

Darshan Lal Vs. Delhi Development Authority

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SooperKanoon Citation : sooperkanoon.com/689588

Court : Delhi

Decided On : Mar-07-2005

Reported in : 118(2005)DLT440

Judge : S. Ravindra Bhat, J.

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

Appeal No. : WP (C) 10918/04 and CM 7723/04

Appellant : Darshan Lal

Respondent : Delhi Development Authority

Advocate for Def. : Anil Sapra, Adv.

Advocate for Pet/Ap. : Maneesh Goel, Adv

Judgement :

S. Ravindra Bhat, J.

1. By this writ petition under Article 226 of the [Constitution of India](#) an action of the Delhi Development Authority (DDA) canceling the perpetual lease deed of the petitioner, dismissing a plot measuring 978 sq.yds. (hereafter the plot) has been impugned.

2. The petitioner was allotted a plot, as member of Mohan Cooperative Estate Ltd. A perpetual sub-lease was executed in his favor on behalf of the Central Government on the 17th of April 1978.

3. After securing the necessary permissions the petitioner put up building on the plot and started using it. On 10.12.2002 the DDA (which in the meanwhile had been handed over the management of the Estate and lease hold rights) issued a show cause notice alleging that during the course of a site inspection it was discovered that the plot was being used for Godown Engineering Tool which was in breach of conditions the lease deed. The DDA further directed that the said misuse of the plot be stopped forthwith and that an amount of Rs.1039/- per sq.mtr. per annum be deposited for the past period, along with documentary evidence about the commencement and stoppage of use within 15 days.

4. It is averred that the petitioner responded to the show cause notice, stating that he had not committed any breach. The DDA proceeded to pass impugned order on 11.3.2003 cancelling the lease hold rights so the petitioner was directed to hand over possession of the plot and superstructure on it on 3.4.2003. The cancellation order also stated that the petitioner have not shown cause to the earlier notice and that the misuse alleged have not been remedied.

5. The petitioner addressed a representation on 18.3.2003 to the DDA stating that he had in fact replied to the show cause notice and that the premises were being used according to the terms of the lease. This was followed with another representation and a request for conversion of the leasehold rights, into free hold. For that purpose, the petitioner deposited an amount of Rs.1,40,480/- on 2.1.2004. The DDA declined this request for conversion on the ground that the leasehold rights has already been cancelled and, therefore, there was no question of acceding the request for conversion.

6. The petitioner avers that the impugned order was not preceded by any show cause or opportunity of hearing. The petitioner avers that part of the premises were put to godown/storage of construction material, such as wooden planks, shuttering material and other goods related to construction, which is a permitted industrial use. The basis of the notice, namely, use of the plot contrary to the terms

of the lease, has been, therefore, questioned as incorrect and illegal. The petitioner also has averred that as per the Master Plan too, the use of the premises as godown is permissible. The petitioner relied upon a judgment of this Court reported as *Ranjandheer (India) Pvt. Ltd. v. Delhi Development Authority*; 2004 (1) AD (Del) 409. It is also averred that the cancellation was not preceded by opportunity of hearing; therefore, it is vitiated for violation of principles of natural justice.

7. The DDA in its counter affidavit has averred that the plot was being misused for running godown for Engineering Tools, which is not permitted in terms of the lease deed. It is also stated that the show cause issued in that regard, was based on an inspection report; the petitioner did not reply to the show cause. Under the circumstances, the lease was determined by the impugned order. It is averred that the impugned order was strictly according to the relevant clauses in the lease deed.

8. Shri Manish Goel, learned counsel for the petitioner submits that the relevant clauses in the lease deed required use of the plot for the purposes of manufacturing process or running the industry of or such other manufacturing process or running the industry of item as per Master Plan.

He has relied upon the definition of godown in the schedule of the Development Code in the Master Plan; he has also relied upon the permission to use premises in use zone as per sub clause 8(2) of the revised Master Plan. He submits that the activity of storage/godown and warehousing is a permitted use in premises earmarked for manufacturing purposes. It is also submitted that in view of this position, the show cause notice itself was illegal. It is submitted that in any case, the impugned order is arbitrary since it proceeded to merely confirm the show cause notice; on the footing that no reply was received. The DDA was in an obligation to grant hearing to the petitioner, which was admittedly not done.

9. Mr. Anil Sapra, learned counsel appearing for the respondent-DDA submits that merely because the premises are permitted to be used for godown under the Master plan, there is no automatic assumption that it could be used for godown. The plot was allotted primarily for being used for a manufacturing activity or

process. Since admittedly, it was not done, the DDA was well within its right to determine the lease. Its action cannot be faulted because the petitioner did not reply to the show cause notice. He submits that the reply relied upon by the petitioner was never received by the DDA.

10. The relevant clauses namely, Para 14 of the lease deed in question are extracted below :

14. The sub lessee shall not without the written consent of the Lesser use or permit to be used the industrial plot or any building thereon for residence or for carrying on any trade or business whatsoever or use the same or permit the same to be used for any purpose than that of carrying on the manufacturing process or running the industry of or such other manufacturing process or running the industry of Item as per Master Plan or such other manufacturing process or industry as may be approved from time to time by the Chief Commissioner or do or suffer to be done therein any act or thing whatsoever which in the opinion of the Lesser may be a nuisance, annoyance or disturbance to the Lesser, lessee and other sub-lessees and persons in the neighborhood.

Or any unforeseen expenditure to be made hereinafter by the lessee on any item of development to be carried out in terms of clause III of the Agreement or the instructions issued by the Lt. Governor or the directions given by the local bodies in this behalf.

Provided that, notwithstanding anything contained herein to the contrary, the Lesser in his absolute discretion, or the Lessee with the prior consent in writing of the Lesser, may, without prejudice to the right of re-entry as aforesaid, waive or condone breaches, temporarily or otherwise, on receipt of such amount by the Lesser or by the lessee on behalf of the Lesser and on such terms and conditions as may be determined by the Lesser and the Lesser or the Lessee whoever may be entitled may also accept the payment of the said sum or sums or the rent which shall be in arrear as aforesaid together with interest at the rate of six percent per annum. The amounts for waiver or condensation received by the Lessee from the sub-lessee shall be paid forthwith by the lessee to the Lesser subject to such deductions as the Lesser may, in his absolute discretion allow to be retained by

the lessee.

11. A reading of the above would show that there is a prohibition for the use of the industrial plot or any building on it for the following purposes

(a) residence

(b) carrying on any trade or business

(c) use or permit the use of the plot for any purpose other than that of manufacturing process or running the industry of Item as per master plan

The proviso to this condition enables the Lesser to permit a contrary user, or to waive or condone breaches of terms and conditions, by requiring deposit of amounts and imposing further terms and conditions that may be deemed relevant. Significantly, the lease deed does not outline the industrial activity or manufacturing process; it merely refers to what is permitted in the Master plan. Sub clause 8(2) of the Master Plan outlines permitted use of select use premises in use zone. Every use has been assigned a Serial number, to which the permissible use zones are in turn, prescribed. Sl.Nos.36 and 37 deal with light industry plot and extensive industry plot. Sl.No.20 deals with storage, godown and warehousing.

12.The Serial number in the Annexure to the development code namely, in sub-clause 8(2) to show what are the permitted uses for which the different uses/activities permitted in the use premises. Storage, godown and warehousing, described in Sl.No.20 in aspect of storage godown and warehousing, the use zone, as per the chart, permits storage, godown and warehousing activity in manufacturing use zones as well as commercial use zones. However, it is not permitted in residential use zones. Relevant extracts from sub-clause (8)(2) and the permission of use premises in use zones are reproduced below :

SUB/CLAUSE 8(2) PERMISSION OF USE PREMISES IN USE ZONES

(as part of approval of layout plan or as a case of special permission from the Authority)

(a)(i) Permission of selected use Premises in Use Zones RD,C1,C2,M1,M2
 -----S. Use Premises USE
 ZONESNo.-----016 Convenience Shopping P NA
 NA NA NA017 Local Shopping Centre P NA NA NA NA020 Storage, Godown
 andWarehousing(i) Non-inflammable NP NP P P P(ii) inflammable (as
 perregulation regardingexplosive material) NP NP P P
 P-----

13. Clause 8(3), which deals with uses/use activities permitted in used premises, provides with regard to storage etc. as follows : Stor AGE, GODOWN and WAREHOUSING (020) Storage, Godown and Warehousing, Watch and Ward Residence (up to 20 sqm), Wholesale Outlet, Administrative and Sales Office.

The development code schedule and its Annexure define different use premises. The relevant clauses are extracted below : 036. Industrial Plot-Light Industry A premises for industrial unit as per the list given in annexure III having up to 50 workers with non-hazardous performance.

037. Industrial Plot-Extensive Industry

A premises for industrial unit as per the list given in the annexure III having up to 50 workers in case of new extensive industrial units and 500 workers for existing units.

038 Industrial Premises-Extractive Industry

A premises for carrying out quarrying or extraction of stone and sub-soil material respectively.

039 Industrial Plot-Industry Specific Type

A premises for an industrial unit within a group of such units for manufacturing of specific products like electronic goods etc.

14. In Ranjandheer case (supra) the Court had held as follows :

in order to appreciate whether a particular property is being put to use contrary to the Master Plan, an inspection must take place to find out as to the extent of the premises being put to non-manufacturing and non-industrial use, since part of the premises can be put to such use. This has not been done in any of the cases. Really speaking, the test is of the predominant purpose of the use of the plot with permission to carry on the other incidental activities as prescribed in the use zones.

15. On an application of this test (i.e of predominant use) indicated in the decision, it is apparent that the use that is, otherwise, permitted in the Master Plan, as per the permitted use as per sub clause 8(2) has to be examined, in a specific manner All relevant facts such as the total area the built up area upon the property, nature and character of the impermissible use, the total extent of such impermissible use, in relation to the total extent of the property have to necessarily be examined. In the absence of such an exercise, the test of determination use, in my view is not satisfied.

16. In the present case, the petitioner has used part of the property as a godown. There is no allegation that he has parted with possession without permission or used it for completely prohibited purposes such as residential or other commercial activity Hence, the use of a portion of the premises ought not to entail the drastic consequence of determination of lease. The DDA ought to have kept in mind the principle indicated in Ranjandheer case while considering the issue of misuse, and seen the predominant use, as well as nature of use. It cannot be said that the use of part of an industrial plot as godown is completely prohibited; the extent of such use, in relation to the entire property had to be seen.

17. Coming to the other aspect, the manner in which the action was taken, cannot be sustained. Every action of the State or a public agency has to satisfy the test of non-arbitrariness. Hence any action that would adversely impact a citizen has to be preceded by a fair procedure. In the present case, the DDA did not follow that procedure. In my view that the DDA is under an obligation not only to issue a show cause notice but also to grant hearing before passing an order of the kind impugned here namely, canceling/determining leasehold right. Valuable rights of

parties in relation to their property and source of livelihood are involved when such decisions are taken. The requirements of notice, hearing by an impartial person with an unbiased mind and reasons based on relevant factors are indispensable elements of the fair procedure. None of these were admittedly followed in this case. The impugned order is, therefore, unsustainable.

18. In view of the foregoing discussion this petition is entitled to succeed. It is made clear that this decision does not deal with the further relief sought in these proceedings namely, a direction to DDA to forthwith convert the property. All contentions and rights of parties in that regard are left open.

19. A direction is, therefore, issued to the DDA quashing its impugned letter. It is also directed not to take any steps towards dispossessing the petitioner. The writ petition is allowed to the extent indicated above.

20. No costs.