

Moon Light Electronics Industrial Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jan-25-1991

Reported in : 44(1991)DLT527

Judge : B.N. Kirpal and; Santosh Duggal, JJ.

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

Appeal No. : Civil Writ Petition No. 2716 of 1988

Appellant : Moon Light Electronics Industrial

Respondent : Delhi Development Authority

Advocate for Def. : Prag Chawla, Adv.

Advocate for Pet/Ap. : P. Chakraborty, Adv

Judgement :

B.N. Kirpal, J.

1. The challenge in this writ petition is to the threatened-cancellation of the lease of the plot No. 38. Block-W, Okhla Industrial Area, Phase II. It appears that a request was made to the D.D.A. for the transfer of 90% share of the said plot in favor of the petitioner. This request was made on 8th January, 1981.

2. It is not in dispute that the D.D.A. is entitled to charge 50% of the unearned increase. The unearned increase is to be arrived at by seeing the market value of the land on the date when the transfer is sought and the registered price at which it was purchased.

3. The respondents are claiming from the petitioner unearned increase regarding the price of land at Rs. 1191 /- per sq. meter. Earlier about Rs. 29,000/- (provisionally) had been charged as unearned increase which was paid, but the charge at the rate of Rs. 1191/- per sq. meter is on the basis that the auction rates in the year 1981 was Rs. 1191/- per sq. meter.

4. It is true that the rate which is to be charged is the market rate as on 8.1.1981 but what is this market rate is essentially a question of fact and it is not possible for us in these proceedings under Article 226 to determine this question of fact, namely, the market rate of the land as on 8th January, 1981. If the amount which is being claimed by the respondents is high, then this dispute should be settled in an appropriate Court which can decide such questions of fact. It appears to us that from the record of this case that it is not possible for us to come to the conclusion that the decision of the respondents to charge this amount is per se arbitrary or without any foundation. It may be that the decision of the respondents that the market rate is Rs. 1191/- is, after all the evidence is taken into consideration, factually incorrect, but merely because this decision may ultimately be found to be factually incorrect does not mean that we can, at this stage and in these proceedings, regard this decision as being arbitrary or without any basis.

5. The petitioner is given an opportunity to pay the amount demanded by the respondents within six weeks from today and in case this amount is paid, the same will be without prejudice to the petitioner's contentions which may be raised in an appropriate forum and, further, if this amount is paid within the stipulated period the lease of the petitioner will not be cancelled. The petition is disposed of in the aforesaid terms.