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(2010) 02 DEL CK 0157

In the Delhi High Court

Case No : Writ Petition (C) No. 6749 of 2007

Arun Kumar Gupta APPELLANT

Vs

The Delhi State Industrial Development Corporation Ltd. RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0157

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

Bench : Single Bench

Advocate : H.C. Mittal, for the Appellant; Renuka Arora, for the Respondent

Judgement

S. Muralidhar, J.—The prayer in this writ petition is for a direction to the Respondent Delhi State Industrial Development Corporation (''DSIDC'') to transfer the Plot No. 765 at Narela Industrial Complex Delhi in favour of the Petitioner.

2. This is the second time that the Petitioner is approaching this Court. The original allotee of the said plot was one Smt. Raj Kumari. On 11th December 1991 she sold it for consideration to Smt. Pushpa Gupta under an agreement to sell, general power of attorney (''GPA'') and other documents. It is stated that on 13th October 1995, the DSIDC had announced a scheme whereby it permitted transfer of the plots upon payment of a premium of Rs. 2,27,500/- to it. This was apart from the sale consideration for which the property was sold. The Petitioner purchased the plot in question from Pushpa Gupta on 7th February 1996 under an agreement to sell, GPA etc. On 17th June 1996 he applied to the DSIDC with requisite charges of Rs. 2,27,500/- for transfer of the plot in his name by depositing the requisite charges of Rs. 2,27,500 along with all the original sale papers.

3. It is stated that on 7th June 1997 Raj Kumari in connivance with her husband Dharam Pal and Pushpa Gupta sent a letter to the DSIDC claiming that the plot had not been sold to him. The Petitioner is then stated to have filed criminal

proceedings against Raj Kumari, her husband Dharam Pal and Pushpa Gupta. The Petitioner also filed a civil suit. The said proceedings ended in a compromise agreement dated 21st January 2003 between the parties on the basis of which the suit was decreed in favour of the Petitioner. The criminal cases also stood withdrawn on 3rd February 2003.

4. Despite the above developments, the DSIDC did not accede to the request of the Petitioner and, therefore, he filed Writ Petition (C) No. 5149 of 2003 in this Court. In the said writ petition a statement was made by the DSIDC that it was willing to transfer the plot in favour of the Petitioner as per usual terms and conditions. On 1st October 2004 the statement was taken on record and the writ petition was disposed of by the following order:

Learned Counsel for the Respondent on instructions from the Managing Director states that a decision has been taken to transfer the plot in favour of the Petitioner as per usual terms and conditions. In case any other formality is required to be completed by the Petitioner, the same be communicated within a period of two weeks from today to the Petitioner and on compliance of the said formalities the plot, will be transferred in favour of the Petitioner and the documents duly executed within a maximum period of one month of the formalities being completed. The writ petition is disposed of in the aforesaid terms leaving the parties to bear their own costs.

5. On 11th October 2004 the Petitioner was sent a letter by the DSIDC asking him, inter alia, to pay a sum of Rs. 3,18,500/- [towards balance unearned increase (provisional)], Rs. 52,500 towards ground rent/maintenance charges and (2001-2004) stacking charges and Rs. 16,325/- towards road cutting charges for sewer and water connection.

6. The Petitioner protested against the above demand by a letter dated 21st October 2004. When no response was received thereto he filed the present writ petition.

7. In the counter affidavit filed on behalf of the Respondents it is stated that in terms of a circular dated 27th September 2001 of the Government of National Capital Territory of Delhi (''GNCTD''), the DSIDC was bound to collect 15% unearned increase "on every sale/transaction" as per the rate prevalent at that time. Therefore it was not enough for the Petitioner to pay Rs. 2,27,500/- as premium for the transfer under which he acquired the property. He was also required to pay an equivalent sum on the transfer of the property from Raj Kumari to Pushpa Gupta.

8. In order to appreciate the above contention it is important to refer to the letter dated 27th September 2001 written by the GNCTD to the DSIDC regarding revision of rates in respect of industrial plot at the Narela Industrial Complex. The said letter reads as under:

No. DSIDC/NAC/26/96-97/43

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dated: 27-9-01

To

The Chairman Cum Managing Director

DSIDC

N-36, Bombay Life Building

Connaught Place,

New Delhi.

Sub: Revision of rates in R/o industrial plots at Narela Industrial Complex.

Sir,

Whereas the Lessor/Lt. Governor, Union Capital Territory of Delhi is inter-alia entitled to claim and recover 50% of the unearned increase in the value of the industrial plot at the time of sale/transfer etc. in terms of the Clause (5) of the covenant II of the perpetual lease deed.

Now, in exercise of the power conferred upon the Lessor vide Clause 5(a) of the covenant II of the perpetual lease deed, the Lessor/Lt. Governor of Union Capital Territory of Delhi is pleased to enhance the rates of unearned increase in r/o Narela Industrial Estate, as under:

(A) For the period of 1.4.93 to 31.3.96, 50% of un-earned increase is Rs. 650/- per sq. mt.

(B) For the period beyond 31.3.96, 50% un-earned increase will be enhanced by 20% on adhoc basis every year till the final market rates are notified i.e. as per other estates of deptt. of Industries, Delhi.

(C) 50% un-earned increase charges be taken till the time of deposition of transfer charges in full as well as deposition of complete documents whichever is later.

(D) For every Sales/transaction 50% unearned increase, as per rate prevalent at the time be charged.

(E) The Department should charge the transfer charges for each and every transaction.

Yours faithfully

(Rajesh Mishra)

Dy. Secretary of Industries

9. The above letter dated 27th September 2001 talks of enhancement of rates of unearned increase beginning with the period 1st April 1993 to 31st March 1996 at Rs. 650/- per sq.m. and for the period beyond 31st March 1996 that some

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would be increased by 20%. The above letter in turn refers to Clause II (5)(a) of the lease deed the second proviso to which reads as under:

Provided further that, in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the Premium Paid and the market value of the Industrial Plot at the time of sale, transfer, assignment, or parting with the possession, the amount to be recovered being fifty per cent of the unearned increase and the decision of the Lessor in respect of the market value shall be final and binding.

10. The submission of learned Counsel for the Petitioner is that the above circular can only apply to transfers that have taken place after 1st April 1993. He submits that he is covered by Clauses (A) and (B) of the above circular and that having already paid a sum of Rs. 2,27,500/- in terms of (A) he is prepared to pay a further sum of Rs. 52,500/- being 20% of the enhanced unearned increase on the transaction. He further submits that the above circular cannot go beyond the scope of the second proviso to Clause II (5)(a) of the lease deed which permits the lessor to recover only "a portion of the unearned increase in the value" i.e. the difference between the premium paid and the market value of the industrial plot at the time of sale.

11. In the considered view of this Court, the submission of the learned Counsel for the Petitioner that the above circular can only apply to transfers that took place after 1st April 1993 appears to be correct. The requirement in Clause (D) that every sale or transfer would attract 50% unearned increase does not, as is sought to be suggested by the learned Counsel for the Respondent, include the transaction dated 11th February 1991 by which the property was purchased by Pushpa Gupta from Raj Kumari.

12. Consequently, the demand raised by the DSIDC on the Petitioner for a sum of Rs. 3,18,500/- is hereby set aside. The DSIDC will recover from the Petitioner a sum of Rs. 52,500/- towards GM/RC, stacking charges and Rs. 16,325/- for road cutting charges for sewer and water charges. The said sums will be paid by the Petitioner within two weeks from today to the DSIDC. He will also comply with any other requirement specified by the DSIDC including giving an affidavit of undertaking as per the specimen enclosed with the letter dated 11th December 2001. Within a period of four weeks after the aforementioned payment is made by the Petitioner, the DSIDC will transfer the plot in question in his name.

13. With the above directions, the writ petition is disposed of with no order as to costs.

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