

Subhash Chander Vs. D.D.A.

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Court : Delhi

Decided On : May-17-2012

Judge : The Honourable Acting Chief Justice Mr. a.K. Sikri & Rajiv Sahai
Endlaw

Appeal No. : LPA 991 OF 2006

Appellant : Subhash Chander

Respondent : D.D.A.

Advocate for Pet/Ap. : Mr. Batra

Judgement :

A.K.SIKRI, ACJ.

1. The appellant is the lessee of plot No.A-3/51, Paschim Vihar, New Delhi. Vide perpetual lease deed dated 8th January, 1974 executed between the appellant and the President of India. The appellant applied for conversion of the leasehold rights into freehold. In response, the respondent Delhi Development Authority (DDA) sent a demand letter dated 21st August, 1998 calling upon the appellant to deposit a sum of Rs.22,27,664/- on the ground that the appellant was misusing the said residential premises by running a school therein with the name "Premier Public School". As per the respondent DDA, notice dated 28th May, 1983 had also been issued to the appellant to show cause why misuse charges be not levied. The case of the respondent DDA is that no reply was received to the said show

cause notice and therefore another show cause notice dated 7th January, 1984 was also issued but even that was not responded to and the appellant did not even intimate that he had removed the misuse. It was only when inspection was carried out in the year 1995, pursuant to the conversion application made, that it was reported that there was then no misuse. On this basis, the respondent DDA computed and demanded misuse charges from 28th May, 1983 to 11th December, 1995.

2. The appellant, in the first instance took the matter before the Lok Adalat of the respondent DDA, questioning the levy of aforesaid misuse charges. His contention was that he was not served with any show cause notice. During the proceedings before the Lok Adalat, on 17th December, 2002, the appellant was confronted with the proof of service of show cause notice dated 7th January, 1984; however the appellant still denied the same stating that he had not received any such show cause notice. As the matter could not be sorted out in the Lok Adalat, those proceedings were dropped. Thereafter the appellant filed W.P.(C) No.8075/2003 under Article 226 of the Constitution of India in this Court challenging the aforesaid demand of Rs.22,27,664/- on account of misuse charges and with prayer that his application for conversion from leasehold to freehold be considered and processed without demanding these charges.

3. Significantly, in the said writ petition, the petitioner accepted the receipt of show cause notice dated 7th January, 1984. The case set-up now in the writ petition was that the petitioner had given reply to the said show cause notice on 15th January, 1984. The respondent DDA contested the writ petition by contending that no such reply was received and the purported reply dated 15th January, 1984 filed by the appellant along with writ petition was a fabricated document. The learned Single Judge accepted the aforesaid plea of the respondent DDA on the ground that once the appellant had taken the stand before the permanent Lok Adalat that no show cause notice dated 7th January, 1984 was at all received, the question of giving any reply thereto did not arise and had it been so, the appellant could have placed the said reply for consideration of the permanent Lok Adalat. The learned Single Judge vide order dated 17th September, 2004 also observed that if the appellant had done so, the permanent Lok Adalat which even records evidence

could have gone into the entire controversy which was now sought to be raised in the writ petition. On this ground, the writ petition was dismissed.

4. The appellant challenged the said order by filing LPA No.1116/2004. According to the appellant, at that stage he was able to get a photocopy of Branch Diary Register of the respondent DDA wherein receipt of the reply dated 15th January, 1984 sent by post by him to the respondent DDA was recorded at serial No.3298 on 18th January, 1984. This fact was brought to the notice of the Division Bench hearing the aforesaid appeal. The Division Bench, on this plea, permitted the appellant to file review petition seeking review of judgment dated 17th September, 2004 passed by the learned Single Judge.

5. The appellant accordingly filed Review Petition No.162/2005 pointing out that the reply was not forged as it was duly recorded in the Receipt Dak Register of the respondent DDA at the aforesaid entry. This review petition was contested by the respondent DDA *inter alia* on the ground that the respondent DDA does not receive so much dak on any particular day and Receipt No.3298 was improbable. The learned Single Judge dismissed the writ petition, after recording the aforesaid submissions of both the parties, in the following words:-

“11. These are writ proceedings and such a disputed question of fact cannot be gone into. More so far as the reasons that before the permanent Lok Adalat, petitioner took a stand that he was never served with any show cause notice dated 7.1.1984. While filing the writ petition, petitioner took a stand that he was served with the show cause notice but he replied to the same.

12. Documents appear to have been created by the petitioner.

13. RP dismissed.”

6. Challenging the said orders passed in the writ petition as well as in the review petition, present Intra-Court appeal is preferred. Submission of the learned counsel for the appellant is that there was no reason to believe the stand of the respondent DDA that there could not be so many receipts of dak in one day. It is submitted that the photocopy of the branch diary reflects that the letter was

delivered vide entry no.3298 on 18th January, 1984. Mr. Batra counsel for the appellant has also produced the copy of the letter dated 15th January, 1984 to show that it was hand delivered. There is a stamp of DDA thereupon and entry No.3288 is given on this letter also purportedly delivered on 18th January, 1984.

7. We have already extracted paras 11 to 13 of the order of the learned Single Judge passed in the review petition. In para 11, the learned Single Judge has observed that the disputed questions of fact are raised which cannot be gone into and at the same time it is stated in para 12 that documents appeared to have been created by the appellant. The learned Single Judge is right to the extent that whether the aforesaid reply dated 15th January, 1984 was sent by the appellant or hand delivered or not is a disputed question of fact. It is more so when the respondent DDA has specifically denied having received the aforesaid reply. Once that is the observation made in para 11, at the same time making the observation that the document appeared to have been created by the appellant in para 12 may not be appropriate. In these circumstances, once disputed questions of fact could not be gone into in the writ jurisdiction, the learned Single Judge should have relegated the parties to other proceedings.

8. No doubt, the stand taken by the appellant before the permanent Lok Adalat and thereafter in the writ petition is somewhat contradictory. However the appellant has his own explanation and that also becomes a matter of evidence. In these circumstances, we are of the view that the writ petition should have been dismissed only on the ground that it raises disputed questions of fact.

9. We find that clause VI. of the Perpetual Lease Deed dated 8th January, 1974 contains an arbitration clause and stipulates that in the event of any question, dispute or difference etc. the matter shall be referred to the sole arbitration of the Lt. Governor or any other person appointed by him. Better course of action, in these circumstances, would be for the appellant to invoke the said arbitration.

10. We may record that the learned counsel for the appellant had made a submission that the appellant was entitled to a hearing and since the impugned demand was made without giving any hearing to the appellant, instead of asking the appellant to invoke the remedy of arbitration, direction be issued to the

respondent DDA to give the appellant a hearing and pass an order on that basis. However this submission cannot be accepted as it proceeds on the assumption that the receipt of the reply dated 15th January, 1984 which the appellant claims to have given to the respondent DDA stands admitted. Once we find that itself is a disputed question of fact, the aforesaid course of action suggested by the appellant cannot be accepted. We may also record that in the counter affidavit filed by the respondent DDA categorical stand is taken that no such reply was received. Under these circumstances, no purpose would be served in sending the case back to the respondent DDA to determine whether reply was given or not and which can be sorted out only after the evidence is led on this disputed issue. For this reason we hold that arbitration would be the appropriate remedy.

11. We thus modify the order of the learned Single Judge and dismiss the writ petition on the aforesaid ground as not maintainable as it raises disputed questions of fact giving liberty to the appellant to invoke arbitration.

No order as to costs.

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