

SUPREME COURT OF INDIA

Delhi State Indus.Dev.Corpn.Ltd.

Vs.

Ashok Kumar Madan

C.A.No.1087 of 2015

(V.Gopala Gowda and N.V.Ramana JJ.)

21.01.2015

ORDER

V.GOPALA GOWDA, J.

1. Leave granted.

2. This appeal has been filed against the impugned judgment and final order dated 24.07.2013 passed by the High Court of Delhi at New Delhi in L.P.A. No.3 of 2013, whereby the High Court has disallowed the action of the appellant-Corporation in cancellation of the plot allotted under the "Relocation Scheme" on account of non-payment of the initial 50% amount towards the cost of the plot in terms of order dated 24.1.2001 passed by this Court in M.C.Mehta Vs. Union of India[1] and subsequently dismissed the L.P.A. of the appellant-Corporation.

3. The brief facts of the case are stated hereunder:-

4. The appellant-Corporation is the agency implementing the direction of this Court in the case of M.C.Mehta (supra), for the relocation of industries that are carrying on business in non conforming areas or are misusing residential properties. The respondent, who was running a commercial/industrial establishment in a residential premises, made an application dated 23.12.1996 for the allotment of a plot under the "Relocation Scheme" and also furnished a sum of Rs.60,000/- along with the application. The respondent was required to make a further deposit of 30% of the tentative cost of the plot, which amounts to Rs.75,000/-, apart from the earnest money paid along with the application, which was duly deposited by him on 09.05.2000. The application of the respondent was accepted and he was allotted a plot measuring 150 sq. meters bearing no.57,

Pocket-I, Sector-2, Bawana Industrial Area, Delhi, in accordance with the allotment letter issued on 23.10.2000. The appellant-Corporation also informed the respondent that the cost of the plot stood revised from Rs.3000/- per sq. meter to Rs.4,200/- per square meter and the respondent was also required to deposit 50% of the revised estimated cost, which amounted to Rs.3,15,000/- within a period of 3 months from 23.10.2000. Pursuant to an order dated 24.01.2001 passed by this Court in M.C.Mehta's case (supra), the date for depositing the requisite amount was subsequently extended to 31.03.2001. The respondent failed to deposit the said amount despite the extension of the period given by this Court. The respondent deposited an amount of Rs.1,80,000/- to complete the payment of 50% of the cost of the plot on 27.11.2001, instead of the stipulated date i.e. 31.03.2001, without any demand and permission from the appellant-Corporation. The payment challan states that any late payment or payment without demand would not create any right upon the property. on 27.07.2004, an aggregate sum of Rs.4,27,117/-, was deposited by the respondent on a demand made by an officer of the appellant-Corporation, to complete the balance payment of 50% of the cost of the plot as well as the interest for delay in making payment. Further, on 14.11.2006, the respondent received a communication from the appellant-Corporation, demanding certain documents to facilitate the handing over the possession of the plot to the respondent. However, the allotment in favour of the respondent was cancelled on 30.01.2008 and the amount was refunded with interest on 07.05.2010. Aggrieved by the cancellation order, the respondent filed Writ Petition No.8478 of 2010 before the learned single Judge of the High Court, who disposed of the same in favour of the respondent vide order dated 03.07.2012, stating that the appellant-Corporation had not corrected the mistake committed by its officer and had remained silent for four years after the receipt of the value of the plot. It has further held that the aforesaid action of the appellant-Corporation shows that it had accepted the action of the officer. Further, the respondent had paid interest on the delayed payment, which was also accepted by the appellant-Corporation, and therefore the doctrine of equity is in his favour. Further, no action was taken against the concerned officer of the appellant-Corporation by it. Thus, in the absence of any reasonable explanation as to why the appellant-Corporation chose to enjoy the money of the respondent for a period of 4 years without any recourse to him and without taking any action for the cancellation of the allotment of the plot, can safely lead to the conclusion that the appellant-Corporation chose to accept the action of its Section Officer, Mr.R.K.Bhatia. Thus, the learned single Judge disposed of the writ petition and quashed the cancellation letter dated 30.01.2008, wherein the appellant-Corporation has cancelled the plot allotted to the respondent and further the appellant- Corporation was directed to make available

an alternate plot to the respondent in case the original plot allotted to the respondent was not available, within a period of four weeks from the date of the order.

5. The Division Bench of the High Court also dismissed the appeal of the appellant-Corporation on the similar reasons assigned by the learned single Judge. Hence, this appeal is filed by the appellant-Corporation seeking to set aside the impugned judgment and order of the High Court.

6. It is the contention of Mrs. S. Janani, the learned counsel on behalf of the appellant-Corporation that the High Court has erred in not considering the fact that the respondent has failed to make the payment in terms of the allotment letter and also in accordance with the directions issued by this Court, whereby the period stipulated for making payment with regard to the allotment of land was extended. The High Court has failed to see that the appellant-Corporation has followed the policy of cancellation of allotment in cases where the initial 50% of payment has not been deposited in time by the allottees uniformly and any favourable decision as directed by the High Court in favour of the respondent would open the flood gates of litigation and in such circumstances the appellant-Corporation would be put to great hardship.

7. Further, the paragraphs 3, 11 and 12 of the allotment letter dated 23.10.2000, clearly state that in case the payment towards the cost of the plot is not made within the stipulated time, by the allottees, in respect of the plot already allotted in favour of the respondent is likely to be cancelled without any further notice in this regard. The Delhi Government has reserved its right to withdraw/reject the offer of allotment made in favour of the respondent in case of any discrepancy noticed subsequently after following due process of law.

8. Further, it has been contended by the learned counsel that it is the sole discretion of the Delhi Government to allot and cancel the plot allotted in favour of any allottee, if the conditions stipulated therein are not complied with by the allottee, without informing him in this regard.

9. It has been further contended by the learned counsel that the delay in refunding the amount to the respondent amounts to a conscious decision on the part of the appellant-Corporation to accept the belated payment of the first instalment made by the respondent towards the allotment of the land. However, the delay in refunding the amount to the respondent by the appellant-Corporation cannot be inferred as an acceptance of the same by it towards the allotment of the plot in

favour of the respondent. The respondent had not deposited the shortfall amount of 50% of the cost with its authorization within the stipulated time and therefore, it cannot be contended that the respondent was misled by the conduct of the appellant- Corporation to think that the cut-off date fixed by this Court has been relaxed by it.

10. On the other hand, it is the contention of Mr. Akhilesh Kumar Gupta, the learned counsel on behalf of the respondent that the appellant-Corporation has accepted the full payment amount with interest towards the cost of the plot, which was deposited by the respondent after sanction and approval from one Mr.R.K.Bhatia, Section Officer of the appellant-Corporation. However, the appellant-Corporation has refused to withdraw the cancellation order inspite of several representations made by the respondent.

11. It has been further contended by him that no communication was received by the respondent from the appellant-Corporation that there was any default in the payment towards the allotment of the plot, when the respondent had deposited the additional amount of Rs.1,80,000/- on 27.11.2001, thereby completing the deposit of the requisite amount of 50% payment of the total cost of the plot that was made available to the respondent through the allotment scheme by the Delhi Government.

12. It has been further contended that the respondent had deposited Rs.7,42,117/- on 27.07.2004, which is the total cost of the plot together with the up to date interest in response to the newspaper advertisement published by the appellant-Corporation, asking the allottees of the Relocation Scheme, who had not made full payment for the plots allotted to them, to make full payment along with interest in the office of the appellant-Corporation within the time stipulated in the above advertisement. Further, the respondent received the communication from the appellant-Corporation, demanding certain documents to facilitate it to hand over the plot to the respondent, which were duly furnished by him. However, the handing over of the possession of the allotted plot was not made to him but on the other hand, the allotment of the plot to him was cancelled giving the reason that there was default in the payment of the instalments on the part of the respondent, which is factually incorrect.

13. Further, it has been contended that the contract between the appellant-Corporation and the respondent is still subsisting and there is no substantial question of law in this appeal to interfere with the judgments and orders of both the learned single Judge and the Division Bench of the High Court as they are legal

and valid. It is further urged that the appellant-Corporation has committed fraud on the respondent and therefore the appeal of the appellant-Corporation is not maintainable before this Court. The allotment of the plot in favour of the respondent was cancelled by the appellant-Corporation in utter violation of the principles of natural justice.

14. On the basis of the facts pleaded, the evidence on record and the rival legal contentions urged on behalf of the parties, we have to examine whether the appellant-Corporation is entitled to the relief as prayed for in this appeal. The answer for the same is given in the negative.

15. It is contended by the learned counsel for the appellant-Corporation that the respondent had made a default in the payment of the initial 50% of the cost of the plot amounting to Rs.3,15,000/- despite the extension of time given by this Court in the M.C.Mehta case (supra), i.e. upto 31.03.2001 and instead, he made the payment directly to the bank without the authorization of the appellant-Corporation and therefore, the said deposit made towards the cost of the allotment of the plot is not valid and therefore it has cancelled the allotment of the plot in favour of the respondent. The action of cancellation of the plot by the appellant-Corporation for the reasons ascribed above cannot be accepted by us in view of the peculiar facts and circumstances of the present case, wherein, on 27.07.2004, an endorsement was made by the officer of the appellant-Corporation, Mr.R.K.Bhatia, asking the Bank of Baroda to accept the balance payment payable by the respondent, thus leading the respondent to a bona fide belief that the belated payment along with the interest that was deposited by the respondent has been duly accepted by the appellant-Corporation.

16. Further, on a careful examination of the cancellation letter that was addressed to the respondent, cancelling the allotment of the plot allotted to him, the appellant-Corporation had not given any other reason except admitting the bona fide mistake on the part of its officer in accepting the belated payment made by the respondent towards the allotment of the plot and the delay on the part of the respondent in making the payment within the stipulated time period. Thus, the explanation given by the appellant- Corporation has failed to satisfy the courts below as well as this Court as the appellant-Corporation had continued to retain the total amount deposited by the respondent for more than half a decade, without even making an attempt to return the same with interest to the respondent. Further, the respondent had promptly responded to the newspaper advertisement dated 27.04.2004, published by the appellant-Corporation, asking the allottees of the plots to make full payment along with the interest in the office of the appellant-Corporation.

17. Further, as has been rightly held by the Division Bench of the High Court, that the letter dated 14.11.2006 sent by the appellant-Corporation for furnishing of certain documents by the respondent, to facilitate the appellant-Corporation to hand over the possession of the plot to him, would also indicate that the appellant-Corporation had condoned the delayed payment of the cost of the plot on the part of the respondent and further, there is no allegation made in the present appeal that the concerned officer of the appellant-Corporation had colluded with the respondent or acted in mala fide manner with a view to favour him by allowing him to deposit the cost of the plot belatedly. In fact, the deposit of the amount was made by the respondent pursuant to the opportunity given to him by the extended time for depositing the amount as published in the newspaper advertisement.

18. Thus, the fact that the respondent had paid interest on the delayed payment to the account of the appellant-Corporation, which was accepted by it and it did not take any action either against its officer or for the return of money to the respondent between the period 2004-2008, certainly created equity in favour of the respondent, as observed by the learned Single Judge and the judgment and order was rightly confirmed by the Division Bench of the High Court.

19. The appellant-Corporation has failed to satisfy this Court with cogent and reasonable explanation as to why the money paid by the respondent for the allotment of the plot was not returned to him by the appellant-Corporation which has led him to believe that his delayed payment towards the cost of the allotted plot had been accepted by the appellant-Corporation. Thus, in our considered view, there is no merit in the above contentions urged by the learned counsel on behalf of the appellant-Corporation and the respondent has been wrongfully denied the benefit of allotment of the plot. Therefore, the quashing of the cancellation of the allotted plot by the High Court is legal and valid, the same does not warrant interference by this Court.

20. Thus, we direct the appellant-Corporation to re-allot the plot originally allotted to the respondent, i.e. Plot No.57, Pocket-I, Sector-2, Bawana Industrial Area, Delhi, and if the same is not available, an alternative plot, in the same Bawana Industrial Area or any other proximate area be allotted to him within a period of four weeks from the date of receipt of the copy of this order. The discretionary power exercised by the learned single Judge of the High Court which is confirmed by the Division Bench of the High Court need not be interfered with by this Court as no case is made out. The appeal is dismissed.

[1] (2001) 1 SCALE 420

