Syndicate Bank and anr. Vs. Delhi Development Authority and ors.

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SooperKanoon Citation : sooperkanoon.com/696452

Court : Delhi

Decided On : Jul-30-2003

Reported in : 2003VAD(Delhi)246; 105(2003)DLT959

Judge : Sanjay Kishan Kaul, J.

Acts : Delhi Development Act, 1957 - Sections 14, 29, 29(2), 56, 56(2), 57(1) and 58; Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 - Rule 43; ;Government Grants Act, 1865 - Sections 3

Appeal No. : C.W.P. No. 3166/1993

Appellant : Syndicate Bank and anr.

Respondent : Delhi Development Authority and ors.

Advocate for Def. : C. Mohan Rao, Adv. for Resps. No. 1 and 2

Advocate for Pet/Ap. : Adarsh B. Dial, Sr. Adv. and ; R.P. Aggarwal, Adv

Disposition : Writ petition dismissed

Judgement :

Sanjay Kishan Kaul, J.

1. A perpetual lease was executed on 14.5.1980 in favor of M/s En Cee and Associates Private Limited, respondent No. 3, by respondent No. 1 DDA in respect

of plot No. B-3, G.T. Karnal Road Industrial Area, Azadpur. The prescribed user as per lease was running an industry of auto spring leaves or such other manufacturing process or industry as may be approved from time to time by the Lt. Governor.

2. Respondent No. 3 and petitioner No. 1, which is a nationalized bank, entered into an arrangement for opening of a branch of petitioner No. 1 bank in the premises and in view thereof a written request was made by the petitioner bank to respondent DDA for permission to open the bank on 2.4.1984. The respondent DDA vide letter dated 17.5.1984 informed the petitioner bank that the proposal of running a bank can be considered under a special appeal for temporary period for one year up to 15.5.1985 subject to the petitioner bank paying to the respondent DDA a composition fee at the rate of 40% of the total rent for a year up to 15.5.1985. This was on account of non-conforming use of the premises in question and was labeled as grant of temporary permission under special appeal provisions. An unconditional written consent from the landlord was also required to be furnished as also an undertaking by the petitioner bank that the non-conforming use will be terminated after the aforesaid period.

3. The petitioner bank and the respondent No. 3 landlord did the needful and the branch of the bank was opened. The request for further non-conforming user was renewed from time to time subject to payment of composition fee. It may be stated that respondent No. 3 landlord continued to receive the rent as per the lease agreement and the payment made by the petitioner bank as a percentage of the rent to respondent DDA was not deducted from the amount payable to the landlord. This was in accordance with the terms and conditions of the lease agreement between the petitioner bank and respondent No. 3 landlord.

4. The renewal was made up to 1988 at the same composition fee of 40% and on compliance of the requirement for submission of necessary no objection and undertakings.

5. The composition fee was subsequently raised and in terms of the letter dated 4.10.1990, 40% composition fee was payable up to 18.1.1989, 60% for a period of one year thereafter and 80% for the remaining period up to 18.6.1990 which was

the date when the lease deed was coming to an end. The petitioner bank accepted the same vide letter dated 9.10.1990 and made the payment and also submitted the relevant undertaking. A letter dated 14.11.1990 was issued by DDA intimating the calculation for the different periods as aforesaid and since some composition fee was still left unpaid, the same was paid by the bank on 23.11.1990.

6. Respondent DDA thereafter sent reminders to the petitioner bank on 11.7.1991 onwards asking for information about the renewal of the lease since the temporary permission for non-conforming user had already expired. The petitioner bank submitted the necessary undertaking dated 3.9.1991 and the temporary permission was granted vide letter dated 24.10.1991. In terms thereof, the petitioner ban k was required to pay 80% as composition fee from 19.6.1990 to 18.1.1991 and at 100% from 19.1.1991 to 30.6.1992. The composition fee, however, was not deposited and a number of reminders were sent to the petitioner bank threatening action under Section 14 read with Section 29(2) of the Delhi Development Act, 1957 (hereinafter called as 'the said Act'). A final notice was sent on 8.1.1993 by the DDA.

7. The petitioner then filed the present writ petition seeking quashing of the said demand dated 8.1.1993 for an amount of Rs. 7,52,780/- as composition fee and sought a restraint order against respondents No. 1 and 2 from demanding the composition fee from the bank, declaring that the bank can operate the branch in the premises in question and for a direction to refund the amount paid by the petitioner bank forthwith.

8. In the counter-affidavit filed on behalf of the respondents No. 1 and 2, DDA, it is stated that the prescribed user of the plot is industrial and no trade or business can be carried on in the same. Since the bank was being run in the premises which is a commercial activity, temporary permission was granted subject to composition fee the bank. The bank accepted the same and even executed affidavits and undertakings to pay the amount. These amounts were paid till the year 1990 but thereafter the petitioner bank avoided making payment. It is further stated that the amounts had been calculated as per a formula/policy to be uniformly applied by the respondent authorities for non-conforming user of the

premises. It is stated that the principle behind the policy is to discourage non-conforming use. A reference has been made to resolutions of the respondent including for payment of composition fee of 100%. The learned counsel for the respondent has also produced the relevant policy in respect of the charging of composition fee which provides for composition fee to be charged at different rates dependent on the period of occupation and user for a non-conforming use. It is 40% for the initial three years, 60% for the next year, 80% for the year after that and 100% for the period after five years. The relevant extract is as under:

' Policy for Temporary Permission under Special Appeal.

8. The Authority vide its Resolution No. 115 dated 29.4.77 constituted a Committee under Finance Member, DDA to go into all aspects of granting permission under 'Special Appeal'. The report of the Committee was considered as its recommendations were adopted. The issue was further considered by the Authority who resolved that in pursuance of Authority's Resolution No. 174 dt. 30.6.77 as amplified and modified from time to time, temporary under ' Special Appeal' may be granted by the Vice-Chairman, DDA for varying period subject to the following;

(i) Temporary permission be granted for a period of two years on the condition that there would be a composition fee @ 40% of the rent w.e.f. The date of commencement of the non-conforming uses and fulfillment of other usual terms and conditions as laid down in Authority Resolution No.174 dated 30.6.77 as amplified/modified from time to time.

(ii) A composition fee @ 5% of the rent be charged for the next year after the expiry of the permission period as referred to in para (ii) above.

(iii) A composition fee @ 80% of the rent be charged for the next succeeding year after the expiry of the permission period as referred in para (iii) above.

(iv) A composition fee @ 100% of the rent be charged for the next succeeding year after the expiry of the permission period as referred in para (iii) above.'

9. Learned counsel for the petitioner firstly contends that the Master Plan itself permits user of such industrial plots by a bank and there is no misuse calling for levy of any composition fee. In this behalf, the Master Plan of 1962 was sought to be relied upon. Learned counsel for the respondent DDA, however, pointed out that the period in issue starting is from 1990 and the Master Plan was revised and updated w.e.f. August, 1990 as per a Gazette Notification of the said date.

10. In so far as the period prior to 1990 is concerned, the petitioner has filed repeated undertakings and affidavits and paid the amounts. The petitioner has never impugned these demands till filing of the writ petition in 1993. In fact, it took the petitioner three years to impugn even demand raised in 1990. In my considered view, it is not open to the petitioner to raise the issue of refund of the amount paid at such a belated stage which has been paid on the basis of affidavits, undertakings and consent of the petitioner.

11. In so far as the period of 1990 onwards which forms the basis of the impugned demand, the same has to be examined in terms of the revised and updated Master Plan. Clause 8(1) on page 49 of the Master Plan deals with the sub-division of use zones into use premises.

12. Manufacturing activity is under M-1 and M-2 zones. The contention of the learned counsel for the petitioner is that bank is not a use which is not permitted in the use zones M-1 and M-2. However, on page 53, the use premises which are permitted in use zones, RD, C1, C2, M1 and M2 are stated. RD stands for residential use zones and C1 and C2 for commercial use zones. The activity of banking is specifically mentioned under the heading of commercial use zones and commercial centres in a residential and industrial use zones as per mix use policy. The relevant portion of the Master Plan is as under:

' (ii) USE PREMISES WHICH ARE PERMITTED IN THE USE ZONES RD, C1, C2, M1 & M2--In Commercial Use Zones and in commercial centres in residential and industrial use zones and as per mixed use policy. Retail & Personnel Service Shop, Bank, Restaurant, Cargo Booking Office, Road Transport Booking Office, Commercial & Secretarial Training Centre.'

13. In view of the aforesaid, it is apparent that banking activity is permitted only in the commercial use zones and commercial centres in the residential and industrial use zones. Thus, for the banking activity to be carried on in an industrial use zone as in the present case, there has to be a commercial centre where such banking activity is carried on. It is stated by learned counsel for the respondent that there does exist a commercial centre in the area and the plan in respect thereof was also produced in court.

14. In view of the aforesaid position, the plea of learned counsel for the petitioner cannot be sustained that it is permissible to carry on the banking activity in any part of the industrial use zone.

15. The alternative submission made by learned counsel for the petitioner is that the lease deed was already executed prior to the modification in the Master Plan and the terms and conditions cannot be altered ex post facto. I am unable to accept the plea for a number of reasons. The Master Plan is a dynamic and changing document dependent on certain requirements and parameters. It cannot be said that there cannot be a change in the Master Plan. It is the changed Master Plan which will apply to the area in question though it will not affect the developed area. In fact, the plea raised by learned counsel for the petitioner is that in such a case it is the lease deed which shall govern the matter.

16. In view of the aforesaid, the relevant clause of the lease deed relied upon by both the learned counsel for the parties has to be referred to which is as under:

' (13) The Lessee shall not without the written consent of the Lesser use, or permit to be used, the industrial plot or in any building thereon for residence or for carried on any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of carrying on the manufacturing process or running the industry of Auto Spring Leaves or such other manufacturing process or industry as may be approved from time to time by the Lt. Governor to do or suffer to be done therein any act or thing whatsoever which in the Lesser may be a nuisance, annoyance or disturbance to the Lesser of any person living in the neighborhood. PROVIDED that if the Lessee is desirous of using the said Industrial plot or the building thereon for a purpose other than that of the

manufacturing process or industry as may be approved from time to time, the Lesser may allow such change of user on such terms and conditions, including payment of additional premium and additional rent, as the Lesser may in his absolute discretion determine.'

17. A reading of the aforesaid clause shows that without the written consent of the Lesser, the plot cannot be used for carrying on any trade or business. Such approval as per the proviso to the clause can be granted by the Lesser ' on such terms and conditions, including payment of additional premium and additional rent, as the Lesser may in his absolute discretion determine'. Thus, the additional premium or additional rent is a term and condition which can be imposed by the perpetual Lesser which is the DDA in the present case. The payment of the composition fee is in fact in the nature of such a premium which is sought to be recovered from the petitioners.

18. It is also relevant to note that even the petitioners were of the view that such permission had to be obtained and composition fee paid right till 1990. The payment stopped only on increase of the composition fee.

19. I am unable to accept the contention of learned counsel for the petitioner that there cannot be any increase in the imposition of composition fee from 40% to 100% of the rent payable since it has to bear a relation to the premium under the lease and no such co-relation is provided for as the basis for calculation of the additional premium in terms of the clause of the lease deed as aforesaid. The payment sought to be recovered is not in the nature of only a fine under Section 29 of the said Act but the additional premium under the lease deed.

20. There is also no question on this composition fee being in the nature of a tax to apply the provisions of Article 265 of the Constitution of India providing for no tax to be levied or collected except by authority of law.

21. Learned counsel for the petitioner further contends that the power to make rules under Section 56 of the Act vests with the Central Government which may make such rules after consultation with the authority. Sub-section (2)(j) of Section 56 refers to the manner in which Nazul land shall be dealt with after development

and Section 57(1)(f) provides for regulations to be made by the respondent authority with previous approval of the Central Government in respect of the terms and conditions subject to which user of the land and building in contravention of the plans may be continued. Section 58 provides for laying of rules and regulations before Parliament. Learned counsel for the petitioner, thus, contends that there are no such rules and regulations which have been laid before the Parliament for recovery of composition fee. Learned counsel has also referred to Rule 43 of the DDA (Disposal of Developed Nazul land) Rules, 1981 which provides for the execution of a lease deed in accordance with Form C appended to the Rules in favor of every allottee of Nazul land . A lease deed can also contain such other covenants or clauses in addition to the same which are not inconsistent with the provision of Form C. Form C is the standard lease to be executed in such a case. The lease in the present case is in respect of the allotment to industrial units from non-conforming area and is in standard form. The provision is contained in Clause 13 itself, as noted above, for the additional premium to be recovered and such clauses have to prevail. This is also so in terms of Section 3 of the Government Grants Act, 1865 which provides for the grant to take effect according to its tenor notwithstanding any rule of law, statute or enactment of legislature to the contrary. Thus, the plea of the petitioner cannot be sustained.

22. It may also be lastly noticed that the petitioner bank entered into a transaction with its eyes open. It was aware that the composition fee had to be separately paid to the respondent DDA apart from the lease amount payable to respondent No. 3 landlord. This payment had to be directly paid in terms of clause 2 of the lease deed executed between the petitioner bank and respondent No. 3. The petitioner bank continued to pay the amount even up to the composition fee of 80%. The lease arrangement was thus arrived at as a commercial transaction by the petitioner bank with the respondent No. 3 landlord fully knowing that the payment to be made by the bank consists of two elements - one to be paid to the landlord and the other to the respondent DDA. Thus the commercial decision must have been taken by the petitioner bank keeping both payments in mind and at each stage when such permission was sought, respondent DDA communicated the percentage of composition fee. The petitioner bank is stated to have since vacated the premises in 1999.

23. In view of the aforesaid, there is no merit in the writ petition. The same is accordingly dismissed leaving the parties to bear their own costs.