

D.D.A. Vs. Videocon Industries Ltd. and Another

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Court : Delhi

Decided On : May-11-2012

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

Appeal No. : Rev.P.719 of 2011 & CM.No.21499 of 2011 (for stay) in LPA No. 411
of 2007

Appellant : D.D.A.

Respondent : Videocon Industries Ltd. and Another

Judgement :

RAJIV SAHAI ENDLAW, J.

1. This Bench has vide judgment dated 14th November, 2011 allowed the appeal of the DDA by setting aside the order of the learned Single Judge insofar as limiting the claim of the appellant DDA for unearned increase, to the rate of Rs.100/- per flat/floor space, and upholding the demand of the appellant DDA for unearned increase. While so upholding the demand of the appellant DDA, notice in para 13 of the judgment was taken of the argument of the respondent/Review Applicant that the appellant DDA while computing the unearned increase had considered the market rate / price, more than that declared by the Delhi Government from time to time. The said argument was however negated by holding that the appellant DDA having itself from time to time published market

price for the purpose of unearned increase and the demand on the respondent/ Review Applicant being in terms of the prices so notified, in the absence of any challenge to the said Circulars of the DDA, DDA could not be held bound to compute the unearned increase on the basis of market price declared by any other agency.

2. This review application is confined to the aspect of market price which can form the basis of the demand for unearned increase. It is the case of the respondent/Review Applicant that DDA had been calculating unearned increase on the basis of schedule of market prices notified by the Department of Urban Development, Ministry of Urban Affairs and Employment, Government of India and there was no occasion for the DDA to depart from the said rates; that the Circulars relied upon by the DDA were provisional and in the absence of any notification of the market price by the competent authority i.e. the Ministry of Urban Affairs and Employment, DDA could not on its own determine the market rate/price. It is thus the case in the review application that the market rate of Rs.57,960/- per sq mtr. as published by the Ministry of Urban Development for the relevant years 1998-2000 ought to have been applied instead of the rate of Rs.88,128/- per sq mtr. applied by the DDA in computing the demand. Review is also sought of the demand qua interest on unearned increase.

3. Notice of the review application was issued. Reply has been filed by the appellant DDA and to which rejoinder has been filed by the respondent/Review Applicant. The counsels have been heard.

4. The senior counsel for the respondent/Review Applicant has invited attention to -

(i) letter dated 16th April, 1999 of the Department of Urban Development, Ministry of Urban Affairs and Employment to the DDA informing of the decision to retain the market price as published for the period 1st April, 1994 to 31st March, 1996 also for the period 1st April, 1996 to 31st March, 1998 and intimating the prices fixed for the period 1st April, 1998 to 31st March, 2000 wherein the price fixed for Jhandewalan, for commercial purpose, was at the rate of Rs.57,960/- per sq. meter;

(ii) letter dated 18th January, 2002 of the DDA to the Ministry of Urban Development informing that the market rate of land fixed by the Ministry were not followed by the DDA except for the purpose of lease administration i.e. for the purpose of working out of misuse charges, unearned increase etc; that in the absence of any notification from the Ministry qua prices w.e.f. 1st April, 1996, DDA had increased the rates on a provisional basis between 1st April, 1996 to 31st March, 2000 (and in accordance wherewith the rate of Rs.88,128/- per sq. mtr. was applied by DDA) and seeking permission for adopting the same;

(iii) Circular dated 15th February, 1999 of Land Costing Wing of the DDA also to the effect that the rates fixed by the DDA for the period after 1st April, 1996 were provisional.

5. On the basis aforesaid, the senior counsel for the respondent/Review Applicant has contended -

(i) that since the subject land is nazul land i.e. belonging to the Government, though management thereof is vested in the DDA, the DDA is bound by the Government rates;

(ii) that as per the letter dated 18th January, 2002 and Circular dated 25th May, 1999 (supra) of the DDA also, the rates fixed by it w.e.f. 1st April, 1996 were, in the absence of any rates prescribed by the Government of India and provisional and of which DDA had sought approval from the Government of India;

(iii) that no approval was granted by the Government and thus DDA could not have / cannot charge the rates as mentioned in the letter dated 18th January, 2002;

(iv) reliance in this regard is placed on paras 39 to 42 of the **DDA Vs. Joginder S. Monga** (2004) 2 SCC 297 to contend that Central Government is the ultimate authority for determination of market value and without the proposal of the DDA receiving any favourable response from the Central Government, DDA was bound by the conscious decision of the Central Government retaining the rates for the period 1st April, 1996 to 31st March, 1998;

(v) Qua interest it is stated that since the demand for unearned increase was itself raised in the year 2000, no interest for the period prior thereto, as demanded, could have been demanded. Reliance is placed on a Circular dated 16th August, 2005 of the Co-ordination (Land Disposal) Wing of the DDA in this regard.

6. The counsel for the appellant DDA per contra has argued that the respondent/Review Applicant in the garb of review is re-arguing the matter. It is contended that no arguments as raised now were raised at the time of earlier hearing. It is highlighted that no challenge to the demand of interest also was made at that time. The judgment in **Joginder S. Monga** (supra) is sought to be distinguished by contending that it was a case where the demand of the DDA was struck down for the reason of being in direct conflict with the letter dated 16th April, 1999 (supra) of the Central Government. It is urged that DDA on 25th May, 1999 had fixed its own rates and also communicated the same to the Central Government vide letter dated 18th January, 2002; that the Central Government had not controverted the said proposal of the DDA and is deemed to have accepted the same. It is also argued that the market rate is different from pre-determined rate. It is further contended that w.e.f. 19th April, 2006, even the concept of pre-determined rates has been given up and DDA is now relying only on auction. The counsel for the DDA has further stated that even if there are any errors in the demand for interest, and if the demand for interest is contrary to the Circular dated 16th August, 2005 (supra) of the DDA itself, upon the respondent/Review Applicant pointing out the said error, the same will be corrected by the DDA itself.

7. The senior counsel for the respondent/Review Applicant in rejoinder has reiterated the earlier submissions and has contended that the pleas now taken are there in the file.

8. We find considerable merit in the argument of the counsel for the appellant DDA that all the arguments now raised were not raised at the time of hearing of the appeal on 20th October, 2011. The respondent/Review Applicant indeed has sought to re-argue the matter. The reliance in this regard on the written arguments filed or the pleas taken in the pleadings but which were not urged at the time of

hearing and during the oral submissions, is of no avail. Either the counsels should give up the right of oral submission by placing reliance on the pleadings and the written arguments and if make oral submissions, the Court can proceed on the premise that the other pleas in the pleadings are not urged and ignore the same. It is not as if the respondent/ Review Applicant in the present case did not at the time of hearing, challenge the rate at which the demand for unearned increase was made. However, the only argument was that the rates of the Government were to apply. Neither the judgment on which the reliance is now placed nor the documents, some of which are filed for the first time with the review application, were referred to.

9. Though the review application is liable to be dismissed on this ground alone but to do complete justice, we deem it appropriate to examine the arguments now raised, on merits.

10. As far as the demand for interest is concerned, the counsel for the appellant DDA having stated that the same would be gone into when the respondent / Review Applicant approaches the DDA for payment in terms of that part of the judgment which is not under challenge, we do not deem it necessary to adjudicate on the same.

11. We have in our judgment dated 14th November, 2011 held the appellant DDA to be entitled to 50% of the unearned increase. It is not in dispute that the unearned increase is the difference between the premium paid for the land and the „market price on the date of sale, transfer, assign, parting with possession?. The question which arises is, as to what that market price is to be. We find that the market price was being fixed by the Central Government and the DDA was following the same till 31st March, 1996. However, it appears that the Central Government did not fix the market prices w.e.f. 1st April, 1996 and the decision in this regard remained pending for long. However since DDA, in administration of leases granted by it was required to apply the market price, DDA, w.e.f. 1st April, 1996, in the absence of market prices fixed by the Government, started itself fixing the market price for commercial lands by increasing the same by 20% every year over the price fixed by the Government for the period 1st April, 1994 to 31st

March, 1996. It was only vide letter dated 16th April, 1999 that the Central Government communicated the decision to retain for the period 1st April, 1996 to 31st March, 1998, the market prices as fixed for the period 1st April, 1994 to 31st March, 1996. The rates w.e.f. 1st April, 1998 to 31st March, 2000 were also communicated.

12. We can safely assume that in the absence of any decision of the Central Government between 1st April, 1996 to 16th April, 1999, DDA would have administrated other leases during the said period by treating the market price increased by 20% as aforesaid and claimed unearned increase and other charges from other lessees on the said basis. By applying the said increases, the market price of the subject land in the year 2000 was Rs.88,128/- per sq. mtr. as against the price of Rs.57,960/- per sq. mtr. prescribed by the Central Government.

13. The aforesaid facts would show that a piquant situation had arisen, with DDA treating the market prices to be higher than the market price fixed by the Central Government. If the DDA were to after receipt of letter dated 16th April, 1999 (supra), follow the rates fixed by the Central Government, it would have resulted in DDA charging different rates from different persons though similarly situated. It is perhaps for this reason that DDA vide its letter dated 18th January, 2002 sought the approval from the Central Government of its own rates.

14. Though the counsel for the DDA has been unable to show that any approval was so accorded and the argument of the deemed approval cannot be accepted but we nevertheless hesitate from directing the DDA to apply the Central Government rates. As aforesaid, DDA must have dealt with other leases as per its own rates; DDA cannot be directed to treat the market price in the year 2000 as lower than that applied by it in the year 1998-99.

15. That brings us to the judgment of the Apex Court in **Joginder S. Monga** (supra). The said case was concerned with Nazul land i.e. land belonging to the Government and placed at the disposal of DDA for management. It was in reference to such land that the Supreme Court held that the Central Government was the ultimate authority for determination of the market value and the Central Government having taken a decision to continue with the same valuation, DDA as

a delegatee of the Central Government could not question the said decision.

16. The question which arises is whether the aforesaid judgment can be applied to the present case. The answer would depend upon, whether the subject land is Nazul land or not. Though the senior counsel for the respondent/Review Applicant has argued that the subject land is Nazul land but a minute perusal of the writ petition as well as the review application does not show any such plea having been taken therein, though the land has been described as Nazul land in the rejoinders and to which the appellant DDA has had no occasion to respond.

17. We have in our enquiry as to whether the subject land can be said to be Nazul land, perused the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, as then in force. Rule 23 thereof provides for the lease of Nazul land to be as per Form „A?or Form „B?appended to the rules. A perusal of Form „A?and Form „B?shows that the lease of Nazul land is to be “BETWEEN THE PRESIDENT OF INDIA (hereinafter called “ the Lessor”) through the Delhi Development Authority.....” on the one hand and the lessee/sub-lessee on the other hand. This is in consonance with, Nazul land being land owned by the Central Government and placed at the disposal of the DDA for development, control, supervision, management etc. However when we look at the lease deed of the subject land filed by the respondent/Review Applicant itself along with the writ petition, we do not find the lease to have been granted by the President of India acting through the DDA but to have been granted by the DDA itself. It thus cannot be said that the DDA in the matter of grant of subject land has acted on behalf of the Central Government or that the Central Government is the owner of the subject land.

18. Once it is found that the subject land is not a Nazul land but land belonging to DDA itself, even if DDA in the past has in the administration of leases of non-Nazul land also followed the rates determined and fixed by the Government, it cannot be bound by the said rates and having fixed its own rates and which as per aforesaid are not under challenge, would be entitled to administer the leases of the non-Nazul land in accordance with the said rates.

19. Judicial notice can also be taken of the fact that the prevalent market rates are invariably higher if not much higher than the rates fixed by the governmental authorities. It cannot also be lost sight of that if the consideration for transfer as reflected in the document of transfer is higher than the governmental/DDA rates, unearned increase is to be computed on the basis of the actual consideration. However since the transfer/assignment in the present case was through the route of amalgamation and for which reason the actual consideration paid for the land is not visible, one has to fall back on the rates so fixed by the Government/DDA.

20. We therefore, even on merits, do not find any merit in this review petition which is dismissed. No order as to costs.

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