

Karan Techno-fab Limited Vs. Delhi Development Authority

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Court : Delhi

Decided On : Mar-01-2000

Reported in : 2000(54)DRJ63

Judge : Dr. M.K. Sharma, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.W. No. 2093/98

Appellant : Karan Techno-fab Limited

Respondent : Delhi Development Authority

Advocate for Def. : Ms. Anusuya Salwan, Adv.

Advocate for Pet/Ap. : Mr. S.C. Nigam Adv

Judgement :

ORDER

Dr. M.K. Sharma, J.

1. The present writ petition has been preferred by the petitioner seeking for a direction to the respondent to execute perpetual lease deed conveying title in the Industrial plot measuring 2024.20 square metre, bearing No. 40 Plot A, Mayapuri Industrial Area, Phase-I, New Delhi so as to enable the petitioner to develop the

same and also for a direction to refund the amount of Rs.4,87,159/- calculated as unearned increase and paid by the petitioner under protest Along with interest at 24% p.a. from 12.8.96 up to the date of refund.

2. An auction sale was held in respect of Industrial Plot No. 40, Block 'A', Mayapuri Industrial Area, Phase-I, New Delhi. The said plot was auctioned by the Delhi Development Authority - Respondent and the highest offer was made by M/s. DD Leasing Pvt. Ltd. which was accepted by the DDA in the aforesaid auction sale. In accordance with the Terms and Conditions of the Auction sale 25% of the bid amount was also deposited with the Respondent - Authority on the date of the sale i.e. on 8.8.1985. It is stated that the petitioner paid the balance amount of 75% also on demand by the Delhi Development Authority and, thereforee, direction was sought for the respondent to take necessary action to execute the perpetual lease conveying title in respect of the aforesaid property. Since the respondent has failed to take necessary action for execution of the perpetual lease in favor of the petitioner, the petitioner has prferred this petition seek-ing for the aforesaid relief.

3. The case of the respondent on the other hand, is that the aforesaid lease hold rights in the Industrial plot was auctioned by the Delhi Development Authority in favor of M/s. DD Leasing Ltd. and the highest offer of M/s. DD Leasing Ltd. was accepted and 25% of the amount in accordance with the Terms and Condition of the Auction sale was also accepted by the respondent for the auction sale from the DD Leasing Ltd. It is also stated that the demand for payment of the balance amount was also made on DD Leasing Ltd. by the respondent pursuant to which it is stated that the entire balance payment was also made by the DD Leasing Ltd. and, thereforee, the said plot stood allotted to DD Leasing Ltd. on the records of the respondent. It is also stated that there was a delay in depositing the payment of the balance amount in respect of which a letter dated 1.5.1986 was issued to the said DD Leasing Ltd. for dpositing of Rs.79, 937.50 as interest and the same was duly deposited by DD Leasing Limited. It is contended that since the aforesaid sale has been effected in favor of DD Leasing Ltd., requests for execution of the lease deed in favor of the petitioner could not be acceded to without making payment of 50% unearned increase for change or transfer, which fact was intimated to the petitioner.

4. Counsel appearing for the petitioner, however, submitted that since the substitution of the petitioner in place of DD Leasing Limited as the Auction Purchaser has been carried out by the respondent by recognising the respondent as lessee and also by giving possession of the land to the present petitioner, demand for payment of unearned increase is illegal and without jurisdiction. It was submitted that as the petitioner was recognised by the respondent as the lessee of the plot and since the possession of the plot was handed over to the petitioner on 29.5.1986 the petitioner is entitled to receive the perpetual lease without payment of unearned increase. It was further submitted that the respondent after expiry of about 8 years by their letter dated 26.10.1993 could not have demanded the sum of Rs. 4,87,159.50 as unearned increase which the petitioner deposited i.e. on 12.8.1996 under protest. Counsel appearing for the respondent on the other hand, submitted that the petitioner. Company is a separate entity then that of the DD Leasing Ltd. and the auction sale had taken place and confirmed in favor of DD Leasing Ltd. after it had deposited the entire amount pursuant to the bid and therefore in the eye of law the same has taken place in favor of the DD Leasing Ltd. only and, therefore, the petitioner could not demand execution of the perpetual lease in its favor without making payment of the unearned increase liable to be paid in accordance with law.

5. In the light of the aforesaid submissions of the learned counsel appearing for the parties, I have carefully perused the records placed before me. A copy of the Terms and Conditions of allotment by Auction has also been placed on record. Clause 1(II) provides that a change in the name of the allottee will not be allowed under any circumstances. The records indicate that in the aforesaid auction held for sale of the property in question, M/s. DD Leasing Ltd was the highest bidder having offered Rs. 29 Lacs. The said offer was found to be the highest and was accepted. The said M/s. DD Leasing Ltd. also filed the application for allotment of the perpetual lease hold rights in the said Industrial plot undertaking to pay the balance of the premium. The said application dated 8.8.1995 is placed on record. A demand letter was issued to said M/s. DD Leasing Ltd. by the respondent directing the said M/s. DD Leasing Ltd. to deposit the balance 75% amount which was so deposited by the said DD Leasing Ltd. as would be apparent from the challans placed on record. Thus, the entire payment of the price of the land in

question was made by M/s. DD Leasing Ltd. It further transpires from the records that on the request of the DD Leasing Ltd. extension of time for making payment of the balance sale price was also given on payment of interest for belated payment. The application seeking for such extension of time filed by said DD Leasing Ltd. on 24.1.1986 and the letter dated 1.5.1986 issued by the respondent directing the petitioner to deposit an amount of Rs.75,937.50 as interest for belated payment have been placed on record. The aforesaid amount demanded as interest from M/s. DD Leasing Ltd. was also deposited by the said Company. A copy of the challan indicating such payment is also on record.

6. Thus, it is conclusively proved that the sale in the auction was made by the respondent in favor of M/s. DD Leasing Ltd. and the said Company also made payment of the entire amount and thus, the Contract of Sale was in between the respondent and M/s. DD Leasing Ltd. In accordance with the terms and conditions of auction sale the change in the name of the allottee could not have been allowed by the respondent under any circumstances and, therefore the lease is to be executed in the name of the allottee which in the present case is M/s. DD Leasing Ltd. However, if and when a transfer of the plot takes place in between the allottee recognised by the respondent and the petitioner herein is required to pay the demands for payment of unearned increase which is raised in accordance with the provisions of the Rules. In this connection reference may be made to the guidelines of Land Management circulated by the respondent vide No. LSA/1 1(6)87 policy cases/unearned increase dated 6.8.88. Clause 2 of the guidelines has relevance to the facts and circumstances of the present case. The said clause amongst others provides as follows:

'In case where a Private Limited Co. Public Limited Co. separately floating a new Co. although Directors may be the same of the name of the Old Co. has not changed and is still exist as it was, 5% unearned increase would be chargeable in such cases.'

Clause 3, provides that interest @ 5% per annum on unearned increase from the date of the receipt of the application intimating the change till the payment by the Company or Individual firm shall be charged on the amount the unearned increase

payable to the Delhi Development Authority.

8. Strong reliance was placed by the counsel appearing for the respondent on the action on the part of the respondent in issuing a 'No Objection Certificate' dated 11.6.1986 in favor of the petitioner. A copy of the said letter has also been placed on record which indicates that a 'No Objection Certificate' was issued in the name of the petitioner by the respondent in respect of the aforesaid plot. Relying on the aforesaid fact as also the fact of handing over possession of the plot in question to the petitioner it was submitted that the respondent recognised the petitioner as the lessee.

9. In my considered opinion, the said contention is misplaced for the actual allottee of a piece of land could claim recognition only in accordance with law and not, otherwise. Although the petitioner was given a no objection certificate by the respondent and was also given possession, the same could not vest any right on the petitioner to claim exemption from making payment of unearned increase if the petitioner was, otherwise, liable to pay in accordance with the provisions of the Rules and Schemes framed by the respondent. According to the contents of the guidelines referred to above and also according to the terms and conditions of the Auction sale, the allottee in the present case was M/s. DD Leasing Ltd. and any change made in respect of the ownership could be done only by way of a transfer for which payment for unearned increase has to be made. The allottee herein was M/s. DD Leasing Ltd. and, therefore the subsequent change of the ownership in favor of the petitioner could be recognised only when payment of unearned increase is made. The fact of handing over possession of the plot in question to the petitioner and issuance of a 'No Objection Certificate' in the name of the petitioner by the respondent do not and cannot change the aforesaid legal position and, therefore, they have no relevance in the facts and circumstances of the case.

10. Accordingly, it is held that the petitioner is liable to pay the unearned increase in terms of the demand raised by the respondent Along with interest thereon at the rate as applicable in terms of the guidelines. During the pendency of the writ petition the petitioner paid an amount of Rs. 4,87,159/- on 12.8.96. The aforesaid

fact shall be taken note of by the respondent and on the basis thereof shall issue a fresh demand to the petitioner for payment of the unearned increase as also the interest and on issue of the aforesaid demand, payment shall be made in accordance with the directions of the respondent therein and on completion of all other formalities perpetual lease could be executed in favor of the petitioner.

11. In terms of the aforesaid observations and directions, the petition stands dismissed.

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