

Delhi Development Authority Vs. Sudhir Chandra Aggarwal and anr.

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Court : Delhi

Decided On : May-03-2005

Reported in : 120(2005)DLT76; 2005(83)DRJ90

Judge : B.C. Patel, C.J. and; Sanjay Kishan Kaul, J.

Appeal No. : LPA No. 1144/2004

Appellant : Delhi Development Authority

Respondent : Sudhir Chandra Aggarwal and anr.

Advocate for Def. : Jayant Bhushan, Senior Adv. and ; Sudhir K. Makkar, Adv.

Advocate for Pet/Ap. : Jagmohan Sabharwal, Sr. Adv. and; Deepak Khadaria, Adv

Disposition : Appeal dismissed

Judgement :

B.C. Patel, C.J.

1. Against the well reasoned order dated 28.07.2004 made by learned Single Judge in WP (C) No. 583/2001, the appellant Delhi Development Authority (hereinafter to be referred to as, 'DDA') has preferred the present appeal.

2. The communication forwarded by DDA dated 09.07.2002 allowing extension of time to the petitioners (respondents herein) to complete construction of the building on plot bearing No. A - 25, Niti Bagh, New Delhi on composition fee in the sum of Rs.41,38,595/- was the subject matter before learned Single Judge.

3. It is required to be noted that perpetual sub-lease was executed on 30.11.1972. However, before the two years during which construction was to be completed, Shri Chandra Bhan Aggarwal in whose favor document was executed expired on 30.06.1973. In view of large estate, it appears that there was a dispute amongst the legal heirs of late Shri Chandra Bhan Aggarwal and mutation ultimately attained finality on 24.08.2000. It is thereafter the application submitted for mutation was sanctioned on 29.04.2002. Soon thereafter, an application was made for extension of time for making construction on the said plot. However, by letter dated 09.07.2002, it was stated that the application can be granted subject to certain conditions, i.e., payment of composition fee as noted here-in-above.

4. Learned senior counsel appearing for the appellant / DDA drew our attention to the relevant provisions, i.e., the extracts produced at Annexure A - 2. Clause 1.4 refers to exemption from the levy of annual composition fee. Sub-clause (iv) of clause 1.4 refers to death of the allottee and subsequent delay in mutation where 3 years is the maximum period to be granted. In other eventualities, as indicated in sub-clause (v) of clause 1.4, the maximum period is granted up to 5 years. The relevant clauses are as under:

'1.4 EXEMPTIONS : The exemption from the levy of annual composition fee in the policy will be available as follows :.

(iv) Death of the allottee and subsequent delays in mutation, sickness of the allottee from chronic and incurable disease which results in physical disablement to construct house ?' 3 years maximum.

(v) Where due to exigencies of service condition, lessee is out of country after allotment of plot ?' maximum period of 5 years.

(vi) Where the lessee/sub-lessee has been transferred outside Delhi. This facility would be available to all Central/Delhi Admn./All India Service/the Public Sector undertakings officials posted in Delhi including defense Personnel - maximum of 5 years.

... ..'

5. The Court examined clause 2.1, which refers to composition charges for belated construction. The said clause 2.1 is as under:

'2.1 : V.C., DDA shall be competent to condone delays in construction of building with / without composition as the circumstances of the case warrant.'

6. Thus, the Vice-Chairman, DDA was required to exercise his power under this clause. It refers to two aspects, namely, (i) delay in construction of building; and (ii) with or without composition charges.

7. In view of the aforesaid provisions, the Vice-Chairman, DDA is required to take an administrative decision taking into consideration the circumstances of each case. This power cannot be said to be circumscribed by sub-clause (iv) of clause 1.4 here-in-above, which gives the maximum period of 3 years for exemption. Needless to say that the facts must be such as would entitle the Vice-Chairman, DDA to exercise such a power.

8. The facts indicated here-in-above are clear that after 30.06.1973, the date on which Shri Chandra Bhan Aggarwal expired and as certain disputes arose, it was not possible for any of the legal heirs to carry out the construction.

9. In view of pendency of the proceedings, one person could not have made an application to DDA and / or all the persons too could not have made an application as there were certain disputes pending between the legal heirs of late Shri Chandra Bhan Aggarwal. The parties were before the Court and after the mutation attained finality, the question was for mutation and the application thereof was allowed only on 29.04.2002. These facts were required to be taken into consideration and, in our view, considering these aspects, learned Single Judge has disposed of the matter and the said decision requires no interference.

10. Learned senior counsel for the appellant / DDA further submitted that the discretion, which was exercised by the Vice-Chairman, DDA was final and the Court cannot substitute its own finding in case where the discretion is vested in the authority. It may be noted that if the authority has failed to exercise its discretion under misconception that clause 1.4 limits the power to grant maximum period of 3 years, it cannot be said that Court is not required to interfere with the same. Thus, the very basis of the exercise of the power is erroneous. It is not that this Court sits as an appellate authority over such an administrative decision, but if on an incorrect interpretation of the clauses being clause 2.1 and clause 1.4, the decision is taken by the administrative authority, then learned Single Judge was right in interfering with the same and issuing necessary directions.

11. We find no merits in the appeal. Hence, the appeal and the application are dismissed.