

**M.M.L. BhasIn Vs. Union of India and anr.**

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**Court :** Delhi

**Decided On :** Aug-20-1991

**Reported in :** 45(1991)DLT579

**Judge :** S.N. Sapro, J.

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

**Appeal No. :** Civil Writ Appeal No. 2551 of 1990

**Appellant :** M.M.L. Bhasin

**Respondent :** Union of India and anr.

**Advocate for Pet/Ap. :** D.D. Thakur,; Ashok Mathur and; A.P. Aggarwal, Advs

**Judgement :**

**S.N. Sapro, J.**

(1) In this writ petition, filed under Articles 226 and 227 of the [Constitution of India](#), petitioners have challenged the decision of respondent no. 2, thereby, charging unearned increase, on the basis of the land rate, other than that, prevailing on the date. of application, for permission to sell the Immovable property, as well as, the interest thereon. Petitioners also challenged ^ the power of respondents to levy unearned increase, as per the terms and conditions of perpetual lease-deed. However, during the course of arguments, petitioners sought liberty of this Court,

not to press this ground, since the question was one of fact.

(2) For better appreciation of the questions, involved in the petition, and the contentions, urged before me, by learned Counsel for parties, it will be useful to refer to, in brief, the facts and circumstances of the case.

(3) By a perpetual lease-deed, dated August 20, 1954, plot bearing No. 159, Jor Bagh, New Delhi, was leased out by President of India, to one Shri Thakur Dass Sharma, on the terms and conditions, as incorporated there in. Clause 13 of the lease-deed, inter a/to, provided as under :

'(13)The Lessee shall before any assignment or transfer of the said premises or the Chief Commissioner of Delhi or such officer or body as the Lesser may authorise in this behalf approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the Lessee shall be bound by all the covenants and conditions be rein contained and be answerable in all respect therefore. Provided also that the Lesser shall be entitled to claim and recover a portion of the unearned increase (i.e. the different between the premium already paid and current market value) In the value of land at the time of transfer (whether such transfer is an entire site or only a part thereof), the amount to be recovered being 50 per cent of the unearned increase'.

(4) Shri R.K. Jain, petitioner no. 2 herein, on the basis of the agreement for construction, entered into with Shri Thakur Dass Sharma, had constricted residential building on the aforesaid plot. in accordance with the plans, duly sanctioned by the New Delhi Municipal Committee. The aforesaid plot was mutated in favor of petitioner no. 2. and fresh perpetual lease deed dated April 14, 1980, was executed, in favor of Shri R.K. Jain, as a lessee. Clause 13 of the perpetual lease deed was substituted by anther clause, which inter-alia reads as under:

'13.The lessee shall before any assignment, transfer, mortgage, sale or otherwise parting with any interest or possession, directly or indirectly in the/of the said premises hereby demised or any part thereof obtain from the Lesser or such officer of body as the Lesser may authorise in his behalf approval in witing of the

said assignment, transfer, mortgage, sale otherwise parting with any interest or possession, directly or indirectly and all such assignees, transferees, mortgagee-, purchases, holders of interest or possession shall be bound, by all the covenants and conditions herein contained and be answerable in all respects therefore'.

(5) On March 26, 1980, petitioner no. 2 entered into an agreement to sell the aforesaid property to Shri M.M L. Bhasin, petitioner no. 1 herein, on the terms and conditions, contained therein. Pursuant to the agreement for sale, by application dated March 2, 1981, petitioner no. 2 sought permission of respondent no. 2, for second sale of the said property. At the time of filing of the application, the prevailing rate for the area, in which the said property is situated, was fixed at Rs. 600.00 per sq. yard.

(6) In November, 1981, respondent no. 2 revised the land rate, for the area and the revised rates were made effective with effect from April 1, 1981, and the value was fixed at Rs. 2000.00 per sq. meter.

(7) Petitioner no. 2 was informed that respondent no. 2 was proposing to grant permission to sell, subject to the payment of unearned increase to be charged on the basis of land rate Rs. 2.000.00 per sq. meter. This was being proposed, according to the existing rules of respondent no. 2 which provided that unearned increase. In respect of sale of immovable property, was to be calculated on the basis of the land rate, prevailing 3 months, after the date of application for permission to sell. In other words, respondent no. 2 proposed to charge the unearned increase, on the basis of the land rates, as prevailing on June 1, 1981.

(8) It appears that petitioners made several representations, where in, it was submitted that the levy of unearned increase, on the basis of the revised land rates, was arbitrary and, since on the date, when petitioner no. 2 had applied for grant of permission to sell, the prevailing land rate was Rs. 600.00 sq. yard. The representations, made by petitioners, were, however, erroneously rejected by respondents. By a letter dated February 6, 1986, respondent no. 2, informed petitioners, about the terms and conditions, for permission to sell the property. By the said letter, respondent no. 2 demanded payment of unearned increase, calculated on the basis of the revised land rate of Rs. 2000.00 per sq. meter.

Against this demand, petitioners once again made a representation.

(9) By a letter dated August 29, 1989, respondent no. 2 informed petitioners about the terms and conditions. For grant of permission, which inter alia, provided for the payment of unearned increase of a sum of Rs 4,76,874.75 representing the unearned increase, calculated on the basis of the land rate of Rs. 2000.00 per sq. meter, with interest thereon of a sum of Rs. 1,02,998.50 for the period February 6, 1986 to March 31, 1988, and further a sum of Rs. 77,111.00, for the period April 1, 1988 to August 28, 1989. In addition to that, petitioners were also called upon to furnish a bank guarantee for Rs. 2,23,280.00, towards the interest, at the rate of 10 per cent per annum, on the unearned increase, from June 2, 1981 to February 5, 1986.

(10) Petitioners, without prejudice to their rights, by a letter dated September 8, 1989, informed respondent no. 2, about the compliance of the terms and conditions, communicated by the respondent no. 2. As, petitioners complied with the demand, so vide letter dated September 22, 1989, respondent no. 2 granted the required permission. In their counter affidavit, respondents have not disputed that the land rate, prevailing on the date, when the application was filed, was Rs. 600.00 per sq. yd. But, according to respondents, the land rates, on the basis of which, unearned increase was to be calculated, the policy in force, on the date of application, i.e. March 2, 1981, was that land rates prevailing on the date of granting permission, were to be basis for calculating the unearned increase. This policy is contained in the Ministry of Works and Housing letter dated April 25, 1972, as further reiterated in the office order No. 3/80 dated January 19, 1980, of the Land and Development Office. In the present case, it is alleged by respondents, the terms for sale permission were issued on February 6, 1986. The land rate on February 6, 1986, was Rs. 2,200.00 per sq. meter. The Government, however, took a lenient view and applied the land in force on June 2, 1981 i.e. by adding 3 months to the date of application, by giving the benefit of the Ministry of Works and Housing letter No. J-13019/183-LD (DOI) dated 19/24th March, 1983. The extract of this letter is reproduced : 'It has also been decided that in future unearned increase should be recovered on the basis of land value prevailing on the date marking completion of three months from the date of receipt of complete

application, subject to the proviso that in case land values are due for revision within this period, the recovery of unearned increase should be on the basis of revised land value. It has also been decided that the sale permission granted need not be specific to a purchaser and may be kept valid till the date on which land rates are due for revision.' According to respondents, petitioners were equally responsible for the delay, in issuing the terms.

(11) Mr. D.D.Thakur, learned Counsel for petitioners, contended that in view of the settled position of law, that the unearned increase could be charged, only on the basis the land rates, prevailing on the date of application, the action of respondents, was clearly arbitrary and illegal. Reliance was placed upon the judgments of the Division of this Court in Mrs. Daya Wanti Punj New Delhi and others v. New Delhi Municipal Committee New Delhi and others, : AIR1982 Delhi534 and of the Supreme Court in Union of India and others v. Dev Raj Gupta and others, : AIR 1991 SC93 . According to Mr. Thakur, the present case is fully covered by the aforesaid judgments and, that for the purposes of determining unearned increase, the land rate, as prevailing on the date of application by lessee, was to be the basis and not any rate, that must be applicable, at any other point of time. In these circumstances, it was argued by Mr. Thakur, respondents are bound and obliged to determine the unearned increase, in respect of the property in question, on the basis of the land rate of Rs 600.00 per sq. yd. and to refund the excess amount, including interest charged along with the unearned increase. Y : ^ i t ^ i ^ ' 583

(12) I am of the view that the present case is fully covered by the judgment of the Division Bench of this Court in Mrs. Daya Wanti PunJ, New Delhi and others, (supra). The Division Bench held. 'On the strength of this letter, the L. and D.O. says that he is bound by the instructions of the Government to charge Rs. 1,500.00 per sqyard. because even though it is a 'pre-1972 case' it has been decided by the Government that the rates determined for the year 1972 have to be applied. We cannot see eye to eye with the Government. Nor do we see the logic of this letter. The stand of the Government is legally indefensible. A man who applies for permission in 1970 cannot be asked to pay on the basis of the land values prescribed by the Government for 1972. This is not in dispute that for 1970

the rate would be Rs. 600 per sq. yard. That rate was prevalent from 1962 to '4th January, 1972. It is a fallacious reasoning to say that the land rates prior to 1972 were not 'appreciably lower' than the rates fixed for 1972. There is a world of difference between land values of Rs. 600 per sq. yard for 1970 and Rs. 1,500 per sq. yard for 1972. This is an area of interplay of market forces. From the counter affidavit of the Government it appears that permission was given on the basis of the land rates of Rs. 600 per sq. yard. to three lessees, namely (1) Life Insurance Corporation regarding 25, Curzon Road and, (2) Himalaya House regarding 23, Curzon Road and (3) Hindustan Times regarding 18/20, Curzon Road. All the three lessees had applied to the Government during the period 1966 and 1968. The terms were given to them between 1968 and 1971 and they were informed that the Lesser was willing to give bids consent for change of purpose from residential to commercial on the basis of the land value of Rs. 600 per sq. yard. There cannot be a different yardstick for the petitioners. Their case is also covered by that block of years which covered the period from 1966 to 14.1.72. They are entitled to be treated on the same footing as those three lessees, namely L.I C. Himalaya House, and Hindustan Times, were t ' treated. We see no justification for adopting the basis of land value of Rs. 1,500 per sq. yard which is the basis of the Government's demand. Our conclusion is that 1970 is 'that point of time', to use an expressing of the Government policy dated 21st June, 1979, on the basis of which market value of the land should be ascertained for the - purposes of giving permission for permanent change of purpose.'

(13) The principles, as laid down by the Supreme Court in Union of India and others, (supra), are also applicable to the present case. It was held : 'in the view have taken, we direct that the additional premium should be calculated by the appellants on the basis of the rate which was prevalent as on February 27, 1981, which is the date of the application made for the change of the user. The interest should be charged on such additional premium w.e.f. 12th April, 1984 since a period of three months from the date of notice, viz., January 12. 1984, was available to the respondent-lessees to make the payment of the additional premium. Taking into consideration the facts and circumstances of the present case, the appellants should be given the facility to make the payment in three equal annual Installments 584 and the Installments and the interest should be

charged on such deferred payment at not more than 14 per cent per annum. The respondent lessees would, however, not be entitled to convert the present user of the land into the commercial user until and unless the last of the amount of the additional premium together with the interest thereon is paid.'

(14) In view of the discussion above, and the law laid down in the above mentioned judgments, I am of the opinion that in the present case, respondents were bound and obliged to determine the unearned increase, in respect of the property bearing No. 159 Jor Bagh, New Delhi, on the basis of the land rates, as were prevalent on March 2, 1981, when petitioner no. 2 submitted an application for permission to sell the property. Admittedly, Rs. 600.00 per sq. yd. was the land rate, prevalent on the date of application. Consequently, respondents are bound to determine the unearned increase afresh, on the basis of the land rate of Rs. 600.00 per sq. yd. and to refund the excess amount.

(15) Under the facts and circumstances of the case, the Rule is made absolute. The decision, thereby, determining the unearned increase, on the basis of the land rate of Rs. 2000.00 per sq. meter, as prevailing on June 2, 1981, and the consequent demand for payment, are quashed and set aside. Respondents are also directed to determine the unearned increase afresh, chargeable on the basis of the land rate, as prevailing on March 2, 1981, being Rs. 600.00 per sq. yd. I further direct the respondents to refund the excess amount of unearned increase, calculated on the basis of the land rate of Rs. 2000.00 along with excess interest levied and collected, to petitioners, within a period of 6 months, with interest at the rate of 10 per cent per annum, till the date of payment.

(16) No order as to costs. Writ allowed.

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