

(2004) 12 DEL CK 0077
In the Delhi High Court
Case No : WPC 5509 of 1998

Good Health Accessories (India) Pvt. Ltd.	APPELLANT
Vs	
Delhi Development Authority	RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20(1)

Citation : AIR 2005 Delhi 230 : (2005) 79 DRJ 134

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Manoj Kumar Singh and Pinki Anand, for the Appellant; Shobhna Takiar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

1. Petitioner a private limited company challenges demand raised by DDA vide letter dated 30.9.1998. By and under said letter, interest in the sum of Rs.23,25,495/- has been demanded. Said sum has been arrived at levying interest @ 18% p.a. on premium of Rs.54,40,922/- for the period 1.8.1994 to 12.12.1996.

2. Case of the petitioner is that one Shri Tilak Raj was the member of "The Surgical Co-op. Society Ltd.". As member of the society, he was entitled to an industrial plot in his name. He died on 23.11.1982 and his nominee Smt. Karman Wali (his wife) was substituted as a member in his place by the society. Possession of the plots could not be given to the members of The Surgical Co-op Society Ltd. as there was dispute pertaining to the cost. Matter attained finality on 16.8.1993 when Supreme Court passed an order in CA.No.668/88 settling the issue of price. Post settlement of the issue of cost, on 1.7.1994, DDA issued a demand in the sum of Rs.54,40,922.60 for the plot in question i.e. plot No.B-61, Okhla Industrial Area, Phase-I, New Delhi. Demand was raised on :

a) M/s Om Engineering Works, 29/25, New Rohtak Road, New Delhi.

AND

b) Smt.Karmawali, W/o late Sh.Tilak Raj, X/166, Gali No.11, Rajgarh Colony, Delhi-110039.

3.It is stated by the petitioner that M/s Om Engineering Works was not the allottee and as a result of demand being issued in the name of said firm, brothers of late Sh.Tilak Raj claimed that plot be allotted jointly in the name of partners of the firm. They claimed to be partners of the firm when application was filed. They filed a civil suit against Smt.Karmanwali being Suit No.226/95. Suit was settled.

4.Petitioner states that Smt.Karmanwali had sought mutation in the record of DDA on 14.1.1989. On 26.8.1996, DDA effected mutation. She requested DDA to mutate plot in the name of the petitioner. On 11.9.1996, DDA mutated plot in the name of the petitioner. Thereafter, DDA raised a demand in the sum of Rs.54,40,922.60 on the petitioner vide letter dated 14.11.1996. Petitioner paid on 3.12.1996. After depositing the amount, petitioner demanded possession. DDA raised demand to regards interest and made payment a condition precedent for handing over possession.

5. It is urged that by raising a demand on M/s Om Engineering Works, DDA tempted its erstwhile partners to lay a claim to the plot. Matter got delayed and, Therefore, DDA cannot levy interest for late payment.

6.During pendency of the writ petition, petitioner had approached the Permanent Lok Adalat of DDA. On 10.7.2003, the Presiding Officer of the Lok Adalat recommended that DDA should not charge interest. Reason for said recommendation was that DDA could not have issued a demand letter on M/s Om Engineering Works and by issuing the demand on said firm, DDA was responsible for its erstwhile partners to lay a claim to the plot. Till date of dispute being resolved, DDA was opined as not beng entitled to interest.

7. Petitioner filed CM.No.4494/03 praying that in view of the recommendation of the Lok Adalat, DDA be directed to hand over possession without receiving any interest.

8.There was a dispute as to who controls the petitioner company. Ms.Pinki Anand, Advocate as also Mr.Manoj Singh, Advocate claimed right to represent the company. Each acted under a Vakalatnama issued to them by different persons claiming to be a Director of the petitioner. Both were heard.

9.DDA was directed to produce the record. None was produced when arguments were heard. Thereafter, on 29.11.2004, DDA filed CM.No.13792/04 and sought leave of the Court to submit the record. With consent of both counsel for the petitioner, record was taken for being considered.

10.Question arises, whether DDA is at fault in addressing the demand letter to M/

s Om Engineering Works? If yes, whether Smt.Karmawali was justified in not making payment. It may be noted that request of Smt.Karmawali to transfer the allotment in favor of petitioner was much after July,1994 when demand was raised.

11. Record of DDA shows that as of March,1968, it had a list of members of Surgical Co-op. Society Ltd. which contained the name of late Shri Tilak Raj at Serial No.11 of the list of members with address being :

""Om Engineering Works, 29/25, New Rohtak Road""

12. Correspondence between DDA and late Shri Tilak Raj shows that he was addressing letters on the letter head of "Om Engineering Works" and DDA was addressing him letters as :

"Sh.Tilak Raj, M/s Om Engineering Works, 29/25, New Rohtak Road, New Delhi.""

13. On 18.11.1970, late Shri Tilak Raj submitted to DDA the following affidavit :

""AFFIDAVIT

I, TILAK RAJ s/o Sh.Mangal Sain, Partner of M/s. Om Engg.Works, New Rohtak Road, New Delhi, do hereby solemnly declare and affirm as under:-

1. That I am the partner of the firm M/s. Om Engg. Works and residing at 15/10 Ashok Nagar, New Delhi.

2. That I am carrying on business of Mfg. of Hospital Furniture at premises No. New Rohtak New Delhi and I have not been allotted any industrial plot by the Delhi Administration/DDA in lieu of premises referred to above.

3. I am not the member of any other Industrial Cooperative Society except the Surgical Cooperative Industrial Estate Ltd., Delhi.

4. That I am aware that if any allotment is obtained by me from the President of India/Delhi Development Authority by suppressing or mis-representation of the facts it will be void ab initio.

DEPONENT

I, Tilak Raj aforesaid solemnly affirm and say that the facts mentioned above are true to my knowledge and nothing is false therein and that no material has been concealed.

Place: Delhi DEPONENT

Dated: 18-11-70.""

14. At a draw of lots held on 22.12.1971, the plot in question was allotted to Shri Tilak Raj. On 4.1.1972, DDA intimated said fact to him and stated that demand would be raised shortly. Letter was again addressed to him as :

""Sh.Tilak Raj, M/s Om Engineering Works, 29/25, New Rohtak Road, New

Delhi.""

15. Allotment did not mature into possession due to some dispute pertaining to the cost to be charged. Tilak Raj died on 23.11.1982. On 14.1.1989, after over 6 years of the death of Shri Tilak Raj, his wife Smt.Karmawali wrote to DDA as under :-

""The Deputy Director Industrial Branch Vikas Sadan IN a Colony, New Delhi.

Sub: Transfer of Industrial Plot No.61 Block-B, Okhla Indl. Area, Phase-I, New Delhi.

Dear Sir,

I may state that the Industrial Plot No.61, block No."B" Okhla Indl. Area Phase I, New Delhi was allotted to my husband Sh.Tilak Raj of M/s.Om Engg. Works and the then resident of H.No.29/25 New Rohtak Road, New Delhi, vide your letter No.6A(91)/70-LSB(1) dt. 19.6.78. Unfortunately my husband expired on 23.11.82. A photostat copy of death certificate is enclosed. It is requested that the said plot may please be transferred in my name. I am prepared to fulfill all the formalities and liabilities in this connection.

Thanking you,

Yours faithfully,

Sd/-

(Karmawali)""

16.Two facts emerge. Late Shri Tilak Raj, in his affidavit declared himself to be a partner of the firm M/s Om Engineering Works and Smt.Karmawali, in her letter dated 14.1.1989, referred to her husband as "Shri Tilak Raj of M/s Om Engineering Works" Further, DDA corresponded with late Shri Tilak Raj as :

"Sh.Tilak Raj, M/s Om Engineering Works, 29/25, New Rohtak Road, New Delhi.""

17. On receipt of request from Smt.Karmawali to transfer allotment in her name, DDA required her to submit the following documents :

1. Affidavit regarding the legal heirs of the deceased Along with their age and relationship with the deceased duly attested by Notary Public/1st Class Magistrate.
2. Death Certificate of the Deceased in original.
3. An affidavit disclosing therein if the mother of the deceased is alive or not duly attested to relinquish her rights in favor of the proposed transferee relinquishment deed from her duly registered may be furnished.
4. Relinquishment Deed fully registered with the Sub-registrar, Delhi by all the other legal heirs if they want to do so in favor of the transferee.

5. Indemnity Bond on a non-judicial stamp paper worth Rs.10/- executed by the transferee duly attested by 1st Class Magistrate Notary Public (In case the plot is to be mutated in the name of all the heirs) of the bond should be executed by all the major legal heirs).

6. Application under Urban Land (Ceiling Regulation) Act 1976 from the legal heirs relinquishing their rights in favor of the other legal heirs/ transferee.

7. Photo and Specimen Signature of the mutatee duly attested.

8. "D" Form and Completion Certificate. (Submission fee if payable).

9. Copy of School leaving certificate and other documents by evidence showing blood relations with deceased lessee.

10. Redemption deed of the plot if mortgaged.

11. Receipt of up to date payment of Ground Rent/ in case of society the NOC from the society.

12. Please Note: if the above documents are not received within the stipulated period, your request shall be filed without any further information to you."

18. This was demanded vide an undated letter at page 32 of the file of DDA.

19. Smt.Karmawali did nothing. Perhaps there was no urgency. Matter pertaining to cost was pending before the Supreme Court vide Civil Appeal No.668/88.

20. On 16.8.1993, Supreme Court decided on issue of cost. On 1.7.1994, DDA raised a demand. The demand letter was posted to:

a) M/s Om Engineering Works 29/25, New Rohtak Road.

AND

b) Smt.Karmawali w/o Late Sh.Tilak Raj X/166, Gali No.11, Rajgarh Colony, Delhi: 110039.

21. On 20.7.1994 Sh.Mulakh Raj, Sh.Chaman Lal and Sh.Om Prakash, brothers of late Sh.Tilak Raj served a notice upon DDA requiring it to allot the plot to M/s Om Engineering works. It was stated in the notice that when Tilak Raj had applied, the said firm was a partnership firm with all 4 brother being its partners. It was stated that it was the partnership firm which had applied for the plot and late Sh.Tilak Raj had signed as partner of the firm.

22. On 8.8.1994, Smt.Karmawali wrote a letter to DDA as under:-

The Deputy Director (Indl.)

Delhi Development Authority,

Vikas Sadan, INA,

New Delhi.

Re: F6(91) 70/LSB(1)/1263 dated 12-7-94.

Sub: Indl. Plot No.61, Block-B, Okhla Indl. Area, Phase-I.

Dear Sir,

With reference to the above letter I would like to request that the last date for deposit of premium was granted up to 31-7-1994 whereas the letter under reference was received by me after 31-7-94 hence it has become very difficult for me to deposit the premium in time. Further there is a change in the constitution of the firm due to death of my husband, papers of which are also being filed simultaneously.

Looking to the above facts and problems you are humbly requested to grant further extension for at least one month and oblige.

Thanking you,

Sd/-

(Smt.Karmawali)""

23. On 19.8.1994, Smt.Karmawali wrote a letter to DDA seeking to transfer the allotment in favor of the petitioner. She submitted the documents listed in the letter. The letter reads as under:-

""The Deputy Director (Industrial),

Delhi Development Authority,

A Block 1st Floor,

Vikas Sadan, INA,

New Delhi.

Subject: Allotment of plot No:B-61 in Okhla Industrial Area Phase-I New Delhi.

Your Ref:F6A(91)/70-LSB-I dated 1.7.1994.

Dear Sir,

This is with reference to your letter referred to above on the above subject. As desired, following documents are sent herewith for further action in the matter:-

1. Copies of partnership deed/ dissolution deeds duly attested.
2. Death certificate in original.
3. Affidavit regarding list of legal heirs.
4. Affidavit that the mother of the deceased is not alive.
5. Relinquishment Deed duly registered.
6. Indemnity Bond duly attested.

7. Copies of ration card duly attested.

We further state that we wish to convert our sole proprietorship concern into private limited company under the name and style M/s Good Health Accessories (India) Private Limited consisting Smt.Karmawali and her son Shri Rajinder Kumar as directors of the said private limited company. Before we process our case further your permission under the terms of allotment is required. For this purpose, we hereby submit the following documents and request your honour to accord your permission to convert the proprietorship concern into private limited company as requested above at your earliest possible and hope the documents added herewith you will find these in order:-

1. Copy of Resolution to act on behalf of the company.
2. Memorandum and Article of Association (2 nos.)
3. Affidavit that there is no change in the constitution of the firm after Smt.Karmawali became the prop. of the firm.
4. Undertaking that the company will take over the assets and liabilities of the firm M/s Om Engineering Works and shall cease to exist after the conversion in favor of pvt. ltd. company is allowed.
5. Undertaking that the private limited company will abide by the terms and conditions of lease deed/allotment.
6. Affidavit that the private limited company will carry the trade as per MPD-2001.
7. Undertaking to pay market value if shares are allotted to other than family members.
8. Depletory affidavit to terminate the conversion if any mis-representation is found in future.
9. Undertaking that the plot is free from all encumbrances and no agreement to sell/construction in favor of anybody is executed.
10. Undertaking that no share will be transferred/sold without prior permission of the Lesser.
11. Affidavit regarding blood relation (2 nos)
12. Undertaking that the private limited company will be formed in accordance with the terms of lease/allotment (3 nos.)
13. Undertaking that the unallotted shares will be held by the original subscribers/share-holders (3 Nos).
14. Application u/s 20(1) of UL (Cand R) Act, 1976 Along with its affidavits.
15. Indemnity Bonds-2 nos.

16. Photo-copy of share certificate issued by the society.

In view of above, it is requested that the permission to convert the proprietorship into private limited company be given without any delay. As regards payment of the cost of the plot demanded vide letter dated 1-7-1994, the same will be deposited within the prescribed period and immediately after conversion of private limited company is allowed. Amount to be deposited is too big and the same can be arranged by raising loan in favor of private limited company easily. We hope your good honour will meet our request and accord your permission within the time period stipulated for making the payment of the cost of the plot.

Thanking you and assure you of our best co-operation as always.

Yours faithfully;

For M/s Om Engineering Works;

Sd/-

(Karmawali)

Prop.

Encl: as listed above.""

24.It is apparent that on 8.8.1994, Smt.Karmawali had no money to pay. She never protested that she would not pay due to her late husband's brothers laying a claim to the plot. Further, she herself wrote that there was a change in the constitution of the firm due to death of her husband. She wrote that papers were being filed simultaneously. She filed the papers on 19.8.1994 which showed that on 20.10.1959 a partnership was constituted between late Sh.Tilak Raj and his 3 brothers under the name and style of M/s Om Engineering Works, which partnership was dissolved on 1.4.1971. Late Sh.Tilak Raj and his brother Sh.Mulakh Raj took over the firm as two partners. 2 brothers retired. On 31.3.1976 the firm was again dissolved and late Sh.Tilak Raj took over all assets and liabilities of the firm and conducted business as sole proprietor of the firm.

25.Documents filed by Smt.Karmawali showed that on her husband's death, her children relinquished their share in the sole proprietary business of their father in name of Smt.Karmawali. Documents further show that the children of Tilak Raj and his wife decided and incorporated the petitioner which was to take over the assets and liabilities of the firm "Om Engineering Work".

26.Late Sh.Tilak Raj always referred to himself as "Tilak Raj of M/s Om Engineering Works". On 18.11.1970 he submitted an affidavit describing himself as partner of M/s.Om Engineering Works. Even Smt.Karmawali referred to her husband as "Tilak Raj of M/s Om Engineering Works". Admittedly, Tilak Raj communicated with DDA on the letter head of "Om Engineering Works". Admittedly, DDA was corresponding with him as:

"Tilak Raj Om Engineering Works, 29/25, New Rohtak Road". Admittedly when plot was allotted, partnership subsisted.

27. Facts justify DDA addressing the demand letter dated 1.7.1994 to M/s Om Engineering Works and to Smt.Karmawali.

28.To complete the narration, DDA wrote to the brother of Tilak Raj to justify their claim in light of the documents filed by Smnt.Karmawali. Brothers of late Sh.Tilak Raj filed a civil suit against Smt.Karmawali and laid claim to 1/4th share each in the plot. The suit was finally compromised in August 1996. On 26.8.1996 DDA recognized Smt.Karmawali as sole beneficiary to the plot. On 11.9.1996 DDA accorded approval for transfer of the plot in name of the petitioner. DDA demanded from the petitione, vide letter dated 14.11.1996, that premium be paid. Petitioner paid the premium on 3.12.1996. Thereafter, as noted in para 1 above, DDA demanded interest from 1.8.1994 to 12.12.96.

29.Premium had to be paid within 30 days of 1.7.1994 when demand was raised for the first time. Since I have found nothing wrong in DDA addressing the demand letter to Om Engineering Works and Smt. Karmawali, neither petitioner nor Karmawali can have any justification not to pay within 30 days.

30. Private dispute raised by brothers of late Sh.Tilak Raj and Smt.Karmawali cannot Therefore be an excuse for the petitioner. There is no justification not to pay within time. For delay, interest has to be paid.

31.It cannot be lost sight of that on 8.8.1994, Smt.Karmawali did not protest as to why demand was addressed to Om Engineering Works. She requested for extension of time on the plea that demand letter was received late. She also wrote that there was a change in the constitution of the firm. It also cannot be lost sight of that after demand was raised, request was made to transfer the same in favor of petitioner.

32. Counsel for the petitioners relied upon:

a) Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, .

b) Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., .

c) Rose Educational Scientific and Cultural Society (Regd.) and others Vs. Union of India and others, .

The 3 cases deal with promissory estoppel. I fail to understand how promissory estoppel is attracted on the facts of the present case. It is not a case where petitioner has acted or altered its position pursuant to any representation made to it by DDA.

33.Petitioner also relied upon La Medica Manufacturing Pvt. Ltd. and Others Vs. Delhi Development Authority Ors., . Case deals with issue as to what is the relevant date for applying rate to determine unearned increase. It was held that

relevant date is when an application, complete in all respects is filed.

34. We are not concerned with the issue of unearned increase.

35. Petitioners, vide CM No.4494/2003 filed order dated 10.7.2003 passed by Sh.S.M. Aggarwal, Presiding Officer, Permanent Lok Adalat DDA. Order records:

""5.Moreover, this demand letter was prima-facie per se defective, improper and thus not legally binding for the simple reason that after the death of Shri Tilak Raj in 1982 the demand letter in pursuance of the order of the Supreme Court should have been issued in the name of all the heirs of late Shri Tilak Raj i.e. in favor of his widow, two sons and four daughters. This has not been done. The demand letter has been issued instead in the name of M/s.Om Engineering Works alleged to be a partnership firm by the DDA. The initial allotment was not made in 1972 in the name of M/s.Om Engineering Works but was made in favor of Shri Tilak Raj in his individual capacity and, Therefore, the demand letter dated 1.7.94 in the name of alleged partnership firm was prima-facie illegal and non-est. Even if for the sake of arguments it is assumed, though it is not true, the allotment was to be made in the name of M/s. Om Engineering Works as a Partnership concern, there are documents and nothings in the DDA file which go to show (file page 42/N) that partnership consisting of Shri Mulakh Raj, Shri Tilak Raj, Shri Chaman Lal and Shri Om Parkash was dissolved and Dissolution Deed dated 1.4.71 vide which Shri Mulakh Raj and Shri Tilak Raj alone remained as partners.

As per noting of this page another Dissolution Deed dated 31.3.76 was executed vide which Shri Mulakh Raj had retired and Shri Tilak Raj alone became proprietor of M/s. Om Engineering"s Works from 1.4.76. Thus Shri Tilak Raj having died on 13.11.82 the ole proprietor firm M/s. Om Engineering Works lost its legal status as an entity and the interest of Shri Tilak Raj as alleged proprietor of the firm was to devolve on his widow, two sons and four daughters. Thus the demand letter in this view of also should have been issued after correct processing the matter in favor of all the legal heirs of late Shri Tilak Raj.""

36. I am afraid, the order ignores the facts noted by me in my judgment above. The Lok Adalat has over simplified the matter.

37. Rule is discharged. Petition dismissed.

38. No costs.