

M.R. Warerkar Vs. Dda

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Court : Delhi

Decided On : Nov-07-2006

Reported in : 136(2007)DLT699

Judge : S. Ravindra Bhat, J.

Appeal No. : W.P.(C) 5830/2005

Appellant : M.R. Warerkar

Respondent : Dda

Advocate for Def. : Ajay Verma and ; Biswadeep Baruah, Advs.

Advocate for Pet/Ap. : Atul Y. Chitale,, Suchitra A. Chitale and; Madhup Singhal

Disposition : Appeal allowed

Judgement :

S. Ravindra Bhat, J.

1. Issue rule. With consent of counsel for the parties the petition was taken up for final disposal.

2. The writ petitioner claims a direction for quashing of order/letters dated 5.5.00 and 5.1.01 issued by the Respondent Delhi Development Authority (hereafter referred to as the 'DDA'), requiring him to deposit interest @ 18% on the sum of

Rs. 1,10,763/- for the period 4.3.1977 to 3.6.2000 (hereafter 'the period in question').

3. The undisputed facts of this case are that one Shri T.P.Narayanan was allottee/owner of plot No. A-23 Gulmohar Park, Delhi Union of Journalists Cooperative House Building Society (hereafter referred to as the 'Gulmohar Park') . The allottee died on 10.12.1975. As per a Will executed by him, the right, title and interest in the property was bequeathed to the Petitioner, who approached the DDA to record his name. This request was acceded to and the Petitioner's name was mutated by DDA, in its records, by order dated 14.3.1977. Later, the Petitioner was also admitted as a member of the society in 1978 pursuant to a no objection letter issued by the DDA in that regard. The Petitioner had sought for permission, in terms of the lease deed to mortgage the property, which was granted by the DDA on 5.5.1983, to secure a house building loan. On 16.10.1984 the DDA issued an occupancy certificate to the petitioner.

4. After the publication of the policy for conversion of lease hold rights into freehold the petitioner applied for that benefit in September, 1999. By the impugned letter dated 5.5.2000 the DDA stated that the request could be acceded to if an amount of Rs. 1,10,763/- with interest for the period in question (amounting to Rs. 4,63,543/-) was paid as a condition precedent.

5. The impugned demand has been challenged on the ground that once the DDA accepted the petitioners' status as a heir, carried out mutation, even issued further no objections and occupancy certificate, it was not open to re-open the issue and demand the amounts. The petitioner has not disputed the sum to be recovered on account of the principal amount namely Rs. 1,10,763/-. The narrow question raised is the correctness of the demand towards interest for the period in question, namely, the sum of Rs. 4,63,543/-.

6. The DDA in its counter affidavit has averred that sometime after the mutation has been effected in 1977, it formed an opinion, in 1986 that the mutation had been allowed outside the family and which amounted to violation of Clause 11(b) of the lease deed. That condition prohibited transfers, without permission of DDA; permission could be given if 50% unearned increase were deposited with the

DDA. therefore, the mutation was suspended in 1986. The matter regarding mutation was investigated by the Vigilance Department of the DDA. It has also been averred that the of amount of Rs. 4.63 lakhs towards interest as well as the principal amounts are recoverable on account of the policies of the DDA which was upheld by the Supreme Court in Delhi Development Authority v. Vijay Singh Gurcharan : AIR 2003 SC3669 .

7. The DDA further avers that in the case of succession by the legal heirs to its leasehold property, no unearned increase is charged. However, in the present case the petitioner was not a legal heir and the transaction seems to be solely to avoid unearned increase. In these circumstances it is claimed that the interest demanded was justified.

8. Learned Counsel for the petitioner besides reiterating the contentions raised in the pleadings further submitted the allegation that the mutation was suspended is unfounded. He sought to place reliance on rejoinder affidavit in these proceedings and stated that no communication was received by the petitioner from the DDA regarding suspension of DDA at any point of time. He further submitted that the petitioner was also unaware of the pendency of investigation by the Vigilance Department and that no communication was received in that regard. In these circumstances, since the DDA itself took a long time of more than two decades to communicate the demand for unearned increase, it is unreasonable and unjust to claim any interest.

9. Learned Counsel for DDA supported the stand taken in the counter affidavit. He further submitted that the records in this case disclose that an administrative order was issued on 13.5.1986 requiring suitable action to be taken to suspend the mutation. Subsequently, on 15.9.1986 a letter was issued to the petitioner suspending the mutation. Thereafter, the file was sent to the Vigilance Department where it was pending till 1996. It was submitted that the Vigilance Department returned the file sometime in 1996 with a recommendation, as in every other case that appropriate action should be taken to recover the unearned increase with interest. Counsel submitted that all this while the unearned increase amounts could not be intimated to the petitioner as the issue was pending review and

ultimately the DDA gave shape to its policy dated 18.8.1999 as per which the such transfers could be regularized provided 50% unearned increase was paid. Further as per the said policy in old cases like the present, old rates were to be recovered but with 18% interest.

10. In view of the above factual matrix the narrow controversy requiring the decision is as to the justness of the demand by the DDA in so far as the amount of Rs. 4.63 towards interest is concerned. It is evident from the above facts that although there is some dispute as to whether the petitioner was indeed communicated, the decision suspending the mutation sometime in 1986 nevertheless the fact that no amounts were ever communicated till after he approached the DDA with an application for conversion, is not denied.

11. Counsel for the DDA had submitted during the course of his arguments that the policy of recovering unearned increase in respect of transfers outside the family circle was conceived in public interest and had received a seal of approval of Supreme Court. Under these circumstances the DDA could not be faulted in charging the interest at 18% interest.

12. The question here is not the validity of the policy of the DDA. The petitioner does not attack the scheme, for whatever the reason; he has admitted to the liability to pay the principal amount. The only issue is the DDA could have legitimately levied or sought to recover the interest of over Rs. 4.63 lakhs, when its decision to change the unearned increase and the quantum, had remain uncommunicated. The admitted factual narrative is that between the period 1986-96 the DDA itself did not take any action since the file was pending with its Vigilance Department. The policy of DDA was made effective on 18.8.1999. In these circumstances, the DDA cannot in my opinion, insist that the petitioner ought to pay Rs. 4.63 lakhs as interest at 18% for the period in question, as it is neither reasonable nor fair. If permitted, it would amount to the DDA taking advantage of, and profiting by its lapses. Fairness and reasonableness are unshakable pillars which uphold the equality clause. If the DDA had indeed communicated the amounts payable as unearned increase, sometime in 1986-1987 and the petitioner had defaulted, it could have legitimately claimed the amounts towards interest.

Instead, here, in the absence of any demand, or even in the absence of a policy, which was put in place in 1999, the DDA is unreasonably and arbitrarily claiming such amounts without ever having claimed the principal sum itself, till 2000. Under these circumstances I am of the opinion that the demand to the extent it seeks to recover that amount cannot be upheld.

13. In view of the above findings the impugned demand to the extent it requires the petitioner to deposit Rs. 4.63 lakhs towards interest for the period in question, as precondition for considering his application for conversion, is hereby quashed. The DDA is directed to process the application of the petitioner and communicate its decision within six weeks from today.

14. The writ petition is allowed in the above terms. Order dusty.

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