

Ruby Advertisers Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jul-28-2003

Reported in : 2003VAD(Delhi)359; 105(2003)DLT927; 2003(70)DRJ595; 2003RLR521

Judge : Sanjay Kishan Kaul, J.

Acts : [Government Grants Act, 1895](#) - Sections 3; [Constitution of India](#) - Article 265; Urban Land (Ceiling & Regulations) Act, 1976

Appeal No. : C.W.P. No. 6107 of 2001

Appellant : Ruby Advertisers

Respondent : Delhi Development Authority

Advocate for Def. : Anil Sapra, Adv.

Advocate for Pet/Ap. : V.K. Shali, Adv

Disposition : Writ petition dismissed

Judgement :

Sanjay Kishan Kaul, J.

1. The petitioner being the perpetual lessee of an industrial plot is aggrieved by levy of a charge as a pre-condition to the grant of permission to let out the

premises constructed on the said plot.

2. The petitioner, a partnership firm, purchased an industrial plot measuring 600 sq. yds. bearing No. E - 49/3, Okhla Industrial Area, Phase - II, New Delhi in an open auction in the year 1972 and the perpetual lease deed was executed in favor of the petitioner on 04. 01. 1973.

3. The petitioner constructed an industrial building for carrying on its business of manufacture of garments and was using the same since its inception. However, on account of apparently recession in the business, the petitioner wanted to let out a part of the premises. It is stated that though the petitioner was not bound to apply for permission to let out the portion of the factory premises to a third-party, had applied to the respondent for the same on 23. 02. 2001. The petitioner received a letter dated 12. 04. 2001 in response thereto asking the petitioner to apply in prescribed format and intimating that the petitioner was obliged to pay to the respondent advance rent / charges @ Rs. 1/- per sq. ft. per month. It is this demand with which the petitioner is aggrieved and has filed the writ petition seeking quashing of the letter dated 12. 04. 2001 requiring the petitioner to deposit the amount @ Rs. 1/- per sq. ft. per month.

4. Learned counsel for the petitioner contends that ' lease' is a grant in terms of the [Government Grants Act, 1895](#) (hereinafter to be referred to as, ' the said Act') and in terms of Section 3 of the said Act, it has to take effect according to its tenor. Section 3 of the said Act is as under :-

' 3. Government grants to take effect according to their tenor. - All provisions, restrictions, conditions and limitations over contained in any such grant of transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding. '

5. Learned counsel, thus, referred to the perpetual lease deed dated 04. 01. 1973 and the terms therein, more specifically clause 4(a), which is as under :-

' 4. (a)The Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the industrial plot except with the previous

consent in writing of the Lesser which he shall be entitled to refuse in his absolute discretion.

PROVIDED that such consent shall not be given for a period of ten years from the commencement of this Lease unless, in the opinion of the Lesser, exceptional circumstances exist for the grant of such consent.

PROVIDED FURTHER that, in the event of the consent being given, the Lesser may impose such terms and conditions as he thinks fit and the Lesser shall be entitled to claim and recover a portion of the unearned increase in the value (i. e. the difference between the premium paid and the market value) of the industrial plot at the time of sale, transfer, assignment, or parting with the possession, the amount to be recovered being fifty per cent of the unearned increase and the decision of the Lesser in respect of the market value shall be final and binding.

PROVIDED FURTHER that the Lesser shall have the pre-emptive right to purchase the property after deducting fifty per cent of the unearned increase as aforesaid. '

6. Learned counsel contends that the expression ' otherwise part with possession' has to be read ejusdem generis with the other terms used in the clause, which are ' sale, transfer or assign'. It is, thus, stated that only when possession is parted with as a consequence of the sale, transfer or assigning, previous consent would be required and this is sought to be further substantiated by the second proviso requiring 50% unearned increase to be paid in case of such sale, transfer, assigning or parting with possession.

7. Learned counsel contends that there is no authority for imposition of the levy of Rs. 1/- per sq. ft. per month and there cannot be any levy in the nature of tax de hors the authority in terms of Article 265 of the [Constitution of India](#). Thus, it is further contended that if at all prior permission is required, the same is only in the nature of a consent and no charges can be levied.

8. Learned counsel lastly contends that imposition of such charges would be discriminatory since no such charges are levied in respect of residential premises.

A copy of a sample perpetual sub-lease has been filed to show that the aforesaid clause is identical being clause (6)(b).

9. Learned counsel for the respondent on the other hand, states that there are guidelines issued for subletting of industrial premises, which are annexed to the counter affidavit and are as under :-

' Sub-letting of Industrial Premises :

10. 11In the interest of production and better utilisation of the industrial built up premises, sub-letting of premises constructed upon industrial plots by lessees who have been genuinely engaged in production in those premises has been permitted subject to the following conditions :-

i)The minimum area, which shall be permitted to be sub-let shall not be less than 500 sq. ft.

ii)The maximum area to be sub-let shall not exceed 50% of the permissible floor area.

iii)Each industrial unit seeking permission to sub-let will have to prove that the space to be sub-let is surplus.

iv)Not more than two tenants shall be permitted in one premises.

v)The office/storage space will not be permitted to be sub-let.

vi)The trade to be run by the tenants will have to be permissible in that industrial areas as per the zonal plan.

vii)While submitting the application for permission to sub-let, a plan of the built-up space as well as of the area to be sub-let will be submitted by the applicant industrial unit.

viii)The fee at the rate of Rs. 1/- per sq. ft. per month shall be recovered on annual basis but for a period not exceeding three years or till there is a change in tenancy whichever is earlier.

ix)The tenant could be permitted to pay the fee on behalf of the lessee, if he so likes, but this payment will be in the name of the Lessee.

x)Where the lessee/sub-lessee of an industrial plot exceeding 2000 sq. mtr. has obtained exemption under the Urban Land (Ceiling & Regulations) Act, 1976, on the grounds that this entire area is required by him for his bonafide use, the permission to sub-let shall not be granted.

xi)All conditions regarding the sub-letting will also be applicable to industrial plots purchased in open auction.

xii)If a ' sister concern' is proposed to be allowed in the industrial premises, it will require approval and payment of fee. '

These guidelines are stated to have been relaxed and the liberalized policy, as contained in the letter dated 01. 01. 1991, is as under :-

' As you may be aware the Lt. Governor of Delhi has liberalised certain provisions of the existing guidelines for land management of the Delhi Administration pertaining to the sub-letting of industrial premises in Delhi. The salient features of this liberalisation are given below :

I)The minimum permissible area to be sub-let will be 250 sq. ft.

II)The sub-letting will be permitted for a period of 5 years in the first instance and thereafter the permission may be renewed for a further period of 5 years at a time, against a total permissible period of 3 years presently.

III)A maximum of three sub-lattes can be permitted, subject to the total area of sub-letting not exceeding 50% of the total permissible floor area.

IV)A fee @ Rs. 1/- per sq. ft. per month w. e. f. 1. 11. 90 shall be charged in advance on annual basis. However, the period of sub-letting prior to 1. 11. 1990 is to be regularised on payment of fee calculated @ 20 paise per sq. ft. per month.

V)The permission may be granted only to those allottees who are themselves engaged in industrial activity in the premises.

The Lt. Governor has desired that these guidelines should also be made applicable to the industrial accommodation under the control of DDA in the interests of uniformity. I am therefore directed to request to kindly issue necessary instructions on these lines to the concerned officers in the DDA responsible for land management. '

10. The plea of discrimination is denied and it is stated that the petitioner cannot claim parity with residential premises.

11. Learned counsel further contends that if the provisions in clause 4(a) are read as claimed by learned counsel for the petitioner, then, there is no other clause, which deals with the right to part with possession. It is, thus, stated that there cannot be any sub-letting by the petitioner in the absence of any provision in the lease.

12. Learned counsel has also referred to the sample sub-lease, which is in respect of residential property to contend that there is specific term in the said sub-lease deed entitling the perpetual lessee to sub-let the property for the purpose of a private dwelling unit on a month-to-month tenancy for a term not exceeding 5 years. The relevant clause 8 is as under :-

' (8)Notwithstanding the restrictions, limitations and conditions as mentioned in sub-clauses (6)(a) and (6)(b) above, the Sub-Lessee shall be entitled to sublet the whole or any part of the building that may be erected upon the residential plot for purposes of private dwelling only on a tenancy from month to month or for a term not exceeding five years. '

13. I have considered the submissions advanced by learned counsel for the parties.

14. It would be appropriate to first deal with the plea of discrimination. It is not disputed that there are separate lease deeds for industrial and residential properties. The petitioner cannot raise a claim that both the industrial and residential properties should be dealt with identically in view of the fact that the very nature and user of these properties are different. This is also to be

appreciated keeping in mind the terms of the perpetual lease deed and, in fact, the own contention of the learned counsel for the petitioner is that in terms of Section 3 of the said Act, it is the terms of the lease, which shall govern. In this behalf, reliance was placed by learned counsel for the respondent on clause (8) of the sample sub-lease deed in respect of residential premises is extremely material. The residential premises specifically contain a clause authorizing the sub-letting of the premises in whole or in part for the purpose of a private dwelling unit on a month-to-month tenancy for a term not exceeding 5 years. This clause is totally absent in the perpetual lease deed in question in respect of the industrial plots. Thus, it is not envisaged that there will be any authority in the perpetual sub-lessee to sub-let the said property.

15. It has to be noticed that this clause itself stipulates that the same is notwithstanding the restrictions as mentioned in clauses (6)(a) and (6)(b). Thus, the lease is understood in a manner that there is a restriction of such parting of possession by creation of a sub-tenancy in terms of clause (6)(b), but in view of clause (8), this will not apply to a month-to-month tenancy of period not exceeding 5 years.

16. The interpretation of the identical clause contained in the perpetual lease deed in respect of industrial plots has to naturally follow and the only conclusion would be in the absence of any specific authorization, there is no automatic permission to the perpetual lessee to create any such sub-tenancy without prior permission in writing of the Lesser.

17. Insofar as the plea of learned counsel for the petitioner on the basis of there being no authority to impose such a levy is concerned, it is to be noted that the petitioner applied for permission to sub-let the property and the petitioner was asked to apply for the same in a prescribed proforma. The circulars issued by the respondent show that an attempt has been made to have some kind of a uniform practice in grant of permission of letting of industrial premises. There is a restriction on the area to be sub-let and the levy of certain charges. The object is apparent as these plots were given to be utilized by the perpetual lessees themselves for setting up of their industrial units. Thus, it is not permissible to sub-

let the whole of the property in terms of the said guidelines and a fee is charged on uniform basis. There is no doubt that the respondent can reject the premises to sub-let. If that be the position, then the permission can be granted subject to certain terms and conditions to be stipulated.

18. The second proviso to clause 4(a), in fact, says that the consent may be given by the Lesser, ' who may impose such terms and conditions as he thinks fit'. Thus, apart from the issue of 50% unearned increase, the clause deals with the imposition of such terms and conditions including for parting with possession and the terms and conditions imposed as per the said clause for sub-letting the property is the restriction on maximum and minimum area to be sub-let as also the charge to be paid. This is really a fee for the consent to be granted and is not a tax.

19. In view of the aforesaid, I am of the considered view that challenge by the petitioner to the decision of the respondent to impose fee for grant of permission to sub-let the property cannot be sustained and the writ petition is accordingly dismissed leaving the parties to bear their own costs.