NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5613 OF 2010

JAI BHAGWAN GOEL DAL MILL & ORS. … APPELLANT (S)

VERSUS

DELHI STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. & ANR. … RESPONDENT (S)

J U D G M E N T

RANJAN GOGOI, J.

1. The challenge herein is against the order dated 22.10.2009 passed by the High Court of Delhi dismissing the Letters Patent Appeal filed by the present appellants against an order dated 20.07.2009 passed by a learned Single Judge of the High Court. By the aforesaid orders the High Court has dismissed the challenge of the appellants to the decision of the Respondents that the appellants are entitled to only

one plot pursuant to the relocation policy of the Delhi Administration and that one of the two plots earlier allotted to the appellants be retained and the remaining plot be surrendered.

2. The appellant No.1 (hereinafter referred to as "the appellant"), which is a partnership firm, was running two industrial units for processing Moong and Masoor Dal located in two different plots covered by Khasra No. 570 and 544/1 at Village Bakoli, Delhi. The location of the aforesaid two units came within the purview of the Order dated 30.10.1996 passed by this Court by which relocation of manufacturing/industrial units in non-conforming or residential areas were required to be made. Acting pursuant to the said order of this Court, a Public Notice dated 27.11.1996 was issued inviting applications for allotment of industrial plots for relocation of industries from residential/non-conforming areas. The appellant filed two applications i.e. 17547 and 17549 dated 26.12.1996 for allotment of two separate plots for relocation of its units.

According to the appellants, by communications dated 25.04.2000 the Delhi State Industrial Development Corporation Ltd. (DSIDC) informed the first appellant that on scrutiny of the applications submitted it was found that the appellant is provisionally eligible for allotment of industrial plots at a tentative cost of Rs. 3000/- per sq. mtr. By the said communications the appellant was required to make an initial deposit, which was so done. Thereafter, according to the appellants, by two separate communications dated 07.05.2004 the DSIDC informed the first appellant that on the basis of the draw of lots conducted, the first appellant had been allotted two different plots of 250 sq. mtrs. each at a price of Rs. 4200 per sq. mtr. On receipt of the aforesaid communication the first appellant claim to have deposited the entire cost of the two plots allotted to it against the two separate applications i.e. No. 17547 and 17549. However, instead of handing over possession of the respective plots to the appellant, by the impugned communication dated 08.11.2006 the DSIDC informed the appellant that the two units in respect of which the applications for allotment were

submitted have the same title, partners and municipal certificates and therefore under the relocation policy only one plot could be allotted to the appellant. Accordingly, the appellant was asked to indicate its choice as to which of the two plots they would like to retain. It also appears that pursuant to the aforesaid communication the appellant indicated its option pursuant to which the amount deposited against application No. 17549 was returned by the DSIDC to the appellant.

3. Against the decision contained in the aforesaid communication dated 08.11.2006, the writ petition in question was filed. It is out of the order dated 20.07.2009 dismissing the writ petition that LPA No. 447 of 2009 was filed by the appellants which has been dismissed by the impugned order leading to the institution of the present appeal.

4. We have heard Mr. S.L. Aneja learned counsel for the appellants and Ms. Rekha Pandey learned counsel for the respondents.

5. From the materials brought on record by the contesting parties, particularly, the counter affidavit filed on behalf of the respondents it appears that in a Cabinet Meeting dated 07.06.1999 as also in a meeting of the High Powered Project Implementation Committee in respect of relocation scheme certain decisions were taken which were circulated by a Letter/Memorandum dated 20.07.1999. The decisions contained in paragraphs (iv) and (vii) of the said letter/memorandum dated 20.07.1999 would be relevant for the purpose of the present case and therefore are being extracted below.

> "(iv) The units who have applied for industrial plots measuring more than 400 sq. mtrs. will be offered a maximum of only 250 sq. mtrs.
>
> (v) ....
>
> (vi) ....
>
> (vii) Units which are functioning from more than one premises and submitted separate applications in respect of each premises, the requirement of plot area of all the locations

should be clubbed together and if it exceeds 400 sq. mtrs. then the provisions proposed for larger units should be applied."

6. The aforesaid two decisions would seem to indicate that a revision of the policy decision was undertaken by which the maximum plot size was restricted to 250 sq. mtrs. Similarly, in respect of units which were functioning from more than one premises/location the requirement of plot area of such units were to be clubbed together even if separate applications had been submitted by such units. Both the aforesaid decisions, according to the respondents, was prompted by the acute scarcity of land for the purpose of allotment under the relocation policy. It appears that the aforesaid decisions in modification of the earlier policy taken in June 1999 and circulated by Letter/Memorandum dated 20.07.1999 were not taken note of at the time when the appellant was informed of its provisional eligibility to obtain allotment of two plots (25.04.2000) or before the formal allotment orders on 07.05.2004 were issued in favour of the appellant. The aforesaid change of policy that was overlooked however came

to the notice of the respondents before physical possession of the plots was handed over to the appellant. Accordingly, the impugned communication dated 08.11.2006 was issued requiring the appellant to indicate which out of the two plots allotted to it would be retained.

7. If the initial allotment (2 plots) made in favour of the appellant was contrary to the relocation policy itself the appellant will have no right to retain both the plots. In fact the allotment being pursuant to a policy and at prices much lower than the market price no vested right to be allotted a plot can be recognized. At best a right of fair consideration alone can be attributed which does not appear to have been breached in the present case so as to have required correction in exercise of the jurisdiction vested in the High Court under Article 226 of the Constitution.

8. Learned counsel for the appellants has urged that paragraph (vii) of the letter/Memorandum dated 20.07.1999 should be read to mean as covering only those units whose operations are spread out in more than one location. On the

said basis the application of the aforesaid policy decision to the present case is questioned. We do not find any justification for giving such a meaning to the contents of paragraph (vii) of the letter/Memorandum dated 20.07.1999 in view of the clear language used therein.

9. Learned counsel for the appellants has also drawn our attention to a decision of the Delhi High Court in ***Government of NCT of Delhi Through Commissioner of Industries*** Vs. ***Bhushan Kumar & Anr.***[1]. to contend that a similar matter has been decided in favour of another allottee whereas the writ petition filed by the appellants on largely similar questions has been dismissed.

10. We have read and considered the judgment of the Delhi High Court in the case of ***Bhushan Kumar*** (supra). On such reading we find that the facts in which the aforesaid decision was rendered are not similar to those in the present case. That apart, the judgment rendered by the Delhi High Court is presently under challenge before this Court in SLP(C) No.

[1] 151 (2008) DLT 158 (DB)

19581 of 2008. It would therefore be not appropriate for us to examine the correctness of the said view; neither any such examination would be required in view of our conclusion that the facts of the present case are different from those in ***Bhushan Kumar*** (supra).

11. For the aforesaid reasons, we do not find any merit in this appeal which is accordingly dismissed, however, without any order as to costs.

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J.

[RANJAN GOGOI]

.....J.

[R.K. AGRAWAL]

NEW DELHI,
SEPTEMBER 2, 2014.