

(1989) 09 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Appeal No. 2039 of 1988

Dev Raj Gupta and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-09-1989

Acts Referred:

Delhi Development Act, 1957 — Section 14

Citation : (1989) 39 DLT 298

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : V.N. Kalra and U.L. Watwani, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge in this writ petition is to the letter dated 12th June, 1987 whereby the respondent No. 2 has demanded commercialisation and other charges from the petitioners in respect of the multi-storeyed commercial building, which has been constructed at 20, Barakhamba Road, New Delhi.

(2) Briefly stated the facts are that the aforesaid plot of land by virtue of a perpetual lease deed dated, 17th November, 1981 was given to Smt. Rama Bai wife of Dr. Tulsi-Ram by the Governor General in Council. Clause 2(5) and Clause 2(6), which are relevant of the said letter read as under: - "2(5) The Lessee will not without the previous consent in writing of the Chief Commissioner of Delhi or such officer as the Lesser or the Chief Commissioner, Delhi may authorise in this behalf erect or suffer to be erected on any part of the said demised premises any buildings other than and except the building erected, thereon at the date of these presents. 2(9) The Lessee Will not without such consent as aforesaid carry on or permit to be carried on the said premises any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a residence or do or suffer to be done thereon any act or thing whatsoever which in the opinion of the Chief Commissioner of Delhi may be an annoyance or

disturbance to the Governor General in Council or his tenants in the New Capital of Delhi."

(3) The said Smt, Rama Bai constructed a residential building on the said plot. Then this property was sold on 20th May, 1938 to Smt. Leela Wati wife of late Shri Gulraj Gupta. On the death of Smt. Leela Wati the said property devolved on petitioners No. 1 to 4 and late Shri Hans Raj Gupta. It is alleged that Shri Hans Raj Gupta was the Karta of the Joint Hindu Family and petitioners No. 6 to 9 were his sons and co- partners .. It is not necessary to refer to devolution of the property after the death of Shri Hans Raj Gupta.

(4) As is evident from hereinabove, the building which was constructed was meant to be used for residential purpose. It appears that the Master Plan was framed and according to the Master Plan this area in question including 24 Barakhamba Road, New Delhi was notified as being a part of the commercial zone and the land used was to be for commercial purpose. The Master Plan came in operation on 1st September, 1962.

(5) On 25th April, 1977, Shri Prem Shanker Khandelwal, Advocate, wrote a letter to the Land & Development Officer on behalf of petitioner No 1. It was stated in the said letter that petitioner No. 1 proposes to construct a multi- storeyed building on the aforesaid plot of land and he may be informed as to what use the charges payable for conversion of the land use. A reply to this letter were received by letter dated 29th July, 1977. In the said reply. it was stated that the request of the petitioner's counsel was receiving attention.

(6) It seems that an application had been filed in the office of the Land & Development for mutation of the property, on the death of Smt. Leela Wati, in the name of her heirs. Vide memorandum dated 21st November, 1977, the property in question was mutated in the name of petitioners No. 1 to 4 and late Shri Hans Raj Gupta. Soon thereafter, on 15th 301 February, 1978, late Shri Hans Raj Gupta, for and on behalf of himself, Sbri Dev Raj Gupta and others wrote the following letter :- "Under the Master Plan and the Zonal Plan the above plot now residential can be developed for the construction of a Commercial Building. Please let me know your terms in respect thereof together with commercialisation charges that will have to be paid by us. The plans have already been submitted to the N.D.M C. after their approval by the Urban and Acts Commission."

(7) It appears that a letter dated 1st March, 1980 was sent by the Office of the Land & Development Officer to the owners. In this letter, which is stated to have been received by the petitioners in August, 1980, the petitioners were informed that a proforma has been prescribed for the permission to construct the Multi-storeyed Commercial Building and the said proforma should be submitted duly signed by all the lessees .This proforma was submitted by the petitioners on 24th January, 1981. Thereafter, nothing was heard from the respondents till 12th January, 1984 the Land & Development Officer informed the owners that

permission under Clause 2(5) and Clause 2(6) of the lease for construction of Multi-storeyed Building would be considered if the owners were willing to pay the charges enumerated therein. The petitioners repeatedly represented against the aforesaid demand of the respondents. The amount which was demanded by the respondents by virtue of the aforesaid letter dated 12th January, 1984 was Rs. 2.26 Crores approximately. One of the contentions, which was raised in the representation by the petitioners was that there was no justification that the conversion charges should be charged for a building at the rates which were prevalent on 27th May, 1981. It was contended in the representation that the conversion charges should be those as on 15th February, 1978, the day when application was made to the Land & Development Officer asking for the conversion charges, after the property had been mutated in the names of the owners. Reference was also made in this representation to a Division Bench judgment of this Court in *Daya Wanti Punj and Others Vs. New Delhi Municipal Committee and Others*, in which it has been held that the relevant date for calculation of the commercialisation charges was the date on which application for conversion was first made. No reply was received by the petitioners till by letter dated 12th June, 1987 the respondents reiterated the charges, which had originally been intimated by them in 1981. One additional item, which was demanded by the respondents, was interest on misuse and damages at the rate of 10% with effect from 12th January, 1984 to 11th January, 1987 and thereafter. This amount of interest claimed is Rs. 2,71,428. 84.

(8) The petitioners thereafter filed the present petition challenging the aforesaid demand. In the counter affidavit, which has been filed, there is no dispute with regard to the correspondence which has been exchanged between the parties. It is, however, submitted that as the bill was received from the respondents only in 1981, Therefore, the conversion charges were rightly charged by taking 1981 as the base. It is also the case of the respondents that misuse charges can be realised by the respondents because according to the lease The property was to be used for residential purpose but it was now being used for commercial purpose. The further contention of the respondents is that it was in 1984 that the petitioners were informed as to the amount which was payable and because the demand has not been met, Therefore the respondents were entitled to realisation of interest. In our view the petitioners are entitled to succeed in all the aforesaid three grounds.

(9) With regard to the question of conversion charges, it is clear from what has been stated hereinabove that application had been filed by late Shri Hans Raj Gupta with the Land & Development Officer, in which it was stated that the owners wanted to construct commercial building; plans have already been approved; and had been submitted to the New Delhi Municipal Committee. The Land & Development Officer was required to inform the petitioners as to what will be the commercial charges. It is true that by letter dated 1st March, 1980, the respondents required the owners to give particulars in a proforma, which had been prescribed, duly signed by all the co-lessees, but what is important to note

is that the said proforma came into existence on 16th June, 1978. Mr. Watwani has stated under instructions from representative of the department, that it was only on 16th June, 1978 that the proforma on which particulars have been given was finalised. On the date when the owners had applied for conversion, namely, 15th February, 1978, no proforma existed. The petitioners had made a categorical statement that they wanted to construct a commercial building and commercialisation charges were sought. Thereafter, they waited more than two years before the respondents informed the petitioners "that the respondents required the particulars to be furnished on the proforma. The respondents, if they had acted diligently, could have asked for these particulars on the proforma soon after 16th June, 1978, when the proforma came into existence. The respondents, however, chose not to do so. The respondents, Therefore, cannot take advantage of their own delay and penalise the petitioners by asking the petitioners to pay the conversion charges by calculating the same with effect from 1981. It may be noted and it is an admitted fact, that whereas there was no difference in the rates of the land between 1977 and 1978, there was however, steep rise of the prices of land by 1981. If the commercialisation charges are realised from the petitioners, which they are willing to pay by calculating the same with effect from 15th February, 1978, that will be much less than what is now sought to be realised by the respondents. The difference we are informed by Mr. Kaura, would be about more than Rs. 1.35 crores. In our view, Therefore, following the Division Bench judgment of this Court in Mr. Daya Wanti Punj's case (supra), which decision has also been followed by Avadh Behari Rohtagi, J in Civil Writ No. 1159 of 1982, Dr. Ajit Singh Sabharwal v. The Land and Development Officer and others, decided on 8th July, 1983, the respondents were required to compute the additional premium calculating it on the basis of rates and commercialisation charges as prevalent on 15th February, 1978 and not as on January 24, 1981, as has been done by the respondents in the present case.

(10) Coming now to next item, namely, the misuse charges, the respondents have claimed misuse charges from the petitioners on the ground that the property in question, which was residential in nature, was being used for commercial purpose. There are other items of misuse charges also but with those we are not concerned, and have not been challenged before us. The submission of Mr. Kaura is that because as per the Master Plan and the Zonal Plan; the land use had been changed to commercial purpose, the petitioners were, under law, obliged to use the said property only for commercial purpose. In support of this contention, learned counsel has relied upon two decisions of this Court, namely, Smt Kamla Bakshi and others v. Union of India and another Air 1987 Delhi 380 and Sunil Vasudeva and others v. Delhi Development Authority. 34 (1988) DLT 37. In Smt, Kamla Bakshi's case (supra) Mahinder Narain, J. came to the conclusion that by virtue of provisions of Section 14 of the Delhi Development Act the land or building could be used only in the manner contemplated by the Master Plan and the Zonal Plan. It was further observed by the learned Judge

that if there was no clause in the lease deed which provided, as it did in that case, that land and the building will be used for following purpose, then by operation of law the land use stood changed because of the Master Plan and the Zonal Plan. The terms of the lease deed to that extent would stand superseded. We are in respectful agreement with the aforesaid decision and in our view also the terms of the contract must yield to any statutory provision, which is enacted subsequently. When the law provides that the building or property will be only for commercial purpose, there can be no agreement between the parties which would require the building to be used for residential purpose. Such an agreement would be contrary to law. It is pertinent to note that the lease in the instant case has been granted by the Government and it is the Government which has enacted the Delhi Development Act and the Master Plan, according to which the use of the land has been changed from residential to commercial purpose. For the aforesaid reasons, we are of the opinion that the misuse charges on account of the property being used for commercial purpose instead of residential purpose cannot be charged by the respondents.

(11) As already noted, the petitioners are also complaining against the charge of interest. If a valid demand is made and the same is not paid by the petitioners, the respondents would be entitled to charge interest. In the instant case, however, the amount which has been demanded by the respondents is far in excess of what they could legitimately charge. The conversion charges have been calculated with effect from April, 1981 instead of the rates which were prevalent on 15th February, 1978. This being so, the demand which has been raised in this regard was not in accordance with law. The petitioners were, Therefore, not obliged to make the payment pursuant to an invalid demand and as such the question of the respondents charging any interest for the non-payment or late payment of the demand does not arise. The petitioners would be liable to pay interest if a valid demand is raised but the petitioners do not pay the same within the stipulated time.

(12) No other contention has been pressed before us. For the aforesaid reasons the impugned decisions of the respondents contained in the letters dated 12th January, 1984 and 12th June, 1987 are quashed and the respondents are directed to recompute the additional premium and other charges payable by the petitioners to the respondents within a period of six months from today in accordance with law and our observations. The petition stands disposed of. There will be no order as to costs.