

Suleman Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Aug-16-2011

Judge : Arun Tandon

Appeal No. : Civil Misc. Writ Petition Nos. 73277, with 73351, 73349, 73358, 73347, 73345, 73354, 73353, 73280, 73348, 73491, 73493, 73350, 73355, 73346, 56556, 58643, 59157, 59199, 59202, 59151, 59153, 60759, 59147, of 2010 & 15434, 15437 & 23007 of 2011

Appellant : Suleman

Respondent : State of U.P. and Others

Judgement :

This bunch of writ petitions has been filed by lessees of developed plots (for construction of residential houses) as per the separate tripartite deeds executed between the concerned petitioner, U.P. State Industrial Development Corporation (herein after referred to as UPSIDC) and M/s Ansal Housing Construction Ltd. New Delhi (hereinafter referred to Ansal).

These petitions are a classic example of the manner in which the UPSIDC in collusion with the construction Company Ansal has created a situation, (a) for defrauding the public exchequer and (b) for mis-leading common person like the petitioners to believe that the Tripartite deed was first transfer of the property and so they were entitled to the benefit of reduced rate of stamp duty under the

relevant Government order. The mis-representation has led to a situation where huge demand towards stamp duty penalty along with interest has been raised against the petitioners under the orders impugned passed by the Stamp authorities under the Indian Stamp Act.

Brief facts of the case as on record of these petitions are as follows.

The State of Uttar Pradesh acquired land situate at village Loni district Ghaziabad under the Land Acquisition Act, 1984. This land was transferred by the State of Uttar Pradesh to the UPSIDC for development.

Ansal vide letter dated 15.2.1997 made a request for allotment of 87.10 acres of said un-developed land to the UPSIDC for developing a housing colony in the housing Sector of Tronica City Loni district Ghaziabad. The request so made by Ansal was accepted by the UPSIDC as per their letter dated 6.5.1997. UPSIDC agreed to allot 87.10 acres of un-developed land to the Ansal @ Rs.397/= per sq.mt. on the terms and conditions mentioned in the letter of allotment. From Clause 18 of the allotment letter it is apparently clear that the period of the lease was 90 years. Clause 7 of the said letter of allotment provided that possession of land shall be delivered to Ansal only after payment of 25% of the total amount of premium and after execution of Memorandum of Understanding with the UPSIDC.

The letter of allotment was acted upon and an memorandum of understanding has been executed between the Regional Manager UPSIDC and the Vice President of Ansal. Copies whereof have been brought on record as Annsure-1 to the writ petition No.73277 of 2010 and as Annexure No. 3 to the counter affidavit filed by the Ansal respectively.

Paragraph 3 of the memorandum of understanding provides for the nature of work to be done for the purposes of development of the undeveloped land allotted to Ansal. It is mentioned that the development had to be undertaken as per the approved plan. The internal development work would include laying of roads, drains, sewers, underground cable, water supply and facility of park, roads community centers, schools etc. The development work had to be completed within 3 years. From paragraph 6 of the memorandum of understanding it is

apparently clear that at least 25% of the plots (in terms of number and area) were to be transferred as built up accommodation. For the purpose Ansal was permitted to start booking and to accept the sale proceeds in their name from prospective buyers of plots/buildings immediately after getting the possession and on approval of the layout plan.

Absolutely no price limit was fixed for Ansal on which it could let out the developed plots/residential house. Suffice to record that in the facts of the case the plot have been leased out to the petitioners approximately @ Rs.2400/= per sq.mt. It will be seen that the allotment has been made by Ansal after developing the plot at seven times the price on which they had obtained possession of the same land for development.

Clause 18 further stipulates that the persons obtaining plots from Ansal after development will further be required to pay 10% of the total cost of the land in lump sum at the time of tripartite lease to the UPSIDC as lease rent. After allotment of the developed plot or built up premises a tripartite lease deed be executed between UPSIDA, Ansal and the allottee for which no transfer charges would be payable.

A tripartite lease has been executed between the Ansal, UPSIDC and the petitioners who are the allottees of the developed plots by Ansal.

Clause 12 (c) of the letter of allotment and Clause 6(b) of the memorandum of understanding, contain a recital that the tripartite lease deed would be the first sale. Relevant portion of Clause 6 (b) of memorandum of understanding is reproduce here under :-

“That the lease of the plot or built up premises shall be executed by UPSIDC Limited with the allottees of Developer/Builder . For such lease, developer /builder shall inform the Corporation in writing. A tripartite lease shall be signed among Corporation, developer/builder and its allottees. No transfer charges shall be levied for such first sale.”

Relevant portion of 12 (c) of the letter of allotment which contains same recital is reproduce here as under :-

“The lease of the plot or built up premises shall be executed by UPSIDC Limited with the allottees of Developer/Builder .For such lease, developer/builder shall inform Corporation in writing. A tripartite lease shall be signed by Corporation, developer/builder and its allottees. No transfer charges shall be levied for such first sale. However, for subsequent sale transfer levy as per policy of the Corporation prevailing at that time would be payable to the Corporation.”

On the basis of the said clauses an endorsement was made on all the Tripartite Lease deeds executed by the Officer of the UPSIDC which reads as follows:-

“Lekhpatra duara iss sampatti ka antaran patta pratham baar pratham viyakti ke pakchh me kiya ja raha hai. Kreta/Pattagrahita mool abanti hai.”

From the aforesaid three recitals in writing it is no more in doubt that the UPSIDC and Ansal held out a categorical assurance to the allottee that the tripartite deed recorded first transfer of the plot/flat. It is only because of such assurance having been held out to the allottees like the petitioners that they deposited the stamp duty treating the same to be the first transfer i.e. at concessional rate in terms of the Government order applicable.

In Writ Petition No. 73277 of 2010 copy of the tripartite lease deed dated 31.3.2009 has been enclosed as Annexure-3 to the writ petition. In connected writ petitions lease deeds are stated to be identical.

These tripartite lease deed were presented for registration resulting in initiation of proceedings under section 47 A of the Indian Stamp Act. The Deputy Commissioner, Stamps vide order dated 11.5.2010 held that the lease deeds were not the first transfer of the land and the petitioners were therefore not entitled to the concessional rate of duty. The petitioners have therefore been called upon to pay difference of the stamp duty along with interest.

Not being satisfied the petitioner filed an appeal under section 56 -A of the Indian Stamp Act which has also been dismissed under the order dated 28.7.2010.

Hence this writ petition.

Counsel for the petitioner contends that an instrumentality of the State like UPSIDC which is run and managed by the State Officer had assured that the Tripartite lease deed is the first transfer of the land leading the petitioners to believe in good faith that he is entitled to concessional rate of stamp duty. It cannot be insisted upon by the Revenue authorities of the State that stamp duty at full rate is payable on the tripartite deed as it was not the first transfer.

He submits that purchaser like the petitioners cannot be made to suffer because of the Officers of the UPSIDC in collusion with the Ansal so as to be saddled with financial liability at the hands of the district authorities who are now demanding full stamp duty on the tripartite deed executed.

Sri Manu Khare, Advocate counsel for the Ansal and Sri V.K.Birla counsel for the UPSIDC with reference to paragraph 4 (d) of the short Counter affidavit read with Clause 13 of the letter of allotment in reply contend that only license was granted in favour of the developer/builder i.e. Ansal and the documents i.e. Letter of allotment and Memorandum of Understanding cannot be treated to be a lease. Similarly in paragraph 6 and 7 of the short counter affidavit it is stated that no lease was granted in respect of the undeveloped plots under the allotment letter or under the memorandum of understanding. The UPSIDC continued to be the owner of the land and right to develop the undeveloped plot alone was conferred upon Ansal. It therefore, submitted that in the facts of the case recital in the letter of allotment, memorandum of understanding, and the affixation made on the tripartite deed to the effect that it was the first transfer is factually correct and justified. In support of the contentions raised reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of Residents Welfare Association, NOIDA v. State of Uttar Pradesh and others reported in (2009) 14 SCC 716 and ICICI v. State of Maharashtra reported in 1999 (5) SCC 708. Counsel for the respondents then contended that in view of the judgment of High Court in the case of Somdutt Builders Ltd. v. State of U.P. and others reported 2005 (2) AWC 1711 since the documents i.e. memorandum of understanding and Letter of allotment have not been presented for registration the same cannot be taken into consideration for

ascertaining the liability of stamp duty on the tripartite deed.

In order to examine the correctness or otherwise of the stand so taken by the UPSIDC and the Ansal it would be worthwhile to refer to various clauses of the letter of allotment and the memo of understanding executed between the UPSIDC and Ansal.

Under the allotment letter dated 6.5.97 undeveloped land measuring 87.10 acres was allotted to Ansal for developing a Housing Colony in industrial area of Tronica City Loni district Ghaziabad @ Rs.397 per sq.mt. Clause 7 provides that possession of the land would be delivered on payment of 25% of the premium amount and after execution of the memorandum of understanding. Clause 8 and 9 provide that the development work shall be undertaken as per the approved lay out plan. The conditions of Alltment letter have been made part of the memorandum of understanding.

The development work to be done by Ansal will include laying of internal roads, drains, sewers, underground cables, watter supply, facilities like park, community center and schools etc. inside the allotted area.

Clause 12 of the allotment letter further provides that the developer/builder shall sell at least 25% of the plots (no. and areawise) as built up accommodation and the remaining would be allotted as plot or built up premises according to rules and regulations approved by the corporation.

Clause 18 of the letter of allotment categorically records as follows:-

“ The land of the plot is being allotted on lease for 90 years . Lease rent shall also be payable by the various allottees/your nominees @ 10% of the total cost of the land in lump sum as per prevalent rates of the corporation at the time of lease”.

Similarly the memorandum of understanding in opening recitals contains following statements:- “whereas the rate of 397/= per sq.mtr. for allotment of land is on lease hold basis.”

Under the letter of allotment and the memorandum of understanding there is a specific stipulation that after development the allotment shall be made by the Ansal to prospective buyers for which it can start accepting applications even before such development. The allottees shall not only pay money asked for by the Ansal they shall also be required to pay UPSIDC rent @ 10% of the total premium of the plot as lump sum as per the prevalent rate of the Corporation at the time of lease.

It is, further specifically provided in the said document that a tripartite lease shall be executed duly signed by the Corporation (UPSIDC), developer/builder (Ansal) and the allottees.

In the facts of the case the allotment of land by Ansal in favour of the petitioner is at a rate, which is nearly 7 times the rate paid for the undeveloped land by Ansal to the Corporation.

The Court may now reproduce Clause 13 of the allotment letter which has been heavily relied upon by the learned counsel for the Ansal and the Corporation.

“Clause 13 : Developer/builder shall work as the licensee of the Corporation till the completion of the development work.”

The term for completion of the development work has been provided under Clause 9 as three years from the date of allotment which in certain circumstances could be extended to a period of five years.

From a simple reading of the aforesaid clause it is apparently clear that for development work and that to only for three years the Ansal has been declared to be the licensee. For the entire lease period of 90 years the terms clearly indicate that lease of the land has been granted.

It has been settled by the Supreme Court of India that the use of particular words like 'license' or 'lease' in a deed will not be conclusive qua the exact nature of the transaction. The following have to be taken into consideration for examining the exact nature/intent of the document;

- a) substance of the document must be preferred to the form;
- b) the real test is the intention of the parties- whether they intended to create a lease or a license;
- c) if the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a license; and
- d) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.

The legal principle so enunciated by the Supreme Court in the case of Associate Hotels of India Ltd. v. R.N.Kapoor; AIR 1959 SC 1262 hold the field on the subject even today.

Judged in the legal background as explained by the Supreme Court in Associate Hotels (supra) it is seen that lease of immovable property has been granted by the Corporation in favour of the Ansal which is the first transfer of the property and recital to the contrary in the letter of allotment and memorandum of understanding and the tripartite deed by affixation of the stamp is factually false and misleading.

The legal position with regard to a document being lease or not within the definition of the term under the provision Section 2(16) of the Indian Stamp Act viz-a-viz the provision of Section 105 of the Transfer of Property Act has been a subject matter of consideration in a recent judgment of the Supreme Court in the case of State of Uttarakhand and others v. Harpal Singh Rawat; JT 2011(2) SC 481. The Supreme Court, after noticing the definition of lease as contained in Section 2(16) of the Indian Stamp Act in para 8 of its judgment has laid down as follows:

“The definition of 'lease' contained in Section 2(16) consists of two parts. The first part is applicable to any lease with respect to immovable property. The second part, which is inclusive, applies to various kinds of instruments by which a title, or other rights may be conferred upon the lessee for a specified period in respect of

immovable property or otherwise. The use of the words “includes also” implies that the definition of lease contained in Section 2(16) (c) is very wide and even if the transaction does not amount to a lease under section 105 of the Transfer of Property Act, the same may nonetheless be a lease for the purpose of the Act.”

So far as the judgment relied upon by learned counsel for the respondent are concerned this Court may record that the issue for consideration in the facts of the present case is as to whether the recital in the tripartite deed to the effect that it was the first transfer so as to avail the benefit of the concessional rate of stamp duty is true or not.

The petitioner have not disputed applicability of section 47 A in the facts of the present case.

The facts of the case in hand are clearly distinguishable viz-aviz those of Residents Welfare Association , NOIDA v. State of Uttar Pradesh and Others (supra).

Moreover the legal position with regard to the meaning of 'lease' under Indian Stamp Act has been explained by the Apex Court in the case of State of Uttarakhand and others (supra). It has been laid down that the definition of lease under the Indian Stamp Act is much wider than that under the Transfers of Properties Act.

Similarly this Court finds that the facts in the case of ICICI v. State of Maharashtra and others , reported in (1999) 5 SCC 708 are also clearly distinguishable. In the case in hand interest in the property has been transferred a right has been conferred for developing the plots and for drawing monetary benefit after such development by selecting the prospective allottees and offering the developed plots as well as the flats to be so constructed at the rates so desired by the Ansal.

The Apex Court in the case of Bhavnagar University v. Palitana Sugar Mills (Pvt.) Ltd. and Others , reported in 2003 (2) SCC 111, has held as follows:

“It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

The said judgment has been followed in the recent judgment of the Apex Court in the case of Dr. Rajbir Singh Dalal v. Chaudhari Devi Lal University, Sirsa and Another, reported in AIR 2008 SCW 5817.

So far as the judgment of Somdutt Builders Ltd. v. State of U.P. And others reported in 2005(2) AWC 1711 is concerned the same is clearly distinguishable in view of the terms and conditions of the documents under consideration in the case.

In view of the above this Court holds that the memorandum of understanding between the Ansal and UPSIDC was the first transfer in the nature of lease of immovable property and the subsequent tripartite lease executed between the petitioners, Ansal and UPSIDC subject matter of dispute in the writ petition is the second transfer of developed plot at a much higher rate.

This Court therefore, has no hesitation to hold that the authorities under the Indian Stamp Act are illegally justified in recording a finding that the tripartite deed executed between the Ansal, UPSIDC and the petitioner is not the first transfer of the land therefore Government Order dated 9.7.2008 shall have no application. Full rate of stamp duty was payable and the demand of deficiency in stamp duty cannot be faulted with. The challenge to the impugned order has to be repelled.

The question now arises as to whether the petitioners who have been misled by the Officers of the UPSIDC and Ansal be permitted to bear the consequences of the order impugned alone.

In my opinion persons like the petitioner who are bonafide purchasers and have been misled by the authorities of the UPSIDC and Ansal should not be made to suffer alone. The Officers of the UPSIDC and the Ansal must also be made to bear the consequences of the false assurance held out by them at the time of execution of the tripartite deed.

At this stage the Court deemed it fit and proper to afford an opportunity to the Chief Secretary, to examine the facts on record and inform the Court as to what action is proposed against the UPSIDC and Ansal.

Dictated in open Court on 16.8.2011

Sri Mahesh Chaturvedi, Chief Standing Counsel has filed an affidavit on behalf of the Chief Secretary of the State of U.P. today. It has been stated that an enquiry had been conducted in compliance to the order of this Court dated 28.7.2011. In the enquiry report, the Chief Secretary has opined that criminal as well as civil action is required to be initiated in the matter against all involved in the affixation of stamp on the deed as well as otherwise for misleading the allottee to believe that tripartite deed was first transfer of land and that concessional rate of stamp duty would be applicable.

In view of the said report of the Chief Secretary of the State, this Court is not required to pass any further orders for action being taken against the Officers of the UPSIDC and the construction company namely Ansal. This Court hopes and trust that the Chief Secretary shall act and shall not permit evasion of stamp duty to go unnoticed and persons involved in such acts, scot free.

In the facts and circumstances of the case, this Court finds that since purchasers of the plot have been misled by the officers of the UPSIDC and the Developers namely Ansal the demand of deficiency in the stamp duty payable on tripartite deed of transfer along with interest under the impugned orders must be equally borne by the petitioner UPSIDC and Ansal together. Petitioner must pay his 1/3 of the total demand within two months from today. The Chief Secretary is directed to ensure recovery of 1/3 the amount each from Ansal and UPSIDC within the same period.

Writ petition is disposed of subject to the observations made.

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