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Secure Investment Co. Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Sep-15-1988

Reported in : 1989(16)DRJ220

Judge : R.N. Pyne, C.J. and; G.C. Jain, J.

Appeal No. : Civil Writ Petition No. 1722 of 1985

Appellant : Secure Investment Co.

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : D.R. Gupta and; S.P. Kaira, Advs

Judgement :

R.N. Pyne, C.J.

(1) By this writ petition, the petitioner has challenged a notice dated 8th July, 1985 given by the respondent No. I, the Delhi Development Authority, to the respondent No. 2 M/s. Raja Towers (P) Limited, alleging misuse of plot No. 30 and 31, District Centre, Kalkaji, Nehru Place, New Delhi.

(2) The facts and circumstances of this case may shortly be stated.

(3) On 18th October, 1972, the respondent No. I, Delhi Development Authority (hereinafter referred to as the 'D.D.A.') put up for auction the leasehold right of plot No. 30-31, Nehru Place, New Delhi, of which the respondent No. 2, M/s. Raja

Towers (P) Limited, was declared as the highest bidder. The auction was made subject to certain terms and conditions. Under Clause 4(2)(i) of the Terms and Conditions the lessee shall have to errect, within three years from the date of offer of the possession of the plot, a building in accordance with the type, design and other architectural features prescribed by the Delhi Development Authority after obtaining and in accordance with the sanction to the building plan with necessary design plans and specifications from the proper Municipal bye-laws and the Delhi Development Authority. Under Sub-clause (ii) the plot or building therein shall not be used for purpose other than that as specified. Sub-clause (v) provides that the lessee would be entitled to sublet the whole or part of the building that may be on the plot for the purpose specified in the terms and conditions of the original Lease. Further the lessee would be entitled with the prior permission of D.D.A. in writing to sell or transfer the floor space constructed on the plot. After the respondent No. 2 became the successful bidder of the plot in question, a lease deed dated 29th November, 1973 was executed by and between the respondents. The respondent No. 2 duly constructed a multistoried building on the said plot, and, thereforee, sold the flats, as also the floor space of the building so constructed. The list of the flat owners in Building,No.30-31,Nehru place, New Delhi, submitted by the respondent to the petitioner.

(4) Thereafter, a letter dated 8th July. 1985 was written by the respondent No. 1 to the respondent No. 2 alleging misuse of the basement of the said building. The said letter was forwarded by the respondent No. 2 to the petitioner. The said letter reads as follows :

'Where as by virtue of lease deed dated 29-11-1973 made and executed between you and the President of India, you are the lessee of the. plot of land referred to above. And Whereas the site inspection has revealed that (1) The basement of A-1 in Plot No. 30 is being used as office instead of prescribed use under the Arch. Controls. (2) About 40% area of basement in Plot No. 31 is being used as office. Which is contrary to the terms & conditions of lease-deed and thereby committed the breach of Clause 11(14) of the terms and conditions of lease-deed. Now thereforee, you are hereby directed to show cause within 10 days from the date of issue of this notice as to why action under the terms and conditions of lease

deed.for the determination of lease deed may not be taken against you.Please take notice that in case of your failure to show cause and remove the unauthorised use/ within the stipulated period action to determination of the lease deed will be taken without any further reference to you. Please also note under no circumstances, lease deed once determined shall be subsequently restored.'

(5) In this writ application the petitioner has challenged the said letter on various grounds. The main ground taken by the petitioner is that the floor space in the said building was sold to the petitioner in accordance with the terms and conditions of the auction and the said lease and that the said notice should also have been served upon the petitioner. The petitioner further denied misuse of the space (i.e. basement) sold to it.

(6) On behalf of the respondent No. 1, D.D.A., an affidavit in reply to the show cause has been filed. In the said reply, it is stated that the floor space in the basement which has been sold to the petitioner is not saleable as the same is not counted in permissible F.A.R. As such, the petitioner, who has claimed having bought a floor space in the basement, cannot be ; legally considered to be a bona fide space-buyer on the terms of the lease. It is further stated that the basement can also be constructed over the plot as per architectural controls and building bye-laws. As per. the terms and. conditions of auction and architectural control drawings, the use of the basement is restricted only for machine room, storage and covered parking if desired. It is further stated that the site was inspected by the field staff of the respondent No. 1 and it was found that the basement was being misused by running the office which is contrary to the terms of the lease deed and the architectural control drawings. It is also stated that as per Clause II(l4) of the lease deed, the lessee and the purchaser of the floor space shall not use the premises for other than the uses as specified in the terms and conditions of the auction and the architectural controls/conditions. On these grounds, it is stated, that since there is a misuse of the basement, notice was duly sent to the lessee of the said premises.

(7) The main contention of the respondent No. 1 in issuing the said notice is that the user of the basement of the said building is contrary to the terms of the lease

and the architectural control drawings. It is, thereforee, necessary to mention the relevant clauses of the lease deed dated 29th November, 1973 granted by the respondent No. 1 and the architectural control drawing.

(8) Paragraph II(3)(b) of the lease deed provides that :

' restrictions to be observed in regard to the construction of the building will be as given in drawing No.161AC/B IX- 1-3, 161AC/BIX-2-3, 161AC/B-IY, 3-3 161/DD-l, 161/CD-2, 161/. GE-3.'

Paragraph II(14) of the lease provides that the plot or the building thereon shall not be used for a purpose other than that as specified. Paragraph II(18) of the lease provides that :

'The Lessee shall have to observe the mandatory architectural control as per Drawing No. 161AC/B, IX-13, 161AC/B-IX-2-3, 161AC/ B-.Iy-3-3,161/CD-1,161/CD-2, 161/CD-3.'

Clause 4 of Architectural restrictions for plot Nos. 12, 13, 27 to 33 and 90 to 97 is Nehru Place (District Centre Kalkaji) to be auctioned on 18-10-1972, provides as follows:

'Basement only one basement. Maximum area of the basement could be equal to the covered area on ground floor.The area of the basement will not be counted in the permissible floor space. Its use is restricted only for machine rooms, storage and if desired by the plot owner, for covered parking also.'

(9) Miss Janak Juneja, Secretary, Delhi Development Authority, in her affidavit affirmed on 22nd September, 1987 has stated that on inspection of the basement of plot No.30-31, Nehru Place of the said building,it was found,. that out of the total area of 3200 square feet of the basement purchased by the petitioner an area of 192 square feet only is air-conditioned while the rest of the basement is not air-conditioned. The area which is air-conditioned is barely 6% of the total area of the basement purchased by the petitioner. It is further stated that the lessee could not sell/transfer the basement or any portion thereof as the same is not counted in the permissible floor space. The use of the basement is restricted only for machine

rooms, storage, if desired by the plot owner, for covered parking area as per Clause 4 of the Architectural restrictions which forms part of the lease.

(10) From the above, it appears that the contract between the Lesser, i,e. the respondent No. 1 D.D.A., and the lessee i.e. respondent No.2 provides that the building should be constructed and used according to the architectural control drawings. It further restricts the user of the plot or the building thereon in a particular manner, i.e. the manner as permitted by the architectural control drawings.

(11) From the user of tje basement of the building it appears that there is admittedly a violation of the terms of the lease as also the architectural control drawings by the lessee, i.e. the respondent No. 2. For such violation, the respondent No. 1 is entitled to serve a show cause notice, as has been done in the instant case. It is contended by the petitioner that the show cause notice should be served on it also. The contract of lease is between the Lesser and the lessee, i.e. respondents Nos. 1 and 2, and in case of breach of any terms of the lease, the Lesser is within its right to serve notice as has been done in the .case to the lessee. There is no privity of contract between the petitioner and the Lesser, i.e. the respondent No. 1. thereforee, in our view, no notice need be served on the petitioner.

(12) For the aforesaid reasons, in our view, the service of the notice is justified, and it should be upheld. Inasmuch as the use of basement is in violation of the terms and conditions of the lease and the architectural control as started hereinbefore the impugned notice has been validity given and question of quashing the same does not arise. Heace, this writ application and C.M. No. 2485 of 1985 are dismissed. There will, however, be no order as to costs.

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