
(2005) 03 DEL CK 0157
In the Delhi High Court
Case No : Writ Petition (C) 5892 of 2001

DLF Universal Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Citation : (2005) 03 DEL CK 0157

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : A.M. Singhvi, Pravin Bahadur, Meghalee and Ranjan Narain, for the Appellant; Gaurav Duggal and Ramji Lal, Superintendent, Land DO, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The subject matter of the dispute is that property known as Plot No.124, Narindra Place, Sansad Marg, New Delhi, of which the petitioner is the perpetual lessee. The writ petition was originally filed seeking quashing of the impugned letter/notice dated 13.09.2001 seeking re-entry as also quashing of certain demands made by the respondent failure to pay which had in fact resulted in the re-entry.

2. The matter was earlier heard and parties were given opportunity to file synopsis. In view of certain discussions between the parties, the controversy itself has narrowed down and the position today is that only one aspect of the demands of the respondent is liable to be considered. It may be noticed that there were two aspects to be considered but one of the aspects relating to revision of interest on additional premium from 10% to 16.5% p.a. does not survive since learned counsel for the respondent on instructions states that the interest would be charged at 10% p.a. as had been originally done.

3. The only question thus to be considered is whether for the period 21.07.1982 to 15.05.1985 the respondent is liable to charge misuse charges despite the fact that for the said period of time the respondent had already received the revised ground rent along with interest.

4. It is to be noticed that originally the permissible user of the property was residential which was sought to be utilised for commercial purposes. The crucial date for determination of the charges is not disputed as 21.07.1979 when the application for conversion was made. Thus misuse charges were required to be charged for a period of 3 years thereafter in terms of the circular of the Land DO 16.06.1978. The relevant clause 2(c) is as under :

"The additional ground rent will be recoverable on the basis of 2-1/2% PA. Of the full difference between the value/rate of land as indicated in 2(b) above. Its recovery will start immediately after the completion of 3rd year in the case of commercial multi-storeyed buildings and 2nd year in the case of group housing buildings from the crucial date. In cases where the construction of buildings has already been completed, the additional ground rent will be recovered in lump sum with such interest as may be chargeable from time to time.

5. The petitioner has paid misuse charges for this period and to that extent also there is no dispute. For the subsequent period from 21.07.1982 to 15.05.1985 the petitioner paid the revised ground rent based on commercial user on 27.05.1987. Since the payment was made belatedly the respondent rightly charged interest on the same. Thereafter also up to 2000 the commercial ground rent has been paid and there is no dispute or demand subsisting and claimed by the respondent.

6. Learned counsel for the respondent however, contends that for the aforesaid period of about 3 years, the respondent is liable to charge misuse charges in view of the subsequent circular. It is however not disputed that for this very period the respondent had recovered the ground rent on commercial basis as far back as in 1987 and also charged interest on the same.

7. I fail to appreciate how the respondent can through an administrative order seek to charge misuse charges for this period of time retrospectively having recovered the commercial ground rent for this period of time along with interest.

8. Learned counsel for the respondent sought to rely on the relevant circular dated 11.01.1995 which contain the following clause in respect of misuse and damages :

"MISUSE AND DAMAGES Charges for misuse of the land/building constructed thereon for a purpose other than that for which the land/building was allotted shall be levied from the date on which such misuse is established and up to the date of communication of the terms or sanction of the building plan in accordance with which construction has been executed or date of starting construction whichever is earliest."

9. Learned counsel thus submits that it is up to the date of communication of the terms or sanction of the building plan, that the misuse charges can be levied.

10. It is, however, not disputed that both misuse charges and commercial ground rent cannot be levied because the very basis of charging misuse charges is that

residential premises is being used for commercial purpose. Once commercial ground rent is levied, the natural pre-supposition is that the commercial user of that property is accepted. The respondent having recovered the amount as far back as in 1987 on account of commercial ground rent, thus certifying the property as fit for use of commercial purposes, cannot in 1995 seek to recall the same and recover misuse charges for the same period of time merely because it would be more advantageous for the respondent to do so as the amount of misuse charges for this period would be higher than the commercial ground rent along with interest.

11. The matter stood concluded by accepting the charges in 1987 as also by reason of the fact that for the subsequent period of time thereafter also commercial ground rent was taken right up to 2000 when this controversy was once again raked up.

12. No other issue is required to be considered because it is not disputed that all other controversies between the parties have since been settled after filing of the writ petition.

13. A writ of mandamus is issued quashing the demand for misuse charges for the aforesaid period and any interest demanded thereon. As a consequence of the same the bank guarantee furnished by the petitioner be discharged. The result of the same would be that re-entry notice stand quashed since no amount is recoverable from the petitioner. Parties are left to bear their own costs.