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(2013) 10 DEL CK 0373

In the Delhi High Court

Case No : Writ Petition (C) 13687 of 2009 and CM 15391 of 2009

Inder Pal Singh APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 DEL CK 0373

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : R.D. Sharma and Mr. Rajat Sharma, for the Appellant; Anshuman Sinha and Mr. Ajay Vikram Singh, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—Late Shri Harbhajan Singh father of the petitioner in W.P. (C) No. 13687/2009, late Shri M.L. Vig, father of the petitioner in W.P. (C) No. 14025/2010, late Shri Ramesh Kumar, father of the petitioner in W.P. (C) No. 220/2010, late Shri Sita Ram, maternal uncle of the petitioner in W.P. (C) No. 226/2010 and Shri Rajinder Kumar, petitioner in W.P. (C) No. 272/2010 were allotted different pieces of land measuring 11.97 square meters each, whereas late Shri A.L. Sharma, father of the petitioner in W.P. (C) No. 227/2010 and 271/2010, late Smt. Meera Bai, mother of the petitioner in W.P. (C) No. 13688/2009, late Shri Harish Chander, father of the petitioner in W.P. (C) No. 13989/2009 and Ajay Kumar, petitioner in W.P. (C) No. 14001/2009 were allotted plots measuring 67 square meters each by the respondent-Indian Railways, on license basis, for construction of shops on the aforesaid plots. The said allotment was made under a policy of Indian Railways. As noted by this Court in W.P. (C) No. 17216/2006 and connected writ petitions, as per the agreed terms, the license fees at 20% of the land rates.

Vide demand notice dated 12.4.2009, the allottees were asked to pay the license fees calculated @ 20% of the land rates for the period from 1.4.1995 to 21.3.2004, and 10% of the land rate from the period 1.4.2004 to 31.03.2009.

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The land rates applied were as under:

The land rates were, thus, increased @ 10% per annum upto 31.3.2004 and @ 7% per annum with effect from 1.4.2004. Being aggrieved from the aforesaid demand, the petitioners are before this Court seeking quashing of the demand notice.

2. In their counter affidavit, the respondents have stated that the allottees have failed to pay the arrears of licence fees in respect of the land which was allotted to them and they are liable to pay the same along with interest. It is also stated in the counter affidavit that the present occupants are enjoying the land without having paid the licence fees for the last 16 years.

3. At one stage, the respondents had initiated proceedings under Public Premises Act on the allegations that the arrears of licence fees had not been paid and the occupation was an unauthorized occupation on railway land. During the course of hearing before the Estate Officer Mr. L.R. Vohra, a letter dated 17.9.1992 written by GM (Engineering) to the Executive Director (Land Management), Railway Board was produced. It was stated in the aforesaid letter that the licence fees be recovered @ Rs. 1105 per annum till further orders of the shops in question situated at Tughlakabad. The respondents before the Estate Officer made a statement that they were ready to pay licence fees @ Rs. 1105/- per annum with 10% increase every year without compounding since 1.1.1989. In view of the said statement, the Estate Officer directed the respondents before him to pay licence fees at the aforesaid rate of Rs. 1105 per annum with 10% compounding till the decision of the Competent Authority in this respect.

4. The learned counsel for the respondents has relied upon the decision of the Supreme Court in Lala Ram(D) by L.R. & Ors. versus Union of India & Anr. [Civil Appeal Nos. 243-247 of 2003] wherein the Apex Court upheld the right of the Railways to increase the licence fee. The licence fee in the aforesaid case was enhanced by as much as 13 times. The enhancement was challenged on the ground that it was excessive. Rejecting the challenge, the Apex Court, inter alia, held as under:

8. Undoubtedly, the enhanced license fee being 13 times, the earlier license fee amount seems excessive, and such an observation was also made by the Hon''ble Railway Minister in order dated 11.4.1981, but the enhanced license fee would be illusory if the same is compared with the prevailing license fee in the said market as applicable to private shops. A welfare state must serve larger public interest, "Salus populi suprema lex", means that the welfare of the people is the supreme law. A state instrumentality must serve the society as a whole, and must not grant unwarranted favour(s) to a particular class of people without any justification, at the cost of others. However, in order to serve larger public interest, the State instrumentality must be able to generate its own resources, as it cannot serve such higher purpose while in deficit. Merely because the appellants have been occupying the suit premises for a prolonged period of time,

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they cannot claim any special privilege. In the absence of any proof of violation of their rights, such concession cannot be granted to them.

5. Therefore, being licensor of the land, the respondent is entitled in law, to fix such licence fee, as is deemed appropriate by it and the licencee, if he wants to continue to occupy the licenced land, is under a legal obligation to pay such fee. It would be competent for the licensor, to terminate the licence, in case the licence fee fixed by it is not paid by the licencee, and also initiate proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to enforce such demand and evict the erstwhile licencee from the licenced land.

6. The only contention raised by Mr. R.D. Sharma, learned counsel for the petitioners was that since there has been no decision taken by the Competent Authority after the aforesaid order dated 30.9.1993 passed by the Estate Officer, the petitioners are required to pay the licence fee only @ Rs. 1105 per annum with 10% increase every year with effect from 1.1.1989. He further stated that the petitioners are willing to pay the arrears of licence fees at the aforesaid rate. Therefore, the only question which needs to be examined is whether, subsequent to the order dated 13.9.1993 passed by the Estate Officer, the competent authority has taken a decision with respect to the licence fee of plots in question or not.

7. This is not the case of the petitioners in the writ petitions that no decision with respect to the licence fee of the land subject matter of the writ petition has been taken by the competent authority after the order of the Estate Officer dated 13.9.1993. Consequently, the respondents had no opportunity to file any such decision along with their counter affidavit. The learned counsel for the respondents, however, has placed on record two decisions taken by the Government of India-one dated 29.8.1995 and the other dated 10.1.2005 with respect to the licence fee of Railway land. The decisions dated 29.8.1995 & 10.1.2005 to the extent they are relevant read as under:

2.3 Licences of existing licensees even if not connected with the Railway working may, however, be renewed from time to time so long as the land is not required by Railway for its own purpose but on new terms and conditions indicated in this letter.

xxxx xxxx xxxx

3.1 Licence fee of plots will continue to be fixed as a percentage of the land value, determined as per the procedure detailed in para 4 below. The percentage now applicable to various types of plots will be as under:

4. Fixing of Land Value

4.1 As the end use of the land licenced for the above purposes is generally directly related to traffic movement, it does not bear any direct relation to the land value advised by the Revenue Authorities etc. which is for a different end use. A market value would however be required to be taken to serve as a base

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value for working out rental fee payable. This shall be fixed on the basis of the land value of the surrounding area as on 1.1.1985, as determined from the Revenue Authorities and/or from the following:

a. Evaluation of Town Planning Department;

b. Actuals as per PWD and CPWD Transactions;

c. Actual Transactions as per document filed in the Office of the Sub-Registrar;

d. Value of land as assessed by professional evaluators of the State and Central Governments.

xxxx xxxx xxxx

7.1 As the notional land value will increase by 10% of the previous year''s land value as mentioned in Para 3 above, the licence fee will automatically go up by 10% over the previous year''s fee from the first of April every year. Suitable provisions, with the Schedule of payment due, may be incorporated in the Agreement.

...

2.4 Licenses of existing licencees, not connected with the Railways working as mentioned in Para 3(f) below may, however, be renewed from time to time so long as the land is not required by Railway for its own purpose but on new terms and conditions indicated in this letter.

xxxx xxxx xxxx

3. Rate of licence fee

3.1 Licence fee of plots will continue to be fixed as a percentage of the land value, determined as per the procedure detailed in para-5 below. The percentage applicable w.e.f. 1.4.04 to various types of plots will be as under:

xxxx xxxx xxxx

5.0 Fixing of land value

5.1 A market value would, however, be required to be taken to serve as a base value for working out rental fee payable. This shall be fixed on the basis of the land value of the surrounding area as on 1.1.1985, as determined from the Revenue Authorities and/or from the following:

a. Evaluation of Town Planning Department;

b. Actuals as per PWD and CPWD Transactions;

c. Actual Transactions as per documents filed in the Office of the Sub-Registrar;

d. Value of land as assessed by professional evaluators of the State and Central Governments.

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5.2 The land value as worked out shall be increased every year on the 1st of April, starting from 1.4.1986, at the rate of 10% over the previous year''s land value to arrive at the land value for the following year based on which the annual licence fee shall be fixed From 1.4.2004 onwards, the land value shall be increased at the rate of 7% every year over the previous year''s value.

xxxx xxxx xxxx

7.0 Revision of licence fee

7.1 As the notional land value will increase by 7% over the previous year''s land value as mentioned in Para 5.2 above, the licence fee will automatically go up by 7% over the previous year''s fee from the first of April every year. Suitable provisions with the Schedule of payment due may be incorporated in the....

In view of the aforesaid decisions dated 29.8.1995 and 10.1.2005, it is evident that the competent authority, i.e., the Government of India, Ministry of Railways, revisited the issue of licence fee of Railway lands, after the order passed by the Estate Officer on 13.9.1993. In view of the aforesaid decision of the Government the order of the Estate Officer became inapplicable w.e.f. 1.4.1994.

The licencee has rightly been fixed at 20 per cent of the land value for the period 1.4.1995 to 31.3.2004 whereafter the decision dated 10.1.2005 became applicable and the licence fee was reduced to 10 per cent of the land rate. The land rate has also been rightly revised @ 10 per cent per annum up to 31.3.2004 and thereafter @ 7 per cent per annum w.e.f. 1.4.2004. The demand raised by the respondents, therefore, cannot be said to be illegal, arbitrary or unjustified. No ground for quashing the impugned demand notices, therefore, is made out.

The writ petitions are devoid of any merit and are hereby dismissed.

No order as to costs.

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