Rajiv Goela and anr. Vs. Delhi Development Authority

Rajiv Goela and anr. Vs. Delhi Development Authority

SooperKanoon Citation : sooperkanoon.com/910105

Court : Delhi

Decided On : Feb-09-2011

Judge : S. Muralidhar, J.

Appeal No. : W.P.(C) 9326/2009

Appellant : Rajiv Goela and anr.

Respondent : Delhi Development Authority

Advocate for Def. : Mr. Rajiv Bansal, Adv.

Advocate for Pet/Ap. : Mr. Sachin Chopra, Adv.

Judgement :

1. Whether Reporters of local papers may be allowed to see the judgment? No

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

1. The prayer in this writ petition is for a direction to quash a demand of Rs.53,39,816/- raised in a sale permission letter dated 15 th January, 2009 issued by the Respondent Delhi Development Authority (hereinafter referred to as `DDA). The Petitioners seek a direction to the DDA to re-issue a revised sale permission letter with the demand calculated on the basis of rates prevalent on 24th March, 1978 in the areas adjoining the area in which the property in question, that is at B-

334, New Friends Colony, is situated.

2. In relation to the property in question, the DDA executed a lease deed on 2nd July, 1974 in favour of Shri D.N. Sharma for an amount of Rs.24,096.14. Thereafter the father of the Petitioners, Shri Shyam Shankar Goela entered into an agreement to sell dated 24th March, 1978 with one Shri D.N. Sharma for sale of the property in question for a total sale consideration of Rs.85,000/-. Annexure P-1 to the writ petition is a receipt, which acknowledges payment by Shri Shyam Shankar Goela of a sum of Rs.8,500/- and contains a clause that Shri Shyam Shankar Goela will pay the balance amount of Rs.76,500/- "within 15 days from the date the plan is approved by the DDA."

3. When Mr. D.N. Sharma did not perform his part of the obligations, the father of the Petitioners filed a suit, Civil Suit No.129/1980, for specific performance of the agreement to sell dated 29th March 1978. Suit No.129/1980 was decreed by the learned Additional District Judge on 31st March, 1987. The learned ADJ held that the agreement/receipt dated 24th March, 1978 was a proper agreement to sell between the parties. The defendants were directed to execute the sale deed in respect of the property in question in favour of Shri Shyam Shankar Goela.

4. Shri D.N. Sharma and his son preferred an appeal being RFA No.350/1987 in this Court. A show cause notice was issued by the DDA on 20th June, 1997 to Shri D.N. Sharma stating, inter alia, that it had come to the notice of the DDA that Shri D.N. Sharma had "sold the plot to Shri Shyam Shankar Goela without the prior permission of the lessor" and thus committed breach of Clause II (6) (b) of the said sub-lease deed. This was followed by further show cause notices dated 4 th March, 1998 and 6th November, 1998 by the DDA to Shri D.N. Sharma.

5. Shri D.N. Sharma then filed Civil Writ Petition No. 898 of 1999 against the DDA in this Court in which it was prayed that DDA should be restrained from cancelling the sub-lease deed in view of the judgment dated 31 st March, 1987 of the learned Additional District Judge in Suit No.129/1980. In a reply filed to the said writ petition, the DDA accepted that there had been an agreement dated 24th March, 1978 entered into between Shri D.N. Sharma and Shri Shyam Shankar Goela, which mentions the sale consideration as Rs.85,000/- and further that a sum of

Rs.8,500/- had been paid by Shri Shyam Shankar Goela to Shri D.N. Sharma as part payment.

6. RFA No. 350 of 1987 was dismissed by this Court on 4 th September, 2001. Thereafter Shri Vishwanath Sharma, son of Shri D.N. Sharma filed Civil Appeal No.6700/2004 in the Supreme Court. The said appeal was dismissed by the Supreme Court on 26th February, 2007. In its counter affidavit and the additional affidavit filed in the Supreme Court, the DDA stated that it was entitled to recover unearned increase (UEI) since the property in question had been transferred through a sale receipt dated 24 th March, 1978. It was maintained by the DDA that execution of the sale receipt and other documents amounted to an illegal sale of the plot.

7. The Petitioners, as legal heirs of Shri Shyam Shankar Goela, applied on 30th April, 2007 to the DDA for mutation of the property in question in their names and for extension of time of two years to construct a building on the plot. Further applications were made on 17th and 18th July, 2007 by the Petitioners for early action on the above request. Several reminders were sent in the months of August, September, October and November, 2007. In the meanwhile, Shri D.N. Sharma, through his legal heirs, filed an affidavit in C.W.P.No.898/1999 in this Court seeking to withdraw the said writ petition. Thereafter on 15th January, 2009, the impugned letter was issued by the DDA granting sale permission subject to payment of Rs.53,39,816/- on account of UEI being 50% in the value of the plot along with interest up to 31st January, 2009.

8. An order dated 1st June, 2010 was passed by this Court which reads as under:-

"1. The petitioners have filed the present petition seeking directions to quash the demand made by the DDA in the sum of Rs.53,39,816/- as raised vide sale permission letter dated 15.1.2009. During the pendency of this matter, present application has been filed by the petitioners seeking permission for mutation/ construction of building on the plot, on their depositing the entire amount, as demanded by the DDA, without prejudice to their rights and contentions.

2. Reply to this application has been filed. In paras 5 (a) to (d) of the reply, the stand taken by the DDA is as under:

a) On payment of Rs.63,41,042/- (Rs.53,39,816 on account of unearned increase interest upto 31.01.2009, demand which has already been raised vide letter dated 15.01.2009 and Rs. 10,01,216/- on account of further interest upto 14.06.2010), the DDA will grant mutation of the premises in question in favour of the petitioners.

b) DDA will also grant extension of time later on as per the relevant policy.

c) Conversion can only be applied in respect of the built up property. DDA will process the case of the petitioners as per the conversion policy as and when the petitioners apply for conversion after completion of building on the plot in question subject to fulfillment of all the relevant formalities.

d) DDA will issue No Objection certificate only on clearance of all the outstanding dues by the petitioners towards DDA.

3. Counsel for the petitioners, on instructions from Mr. Rajiv Goela and Mr. Rahul Goela, petitioners, who are present in Court, submits that petitioners are willing to accept the terms and conditions as set out by the DDA in para 5 of the counter affidavit.

4. Accordingly, the present application is allowed. Petitioner shall deposit the amount, demanded by the DDA, within two weeks. DDA shall carry out the necessary mutation within a period of four weeks thereafter and also consider granting extension of time for carrying out construction. The petitioners shall make the deposit without prejudice to their rights and contentions and subject to final outcome of the writ petition.

5. Application stands disposed of."

9. In terms of the above order, the Petitioners paid the sum demanded to DDA without prejudice to their rights and contentions.

10. Mr. Sachin Chopra, learned counsel for the Petitioners, relied upon a Circular dated 16th August, 2005 whereby the DDA issued guidelines for computing UEI.

In para 1 of the Circular, it was stated that the crucial date for determining the market rate for calculation of UEI would be the date of the transaction, "whether in the form of sale/transfer/transfer of shares etc......" It is submitted that the date of transaction should be taken to be the date of the agreement to sell. Instead, the DDA has taken the date of the trial court decree to be the relevant date for determining the UEI. The DDA could not possibly go against its own guidelines and dispute the agreement to sell, the validity of which has been affirmed up to the Supreme Court.

11. The stand of Mr. Rajiv Bansal, learned counsel appearing for the DDA is that up to the time of the judgment and decree of the trial court dated 31 st March, 1987, the transaction between the parties was incomplete. It is stated that finality to the transaction was attained only after the order dated 26th February, 2007 was passed by the Supreme Court, dismissing the Civil Appeal No.6700/2004. It is submitted that instead of taking that date to be the relevant date for the purpose of calculating UEI, the DDA has in fact acted reasonably in taking the relevant date for that purpose to be 31 st March 1987. Consequently, the sale permission letter dated 15th January 2009 was valid and did not call for interference. As regards the Circular dated 16th August 2005, it is stated that since the transaction between the parties was affirmed only when the trial court decreed the suit for specific performance, the relevant date should be 31st March, 1987. It is submitted that any noting to the contrary in the file of the DDA did not amount to the decision of the DDA. Mr. Bansal submitted that a perusal of the receipt/agreement to sell would show that the sale was, in fact, not yet complete as no plan has been submitted to the DDA for its approval.

12. The above submissions have been considered. The idea of charging UEI is to recover for the DDA a portion of the profit/gain earned by the allottee of plot by virtue of a sale, which could even be an illegal sale. Usually, the guideline value or prevalent market rate of properties in the locality would be considered for determining whether the sale consideration shown in the agreement to sell reflects the true market value for the purposes of calculating the UEI. The difference between the sale consideration calculated at such market value and the original premium charged for the plot could give an indication of the profit earned for the

purposes of calculation of UEI.

13. It is not possible to accept the contention of the DDA that the date of transaction in the present case should be taken to be 31 st March 1987, the date on which the trial court decreed the suit for specific performance. No doubt that the sale had to take place within 15 days from the date of approval of the plan by the DDA. However, without sale permission being granted, there was no question of the plan submitted by the Petitioners being approved by the DDA. Therefore, everything hinges on the sale permission to be granted by the DDA. The sale consideration appears on the agreement to sell dated 24th March, 1978. For the purpose of calculation of UEI, the date of transaction has necessarily to be taken to be the date of 24 th March, 1978, which indicates what the sale consideration is. It is not the DDAs case that the sale consideration, as shown in the said document, is less than the prevalent market rate as on that date. The parties had not agreed to any higher sale consideration. It is not, therefore, possible to accept the submission that the date of transaction can get shifted to some other date on which the trial court decrees the suit for specific performance. The trial court, in doing so, only affirmed that an agreement to sell was a valid document and that a sale deed ought to have been executed in terms of such an agreement to sell.

14. It was argued by Mr. Bansal that the words "sale/transfer/transfer of shares etc .." occurring in para 1 of the Circular dated 16 th August, 2005 would not include the date of an agreement to sell since no transfer had actually taken place by virtue thereof. This militates against the DDAs understanding, as is evident from the affidavits filed by it in the proceedings in the suit for specific performance, which went up to the Supreme Court. The transfer in case emanates from the agreement to sell itself as that would have logically led to the execution of the sale deed for which the Petitioners father had to approach the Civil Court.

15. As regards the sale consideration, although the agreement to sell itself indicates it to be Rs.85,000/-, the total consideration now stands increased by virtue of the judgment of the Supreme Court dated 26 th February, 2007. While dismissing the appeal filed by Shri Vishwanath Sharma, the Supreme Court directed the Petitioners herein to pay a sum of Rs.5 lacs "as a matter of good

gesture". It was argued by Mr. Sachin Chopra, learned counsel for the Petitioners that this was not meant to enhance the sale consideration but was an additional sum paid by the Petitioners by way of a good gesture. However, it is in this case that there cannot be an execution of the sale deed in terms of the decree for specific performance without the Petitioners paying the aforementioned additional sum of Rs.5 lacs to Shri Vishwanath Sharma. For all practical purposes, therefore, the sale consideration should be taken to be Rs.85,000/- plus Rs.5 lacs, i.e., Rs.5,85,000/-.

16. The DDA would, therefore, be justified in calculating the unearned increase on the basis that the sale consideration for the property in question is Rs.5,85,000/-.

17. Consequently, it is directed that the DDA will now issue a revised sale permission by issuing the demand of unearned increase calculated on the basis of the sale consideration being Rs.5,85,000/- with interest and other charges calculated as per the DDAs policy.

18. The Petitioners have already made a deposit of the amount of Rs.53,39,816/- together with interest. The balance amount, if any, after calculating the unearned increase payable by them in terms of this order, will be refunded to the Petitioners by the DDA together with simple interest @ 6% per annum on the differential amount, within a period of four weeks from today.

19. The writ petition is disposed of with the above directions.