

(1997) 07 DEL CK 0059

In the Delhi High Court

Case No : Civil Writ Appeal No. 5714 of 1993

Dev Raj Gupta

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 14-07-1997

Acts Referred:

Punjab Municipal Act, 1911 — Section 189

Urban Land (Ceiling and Regulation) Act, 1976 — Section 22

Citation : (1997) 4 AD 608 : (1997) 68 DLT 62 : (1997) 42 DRJ 510 : (1997) 1 ILR Delhi 639 : (1998) 1 RCR(Civil) 396

Hon'ble Judges : S.N. Kapoor, J;R.C. Lahoti, J

Bench : Division Bench

Advocate : Mukul Rohatagi, Sanjay Karol, Neeraj Malhotra, Pinki Anand and A. Salwan, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The petitioners are aggrieved by the action of the respondent-NDMC withholding the release of sanctioned building plans to the petitioners for non-compliance of certain conditions subject to which the respondent had resolved to grant the sanction.

(2) The petitioners are owners of the property known as 20, Barakhamba Road New Delhi and measuring about 0.956 acres. This property has been subject matter of a number of litigations, one of them being Union of India and Others Vs. Dev Raj Gupta and Others, . The dispute was about the payment of conversion charges livable by Delhi Development Authority, the Lessor, as a condition precedent to the grant of its permission or no objection certificate (NOC) to convert the user of the land from residential to non-residential. The dispute has been settled by the Supreme Court on 23.10.90 in accordance with its judgment reported as above.

(3) On 5.8.1977 the petitioners moved an application u/s 169 of the Punjab

Municipal Act, 1911 seeking permission of the Municipal Authority for sanction of the proposed building plan. It appears that the plan has been approved by the Administrator vide resolution No.13 dated 21.1.81. On 29.1.81 a communication (Annexure P-1) was issued to the petitioners, the relevant part whereof is extracted and reproduced hereunder :-

Chief architect's Department

New Delhi Municipal Committee

NO.CA/119/BP New Delhi Dated the 29th Jan."81.

SHRI Hans Raj Gupta &

SHRI Dev Raj Gupta,

3, Ratendon Road,

New Delhi.

SUB: Const. of M.S. Building Office at

20 Barakhamba Road, New Delhi.

WITH reference to your building application dated 5.8.77 on the subject cited above, it is to inform you that the Plans in question have been approved by the Administrator vide Reso. No.13 dated 21.1.81 subject to the following :-

xxxxxxx

xxxxxxx

III) Party submitting clearance/NOC from Competent Authority under U.L. (C&R) Act, 1976.

xxxxxxxxxx

xxxxxxxxxx

X) Clearance from L&DO

xxxxxxxxxx

YOU are advised not to start the construction at site without getting the plans released otherwise construction shall be reckoned as unauthorised and necessary action as per law be taken.

YOU are, Therefore, requested to do the needful and get the plans released.

(V. N. Vasudeva)

Chief architect

(4) When the petitioners had moved the application and the Ndmc passed its resolution and communicated the same to the petitioners, the old Master Plan of

Delhi was in force which allowed Far (Floor Area Ratio) of 2.5 i.e. permitted construction of ground floors plus 10 storeyes. On 1.8.90 new Master Plan of Delhi i.e. Mpd 2001 has come into effect wherein the permissible Far has been reduced to 1.5 i.e. ground floor plus five and a-half storeyes.

(5) Three questions arise for decision :-

(I)What would be the Far applicable to the petitioners 1.5 or 2.5?

(II)Whether the petitioners are required to obtain clearance certificate from the L&DO before the release of building plans?

(III)whether the petitioners are required to obtain permission under Sections 20 and 22 of the Urban Land (Ceiling & Regulation) Act, 1976 (ULCRA, for short) before sanction and release of building plans?

(6) We will take up for consideration each question Seriatim.

(7) On the first question, the learned counsel for the petitioners submitted that the petitioners had applied for sanctioning of the building plan in the year 1977 and it was sanctioned and approved in the year 1981 though it was not released. A vested right accrued in favor of the petitioners on the date of the application, and if not on that day then certainly on the date of resolution of approval passed by the NDMC. The petitioners would be entitled to Far of 2.5 as per the Master Plan in force on those dates. The subsequent change of the law and enforcement of the new Master Plan, reducing the Far cannot take away the vested right accrued in favor of the petitioners.

(8) The first question has to be answered against the petitioners. We do not agree with the petitioners that mere making of an application seeking sanctioning of the building plans gives any vested right to the petitioners. Since the laws relating to planned development of any township and the municipal laws are meant for the public good, they apply on the dates on which they are brought into force and even the pending applications must be decided in accordance with the law as applicable on the date on which the decision is to be taken and sanction to be released. Without entering into an independent analysis of the law on the point it would suffice to refer to two recent Division Bench decisions of this Court namely M/s. Dewan and Sons Investments Pvt.Ltd. Vs. Dda (CW 647/85 decided on 28.2.97 and M/s. JMP Manufacturing Company Pvt.Ltd. VS. Dda 1996(1) Ad Del 71 wherein the Division Benches (to which one of us R. C. Lahoti, J. has been a party) have taken the view that even in the pending applications a sanction contrary to the law applicable on the date on which the sanction comes up for being given and released, cannot be granted.

(9) The communication dated 29.1.81 (Annexure P-1) by the respondent-NDMC to the petitioners merely says that the plans have been approved by the Administrator subject to the conditions mentioned therein. It is a communication of a conditional resolution having been passed by the Administrator. It does not amount to communication and delivery of sanctioned building plans to the

petitioners where after alone a right could legitimately be claimed to have accrued to them.

(10) For two reasons, the petitioners cannot claim to have acquired any vested right from the communication contained in the letter dated 29.1.81. Firstly, as already stated it is a communication of a resolution having been passed; and not a release or delivery of sanctioned building plans. Secondly, the resolution of the Administrator dated 21.1.81 was accompanied by certain conditions and the resolution would not be effective unless the conditions were fulfilled by the petitioners. Thirdly, bye-law 6.8 of Building Bye-Law, 1983 provides that the sanction once accepted through building permit shall remain valid for two years from the date of sanction where after it has got to be revalidated. The revalidation shall be subject to the master/zonal plan regulations and building bye-laws then in force for the area. As a period of two years has expired in January, 1983, the plans shall have to be revalidated and at the time of revalidation they shall have to satisfy the requirements of the current master/zonal plan which is Mpd 2001.

(11) We are, Therefore, unhesitatingly of the opinion that the petitioners cannot have the benefit of 2.5 Far but must be satisfied with 1.5 Far which only is permissible under the Mpd 2001, now in force.

(12) On the second question, the learned counsel for the petitioners have submitted that the Ndmc is wrongly insisting on obtaining clearance under the Ulcra, as there is no provision under the Punjab Municipal Act or the Building Bye laws for obtaining permission under Sections 20 and 22 of the ULCRA. Having no nexus with the object which is sought to be achieved by the Punjab Municipal Act, the insistence on such compliance is totally unjustified and illegal.

(13) The second question shall also have to be answered against the petitioners. The submission of the learned counsel for the petitioners is too tall a submission and cannot be accepted. It is true that the Punjab Municipal Act does not provide for permission from the Urban Land & Ceiling Authority and from the L&DO being obtained before the release of the building plans. However, bye-law 6.2.9 of Building Bye-Laws, 1983 does provide for such documents being filed by an applicant seeking building permit from the local authority. If the document, under which the petitioners are claiming title, itself provide for a permission from L&DO being obtained and so also if there is any law in force which requires any permission being obtained from any other authority so as to entitle the applicant to the grant of a building permit, there is nothing wrong in the municipal authority insisting on such documents being filed. It is simply reasonable. Else the sanction of building plans by the Municipal Authority is likely to give rise to litigation and needless complications which would ultimately tell upon the occupants of the building who may be innocent purchasers, lessees or licencees, whose interests too are to be safeguarded by the local authority. We are, Therefore, of the opinion that there is nothing wrong in the respondent insisting on clearance certificate from the L&DO and clearance under the Ulcra as a

condition precedent to the release of building plans.

(14) On the third question, it was submitted by the learned counsel for the petitioners that Sections 20 and 22 of the Ulcra would become applicable only upon demolition of the building and existence of excess vacant land - in excess of the exemption granted by virtue of permission u/s 6 of the ULCRA. Sections 20 and 22 of the Ulcra do not contain any deeming provisions. There cannot be any deemed vacancy as envisaged u/s 22 of the Act. Section 20, in any case, is not applicable in the facts of the present case.

(15) It was further submitted that Section 20 of the Ulcra is brought into operation only when there exists excess vacant land i.e. land in excess of the ceiling limit prescribed under the Act. The purport and intent of Section 20 is to apply to the Government for permission to hold the said excess vacant land and the Government, if satisfied, would order the applicant to do so. Since the petitioners had no excess vacant land as certified by the competent authority on 11.11.86 u/s 6 of Ulcra, this Section cannot come into operation in the present case and cannot be made a condition precedent for release of the sanctioned plans by NDMC.

(16) Developing further his argument the learned counsel for the petitioners submitted that Section 22 of the Ulcra would come into operation only when any building is demolished and excess vacant land (i.e. vacant land beyond the permissible limit) is created as a consequence thereto. On such excess vacant land coming into existence, the Government may on certain terms and conditions allow the owner to retain such land. Since the petitioners are yet to demolish the said building, Section 22 of the Ulcra cannot come into operation today and the petitioners are not bound to apply for the said permission as on the date. This is without prejudice to the contention of the petitioners that demolition and reconstruction of a building can take place in a phased manner without any excess vacant land being created, and that the Ulcra does not stand in the way of such action being taken. In any case, the petitioners will obtain all clearances which are necessary in law, in future and at an appropriate time and stage. The insistence of the N.D.M.C. to get permissions under Sections 20 and 22 of the Ulcra prior to and/or at the release of the sanctioned plans is unjustified, arbitrary and illegal.

(17) So far as Section 20 is concerned, it applies only to vacant land. Admittedly, the petitioners do not have vacant land. It was not disputed at the time of hearing that whatever vacant land is situated adjoining the building, the same is not excess vacant land so far as the provisions of the Act are concerned. That being the position it is not necessary for the petitioners to file permission u/s 20 of the Act.

(18) However, insistence on permission u/s 22 is relevant for consideration and a major part of arguments at the time of hearing was directed towards it.

(19) Section 22 provides as under :-

22. RETENTION of vacant land under certain circumstances.--Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where any person demolished any building on any land held by him or any such building is destroyed or demolished solely due to natural causes and beyond the control of human agency and as a consequence thereof, in either case the land on which such building has been constructed becomes vacant land and the aggregate of the extent of such land and the extent of any other vacant land held by him exceeds the ceiling limit, then, he shall, within three months from the date of such demolition or destruction file a statement before a competent authority having jurisdiction specifying the location value and such other particulars as may be prescribed for all the vacant lands held by him.

(2) Where, on receipt of a statement under sub-Section (1) and after such enquiry as the competent authority may deem fit to make the competent authority is satisfied that the land which has become vacant land is required by the holder for the purpose of redevelopment in accordance with the master plan, such authority may subject to such conditions and restrictions as it may deem fit to impose permit the holder to retain such land in excess of the ceiling limits for such purpose and where the competent authority is not satisfied and does not so permit the provisions of Sections 6 to 14 both inclusive shall, so far as may be applied to the statement filed under Sub-Section (1) and to the vacant land held by such person in excess of the ceiling limit.

(20) It is clear that Section 22 comes into operation and its applicability is attracted only on demolition or destruction of any building and not before. It was submitted on behalf of the petitioners that demolition and reconstruction of building may take place in a phased manner without any vacant land being created and if that be so then at no point of time the land would be a vacant land. At no point of time Section 22 would come into play. The respondent cannot hypothetically assume that vacant land would certainly come into being at some stage in the process of demolition and reconstruction and that is why permission u/s 22 is being insisted on in advance otherwise the work of the petitioners shall have to be stopped soon after demolition of the existing structure much to their own prejudice. It was also pointed out that if the petitioners have devised any such scheme of demolition and construction whereunder the land is not going to be vacant land at any point of time then building plans consistently with such scheme should have been filed. The building plans showing the present and proposed construction, as have been presently filed by the petitioners with the respondent-NDMC, go to show that at one point of time, on the existing construction being removed, the land would become vacant land and then alone the reconstruction would start after sinking foundation. That is why permission u/s 22 becomes relevant and necessary.

(21) It is true that Section 22 can come into play only on the land becoming a vacant land on the demolition of the existing building. If the petitioners, assisted by expert engineering and architectural opinion, are in a position to plan out such

scheme of demolition and construction in which the land would not become vacant land at any point of time then the question of applying Section 22 of Ulcra would not arise. But that is not the case here and now. It is still open to the petitioners to withdraw their present application for sanction and file a fresh application accompanied by such building plans and scheme of demolition and reconstruction which would satisfy the respondents that the land would not become vacant land at any point of time. Admittedly the present building plans as filed by the petitioners with their application do not satisfy such requirement. The petitioners must, Therefore, obtain permission u/s 22 of the Act and then have the building plans released.

(22) At one stage during the course of hearing it was submitted on behalf of the petitioners that the demand dated 10.8.92 raised by the L&DO is not in accordance with the judgment of the Supreme Court dated 23.10.90 and has Therefore to be quashed. However, at a later stage and while filing a written memo of submissions the learned counsel for the petitioners have made the following statement :-

"VIDE letter dated 10.8.1992 (page 49 of the paper book), petitioners has been asked by the L&DO to pay a sum of Rs.1.69 crores. Petitioners are disputing the payment of the same in the present writ petition. However, in order to complete the project in time to meet its commitment the petitioners, without prejudice, is ready to pay the amounts so claimed. In fact, out of the aforesaid demand, a sum of Rs.1.24 crores has already been paid to the L&DO. Petitioners undertake to pay the balance amount within 90 days from the date of the order, and upon the respondent-NDMC releasing the plans and permitting the petitioners to carry on the constructions."

(23) In view of the above said statement, this controversy does not survive for decision. Suffice it to observe that the petitioners are still at liberty to satisfy the L&DO that its demand was unjust and not in accordance with the judgment of the Supreme Court. There is no reason to assume why the L&DO would not revise its demand and rectify it if only it be not in accordance with the judgment of the Supreme Court.

(24) In view of the delay which has already taken place in the release of sanctioned building plans to the petitioners and in view of the subsequent events such as coming into force of new Building Bye-laws and MPD- 2001 the petition is disposed of in terms of the following directions :

(A)if the petitioners do not propose to revise their building plans and file the same afresh in accordance with the observations made in para 21 above, the petitioners shall file an appropriate application before the Urban Land and Ceiling Authority seeking its permission u/s 22 of the Urban Land (Ceiling & Regulation) Act, 1976. Such application when made shall be disposed of by the Authority within a period of three months from the date of making of the appropriate application complete in all respects and in accordance with law.

(B) On the permission of the competent authority u/s 22 of Ulcra and clearance from L&DO being filed by the petitioners, also an appropriate application for revalidation of the sanction building plans being moved, the respondent-NDMC shall dispose of the application within a period of three months from the date of filing thereof and release the building plans or communicate its decision to the petitioners.

(25) No order as to costs.