
(2002) 08 DEL CK 0295
In the Delhi High Court
Case No : CW 1847 of 2000

H.R. Vaish

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Citation : (2002) 100 DLT 370

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : J.P. Sengh, for the Appellant; Sangeeta Chandra, for R-2 and 3 and Abhilash Mathur, for respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—Rule.

2. At the request of learned counsel for the parties the matter is taken up for final disposal.

3. The petitioner has impugned the letter dated 3.8.99 issued by respondent No. 2 making a demand of Rs. 11,08,948/- along with interest w.e.f. November, 1988 on account of unearned increase in respect of the property bearing No. S-99, Panchsheel Park, New Delhi.

4. One Sh. S.K. Aggarwal was allotted the plot in October, 1971 and he executed a special power of attorney in favor of Sh. V R Vaish father of the present petitioner on 24.1.73. The property was constructed upon by Sh. V R Vaish. On 25.11.1988 Sh. S K Aggarwal executed a gift deed in favor of the petitioner stated to be on account of love and affection for the petitioner being the maternal uncle of the petitioner. Other documents including the indemnity bond and affidavit were also executed by the said Sh. S K Aggarwal in favor of the petitioner and necessary approvals were obtained from RBI since S K Aggarwal was an NRI. The petitioner sought transfer of the said plot in his name and the cooperative society issued a no objection certificate dated 20.7.89. The

communication however, continued between the petitioner and respondent No. 2 in respect of the mutation of the property in the name of the petitioner.

5. On 14.2.92 policy guidelines were issued for conversion of lease hold properties into free hold. This policy was made not only for the original allottees and perpetual lessees but also for general power of attorney holders though an additional surcharge of 33.3% was imposed in case of property transferred on power of attorney basis.

6. On 22.3.93 Sh. V R Vaish made a request to complete the necessary mutation formalities for transfer of property in the name of the petitioner but further documents were asked for. On 24.6.1997 the petitioner submitted an application for conversion into free hold along with the sum of Rs. 2,41,080/- which amount was accepted by respondent No. 2. Thereafter a request was made for conversion of lease hold property into free hold property but the conversion did not take place. The petitioner also made a request on 14.12.98 to the Lt. Governor, respondent No. 3. When the matter was considered the issue apparently raised was whether the gift can be one of the modes of transfer of property. Finally instead of taking a decision in favor of the petitioner the impugned letter dated 3.8.1999 was issued making the demand of Rs. 11,08,948/- on account of 50% unearned increase along with interest. The petitioner made representations against the same but to no avail.

7. Learned counsel for the petitioner contends that in fact of 26.5.1999 a clarification was sought from the Ministry of Urban Development in respect of cases where conversion to free hold on the basis of registered gift deed made in favor of the persons falling outside the definition of family members has been sought and it was desired that the conversion policy should include such gift deeds as valid instruments for allowing conversion of property to free hold. Learned counsel submits that the case of the petitioner was considered as would be apparent from the document note filed as annexure P-36 Along with the said letter. It is noted in the said document note that in the particular case the gift deed was executed by a person holding a power of attorney. It is further stated in the said note that the Lesser's approval for allowing conversion into free hold in this particular case was obtained on 22.2.1998 and it was noted that the matter was placed before the Lt. Governor and it has been decided to amend the conversion policy so as to include cases of gift subject to other conditions as applicable in the cases of general power of attorney being satisfied. Thus learned counsel contends that the case of the petitioner in any case is one which has to be covered under the policy of power of attorney transactions.

8. Learned counsel for respondent No. 2 DDA, on the other hand, contends that the policy for conversion of lease hold into free hold itself has been explained in para 1.16 to the following effect:-

"In cases where applications for Mutation and substitution is pending with the Lesser, conversion would be allowed only after the necessary mutation/

substitution has been carried out."

9. It is thus the contention of learned counsel for the respondent DDA that the case of conversion of the petitioner can only be considered after earlier application for mutation and substitution is finalised which would require payment of the unearned increase.

10. Learned counsel for the respondent No. 2 submits that the case of the petitioner being peculiar in nature, a clarification was sought from the Ministry of Urban Development and the said clarification was issued on 15.11.2000. The said letter is to the following effect:-

"Subject: Clarification/amendment in conversion policy from lease-hold to free-hold-inclusion of Gift Deed for the purpose.

Sir,

I am directed to refer to your letter No. F2(63)/78/CS/889 dated the 25th January, 2000 and 24th March, 2000, on the subject noted above, and to state that Shri H.R. Vaish has requested for conversion of property No. S-29, Panchsheel Park, New Delhi from lease-hold to freehold in his name on the basis of the gift deed executed by his uncle, Shri S.K. Aggarwal, in his favor, without first getting the property mutated in his name. Basically, the request of Shri Vaish is that the property should be converted into freehold in his name treating him at par with a GPA holder. He is prepared to pay additional conversion fee of 33.1/3% as o\\in the case of GPA holder for getting the property converted into freehold in his favor.

2. The request of Shri Vaish has been examined and it has been noted that with the execution of the registered gift deed, the transaction in regard to the transfer of the property is complete. Therefore, the title of the property stands conveyed to the donee. Hence, the appropriate course a open is to mutate the property in favor of Shri Vaish as per the prescribed procedure. Thereafter, he will be entitled to get the property converted into freehold in his name as a lessee."

11. Thus the learned counsel contends that the case of the petitioner has in fact been examined in detail but it was found that appropriate course was to first mutate the property in favor of the petitioner.

12. Learned counsel for the respondent DDA further referred to a circular dated 23.6.1995 for conversion of lease hold into free hold which was filed in court today itself. The circular is as under:-

"DELHI DEVELOPMENT AUTHORITY

(Co-ORDINATION BRANCH/LANDS)

95/Corodn/Land Disposal

Dt. 23.6.1995

Sub: Conversion of lease hold tenure of land

into free hold to deal with cases

connected with sale permission etc.

In pursuance of Govt. of India, Ministry of Urban Development letter No. 1101017/26/93-LD dt. 23.10.93 and No. J-20011/12/III dt. 16.5.94 regarding conversion of lease hold tenure of land into free hold in cases connected with earlier sale permission etc., the matter has been examined in detail and the following decisions have now been take to dispose of all such pending cases.

ISSUES Decisions.

(i) Where lessees/sub lessee has applied for sale Permission, but DDA has not conveyed the Unearned Increase. (i) & (ii) In such cases conversion may be Allowed by treating the earlier Application for sale permission As Infructuous/ withdrawn.

(ii) Where lessees has Sale Permission has conveyed increase, but has not been paid. lessees/sub-applied for and DDA unearned the same

(iii) Where lessee/sub lessee has applied for sale permission and DDA has conveyed unearned increase and the same has been paid in full or partly by the lessee but the sale deed has not been registered. (iii) The amount of unearned increase/ sub-lessee with reference to sale permission would be refundable if the original lessee/ sub-lessee has applied for conversion and he/ she is in physical possession of the property in question.

(iv) Where all the action as mentioned above have been completed including registration of sale deed. (iv) Conversion to freehold may be allowed after carrying out mutation with reference to sale deed executed by the lessee and after Realizing prescribed conversion charges.

This issues with the approval of Vice-Chairman, DDA.

(K.C. SAXENA)

Jt. DIR (CO ODN) LANDS

Another letter has also been filed dated 16.5.1994 in respect of the same subject matter the relevant para 5 of which is as under:-

"5) It has already been clarified that in cases where demand had already been raised/is under issue and party applied for conversion, the demand raised earlier would stand withdrawn and conversion allowed to the applicants on payment of conversion fee plus surcharge, if applicable, without insisting on payment of unearned increase.

13. I have considered the submissions advanced by learned counsel for the parties.

14. The aforesaid facts clearly show that in terms of policy for conversion of lease hold into free hold, the concept of power of attorney transactions is recognised and a premium is required to be paid in respect of such transactions to the tune of 33.3%. Clause 1.16 of the said scheme has thus to be understood in that context which requires conversion to be done after mutation. It is relevant to state that the said clause is followed by Clause 1.17 which is as under:

"1.17. The conversion shall also be allowed in the cases where lessee/sub-lessee/allottee has parted with the possession of the property, provided that:

- a) application for conversion is made by a person holding power of attorney from the lessee/sub-lessee, to alienate (sell/transfer) the property;
- b) proof is given by possession of the property in favor of the person in whose name conversion is being sought.

15. Thus once the power of attorney transaction is recognised there can be no question of mutation of the property in such a case since the same is not being insisted upon in case of power of attorney transactions. Thus Clause 1.16 has to be read in the context of the earlier clauses which are cases of normal conversions. The circular relied upon by learned counsel for respondent No. 2 in fact supports the case of the petitioner. The said circular provides that where even sale permissions are sought for an application made for conversion should be entertained treating the application for sale permission as infructuous/withdrawn. Not only this even in cases where unearned increase has been paid, the amount of unearned increase deposited is liable to be refunded.

16. I am unable to agree with the submission of learned counsel for DDA that the case of the petitioner would fall in the 4th category which deals with cases where registration on sale deeds has taken place. In such cases mutation in purchase to the sale deed has to be carried out after Realizing prescribed conversion charges.

17. It is not disputed in the present case a gift deed has been executed. However, that is not the only document in question. The recorded owner executed a power of attorney in respect of the property in question. This fact is noted in the recorded note discussed above. Thus it cannot be said that the case is one of merely a gift deed since it is a case of the gift deed coupled with the power of attorney.

18. It may be noted that normal practice even in case of power of attorney transactions is to execute general power of attorney, special power of attorney, agreement to sell and will. In the present case we have a gift deed and a power of attorney and in my considered view the case of the petitioner would thus fall in the category of a power of attorney transaction.

19. The consequence is that the impugned demand made by respondent No. 2 cannot be sustained and the said demand dated 3.8.99 is hereby quashed. During the pendency of the writ petition in terms of the order dated 23.11.2001

in the interim application CM 8915/2001 it was directed as an interim measure the petitioner may pay an amount of Rs. 11,08,000/- and give bank guarantee for the interest @ 18% per annum from November, 1988 till 3.8.1999. This order was passed subject to the outcome of the writ petition. Respondent No. 2 was directed to execute necessary documents in favor of the petitioner for conversion into free hold on the same being done. Learned counsel for the parties state tat the conveyance deed already stands executed in favor of the petitioner.

20. In view of the aforesaid the writ petition is allowed and it is directed that respondent No. 2 should refund the amount of Rs. 11,08,000/- to the petitioner deposited with it in pursuance to the interim orders dated 23.11.2001 within a period of 4 weeks from today. The Bank Guarantee furnished by the petitioner for the interest amount should also be discharged by respondent No. 2 within the said time and handed back to the petitioner. Parties are left to bear their own costs.