

Seth Hotels Private Ltd Vs. Dda

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Court : Delhi

Decided On : Aug-08-2013

Judge : Manmohan

Appellant : Seth Hotels Private Ltd

Respondent : Dda

Advocate for Def. : Mr. Arun Birbal, Mr. Atul Bandhu, Mr. M.K. Seth Date

Advocate for Pet/Ap. : Mr. Ramesh Chandra, Mr. R.L.Garg, Mr. Rajiv Goel, Mr. Ajay Garg, Mr. R.S. Sharma, Mr. Satish Kumar Seth, Mr. Rajinder Kumar Seth

Judgement :

15 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 865/2012 & CM Appl. Nos. 1924, 10429, 10786/2012, 5091/2013 & Crl.M.A. 7862/2013 SETH HOTELS PRIVATE LTD Petitioner Through: Mr. Ramesh Chandra, Sr. Advocate with Mr. R.L.Garg, Mr. Rajiv Goel and Mr. Ajay Garg, Advocates Mr. R.S. Sharma, Advocate for Applicants/Mr. Satish Kumar Seth, Mr. Rajinder Kumar Seth versus DDA Respondent Through: Mr. Arun Birbal, Adv. for DDA Mr. Atul Bandhu, Adv. for LR's of late Mr. M.K. Seth Date of Decision:

08. h August, 2013 % CORAM: HON'BLE MR. JUSTICE MANMOHAN JUDGMENT MANMOHAN, J: (Oral) 1. The present writ petition has been filed under Article 226 of the Constitution of India challenging the letter dated 18 th January, 2012 issued by the respondent-DDA determining the allotment of hotel

plot No. 17 at District Centre, Laxmi Nagar, Delhi hereinafter referred to as "aforesaid plot".

2. The facts of the present case are that the aforesaid plot was purchased by M/s. Seth Fashion House in an open auction held on 22nd April, 1992 and the entire premium was paid. Subsequently, upon a private limited company being incorporated by the promoters of the partnership firm, DDA executed a lease deed dated 15th October, 1996 in the name of the petitioner company. On 13th May, 2004, another lease deed was executed by virtue of which additional land measuring 156.31 sq. mtrs. was allotted to the petitioner company. In accordance with the lease deeds, the petitioner had to complete the construction of the hotel within two years. However, upon payment of composition fee, the time for completing the construction was extended upto 30th June, 2007.

3. Since the petitioner did not even start construction work till July 2007, a show cause notice dated 21st February, 2008 was issued to the petitioner. But no reply was received. Thereafter, a final show cause notice dated 10 th December, 2008 was issued to the petitioner.

4. On 24th December, 2008, an alleged director of the petitioner company wrote a letter to DDA stating that due to the pendency of certain litigation, the petitioner was not in a position to commence construction. It is pertinent to mention that upon a petition being filed under Sections 397 and 398 of the Companies Act by Mr. M.K. Seth, one of the shareholders of the petitioner company before the Company Law Board (CLB), it passed a status quo order dated 19th September, 2006 with regard to petitioner's shareholding and fixed assets - which order is still in substance.

5. It is the case of DDA in its counter affidavit that as per the office order dated 25th September, 2008, the time for completing the construction was extended till 31st December, 2011 subject to payment of composition fee. It is stated by DDA that the aforesaid direction was published in leading newspapers. It is also the DDAs case that as the petitioner neither applied for extension of time after 30th June, 2007 nor commenced any construction, the competent authority determined the lease deed on 19th August, 2011 and the same was communicated to the

petitioner vide letter dated 18th January, 2012.

6. Mr. Ramesh Chandra, learned senior counsel for the petitioner submits that the petitioner company could not commence construction of the hotel on the aforesaid plot in view of the ex parte status quo order dated 19th September, 2006 passed by the CLB. Mr. Chandra states that even though this Court had requested the CLB to decide the matter as expeditiously as possible preferably within a period of eight weeks, the petition has still not been disposed of due to delay and default entirely attributable to Mr. M.K. Seth. He also states that the petitioner is willing to carry out construction of the hotel at its own risk and cost provided the interim order passed by the CLB is vacated.

7. On the other hand, Mr. Bandu, learned counsel appearing for legal heirs of late Mr. M.K. Seth states that the petitioner has adopted a dishonest and unfair stand in a bid to exclude them from the management of the company. He points out that the applicants were originally 1/5th shareholders of the petitioner company whose shareholding had been reduced fraudulently by issuing fresh shares to other promoter-directors. He also states that his clients have not taken any adjournment before the CLB and no delay in disposal of the petition before CLB is attributable to them.

8. Mr. Birbal, learned counsel for DDA points out that the present hotel plot was included in the list of hotels required to be completed before the start of commonwealth games. He states that despite time being extended for completion of construction on a number of occasions, the petitioner did not even respond.

9. Having heard learned counsel for the parties, this Court is of the opinion that land allotted to the petitioner on lease for construction of a hotel has been lying unutilized for nearly 17 years from the date of execution of the lease.

10. In fact, the petitioner has not been able to carry out construction due to a case filed by one of its alleged shareholders before the CLB in which a status quo order with regard to its shareholding and fixed assets had been passed and which is still in subsistence. But this Court has no power to interfere with the interim order dated 19th September, 2006 passed by the CLB as the said order has not been

challenged before it and in any event, this Court in the present case is not exercising supervisory jurisdiction over the CLB. Consequently, this Court cannot permit the petitioner to construct the hotel at its own risk and cost.

11. Delay in construction of an infrastructure project like a hotel cannot and should not be condoned as a hotel is a public utility and any delay in its construction causes prejudice to the public at large and in particular the residents of that area.

12. This Court is of the view that the public interest cannot be allowed to suffer at the hands of a company in which its promoters are involved in a protracted litigation. This Court also sees no resolution of the disputes between the promoters in the immediate future.

13. It is settled law that public interest is supreme and overrides private interest. (See R.K. Deka (Dr.) Vs. Union of India, AIR 199.Del 53). A Division Bench of this Court in Rajinder Kishan Gupta Vs. Lt. Governor, Govt. of NCT of Delhi, 2010 (166) DLT 27.has held as under:"34. Even if we presume that keeping the urgency of requirement in mind, the respondents could have acted more expeditiously, we do not find any justification for quashing the acquisition on this ground alone, particularly, when there has been no delay on the part of DMRC in moving the Government and pursuing the matter with it from time to time. An important and prestigious project like Mehrauli - Gurgaon Corridor or MRTS cannot be stalled merely because the Government machinery could possibly have acted more expeditiously then it has actually moved. Public interest is the paramount consideration in such matters and cannot be ignored. The purpose of establishing metro network in Delhi is to remove traffic congestion and reduce environmental pollution by limiting reducing vehicular traffic on the roads. It is in the interest of the citizens of Delhi that the Metro Project is completed expeditiously and within the time frame fixed for the purpose. The Commonwealth Games are scheduled to be held in Delhi next year. It would be endeavour of DMRC, as far as possible, to complete this prestigious project before commencement of the Games so that there are no bottle-necks and traffic snarls in the city during the Games. If there is a conflict in private/individual interest and public interest, which is common to all citizens, the private/individual interest must yield to the public interest." (emphasis

supplied) 14. Due to cancellation of hotel leases, undoubtedly, the petitioner company and its promoters would suffer monetary loss. However, in the opinion of this Court, that cannot be the sole ground for indefinitely extending the time for construction of a project. The interest of the promoters can be suitably safeguarded by giving liberty to the promoters for filing suit for damages against each other for monetary loss that each promoter may allege to have suffered.

15. Consequently, this Court is of the opinion that the action taken by DDA in determining petitioner's lease deeds calls for no interference and the time for construction of the hotel cannot be extended. Accordingly, the present writ petition and pending application are dismissed and DDA is permitted to resume the plot and re-auction the same. However, as learned counsel for the petitioner states that he would immediately approach the CLB for carrying out construction at its own risk and cost, this Court directs DDA to take action for re-auction of the aforesaid hotel plot only after a period of eight weeks. MANMOHAN, J AUGUST 08 2013 NG

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