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Delhi State Industrial and Infrastructure Developmen Vs. M/S K.G. Electronics Pvt. Ltd. and anr.

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Court : Delhi

Decided On : Nov-07-2014

Judge : Rajiv Sahai Endlaw

Appellant : Delhi State Industrial and Infrastructure Developmen

Respondent : M/S K.G. Electronics Pvt. Ltd. and anr.

Advocate for Def. : Ms. Bandana Shukla, Ms. Ruchi Sindhwani, Ms. Swati Yadav

Advocate for Pet/Ap. : Ms. Anusuya Salwan, Mr. Vikas Sood

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

7. h November, 2014 % + LPA No.391/2014 DELHI STATE INDUSTRIAL & INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. .. Appellant Through: Ms. Anusuya Salwan & Mr. Vikas Sood Advs. Versus M/S K.G. ELECTRONICS PVT. LTD. & ANR. .. Respondents Through: Ms. Bandana Shukla for Ms. Ruchi Sindhwani, Adv. for R-2. Ms. Swati Yadav, Official from DSIIDC. CORAM:HONBLE THE CHIEF JUSTICE HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J1 This intra-court appeal impugns the judgment dated 10th December, 2013 of the learned Single Judge of this Court, allowing W.P.(C) No.2324/2013 preferred by the respondent no.1 by directing the

appellant to execute the perpetual lease of plot of land bearing no.A-102 at Narela Industrial Complex in favour of the respondent no.1 / writ petitioner within six weeks thereof subject to the respondent no.1 / writ petitioner completing all the formalities.

2. Though this appeal was accompanied with an application for condonation of 110 days delay in filing thereof, however being prima facie of the opinion that the appeal does not deserve to be entertained, we, without entertaining the controversy whether the appellant discloses sufficient cause for condonation of delay in filing the appeal, heard the counsel for the appellant on merits and reserved judgment on the aspect of admission. We may notice that the counsel for the respondent no.2 Commissioner of Industries, Government of National Capital Territory of Delhi (GNCTD), a non-contesting respondent, appeared on advance notice.

3. The facts are not in dispute. The respondent no.1 / writ petitioner through its two Directors Sh. Devender Kumar Gupta and Sh. Dinesh Kumar Gupta, in or about the year 1987, applied to the appellant for allotment of an industrial plot in Narela area and the appellant allotted plot no.A-102 at Narela Industrial Area to the respondent no.1 / writ petitioner and in or about the year 1995 handed over the possession of the said plot of land to the respondent no.1 / writ petitioner on perpetual lease basis. The said perpetual lease was to be executed subsequently. The work of execution of the lease deed by the respondent no.2 in favour of the respondent no.1 / writ petitioner was taken up in the year 2007 when the respondent no.2 asked the respondent no.1 / writ petitioner to furnish details of changes in the shareholding and directorship of the respondent no.1 / writ petitioner company so as to calculate the unearned increase charges if applicable. Finding that shares of the respondent no.1 / writ petitioner, subsequent to allotment and being put in the possession of the plot of land aforesaid, had been transferred to persons other than family members and further finding that there had also been change in directorship of the respondent no.1 / writ petitioner, the work of execution of the perpetual lease was held up. The respondent no.2 in or about the year 2009-10 transferred the Narela Industrial Area to the appellant. The appellant finally demanded unearned increase charges of Rs.15,08,436/- from the

respondent no.1 / writ petitioner for executing the perpetual lease deed and impugning which demand, the writ petition from which this appeal arises was filed.

4. The learned Single Judge has allowed the writ petition as aforesaid finding/observing/holding: (i) that at the time of allotment of the land to the respondent no.1 / writ petitioner company, the brothers Sh. Devender Kumar Gupta and Sh. Dinesh Kumar Gupta were its only shareholders and Directors; however as on 30th September, 2004, the said Sh. Devender Kumar Gupta and Sh. Dinesh Kumar Gupta held only 28.814% share each and Smt. Anju Gupta, wife of Sh. Devender Kumar Gupta held 14.124% shares, Smt. Rekha Gupta, sister-inlaw of Sh. Devender Kumar Gupta and Sh. Dinesh Kumar Gupta held 14.124% shares and one Sh. Tarun Gupta held the remaining 14.124% shares; (ii) that Smt. Rekha Gupta and Mr. Tarun Gupta who together held 28.248% in the respondent no.1 / writ petitioner company were not family members as defined in the Guidelines for Management of Industrial Land managed by the Delhi Government; however as on 29th September, 2007, Sh. Devender Kumar Gupta and Sh. Dinesh Kumar Gupta were again the only shareholders of the respondent no.1 / writ petitioner company; (iii) that in the aforesaid Guidelines for Management of Industrial Land in Delhi, there is no provision for charging unearned increase wherever the shares in a private limited company are transferred to a person who is not a family member in terms of the definition given in the said Guidelines; (iv) that the appellant relied on the Minutes of the Meeting held on 11 th June, 2009 in the Chamber of the respondent no.2 where a decision was taken that change of Directors in a private limited company is permissible on payment of proportionate unearned increase wherever required as per Land Management Guidelines and that change of Directors in relocation cases is allowed only amongst family members; (v) that the aforesaid decision also applied to the case where Land Management Guidelines provide for payment of unearned increase; however as aforesaid the said Guidelines do not provide for payment of unearned increase in case there is a transfer of shares in a company to a person who is not a member of the family; thus the said policy decision also did not entitle the appellant to claim unearned increase from the respondent no.1 / writ petitioner; (vi) in the light of the above, the question whether the said Guidelines apply to the respondent no.1 / writ petitioner was not relevant; (vii) that even the terms and conditions of the

perpetual lease deed proposed to be executed in favour of the respondent no.1 / writ petitioner prohibit only selling, transferring, assigning or otherwise parting with the possession of the leased land without permission and which could be granted on payment of 50% of the unearned increase; however the respondent no.1 / writ petitioner to whom the land was allotted, is a company, a legal entity and notwithstanding the interim change in shareholding and directorship of the respondent no.1 / writ petitioner, the respondent no.1 / writ petitioner company remained the owner / in possession of the said land; (viii) it was also not a case of transfer / change of majority shareholding in a company and in which case the unearned increase could possibly be claimed; as aforesaid the shareholders at the time of allotment of land had continued to hold 71% share even when the shares were transferred.

5. We have invited the attention of the counsel for the appellant to: (a) Human Care Medical Charitable Trust Vs. Delhi Development Authority 186(2012) DLT395where one of us (Rajiv Sahai Endlaw, J.) held that when perpetual lease is executed, in that case by the DDA, in favour of a Society, it is the Society which is prohibited from selling, transferring, assigning the land / building constructed thereon and a change in the proprietorship or the Governing Body of the Society cannot fall within the meaning of otherwise part with the possession of the property; that a change in proprietorship of the Society would thus not amount to subletting, assigning or parting with possession of the leased property as the privity under the perpetual lease deed is with the Society and not with the members, at the time of allotment of land of the Society; reliance was placed on the earlier judgments of this Court in Indudyog Co. Ltd. Vs. GNCTD MANU/DE/1422/2003 and J.C. Khosla Vs. Khosla Medical Institute & Research Society MANU/DE/1194/1996; (b) Delhi Development Authority Vs. Mahabir Prasad and Sons MANU/DE/3308/2009 where a Division Bench of this Court held that unearned increase as a jural concept requires a sale, for the reason that without a sale, what would be the measure to determine the increase in the price of land; (c) Rama Association (P) Ltd. Vs. Delhi Development Authority 45 (1991) DLT630where another Single Judge of this Court held that a company is a legal entity separate and distinct from its shareholders and Directors; if the lease is executed in favour of a company, the embargo therein on subletting, assigning or

parting with possession is on the company; (d) Salomon Vs. Salomon and Co. Ltd. [1897]. A.C. 22 (HL), State Trading Corporation Vs. C.T.O. AIR 1963 SC1811 Ram Chand and Sons Sugar Mills Vs. Kanhaya Lal Bhargava AIR 1966 SC1899 Electronics Corporation of India Ltd. Vs. Secretary, Revenue Department (1999) 4 SCC458and Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay AIR 1955 SC74inter alia to the effect that if the shares of a company are transferred, it does not mean that the legal entity of the company is changed; and (f) Scindia Potteries and Services Ltd. Vs. Deputy Land and Development Officer, Government of India 41 (1990) DLT261where also a Single Judge of this Court held that shareholders of the company are distinct from the company of which they hold shares and sale of shares cannot be construed as sale of land held by the company. and enquired from the counsel for the appellant that in view of the said settled position of law aforesaid followed by the learned Single Judge, how can the impugned judgment be faulted.

6. No reply has been forthcoming.

7. We have also examined the letter dated 7th July, 1990 of allotment of the said land in favour of the respondent no.1 / writ petitioner and the same is also not found to contain any condition to the effect that the change of shareholding and Directorship was prohibited or any unearned increase would be payable therefor. We may in this regard notice that such a provision exists in some of the documents of allotment and lease / perpetual lease of land executed by governmental agencies.

8. The counsel for the appellant has sought to argue that the allotment of land in favour of the respondent no.1 / writ petitioner being under a Relocation Scheme, the respondent no.1 / writ petitioner should be deemed to be not entitled to indulge in transfer of shares and directorship.

9. The said contention is to be noted to be rejected. The allotment / transfer would be governed by the terms of such allotment / transfer thereof and which as aforesaid do not provide so.

10. The counsel for the appellant has lastly contended that we may dispose of this appeal by observing that the judgment of the learned Single Judge is on the peculiar facts and would not constitute a precedent.

11. The judgment of the learned Single Judge being on settled principle of law as above, such an observation cannot be made. However, if the appellant in any other case is entitled to distinguish the said judgment or the judgments cited by us, it would of course be entitled to. The appeal is accordingly dismissed. We refrain from imposing any costs. RAJIV SAHAI ENDLAW, J CHIEF JUSTICE NOVEMBER07 2014 gsr

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