

N.K. Varma Vs. Union of India

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Court : Delhi

Decided On : Feb-09-2012

Appellant : N.K. Varma

Respondent : Union of India

Advocate for Def. : Mr. Sumit Sharma, Ms. Sumati

Advocate for Pet/Ap. : Mr. Sanjeev Mahajan

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: 9th February, 2012 + W.P.(C) 3225/2006 % N.K. VARMAPetitioner Through: Mr. Sanjeev Mahajan, Adv. Versus UNION OF INDIA Respondent Through: Mr. Sumit Sharma and Ms. Sumati, Adv. CORAM :- HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW JUDGMENT RAJIV SAHAI ENDLAW, J..

1. The petition, i) impugns the notice dated 22.11.2005 of the respondent Land and Development Office (L and DO) in so far as the same requires the petitioner to pay damages for unauthorized use and occupation of 25 sq. yds. of land abutting property No.142, Golf Links, New Delhi with effect from 10.06.1960 and charges for misuse of property no.142, Golf Links, New Delhi with effect from 26.09.1974 and ii) seeks mandamus for implementation of the decision dated 27.12.1976 of the Joint Secretary (Planning) of the Ministry of Urban Development by execution of a supplementary lease deed with respect to the said 25 Sq. yds. of land. The

writ petition was accompanied with an application for interim relief restraining the respondent L and DO from taking any coercive steps against the petitioner including of evicting the petitioner from the said 25 sq. yds. of land. This Court while issuing notice of the petition, vide order dated W.P.(C) 3225/2006 *Page 1 of 11* 06.03.2006 restrained the respondent L and DO from taking coercive measures for recovery of the amount of damages and misuser charges. The said interim order was made absolute on 20.08.2008. After judgment was reserved, the petitioner moved another application for interim relief averring threats of dispossession from the said 25 sq. yds. of land. Vide order dated 06.01.2012 on the said application, the parties were directed to maintain status quo. Pleadings have otherwise been completed and the counsels have been heard..

2. The President of India acting through the Land and Development Officer vide Perpetual Lease Deed dated 18.12.1959 leased out a plot of land bearing No. 142, admeasuring 375 sq. yds in the residential colony of Golf Links, New Delhi to one Sh. Madan Lal Bajaj. The said Sh. Madan Lal Bajaj vide Sale Deed dated 29.12.1959 i.e. within a few days of the Perpetual Lease Deed aforesaid transferred and assigned all his rights in the said plot of land in favour of the petitioner. The petitioner claims to have thereafter in or about the year 1960-61 carried out construction on the said plot of land. The respondent L and DO has along with its list of documents dated 04.12.2010 filed before this Court a copy of the letter dated 16.10.1967 addressed by it to the NDMC complaining of encroachment over government land (presumably 25 sq. yds. of land abutting plot No.142 supra) and enquiring as to how the NDMC sanctioned the building plans for raising construction on plot No.142, Golf Links, New Delhi without obtaining the prior approval of the respondent L and DO. Though the petitioner has chosen not to file the Perpetual Lease Deed of the plot of land before this Court but from the standard form of the Perpetual Lease Deed prevalent, judicial notice can be taken of the fact that the term thereof W.P.(C) 3225/2006 *Page 2 of 11* requires the lessee to obtain approval of the lessor L and DO also for raising any construction on the plot of land. The petitioner also admits receipt of a notice dated 25.11.1968 of the L and DO containing reference to an earlier letter dated 24.08.1967 (informing petitioner of rejection of the building plans since the plot area leased out was 375 sq. yds. but the petitioner had occupied 400 sq. yds.) requiring the

petitioner to show cause as to why he had not got the building plans approved from the L and DO as required under Clause I(v) of the Perpetual Lease Deed and why the area of the plot in the plans got sanctioned from the NDMC had been wrongly shown as 400 sq. yds. instead of 375 sq. yds..

3. The petitioner in his reply dated 20.12.1968 to the L and DO stated that though the area of the plot as per the Perpetual Lease Deed was 375 sq. yds. but the plot handed over was 400 sq. yds.; he thus denied that there was any encroachment..

4. It appears that proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were initiated against the petitioner for eviction from the said 25 sq. yds. of land soon thereafter..

5. It was / is the case of the petitioner that building constructed over the plot of land leased to him and the said 25 sq. yds. was in a manner which did not allow handing over possession of the said 25 sq. yds. of land and hence the petitioner in or about the year 1976, while the proceedings under the PP Act were still pending, offered to pay the price of the said 25 sq. yds. of land..

6. The petitioner claims that his aforesaid proposal was accepted by the Joint Secretary (Planning) of the Ministry of Urban Development as evident from the notings dated 21.12.1976 and 17.01.1977 on the file but the said W.P.(C) 3225/2006 *Page 3 of 11* acceptance was not communicated to him and came to his knowledge only when he inspected the file under the Right to Information Act, 2005. The respondent L and DO in its counter affidavit denies that any decision to grant the said 25 sq. yds. of land to the petitioner was taken or was so reached on 21.12.1976 or on 17.1.1977; it is pleaded that the said notings while processing the request of the petitioner were not final and subject to approval of appropriate authorities..

7. It appears that the proceedings under the PP Act lingered on. The petitioner claims to have learnt that the respondent L and DO had allotted such additional area abutting the leased land and had executed supplementary lease deed with respect thereto, in relation to property No.C-547, Defence Colony, New Delhi. The petitioner vide letter dated 15.01.1997 requested the respondent L and DO to

similarly grant lease of said 25 sq. yds. to him also. No decision appears to have been taken on the said request of the petitioner..

8. In the meanwhile, the Estate Officer in the proceedings under the PP Act passed an order dated 08.04.2005 of eviction of the petitioner from the said 25 sq. yds. of land. The petitioner filed an appeal thereagainst..

9. The petitioner continued to represent to the respondent L and DO for granting him lease of the said 25 sq. yds. of land also. The respondent L and DO ultimately vide its letter dated 22.11.2005 (supra) communicated its decision to allot the said 25 sq. yds. of land to the petitioner subject to the petitioner paying additional premium of `2,89,716/- at the prevailing notified land rates with respect thereto and also pays `5,14,067/- towards damages for unauthorized use and occupation of the said 25 sq. yds. from 10.06.1960 till 14.01.2006 and ` 7,98,191/- towards charges for misuser of W.P.(C) 3225/2006 *Page 4 of 11* an area of 1829 sq. fts. in the property as an office of M/s Batliboi and Co. from 26.09.1974 till 18.07.1991. The demand of additional premium of `2,89,716/- is not the subject matter of challenge in this petition and the petitioner claims to have already paid the same..

10. The challenge in this petition is to the demand aforesaid for damages for unauthorized use and occupation and misuser charges..

11. The challenge to the damages for unauthorized use and occupation of land admeasuring 25 sq. yds. is predicated on the grounds, i) that the petitioner had as far back as in 1976 offered to pay the additional premium for the said 25 sq. yds. of land and the delay in taking decision thereon was on the part of the respondent L and DO and thus the petitioner could not be burdened with such damages; ii) that a decision for grant of the said additional land was taken as far back as in the year 1976-77 but not communicated to the petitioner and for this reason also damages for unauthorized occupation could not be claimed from the petitioner; iii) that the damages could have been computed and awarded by the Estate Officer only and which had not been awarded and the respondent L and DO itself could not have fixed and claimed the damages of ` 5,14,067/-..

12. The demand for misuser charges is on the basis of use of the property for office purpose by M/s Batliboi and Co. in contravention of the terms and conditions of the Perpetual Lease Deed. The challenge to the said demand is predicated on the petitioner, immediately after receipt of notice dated 28.11.1974 from the respondent L and DO regarding such misuse, having called upon his tenant M/s Batliboi and Co. vide notice dated 02.01.1975 to stop the misuse and having informed the L and DO vide letter dated 30.06.1977 of vacation of the ground floor by M/s Batliboi and Co. and W.P.(C) 3225/2006 *Page 5 of 11* of letting out of the property to Embassy of Bulgaria for residential purposes. The petitioner contends that the respondent L and DO thereafter neither inspected the premises nor issued any notice and thus gave up its claim for such misuse..

13. This court vide order dated 20.08.2008 permitted the petitioner to make a detailed representation to the respondent L and DO. Such a representation was made and was decided vide communication dated 18.12.2008 of the respondent L and DO. In the said communication, it is stated that the present case is not similar to that of C-547, Defence Colony, New Delhi inasmuch as the petitioner herein, in violation of the term of the Perpetual Lease Deed requiring the petitioner to take approval of the L and DO for construction and by misrepresenting to the NDMC obtained sanction for construction over land admeasuring 400 sq. yds. when the land leased out to him was 375 sq. yds. only; that no decision in 1976-77 was taken for granting lease of the said 25 sq. yds. to the petitioner as the same was not a administratively desirable course of action; that the demand in the year 2005 at the then prevalent rates was made in response to the offer dated 13.04.2005 of the petitioner to pay the current notified rates therefor. With respect to the misuser charges, it is stated in the said communication that the respondent L and DO had tried to inspect the premises on 21.11.1988, 01.03.1989, 11.10.1989, 30.11.1990, 30.01.1991 as well as 17.07.1991 but inspection was refused and for this reason misuse charges were levied till 19.07.1991 when inspection was allowed and misuse was found to have stopped. It was further stated that during the inspection on 22.08.1977, the first floor and barsati floor were still found in possession of M/s Batliboi and W.P.(C) 3225/2006 *Page 6 of 11* Co., even after the premises were stated to have been let out to Bulgarian Embassy..

14. I am unable to find any merit in the challenge by the petitioner to the demand for damages for unauthorized use and occupation of 25 sq. yds. of land for the period 10.06.1960 to 14.01.2006. The petitioner has been unable to establish that any decision was taken in the year 1976-77 to grant lease with respect thereto to the petitioner. Thus the question of non communication of the said decision to the petitioner or the petitioner being not liable for damages thereafter does not arise. Even if it were to be believed that some notings favourable to the petitioner exist on the file, the same do not create any right in favour of the petitioner. The Apex Court in *Sethi Auto Service Station v. DDA* (2009) 1 SCC 180 held that internal notings are not meant for outside exposure and notings in the file culminate into an executable order affecting the rights of the parties only when it reaches the final decision making authority in the department, gets his approval and the final order is communicated to the person concerned. Similarly, in *Jasbir Singh Chhabra v. State of Punjab* (2010) 4 SCC 192, it was held that issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person, someone may suggest a particular line of action; however, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The said views were recently approved in *UOI v. Vartak Labour Union JT* 2011 (3) SC.

110. Similarly, merely because the petitioner in the year 1974-75 had himself offered to take the land on lease on payment of charges/premium therefor and the delay therefrom till 2005 being of the W.P.(C) 3225/2006 *Page 7 of 11* respondent is irrelevant. The said factors do not in any way dislodge the fact that the petitioner inspite of full knowledge of the land leased out to him being 375 sq. yds. only surreptitiously got the plans for construction over 400 sq. yds. sanctioned from the NDMC without seeking the approval as he was required to obtain from the L and DO. An encroacher in unauthorized occupation of the land has no inherent right to seek allotment or title with respect thereto and cannot avoid damages for unauthorized use and occupation for the reason of having applied for title and the delay in conferring such title being of the land owning agency. The petitioner, as aforesaid has failed to establish any right in his favour to get a lease with respect to the said 25 sq. yds. of land. Neither any policy in this regard is shown nor is the

case of petitioner established to be similar to C-547 Defence Colony, the only instance cited, specially in the light of reasons aforesaid given by the respondent L and DO. Even otherwise, the petitioner as an encroacher and land grabber has no equity in his favour and is not entitled to any relief in this equitable jurisdiction. Reference, if any necessary can be made to *Rajinder Kakkar v. Delhi Development Authority* 54 (1994) DLT.

484. Golf Links is one of the premium residential localities situated in the heart of the city and it is common knowledge that the market rate of land therein is manifold the notified rates on the basis whereof the premium with respect to the said 25 sq. yds. of land has been claimed from the petitioner. The petitioner, though for the last over 45 years has illegally occupied public land, even after being made an offer for acquiring leasehold rights therein at nominal rates, cannot be heard to challenge / dispute the damages for such illegal occupation, amounting to `5,14,067/- only for the said period of 45 years. W.P.(C) 3225/2006
Page 8 of 11.

15. Though some merit is found in the argument of the petitioner that damages for unauthorized use and occupation are to be determined by the Estate Officer but the petitioner forgets that the claim for such damages of `5,14,067/- for 45 years is as a condition for grant of lease with respect to the said 25 sq. yds. and not as a legally enforceable due, to be adjudicated by the Estate Officer under the provisions of the PP Act. It is also not as if the demand of ` 5,14,067/- for unauthorized occupation of 45 years is whimsical. Rather, taking judicial notice of prevalent values and rents in the locality, the same is found to be most reasonable, if not on the lower side. Generally it is also seen and as is evident from detailed calculation in present case also, that such demands are as per prescribed rates. The respondent L and DO was not obliged to have the claim for such damages assessed from the Estate Officer. The only effect of the petitioner not accepting the condition contained in the letter dated 22.11.2005 (supra) of payment of such damages for grant of lease of 25 sq. yds. of land is, that the petitioner would not be entitled to said lease. Thus no merit is found in the said contention also..

16. Thus, notwithstanding the petitioner having paid `2,89,716/-, as premium for 25 sq. yds. of land it is found that the offer contained in the letter dated 22.11.2005 (supra) was a composite offer and the grant of lease of 25 sq. yds. was subject to payment not only of the premium of `2,89,716/- but also payment of damages for unauthorized use and occupation and which the petitioner has failed to accept unequivocally. The respondent L and DO is thus not found to be bound today to grant lease of the said 25 sq. yds. of land to the petitioner in terms of the letter dated 22.11.2005 also. W.P.(C) 3225/2006 Page 9 of 11.

17. As far as the claim for misuse charges is concerned, the same is found to entail disputed questions of fact with the petitioner claiming that the misuse stopped soon after the first notice dated 28.11.1974 and the respondent L and DO contending otherwise. The said disputed questions of fact cannot be adjudicated in writ jurisdiction and thus the challenge to the said misuse charges in this fora is not maintainable. Though as aforesaid the petitioner has chosen not to place the Perpetual Lease Deed before this Court but other such lease deeds noticed by this Court are generally found to contain arbitration clause. If that be so, the remedy of the petitioner would be to invoke the said arbitration clause, else, to institute a suit in this regard. The respondent L and DO on the other hand would be entitled to take action in accordance with law for alleged misuse and failure of petitioner to pay charges for condoning the same. The counsel for the petitioner in this regard has relied on Prof. Ram Prakash Vs. DDA ILR SUPP.

4. (2007) Delhi 62 and which judgment was subsequently confirmed by the Apex Court to contend that misuse charges after long lapse of time cannot be claimed. However, in the case of Prof. Ram Prakash (supra), the first demand for misuse charges was made long after the alleged misuse and only when the lessee had approached for freehold conversion and in such circumstances was held to be bad. However that is not the case here. In the present case, objection to the misuse was raised immediately after the premises was found being misused and which misuse is admitted by the petitioner also and the petitioner claims to have taken steps for having the misuse stopped. It is the case of the respondent that though it from time to time took steps for having the property inspected but inspection was denied. The present case thus W.P.(C) 3225/2006 Page 10 of 11

cannot be said to be a case akin to the facts in Prof. Ram Prakash. The matter relating to misuse was alive in the present case at least till the year 1991. The respondent has further stated that the property was thereafter being treated as re-entered and for which reason no claim was made. The said questions in any case do not fall for adjudication in this proceeding and the petitioner would be at liberty to raise the same in arbitration / suit. Moreover, the said misuse charges also were claimed as a condition for grant of lease of 25 sq. yds. and the payment thereof in the face of admission of misuse was a pre-condition to grant of the lease of said 25 sq. yds. and thus the challenge thereto cannot be sustained..

18. No merit is thus found in the writ petition. The same is dismissed. The interim orders are vacated. The appeal to the District Judge against the order of Estate Officer is informed to have been dismissed. The petitioner having enjoyed the interim orders of this Court, the respondent is directed to (unless there is stay of dispossession in any other proceeding) within four weeks hereof take steps for dispossession of the petitioner from the said 25 sq. yds. of land and for recovery of damages for unauthorized use and occupation thereof. The petitioner is also burdened with costs of Rs.25,000/- payable to respondent L and DO within four weeks of today. RAJIV SAHAI ENDLAW, J FEBRUARY 9, 2012 'gsr' W.P.(C) 3225/2006 Page 11 of 11

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