

(2012) 09 AHC CK 0238

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 18964, 42745 and 42748 of 2009

Gopal Swarup Chaturvedi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Citation : (2012) 10 ADJ 446 : (2013) 2 AWC 1314

Hon'ble Judges : Amitava Lala, Acting C.J.;P.K.S. Baghel, J

Bench : Division Bench

Advocate : Navin Sinha, M.K. Gupta and Samit Gopal, for the Appellant; R.K. Saxena and S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Amitava Lala, A.C.J.

1. The petitioners in the aforesaid writ petitions are brother and sisters. There is no dispute with regard to conversion of leasehold Nazul land of the petitioners to freehold excepting two issues:

(a) Whether 20% rebate will be given to the petitioners as per the Government order dated 10th December, 2002 or 10% as per the Government order dated 21st October, 2008 on account of deposit of requisite amount within 90 days from the date of demand notice?

(b) What would be the appropriate circle rate applicable to the respective petitioners?

Therefore, let us discuss both the points one after another.

So far as first point is concerned, three separate lease-deeds were executed and registered by the authority in favour of the petitioners on 25th September, 2007 giving separate plot numbers i.e.. Plot Nos. 146-A/1, 146-A/2 and 146-A/3, Civil Station, Allahabad. Thereafter, the petitioners applied for conversion of such

leasehold lands to freehold on or before 25th June, 2008 as per the Government order dated 10th December, 2002 upon deposit of 25% amount of the self assessed value. On 21st October, 2008 subsequent Government order came into force. Respective demand notices were issued to the petitioners on 13th March, 2009 claiming therein inter alia an amount of Rs. 1,05,81,236.00, Rs. 1,08,66,946.00 and Rs. 1,13,81,601.00 respectively after adjusting 25% amount deposited by the petitioners as per previous Government order of 2002. But at the time of giving rebate under selfsame notices only 10% rebate has been allowed as per new Government order of 2008 instead of 20% rebate in case of deposit within 90 days. Against such demand notices, the petitioners made their respective representations, which were rejected by the concerned District Magistrate by orders dated 18th July, 2009 by reaffirming the demand notice.

2. Challenging the aforesaid demand notices dated 13th March, 2009 as well as the orders dated 18th July, 2009 the aforesaid writ petitions have been filed. However, this Court was pleased to direct the petitioners to deposit the entire amount under protest as per the demand notice dated 13th March, 2009, which shall be subject to the final order of this Court and if such payment is made, the Collector/District Magistrate shall take appropriate steps for execution of the freehold deed/s.

3. The moot point of the petitioners is that when the applications were made by the petitioners for the purpose of conversion of land from leasehold to freehold, the Government order dated 10th December, 2002 was existing, therefore, they are entitled to get the rebate of 20% on deposit within 90 days as per the aforesaid Government order. Since the deposits are made within 90 days either from the date of notice or from the date of order of the Court, there is no question of applicability of the Government order dated 21st October, 2008 retrospectively by giving rebate of 10%. In support of their contentions, the petitioners have relied upon a Division Bench judgment of this Court in Dr. O.P. Gupta and others v. State of U.P. and another, 2009 (7) ADJ 285 (DB), wherein it has been held that the benefit will be given to the petitioners as on the date of making application. The petitioners cannot be penalised for inaction on the part of the authority.

4. It is not unknown to us that some unscrupulous persons, after making applications for conversion of land, keep the same pending indefinitely with unholy nexus and connection with the persons attached to the authorities. Similarly, sometimes for unlawful gain of some of the persons attached to the authorities, conversion processes are being delayed enormously. Both are bad. Court has no sympathy towards the persons involved in such type of activities. But the cases in hand are quite different. The petitioners have deposited 25% amount of self assessment as per the Government order dated 10th December, 2002 and other deposits are also made within the aforesaid period. Therefore, the petitioners have given the test of bona fide.

5. From paragraph-10 of the counter-affidavit filed in Writ Petition No. 18964 of

2009, we find that the explanation as given by the respondents therein cannot be said to be logical in respect of the fiscal policy. According to the State, at the time of issuance of demand notices, the Government order dated 21st October, 2008 was in existence, therefore, the provisions of the Government order dated 21st October, 2008 have been complied with. The freehold discount of 10% was given to the petitioners according to the aforesaid Government order dated 21st October, 2008. The deed of freehold was executed on 20th November, 2009 when the demand notices were issued on 13th March, 2009. Again at the time of issuance of demand notices, the Government order dated 21st October, 2008 was in existence.

6. However, when we go through the respective demand notices dated 13th March, 2009, we find that reference of both the Government orders are given thereunder. Calculation of requisite amount for the purpose of deposit has been made on the basis of the earlier Government order dated 10th December, 2002 but rebate has been given for 10% instead of 20% on the basis of the new Government order dated 21st October, 2008. Therefore, the demand notices are ex facie bad and outcome of total non-application of mind. Moreover, according to us, unlike the other laws, the fiscal laws are very much specific in making a claim from a person because any recovery against the law will be treated to be unjust enrichment on the part of the State or the State authority. In a case of fiscal dispute, both the authority and the assessee have to go by the mathematical precision. Similar view has already been taken by the Division Benches of this Court, presided over by one of us (Amitava Lala, J.) in the judgments in *M/s. Parsvnath Developers Ltd. v. Greater Noida Industrial Development Authority* and another, 2011 (8) ADJ 771 (DB) and *M/s. Premium Suitings Pvt. Limited v. Commissioner of Central Excise, Division Kanpur*, 2009 (3) ADJ 82 (DB). In addition thereto, a Division Bench of this Court in *Dr. O.P. Gupta* (supra) has already held that the date of application is the cut off date. Therefore, the same being verdict of coordinate Bench has a binding effect upon this Court.

7. Hence, in totality, we do not find that the rebate of 10% as given in the demand notices is sustainable in nature.

8. So far as second point i.e.. applicability of circle rate in respect of the respective petitioners is concerned, the petitioners' case is that initially entire land was recorded as single plot, being Nazul Plot No. 146-A, Civil Station, Allahabad, in favour of mother of the petitioners but, after her death, on 25th September, 2007 three separate lease deeds were executed by the State authority in favour of the petitioners in these three writ petitions by apportioning the lease land into three parts. Such separated plots have also been allotted giving separate numbers i.e.. Plot No. 146-A/1, Civil Station, Allahabad, Plot No. 146-A/2, Civil Station, Allahabad and Plot No. 146-A/3, Civil Station, Allahabad. All the separate lease deeds executed in favour of the petitioners have been annexed as Annexure-2 to the respective writ petitions. In this background,

petitioners" contention is that since separate numbers have been given to each of three plots by execution of separate lease deeds, individual rights have been created though there is no physical demarcation. Therefore, according to the petitioners, the formula as prescribed in the Government order dated 26th September, 1997 for calculating the circle rate of the corner plot will be applied only in respect of the plot of petitioner in the first writ petition, and not in the cases of petitioners in the second and third writ petitions, who are not having allotment of corner plots. However, in their cases calculation will be made only on the basis of the circle rate of the road, on which their plots are situated. Moreover, the earlier provision for payment of circle rate for a corner plot as was laid down in Paragraph-6 of the Government order dated 17th February, 1996 has been repealed by Para-graph-3 of the new Government order dated 26th September, 1997, which is presently covering the issue in this regard. For better understanding, Paragraph-6 of the Government order dated 17th February, 1996 and Paragraph-3 of the Government order dated 26th September, 1997 are reproduced hereunder (as per the English translation):

Paragraph-6 of the G.O. dated 17th February, 1996:

6. If Nazul land is situated between two parts on the corner of the road and if the circle rates of both the parts are different; then in such type of cases, assessment shall be made on the basis of road having higher circle rate, as done in the case of land situated between two roads.

Paragraph-3 of the G.O. dated 26th September, 1997:

3. Repealing the provision made in para-6 of the Government Order No. 82/9-aa-4-96-629N/95, dated February 17, 1996, it has been decided that the proceedings of making free-hold will be carried out under the following provisions-

1. Determination of the circle rate of the nazul land for making it freehold situated between (in corner of) two roads, will be carried out under the following formula.

As per the provisions mentioned above, permission to make free-hold the fraction-part of the leased land will be given only in that condition when legal successor of lease-holder will give approval with the affidavit to the effect that they will make free-hold the remaining leased land, in future as well, at assessed rate on the basis of above-mentioned formula as per the provision made in the nazul policy.

2. In case of nazul land, the lease of which mentions a particular road for location of the plot of land, then adding 10 percent of circle rate as corner charges to the circle rate of that road, the free-hold proceeding will be carried out. Circle rate means circle rate of the prescribed date for making freehold under the nazul policy.

9. Learned Standing Counsel has contended before this Court that since the plots

are not physically demarcated from each other, the circle rate will be applied treating the entire land as one plot on the basis of the formula as given in the earlier Government order dated 17th February, 1996 for the corner plot. On the other hand, it is further contended by the petitioners that such Government order dated 17th February, 1996 is no more in existence and, therefore, if the formula as prescribed in the Government order dated 26th September, 1997 is accepted, then considering the fact that at the relevant point of time the prevalent circle rate on Kastoorba Gandhi Marg was Rs. 11,000/- per square meter when on Stanley Road it was Rs. 6600/- per square meter, the circle rate for the corner plot comes to Rs. 8650/- per square meter. However, this rate will be applicable only in respect of plot of the first petitioner but not in respect of the plots of the other petitioners.

10. Upon going through the respective writ petitions as well as the affidavits filed on behalf of the parties and also the Government orders, we are of the view that the submission as made by the petitioners is treated to be correct in view of the fact that separate identity has been given by the State itself by executing separate lease deeds and by giving separate numbers to the plots of the petitioners. Having so, the circle rate will be applicable as per the plot numbers and location thereof. If the plot lies on one particular road, calculation of circle rate will be made as per the same. Therefore, whatever calculations have been made by the authorities for giving higher rate towards the plots of petitioners of the second and third writ petitions cannot be acceptable and, as such, such circle rate fixed by the authority for the same under the demand notices is not sustainable. So far as the case of petitioner in the first writ petition is concerned, his plot situates at the corner between two roads, therefore, the formula given in the Government order dated 26th September, 1997 will be applicable and, as such, the calculation as made in the impugned notice in this regard is also not sustainable.

11. In view of the above discussions, in totality the demand notices dated 13th March, 2009, impugned in the present writ petitions, are liable to be quashed and are hereby quashed. Consequential orders, as challenged in the second and third writ petitions, are also quashed. Fresh calculation will be made by the respondents strictly as per the Government orders, as discussed above, and also as per the observations made by this Court hereinabove after giving fullest opportunity of hearing within a period of seven days from the date of communication of this order. Fresh demand notices will be issued to the petitioners within seven days thereafter. As per the fresh demand notices, the amount already deposited by the petitioners will be adjusted. In case of shortfall, the petitioners will deposit the same within two weeks thereafter. However, in case any deposited amount is found surplus, that will be refunded to the petitioners with simple interest @ 6% per annum.

12. Accordingly, the writ petitions are allowed, however, without any order as to costs.

Hon"ble P.K.S. Baghel, J.

I agree.