

**SUPREME COURT OF INDIA**

Metal Seam Co. of India (P) Ltd.

Vs.

Avadh Delicacies & Ors.

C.A.No.361 of 2016

(V. Gopala Gowda and Uday U.Lalit,JJ.)

19.01.2016

**JUDGMENT**

**Udav U. Lalit,J.**

(Arising out of SLP (C) No. 10951 of 2014)

1. Leave granted.

2. This appeal challenges the judgment and order dated 28.03.2014 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No.1840 of 1998 whereby the High Court was pleased to set-aside the orders dated 09.06.1998 and 15.06.1998 passed by the General Manager, District Industries Centre, Lucknow.

3. The facts in the present matter are as under:-

a) In 1956, Shed No.B-5 inclusive of appurtenant open space situated in Talkatora Industrial Estate, Lucknow (hereinafter referred to as the "concerned shed") was allotted to M/s Surya Chemicals for establishment of a factory. Under the Hire Purchase agreement entered into between M/s Surya Chemicals and the Director of Industries on behalf of the Government of U.P., it was expressly stipulated in Condition No.4 as under:-

"Not to sell, mortgage, assign or otherwise transfer the factory building except with the previous permission in writing of the Director of Industries, U.P. till the price has been fully paid and the transfer as aforesaid shall be as such conditions as the Director of Industries, U.P., may lay down while granting such permission."

b) The present Appellant was allotted the adjoining shed namely B-6 in the year 1968 and in due course of time it started manufacturing containers and drums. As the business of the Appellant expanded, it required additional premises. Around this time M/s Surya Chemicals was in arrears in making payment of instalments in respect of

the concerned shed. At one stage the allotment in its favour was cancelled but on an assurance that it would start production, it was given time and the allotment was restored. The Appellant approached the Joint Director of Industries for allotment of the concerned shed on payment of entire cost.

c) Since M/s Surya Chemicals was in default, the Joint Director of Industries recommended cancellation of allotment of the concerned shed and wrote to the General Manager to take the appropriate steps after taking legal opinion in the matter. The General Manager however by his order dated 01.12.1983 recommended transfer of the concerned shed in favour of Avadh Delicacies, Respondent No.1 herein. Respondent No.1 was a new firm provisionally registered as a Small Scale Industries unit with the General Manager. The order was passed on an application moved by M/s Surya Chemicals for transfer of the concerned shed to Respondent No.1.

d) On 25.02.1984 the Joint Director of Industries accepted the transfer application moved by M/s Surya Chemicals permitting the transfer of the concerned shed in favour of Respondent No.1. This led to the filing of Writ Petition No.1166 of 1984 by the Appellant in the High Court. It was submitted that the application for transfer ought to have been considered along with other pending applications and when the application of the Appellant was pending there was no question of accepting the transfer as proposed by M/s Surya Chemicals.

e) That writ petition was allowed by the High Court by its judgment and order dated 04.03.1987. It was observed as under:-

"In the instant case, from the above facts, it is obvious that the allotment which has been permitted without considering other applications, is unreasonable and lacks good faith and could not be said to be in public interest. The order passed by the State Government effecting the order of transfer in favour of opposite party No.6 is unreasonable and invalid. In these circumstances, the allotment order passed in favour of opposite party No.6 cannot be allowed to stand. The writ petition is accordingly allowed and a writ of certiorari is issued quashing the order dated 25.02.1984, passed by the Joint Director of Industries (Annexure-14) and the order dated 23.02.1984, passed by the State Government contained in Annexure-13 to the writ petition. However, it will be open to the opposite parties to consider the merits of the case of the petitioner and that of opposite party No.6 and in case the opposite party No.6 in fact has started any production regarding which there is dispute and doubt, his claim would be given due consideration and in any view the opposite parties will, so far as possible, allot any other shed to opposite party No.6 if circumstances warrant that he should not get and keep possession over shed No.5-B."

f) Thus the order of transfer in favour of opposite party No.6 i. e. Respondent No.1 was quashed. The authorities were directed to consider the merits of the case of the Appellant and Respondent No.1 and in case the claim of Respondent No.1 was to be accepted, its claim could inter-alia be considered in respect of any other shed.

g) The aforementioned judgment and order dated 04.03.1987 was challenged by Respondent No.1 in this Court by filing Civil Appeal No. 3062 of 1987 and during its pendency nothing could be done. It appears that on 25.09.1997 Shed No.C-1 in the very same Industrial Estate came to be allotted to the Appellant. On 29.09.1997 the aforesaid civil appeal was dismissed for non-prosecution by this Court and such dismissal has attained finality.

h) Soon thereafter the matter was taken up for consideration. On 20.03.1998 a notice was issued to the Respondent No.1 to present its case along with necessary record relating to the concerned shed. A further notice in that behalf was again issued to Respondent No.1 on 27.03.1998. Similar notices were also issued to the Appellant and M/s Surya Chemicals.

i) In the meeting of Zila Udyog Bandhu held on 20.05.1998, the matter concerning allotment of concerned shed was considered. It was observed that in the year 1997 Shed No.C-1 was already allotted in favour of the Appellant. The committee however concluded as under:-

"Having considered the entire facts of the above case and after due deliberations, the Chairman has taken the decision that Shed No. B-5 was allotted to M/s Surya Chemicals in the year 1965 and the possession of the shed was handed over on 01.01.1966 but they have not commenced any work at their own and transferred Shed No. B-5 to M/s Avadh Delicacies. M/s Surya Chemicals is not interested in setting up of unit and started production, therefore, the committee has taken the decision to cancel the allotment of Shed No. B-5 to M/s Surya Chemicals and make its allotment in favour of M/s Metal Seam Company of India under the provisions of Government Order No. 1888/18-2-92-25(3)/92 dated 30.4.1992 as per rules."

j) On 09.06.1998 General Manager, District Industries Centre, Lucknow issued a letter cancelling the allotment of the concerned shed which was made in favour of M/s Surya Chemicals and re-claimed the possession of the concerned shed. Further, by order dated 15.06.1998 the General Manager, District Industries Centre, Lucknow allotted the concerned shed to the Appellant. M/s Surya Chemicals did not challenge the order of cancellation dated 09.06.1998. However, Respondent No.1 challenged the said order by filing Writ Petition No.1840 of 1998 in the High Court. During the pendency of the writ petition, there was an order of status quo which continued till the disposal of the writ petition. It appears that on 10.03.2006 another shed in the same Industrial Estate being Shed No.C-2 was allotted to the Appellant herein. The Appellant since then has been having allotment of three sheds, namely, B-6, C-1 and C-2 in its favour.

k) In the aforesaid writ petition a supplementary affidavit was filed by General Manager, District Industries Centre in January, 2000 stating as under:

"That this Hon'ble Court on 13.09.1999 (when the instant case was listed) was pleased to enquire whether the petitioner's case was considered or not for allotment of industrial plot in question in view of the judgment of this Hon'ble Court dated 04.03.1987 passed in Writ Petition No. 1166 of 1984 (MB) (Metal Seams Co. of India v. State of UP & Ors.) in this regard it is submitted that in paragraph 23 of the counter affidavit filed in the instant writ petition i.e. Writ Petition No. 1840 of 1998(MB) dated 19.03.1999 it has been specifically asserted that after the dismissal of the SLP against the judgment and order dated 04.03.1987 the steps were taken by the Department for the assessment of the comparative need of the conflicting parties in respect of shed in question. In the said paragraph it was further stated that all the parties namely (1) M/s Surya Chemicals, (2) M/s Metal Seams Co. and (3) M/s Avadh Delicacies were called vide letters dated 20.03.1998 and 27.03.1998 by the committee consisting of (1) General Manager, District Industries Centre, Lucknow, (2) Director, Central Design Centre, Lucknow and (3) Project Manager in the office of Joint Director Industries, Lucknow. The said letters were annexed as annexure Nos. (A-3 and A-4) to the said counter affidavit.

l) The record placed before us indicates that Respondent No.1 had initially got registration to manufacture ayurvedic medicines in the year 1987. However, in the year 1992 it had obtained licence to run a Flour Mill and to deal in and store food grains. On 25.06.1997 Respondent No.1 had written to the Trade Tax Officer, Lucknow as under:

"1. The firm of the applicant is registered with your office under State Trade Tax Act vide Registration No. LKO-0366347 dated 17.05.1992.

2. That the trader has closed down his business because of the loss in it.

3. That Form No.15 and 19 are already submitted in the office. Hence, the applicant urges that the notice of closure may be admitted and the firm may be permanently closed."

(m) The aforementioned Writ Petition No.1840 of 1998 came to be allowed by the High Court by its judgment and order dated 28.03.2014. The High Court observed that Annexure No.R-16 placed on its record by way of rejoinder affidavit, disclosed that Respondent No.1 was running an industry for manufacturing PVC pipes and accessories and its production had also started. It was further observed that the order of allotment dated 15.06.1998 in favour of the Appellant was passed without giving any opportunity of hearing or issuing any show cause notice to Respondent No.1 and without complying with the directions in the order dated 04.03.1987. The High Court also stated that order dated 15.06.1998 was not sustainable in as much as it was issued without any public auction or inviting tenders.

4. This appeal by special leave challenges the judgment and order passed by the High Court setting aside the order of allotment dated 15.06.1998. In support of the appeal, Mr. H.P. Raval, learned Senior Advocate submitted that the notices dated

20.03.1998 and 27.03.1998 clearly indicate that requisite opportunity was afforded to Respondent No.1, that record indicated that the cases of all three claimants including that of Respondent No.1 were considered before letter of cancellation dated 09.06.1998 was issued, that cancellation was never challenged by M/s Surya Chemicals and that Respondent No.1 had no stateable claim in respect of the concerned shed. Appearing for Respondent No.1, Mr. Guru Krishna Kumar, learned Senior Advocate submitted that in keeping with the direction issued in the judgment and order dated 04.03.1987 the claim of Respondent No.1 was required to be considered, which is a matter of fact, was not considered at all and that the requirement of the Appellant stood completely satisfied by allotment of two sheds namely C-1 and C-2 during the pendency of the proceedings.

5. We have considered the submissions and gone through the record. The Appellant is right in its submissions that requisite notices were issued to Respondent No.1 and that it was afforded adequate opportunity. The observations of the High Court in that behalf are not quite correct. The supplementary affidavit filed in January 2000 made the position quite clear. The petition was therefore wrongly allowed on the ground that no opportunity was given to Respondent No.1. We have also seen the record and are satisfied that Respondent No.1 had closed its operation in the year 1997. According to annexure No. R-16 placed along with the rejoinder affidavit, an inspection report was apparently prepared. That report is a solitary piece in support of its submissions of having started manufacturing activity. Nothing has been placed on record, no licence is adverted to nor is it shown how and in what manner Respondent No.1 started its activity of manufacturing PVC pipes. Nothing was filed or placed on record pursuant to notices dated 20.03.1998 and 27.03.1998. We do not find any merit in the submissions that Respondent No.1 has been conducting any activity of manufacturing of PVC pipes. The claim of Respondent No.1 must therefore be rejected. At the same time it is absolutely clear on record that the Appellant has been having allotment of three sheds namely B-6, C-1 and C-2 in its favour in the same Industrial Estate. No special equities are in its favour and no case is therefore made out for allotment of concerned shed to the Appellant. The observation of the High Court that the order dated 15.06.1998 was issued without any public auction or inviting tenders and as such was completely unsustainable, in our view is absolutely correct.

6. In the circumstances we allow the present appeal with following directions:-

“(a) The claim of Respondent No.1 was rightly rejected while cancelling allotment made in favour of M/s Surya Chemicals vide letter of cancellation dated 09.06.1998. The order of cancellation dated 09.06.1998 is sustained and shall be fully operative. Respondent No.1 who has been in wrongful occupation of the concerned shed must surrender the possession immediately. The authorities are directed to recover the possession forthwith and report compliance to this Court.

(b) In view of the change in circumstances namely allotment of sheds C-1 and C-2 in its favour, the Appellant is not entitled to claim any special equity. The order of allotment dated 15.6.1998 passed in its favour therefore stands set aside.

(c) The authorities are directed to conduct public auction or invite tenders for allotment of the concerned shed at the present market value. Needless to mention that the present Appellant and Respondent No.1 or any other person is free to participate in such public auction or tender.”

7. This appeal thus stands allowed and the judgment of the High Court under appeal stands modified to the aforesaid extent. No order as to costs.