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Satish Kumar Kapoor Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Feb-18-2003

Reported in : 107(2003)DLT41

Judge : Sanjay Kishan Kaul, J.

Acts : [Constitution of India](#) - Article 226; Urban Land (Ceiling and Regulation) Act, 1976 - Sections 9

Appeal No. : Civil Writ No. 1327 of 2000

Appellant : Satish Kumar Kapoor

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Deepak Khadaria, Adv.

Advocate for Pet/Ap. : Sanjiv Khanna, Adv

Judgement :

ORDER

Sanjay Kishan Kaul, J.

CW No. 1327/2000:

Rule

1. With the consent of learned Counsel for the parties the petition is taken up for final disposal.
2. The petitioner was granted perpetual sub-lease hold rights in respect of plot A-80, Geetanjali Enclave, New Delhi, measuring 900 square yards (752.51 square metres) in pursuance to the perpetual sub-lease deed 10.1.1972. The petitioner was required to construct on the plot in question within a period of two years from 21.9.1971 in terms of Clause 11(5). This period in terms of guidelines of respondent were extended to three years from two years. Thus the petitioner was required to complete the construction by 20.9.1974. '
3. It is not disputed that a general amnesty period was provided from 1.1.1971 to 31.12.1975 in view of the shortage of steel, cement and necessary requirements for carrying on construction. On 15.9.1976 the Urban Land (Ceiling and Regulation) Act was notified and made applicable to Delhi (hereinafter referred to as the Act). The petitioner applied for exemption under the Act on 14.9.1976. On 7.1.1988 a draft assessment order was prepared in terms whereof the entire land was liable to be forfeited and to vest with the Government under the said Act. The petitioner filed objections to the same and final order was passed on 29.1.1991 under Section 9 of the said Act to the effect that out of the total land of 752.51 square metres the land measuring 261.84 square metres was declared surplus and the petitioner was entitled to retain the balance portion of land. The petitioner filed an appeal against the said order and the operation of that order dated 29.1.1991 was stayed.
4. On 22.3.1999 the Act was repealed when the appeal was still pending. The effect of the same that proceedings initiated against the same lapsed since the possession of the land was not taken over from the petitioner. The petitioner just prior to the same had applied for extension of time for construction on 9.3.1999 setting out the difficulty which the petitioner faced in view of the aforesaid Act. The extension was granted by respondent No. 1 on 6th March, 2000 valid till 31.3.2000 on payment of Rs. 28,18,271/- as composition fee. The petitioner filed the present writ petition impugning the said demand.

5. In terms of the orders passed on 7.4.2000 petitioner agreed to deposit an amount of Rs. 33,43,540/- on condition of extension of time up to 20.9.2000 in terms of the demand of respondent No. 1 without prejudice to his rights and contentions and on the same being paid, petitioner was granted the said extension of time. It was made clear that in case the petition was allowed, the amount deposited by the petitioner would be refunded to the petitioner in accordance with law with interest to be fixed at a later stage. The petitioner deposited the amount, got the extension and completed the necessary construction; To this extent there is no dispute. On 2.11.2001 the Court noticed the discrepancy which arose in the methodology of the computation in view of the contention of the learned Counsel for the petitioner that the correct slab had not been applied for the initial period. The only question thus to be considered in the present petition is the methodology of applying the table for the composition fee taking into consideration the general exemption against as also special exemption granted vide circular dated 5.3.1997 in terms whereof for the plot size in question the period taken from the date of submission of the application to the date of issue of exemption under the Act is to be excluded subject to a maximum period of eight years. The same is as under:

'(i) For plot size 500 sq. mtrs. to 2000 sq. mtrs.

Where the size of plot attracts the provisions of ULCR Act, 1976, and is less than 2000 sq. mtrs. The period taken from the date of submission of application to the date of issue of exemption order shall be excluded. This will be subject to maximum of 8 years and thereafter composition rates shall be charged as per guidelines.'

6. The contention of learned Counsel for respondent No. 1 is that the calculations made by the said respondent are correct and the benefit of the aforesaid exemption as well as the general period of exemption of three years has already been granted to the petitioner. The dispute is thus only on the applicability of the table since the contention of learned Counsel for the respondent is that even during the period of exemption the time period would continue to run though no charges would be levied for the same. The effect of this contention is that though for the year in question no charges would be levied, when the charges are to be

levied, latter year would be taken into consideration as the relevant slab year. This has material bearing since the slab rates keep on increasing for subsequent years. Thus if during the exemption period the slab period continue to run then the effect would be that though no composition fee would be charged for the said period, a higher composition fee would be charged for the subsequent period since slab in question to be considered would be of latter year. The aforesaid contention is disputed by learned Counsel for the petitioner who contends that for the period of exemption the slab year in question stop running. The principle sought to be applied for by the learned Counsel for the petitioner is the similar principle of limitation where that period is not taken into consideration at all. The effect of this submission would be that the slab in question applicable would be of an earlier year and thus lower rates would be applicable.

7. I have considered the submissions in this behalf and I am in agreement with the submission of learned Counsel for the petitioner. Once a general period of exemption is granted or the period of eight years is exempted that is no question of time period running in the exemption period. Thus it is the relevant slab which would be applicable to the case of the petitioner for that period and not for a subsequent year by merely not levying the composition fee for the earlier period counting the same towards the time period.

8. In the present case the effect would be that the time period would start running from 21st September, 1971 and would continue till 31st December, 1971 when the general period exemption became applicable from 1.1.1972 to 31.12.1975. It was again started running from 1.1.1976 till 14.9.1976 since the Act was notified for Delhi on 15.9.1976. The petitioner would thereafter have the benefit of a period of eight years of exemption and the time period would again start running from 15.9.1984 and would continue to run thereafter. The time period for which exemptions have been granted shall not be taken into consideration for determination of the year of slab. In fact broadly speaking the first year period which would start running from 21.9.1971, would come to an end in and around 14.9.1976 and the second year of slab would start running from 15.9.1984 and would continue to run thereafter.

9. There is also force in the contention of learned Counsel for the petitioner that the petitioner cannot be burdened with the charges as a consequence of the delay in processing the application of the petitioner which was filed on 9.3.1999 and was granted only on 6.3.2000 extending the time period till 31.3.2000. The application should have been processed within a reasonable period of time and at maximum within a period of about two months. Thus the time period will again not run from 6.5.1999 to 5.3.2000 when the permission was so granted and this period should also be excluded from the calculation in terms aforesaid.

10. The net result of the aforesaid is that the petitioner has undoubtedly paid amount in excess of what would be liable to be charged from the petitioner and this amount after due calculation is liable to be refunded to the petitioner. The needful be done by respondent No. 1 within a period of six weeks from today. Since the issue of interest on the said amount was left open in terms of the order dated 7.4.2000 it is directed that the said amount shall be refunded with interest @ 9% per annum from the date of deposit till the date of the judgment which will be refunded along with the refund of the principal amount within six weeks. In case of delay in making payment to petitioner, respondent would be liable to pay interest @ 18% per annum from the date of the judgment till the date of payment.

11. The writ petition stands disposed of in the aforesaid terms leaving the parties to bear their own costs.

C.M. No. 2169/2000:

No further orders are called for in this application in view of the disposal of the writ petition.

Application stands disposed of.

dusty to parties.