(2013) 11 DEL CK 0251

In the Delhi High Court

Case No : Writ Petition (C) 1149 of 2013

Jagan Nath Gupta Memorial Educational Society APPELLANT

Vs

Delhi Development Authority and Another RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Delhi Development Act, 1957 — Section 3, 57

Citation : (2014) 1 AD 338 : (2014) 140 DRJ 51 : (2013) 6 ILR Delhi 4715

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Amit Sibal and Mr. Ajiteshwar Singh, Mr. Amulya Dhingra and Mr. Chinmay Kumar, for the Appellant; Ajay Verma, Advocate DDA, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—The Petitioner Jagan Nath Gupta Memorial Educational Society (the Society) seeks a writ of mandamus requiring the Respondent Delhi Development Authority (DDA) to refund a sum of Rs. 3,02,91,764/- deposited by the Petitioner with the Respondent in pursuance of the Notification dated 23.12.2008 towards additional FAR which was then applicable upon the holders of institutional plots including hospital plots. The case of the Petitioner is that the Petitioner is a Society registered under the Societies Registration Act, 1860 and enjoys Income Tax exemption. By virtue of Notification dated 23.12.2008, holders of institutional plots including hospital plots were required to pay additional FAR charges as mentioned in para 6 of the Notification. Thus, the members of Association of Self Financing Institutions (of which the Petitioner is also a member) met the Hon''ble Lieutenant Governor of Delhi on 30.03.2009 against the levy of FAR charges upon educational institutions. The Association also wrote a letter dated 24.04.2009 to the Commissioner (Land Disposal DDA) highlighting the fact that the institutions like the Petitioner were non-profit organisations and application of charges for use of additional FAR upon them will only lead to an increase of the financial burden upon such institutions. Thereafter, there were some correspondences between the Association of Self Financing Institutions and the DDA and finally the Under Secretary to the Government of India by a letter dated 15.05.2012 (Annexure P-12) conveyed approval of the Central Government to the proposal of the DDA regarding exemption of additional FAR charges in respect of the educational societies which were exempted under the Income Tax Act. In the meanwhile, on the demand of Rs. 3,02,91,764/- raised by the Assistant Engineer, DDA vide a letter dated 24.09.2009 on the Petitioner, the amount was deposited by the Petitioner with the DDA under protest with a request to refund the excess amount paid in case the additional FAR charges were reduced by the Government of India.

2. In pursuance of the approval of the Central Government, a fresh Notification dated 17.07.2012 was issued by the DDA amending the earlier Notification stating that no additional FAR charges are to be recovered from educational societies, healthcare institutions and social welfare societies having Income Tax exemption.

3. In pursuance of this Notification, the Petitioner by a letter dated 14.06.2012 sought refund of the amount of Rs. 3,02,91,764/- deposited by him under protest with the DDA. The abovesaid letter is extracted hereunder:

Sir,

Kindly refer to our letter dated Sept 24, 2009 on the subject mentioned above, whereby we had submitted Rs. 3,02,91,764/-(Thee crores two lakhs ninety one thousand seven hundred and sixty four only) towards additional FAR Charges in respect of our institute at MOR Pocket-105, Kalkaji, New Delhi-110019 (copy of letter along with receipt enclosed).

Since Ministry of Urban Development vide its letter date 15th May 2012 has conveyed approval of Central Government to the proposal of DDA regarding exemption of additional FAR charges in respect of Educational Societies which are exempted from IT ACT. (copy enclosed for your kind perusal). As such, we request you to kindly process our case and refund the above said amount with interest.

4. Since the amount paid was not refunded, the instant writ petition has been filed by the Petitioner.

5. The DDA has contested the writ petition by way of filing a counter affidavit. The sole ground laid in the affidavit is that since the Notification dated 17.07.2012 was issued subsequent to the payment of FAR charges, it will not have any retrospective effect. In the affidavit, it is stated that the cases in which the building plans had already been approved cannot be reopened and the amount thus paid by the Petitioner cannot be refunded.

6. Mr. Amit Sibal, learned counsel for the petitioner, has urged that by virtue of the amendment of the original notification dated 23.12.2008 by a subsequent

notification dated 17.07.2012, it became operative from the initial date of notification only. He has urged that any other interpretation will make levy of FAR charges totally arbitrary. Referring to an order dated 20.07.2012 passed by a Division Bench of this Court in a batch matter in W.P. (C).9572/2009 etc., the learned counsel for the Petitioner urges that even on the ground of parity, the amount deposited by the Petitioner is liable to be refunded to it.

7. On the other hand, Mr. Ajay Verma, the learned counsel for the DDA submits that the notification will not have any effect retrospectively and that in the order dated 20.07.2012, the Division Bench had clarified that the order was applicable only to the Petitioners who were before the Court in those writ petitions.

8. It may be noted that by virtue of Notification dated 23.12.2008, certain regulations were framed for payment of certain charges for additional FAR in respect of different properties. The property in question is dealt at Serial No. 6 of the Notification, which is extracted hereunder:-

DELHI DEVELOPMENT AUTHORITY

NOTIFICATION

New Delhi, the 23rd December, 2008

Fixation of rates to be applied for use conversion, mixed land use and other charges for enhanced FAR arising out of MPD 2021.

S.O. 2955(E)-In exercise of power conferred by Section 57 of the Delhi Development Act, 1957 (61 of 1957), the Delhi Development Authority with the previous approval of the Central Government, hereby makes the following Regulations in pursuance to Notification No. S.O. 2432(E) dated 10th October, 2008:

9. The plots of land of this category were exempted from payment of additional FAR charges by virtue of the subsequent Notification dated 17.07.2012. The Notification is extracted hereunder:-

DELHI DEVELOPMENT AUTHORITY

LAND COSTING WING

VIKAS SADAN INA

NEW DELHI

NOTIFICATION

Subject:-Exempting additional FAR charges in respect of Educational institutions/ Trusts, Health-care and other social welfare societies etc. having exemption from income tax.

In exercise of powers conferred by section 57 of the Delhi Development Act, 1957 (No. 61 of 1957), the Delhi Development Authority with the previous approval of the Central Government hereby makes the following modification to Notification S.O. 2432(E), dated 10-10-2008 and S.O. 2955 (E), dated 23-12-2008 published in the Gazette of India, Part II, Section 3, Sub-section (ii) with regard to fixation of rates to be applied for additional FAR charges for Institutional plots. 6(g) for Educational Societies/Health-care, Social Welfare societies etc. where mode of disposal of land is still allotment.

Accordingly Para 6(g) of these notifications dated 10-10-2008 and 23-12-2008 shall be amended by the following:

The other contents of the notification dated 23/12/2008 will remain unchanged.

The exemption of additional FAR charges will remain in force till further modification and notification by the Government of India.

File No. F2[163] 07/AO(P)/Pt-II/Dated: 17 July, 2012

D. Sarkar

Commissioner-cum-secretary

Delhi Development Authority

10. A perusal of the Notification dated 17.07.2012 clearly reveals that it has not modified the payment of charges for additional FAR. Rather, an amendment had been issued only to the effect that Para 6 (g) of the Notification dated 10.10.2008 and 23.12.2008 was amended as stated in the Notification dated 17.07.2012.

11. It is true that the amendment has not been specifically made effective retrospectively, yet it may be mentioned that a policy decision was taken by the Central Govt. on recommendation of the DDA.

12. It may also be noted that immediately after issuance of the Notification dated 23.12.2008, there were representations by Association of Self Financing Institutions to review the additional FAR charges payable as per MPD 2021 on the ground, inter alia, that the payment of additional charges will make the higher education unaffordable to the residents of this city. This ultimately found favour with the DDA who recommended to the Central Govt. to carry out the said amendment. Since only Item No. 6 of the Notification was amended, it has to be presumed that the amendment will relate back to the issuance of the original Notification dated 23.12.2008.

13. This view is also in consonance with the decision of the Division Bench in batch of writ petitions i.e. W.P. (C) 9572/2009 wherein the Division Bench by order dated 20.07.2012 allowed refund of the additional FAR charges where sanction of the building plan was granted, subject to deposit of the additional FAR charges in the Court/on furnishing of bank guarantee. In fact, in W.P. (C) 9572/2009, the counsels for the DDA and the UOI had themselves pointed out that a Notification had since been issued and was likely to be published.

14. It is true that the Division Bench had observed that the decision dated 20.07.2012 shall be applicable only to the Petitioners before that Court in the batch of writ petitions. Yet, the Petitioner being a similarly placed person cannot be denied the benefit of the same. The Division Bench held as under:

In view of the above notification it is absolutely clear that no additional FAR charges are to be recovered from the Educational societies/Health care and Social welfare societies having income tax exemption. As such no additional FAR charges would therefore be recoverable from the present petitioners. If any of the petitioners have made deposits in this court pursuant to any order passed by this court the same shall be returned to the respective petitioners. In case of any Bank Guarantees that may have been furnished on account of directions of this court in view of the additional FAR charges, the petitioners concerned would also be entitled to have the same revoked.

In view of the fact that now no FAR charges are to be recovered from the Educational societies/Health care and Social welfare societies having income tax exemption, any action which may have been made conditional on the payment of the additional FAR charges would now not have the said condition. In other words, the non-payment of the FAR charges will not come in the way of the petitioners to proceed with their release of sanctioned building plans, occupancy certificates, extension of time and NOCs etc. if the other conditions prescribed in law are fulfilled.

15. Thus, on parity also the Petitioner who has deposited the amount with the DDA is entitled to the refund in view of the order dated 20.07.2012 passed by the Division Bench.

16. In accordance with this, the writ petition is disposed of.

17. The Respondent DDA is directed to refund the amount of Rs. 3,02,91,764/- to the Petitioner, deposited towards additional FAR within a period of eight weeks, failing which the Petitioner shall be entitled to an interest @ 12% per annum from the date of this order till the amount is refunded. Pending applications stand disposed of.

