

(2005) 05 DEL CK 0013
In the Delhi High Court
Case No : WP (C) 423 of 1996

International Metal Industries Private Ltd.	APPELLANT
Vs	
Delhi Development Authority and Another	RESPONDENT

Date of Decision : 30-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 3

Citation : (2005) 05 DEL CK 0013

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : R.P. Bansal and S.K. Chaudhary, for the Appellant; Neelima Tripathi, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—In these proceedings under Article 226 of the Constitution of India, the relief sought is for an appropriate order, for quashing the show cause notice dated 18.10.1995 issued by the Delhi Development Authority (DDA) as also to quash/setting aside of a demand made by the DDA in the sum of Rs.20,20,715/-.

2. DDA held an auction for sale of certain industrial plots on 17.1.1972. Six persons, namely, Smt. Chand Rani, Sh. V.K. Bhandari, Sh. Mohan Lal, Sh. Balwant Rai, Sh. Yash Pal and Sh. G.K. Gupta have jointly bid for 1340.72 square meters plot (hereafter called "the plot in question"). They were declared successful; on payment of entire consideration, possession of the plot was handed over on 20th February, 1975. The DDA issued a no-objection certificate to the said allottees by letter dated 7.3.1975. The consideration paid for the plot was Rs.82,000/-. The no-objection certificate issued by the DDA was intended to be in favor of a firm comprising of the six bidders.

3. The proposed purchasers had intended to set-up a firm; they approached the DDA stating that few of them would be retiring from business and the rest would

continue as partners. The DDA thereupon elicited a response as to whether one of the retiring partners was a blood relative of the continuing partners. It is averred that at the time of bidding itself the names of the concerned partners were furnished to the DDA; subsequently some of them were sought to be deleted from the firm. In the meanwhile, The Urban (Land Ceiling and Regulation) Act was enacted; it came into force on 17.2.1976. As per Section 3 of the said enactment, a prohibition was enacted from holding of a vacant land in excess of ceiling limits prescribed under the Act. The plot in question fell within the coverage of the Act; hence the bidders/firm had to apply for exemption u/s 20 of that Act. It is averred that an application in that regard was made on 16.9.1976 to the competent authority.

4. During pendency of the application, certain correspondence appears to have taken place between the original bidders/firm and the DDA. On 27.2.1979, the general power of attorney holder, on behalf of the bidders Mr. V.K. Bhandari wrote to the DDA seeking extension for construction of building by one year. He wrote again on 16.3.1979 requesting that the plot ought to be retained in the names of Smt. Chand Rani and Sh. V.K. Bhandari. It was requested that the names of Sh. Mohan Lal, Sh. Balwant Rai, Sh. Yash Pal and Sh. G.K. Gupta be deleted. Affidavits of the four persons whose names were deleted along with four relinquishment deeds and indemnity bonds of the continuing remaining bidder/purchaser, namely, Smt. Chand Rani and Sh. V.K. Bhandari were enclosed with the letter. Sometime in September 1979, DDA issued a notice to all the allottees without indicating its decision on the request for deletion of certain names; the show cause called upon the original allottees to reply as to why action be not take in view of the fact that no construction had been put up on the plot in question within a period of two years from the date of securing its possession. A reply was given on 7.1.1980 where Sh. V.K. Bhandari, one of the original bidders for himself and on behalf of her mother Smt. Chand Rani disclosed that an application was pending before the competent authority under the 1976 Act. It was also mentioned that in the absence of exemption u/s 20, the petitioner could not submit industrial building plans nor had the perpetual lease deed been executed and registered in their favor. The earlier request to delete names of four original bidders was again made. The DDA replied to this merely asking whether they were willing to execute the lease deed with all the original co-lessees. It did not give any decision on the request for deletion of names. Thereafter, Smt. Chand Rani again asked for the execution of the lease deed in her name and the name of Sh. Bhandari by letter dated 13th March, 1980. The DDA responded again by reiterating that names of all the original allottees were included in the lease deed.

5. On 11th September, 1980, a letter was written by DDA informing that the request for deletion of names could be considered on submission of an undertaking to the effect that 50% un-earned increase of the share of the outgoing partners would be deposited.

6. On 5th January, 1981, the petitioner herein namely M/s. International Metal Industries (P) Ltd. which had been formed, applied to the DDA enclosing its memorandum and articles of association. This company was founded by all the six original bidders who were auction/purchasers in respect of the plot in question. The DDA was reminded on 6th February, 1982 that the request be processed and it was specifically informed that the case for exemption u/s 20 of the Urban Lands (Ceiling and Regulation) Act was held up for want of lease deed. By letter written sometime in April 1982, petitioner company expressed its helplessness and inability to start construction in the absence of a lease deed and stated that it was necessary for the purposes of securing exemption.

7. On 11.12.1982 the DDA wrote to the original bidders, without reference to the company that certain documents which included application under the Urban Land (Ceiling and Regulation) Act as also exemption certificate was necessary along with indemnity bands etc. from the concerned partners/bidders.

8. On 4.5.1983, the DDA wrote another letter pointing out certain deficiencies in the memorandum of articles and association with regard to names of all the Directors, namely, Sh. G.K. Gupta and Sh. Balwant Rai. The queries were answered by letter dated 0.6.1983. The DDA pursued the matter further and sought for documentary evidence by its letter dated 25.8.1983. The petitioner company wrote back on 27.8.1983 pointing out that the original documents to prove the necessary facts were already handed over on 3rd March, 1975, nevertheless photostat copies were furnished.

9. Eventually, after a long lull, further documents were sought on 19.8.1993 from the original bidders. The petitioner gave the necessary clarifications and also furnished an affidavit under cover of letter 21.9.1993.

10. A further round of correspondence took place during the period October to December 1993 wherein fresh sets of affidavit, copies of partnership deed, memorandum and article of association were sought for by the DDA. The petitioner furnished the requisite documents. Finally, on 25th April, 1994, the lease deed was executed in favor of the petitioner company. It stipulated by clause (iii) that lessee was under an obligation to, within two years from 20th February, 1975, after obtaining sanction to the building plan, erect or construct upon the industrial plot and complete in a substantial manner, an industrial building for carrying on approved manufacturing process. The lease deed was registered on 26th April, 1994.

11. The competent authority under the Urban Land (Ceiling and Regulation) Act called upon the petitioner to furnish copies of several documents which included the attested copies of title deed by its notice dated 16.8.1994. The petitioner complied with this demand. By this time, the lease deed has been executed in its favor. Hence, by an order dated 3rd February, 1995, the competent authority granted exemption. The exemption was to an extent of 643.03 square meters, forming part of the plot in question. It expressly recorded the restriction/

condition of having to put up a structure on the plot.

12. In this background, on 23.5.1995, DDA demanded a sum of Rs.20,20,715/- towards composition fee up to 19th December, 1995, and also ground rent, in the sum of Rs.21,198/-. Subsequently, it issued the show cause notice dated 18.10.1995 impugned in these proceedings.

13. It is averred on behalf of the petitioner that the impugned demand and show cause notice are entirely arbitrary. The DDA itself is guilty of inaction; for all through it raised every conceivable objection and did not execute the lease deed in the petitioner's favor. Utterly irrelevant and trifling details were called for; on many occasions material that existed was again sought from the petitioner or its partners. This process resulted in-ordinate delay. In the meanwhile, the petitioner was compelled by circumstances beyond its control and could take no action for constructing on the plot. It is averred that the Urban Land (Ceiling and Regulation) Act constituted an impediment in that till the competent authority exempted the area, the petitioner's title to the land was under cloud. Further more, the petitioner could not have commenced construction or even proceeded ahead with the request for exemption in the absence of a lease deed.

14. The DDA, on the other hand, avers that the petitioner is not entitled to relief. Immediately, after handing over possession, a no-objection certificate was issued. There is nothing which prevented the petitioner to proceed with the construction on the basis of allotment letter and no-objection certificate that was issued for the specific purpose. Terms and conditions of the lease were disclosed at the time of auction itself. Reliance has been placed upon clause iv(a) of the terms and condition of auction which stipulate that the purchaser/lessee would have to erect, within two years of delivery of possession of the plot, a building for running an industry after obtaining possession and in accordance with sanction to the building plan from the appropriate authority.

15. It is averred that the petitioner has to blame itself for the delay and face the consequences of having to pay the composition charges demanded. On several occasions, the petitioner and its directors had taken differing stands; they never came forward and gave the name of the proposed firm. When the issue of deletion of certain names arose, documents were sought. After some documents were furnished to the DDA, there was yet another change of thinking and the petitioner was incorporated. Under these circumstances, the DDA required an assurance that 50% of the unearned increased would be paid. On this score, there was no firm commitment. The matter lingered for a decade between 1983 to 1993 when the petitioner did not follow up the matter with the DDA at all. Eventually, the lease deed was executed in its favor and it was able to secure an exemption certificate from the competent authority. Under these circumstances, there is nothing wrong in the impugned demand or the show cause notice.

16. The original record of the DDA was produced during the course of proceedings. I have gone through the same. After the request for extension of

time was made and the original bidders had represented for mutation of the property in the name of the fir, a note was put up on 21.4.1980 that the proposal ought not to be accepted unless the petitioner paid unearned increase. This position was maintained in a further note on 16.1.1981 when a decision was taken to forward the matter for legal opinion. The legal adviser by his note dated 2.3.1981, after considering the effect of incorporation of the petitioner, was of the view, that even though all the original persons who bid for the plot were members/ directors, nevertheless action by way of re-entry of the plot ought to be initiated, unless the intending purchasers paid 50% of the unearned increase on the whole of the plot. By then, the information about the petitioner having applied for exemption under the Urban Land Sealing and Regulation Act was received; the DDA decided to ask for a copy of the application and the exemption certificate, on 22.6.1982. Finally on 5.11.1982 some sort of a decision was proposed to execute the lease deed, for which purpose it was proposed to call for further documents.

17. After these developments a fresh query was made in April, 1983 as to whether the provisions of the Urban Land Ceiling Regulation Act in fact applied. Thereafter, file contains numerous references to the documents submitted by various members of the petitioner and co-relation with certain members' documents/ particulars such as father's name etc.

18. The file shows that Indemnity Bonds were furnished in January G?" February, 1983 on behalf of all the original six bidders who had become members of the petitioner by then. The Memorandum of Articles of Association of the Company too had been supplied in August, 1983. Even in the year 1988 the DDA kept enquiring about details such as parentage of Balwant Rai in spite of affidavits/ undertakings and copies of other documents having been furnished earlier.

19. Mr. R.P. Bansal, learned senior counsel submits that the entire formalities as far as payment of consideration was concerned, were completed by the original bidders in the year 1973 itself. However, as per Clause 6 of the terms and conditions of auction, the DDA was under an obligation to register lease deed and then hand over possession to the highest bidders. The six names had been submitted in whose favor the lease deed was to be executed. One of them was to take appropriate steps in that regard. The Deed of Power of Attorney was submitted to the DDA in the year 1972 itself. Nevertheless without completing the most crucial formality of execution of lease deed, it handed over physical possession on 22.9.1975. The DDA, however, chose to withhold execution of the lease deed.

20. Counsel submitted that when the request for execution of lease deed was being processed and within the period permitted for construction as per the terms and conditions of the auction, the provisions of Urban Land Ceiling and Regulation Act came into force. It's effect was to inhibit the possibility of construction on the plot. In the absence of an exemption or clearance by the Competent Authority, it would have been impossible for the petitioners to

construct; in the event of certain portions being declared excess, they would have been put to grave irreparable prejudice. It was also submitted that the exemption could not have been secured without furnishing the lease deed.

21. Learned counsel submitted that even though till 1978-79 there might have been some confusion as to who amongst the original bidders were to be continued as lessees nevertheless on account of the delay and the repeated queries being put-forth by the DD, the proposal to delete some of the bidders was given up and the DDA was accordingly intimated in 1981. The DDA was requested to execute the lease in favor of the petitioner, which had been incorporated by then; all the original bidders were members/directors. In spite of knowledge of these facts, time and again the DDA kept on eliciting queries and repeatedly sought for documents which had been furnished earlier. All these resulted in a gross and inordinate delay solely on account of its prevarications. Eventually, the lease deed was executed in 1994 in favor of the petitioner. It was only thereafter that the exemption could be secured.

22. Learned counsel submits that the sequence of events shows that the petitioner cannot be faulted. The impugned amount demanded is exorbitant; the petitioner being a completely innocent party is sought to be penalised for no reason whatsoever. He, the before, submitted that the impugned show cause notice and demand has to be set aside as arbitrary and unreasonable.

23. Ms. Neelima Tripathi, learned counsel appearing for the DDA submitted that after possession handed over and a no objection certificate was issued, in fact there was no impediment or restriction on the petitioner to construct on the plot. She submitted that the objective of incorporating the condition of construction within a stipulated period was to effect development of the Industrial Area in question. The delay in execution of the lease deed, she submitted was attributable to the shifting stands of the original bidders and eventually the petitioner.

24. Learned counsel for DDA submitted that there are three distinct periods. It is submitted that the first period is between the year 1972 and 1976. During this period, the petitioner was successful in paying the amounts, was given possession and also handed over a no objection certificate. After issuance of the No Objection Certificate, the Act came into force. The second period according to her was between 1977 and 1983. It is submitted that in 1979 itself the petitioners had admitted that they were under an obligation to construct upon the plot, and a request for extension of time was sought for. Thereafter, considerable correspondence took place only on their account. They could not decide as to who among the original bidders was to figure in the lease deed; they kept changing their positions. Eventually the petitioner company was incorporated, which necessitated the DDA in re-examining the question to determine whether un-earned increase was payable as per its policy. The third and last phase according to the learned counsel is between 1983 and 1993 it shows a complete lull as far as the petitioners were concerned, they made no

attempt to come forward and have the matter resolved by the DDA.

25. Learned counsel for the DDA, Therefore, submits that there is nothing wrong or arbitrary as far as the impugned show cause notice or the demand for the amount in question is concerned.

26. The conspectus of facts shows that consideration for the plot was deposited with the DDA. The DDA took two years to hand over physical possession; it did so on 22.2.1975. The NOC was issued on 7.3.1975. The entire premise or rather the basis of the DDA's case is that the petitioner could construct without the lease deed and subsequently without even the exemption or clearance under the Land Ceiling Regulation Act.

27. There is no doubt that for a period of about 3 to 4 years there was some change in the stand as to who among the original bidders ought to be included in the lease deed. Undoubtedly, some persons were sought to be deleted. The DDA was toying with the idea of requiring deposit of unearned increase. Eventually, the petitioner company included all the original bidders as Members/ Directors, in the private company. This basic position has never been disputed. The records of the DDA, however, point at distrust and suspicion inasmuch as that this move was seen as an attempt to transfer the property; unauthorizedly. Hence it received intensive security as to whether such transfer merited a notice for payment of unearned increase. At one stage the DDA even contemplated issuing notice to cancel the lease. Thereafter, several letters/ communications were addressed requiring one or the other document which already existed with the DDA itself. Particulars such correct name, independent proof of parentage etc. which appear to be completely irrelevant and in any case were under possession of the DDA itself were elicited repeatedly.

28. All this delayed the processing of the petitioner's case for execution of lease deed. Finally in the year 1993 it was decided to execute the lease deed in favor of the petitioner. Nothing has been shown that unearned increase was claimed.

29. What emerges from the above analysis is that the petitioner had been all along insisted that a lease deed is crucial and necessary for the purposes of securing exemption under the Urban Land and Ceiling Act. That fact has not been disputed. Indeed I am of the view that such a position is logical and stands to reason since the petitioner would have committed a grave folly if it had proceeded without the exemption under the Act. In that eventuality, if the competent authority refused the exemption or declared some portion of the plot to be surplus or in excess, the construction itself could have been endangered. It was, Therefore, unreasonable to expect the petitioner to proceed and construct upon the property in question without the sanction from the competent authority under the Act.

30. It is a matter of record that the exemption under the Act was issued only after the lease deed was executed by the DDA in the petitioner's favor and furnished to the competent authority. This in my opinion bears out the

petitioner's grievance. If timely action by way of execution of lease deed had been taken, possibly the petitioner would have saved about a decade. That, however, is merely a matter of surmise since what actually happened was something else. The DDA has never accused or alleged that the petitioner intentionally delayed the proceedings under the Urban Land Ceiling and Regulation Act. It had nowhere stated that the furnishing of such lease deed was not essential.

31. Therefore, I am of the view that there was an intrinsic link between the execution of the lease deed and the grant of exemption under the provisions of Section 20 of the Urban Land Ceiling and Regulation Act. Till the latter event occurred, it would have been imprudent for the petitioner to go ahead with the construction.

32. The second aspect of the matter is, quite apart from the issue of exemption under the Act, as to whether the petitioner could or ought to have put up the construction merely with the no objection certificate issued by the DDA. This issue requires examination only to the extent it was urged in the course of the proceedings. Admittedly, the petitioner was given physical possession of the plot on 22.2.1975. The NOC was issued on 7.3.1975. The Urban Land Ceiling and Regulation Act came into force on 1.2.1976 i.e. less than one year from the issuance of the No Objection Certificate. The relevant clause in the terms and conditions of the auction (as also in the lease deed) require the construction to be completed within two years from the delivery of possession of the flat. Thus, the petitioner could have but for the embargo or impediment placed on account of the Act, constructed upon the property in question till some time in February, March, 1977. Intervention of the enactment, however, changed the entire perspective, as discussed earlier. Under the circumstances, even the period of two years, in my opinion had not expired, if one takes into account the operation of the enactment and the steps that were to be necessarily taken by the petitioner to proceed with construction after clearance/ exemption. Therefore, the period between February, 1976 and 2nd March, 1977 when finally the exemption was granted by a competent authority, had to be excluded.

33. In view of the foregoing discussion, I am of the opinion that the show cause notice and the impugned demand are not sustainable. They have been issued without proper application of mind to the facts, particularly, the disability under which the petitioner was labouring for the entire duration of time. Furthermore the DDA itself dithered over the issue for a long time and did not execute the lease deed. The show cause notice and impugned demand are therefore, arbitrary and unreasonable; they violate Article 14 of the Constitution of India. The DDA completely overlooked the effect of the Urban Land Ceiling and Regulation Act and need to execute a lease deed as a pre-condition for securing exemption u/s 20, after which event only could the petitioner have proceeded with construction upon the plot.

34. In view of the above findings, the petition has to be allowed. The show cause

notice dated 18.10.1995 and the demand dated 23.5.1995, impugned in these proceedings are hereby quashed/ set aside. The respondent is directed to grant two years time for construction of the building on the petitioner's plot namely, C-59/3, Wazirpur Industrial Area.

35. Rule made absolute in the above terms. No order as to costs.