
(2011) 09 DEL CK 0354

In the Delhi High Court

Case No : Writ Petition (C) 15304 of 2004

Harbans Lal Pahwa

APPELLANT

Vs

The Lieutenant Governor and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0354

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : D.G. Dastidar, for Nandni Sahni, for the Appellant; Deepika, for R 1 and 4 and M.K. Singh, for DDA, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The respondent No. 2 DDA, in pursuance to the Scheme and recommendation of the respondent No. 4 Land & Building (L&B) Department of the Delhi Administration, vide letter dated 19.09.1978 allotted a plot of land admeasuring 334.45 sq. mtrs. equal to 400 sq. yds. and bearing No. 43, Block G in East of Kailash Residential Scheme to one Sh. Khem Chand as alternative residential plot in lieu of acquired land. The said Sh. Khem Chand was put into possession of the said plot of land on 08.02.1980 and a Perpetual Lease Deed dated 29.05.1980 was executed in favour of Sh. Khem Chand with respect to the said plot of land. Sh. Khem Chand in the year 1980 itself agreed to sell the said plot of land to the petitioner herein and is informed to have, on receipt of the entire sale consideration, put the petitioner herein into possession of the land. However, no sale deed having been executed in favour of the petitioner, the plot, in the records of the respondent DDA remained in the name of Sh. Khem Chand only. The petitioner raised construction on the said plot of land and of which Occupancy Certificate dated 17.02.1983 was issued by the respondent DDA.

2. The respondent DDA vide letter dated 19.09.1984 informed Sh. Khem Chand that the Perpetual Lease Deed dated 29.05.1980 executed in his favour with respect to the aforesaid plot of land had been cancelled on 17.08.1984 upon

withdrawal vide letter dated 07.07.1982 by the respondent Delhi Administration of the earlier recommendation on the basis whereof the plot was allotted. Proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were also commenced.

3. Sh. Khem Chand filed W.P. (C) No. 2482/1984 in this Court impugning the order cancelling the Lease Deed and for restraining dispossession from the said plot of land. On 17.04.1985, the counsel for the Delhi Administration informed this Court that the letter dated 07.07.1982 (withdrawing the recommendation for allotment of land in the name of Sh. Khem Chand) had been withdrawn. This Court accordingly vide order dated 17.04.1985 in W.P. (C) No. 2482/1984 held that the order dated 17.08.1984 of cancellation of lease which was based on the letter dated 07.07.1982 (which had been withdrawn) could also accordingly not survive and disposed of the writ petition as infructuous. The order dated 17.04.1985 also records the statement of the counsel for Delhi Administration that the eligibility of Sh. Khem Chand had been determined for a plot of only 250 sq. yds.; it was as such further ordered that as and when the said order determining eligibility for 250 sq. yds. instead of 400 sq. yds. will be served on Sh. Khem Chand, he will be at liberty to take appropriate proceedings there against in accordance with law. This Court further directed that consequently, the proceedings initiated by respondent DDA under the Public Premises Act will also stand withdrawn.

4. There is nothing to show that the petitioner to whom the plot stood sold was aware of cancellation of lease or of filing of W.P. (C) No. 2482/1984 by Sh. Khem Chand or order aforesaid therein. Rather, an application for sanction of further construction was made (by the petitioner as attorney of Khem Chand) and allowed and Occupancy Certificate dated 03.08.1985 with respect thereto issued.

5. It transpires that the Delhi Administration thereafter determined the eligibility of Sh. Khem Chand for alternative plot in lieu of acquired land for 250 sq. yds. only and since in accordance with the earlier recommendation, determining the eligibility of Sh. Khem Chand for plot of 400 sq. yds., the respondent DDA had allotted the plot aforesaid to Sh. Khem Chand and further since Sh. Khem Chand was already in possession of the plot, the respondent DDA regularized the allotment of the balance/excess 150 sq. yds. in favour of Sh. Khem Chand subject to payment of Rs. 81,91,414/- being the market price of the land. However there is nothing to show that Sh. Khem Chand was informed or the basis of the said demand.

6. However even if Sh. Khem Chand was informed of the above, having already sold the plot to the petitioner and there being no threat of dispossession, no action was taken by Sh. Khem Chand also against his eligibility being determined for 250 sq. yds. only and/or against the demand of Rs. 81,91,414/- for regularizing balance 150 sq. yds. allotted to him. In fact there is nothing to show that respondent DDA thereafter took any action in the matter, neither for demanding/recovering the said sum of Rs. 81,91,414/- or for cancellation of the

lease with respect to the said 150 sq. yds. upon non payment of the said amount.

7. The matter rested as such till the year 1997 when respondent DDA vide letter dated 27.08.1997, in response to the application of the petitioner for conversion of leasehold rights in the land underneath the property into freehold in his own name in accordance with the policy of freehold conversion then introduced by the respondent DDA, informed the petitioner that his application for freehold conversion could not be considered since the said sum of Rs. 81,91,414/- was outstanding as balance cost of the plot.

8. Upon the representations of the petitioner there against not meeting with any success, the petitioner earlier filed W.P. (C) No. 3684/1998 in this Court challenging the demand for Rs. 81,91,414/- and for directing the respondent DDA to convert the leasehold rights in the land into freehold without insisting upon payment thereof.

9. It is the case of the petitioner that he was not aware of the cancellation aforesaid of the lease, of filing of W.P. (C) No.2482/1984 by Sh. Khem Chand or of order therein. Accordingly, all the said facts were not mentioned in W.P. (C) No.3684/1998. However, the respondent DDA in its counter affidavit in the said writ petition disclosed the said facts. The said W.P. (C) No. 3684/1998 came up for disposal on 13.07.2004 when upon this Court observing that the petitioner had not challenged the order of the Delhi Administration reducing the entitlement of Sh. Khem Chand from 400 sq. yds. to 250 sq. yds., the petitioner sought to withdraw that writ petition with liberty to file a fresh petition challenging the said order also. The said writ petition was accordingly, vide order dated 13.07.2004, dismissed as not pressed with liberty to the petitioner to file a fresh comprehensive petition.

10. It is thereafter that the present petition has been filed. Notice of the petition was issued. The petitioner was permitted to amend the writ petition. Pleadings have been completed and the counsels have been heard.

11. Though the petitioner has in the petition sought quashing and setting aside, also of the order dated 17.08.1984 of the respondent DDA revoking the Perpetual Lease Deed dated 29.05.1980 with respect to the aforesaid plot of land but as aforesaid, the said order was quashed vide the order dated 17.04.1985 in W.P. (C) No. 2482/1984. It is not the case of respondent DDA that thereafter any fresh order of cancellation of allotment/Lease Deed dated 29.05.1980 or with respect to 150 sq. yds. conveyed in excess of the entitlement of the petitioner, has been passed. It has as such been enquired from the counsel for the respondent DDA as to how the respondent DDA can today urge that Sh. Khem Chand and the petitioner as his successor, is not entitled to the entire 400 sq. yds. conveyed vide Perpetual Lease Deed dated 29.05.1980 which subsists. No answer has been forthcoming.

12. In my opinion, the writ petition is entitled to succeed on this ground alone. Admittedly, title with respect to the entire 400 sq. yds. was conveyed. Though

the said title was sought to be revoked/cancelled on 17.08.1984 but the said cancellation was set aside by this Court vide order dated 17.04.1985 in W.P. (C) No. 2482/1984. Even though according to the respondents, thereafter the eligibility of Sh. Khem Chand was determined for a plot of 250 sq. yds. only and the allotment/possession of the remaining 150 sq. yds. was sought to be regularized by demanding Rs. 81,91,414/- as the price of the excess 150 sq. yds. but no steps having been taken for cancellation of the lease already in existence with respect to the entire 400 sq. yds. and which Lease Deed records the payment of premium for the entire 400 sq. yds., Sh. Khem Chand and the petitioner as his successor thus continue to have a lawful title with respect to the entire 400 sq. yds. and without the respondent DDA demonstrating to this Court that any steps were taken for altering the Lease Deed, it cannot be said that the title with respect to the entire 400 sq. yds. has ceased to exist.

13. In the circumstances, I am of the opinion that there is no need for this Court to adjudicate the challenge to the order reducing the eligibility of Sh. Khem Chand from 400 sq. yds. to 250 sq. yds. I may however notice that this Court in Sudarshan Lal Gupta Vs. Delhi Administration and Another, has held that withdrawal of a recommendation for allotment of alternative plot in lieu of acquired land after execution of Perpetual Lease Deed and after construction having been raised on the plot so allotted and without prior notice, opportunity and compensation, is illegal, opposed to rules of natural justice and barred by promissory estoppel. The respondents from 1985 till 1997 maintained quietus and did not take any steps whatsoever. The property could well nigh have changed further hands in the interregnum. The respondents did not take any steps whatsoever to change the allotment from that already made of 400 sq. yds. to 250 sq. yds. only or to revoke the title with respect to the excess land. The respondents by their conduct have allowed the petitioner to continue enjoying the property and are not only estopped from demanding the amount but have no legal right to demand the same. Without the title of Sh. Khem Chand to the entire 400 sq. yds. under the perpetual lease aforesaid being revoked, it cannot be said that the petitioner as successor of Sh. Khem Chand, is in possession of any extra land for which he is liable to pay the demanded amount.

14. Even otherwise, it was Sh. Khem Chand who was best equipped to contest the reduction of his eligibility for alternative plot from 400 sq. yds. to 250 sq. yds. The petitioner who is a transferee from Sh. Khem Chand cannot be expected to be in the full know of all the relevant facts in this regard. The respondents have not produced before this Court any material to show as to why eligibility of Sh. Khem Chand was earlier determined for a plot of 400 sq. yds. and what were the reasons for alteration thereof. The respondents ought to have got the matter adjudicated in 1984 itself but chose to withdraw the letter dated 07.07.1982 of revocation of earlier recommendation. The entire conduct of the respondents is found to be such for which the petitioner cannot be made to suffer.

15. The Division Bench of this Court in Delhi Development Authority Vs. Jayshree

Bagley and Another, where also the transferees from a person allotment in whose favour stood cancelled, had been in possession for long without any claim from the persons to whom allotment had been subsequently made, held that no case for disturbing them was made out.

16. The petition therefore succeeds. The demand of the respondent DDA of Rs. 81,91,414/- from the petitioner is struck down/quashed. The respondent DDA is directed to on or before 31.12.2011 and subject to the petitioner complying with the requisite formalities, convert the leasehold rights in the land underneath the property into freehold without insisting upon the petitioner paying the said sum of Rs. 81,91,414/- or any other amount with respect to the excess land of 150 sq. yds. However, in the circumstances, no order as to costs.