

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.1079 OF 2008

IN

CIVIL APPEAL NO. 4130 OF 2008

M/S DULARI EXPORTS LTD. & ORS. ... PETITIONERS

Versus

H.S.I.D.C. LTD. & ORS. ... RESPONDENTS

ORDER

S.B. Sinha, J.

1. This petition has been filed for review of our judgment and order dated 16th May, 2008.

2. The instant case is one of those cases wherein it was opined that it was difficult to uphold the order of the High Court, but having regard to the general offer made by the learned Additional Solicitor General to the effect

that those who intended to obtain re-allotment of plot may do so on payment of the price as per the current rate as on the date of the order of the High Court. The appeal filed by the Corporation was disposed of on the above terms.

3 Mr. Puneet Bali, the learned counsel appearing on behalf of the Review-Petitioners would contend that this Court has proceeded on a wrong premise that the Corporation had in fact directed resumption of the allotted plot. It was contended that the Corporation never directed any resumption owing to alleged non-compliance of the conditions of grant in regard to completion of construction of the factory premises within the prescribed period. In this connection, our attention has been drawn to various orders passed by the concerned authorities including the appellate authority and the High Court

4. Our attention has furthermore been drawn to certain factual errors purported to have been committed by this Court while noticing the facts of the matter.

We may, therefore, place on record the facts as stated before us by Mr. Bali so far as the same are relevant.

The Review-Petitioners had paid four installments. They did not pay the fifth installment within the prescribed time. They submitted a demand draft of Rs.19,00,253/- towards fifth installment. The Corporation by a letter dated 30th January, 2004 referring to its earlier order dated 1st January 2004 by which a show cause notice was issued to it on account of non commencement of construction within the stipulated period as also the subsequent reply of the petitioners dated 9th January 2004, stated:-

“In this regard, I am again directed to inform you that as per terms and conditions of allotment, you were required to start construction of factory building within a period of one year and six months from the date of offer of possession, but you have not started the same even after lapse of more than two years and six months.

In view of the above, the reply submitted by you is not satisfactory and plot has become liable for resumption and as such the demand drafts submitted by you have not yet been accepted. On account of above violations though the plot has become liable for resumption, however, before resuming the plot, the Corporation has decided to give you an opportunity of retaining the plot at the current price of Rs.2200/- per square meter. In case you are interested in retaining the plot at current price of Rs.2200/- per square meter, you are advised to convey your acceptance, within a period of 15 days from the date of issue of this letter, failing which the plot will be resumed without any further notice in this regard.”

The Review-Petitioners did not accept the said offer. It filed objections thereto. By an order dated 27th June, 2005, the said objections were rejected, stating:

“ The objections filed by you have been duly considered, wherein you have neither disputed the starting of construction over plot in question within the stipulated period, as one of the conditions of allotment, failure whereof renders the plot liable to be resumed nor explained any reasons justifying your failure to comply with the said condition. Hence the objections filed by you have no merit and hereby rejected. Accordingly a cheque dated 15.6.2005 for Rs.8155203/- drawn on State Bank of India, Industrial area branch, Panchkula is being sent to you on account of refund of the amount deposited by you after deductions as per terms and conditions of allotment. Further, the demand drafts in original bearing Nos. 204383 for Rs.900000/-; 204384 for Rs.900000/- & 204385 for Rs.100253/-, all dated 9.1.2004 and Drawn on Indian Overseas bank are also returned to you, which you were deposited with the Corporation towards 5th installment of the cost of plot. You are requested to hand over the vacant possession of the plot to Estate Manager, IMT, Manesar within a period of 30 days.”

5. An appeal was preferred thereagainst and the Appellate Authority was of the opinion that it was merely a proposal for resumption and not an order of resumption itself.

The learned counsel would contend that it is on the aforementioned premise he filed a writ petition before the High Court which was allowed by an order dated 8th May 2006. It was urged that the Review Petitioners during the pendency of the writ petition had not only completed the construction of the factory but also commenced commercial production, this Court should not have equated the case of their with those of others. Mr. Bali pointed out that the current rate on which the Review- Petitioners were required to deposit is Rs.4,000/- per square meter, but it has all along been and still is ready and willing to pay Rs.2,200/- per square meters as demanded of them earlier by the Corporation.

6. Before embarking on the issue raised before us, we may place on record that the learned counsel appearing on behalf of the Review-Petitioners at the initial stage of the hearing like others made an offer that he would pay the amount calculated at the market rate as prevailing on the date of delivery of the judgment by the High Court but on the next day they turned back therefrom. A prayer was made to recall that order, which was allowed and the appeal was heard on merits.

7. It may be true that the Corporation did not expressly use the words 'resumption of the plot' but in effect and substance it must be held to have

done so. In its purported so-called proposal for resumption, the Corporation categorically stated that despite the fact that it violated the conditions of allotment, it was free to offer the current price for regularization of the allotment at the rate of Rs.2,200/- per square meter. Acceptance of such an offer was valid only for a period of 15 days from the date of issue of the suit notice. No offer was made within the stipulated period. In fact, Review-Petitioners objected thereto. Evidently, on the premise that they had complied with the terms and conditions of the letter of allotment, they filed objections. The said objections were not only rejected but the Review-Petitioners were directed to handover possession. Possession can be directed to be handed over only on resumption of plot. There cannot, therefore, any doubt whatsoever that the Corporation had in effect and substance directed resumption of the plot allotted to the Review-Petitioners.

Be that as it may, it was stated before us that during the pendency of the writ petition, the Review-Petitioners had not only completed the construction but also started commercial production, but this Court while considering the legality or otherwise of the order passed by the High Court was entitled to consider the issue keeping in view the initial order passed by the Corporation. Any subsequent event might have been a relevant fact for the purpose of passing equitable orders, but the same by itself would not be

a ground to revive the offer of the appellant to pay Rs.2,200/- per square meter although it failed and/or neglected to do so within the stipulated period.

8. We may, however, before parting, place on record that Mr. Bali contended that the requisite amount had been tendered to the Corporation but the same had been returned on the ground of pendency of the review application. If that be so, in the event, the Review-Petitioners tender the requisite amount to the Corporation within a period of seven days from date, the same shall be accepted without any demur whatsoever.

9. We, therefore, are of the opinion that the application for review on merit must be dismissed. The Review Petition is dismissed accordingly with costs payable to the Corporation. Counsel's fee is assessed at Rs.1,00,000/- (Rupees One Lakh only).

.....J.
[S.B. Sinha]

.....J.
[V.S. Sirpurkar]

New Delhi;
July 16, 2009