

Sh. Abdul Rasool Virji Vs. Delhi Development Authority

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Court : Delhi

Decided On : Nov-15-2002

Reported in : 2002(62)DRJ307a

Judge : Sanjay Kishan Kaul, J.

Appeal No. : CW No. 259/2001

Appellant : Sh. Abdul Rasool Virji

Respondent : Delhi Development Authority

Advocate for Def. : Bankey Bihari Sharma, Adv.

Advocate for Pet/Ap. : Harish Malhotra, Adv

Judgement :

Sanjay Kishan Kaul, J.

1. The subject matter of the dispute is plot No. A-1, Maharani Bagh measuring 1800 sq. yards now known as 6, East Avenue, Maharani Bagh, New Delhi in respect of which perpetual lease hold rights were granted to one Shri N.R. Pillai. The property was constructed upon, Mr. N.R. Pillai passed away on 31.3.1992 and prior to his demise has executed a Will dated 13.3.1978. In view thereof the property was mutated on 28.5.1993 in favor of the two sons of the deceased owner. Probate was also granted on 16.11.1993.

2. The said two sons of the owner entered into an agreement of sale in favor of the petitioner in respect of the property in question on 16.1.1994 for a total consideration of Rs. 3 crores and permissions was granted by the Competent Authority. The respondent in terms of the perpetual sub lease deed dated 17.4.1965 made a demand towards provisional un-earned increase of Rs. 2,23,84,725/- on 4.9.1995. The petitioner aggrieved by the same filed CWP No. 3948/95 before this Court and interim orders were passed on 22.5.1996 in favor of the petitioner. The writ petition was allowed on 22.1.1999 and it was directed that petitioner was liable to pay lesser amount which is stated to be Rs. 70,82,127/- along with interest. It may be noticed that during the pendency of the writ petition, petitioner had deposited a sum of Rs. 1,49,72,225/- on 12.6.96 and had furnished an undertaking as required by the respondent for grant of sale permission. Pursuant thereto sale permission was granted any conveyance deed was executed on 21.1.1997 in favor of the petitioner which is stated to have been duly registered.

3. In view of the judgment of the Division bench dated 22.1.1999 disposing of the writ petition, petitioner was liable to be refunded amount but the respondent filed Special Leave Petition before Hon'ble the Supreme Court and the operation of the impugned order was stayed.

The DDA came up with a scheme for conversion of lease hold rights into free hold and the petitioner applied on 24.10.1999 for conversion into free hold and deposited requisite amount. Since the conversion was not being allowed and conveyance deed on free hold basis was not executed, petitioner filed the present petition before this Court seeking a writ to that effect.

4. The only reason for the non-grant of the permission and execution of the documents on free hold basis as stated in the counter affidavit is that in terms of the scheme conversion cannot be allowed in the following two eventuality:

5.(i) in cases where any legal dispute relating to property is pending.

(ii) in cases where application for mutation or substitution is pending decision with the Lesser.

6. It may, however, be noticed that dispute which is pending between the parties is about quantum of un-earned increase and the petitioner has already given appropriate undertaking to the respondent. Learned counsel for the parties state that in terms thereof the petitioner has undertaken to pay any differential amount of un-earned increase.

7. Learned counsel for the petitioner has referred to the circular issued by the DDA dated 23.6.1995 in respect of conversion from lease hold into free hold and states that case of the petitioner falls within Clause (iv). Relevant portions of the circular read as under:

IssueDecision (i) Where lessee/sub lessee has applied for sale permission but DDA has not conveyed the unearned increase.(i) & (ii) In such cases conversion may be allowed by treating the earlier application for sale permission as infructuous/ withdrawn. (ii) Where lessee/sub-lessee has applied for sale permission and DDA has conveyed unearned increase, but the same has not been paid. (iii) Where lessee/sub-lessee applied for sale permission and DDA has conveyed unearned increase and the same has been paid in full or partly by the lessee/sub-lessee but the sale deed has not been registered.(iii) The amount of unearned increase deposited by the lessee/sub-lessee with reference to sale permission would be refundable if the original lessee/sub' lessee has applied for conversion and he/she is In physical possession of the property in question. (iv) Where all the action, as mentioned above have been completed including registration of sale deed.(iv) Conversion to free hold may be allowed after carrying out mutation with reference to sale deed executed by the lessee/sub-lessee and after Realizing prescribed conversion charges. '

8. Learned counsel for the petitioner has also referred to the decision of learned Single Judge of this Court in CWP No. 7096/2000, Sh. Bhupinder Singh v. Delhi Development Authority and Ors., decided on 18.3.2002 where a similar situation arose and a plea was taken that conversion application cannot be processed pending mutation. Reference was made to the letter dated 16.5.1994 issued by the Govt. of India to the Vice Chairman, DDA, para-5 of which quoted as under

'5. It has already been clarified that in cases where demand has already been raised/is under issue and party applies for conversion, the demand raised earlier would stand withdrawn and conversion allowed to the applicants on payment of conversion fee plus surcharge, if applicable, without insisting on payment of unearned increase.'

9. Since conversion charges as well as un-earned increase had been deposited but the conveyance deed had not been executed, writ was issued directing execution of the conveyance deed.

10. In view of the aforesaid, I am of the considered opinion that the petitioner falls within the scheme and would be covered by the circular dated 23.6.1995. In the present case, in fact, conveyance deed on lease hold basis had been executed in favor of the petitioner on the undertaking of petitioner to pay balance amount of charges. The matter which is pending before Hon'ble the Supreme Court is the issue of quantum of the conversion charges and the titled is not in dispute. Thus the two eventualities stated in the counter affidavit do not exist in the present case. That being the position, I am of the considered view that there is no impediment in execution of the conveyance deed on free hold basis in favor of the petitioner and the undertaking given by the petitioner to pay balance conversion charges, if any, shall continue to operate. Learned counsel for the petitioner further states that petitioner will file an undertaking with the DDA stating that the petitioner shall not transfer, alienate or create any third party interest in the property without obtaining prior permission from the respondent so that in such an eventuality the purchaser can give the appropriate undertaking.

11. A writ of mandamus is thus issued directing the respondent to execute the conveyance deed on free hold basis in favor of the petitioner within a period of eight weeks from the petitioner submitting undertaking as aforesaid and on the petitioner completing any other formalities. Parties are left to bear their own costs.