

**SUPREME COURT OF INDIA**

A.B.N.A.

Vs.

The Managing Director, M/s. U.P.S.I.D.C. Limited, Kanpur

S.L.P.(Civil)No.16116-16117 of 2010

(A. K. Patnaik and Swatanter Kumar, JJ.)

08.05.2012

**ORDER**

**A. K. Patnaik, J.**

1. These are petitions under Article 136 of the Constitution for leave to appeal against the order dated 04.03.2009 of the Monopolies and Restrictive Trade Practices Commission, New Delhi, (for short the MRTP Commission) in Review Application No.16 of 2007 and the order dated 05.01.2010 of the Competition Appellate Tribunal, New Delhi, in Review Application No.06 of 2009.

2. The facts very briefly are that the respondents published an advertisement in the Hindustan Times, New Delhi inviting applications from entrepreneurs for allotment of industrial land in Greater NOIDA on payment of 10% of the cost of allotted land. In response to the advertisement, the petitioners applied for a plot and on 05.03.1994 a plot of 800 square metres in Site-C was allotted. The petitioners paid 10% of the cost of the plot on 23.03.1994. However, physical possession of the plot was not given to the petitioners on the ground that the petitioners had not paid all the dues for the plot. The petitioners then filed a complaint UTPE No.119 of 2000 before the MRTP Commission and after notice to the respondents the complaint was heard from time to time. While the complaint was pending, petitioners filed I.A. No.18 of 2004 before the MRTP Commission to take possession of the allotted plot. On 13.09.2007, the MRTP Commission passed an order directing that the respondent shall handover possession of the allotted plot within next two weeks to the complainant and as regards the balance amount, if any due, the respondents shall submit a detailed chart giving the dates on which the subsequent installments were due and the amount payable on each due date. By the order dated 13.09.2007, the MRTP Commission also directed the petitioners to furnish a fresh SSI certificate to the respondents and directed that the matter be listed on 01.11.2007 for further directions. Instead of handing over possession of the allotted plot to the petitioners, the respondents filed Review Application No.16 of 2007 on 18.12.2007 and

by the impugned order dated 04.03.2009 the MRTP Commission allowed the Review Application and recalled the order dated 13.09.2007 insofar as it directed the respondents to handover possession of the plot to the petitioners. Aggrieved, the petitioners filed Review Application No.06 of 2009 before the Competition Appellate Tribunal and by the impugned order dated 05.01.2010, the Competition Appellate Tribunal dismissed the Review Application of the petitioners.

3. The petitioner No.3, who appeared in-person and argued on behalf of the petitioners, submitted that the order dated 13.09.2007 of the MRTP Commission directing the respondents to handover physical possession of the allotted plot to the petitioners was a consent order as it was passed on the consent of the two advocates appearing for the respondents, namely, Mr. Shakti Singh Dhakray and Mr. D.K. Sharma. He submitted that the order dated 13.09.2007 of the MRTP Commission being a consent order, the same could not have been reviewed by the MRTP Commission and on this ground the impugned order dated 04.03.2009 of the MRTP Commission recalling the order dated 13.09.2007 in Review Application No.16 of 2007 is illegal and is liable to be set aside. He further submitted that Review Application No.16 of 2007 was filed before the MRTP Commission by the respondents on 18.12.2007 more than thirty days period prescribed for filing of the Review Application. He submitted that by the time Review Application No.16 of 2007 was filed, the petitioners had filed contempt petition for violation of the order dated 18.12.2007 as well as a petition for executing the order dated 18.12.2007 before the MRTP Commission. He submitted that the MRTP Commission should not have entertained the Review Application after such long delay. He finally submitted that the stand taken by the respondents in Review Application No.16 of 2007 was that the MRTP Commission had no jurisdiction to direct the respondents to handover possession of the plot to the petitioners but there are decisions of this Court which make it clear that the MRTP Commission has the power to even direct handing over possession to the complainant.

4. Learned counsel for the respondents, on the other hand, submitted that the order dated 13.09.2007 of the MRTP Commission was an interim order and the MRTP Commission has rightly held in the impugned order dated 04.03.2009 that it could not have directed the respondents by an interim order to handover possession of the plot to the petitioners as this was the final relief claimed by the petitioners in the complaint before the MRTP Commission. Relying on the decision of this Court in Ghaziabad Development Authority v. Ved Prakash Aggarwal [(2008) 7 SCC 686], he submitted that the MRTP Commission has no power to direct handing over possession of the plot to the complainant and it is only the Civil Court which could while granting a decree of specific enforcement of the contract direct the defendants to handover possession to the plaintiffs. He submitted that the order dated 13.09.2007 passed by the MRTP Commission directing handing over possession of the plot

to the complainant is thus without jurisdiction. He submitted that this Court in Kiran Singh and Others vs. Chaman Paswan and others (AIR 1954 SC 340) has held that an order without jurisdiction is a nullity and can be challenged in collateral proceedings. In reply to the submission on behalf of the petitioners that Review Application No. 16 of 2007 was filed beyond 30 days and belatedly, he submitted that under Section 13(2) of the MRTP Act, the MRTP Commission has the power to revoke any order passed by it at any time.

5. For deciding the contention raised on behalf of the petitioners that the order dated 13.09.2007 of the MRTP Commission was a consent order, we must look at the order dated 13.09.2007 of the MRTP Commission, which is quoted herein below:

“We have heard the arguments for some time of the parties. The parties are at issue regarding the balance amount payable by the complainant to the respondent towards balance installments or interest thereon. The other controversy is regarding the formalities namely certificate of SSI Registration and a NOC from Pollution Control Department of the State. Earlier the complainant had submitted a provisional SSI certificate which is already expired. Complainant now undertakes to furnish the fresh SSI certificate to the respondent positively within one month. Respondent shall handover the possession within next two weeks thereafter to the complainant. As regards the balance amount if any due, the respondents shall submit a detailed chart giving the dates at which the subsequent installments were due and amount payable on each due date. It has been pointed out by the learned counsel for the respondent that the complainant should hand over these documents to Mr. Dinesh Jain, Legal Adviser of UPSIDC at Surajpur Office with intimation to the counsel for the respondent who will ensure that the possession is delivered to the complainant within next two weeks. The SSI certificate earlier submitted by the complainant was provisional and has already expired. Therefore, an issuance of that certificate by the concerned authority will not stand in the way of their issuing a fresh SSI certificate. The General Manager, District Industry Centre, Greater NOIDA is directed to issue the SSI certificate at the earliest after compliance of the necessary formalities. A copy of the order be given dasti to the complainant. List on 1st November, 2007 for further directions. Sd./- (Honble J. Sri O.P. Dwivedi, Chairman) & (Sri D.C. Gupta, Member) On a reading of the order of the order dated 13.09.2007, we do not find that the directions in the said order to the respondents to handover the possession of the plot to the petitioners was based on the consent of the learned Advocates appearing for the respondents and this is what has been held by the MRTP Commission also in the impugned order dated 04.03.2009. Thus, the contention of the petitioners that the

order dated 13.09.207 of the MRTP Commission was a consent order is misconceived.

6. It is not disputed by the petitioners that Review Application No. 16 of 2007 was entertained by the MRTP Commission under sub-section (2) of Section 13 of the MRTP Act. Sub-section (2) of Section 13 of the MRTP Act is quoted herein below:

“13(2) Any order made by the Commission may be amended or revoked at any time in the manner in which it was made. The language of sub-section (2) of Section 13 makes it clear that the MRTP Commission may amend or revoke any order in the manner in which it was made at any time. The expression at any time would mean that no limitation has been prescribed by the legislature for the MRTP Commission to amend or revoke an order passed by it. Hence, the argument on behalf of the petitioners that the MRTP Commission could not have entertained the Review Application for recalling the order dated 13.09.2007 beyond the period of 30 days has no foundation in law. Moreover, the order dated 13.09.2007 of the MRTP Commission on its plain reading was only an interim order and the MRTP Commission could modify or revoke the interim order directing the respondents to handover physical possession of the plot to the petitioners if it thought that such a direction could only be considered at the time of finally deciding the complaint. We therefore do not find any infirmity in the order dated 04.03.2009 of the MRTP Commission recalling the direction to handover physical possession of the allotted plot to the petitioner saying that this direction can be considered at the stage of final adjudication of the complaint.

7. On a perusal of the impugned order dated 04.03.2009, however, we find that although the respondents cited the judgment of this Court in Ghaziabad Development Authority v. Ved Prakash Aggarwal (supra) and contended before the MRTP Commission that the MRTP Commission had no authority to order handing over of possession and that the jurisdiction was only with the Civil Court to order specific performance of the contract, the MRTP Commission has observed that this contention cannot be dealt with while passing the interim order and can only be decided at the time of final adjudication of the complaint. Hence, we are not called upon to decide the question whether the MRTP Commission has power to direct handing over the possession of the plot to the complainant and this question can be decided by the MRTP Commission at the stage of final adjudication of the complaint.

8. In the result, we do not find any merit in these Special Leave Petitions and accordingly we decline to grant special leave to the petitioners to appeal against the order dated 04.03.2009

of the MRTP Commission and the order dated 05.01.2010 of the Competition Appellate Tribunal. The Special Leave Petitions are dismissed with no order as to costs.