ambitious Enterprises & Anr. etc.

(K. Ramaswamy, D.P. Wadhwa JJ)

09.07.1997

JUDGMENT

D.P. WADHWA,J.

1. Special leave granted.

2. These 11 appeals are directed against the judgment dated July 29, 1994 of the Division Bench of the Delhi High Court passed in appeal against the judgment of the learned Single Judge dated May 27, 1994. The judgment of the learned Single Judge decided as many as 25 writ petitions, while he allowed 14 of them 11 were dismissed. Delhi Development Authority (for short 'the DDA') had filed Letters Patent Appeals against the judgment of the learned single Judge allowing the writ petitions, 11 of these are before us.

3. The writ petitioners were aggrieved by the order of the DDA rejecting their applications for allotment of plots for which they had applied in terms of public notice dated February 8, 1976 and they had also deposited the earnest money and had further paid 30% of premium as per the subsequent notice issued in September 1976.

4. The rejection of the request of the appellants for allotment of plots was principally on two grounds: (1) the applicants were not having licences under Section 416 of the Delhi Municipal Corporation Act and (2) Rule 6(v) of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (for short 'Nazul Rules') also required the applicants to be possessed of municipal licence. Both these objections of the DDA did not find favour either with the learned Single Judge or the Division Bench in Letters Patent Appeals. So these appeals by DDA.

5. Notice dated February 8, 1976 informed all concerned of the decision of the DDA to the industries functioning in non-conforming areas or the areas which were under acquisition for various public purposes to obtain land in the conforming industrial areas which had been developed by the DDA in different localities in Delhi in accordance with the provisions of the Master Plan. The applicants were required to make applications on prescribed forms. The notice also informed the applicants to deposit earnest money on the basis of the size of the plot applied by them for allotment. Price of the land was to be deposited in four quarterly instalments. The last date for receipt of the application was March 31, 1976. A second notice was issued by DDA in September 1976 requiring the applicants to pay 30% of the total premium of the land by October 31, 1976. The notice also specified the rates to be charged for different types of developed plots. It is not disputed that the appellants did apply, deposit earnest money as well as the premium as required by the two notices. Their applications however came to be rejected in the year 1988 and the earnest money and

premium were also refunded. In the letter rejecting the applications no ground was mentioned as to why the applications were rejected. But it is a common ground that these were rejected as the applicants did not possess the municipal licence and any allotment on that account would contravene the statutory provisions of the Nazul Rules. Section 416 of the DMC Act is as under:

> "416. Factory, etc., not to be established without permission of the Commissioner, (1) No person shall, without the previous permission in writing of the Commissioner, establish in any premises, or materially alter, enlarge or extend, any factory, workshop or trade premises in which it is intended to employ steam, electricity, water or other mechanical power.
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> (2) The Commissioner may refuse to give such permission, if he is of the opinion that establishment, alteration, enlargement or extension of such factory, workshop or trade premises, in the proposed position would be objectionable by reason of the density of the population in the neighborhood thereof, or would be a nuisance to the inhabitants of the neighborhood."

6. Contravention of this provision entails penal consequences and its punishment is provided under Section 461 which is as under:

> "461. Punishment for certain offences. Whoever - (a) contravenes any provision of any of the sections, sub-sections, clauses, provisos or other provisions of this Act mentioned in the first column of the Table in the Twelfth Schedule: or (b) fails to comply with any order or direction lawfully given to him or any requisition lawfully made upon him under any of the said sections, sub-sections, clauses, provisos or other provisions. shall be punishable - (i) with fine which may extend to the amount, or with imprisonment for a term which may extend to the period, specified in that behalf in the third column of the said Table or with both: and (ii) in the case of a continuing contravention or failure, with an additional fine which may extend to the amount specified in the fourth column of that Table for every day during which such contravention of failure continues after-conviction for the first such contravention or failure."

In we refer to Twelfth Schedule as mentioned in the section, the punishment prescribed is as under:

> Section, Subject Fine Daily sub-section, or fine clause or impri- which proviso sonment may which be may be imposed imposed Section Establishment of 5000 500 416 factory, etc.,without permission
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> Rule 6(v) of the Nazul Rules is as under:
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> "6(v) to industrialists or owners and occupiers of ware houses who are required to shift their industries and ware houses from non-conforming areas to conforming area under the Master Plan, or whose land is acquired or is proposed to be acquired under the Act;
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> Provided that the size of such industrial plot shall be determined with reference to the requirement of the industry or warehouses set up or to be set up in accordance with the plants and such industrialists and owners of warehouses have the capacity to establish and run such industries or warehouses and on the conditions that the land

> allotted at pre-determined rates shall not, in any case, exceed the size of the land which has been, if any, acquired from such industrialists or owners and occupiers of warehouses and which form part of Nazul land: Provided further that in making such allotment, the Authority shall be advised by the Land Allotment, Advisory Committee."

7. Pursuant to the notice inviting application about 15,000 applications were received for allotment of plots. As the number of applications was large the DDA, it would appeal, decided that an applicant should deposit 30% of the premium amount of the land sought to be allotted as a condition precedent for DDA to consider the application. Out of 15,000 applicants only 416 deposited the requisite amount of premium. Thus sizeable number of applicants were weeded out. Even after depositing the amount or premium some of the applicants withdrew the same and ultimately only 299 applicants were left in the field. In November 1980 the applicants were asked to furnish a legible photostat copy of the MCD licence pertaining to their respective units and location. Out of these 184 applicants were allotted plots as they were found to be in possession of valid municipal licence issued by the MCD as on the date of the application and their industries were found to be in non-conforming areas. Cases of remaining 115 were referred to a committee for ascertaining their eligibility for allotment of plots. The committee after examining the matter found that 60 out of 115 applicants were eligible for allotment of alternative plots. Cases of 55 applicants were rejected on the ground that they were not possessing municipal licence as on the date of making their applications for allotment of plots or their industries were not situated in non-conforming areas. These 11 appellants before us are from those 55 applicants whose applications were rejected.

8. Para 8 of the application for allotment of plot which was made on the form prescribed required information as to the following:

> "Number and date of municipal licence held, if any, and date upto which it is valid."

9. The Division Bench noted that the words "if any" were significant and that what the information required was the details of the municipal licence if the applicant was holding one. It held that holding of a municipal licence could not be a mandatory condition for allotment of plot. February 1976 notice also did not require that the applicants who wanted shifting of their industries from non-conforming area should be holder of valid municipal licences. The Division Bench also observed that it was not disputed by the DDA that the petitioners whose writ petitions had been allowed by the learned Single Judge had applied for the industrial licences from the MCD and that the same were granted to them with retrospective effect covering the dated when the applications were made by them for allotment of plots and that therefore in either view, the contention of DDA based on possession of municipal licences could not merit consideration. The Division Bench then examined Rule 6(v) of the Nazul Rules and was of the opinion that it did not postulate any condition that Nazul land could be allotted at pre-determined rates only to persons having municipal licences in respect of the industrial undertakings. The Division Bench held as under:

> "According to the above Rule, land could be allotted to industrialists or owners of units and occupiers of warehouses who are required to shift from non-conforming areas to conforming areas under the Master Plan or whose land is acquired or is proposed to be acquired. It seems to us that the Rule requires industries operating in non-conforming areas to be shifted to conforming areas in accordance with the Master Plan. Under Master Plan land use of a particular area is specified. The land cannot be used for a purposes other than the one sanctioned by the Master Plan.

> Therefore, any industry operating in a non-conforming area would be required to be shifted to a conforming area. In any event, as already pointed out, the writ petitioners whose writ petitions have been accepted by the learned Single Judge were granted municipal licences from retrospective dates, covering the dates on which applications were made for allotment of land."

10. The question that arises for consideration is if the DDA was justified in superimposing a condition for an applicant to hold a valid municipal licence and if Rule 6(v) of the Nazul Rules required allotment of land only to an applicant holding a valid municipal licence or whose industry was in non-conforming area.

11. It was submitted before the learned Single Judge by the DDA that there were large number of applicants and fewer plots and therefore putting a condition that only those applicants who were holding municipal licences could be allotted plots was a valid condition. This is how the learned Single Judge dealt with this argument:

> "DDA is a public authority. It is bound by the standards held out it as governing the case of several applicants. When the plots are allotted for a particular purpose in pursuance of a scheme formulated by the public authority, the public authority is expected to consider the case of the applicant with reference to the said scheme and the object to be projected by implementing the scheme. Only because there are a large number of applicants, the public authority cannot ignore the terms of the scheme. If there are more number of applicants than the number of plots available, the DDA could have resorted to the drawing of lots amongst all the eligible applicants or could have probably proceeded to hold auctions. By imposing the requirement of the municipal licence on an applicant an artificial distinction is sought to be made amongst the industries who were operating in non-conforming areas."

> To us it appears that the condition imposed by the DDA for allotment of industrial plot to a person who was having a valid licence under the MCD Act was neither arbitrary, unreasonable or irrational. A person who is running a trade without a valid licence under Section 416 of the MCD Act is committing an offence which is a continuing offence and he cannot be put at the same pedestal with a person who is law abiding and is having a valid licence. Otherwise it will be putting a premium on illegality. That condition of holding of valid MCD licence imposed by DDA would be legal even if the number of plots available is more than the applicants. It is not material if the notice inviting applications was silent on this aspect of the matter and the application form which was prescribed used the words "if any" as mentioned above. It was submitted on behalf of the DDA that due to the pressure of the industries which had been running in the non-conforming areas temporary scheme for their continuance until their eviction was announced in 1982 by the MCD and thereunder ad hoc licences were granted to such industries subject to their giving an undertaking for closing the industry and not to claim any damages for such closure and also not to claim any alternative site in conforming zone. This Court also noted the argument of the respondents that when the Committee was constituted to identify out of 115 applicants and 60 of them were found to be eligible and 55 ineligible, some units out of those 60 found to be eligible were in the same position as those who had obtained temporary licences under the ad hoc scheme in 1982 and they also did not have the necessary licences under the MCD Act as required under Section

416 prior to the date of making the application for allotment and that their cases were similar to that of the respondents. The Court directed the DDA to verify those facts. Thereafter it was submitted by the counsel for the DDA that he himself examined cases of 7 parties out of 11 in respect of whom these appeals were pending and that he did not find any criteria as such prescribed for allotment to those 60 persons or denial there of to the 11 persons subject matter of these appeals. Each case had been considered in its own back drop. The Court recorded the statement of Mr. Arun Jaitley, learned counsel for the DDA as under:

"A perusal of the recommendations of the Committees indicating that there was no single definitive criterion adopted by the committees. The case of each unit appears to have been dealt with on its own merit".

In this view of the matter, the Court observed that the appropriate course would be to direct the Commissioner (Land Disposal) of DDA to constitute a committee consisting of three high ranking officers to go into the merits in each of the claims of the respondents and to find out what criteria would be adoptable in those cases and whether the respondents would be entitled to the allotment on the basis thereof. Report of the committee was submitted to this Court and objections thereto by the respondents filed before the committee which were again examined and the committee after considering those objections again submitted its report. Nevertheless the Court after examining the reports was of the view that the averments made by the respondents in support of their matters had not been adequately dealt with by the Committee. The Court directed an affidavit to be filed by the DDA as to how the objections had been dealt with and found to be unsustainable. The Court also directed filing of the policy of the allotment. In pursuant thereto an affidavit of Ms. Asma Manzar, Director (Lands), Delhi Development Authority was filed.

12. Ms. Asma Manzar, Director (Lands) DDA was also a member of the committee which had submitted its report earlier and examined the objections of the respondents subsequently also which had been filed with reference to the report. In the present affidavit Ms. Asma Manzar has filed a precise regarding the policy of allotment of industrial plots to the applicants who had deposited earnest money in response to the press advertisement issued in 1976. It was decided by the DDA that all those applicants who had deposited on time 30% of the premium be allotted, if eligible otherwise, industrial plots. The eligible conditions as we find from the record were: (1) the prospective allottee should have a valid municipal licence under Section 416 of the MCD Act on the date of the application for allotment of plot, and (2) the industry should be existing in a non-conforming area. On these basis the applications were scrutinised on representation being made. Cases on 115 parties out of 299 which had earlier been rejected were ordered to be re-examined by the Vice-Chairman, DDA. A committee was thus constituted to look into each and every case so as to determine eligibility. The Deputy Director (Industry). Deputy Director (City Planning) and one representative of the Prosecution Branch of the DDA were nominated on the committee. It is stated that this committee had inspected all the 115 units after formulating a proforma and examined the documents of the units which had bearing on their eligibility. The committee in its report rejected the claim of 55 units. The recommendations of the committee as these were based on spot inspection, assessment of physical performance, consideration of removal of hazard and nuisance etc., it would appear, were accepted by the DDA.

13. A committee which had been constituted after directions of this Court against examined the

records of those units whose cases had been accepted as it was suggested by some of the respondents that their cases also fell in the same category. The committee, however, did not find these facts to be correct.

14. It is not disputed that the parties who were not having municipal licences on the date of their respective applications have been barred from getting an industrial plot altogether. They are, however, left to fend for themselves either by buying and industrial plot in public auction or by a private purchase. As per the policy the DDA does not want to allot the industrial plots to them on pre-determined rated as they fell outside the policy made by it. In terms of this policy it is also not material as to from what time in fact an industrial unit had been working and may be much a prior to the date of application for allotment of industrial plot. An argument was also advanced that the Nazul Rules cam into force only on September 26, 1981 but the public advertisement for allotment of plots had been issued much earlier and, therefore, the Nazul Rules would not be applicable. This argument does not appear to be sound. No plots had been allotted prior to the coming into force of the Nazul Rules and once these Rules, which are statutory, came into force no allotment could have been made outside and in contravention of those Rules. If we see the relevant part of Rule 6(v) it will apply to those industrialists who are required to shift their industries from non-conforming areas to conforming areas under the Master Plan. It is correct that some of the respondents were granted municipal licences under ad hoc licensing policy, 1982 from a retrospective date and it would appear, licence fee has also been charged from the back dated. DDA has not accepted these ad hoc licences as per condition of its policy there should be a valid municipal licence on the date of the application. It has been pointed out that those parties who wanted ad hoc licences had to give an indemnity bond. This ad hoc licensing policy was issued by the MCD on consideration by the Delhi Administration that "at length the problem of industrial units functioning in non-conforming areas unauthorisedly without any licence and had suggested that the units set up before August 15, 1982 which are not obnoxious and hazardous should be granted licence in terms and conditions finalised and conveyed in this behalf". In the indemnity bond there had to be a specific averment that the persons was running factory "without a proper licence from the Municipal Corporation of Delhi" as required under Sections 416/417 of the Delhi Municipal Corporation Act, 1957. Another stipulation was "that the person will not claim any alternative site in any conforming area in lieu of the temporary licence granted to me/us for the aforesaid/factory run by me/us in the non confirming area, details whereof have been mentioned hereinabove." Yet a further stipulation in the indemnity bond was that "I/we will not claim damages or compensation or any alternative site in a conforming area in case I/we am/are asked or required to close or shift the trade/industry from the non-conforming area in respect whereof the temporary licence as aforesaid has been granted to me/us by the Municipal Corporation of Delhi."

15. The respondents relied on these ad hoc licences to claim that they were running trade/factory from 1976 but were not accepted by the DDA and their applications were rejected by the committee even after they filed objection to the report of the committee during the pendency of these appeals. We have also examined the reports of the committee; objections of the respondents; policy and other records of these appeals, and we find that except for the cases of M/s. Vijay Steel Products and Anr. SLP(C) No. 9028/95, Kimat Baldev Chhiber & Anr. SLP(C) No.9123/95 and M/s. Chawla Sons (Regd.) & Anr. SLP (C) No. 9098 other cases do not merit consideration thus holding that the respondents therein are not entitled to alternative plots.

16. In case of Vijay Steel Products there is a notice dated August 21, 1980 from the DDA requiring Vijay Steel Products to stop its industrial unit as it was running the same in non-conforming area in contravention of Zonal Development Plan of Zone No. H-4 under Section 14 of the Delhi

development Act, 1957. Vijay Steel Products was even prosecuted for an offence under Section 29 of that Act for contravention of Zonal Plan. The learned Magistrate, however, acquitted the party by an order dated February 21, 1985 on the ground that the party had deposited earnest money as well as 30% of the premium for allotment of alternative plots of land in 1976 and all this period the DDA had not made any allotment. It was, therefore, wrong on the part of the DDA to reject the application of Vijay Steel Products on the ground that it was not located in a non-conforming area being situated in 'Lal' Dora' DDA cannot have two different stands one for rejecting the application of Vijay Steel Products for allotment of industrial plot on the ground that it was not located a non-conforming area and also prosecuting it on the ground that it was running its industry in a non-conforming area. The appeal against Vijay Steel Products had to be dismissed.

17. In the case of Kimat Baldev Chhiber we find that he was granted L-4 licence in 1968 Central Excise rules framed under the Central Excise and Salt Act, 1944 for the "manufacture of goods liable to Central duty of excise". It is claimed in the affidavit filed by Mr. K.B. Chhiber that he was granted municipal licence to run his industry with effect from 18.6.75 which was in pursuance of application dated 17.10.1975. There is a letter of February 24, 1977 of the MCD to M/s. Saraswati Cable Corporation (proprietor Mr.K.B. Chhiber) requiring it to deposit a sum of Rs. 5569 o or before February 28, 1977 toward the licence fee with a warning that legal action would be taken and sanction withdrawn in case any default was made. This letter would justify the stand of Mr. Chhiber that MCD had issued a licence under Section 416 of the MCD with effect from June 18, 1975. The appeal of the DDA against M/s. K.B. Chhiber also does not merit consideration and it has to be dismissed.

18. In the case of M/s. Chawla Sons (Regd.) there are two MCD licences, one is for the period from April 1, 1976 to 31st March, 1977 of which validity is upto March 31, 1983 and amounts of Rs. 210/- had been deposited in each year against the receipt number mentioned in the licence. this licence shows that the industry is in a non-conforming area.The other licence is for the period from April 1983 to March 1984 onwards and issued on March 28, 1983. The Committee has rejected the case of this period on the ground that the unit had obtained MCD licence under ad hoc policy on the basis of undertaking that it will not claim alternative allotment and was thus not eligible for allotment. It appears to us that the first licence had not been given due consideration by the committee. The appeal of DDA against this party has also therefore to be dismissed.

19. Considering the whole aspect of the matter the appeals of the Delhi Development Authority in the case of M/s. Vijay Steel Products SLP (C) No. 9028/95, Kimat Baldev Chhiber SLP (C) No. 9123/95 and M/s. Chawla Sons (Regd.) 9098/95 are dismissed and affirming the orders of the High Court and in the cases of M/s. Abitious Enterprises SLP (C) No.8351/95, M/s. Chopra Dying Industries SLP (C) No. 10819/95, M/s. Basant Parkash Electric & Co. SLP(C) No. 9031/95, Raj Brothers SLP(C) No. 9567/95, R.K. Chanderbhan Multani SLP (C) No. 18870/95, Joytosma Export SLP (C) No.9370/95, M/s. Dolly Toys International SLP (C) No. 9369/95 and Satish Chander SLP (C) No. 10058/95 the appeals are allowed, the orders of the High Court are set aside and the Writ Petitions filed by the respondents are dismissed. No costs.