

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION NO.3 OF 2010
IN
CIVIL APPEAL NO. 5712 OF 2002

GARG WOOLLEN PVT.LTD. Appellant (s)

VERSUS

STATE OF U.P. AND OTHERS Applicant/
Respondent(s)

WITH

INTERLOCUTORY APPLICATION NO.3 OF 2010
IN
CIVIL APPEAL NO.5713 OF 2002

AND

INTERLOCUTORY APPLICATION NO.4 OF 2011
IN
INTERLOCUTORY APPLICATION NO.3 OF 2010
IN
CIVIL APPEAL NO.5713 OF 2002

M/S. TIRUPATI LPG INDUSTRIES LTD. Applicant(s)

In the matter of

EVEREST CYLINDERS PVT. LTD. Appellant(s)

VERSUS

STATE OF U.P. AND OTHERS Respondent(s)

O R D E R

I.A. No.4 of 2011 in I.A. No.3 of 2010 in C.A. No.5713 of 2002:

This is an application by M/s. Tirupati LPG Industries Limited
for its impleadment as party in the application filed by Uttar

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Pradesh State Industrial Development Corporation (for short, "the
Corporation") for modification of order dated 15.4.2009 vide which
Civil Appeal No.5713 of 2002 was disposed of along with Civil Appeal
No.5712 of 2002.

We have heard Shri Krishnan Venugopal, learned senior counsel
appearing for the applicant and Shri R.P. Bhatt, learned senior
counsel appearing for the Corporation and perused the record.

Since there is no dispute between the parties that the
applicant had purchased the property belonging to the appellant as

early as in 2000 and this Court had not been apprised of the said fact before or at any time of disposal of the appeal, we deem it proper to entertain the prayer made in the application and order its impleadment as party-respondent in I.A. No.3 of 2010 in C.A. No.5713 of 2002.

(After the aforesaid order was typed, the Court Master pointed out that I.A. No.4 of 2011 in I.A. No.3 of 2010 in Civil Appeal No.5713 of 2002 filed by M/s. Tirupati LPG Industries Limited for impleadment had already been allowed by this Court on 28.1.2011)

I.A. No.3/2010 in C.A. No.5712 of 2002:

AND

I.A. No.3/2010 in C.A. No.5713 of 2002:

We have heard Shri R.P. Bhatt, Senior Advocate appearing for the applicant, Shri Vijay Hansaria, Senior Advocate appearing for

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the appellant in Civil Appeal No.5712 of 2002 and Shri Krishnan Venugopal, Senior Advocate appearing for M/s. Tirupati LPG Industries Limited, which has been impleaded as a party in I.A. No.3 of 2010 in Civil Appeal No.5713 of 2002.

The writ petitions filed by Garg Woollen Private Limited and Everest Cylinders Private Limited questioning the acquisition of their land were dismissed by the Division Bench of the Allahabad High Court vide separate orders dated 9.9.1997.

When the special leave petitions filed against the orders of the High Court were listed for admission hearing, learned senior counsel appearing for the appellants made a statement that their clients are willing to take the acquired land on lease at reasonable rent. Thereupon, the Court issued notice and directed the parties to maintain the status quo. After receipt of the notice of the special leave petitions, Shri S.K. Srivastava, the then Regional Manager of the Corporation at Meerut filed affidavits disclosing therein the premium etc., payable for allotment of the industrial plots.

The appeals were finally taken up for hearing in 2009 and were disposed of vide order dated 15.4.2009, the relevant portions of which read as under:

"When the special leave petitions, out of which these appeals arise, were listed for admission hearing learned counsel appearing on behalf of the appellants stated that their clients are willing to take the acquired land on which the structures

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stand on lease on reasonable rent. In view of the statements of the learned counsel, notice was issued to the respondents on 20.3.1998 and orders of status quo regarding possession were passed.

On behalf of the Uttar Pradesh State Industrial Development Corporation (for short, "the Corporation"), its Regional Manager, Shri S.K. Srivastava has filed identical counter affidavits, paragraphs 4 and 5 of which read thus:

"4. That after 3.1.1987, the rate of premium of the various plots, carved out of land, acquired under the notification were allotted to the various industrialists, was Rs.120/- p.sq.mtrs.

5. That in the circumstances the corporation is entitled to the following amount, should this Hon'ble Court come for the conclusion that the plots should be allotted to the petitioner:-

- 1 The rate of premium Rs.120/- P.SQ.Mt. for allotment of plot.
- 2 Interest on the simple interest at the rate of of 18% per annum w.e.f. 3.1.87.
- 3 Lease rent @ Rs.250/- per Hectare per year which is subject upward revision @ Rs.320 after 30 years and Rs.620/- after 60 years."

Learned counsel for the appellants stated that their clients are agreeable to accept the allotments at the rates specified in the above reproduced paragraphs 4 and 5 of the counter affidavits. They, however, made a request that nine months' time may be allowed to their clients for making payment of the entire amount. In our view, the prayer made on behalf of the appellants is reasonable and merits acceptance. Accordingly, the appellants are allowed nine months' time from today for making payment in terms of paragraphs 4 and 5 of the counter affidavit subject to their

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filing undertaking to this effect within four weeks from today.

The civil appeals are, accordingly, disposed of."

Now, the Corporation has applied for modification of

aforementioned order by stating that as in 2009 price of the land, which was the subject matter of dispute in C.A. No.5712 of 2002 was between Rs.3850/- and Rs.4421.30 per sq.mt. whereas by virtue of the order passed by this Court, the appellants became entitled to allotment of land at the rate specified in affidavit dated 22.11.1999 of Shri S.K. Srivastava along with interest and lease rent and this would cause serious prejudice to the interest of the Corporation.

Shri Vijay Hansaria, learned senior counsel appearing for the appellant in Civil Appeal No.5712 of 2002 argued that the applications should be dismissed solely on the ground of unexplained delay of one year during which period appellant-Garg Woollen Private Limited had deposited almost Rs.48 lakhs as price of the land possessed by it. Shri Hansaria pointed out that order dated 15.4.2009 was passed keeping in view the affidavits filed by the Regional Manager of the Corporation and argued that it will be wholly inequitable to allow the applicant to wriggle out of the statement contained in the affidavit of Shri S.K. Srivastava.

We have considered the submissions of the learned counsel but have not felt persuaded to non-suit the Corporation only on the

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ground of delay. The difference in the price indicated in affidavit dated 22.11.1999 of Shri S.K. Srivastava and the price prevalent in 2009 is too large to be ignored. We have no doubt that if this Court had been apprised of the difference in the price and the fact that the land belonging to Everest Cylinders Private Limited had been purchased by M/s. Tirupati LPG Industries Limited in 2000, it would have decided the appeals keeping in view escalation in the price and the transaction involving purchase of land etc., of Everest Cylinders Private Limited by M/s. Tirupati LPG Industries Limited and may not have ordained the appellants to deposit the price of the land at the rate of Rs.120/- per square meter.

For the reasons stated above, the applications are allowed and order dated 15.4.2009 is recalled. The appeals shall now be listed

Mr. S.S. Pillania, Adv.
Mr. Aftab Ali Khan, Adv.
[for applicant in I.A. Nos.4 & 5
in C.A. No.5713 of 2002]

Mr. P.P. Rao, Sr.Adv.

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Mr. Dinesh Kumar Garg ,Adv
[for Mr. S.K. Misra,Adv.]

Mr. Gaurav Jain, Adv.
Mrs. Abha Jain, Adv.
[For Mr. S.K. Srivastava]

UPON hearing counsel the Court made the following
O R D E R

I.A. No.4 of 2011 in I.A. No.3 of 2010 in C.A. No.5713 of 2002:

This is an application by M/s. Tirupati LPG Industries Limited for its impleadment as party in the application filed by Uttar Pradesh State Industrial Development Corporation (for short, "the Corporation") for modification of order dated 15.4.2009 vide which Civil Appeal No.5713 of 2002 was disposed of along with Civil Appeal No.5712 of 2002.

We have heard Shri Krishnan Venugopal, learned senior counsel appearing for the applicant and Shri R.P. Bhatt, learned senior counsel appearing for the Corporation and perused the record.

Since there is no dispute between the parties that the applicant had purchased the property belonging to the appellant as early as in 2000 and this Court had not been apprised of the said fact before or at any time of disposal of the appeal, we deem it proper to entertain the prayer made in the application and order its impleadment as party-respondent in I.A. No.3 of 2010 in C.A. No.5713 of 2002.

I.A. No.3/2010 in C.A. No.5712 of 2002:

AND

I.A. No.3/2010 in C.A. No.5713 of 2002:

In terms of signed order, the applications are allowed and order dated 15.4.2009 is recalled. The appeals shall now be listed for rehearing.

While disposing of the two applications, we deem it proper to discharge the notice issued to Shri S.K. Mishra and S.K. Misra, Advocate and Shri S.K. Srivastava, the then Regional Manager of the Corporation.

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(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed Order is placed on the file)