SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Uoi and Others Vs. Engineering and Ind. Corporation Pvt. Ltd

Uoi and Others Vs. Engineering and Ind. Corporation Pvt. Ltd

SooperKanoon Citation : sooperkanoon.com/948148

Court : Delhi

Decided On : Jul-10-2012

Judge : Pradeep Nandrajog, the Honourable Mr. Justice Sunil Gaur &Amp; the Honourable Ms. Justice Pratibha Rani

Appeal No. : L.P.A. No. 1125 of 2007

Appellant : Uoi and Others

Respondent : Engineering and Ind. Corporation Pvt. Ltd

Judgement :

Pradeep Nandrajog, J.

1. Save and except one issue, various issues raised in LPA No.415/2005, LPA No.1125/2007, LPA No.1233/2007, LPA No.134/2008, LPA No.301/2008, LPA No.381/2008, LPA No.468/2009, LPA No.581/2009, LPA No.397/2011, LPA No.635/2011 and LPA No.650/2011 were answered by a Division Bench Coram : Pradeep Nandrajog, J. and Sunil Gaur, J. vide judgment dated February 28, 2012. One question was referred to a Larger Bench, as framed in para 81 of the decision dated February 28, 2012, and the same pertains to a policy circular considered and opined upon by a Division Bench of this Court in the decision reported as 2005(1) AD (Delhi) 634 UOI vs. Vinay Kumar Aggarwal.

2. While referring the question, it was recorded that the same arises out of a policy guideline dated August 02, 1996. In para 84 of the order dated February 28, 2012

it is expressly recorded that notwithstanding the question of law being referred to a Larger Bench and requiring the registry to place before the Hon'ble Chief Justice the instant appeal for constitution of a Larger Bench, all learned counsel appearing in the connected appeals would be permitted to address arguments on the question of law settled and thus we had heard learned counsel for the parties who were appearing in other appeals, since the decision in the reference would impact other appeals as well.

3. Order dated July 06, 2012 passed by this Bench at the conclusion of the hearing of the question of law referred, records that notwithstanding there being an error in the order referring the question of law by recording that it arises with reference to the policy guideline dated August 02, 1996; it was noted that the reference should be to the policy guideline dated June 25, 1996 and further notwithstanding there being a difference in the language of what was recorded by the Division Bench with reference to the extracts of the policy guidelines dated August 02, 1996 and the policy guideline dated June 25, 1996, there was no material impact on the question of law settled and that even with reference to the policy guideline dated June 25, 1996, the question of law referred was correctly framed and required to be answered and that learned counsels so agreed.

4. The error of referring to the correct policy guideline, by the Division Bench, is on account of the fact that in the city of Delhi, lease-hold tenures have been conferred by various Land Administering Agencies but the subject of „Land?is under the aegis of the Union of India. The decision to convert lease-hold tenures into free-hold tenures was taken by the Union of India and the terms were notified separately by Land DO, DDA and other Land Administering Agencies; the latter were following the guidelines adopted by Land DO in letter and spirit and for unexplainable reasons they chose to separately notify the policy guidelines and as and when problems were encountered, Land DO issued clarificatory/subsequent modifications, other Land Administering Agencies followed, and this explains the existence of a policy guideline dated August 02, 1996, which in fact is issued by DDA, but inadvertently got referred to, in the reference order, as the policy guidelines issued by Land DO/Union of India. In any case, as noted by the Full Bench, and as recorded in the order dated July 06, 2012, nothing turns thereon.

5. This Bench, accordingly heard arguments on the question :

“Whether Clause 4 of the circular dated June 25, 1996 is restricted to restoration charges to be paid towards unauthorized occupation of the demised property upon the lease being determined and re-entry order passed till the date of the lease being restored and re-entry order withdrawn and does not encompass damages payable on account of misuse and/or unauthorized construction or Clause 4 means as was interpreted in Vinay Kumar Aggarwal’s case (supra).”

6. The relevant clause of the circular in question reads as under:-

“4. In this connection it is further clarified that -

(a) In respect of misuse of properties or unauthorized construction thereon, if misuse is condonable as per Master Plan provisions/zoning regulations or it is within the condonable items as prescribed by the Government, from time-to-time, no additional conversion fee will be charged in such cases as prescribed vide this Ministry?s letter of even number, dated 8.4.1992.

(b) In respect of other misuses, conversion to freehold will be available provided the area misused does not exceed 25% of the built up area or 500 sq.ft. conversion fee, as prescribed, will be charged.

(c) In cases where applications for sale permission were made by the parties and in the process unearned increase was deposited, but sale deeds have not been executed, pursuant to the sale permission, refund/adjustment or the amount paid by the party will be available in case party approaches the Government of conversion of property on payment of the prescribed conversion fee/surcharge/Addl. Conversion fee, as applicable.

In such cases it is further clarified that where property has been re-entered, the re-entry order will be revoked by the lease administering authorities on payment of prescribed charges of Rs.100/- per day or Rs.3,000/- per annum and in such cases no damages on account of deemed unauthorized occupation of Government land/property will be levied by the lease administering authority while allowing conversion.”

7. Before noting the arguments of learned counsel for the parties it would be useful if we pen profile the backdrop resulting in the issuance of the policy guideline dated June 25, 1996 and for which we may conveniently use the canvas of the narratives in the order of the Division Bench dated February 28, 2012.

8. Various Government agencies and principally the Land and Development Office (Land DO) had been developing land in Delhi and allotting the same under perpetual lease-deeds. Depending upon whether the land was to be used for a residential, commercial or an industrial purpose, while executing the perpetual lease-deed the land use was stipulated i.e. the purpose for which the land could be used as per the lease was stipulated and so was the user of the building to be constructed thereon; it was expressly recorded in the lease-deed that the same i.e. the use for the purpose stipulated was a condition of the lease and breach thereof would entail the penalty of forfeiture and upon determination of the lease the lessor would be authorized to re-enter the land demised. Similarly, there were conditions imposed in the lease that the lease-hold tenure would not be transferred without the prior written consent and permission of the lessor; which the lessor could deny or permit, and if permitted upon demanding a percentage of the unearned increase in the value of the land not exceeding 50%. It was expressly recorded, as a condition of the lease, that breach of this condition would entitle the lessor to determine the lease and effect re-entry. It was thirdly made a condition that the lessee would strictly construct a building, having a covered area sanctioned by the lessor and in conformity with the municipal building by-laws. It was expressly recorded in the lease-deed that breach of this condition would also entitle the lessor to determine the lease and effect re-entry.

9. Thus, as noted by the Division Bench, in para 47 of its opinion dated February 28, 2012, there were three kinds of breaches contemplated by the perpetual lease-deed executed; and we may only highlight that the perpetual lease-deed executed by all Land Administering Agencies have pari material clauses i.e. the same very three conditions and consequences of breach thereof.

10. As noted by the Division Bench, in para 46 of its opinion dated February 28, 2012, the Government took a decision that the perpetual lessee could opt for the

lease-hold tenure to be converted into a free-hold tenure by paying conversion charges at the rates notified. The conversion scheme was notified on February 14, 1992 and in respect of those persons who had transferred the lease-hold interest without the prior permission of the lessor it was stipulated in the policy that such transferees could also avail the benefit of the policy, but upon paying not only the conversion charges but in addition a surcharge of 331/3%. The policy took note of there being either misuse or unauthorized construction, rendering liable the leasehold tenures to be determined or in some cases already determined. The policy required that in such cases the misuse would be stopped and/or the unauthorized construction removed and damages paid for the period of the misuse and/or the period during which the unauthorized construction existed. The policy stipulated :

"In case of re-entered properties conversion would be allowed only when re-entry notice has been withdrawn and the lease restored."

11. Suffice would it be to state that re-entered properties were the ones where the lease-hold tenure had been determined on account of one or more of the three breaches contemplated i.e. transfer of interest without the written consent of the lessor, misuse or unauthorized construction being made.

12. The policy formulated in the year 1992 and as notified, did not provide the manner in which re-entry would be withdrawn. A clarificatory guideline dated April 28, 1994 was issued, but limiting to cases of breach by way of transfer of the lease-hold tenure without the prior written consent of the lessor and clarified that the original policy took care of such situation in the form of a surcharge to be paid. Unfortunately, the Ministry of Urban Development did not clarify with reference to re-entry being made or liable to be made on account of breach of the lease due to misuse or unauthorized construction. Another policy circular dated May 16, 1994 was issued with reference to the issue of unearned increase payable and clarified that none had to be charged.

13. The next policy circular is the one with which we are concerned i.e. the policy circular dated June 25, 1996 and the subject matter of dispute is the interpretation to Clause 4 of the policy circular, contents whereof have been extracted by us in

para 6 above.

14. In Vinay Kumar Aggarwal?s case (supra), a Division Bench of this Court has opined that the clause in question mandates revocation of the re-entry made by the Lease Administering Authorities by charging Rs.100/- per day or Rs.3000/- per annum where re-entry was ordered on account of misuse of properties or unauthorized construction and this would mean that upon payment of said sums the breaches stand condoned, inasmuch as without the breach being condoned, re-entry cannot be revoked. To put it simply, the said amounts have been treated akin to compounding charges. The Division Bench has been influenced by the fact that the clause in question, vide para (a) thereof specifically deals with issues of misuse of properties or unauthorized construction thereon.

15. We may note that the decision of the Division Bench was challenged before the Supreme Court and Leave to Appeal was granted, but Civil Appeal No.1364/2006 UOI vs. Vinay Kumar Aggarwal was dismissed vide order dated February 18, 2010 which reads as under:-

“We are not inclined to interfere with the impugned judgments of the High Court. We however, leave the question of law that has been raised by the ASG, open for decision in some other case. With this observation the appeal is dismissed.”

16. However, in a later decision pronounced by a Division Bench of this Court, following the law declared by the Division Bench in Vinay Kumar Aggarwal’s case (supra), the Supreme Court granted Leave to Appeal in SLP(C) No.31868/2010 UOI vs. Anu Mehra and the matter is pending before the Supreme Court.

17. Sh.Amarjit Singh Chandhiok, learned ASG urged that the Division Bench of this Court in Vinay Kumar Aggarwal’s case (supra), probably for the reason the argument was not advanced, did not consider the argument that when a lease is determined the continued possession of the lessee becomes unauthorized; rendering the lessee liable to pay damages on account of unauthorized occupation of the property leased and that the circular guideline in question merely contemplated this period of unauthorized occupation and provided that for each days unauthorized occupation damages would be paid at Rs.100/- per day subject

to a maximum of Rs.3000/- per annum and not that this was the amount payable to regularize the breach. Per contra, learned counsel appearing for the respondents urged that the view taken by the Division Bench was correct and that if re-entry was effected due to misuse of property or an unauthorized construction being made, the revocation thereof on charges payable as per the circular would mean that the breach stood compounded.

18. Let us digest the clause in question. The opening words of the clause : 'In this connection it is further clarified' makes it clear that the circular is clarificatory. The circular in question deals with various issues and one of them being the issue of re-entry being effected upon there being either misuse of property and/or unauthorized construction thereon. Vide para (a) of Clause 4 it is clearly contemplated that the clause deals with an issue concerning the misuse of property or unauthorized construction thereon and clarifies only with respect to misuse, evidenced by the fact that the said para refers to such misuse which is condonable as per Master Plan provisions or Zoning Regulations; Clause (b) contemplates situations of misuse not exceeding 25% of the built area or 500 sq. ft. Clause (c) contemplates situations of unearned increase. After listing, in clauses (a), (b) and (c) a particular situation pertaining to misuse, unauthorized construction or a transfer, a residual provision is stipulated in the concluding paragraph of the clause, dealing by way of clarification, with properties which have been re-entered. It stands clarified that in cases of properties which have been reentered, 'the re-entry order will be revoked by the lease administering authorities on payment of prescribed charges of Rs.100/- per day or Rs.3,000/- per annum and in such cases no damages on account of deemed unauthorized occupation of Government land/property will be levied by the lease administering authority while allowing conversion'.

19. The underlined portions in the extract of the policy guideline would highlight that the charges stipulated are in lieu of damages on account of unauthorized occupation of the demised property, upon the lease being determined, and ex-facie have no concern or connection with the misuse charges or charges towards unauthorized construction. Prima-facie, the error committed by the Division Bench is not to keep in view the distinction between a lessor being entitled to determine a

lease upon breach of a condition thereof, but being willing to condone the breach if adequately recompensed, vis--vis a lessor determining the lease relegating the lessee to the status of an unauthorized occupant and becoming liable to pay damages for unauthorizedly occupying the premise in question, and the lessor fixing the damages to be paid to regularize the unauthorized occupation. The expression 'On account of deemed unauthorized occupation of Government land/property', which immediately follows the expression 'On payment of prescribed charges of Rs.100/- per day or Rs.3000/- per annum', makes it evident that the circular clearly conveys the view projected by the learned Additional Solicitor General and thus we accept the argument.

20. We accordingly overrule the view taken by the Division Bench of this Court in Vinay Kumar Aggarwal's case (supra) and answer the reference as per para 19 above. We hold that Rs.100/- per day, subject to a maximum of Rs.3000/- per annum payable as per the policy circular dated June 25, 1996 is restricted only to the period post re-entry being effected and is the amount towards damages payable for unauthorized occupation and that the said sum is not towards regularizing a breach in the form of misuse or unauthorized construction.

21. We may clarify that learned counsel for the respondents had attempted to make submissions qua the rights of the lessees flowing out of, from or under subsequent policy guidelines issued in the year 1999 and the year 2003 and that we had indicated during hearing that our mandate was restricted and limited to answer the reference made to us and not expand the scope thereof; and suffice would it be for us to note that all such issues, if they arise in individual cases, could be addressed before the Division Bench which would hear the appeals, but would simultaneously note that these guidelines issued in the year 1999 and in the year 2003 have been noted and considered in the order dated February 28, 2012.

22. The appeal and other appeals, number whereof is noted in paragraph 84 of the decision dated February 28, 2012 of the Division Bench are directed to be placed before the appropriate Bench as per Roster by the registry.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com