

A M/S. A.B.N.A. AND ORS.  
v.  
THE MANAGING DIRECTOR, M/S. U.P.S.I.D.C. LIMITED,  
KANPUR & ANR.  
(SLP (C) Nos. 16116-16117 of 2010)

B MAY 08, 2012

**[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]**

C *Monopolies and Restrictive Trade Practices Act, 1969 – s. 13(2) – Allotment of plot – Possession not given – Allottee’s complaint to MRTP Commission – During pendency of complaint, interim application seeking physical possession of the plot – Commission by order dated 13.9.2007 passing direction to handover possession to the allottee – Review application by the opposite party – The Commission recalled the order dated 13.9.2007 whereby it had directed to handover the possession – Review application filed by the allottee dismissed – In SLP, plea of the allottee that the order dated 13.9.2007 could not have been recalled being a consent order and that review application was barred by limitation – Held:*  
D *There is no infirmity in the order of the Commission whereby it recalled the direction to handover possession to allottee on the ground that the direction could be considered at the stage of final adjudication – The order dated 13.9.2007 was not a consent order – The order dated 13.9.2007 being an interim order could have been modified or revoked – Commission has power u/s. 13 (2) to amend or revoke any order at any time hence it is not barred by limitation – Petition dismissed.*  
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G *Ghaziabad Development Authority v. Ved Prakash Aggarwal (2008) 7SCC 686: 2008 (8) SCR 676; Kiran Singh and Ors. v. Chaman Paswan and Ors. AIR 1954 SC 340: 1955 SCR 117 – referred to.*

A.B.N.A. AND ORS. v. MANAGING DIRECTOR, M/S. 281  
U.P.S.I.D.C. LIMITED, KANPUR

**Case Law Reference:**

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**2008 (8) SCR 676** Referred to. **Para 4**

**1955 SCR 117** Referred to. **Para 4**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No.  
16116-16117 of 2010.

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From the Judgment & Order dated 04.03.2009 of the  
M.R.T.P.C. New Delhi, in RA-16 of 2007 and order dated  
05.01.2010 of the Competition Appellate Tribunal, New Delhi  
in RA-06 of 2009, in UTPE-119 of 2000.

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Petitioner-In-Person.

Aarti Upadhyay, Rakesh Uttamchandra Upadhyay for the  
Respondents.

The Order of the Court was delivered

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**A.K. PATNAIK, J. 1.** These are petitions under Article 136  
of the Constitution for leave to appeal against the order dated  
04.03.2009 of the Monopolies and Restrictive Trade Practices  
Commission, New Delhi, (for short 'the MRTP Commission')  
in Review Application No.16 of 2007 and the order dated  
05.01.2010 of the Competition Appellate Tribunal, New Delhi,  
in Review Application No.06 of 2009.

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2. The facts very briefly are that the respondents published  
an advertisement in the Hindustan Times, New Delhi inviting  
applications from entrepreneurs for allotment of industrial land  
in Greater NOIDA on payment of 10% of the cost of allotted  
land. In response to the advertisement, the petitioners applied  
for a plot and on 05.03.1994 a plot of 800 square metres in  
Site-C was allotted. The petitioners paid 10% of the cost of the  
plot on 23.03.1994. However, physical possession of the plot  
was not given to the petitioners on the ground that the  
petitioners had not paid all the dues for the plot. The petitioners  
then filed a complaint UTPE No.119 of 2000 before the MRTP  
Commission and after notice to the respondents the complaint

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A was heard from time to time. While the complaint was pending, petitioners filed I.A. No.18 of 2004 before the MRTP Commission to take possession of the allotted plot. On 13.09.2007, the MRTP Commission passed an order directing that the respondent shall handover possession of the allotted plot within next two weeks to the complainant and as regards the balance amount, if any due, the respondents shall submit a detailed chart giving the dates on which the subsequent installments were due and the amount payable on each due date. By the order dated 13.09.2007, the MRTP Commission also directed the petitioners to furnish a fresh SSI certificate to the respondents and directed that the matter be listed on 01.11.2007 for further directions. Instead of handing over possession of the allotted plot to the petitioners, the respondents filed Review Application No.16 of 2007 on 18.12.2007 and by the impugned order dated 04.03.2009 the MRTP Commission allowed the Review Application and recalled the order dated 13.09.2007 insofar as it directed the respondents to handover possession of the plot to the petitioners. Aggrieved, the petitioners filed Review Application No.06 of 2009 before the Competition Appellate Tribunal and by the impugned order dated 05.01.2010, the Competition Appellate Tribunal dismissed the Review Application of the petitioners.

3. The petitioner No.3, who appeared in-person and argued on behalf of the petitioners, submitted that the order dated 13.09.2007 of the MRTP Commission directing the respondents to handover physical possession of the allotted plot to the petitioners was a consent order as it was passed on the consent of the two advocates appearing for the respondents, namely, Mr. Shakti Singh Dhakray and Mr. D.K. Sharma. He submitted that the order dated 13.09.2007 of the MRTP Commission being a consent order, the same could not have been reviewed by the MRTP Commission and on this ground the impugned order dated 04.03.2009 of the MRTP Commission recalling the order dated 13.09.2007 in Review

Application No.16 of 2007 is illegal and is liable to be set aside. He further submitted that Review Application No.16 of 2007 was filed before the MRTP Commission by the respondents on 18.12.2007 more than thirty days period prescribed for filing of the Review Application. He submitted that by the time Review Application No.16 of 2007 was filed, the petitioners had filed contempt petition for violation of the order dated 18.12.2007 as well as a petition for executing the order dated 18.12.2007 before the MRTP Commission. He submitted that the MRTP Commission should not have entertained the Review Application after such long delay. He finally submitted that the stand taken by the respondents in Review Application No.16 of 2007 was that the MRTP Commission had no jurisdiction to direct the respondents to handover possession of the plot to the petitioners but there are decisions of this Court which make it clear that the MRTP Commission has the power to even direct handing over possession to the complainant.

4. Learned counsel for the respondents, on the other hand, submitted that the order dated 13.09.2007 of the MRTP Commission was an interim order and the MRTP Commission has rightly held in the impugned order dated 04.03.2009 that it could not have directed the respondents by an interim order to handover possession of the plot to the petitioners as this was the final relief claimed by the petitioners in the complaint before the MRTP Commission. Relying on the decision of this Court in *Ghaziabad Development Authority v. Ved Prakash Aggarwal* [(2008) 7 SCC 686], he submitted that the MRTP Commission has no power to direct handing over possession of the plot to the complainant and it is only the Civil Court which could while granting a decree of specific enforcement of the contract direct the defendants to handover possession to the plaintiffs. He submitted that the order dated 13.09.2007 passed by the MRTP Commission directing handing over possession of the plot to the complainant is thus without jurisdiction. He submitted that this Court in *Kiran Singh and Others vs. Chaman Paswan and others* (AIR 1954 SC 340) has held that

A an order without jurisdiction is a nullity and can be challenged in collateral proceedings. In reply to the submission on behalf of the petitioners that Review Application No. 16 of 2007 was filed beyond 30 days and belatedly, he submitted that under Section 13(2) of the MRTP Act, the MRTP Commission has  
 B the power to revoke any order passed by it “at any time”.

5. For deciding the contention raised on behalf of the petitioners that the order dated 13.09.2007 of the MRTP Commission was a consent order, we must look at the order dated 13.09.2007 of the MRTP Commission, which is quoted  
 C hereinbelow:

“We have heard the arguments for some time of the parties. The parties are at issue regarding the balance amount payable by the complainant to the respondent towards balance installments or interest thereon. The other  
 D controversy is regarding the formalities namely certificate of SSI Registration and a NOC from Pollution Control Department of the State. Earlier the complainant had submitted a provisional SSI certificate which is already expired.

E Complainant now undertakes to furnish the fresh SSI certificate to the respondent positively within one month. Respondent shall handover the possession within next two weeks thereafter to the complainant. As regards the  
 F balance amount if any due, the respondents shall submit a detailed chart giving the dates at which the subsequent installments were due and amount payable on each due date.

G It has been pointed out by the learned counsel for the respondent that the complainant should hand over these documents to Mr. Dinesh Jain, Legal Adviser of UPSIDC at Surajpur Office with intimation to the counsel for the respondent who will ensure that the possession is delivered to the complainant within next two weeks.

H The SSI certificate earlier submitted by the complainant

was provisional and has already expired. Therefore, an  
issuance of that certificate by the concerned authority will  
not stand in the way of their issuing a fresh SSI certificate.  
The General Manager, District Industry Centre, Greater  
NOIDA is directed to issue the SSI certificate at the earliest  
after compliance of the necessary formalities. A copy of  
the order be given “dasti” to the complainant.

List on 1st November, 2007 for further directions.

Sd./- (Hon’ble J. Sri O.P. Dwivedi, Chairman) & (Sri D.C.  
Gupta, Member)”

On a reading of the order of the order dated 13.09.2007, we  
do not find that the directions in the said order to the  
respondents to handover the possession of the plot to the  
petitioners was based on the consent of the learned Advocates  
appearing for the respondents and this is what has been held  
by the MRTP Commission also in the impugned order dated  
04.03.2009. Thus, the contention of the petitioners that the  
order dated 13.09.207 of the MRTP Commission was a  
consent order is misconceived.

6. It is not disputed by the petitioners that Review  
Application No. 16 of 2007 was entertained by the MRTP  
Commission under sub-section (2) of Section 13 of the MRTP  
Act. Sub-section (2) of Section 13 of the MRTP Act is quoted  
hereinbelow:

“13(2) Any order made by the Commission may be  
amended or revoked at any time in the manner in which it  
was made.”

The language of sub-section (2) of Section 13 makes it clear  
that the MRTP Commission may amend or revoke any order  
in the manner in which it was made “at any time”. The  
expression “at any time” would mean that no limitation has been  
prescribed by the legislature for the MRTP Commission to  
amend or revoke an order passed by it. Hence, the argument  
on behalf of the petitioners that the MRTP Commission could

A not have entertained the Review Application for recalling the  
order dated 13.09.2007 beyond the period of 30 days has no  
foundation in law. Moreover, the order dated 13.09.2007 of the  
MRTP Commission on its plain reading was only an interim  
order and the MRTP Commission could modify or revoke the  
B interim order directing the respondents to handover physical  
possession of the plot to the petitioners if it thought that such a  
direction could only be considered at the time of finally deciding  
the complaint. We therefore do not find any infirmity in the order  
dated 04.03.2009 of the MRTP Commission recalling the  
C direction to handover physical possession of the allotted plot  
to the petitioner saying that this direction can be considered  
at the stage of final adjudication of the complaint.

7. On a perusal of the impugned order dated 04.03.2009,  
however, we find that although the respondents cited the  
D judgment of this Court in *Ghaziabad Development Authority  
v. Ved Prakash Aggarwal* (supra) and contended before the  
MRTP Commission that the MRTP Commission had no  
authority to order handing over of possession and that the  
jurisdiction was only with the Civil Court to order specific  
E performance of the contract, the MRTP Commission has  
observed that this contention cannot be dealt with while passing  
the interim order and can only be decided at the time of final  
adjudication of the complaint. Hence, we are not called upon  
to decide the question whether the MRTP Commission has  
F power to direct handing over the possession of the plot to the  
complainant and this question can be decided by the MRTP  
Commission at the stage of final adjudication of the complaint.

8. In the result, we do not find any merit in these Special  
Leave Petitions and accordingly we decline to grant special  
G leave to the petitioners to appeal against the order dated  
04.03.2009 of the MRTP Commission and the order dated  
05.01.2010 of the Competition Appellate Tribunal. The Special  
Leave Petitions are dismissed with no order as to costs.

H K.K.T. Special Leave Petitions dismissed.