Mithilesh Kumar Pandey Vs. Delhi Development Authority and Others

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Court : Delhi

Decided On : May-11-2016

Judge : Badar Durrez Ahmed &Amp; Sanjeev Sachdeva

Appeal No. : W.P.(C). No. 6388 of 2013

Appellant : Mithilesh Kumar Pandey

Respondent : Delhi Development Authority and Others

Judgement :

Sanjeev Sachdeva, J.

1. The petitioners, who are advocates, have filed the present petition claiming to be in public interest seeking a mandamus thereby terminating the extension of lease granted in favour of Indian Hotels Company (IHCL) in respect of Hotel Taj Palace by respondent No.1/DDA and further for issuance of directions to Central Bureau of Investigation (CBI) or any other competent agency to probe and investigate into the extension of lease granted in favour of IHCL in respect of Hotel Taj Palace, Sardar Patel Marg, New Delhi.

2. The contention of the petitioners in the petition is that lease agreement was executed between DDA and IHCL in respect of the property i.e. Hotel Taj Palace, Sardar Patel Marg, New Delhi on 01.04.1983 for a period of 30 years. The said lease agreement ended on 31.03.2013 and instead of conducting an auction for

running the operation of Hotel Taj Palace, the DDA chose to renew the lease in favour of IHCL for a further period of 25 years w.e.f. 01.04.2013.

3. It is contended that DDA completely disregarded the fact that there are arbitration matters pending between DDA and IHCL for the last about 16 years in relation to financial audits and concerning serious issues. It is further contended that extension of hotel lease has been done without complying with norms and in contravention with the earlier lease agreement. It is submitted that extension of the lease again and again mechanically in favour of IHCL by DDA is bad in law and DDA/Land DO being State instrumentalities cannot grant largesse in favour of a private builder as per their own whims and fancies.

4. It is further contended that the lease for Hotel Taj Palace was scheduled to end on 31.03.2013 but IHCL sent a letter to DDA in September 2012, over six months in advance, expressing its interest to renew the lease.

5. The Land and Development Office, Ministry of Urban Development, arrayed as respondent No.3, has filed its counter affidavit opposing this petition. It is contended in the counter affidavit that the land measuring about 6 acres at Sardar Patel Marg was allotted to DDA for construction of a five star hotel for meeting the hotel requirements of Asian Games vide allotment letter dated 04.03.1981. There were certain violations in the terms of allotment and, accordingly, allotment was withdrawn and cancelled vide letter dated 29.10.1983.

6. The allotment was subsequently restored on 10.04.1985, subject to the revision of ground rent from 2.5% to 5% per annum of the premium as the land was re-allotted to DDA at half the normal rates and subject to payment of damage charges for their occupation of the plot up to one day before the re-allotment. As per the terms of allotment, the DDA was mandated not to sub-lease the land in favour of any other party, they could, however, make such arrangement for construction and running the hotel as would not involve sub-leasing of the plot.

7. It is contended in the counter affidavit that DDA is competent to take decision in respect of the hotel business without interference of Land DO provided it adheres to the terms of the lease/allotment. It is contended that the land has been leased

out by Land DO to DDA on perpetual lease basis. It is further contended that the hotel premises is inspected from time to time to confirm the compliance of the terms of allotment/lease and, if any irregularities are found during inspection, action to remedy the same is taken under the terms of allotment/lease/agreement.

8. DDA has also filed its counter affidavit contending that in 1981, the Government of India through Land and Development Office allotted to DDA a site measuring six acres for construction of a five star hotel. One of the conditions for allotment was that the DDA shall not sub-lease the land in favour of any other party. They can, however, make such arrangements for construction and running the hotel as will not involve sub-leasing of the plot.

9. It is contended that according to the same, DDA by advertisements invited reputed companies in the hotel business for collaboration for the construction and for running of the hotel. The said exercise culminated in the collaboration agreement dated 09.04.1985 being executed between DDA and IHCL, which was termed as an Agreement for the Construction and Licence of a Hotel Building at Sardar Patel Marg, New Delhi. The hotel, so constructed, is operating in the name and style of Hotel Taj Palace.

10. It is contended that under the said agreement, DDA agreed to collaborate with IHCL in the construction of the said hotel building, inter alia,

a. by financing the construction of the hotel building at its cost not exceeding Rs. 10 crore, and if the actual cost exceeded that amount, then IHC undertook to invest in the agreed items;

b. IHC undertook to equip the hotel with the necessary equipment and assets such as kitchen equipment, laundry equipment, furniture, furnishings and other agreed assets;

c. IHC was given the license to occupy and use the hotel building to be constructed for the purpose of running therein a hotel, to be operated by IHC on license basis as per the terms and conditions of the Agreement;

d. DDA was entitled to receive a License fee in the amount equivalent to 171/4 % of the gross receipts of the hotel.

11. Article VI of the agreement dated 09.04.1985 pertaining to LICENCE TERMS reads as under:-

(i) The licence hereby granted shall be in force for a period of 30 years commencing from 1.4.1983 subject to the condition that the licencee shall be bound by and observe and perform all the terms and conditions contained in the agreement through the period of the licence

(ii) That the licencee shall have the option of renewing the licence of the said hotel building for a further period of 25 years on giving notice in writing of such intention to the licenser at least six months before the expiration of the licence hereby granted, and the licenser would renew it upon the same terms and conditions as are herein contained excepting only this clause as to renewal, and subject to the payment of licence fee as contained in clause (I) of Article VIII mentioned hereinafter.

(iii) On the expiry of such extended period of the licence, if any, as stated above, the licenser shall have the option to grant license for a further period on such terms and conditions as may be mutually agreed upon between the licencer and the licencee. If the licencee would be desirous of obtaining a licence for a further period as mentioned in this clause, it shall give to the licencer, a notice in writing at least one year before the expiry of the licence period as contained in clause (2) above for the consideration of the licencer. But it is clearly understood that in any case the licenser shall not be bound to grant the licence for further period.

12. It is further contended in the counter affidavit by DDA that IHCL had been making payments of the licence fee from time to time based on gross receipts as certified by its statutory auditors. DDA conducted audit of the books of accounts of Hotel Taj Palace from time to time to verify the correctness of the gross receipts as stated by IHCL. There were claims by DDA and counter claims by IHCL with respect to the revenue share. The entire issues were referred to Arbitration and the arbitration proceedings continued over a long period primarily due to

unavailability of Arbitrators. It is contended that DDA had claimed Rs 31,81,79,945/- (i.e. Rs 13,93,89,632/- as principal and Rs 17,87,90,313/- as interest as on 31.03.2013) as the amount payable by IHCL over and above the amount already paid by it. The claims of DDA primarily related to the interpretation of the terms gross receipts in the agreement.

13. It is contended that during the course of arbitral proceedings, by letter dated 21.08.2012, IHCL exercised its option of renewing the licence of the Hotel under agreement dated 09.04.1985 for a further period of 25 years from the expiry of the initial term which was to expire on 31.03.2013 on the same terms and conditions. Subsequently, by letter dated 06.09.2012, IHCL, without prejudice, paid an amount of Rs 23,76,83,308/- towards the claims made by DDA before the Arbitral Tribunal against IHCL on account of shortfall in payment of licence fee for the period 1986/1987 to 2009/2010. The payment was made subject to the outcome of the arbitral proceedings.

14. It is further contended that DDA and IHCL arrived at a settlement of the claims of DDA including an agreed interpretation of the terms gross profits which would be applicable in future also and the arbitral proceedings culminated in a Consent Award dated 25.04.2013. The audit for the years 2010-11 and 2011-12 was also conducted in light of the Consent Award and the principal demand raised was paid by IHCL. It is contended that the audit of subsequent years would be conducted in light of the Consent Award.

15. It is contended that IHCL had a right to ask for renewal of the agreement dated 09.04.1985 on the same terms and conditions and, accordingly, the agreement was renewed for a further period of 25 years from 01.04.2013 and a supplementary agreement dated 04.10.2013 has been executed.

16. The respondent No.4/IHCL has also filed its counter affidavit virtually taking the same stand as taken by the DDA. Additionally, the respondent No.4 has referred to various dismissal orders passed by this Court as well as the Supreme Court in various proceedings initiated by the petitioners in public interest. It is the contention of IHCL that the petitioner is a habitual and serial public interest litigator and has been filing petitions based on information gathered from newspapers

reports/press reports/websites without making any further enquiries as to the veracity of the news reports.

17. Land DO has filed a supplementary affidavit contending that a sum of Rs 3,13,64,000/- was deposited by DDA on 12.01.1987 towards the balance installment of premium for allotment of the land on lease basis and a further sum of Rs 1,40,43,849/- was deposited by DDA on 19.07.1989 on account of interest, damages and ground rent. It is further submitted that the ground rent of the said hotel amounting to Rs 26,13,600/- has been received in the Government account regularly.

18. The above facts clearly show that the petitioners have filed the present petition merely based on newspaper reports without conducting any verification or inquiry to ascertain the veracity of the newspaper reports. It is apparent from the affidavits filed by Land DO and DDA that the subject land duly stand allotted to DDA on perpetual lease basis. DDA is empowered to construct a hotel thereon and to enter into any arrangements for construction/maintenance and running of the hotel with any third party provided the same does not amount to sub-leasing of the land to the said third party. The perpetual lease is subsisting.

19. DDA has entered into a collaboration agreement with IHCL for the purposes of construction, maintenance and running the hotel. The original term, as stipulated by the agreement dated 09.04.1985, was 30 years ending on 31.03.2013. The agreement provides for an extension for a further period of 25 years at the request of the licensee i.e. IHCL. The request has been made in terms of the said agreement, i.e. six months prior to the expiry of the term. The extension granted w.e.f. 01.04.2013 is in terms of the collaboration agreement between DDA and IHCL. Land DO has also confirmed that it carries out regular inspection to verify the compliance with the terms and conditions of the lease of the allotment. In case of any variation, the same is pointed out for rectification. It is nobody s case that there is any breach of the perpetual lease by DDA or its licensee under the collaboration agreement.

20. DDA has also clarified that a dispute had arisen with IHCL on account of interpretation of the terms gross receipts in the collaboration agreement. The

dispute has now been resolved amicably through the process of arbitration and the term has been interpreted. Parties are complying with the interpretation agreed upon and amounts falling due under the collaboration agreement as also the perpetual lease are being paid by the respective parties to the concerned authorities.

21. DDA has averred that at the time of initial allotment in favour of IHCL, reputed companies in hotel business were invited though a newspaper advertisement and, ultimately, the agreement was executed with IHCL.

22. The present petition has been filed purely based on newspaper reporting. The original collaboration agreement is of 09.04.1985 and the term thereunder commenced w.e.f. 01.04.1983. The present petition has been filed in the year 2013 after a gap of over 28 years. The grievance raised in the petition is with regard to the renewal. Renewal, as stated above, is in accord with the terms of the collaboration agreement dated 09.04.1985.

23. In view of the above, we find that the present petition is frivolous, without any merit and baseless and does not sub-serve any public interest.

24. The petition is, accordingly, dismissed. There shall be no order as to costs.