
(2010) 08 DEL CK 0333

In the Delhi High Court

Case No : Writ Petition (C) 7014 of 1999 and 2700 of 2000

Abaskar Constructions Pvt. Ltd.

APPELLANT

Vs

Land and Development Officer and Others
 Mrs. Kamla
Bakshi and Others Vs Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Citation : (2010) 08 DEL CK 0333

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Jasmeet Singh, K.D. Sengupta, in W.P. C 7014/1999 and P. Nagesh, in W.P. C 2700/2000, for the Appellant; Vikram Saini, for DDA, in W.P. (C) 7014/1999, Sachin Datta, Manikya Khanna for UOI and Asutosh Lohia, for NDMC in W.P. (C) 7014/1999 and 2700/2000, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—Both these petitions arise out of a judgment of this Court in an earlier round of litigation and involve similar issues. Accordingly, they are being disposed of by this common judgment.

2. The background to the present petitions is that plots of land, situated in the vicinity of Connaught Place and India Gate, were auctioned. In respect each of the plots, a separate perpetual lease deed with identical terms was executed in favour of the auction purchasers by the then Secretary of State for India in Council through the then Chief Commissioner, Delhi. In terms of the said lease deeds a single-storeyed residential house was constructed on many of the plots. Thereafter, when the construction of multi-storeyed buildings commenced in the city of Delhi, one of the issues that arose was the terms on which the lessee could be permitted change of the user of residential premises to multi-storeyed commercial premises. In most cases, after obtaining the sanction from the local authorities like the New Delhi Municipal Committee (NDMC), the lessee constructed multi-storeyed buildings consisting of flats. Those flats were

disposed of resulting in multiple owners in a single building.

3. Show cause notices were issued by the Land & Development Office ("L&DO") to the lessees for determining the lease and exercising the right of re-entry on the ground that the lessees had violated the terms of the lease by changing the user of the land without obtaining prior permission of the lessor. Initially, the lessees challenged the notice of re-entry by filing writ petitions in this Court. While the petitions were pending, the focus shifted to the terms and conditions on which the lease would be renewed. This Court was informed that the Respondents were not serious about exercising their right of re-entry and they were agreeable to suitable revision of the terms and conditions of the leases so as to benefit the lessor as well. The initial offer for revised terms and conditions was given by the L&DO on 29th September 1983 in compliance with the directions issued on 7th February 1983 by this Court. Thereafter the Ministry of Urban Development (Lands Division) ["MOUD"], Government of India revised its policy on 11th January 1995. Pursuant to the revised policy and directions issued by this Court on 17th July 1995, the MOUD by its communication dated 19th October 1995 gave a revised offer. In terms of the said offer, each lessee, for the purposes of condonation or regularisation of the breaches of the terms of the lease, was required to pay to the L&DO an amount on account of the additional premium to be paid in lump sum; 5% charges on additional premium; revised ground rent; overhead charges; existing ground rent; interest on existing ground rent; additional ground rent; interest on additional ground rent; damage charges; penalty; charges for withdrawal of re-entry; and cost of supplementary lease deed. Apart from making the above payment, each lessee was to furnish two undertakings i.e. to execute a supplementary lease deed as well as tripartite agreement.

4. During the final hearing of the aforementioned batch of writ petitions, the Petitioners challenged the revised terms and conditions offered by the L&DO on the ground that they were "highly discriminatory, exorbitant, unreasonable, harsh, illegal and contrary to the guidelines and the policy issued by the Respondents themselves from time to time." They disputed the "crucial date" for calculation of conversion charges/additional premium. They assailed the requirement of having to execute a supplementary lease deed and tripartite agreement. The offer by the L&DO was also attacked on the ground of hostile discrimination.

5. The following three issues were formulated for consideration by the Division Bench, which delivered its judgment in Ansal and Saigal Properties (P) Ltd. and Others Vs. L. and D.O. and Others, :

(1) Whether the terms, now being offered by the L&DO, in pursuance of the orders/directions of the Court dated the 17th July 1995, vide letter No. L&DO/L1-9/134(6)95/396 dated the 19th October 1995 for regularization of breaches, withdrawal of re-entry and is according/granting ex-post facto sanction for the construction of multi-storeyed commercial buildings on the demised premises in

terms of Clauses 2 (5) and 2 (6) of the leases are exorbitant, unreasonable, harsh, illegal and contrary to the guidelines and the policy issued by the Respondents?

(2) What is the scope of judicial review? Whether the terms offered by the Government of India, Ministry of Urban Affairs and Employment, Land & Development Office, Nirman Bhawan, New Delhi vide Communication No. L&DO/L1-9/134 (6)/95/396 dated the 19th October 1994 for condoning the breaches of the terms and conditions of the leases are not open to judicial review?

(3) Whether the Petitioners have been subjected to hostile discrimination by the Respondents while giving the offer of 1995 as compared to other lessees?

6. The Court then crystallized the terms and conditions set out by the L&DO, which the lessees were asked to comply with, as under:

(A) (i) Payment of additional premium; (ii) Payment of 5% p.a. charges on additional premium;

(B) (i) Payment of revised ground rent; (ii) Payment of overhead charges;

(C) (i) Payment of existing ground rent; (ii) Payment of interest on existing ground rent;

(D) (i) Payment of additional ground rent; (ii) Payment of interest on additional ground rent; (E) Payment of damage charges;

(F) Penalty;

(G) Charges for withdrawal of re-entry;

(H) Cost of supplementary lease;

(I) Withdrawal of writ petitions pending in this Court;

(J) Furnishing an undertaking on a non-judicial stamp paper of Rs. 2/- agreeing to pay revised ground rent of the original ground rent in terms of Clause (4) of the original lease;

(k) furnishing an undertaking on a non-judicial stamp paper of Rs. 2/- agreeing to execute a supplementary lease deed which would provide for, apart from the above and in addition to the existing covenants of the lease to the extent the same are not modified or superseded by these terms, the following:

(a) restricting the sale, transfer, mortgage assignment of the building blocks, flats or any part thereof without the prior permission of the lessor and payment of unearned increase in any of the events;

(b) revision of revised ground rent after every span of 10 years. The ground rent so revised however will not exceed 25% of the ground rent prevailing at the time of such revision; and

(c) keeping a running strip of land measuring 5291.55 sq.ft. in front and rear of the demised premises free from all encumbrances, structure, construction and surrendering the same to the lessor or his authorised Agent as and when called upon to do so.

17. Along with the supplementary lease deed the lessee, in terms of the above said offer, was also required to execute a tripartite agreement so as to facilitate the transfer of the flat/flats on lease hold rights on prorate basis and the formation of a co-operative society of the flat owners for smooth running of common amenities.

7. It appears that during the hearing before the Court, the lessee agreed to give up the challenge to some of the above requirements and, therefore, the Court took up for consideration only the issue of payment of additional premium, payment of 5% per annum charge on additional premium, payment of revised ground rent, payment of overhead charges, charges for withdrawal of re-entry, execution of a supplementary lease deed and execution of a tripartite agreement.

8. The Division Bench, in para 38 of the judgment, held as under as regards the validity of the demand for additional premium (DLT, @ p.174):

38. As a result of above discussion, in our opinion, while granting permission for the change of the user, the lessor or the duly authorized agent of the lessor such as L&DO, is fully justified in demanding additional premium/conversion charges and the additional premium/conversion charges, for the conversion of the user of the land will be determined with reference to the land rates [as notified by the Government (Ministry of Urban Development) from time to time] applicable on the "crucial date" as per the FAR assigned to the plot prevailing on the crucial date. In case where the land rates are linked to the prescribed FAR, the same will be increased or reduced, as the case may be, proportionately with reference to the actual FAR applicable on the plot as on the crucial date but in cases where the land rates have been prescribed as per existing FAR, while calculating additional premium/conversion charges the land rates need not be proportionately increased or reduced.

9. While holding 5% per annum charge on additional premium, the payment of overhead charges and charges for withdrawal of re-entry as not justified, the Division Bench upheld the payment of revised ground rent as well as the penalty. It also upheld the requirement of the execution of a supplementary lease deed. However, it left open the question of execution of a tripartite agreement, to be settled by the parties later on among themselves.

10. The final directions issued by the Division Bench were as under:

(i) that the impugned notice(s) and/or demand/bills raised by the lessor for condoning the breaches of the terms and conditions of the leases are hereby quashed and that no further action be taken by the Respondents in pursuance thereof;

(ii) that the Respondents, consistently with the observations made hereinabove, shall within six weeks from the date of this order, give fresh terms and conditions for the condonation of the breaches of the terms and conditions of the lease to the concerned lessees (Petitioners) irrespective of the fact whether any notice of determining the lease and/or for exercising the right of re-entry has been already given or not. The Petitioners, within thirty days from the date of the receipt of such fresh terms from the Respondents, shall complete the formalities, as stated above, and shall also deposit the amount in terms of the fresh offer. In case the Petitioner(s) fail to complete the formalities and deposit the amount within the above said period of thirty days, the Respondents would be at liberty to take further action against the defaulting Petitioner(s) in terms of the provisions of the lease. In the facts and circumstances of the case the parties are left to bear their own costs.

11. The facts in W.P. (Civil) 7014 of 1999 are that by a letter dated 10th April 1999, the L&DO called upon the Petitioner M/s. Abaskar Constructions Pvt. Limited (ACPL) to pay additional premium of Rs. 91,98,105/-, the interest on additional premium in the sum of Rs. 39,72,574/-, revised ground rent on the premium in the sum of Rs. 82,08,379/- and various amounts as interest calculated thereon, existing ground rent, additional ground rent, damages charges, misuse charges etc. The calculation for the interest amount of Rs. 83,05,409/- was as under:

a. Interest @ 14% per annum on additional premium w.e.f. 18th January 1986 i.e., 90 days after issue of terms on 18th October 1995 to 17th February 1999 and thereafter @ Rs.1,07,311/- per month

b. 10% interest on revised ground rent w.e.f. 18th January 1996 to 17th February 1999 and, therefore, at Rs. 68,403/- per month Rs.25,32,299.00
10% interest on revised ground rent w.e.f. Rs. 2,55,180.00 15th January 1996 to 14th February 1999 and, therefore, at Rs. 13,417/- per month. Interest on existing ground rent @ 6% per annum from 15th July 1971 to 3rd October 1971. Rs. 1.00

c. 8% interest on existing rent w.e.f. 4th October 1971 to 28th August 1975 Rs. 190,00 10% interest on existing ground rent w.e.f. 29th August 1975 to 17th February 1999 and, Therefore, at Rs. 15/- per month Rs. 4367.00

d. Interest on additional ground rent from 15th July 1971 to 3rd October 1971 Rs. 1.00 Interest @ 8% per annum from 4th October 1971 to 28th August 1975 Rs. 15.00 Interest @ 10% per annum from 29th August 1975 to 17th February 1999 and thereafter @ Rs.0.70 per month Rs. 383.00

e. 10% interest on damages for unauthorised construction area 27.033 sq.mtr and misuse charges for area of 1827 sq.ft. left being used as office w.e.f. 18th January 1996 to 17th February 1994 and, therefore, at Rs.45,304/-
Rs.15,40,469.00 ----- Total Rs. 83,05,409.00 -----

12. The above demands were reiterated on 26th July 1999 and 12th November 1999. These three communications have been challenged on the ground that they are contrary to the directions issued by the Division Bench of this Court in its judgment dated 19th May 1998 in Ansal & Saigal Properties. The Petitioner ACPL has also challenged the basis on which the revised ground rent and the additional premium have been computed.

13. While notice was directed to issue in this writ petition on 26th November 1999, the following interim order was passed:

The Petitioner has sought restrained against the Respondents from recovery of Rs. 3.35 crores raised by them vide letter dated 10th April 1999 to regularize the breaches temporarily and to grant ex post facto sanction for construction of multi-storeyed commercial building with effect from 13th March 1975. The Petitioner has deposited Rs. 40,25,190/-.

Subject to deposit of another Rs. 60,00,000/- the impugned demand shall be stayed till the next date of hearing.

Thereafter, the above interim order was continued by this Court.

14. The facts in WP (Civil) No. 2700 of 2000 filed by Mrs. Kamla Bakshi and Mr. Vikram Bakshi (hereafter "Bakshis"), are that a demand was raised on 10th April 1999 which according to the Petitioners was not in accordance with the judgment of the Division Bench of this Court in Ansal & Saigal Properties. By an order dated 26th April 1999, the Supreme Court passed an order granting liberty to the Petitioners to move this Court for clarification and/or any further directions in the event of any problem in the actual working out of the amounts payable under the judgment of this Court. The Petitioners sought fresh terms from the L&DO by a letter dated 10th May 1999. By a letter dated 28th June 1999, the L&DO informed the Petitioners that the land rate on the date of the application dated 10th May 1999 was Rs. 1000/- per sq. yard for 100 FAR and had accordingly been applied for calculating additional premium and revised ground rent on the basis of achieved FAR by the Petitioner which was 248.89%. The demand was reiterated on 16th November, 1999 and 24th April, 2000. The demand notice dated 10th April 1999 and the consequent notice dated 24th April 2000 have been challenged by the Bakshis.

15. This Court has heard the submissions of Mr. Jasmeet Singh, learned Counsel for ACPL, Mr. P. Nagesh, learned Counsel for the Bakshis and Mr. Sachin Datta, learned Counsel for the Respondents in both the petitions.

16. The first issue concerns the determination of the "crucial date". The case of ACPL is that the crucial date has to be either 9th December 1970, i.e. the date on which Mr. K.P. Mittra, one of the then lessees of the plot in question duly applied to the L&DO for the permission for commercialisation of plot No. 26, Curzon Road, New Delhi. They also sought information on the requisite conversion charges and additional ground rent which was required to be

deposited by them. Alternatively it is submitted that the "crucial date" has to be 23rd July 1971, the date on which the plans were sanctioned by the NDMC. In the case of the Bakshis, it is contended that the crucial date should be 9th February 1977, i.e. the date on which they applied to the L&DO for conversion of user from residential to a multi-storied commercial building.

17. It is pointed out by Mr. Datta, learned Counsel for the Respondents that the letter dated 9th December 1970 only asked for information relating to conversion charges. Although the said letter states that: "We are submitting our plans to the New Delhi Municipal Committee", it does not really enclose the plan. Mr. Datta has rightly stated that the said letter merely asked for the information on the conversion charges. Clearly, therefore, 9th December 1970 cannot be the crucial date.

18. In the judgment of the Division Bench the crucial date has been defined as "the date of receipt of application (complete in all respects) for conversion accompanied by the requisite documents". While the ACPL contends that alternatively the date on which the plan was sanctioned by the NDMC, i.e. 23rd July 1971, should be taken as the crucial date, the said submission is countered by the Respondents by pointing out that the plans were revalidated by the NDMC vide Resolution No. 34 dated 10th March 1975. The building plans of 23rd July 1971 were rejected by the NDMC on 14th September 1973. The mutation in favour of ACPL was carried out on 24th January 1975 and, therefore, the breach notices were sent to the then co-lessees (i.e. Dr. A.P. Mittra and Mr. K.P. Mittra) on 26th September 1972, 24th April 1974 and 3rd September 1974. This Court is, therefore, unable to accept the submissions made on behalf of ACPL that the crucial date should be either 9th December 1970 or 23rd July 1971. As explained by the Division Bench, "where application has neither been made nor construction executed in accordance with the originally sanctioned plan but is executed as per the revalidated plan, the date of revalidation of such plan will be the crucial date." Consequently, this Court agrees with the learned Counsel for the Respondents that the crucial date for the purpose of calculation of additional premium as far as ACPL is concerned has to be 10th March 1975.

19. As regards the calculation of the additional premium, the plea on behalf of the Bakshis is that admittedly the market rate of land on 9th February 1977 was Rs. 1000/- per sq. yard which was the rate demanded from all applicants who had filed their plans after 1st April 1974 till 1st June 1979. It was submitted that this rate was communicated to the occupant of 8, Kasturba Gandhi Marg, New Delhi by L&DO vide its letter dated 25th August 1976. The said occupant had achieved an FAR of 2.5 at the site. It is pointed out that in the areas surrounding Connaught Place, the FAR at the relevant time was 400 and it was subsequently brought down in the year 1974 to 2.5 as per the Master Plan. Therefore, between the period 1974 and 1980 the permissible FAR in the areas surrounding Connaught Place was 2.5. It is stated that Mrs. Kamla Bakshi and others forwarded a cheque of Rs. 9 lakhs on 19th January 1981 to the L&DO towards

additional premium on the basis of conversion charges @ Rs. 1,000/-per sq. yard. This was returned by L&DO by a letter dated 18th May 1983. The Petitioners had reiterated their willingness to pay the additional premium and in fact submitted that in their case the amount calculated works out to Rs. 9,32,075/- . The said figure was arrived at by multiplying the area i.e. 1864.15 sq. yards x 1000 sq. yard = Rs. 18,64,150/- and as per the formula additional premium would be equal to 50% of the market value of the land, which was equal to Rs. 9,32,075/-. However, the Respondent did not accept this and issued them a notice dated 1st February 1984. It is pointed out that during the pendency of the writ petition challenging the said notice, Mrs. Kamla Bakshi and others deposited Rs. 9 lakhs on 29th January 1986 and a further sum of Rs. 6 lakhs on 5th December 1998 without prejudice to their rights and contentions. The building was completed on 26th April 1988.

20. The bone of the contention is that the Respondents have calculated additional premium on the basis of the market rate of the land on the crucial date being @ 2,500/- per sq. yard. It is submitted by the Petitioners that such calculation goes contrary to the judgment of the Division Bench. The stand of the Respondents on the other hand is that land rate of Rs. 1,000/- per sq.yards was on the basis of the permissible limit being 100 FAR. This was upheld by this Court in its decision dated 19th May 1988. The Department of Urban Development clarified that the land rates prior to 1979 were not co-related to the FAR achieved because the concept of multi-storeyed building was not in vogue during the corresponding period and no finalized policy to deal with such cases was evolved by the Government. Therefore, the Government clarified that prior to 1979, land rates as notified from time to time should be deemed to have been prescribed for FAR of 100. This would be correspondingly increased with reference to the FAR achieved by the lessee and the charges calculated accordingly. Clearly, the land rate of Rs. 1,000/- per sq. yard as on the crucial date has been multiplied by the FAR achieved as per the government policy which has been upheld by this Court in Ansal & Saigal Properties (P) Ltd. Since admittedly FAR achieved was 2.5, it is submitted that the Respondents were fully justified in calculating the additional premium on the basis of the market rate of the land @ Rs. 2500/- per sq. yard.

21. It is pointed out by Mr. Datta that this Court in Ansal & Saigal Properties had upheld the terms given on 18th October 1995 except the three minor components. These were: (i) the payment of 5% per annum charges on additional premium; (ii) payment of overhead charges; and (iii) charges for withdrawal of re-entry. The fresh terms given on 10th April 1999 do not include these three components. Consequently, there was no need to change any of the other terms under other head when this Court had directed the Respondents to calculate the additional premium.

22. A copy of the communication dated 18th January 1996 issued by the Ministry of Urban Affairs & Employment has been produced before this Court. It stated as

under:

To

The Land & Development Officer,

L&DO, Nirman Bhawan,

New Delhi.

Subject: Group housing/commercial complexes development in Delhi/New Delhi - Conversion charges and other terms - rationalization and simplification revised orders.

Sir,

I am directed to invite attention to this Ministry's letter of even number dated 11th January 1995 prescribing guidelines for dealing with conversion cases which envisage that the benefit of these guidelines could even be extended to pending cases as a special case provided application to this effect is made by the lessee within a period of three months from 1st January 1995.

This matter has been examined further by the Government and during the course of examination of certain pending cases it is observed that prior to 1979 land rates are to be taken into consideration for the purposes of determination of additional premium and RGR etc. The rates were not correlated to the FAR achieved because the concept of Group Housing was not in vogue during the corresponding period and no finalized policy to deal with such cases was evolved by the Government.

In this connection, the special rate as prescribed for allowing conversion to multi-storey/group housing having not been held valid by the Courts, it has been decided that for reckoning of conversion charges, land rates as notified by the Government from time to time should be deemed to have been prescribed for FAR of 100 and will be correspondingly increased w.e.f. the FAR achieved by the lessee and charges calculated accordingly.

This issues with the concurrence of Finance Division, vide their I.D. Note No. 146-F/JS(F) dated 18th January 1996.

Yours faithfully,

Sd/-

(B.R. Dhiman)

Officer on Special Duty (L)

23. The above stand of the Respondents appears to this Court to be reasonable. It is correct that the Division Bench has upheld the additional premium as worked out by the Government Policy of 1995 where the land rate was taken @ Rs. 1000/- per sq. yard for 100 FAR. This Court, accordingly, finds no error

committed by any of the Respondents in the calculation of the additional premium. It must be remembered that the Division Bench has categorically held that "the terms, now being offered by the Respondents for condoning the breaches, based on their policy dated the 11th January 1995, excepting the clauses, held by us as unreasonable, cannot be said to be unreasonable, harsh, illegal or improper." Therefore, barring the three items referred to hereinabove, this Court virtually upheld the revised terms offered by the Respondents in Ansal & Saigal Properties. This would include interest being charged on the above amounts as well.

24. As regards the discrimination vis-?-vis the case of Ram Parshad, it is pointed out by the Respondents that the calculation in that case was done in the year 1977 as per the prevailing policy whereas in the case of the Petitioner, calculation was made in 1995 as per the policy in force in 1995. It appears to this Court that indeed the Petitioner cannot seek parity with the case of Ram Parshad.

25. Much reliance has been placed upon the affidavit of July, 1984 of Shri D.N. Asija, L&DO, wherein it has been stated that the land rate @ Rs. 2500/- per sq. yard is in terms of the Master Plan/Zonal Plan of the area in question in the year 1977. The said clarification does not take away the force of the arguments of the Respondents that the additional premium has to be calculated on the basis of the revised norms.

26. For all the aforementioned reasons, this Court does not find any merit in any of the above submissions made on behalf of the Petitioners. The writ petitions are dismissed and the interim orders are vacated.

27. As a result, it is directed that after giving credit to the amounts already deposited with it by each set of Petitioners, the Respondents shall communicate the re-worked amount due from the Petitioners together with interest accrued thereon within four weeks from today. The Petitioners will make payment of such sum within the time granted for that purpose by the Respondents.