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Court : Delhi

Decided On : Dec-21-1973

Reported in : 1974RLR267

Judge : D.K. Kapur, J.

Acts : Punjab Municipal Act, 1911 - Sections 193

Appeal No. : Civil Writ Appeal No. 133 of 1973

Appellant : Delhi Guest Houses

Respondent : New Delhi Municipal Corporation

Advocate for Pet/Ap. : S.N. Marwah and; Bikramjit Nayar, Advs

Judgement :

D.K. Kapur, J.

(1) (THERE was shortage of good hotel accommodation and the Governmenit encouraged the construction of same. The D.D.A. passed a resolution on 24-12-70, that request for setting up a hotel should first be scrutinised by the Director General of Tourism and if recommended favorably then local authority should entertain building plans. The L & D Office also told the petitioner by letter dt. 11-12-71 that petitioner should approach the D.G. of Tourism and the D.D.A. Petitioner acquired 7. Aurangzeb Road, N. Delhi on 30-3-71. It applied for requisite

consent to the D.D.A. who gave the same on 29-4-71 on condition that space be left for widening of the Road. The D.G of tourism had recommended petitioner's case as most welcome. Petitioner then sought collaboration from some international hotel company and got plans prepared. It took the same for submission to respondent who refused to accept the same on the basis of resolution dt. 13-12-71 which required a No Objection certificate from L & D office to accompany the plans. Petitioner filed the writ claiming the action as malafide and unauthorised alleging that new procedure had been introduced for charging high premium for conversion of residental property into commercial property. The man defense was that U/S 193 (2) of the Punjab Municipal Act the N.D.M.C. was entiled to reject plan without the requisite consent from the Lesser.] Para 6 onwards the judgment is :

(2) The main question for consideration is what is the power of the) Municipal Committee under the Punjab Municipal Act, 1911, in a case like the present.

(3) The procedure of the New Delhi Municipal Committee in dealing with plans for constructions to be made in the area of the Municipality is prescribed in the bye-laws of the New Delhi Municipal Committee which have been annexed to the petition as Annexure 'IX' It is unnecessary for the purpose of this petition to refer to those bye-laws in any great detail. It is sufficient to say that the bye-laws are quite elaborate and require fulfillment of a number of requirments which are set out in the bye-laws. The form of the application is set out in Schedule I at page No. 65 of the printed bye-laws. It requires the submission of seven sets. There does not seem to be any requirement in there bye-laws to submit a No Objection Certificate from any authority. However, it is quite clear that the Punjab Municipal Act, 1911, enables the Municipal Committee to reject applications in certain cases. The validity of the impugned resolution No. 5/17, dated 13th December, 1971, is sought to be uphed by reference to Section 19J (2) of the Punjab Municipal Act, 1911.

(4) Now, this provision would seem to indicate that the Committee may refuse to sanction the erection of a building for reasons which it deems just and sufficient or ; if the land is vested in the Government (or the Committee), the sanction can also

be refused on the ground that the applicant has not obtained the consent of the Government. At first sight, this would indicate that the stand taken by the Municipal Committee is wholly justified. The Committee may require an applicant to get the consent of the Government, if the land belongs to the Government. I may now reproduce resolution No. 5/17, which is challeged in the present case. It reads :-

'IT is necessary in such cases that plans should be accompanied with no Objection from L &D.O.; for the conversion in the use of Land concerned. This plan is rejected under Section 193(2) of the Punjab Municipal Act. It is also decided that in future when plans for such cases are submitted to the Office, they may be returned to the party if they are not accompanied with the required No Objection letter because an application without L&DO;'s No Objection is to be treated as incomplete.'

(5) This resolution has two parts. Firstly, the plans has been rejected by applying Section 193(2) of the Act; the second part is that future plans will be returned to the party concerned. If a No Objection Letter does not accompany the application. This part of the resolution is obviously not based on Section 193(2) of the Act and is, thereforee, not warranted by that Section at all. The Municipal Committee has to act according to its bye-laws and has no jurisdiction to refuse to entertain an application merely because a No Objection Certificate does not accompany the application. None of the bye-laws authorise a return of an application as being incomplete if a No Objection Letter does not accompany it. None of the Sections of the Punjab Municipal Act, 1911, warrant such a return of the application. All that Section 193(2) says is that the Committee may refuse to sanction the plan if consent has not been obtained from the Government when the land vests in it. This is an optional power with the Committee, because discretion is given either to refuse the sanction, or to sanction ; the words 'may refuse the sanction', show that there is such a discretion. Hence, even if there is no consent, the Municipal Committee may sanction the plan. It is, thereforee, not possible for the Committee to pass a general resolution refusing to entertain any application in future if a No Objection Letter does not accompany the application. This shows that the second part of the resolution is invalid.

(6) I now turn to the first part of the resolution. The question is, whether the terms of Section 193(2) enable the Municipal Committee to insist on a No Objection Letter accompanying the application in a case where the land vests in the Government. To my mind this depends on the meaning to be given to the words in the section, which are 'the consent of the Government concerned has not been obtained.' I have cut out the unnecessary words while making this quotation What is meant by 'consent' Now, there may be many types of cases affecting land held on a lease from the Government There may be a lease which permits a particular type of building being constructed. If an application is filed along with the lease-deed if necessary, can the Committee reject the application on the ground that a No Objection letter does not accompany the application I think it cannot. I say so because the lease-deed itself is a cement by the Government to permit a construction being made on the land in question. There may be a cage where a person makes an application for sanctioning the building to be constructed on Government land to which he has no right at all. If an application is made by a trespasser or an unauthorised person, the Municipal Committee is certainly entitled to ask that person to produce the consent of the Government. On the other hand, if a lessee or other authorised person makes such an application, then the Municipal Committee can only ask for the production of the lease-deed It cannot ask for documents in addition to the lease deed and say that the lease deed is not a consent. If this was so, it would make it almost impossible for the holders of leases to construct a building, even if they were authorised by the lease-deed to do so. To ask for a consent letter from such persons is obviously beyond the powers of the Municipal Committee under Section 193(2) of the Act. A lease is defined in Section 105 of the Transfer Property Act. (...)

(7) This definition indicates that a holder of a lease has the right to occupy the property and enjoy it. This enjoyment is of the property as it is. Some leases do not permit any construction being made on land which is leased out; some leases do. It depends on the terms of the lease whether the lessee is entitled to make a construction or not. If the lease does not permit any construction being made, then the Committee will be within its rights to ask for a consent being produced under Section 193(2) of the Act If, however, the lease does permit a construction being made, then no further consent is necessary. The lease-deed itself is a consent by

the Government to the lessee enabling that lessee to construct a building. In such cases, a No Objection Letter cannot be asked for by the Committee. This seems to be the general position of the Municipal Committee under Section 193(2) of the Act. But this does not cover all the possible situations that may arise. There can be no blanket rules that an application for constructing a building on a lease-hold property must also be accompanied by a No Objection Certificate, failing which the Committee may refuse to sanction the construction of a building.

(8) Now I propose to deal with the particular situation that may arise in cases like the present. If there is a lease deed allowing the construction of say a house, but the lessee makes an application to construct, say a factory, will the Municipal Committee be within its rights to ask for a further consent under Section 193(2) of the Act? This will depend on an interpretation of the lease. I do not think that the Committee would be justified in asking for any further consent beyond what was granted in the lease even if the building does not correspond with the building permitted in the lease. The reason for this is that the rights of the Government and the rights of the lessee are controlled by the lease itself. If the lesee is foolish enough to make a building which infringes the lease, then the lease will be liable to be terminated, or being for-feited. which is obviously something which concerns the Lesser and does not conern the Municipal Committee. In the present case, the application for construction, which has been returned to the petitioner, as I understand it, is an application to construct a five-star hotel. This may or may not be permissible under the lease. To hold that the interpretation of the lease depends on the free will of the Municipal Committee is to put too much a burden on that body. The rights of the parties have to be determined in accordance with the lease. The Municipal Committee may very well make a mistake as to the meaning and effect of the lease. If the lease is infringed by the lessee, it is for the Government to decide whether to for-feit or terminate the lease, or to condone the breach of the lease. The action of the Municipal Committee in this case seems to make the Committee the final arbiter in this respect. This is unwarranted on a proper construction of Section 193 (2) of the Act. For example, if one considers the present case, and I ana making these observations without having the lease-deed before me, the lease may permit a residential building, the dimensions of which are unspecified in that document. If the Municipal Committee comes to the

conclusion that a hotel is not a residential building, it may very well say that there is no consent within the meaning of Section 193 (2), but on a true construction of the lease, it may |be that the correct legal position is that a hotel is a residential building within the meaning of the lease and, thereforee, permissible under the same. It is not for the Municipal Committee to interpret the lease or to give its own meaning to it. This is a matter which has to be decided upon by the appropriate authorities mentioned in the lease-deed, which may again be the subject matter of dispute before a civil court. I am, thereforee, of the view that all the Municipal Committee is concerned with is the existence of a permission to construct a building. If such a permission is available in the lease-deed, it is not for the Municipal Committee to determine what type of building that is. It is not necessary for the applicant to also produce a separate sanction from the Government concerning that very building There may, of course, be very glaring in which the Committee can say that there is no consent by the Government on a bare reading of the lease-deed. This may be when a building completely different from the one envisaged in the lease-deed is sought to be constructed. For example, if the lease-deed permits the construction of residential premises, but the lessee proposes to build a cinema or a factory or a warehouse or such building. which is completely alien to the nature of the lease. In such cases, it may be open to the Committee to say that there is in fact no consent under Section 193 (2) of the Act. Even in such cases, I feel that the Committee can treat the lease-desd as a consent an I indicate on the sanction that it is either absolute or subject to the grant of a further approval by the Government.

(9) Applying these various examples and principles to the case in hand, I find that the resolution No. 5/17, dated 14th December, 1971, is not a proper or valid resolution. It is based on two parts as already indicated. The first part is based on the fact that there is a conversion in the use of the land. The facts of that case are not before me, but assuming that there was a conversion in the use of the land, it is for the Lesser to make objection and not for the Municipal Committee. If the conversion was barred by the terms of the lease-deed, then the Committee could say that there was no consent in terms of the lease. In such a case, the Committee could say that the intended building was not permitted by the lease, and thereforee, a No Objection Certificate was necessary as there was no consent

of the Government. The second part is in any case invalid. It is invalid, because the refusal by the Committee has to be based on the documents presented to it. The plans cannot be rejected without examining the documents accompanying it. The resolution is, thereforee, not proper.

(10) Turning now to the present case, it is for the Municipal Committee to examine the application along with any lease-deed that may be required to be filed along with the same. If the use of the land for the purposes of a hotel is barred by the lease on a plain reading of it, then the Municipal Committee can refuse to sanction the building under its powers under Section 193 (2) of the Act. If, on the other hand, there is no express bar in the lease to a residential building built thereon being used for a hotel, then the sanction cannot be refused under Section 193 (2) of the Act. As long there is a permission to build a building contained in the lease-deed, such a building after its construction is not within the province of the Municipal Committee acting under the Punjab Municipal Act, 1911. In this connection, it is sufficient to note that any residential building is capable of being used as a hotel, because there may be small hotels or there may be big hotels. It is, thereforee, open to the Municipal Committee to reject the plan only on the ground that it infringes the bye-laws or if the building is beyond what is permitted by the lease-deed. In such cases, the Municipal Committee can entertain the application for the construction of the building for determining whether it is in accordance with the bye-laws, and then say that the sanction is being given subject to the Lesser allowing a particular type of building being constructed thereon. All this depends on the terms of the lease itself.

(11) In the view of this discussion, I come to the conclusion that a writ of mandamus has to be issued to the respondent directing it to entertain the application which has been returned to the petitioner without consideration. A further direction has to be issued that this application is to be considered in the right of the bye-laws framed by the Municipal Committee, and if it is in accordance with those bye-laws, the plan should be sanctioned, However, if the Municipal Committee finds that the building is not one which is permitted under the terms of the lease, it can make the sanction subject to the production of a No Objection Certificate or subject to the approval of the appropriate authority specified in the

lease, such as the Land and Development Office. It should not, however, reject the plan on the ground that no consent has been obtained from the Government, because it is the common case of both parties that the lease deed does permit the construction of a building thereon.