

(1997) 02 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Appeal No. 5078 of 1993

Gopichand and Another

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 24-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 AD 413 : (1997) 66 DLT 579

Hon'ble Judges : Kripa Shankar Gupta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : R.K. Gupta, C.M. Rao and Sangeeta Chandra, for the Appellant;

Judgement

K.S. Gupta, J.

(1) In this writ petition filed under Article 226 of the Constitution of India petitioners have alleged that in the auction held by the respondent on July 13, 1993, for shop No. 23 (area 11.31 sq. metres) in C.S.G. No. 2, Sector Ix, Rohini, Delhi, they gave a bid of Rs. 2,71,000.00 . Since the bid of the petitioners was the highest, as per the terms and conditions (Annexure A) they deposited a sum of Rs. 67,750.00 as the earnest money i.e. 25% of the bid amount. After the bid of the petitioners was confirmed by the Vice Chairman, respondent issued a demand notice No. 93(62) 93 Ce dated July 29, 1993 (Annexure B). In terms of this demand notice petitioners were required to deposit a sum of Rs. 2,11,425.00 within 30 days from the date of issue thereof. Amount demanded under the Head (h)(iii) in the said demand notice is as under : Ground Rent per annum ... Rs. 4,065 .00 Maintenance Charges ... Rs. 4,065.00

(2) It is alleged that at the time of auction the petitioners were not informed that they would also be liable to pay the ground rent and maintenance charges Along with the amount for which the bid was given by them. Therefore, on receipt of the above demand notice petitioner No. 1 visited the office of the respondent and contacted the concerned official and requested him to revise the demand notice

but of no avail. Petitioners got a legal notice dated August 4, 1993 served on the respondent through Mr. Raj Kishore Gupta, Advocate, calling upon it to rectify the demand notice but despite service thereof petitioners have not heard anything from the respondent. Under protest petitioners deposited a sum of Rs. 2,11,500.00 as demanded in the notice dated July 29, 1993. Possession of above shop No. 23 was thereafter delivered to the petitioner on September 21, 1993 by the respondent.

(3) It is further alleged that the petitioners have come to know that in respect of shops Nos. 11, 21 & 31 in C.S.C. No. 2, Sector IX, Rohini, respondent has fixed the ground rent at Rs. 1,775.00 per annum each. Area of these shops too is 11.31 sq. metres each. Demand of the ground rent raised by the respondent vide notice dated July 29, 1993 is thus discriminatory and it cannot charge ground rent more than Rs. 1,775.00 per annum from the petitioners. It is also alleged that the amount of the maintenance charges is always equal to the ground rent, Therefore, demand towards maintenance charges in the sum of Rs. 4,065.00 is further discriminatory. Moreover, in the aforementioned demand notice respondent has not disclosed the basis for calculating the amount of ground rent and maintenance charges. It is prayed that by issuing writ (s) of certiorari/ mandamus demand raised in respect of ground rent and maintenance charges @ Rs. 4,065.00 each may be quashed and the respondent be directed to fix the ground rent and maintenance charges of shop No. 23 at Rs. 1,775.00 per annum each with effect from September 21, 1993.

(4) Respondent contested the petition by filing reply on the affidavit of H.S. Dhankar, Director, DDA. It is not disputed that in the auction held on 13.7.1993, the petitioners purchased shop No. 23 measuring 11.31 sq. metres in Community Shopping Centre No. 2, Sector IX, Rohini, Along with the leasehold rights underneath the shop for Rs. 2,71,000.00 and deposited Rs. 67,750.00 towards 25% of the bid amount.

(5) It is also not denied that after the confirmation of the bid by the Vice Chairman, demand notice dated July 29, 1993 for deposit of Rs. 2,11,425.00 towards the remaining 75% bid amount Along with annual ground rent and maintenance charges @ Rs. 4,065.00 each was issued to the petitioners and on petitioners' depositing the said amount, possession of shop No. 23 was delivered to them, as alleged.

(6) It is stated that prior to July 1992, the basis for calculating the cost of land was 60% of the reserve price. But with effect from July, 1992, as per the decision taken by the Competent Authority, the basis for calculating the cost of land was revised to 60% of the bid amount instead of reserve price. Annual ground rent is calculated @ 2% of the cost of land. Likewise is the basis for calculating the annual maintenance charges. Annual ground rent and the maintenance charges @ Rs. 4,065.00 each have been calculated on the basis of the aforementioned formula. It is further alleged that annual ground rent and maintenance charges are taken one year in advance. Difference in the amount of

ground rent and maintenance charges in respect of shop Nos. 11, 21 & 31 has occurred due to change in policy in July, 1992. It is emphatically denied that there has been any discrimination in the matter of charging annual ground rent and maintenance charges from the petitioners, as alleged.

(7) Petitioners Along with the rejoinder to the reply of the respondent annexed a statement (Annexure at) as regards the details of the shops Along with their area, reserve price, ground rent, bid amount and names of the purchasers for some of the shops in C.S.C. No. 2, Sector IX, Rohini and L.S.C. at Shalimar Bagh which were sold in an auction held on February 4, 1993 by the respondent.

(8) The only point, which falls for our consideration in this petition is whether the petitioners have been discriminated against in the matter of fixation of the amount of annual ground rent and maintenance charges in respect of shop No. 23, C.S.C. No. 2, Sector IX, Rohini, by the respondent. Petitioners cited instances in para 6 of the petition and also relied upon Annexure at filed Along with the rejoinder where the amount of annual ground rent and maintenance charges was fixed at Rs. 1,775.00 each regarding other shops of similar size in the same shopping complex. Contention advanced by the learned Counsel for the respondent was that amount of annual ground rent and maintenance charges @ Rs. 1,775.00 each in respect of shops Nos. 11, 21, 31, reference whereof is made in para 6 of the petition, was fixed with reference to the policy, which was in vogue prior to July, 1992 and as the case of the petitioners is governed by the revised policy of July, 1992 they cannot derive any advantage as regards the rate of the annual ground rent and maintenance charges fixed in respect of shops Nos. 11, 21 & 31. There is considerable merit in the submission. Since shop No. 23 was sold to the petitioners in an auction held on July 13, 1993 they are to be governed by the revised policy according to which the cost of land is to be calculated equivalent to 60% of the bid money instead of the reserve price.

(9) Coming to the instances quoted in Annexure A1, the respondent does not dispute the correctness of the factual statements made therein. In Annexure at the amount of the annual ground rent has been shown as Rs. 1,775.00 in respect of shops Nos. 1, 3, 11, 19, 21, 31 & 38. All these shops are located in the C.S.C. No. 2, Sector IX, Rohini, on the ground floor where shop No. 23 of the petitioners is situated. Their area too is 11.31 sq. metres each. Said shops have been sold in the auction held by the respondent on February 4, 1993 for Rs. 4,66,000.00 , 4,84,000.00 , 3,41,000.00 , 2,36,000.00 , 2,12,000.00 , 3,65,000.00 and 3,16,000.00 respectively. According to the petitioners, if there was change in the policy in July, 1992 as pleaded in the reply, annual ground rent of the aforementioned shops ought to have been more than Rs. 1,775.00 each. Relying on letter No. F.21 (Misc) Shops/Costing/2 dated September 25, 1992 sent by Arjun Lal, Accounts Officer (HAC) to the Deputy Director (CE), Dda, Vikas Sadan, New Delhi, submission advanced by the learned Counsel for the respondent was that the revised policy of July, 1992 wherein the cost of land was to be calculated equivalent to 60% of the bid amount instead of reserve price was suspended for

a period of six months with effect from September 12, 1992 by the Vice Chairman. As the above shops Nos. 1, 3, 11, 19, 21, 31 & 38 were auctioned during the period of six months, the annual ground rent of these shops was fixed at Rs. 1,775.00 each, taking the cost of the land equivalent to 60% of the reserve price of Rs. 1,80,300.00 . A copy of the aforesaid letter dated September 25, 1992 has been placed on record on behalf of the respondent. Bare reading of this letter goes to show that the revised policy of July, 1992 was suspended for a period of six months with effect from September 12, 1992 by the Vice Chairman and the reserve price of the said shops was. fixed at Rs. 1,80,300.00 besides annual ground rent and the maintenance charges thereof at Rs. 1,775.00 each. Obviously, fixation of the annual ground rent at Rs. 1,775.00 with respect to aforementioned shops Nos. 1,3,11,19, 21,31 & 38 was governed by the instructions contained in said letter dated September 25, 1992. Thus, these instances are also of no help to the petitioners. Suspension of the policy decision of July, 1992 came to an end on March 12, 1993. With effect from March 12, 1993 the revised policy of July, 1992 stood revived. The fixation of the annual ground rent and the maintenance charges on and from that date thus is to be governed as per the revised policy. Since the petitioners purchased Shop No. 23 in an open auction on July 13, 1993 the annual ground rent and maintenance charges was required to be calculated taking the cost of the land equivalent to 60% of the bid amount as per the revised policy of July, 1992. If one calculates the annual ground rent @ 2% on that cost of land it comes to Rs. 4,065 .00 . Likewise will be the annual maintenance charges. Petitioners have not been able to point out any case wherein the annual ground rent and maintenance charges may have been fixed @ Rs. 1,775.00 each by the respondent in respect of the shop of the size purchased by the petitioners with the bid amount of Rs. 2,71,000.00 in C.S.C. No. 2, Sector IX, Rohini, after March 12, 1993. Petitioners, Therefore, must be held to have not made out a case of discrimination in the matter of fixation of annual ground rent and maintenance charges at Rs. 4,065 .00 each in regard to shop No. 23 and the petition is, Therefore, liable to be dismissed.

(10) In the result, the petition is dismissed but in the circumstances of the case with no order as to costs.