(2004) 11 DEL CK 0038

In the Delhi High Court

Case No : WP (C) No. 618 of 2002

Jheel Kuranja Residents Welfare Association (Regd.) and Another — APPELLANT

Vs

Delhi Development Authority and Another — RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:
Delhi Water Board Act, 1998 — Section 2(1), 32

Citation : (2004) 115 DLT 491 : (2005) 79 DRJ 369

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Sandeep Sethi and P.S. Bindra, for the Appellant; K.K. Buchar, for R-1, Indrani Ghosh and Shobha Takiar for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Challenge is to a public notice dated 9.7.2001 (Annexure P-5) demanding sewage development charges @ Rs. 200/- per sq. meter from the owners of plots in Jheel Khurenja. Public notice states that work of internal sewerage system has been completed and made functional for collection, removal and disposal of all filth, polluted and obnoxious matters from latrines, urinals and cesspools. owners/occupiers of land and buildings in the area were called upon to pay the charges and obtain sewer connections. It was made known that irrespective of whether one takes the sewer connection or not, charges have to be paid. Option for payment in installments with 12% simple interest was given. 20% rebate for prompt payment was notified. Public notice has been issued by Delhi Jal Board (DJB).

2. It is stated by the petitioners that in the year 1915-16, the Delhi Improvement Trust developed a colony in Jheel Khuranja village and carved out 259 plots. They were allotted to individuals. All 259 plots are stated to be built upon.

3. Petitioners state that on 31.3.1937 an agreement was entered into between

Secretary for the Government of India and Governor General of India in Council and Delhi Improvement Trust. Under said agreement, management of land in question, apart from other lands, was vested in the Delhi Improvement Trust. A sum of Rs. 21.4 lacs, equivalent to half cost of laying sewerage disposal system was received by the Delhi Improvement Trust. It is stated that Delhi Development Authority is the successor-in-interest of the Delhi Improvement Trust. It is further stated that having received the money from the Government of India for laying a sewerage disposal system, Delhi Improvement Trust and thereafter its successor, Delhi Development Authority is liable to provide the sewerage disposal system and Delhi Jal Board is not entitled to charge any amount from the owners/occupiers of the land.

4. Petitioners claim to have sent a protest letter to the Delhi Jal Board (DJB) informing :

"That inspire of it being one of the oldest colony of Delhi, not only the sewerage system has been provided recently but the exorbitant sewerage development charges @ Rs. 200/- per sq.meter have been fixed as per order No. DJB/EE/(C)/DR-IX/2001.1001 dated 9.7.2001. Whereas our adjoining/neighboring colonies like Geeta Colony, Krishna Nagar, Gandhi Nagar, Ghondli, Rajgarh, Chander Nagar, Khureji etc. had been charged very less sewerage development charges in comparison to us."

5. In other words, petitioners allege discrimination.

6. By a notice dated 21.11.2001, time was extended up to 8.1.2002 for making payment.

7. Petitioners state that in any case, demand is beyond the mandate of Delhi Water Board Act, 1998. Petitioners state that DJB can only recover the cost incurred in providing the sewerage disposal system. Section 2(1) and Section 32 of the Delhi Water Board Act, 1998 are relied upon. Reliance has been placed on the work order dated 6.6.2000 awarding the work of providing and laying internal sewer in Jheel Khurenja at the total cost of Rs. 19,37,244.85. It is stated that all 259 plots in Jheel Khurenja are 500 sq.meters and at the rate demanded, DJB would get Rs. 2.59 crores, an excess of Rs. 2.09 crores.

8. Response of DDA is that the agreement relied upon, i.e. agreement between Delhi Improvement Trust and the Secretary to the Government of India and Governor General of India in Council while handing over management of various colonies to the Improvement Trust listed only a few colonies for which sum for development was paid. Jheel Khurenja was excluded.

9. Response of DJB is that it has laid sewage lines from its own funds. Admitting that works were awarded at a tendered cost of Rs. 19,37,244.85, it is stated that these did not include the road restoration charges since roads had to be dug to lay the sewer lines. It is stated that departmental charges i.e. charges for administering the works were also not included. In para 7 of the counter

affidavit, it is deposed :

"7. That the answering respondent has incurred an expenditure of Rs. 54,96,301/- for providing the sewerage facilities in the Jheel Khurenja society. This expenditure was incurred to provide the residents with better facility to augment their life standards and they are liable to pay for the facilities availed by them which have been made available to them. This cost of Rs. 54,96,301/- includes cost of civil work, road restoration charges, charges and expenses for shifting of electric pole/cable etc. It is misconceived and denied that the charges are exorbitant or excessive. There is no element of profit in the charges. There are several administrative and other expenses which are not even reflected in the aforesaid amount."

10. In response to the counter affidavit filed by DJB, petitioners state that as late as on 8.9.2003, DJB has directed owners/occupants of neighbouring colonies to pay development charges for sewage system @ Rs. 100/- per sq.meter. The colonies are Railway Colony, Mandawali and Shahdara.

11. Additional affidavit has been filed by DJB on 2.11.2004. It is explained as under :

"3. That in the rejoinder contention raised by the petitioner is that in respect of neighbouring colony the DJB has by public notice dated 8.09.03 levied the charges @ Rs. 100/- sq.meter.

4. That in this context, it is pertinent to mention that vide Resolution dt. 30.04.96 rates of water and sewerage development charges were fixed at Rs. 55/- and Rs. 100/- per sq.mt. respectively. These rates were applicable in respect of those colonies where work was taken up after 5.4.1994.

5. That the other main condition of above resolution dated 30.4.1996 was that the work would be awarded for execution after a minimum of 75% of 1st installment of development charges received from the colony as a whole. The balance amount of development charges was to be payable in 30 equated quarterly installments, with 12% simple interest, after notification of water/ sewerage services.

6. That the rates of water and sewerage development charges was further revised from Rs. 55/- and Rs. 100/- to Rs. 110/- and Rs. 200/- per sq.mtr. respectively vide DJB''s Resolution No. 481 dated 06.12.1999. Copy of the resolution is annexed as Annexure-1.

7. That further DJB vide its Resolution No. 581 dated 26.04.2000, decided that those colonies which have been requested in writing prior to 4.2.2000 to deposit development charges, be given an opportunity to deposit at least 75% of 1st installment of development charges at pre-revised rates on or before 31.5.00. It is submitted that on request from various quarters, the last date of availing pre-revised rates was extended from 31.5.2000 to 31.7.2000 vide DJB''s resolution No. 618 dated 3.8.2000. The last date of availing pre-revised rates was finally

extended from 31.7.2000 to 30.9.2000. Copy of resolution and minutes is annexed as Annexure II (colly.)

8. It is submitted that where the process of laying the sewerage system in colonies was started prior to 30.9.2000 and more than 75% of 1st installment of sewerage development charges was recovered prior to 30.9.2000 the pre-revised rates were applicable.

That in view of facts and circumstances explained in the preceding paras, the sewerage development charges from Railway Colony Mandawali and Mandawali Unche Pur as mentioned in the public notice dated 8.9.03 were recovered @ Rs. 100/- per sq.mt. The plot holders who had deposited the sewerage development charges in lump-sum within three months from the date of issue of notification were granted rebate of 20% and on failure the sewerage development charges were recovered in 30 equated quarterly installments with 12% simple interest."

12. Agreement dated 31.3.1937 shows that Nazul Estates described in Schedule-I to the agreement were placed at the disposal of the Delhi Improvement Trust. 23 Nazul Estates are listed in Schedule-I. Colony in question is at Seriall No. 13. (It was agreed that Chiraga South, the Estate at S. No.13 is called Jheel Khurenja). Clause 8 of the agreement states that the Trust assumes full liability for all expenditure for works described in Schedule-II. Clause 10 of the agreement states:

"10. In consideration of the liability hereby assumed by the Trust for the management of the said Nazul Estate and the execution of the works described in Schedule-II to this Agreement, Government shall pay to the Trust :-

a) A grant of Rs. 21.40 lakhs being a sum approximately equivalent to one half of the estimated cost of the Sewage Disposal Scheme described in the Schedule II to this Agreement;

b) loans of such amount as may be required to enable the Trust to complete

i) the Sewage Disposal Scheme, and

ii) the programme of anti-malaria works described in Schedule II to this Agreement;

at interest equal to Government''s rates for the time being for loans to Local Authorities.

c) such further loans as Government may sanction for the improvement and development of the said Nazul Estate; and

d) by charging against the Nazul Development Account such equitable proportion of the Administrative costs of the Trust as may be agreed upon between Government and the Trust; and the service of one half of the loan referred to in sub-clause (i) of clause (b) and the service of the whole of the loans referred to in sub-clause (ii) of clause (b) and in clause (c) shall be a charge on the income arising from the development of the said Nazul Estate."

13. Schedule-II does not refer to any works in Chiraga South or Jheel Khurenja. It refers to works only in the Nazul Estate Kilokri.

14. It is evident that sum of Rs. 21.4 lacs received by the Delhi Improvement Trust did not pertain to any works in Jheel Khurenja. Stand of the petitioners that the Delhi Improvement Trust received Rs. 21.4 lacs for carving out development work in Jheel Khurenja and hence as successor-in-interest, DDA is obliged to provide sewerage disposal system has, Therefore, to be rejected.

15. On the issue of discrimination, it need only be stated that petitioners cannot claim parity with colonies where development was carried out earlier. Due to rise in cost index, expenditure goes up as time passes.

16. Shri Sandeep Sethi, learned counsel for the petitioners conceded that u/s 32 of the Delhi Water Board Act, 1998, DJB could recover the development charges. Section 32 reads as under :

"32. Permission to connect private drain with public drain - Subject to such conditions as may be laid down by regulations made in this behalf, and to payment of any consequential expenditure incurred by the Board, as assessed by the Board, the Board may allow the connection of any private drain to any public drain under its control.

Provided that nothing in this sub-section shall entitle any person-

(a) to discharge any industrial effluent into any public drain except in accordance with regulations made in this behalf, which may include provision for treatment of such effluent before its discharge into such drain; or

(b) to discharge into the drain any substance the discharge of which is prohibited under any law; or

(c) to discharge foul water into a drain provided for surface water into a sewer, unless expressly permitted by the Board is a purely temporary measure."

17. Section 2(I) defines development charges to mean:

"Development charges means charges to defray the cost incurred by the Board in initially providing any service to any premises or group of premises or for augmenting such service and includes departmental charges."

18. Thus DJB is statutorily empowered to recover development charges.

19. Development charges as defined has 2 components. 1st component is the cost incurred. 2nd component is the departmental charges.

20. As per known and accepted principles of costing, expenditure incurred on loan being taken, permits capitalization of interest as part of the cost. If no loan is raised, interest on blocked capital is permissible to be capitalized on the

expenditure incurred.

21. Additional affidavit filed by DJB states that on 3.12.1999 vide resolution 481 it resolved as to how it would cost a development scheme. Resolution records that for sewerage disposal scheme, the predecessor-in-interest of DJB, namely, Delhi Water Supply & Sewage Disposal Committee had on 30.1.1996 fixed development charges @ Rs. 100/- per sq.meter for sewerage development. This rate was for the date 5.4.1994.

22. Resolution of DJB records that past expenditure incurred shows that approximately cost escalation of 12% is there each year. Resolution, accordingly records that effective from 1994 when rate fixed was Rs. 100/-, rate as of 2001 i.e. 7 years down the line would be Rs. 200/- per sq.meter. Arrived at by increasing the cost by 12% each year.

23. Costing is a function within the domain of the executive. Scope of judicial intervention is minimal. If a statute prescribes certain inputs to be taken into while costing, limited jurisdiction of the court is to enquire into whether the said inputs have been kept in mind by the executive while arriving at the cost. Role of the court is to confine the executive within confines of reasonableness and to ensure that it does not act arbitrarily. A Full Bench of this Court in decision Sheelawanti and Another, Retired/Retiring Public Servants Forum, Joginder Kumar Sharma, Alam Singh and Others, Gurpiari Jolly, Prem Chopra, Dwarka Dass and Ravi Kher Vs. Delhi Development Authority and Another, held so. Supreme Court in the decision Delhi Development Authority Vs. Ashok Kumar Behal and Others, has affirmed the view taken by the Full Bench of this Court. The court is not to act as a cost or a chartered accountant. Role of court is to see that pricing is not arbitrary or is not the result of the application of a wrong principle of law.

24. One fact may be noted. Counsel for DJB stated that not all plots measure 500 sq.meter. Counsel for the petitioner admitted said fact.

25. Rule is discharged. Petition dismissed.

26. No costs.