

(1986) 10 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 857 of 1984

Kamala Bakshi and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 28-10-1986

Acts Referred:

Citation : AIR 1987 Delhi 180 : (1987) 12 DRJ 13 : (1987) RLR 51

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Advocate : R.K.P. Shankar Das, M.G. Ramachandran and Y.K. Sabharwal, for the Appellant;

Judgement

Mahinaer Narain, J.

(1) By an order dated 14/8/1984, Chadha, J. had dealt with this application. Aggrieved by the order of Chadha, J., whereby he had granted stay of re-entry upon terms, a Letters Patent Appeal was filed, being L.P.A. No. 131 of 1984 by the petitioner, herein.

(2) At the hearing of the L.P.A., on 2/5/1985, a Division Bench of this Court, consisting of Prakash Narain, CJ. and N.N.Goswamy,J., passed the order as under :

"IT is not disputed that some of circulars and notifications as such were not before the learned single Judge. Perhaps what was shown to the learned single Judge was a summary of the various circulars issued from time to time . regarding, the fixation of market rates from notifications; however appears to have been shown. In our view and in all fact

(3) The matter has now been placed before me for "reconsideration the prayers in C.M. 1114 of 1984", and for "rehearing" on C.M. 1114 of 1984.

(4) Before me the main thrust of arguments of Mr. R.K.P. Shankardass has been that it is pleaded by him in his writ petition that by virtue of provisions of Section

14 of the Delhi Development Act, the contractual rights and obligations contained in the perpetual lease-deed (Clause 2(5) and 2(6) have been altered by operation of that law.

(5) The Delhi Development Act came into force in Delhi on 27/12/1957. This statute, its terms show, binds the government. As. stated by the Supreme Court in Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta, , a statute binds the government unless it expressly or by necessary implication exempts the State, No such exception is to be found in Delhi Development Act, 1957. Section 14 thereof reads as under :-

"14. After coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan :

PROVIDED that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in purpose and to the extent for and to which it is being used upon the date on which such plan comes into force."

(6) The Master Plan for Delhi came into operation after it was approved by the Central Government on 1/9/1962. It is not disputed that according to the Master Plan the area with which we are concerned in this case, 13, Tolstoy Marg, New Delhi, is to be used for commercial purposes. The "Master Plan is statutory. This was so stated by the Supreme Court in Municipal Corporation of Delhi v. Kishan Dass & another, Air 1969 S.C. 390. The Supreme Court said, "There is no controversy, in this case, that the Master Plan has been prepared u/s 7 by the Authority on 1/9/1962, and it has also come into force, as contemplated by Section 11." Prima facie it appears to me that by virtue of the operation of the Delhi Development Act, and the statutory Master Plan for Delhi which, as stated above, came into force on 1/9/1962, the purpose for which plot No. 13, Tolstoy Marg, New Delhi could be used, has been changed from contractual "residential" purposes, to statutory "commercial" purposes too.

(7) Prima facie it also appears to me that as the purpose for which plot No. 13, Tolstoy Marg, New Delhi, could be used, has been added to statutorily to include commercial use. There was no need to seek any "conversion" of the plot from residential to commercial, as appears to have been done in the instant case.

(8) The dispute in this writ petition is regarding the demand for "conversion charges" which has been made by the respondent. In case of statutory conversion, there would be no scope for insisting upon receipt of conversion charges under a contract-the perpetual lease between the petitioner -and the Lesser.

(9) A number of contentions have been raised by Mr. ISabharwal who appears for the Union of India. He says firstly that the lease is operative between the parties which means that each clause is operative between the parties, and the parties

are bound under the same. Had it not been statutory enactment of the Delhi Development Act, particularly provision of Section 14 thereof, which prohibits the use of any land or building for purposes other than the contemplated by the Master Plan or Zonal Plan, there would have been no difficulty in accepting this contention. What happened in this case is that the statute which has come into operation after the execution of the perpetual lease deed, the inter se rights and obligations between the parties have been modified by the statute, and the statutory Master Plan. After: coming into force of the statutory Master Plan, in view of Section 14 of the Delhi Development Act, the plot in question could be used for commercial purpose, postulated by the Master Plan for Delhi. The terms of the perpetual lease, other than the one relating to use of the plot, which as stated above was modified, continue to be operative.

(10) It is urged by Mr. Sabharwal that the permission of the Lesser to erect commercial building is mandatory. Clause 2(5) of the perpetual lease-deed reads as under:

"2(5).The lessee will not without the previous consent in writing. of the Chief Commissioner of Delhi or duly authorised officer as aforesaid erect or suffer to be erected on any part of the said demised premises any buildings other than and except the building erected thereon at the date of these presents."

(11) The reply given by Mr. R.K.P. Shankardass to this is that the letter dated 1/3/1986, annexure Viii to the writ petition gives "no objection" to the building of a multi-strayed or a commercial building .What he says is that claim of additional premium, additional ground rent and other charges for development cannot be asked for in view of the statutory change in the letting purpose. In view of the statutory change, prima facie, I agree with what is stated by Mr. R.K.P. Shankardass. As statutory change has been made, rightly, no objections were raised. " As regards additional premium etc. which is demanded, that has to be justified on the basis of the agreement between the parties. The agreement between the parties with respect to this is to be found in Clauses 2(1), 2(2) and 2(3) of the perpetual lease which read as under :

"2(1).The lessee will pay into the Lesser the yearly rent hereby reserved on the days and in the manner hereinbefore appointed.

2(2).The lessee will from time to time and discharge all rates, taxes, charges and assessments of every description which are no or may at any time hereafter during the continuation of this lease be assessed, charged or imposed upon the premises hereby demised or on any buildings to be erected thereupon or on the landlord or tenant in respect thereof.

2(3).All arrears of rent and other payments due in respect of the premises hereby demised shall be recoverable in the same manner as arrears of land revenue under the provisions of the Punjab Land Revenue Act, Xvii of 1887, and any amending Act for the time being in force."

(12) What Mr. R.K.P. Shankardass contends 2(2) relates to Clause 2(1) relates to yearly rent, Clause 2(2) relates to taxes on property and Clause 2(3) is a provisions for recovery of both, the first part of it refers to arrears of rent, clearly this moans yearly rent reserved, and the latter part" of Clause 2(3) "other payments" refers to Clause 2(2), which are taxes. on property etc. Clause 2(3) deals with recovery of the arrears of annual rent, and other payments, as arrears of land revenue, and is not meant to enable imposition of charges for alleged conversion, of letting purposes from residential to commercial. Having perused the entirety of the perpetual lease-deed, I see no other clause which can have any bearing on the alleged power of the Lesser to make the lessee pay any "conversion charges".

(13) Mr. Sabharwal relies upon Clause 2(6) of the perpetual lease- deed which reads as under :-

"2(6).The lessee will not without such consent in writing of the Chief Commissioner of Delhi, carry on or permit to be carried on the said premises any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a residence or do or suffer to be done thereon any act or thing whatsoever which in the opinion of the Chief Commissioner of Delhi may be an annoyance or disturbance to the Secretary , of State or his tenants in the New Capital or Delhi".

For the purpose of saying that the plot No. 13, Tolstoy Marg, New Delhi, cannot be used for purposes of trade or business without prior consent of the Lesser, does not appear to have much force in view of the provisions of Section 14 of the Act, and the statutory Master Plan, which prohibit use of any land or building for purposes other than that which is indicated in the Master Plan for Delhi. This Clause 2(6) would, prima facie in my view stand modified by the provisions of the Delhi Development Act, 1957, and the statutory Master Plan, which was prepared by the Delhi Development Authority.

(14) It is also contended by Mr. Sabharwal that the remand order of the Division Bench, dated 2/5/1985, would not permit the petitioners from raising any question regarding Section 14 of the Act and the statutory Master Plan, I find that the contention regarding the effect of provisions of Section 14 of the Act, and the statutory Master Plan, have been specifically taken in paragraph 13 and in ground (X), both of which are reproduced here below :

"ACCORDINGLY the use of the land for purposes other than for which the same is earmarked in the master plan and the zonal development plan has been prohibited by law. As such the land in the Connaught Place are falling in Zone D-I including the said plot of land in Tolstoy Marg, New Delhi, could not be used or permitted to be used for purposes other than commercial. Accordingly these requirements of the law superseded the provisions of the perpetual lease deed dated 23-10-1966."

"X.In view of the provision of Section 14 of the Delhi Development Act, 1957

which requires the land in Connaught Place area falling in Zone D-I including the said plot of land in 13, Tolstoy Marg, New Delhi could not be used or permitted to be used for purposes other than commercial. Accordingly these requirements of law supersede the provisions of perpetual lease-deed dated 23-10-1966.

THE second respondent was Therefore bound to grant approval for the construction of multi-storeyed building on the said plot of land and has no power whatsoever to withhold the permission or otherwise interfere with the construction of the multi-storeyed building in accordance with the plans sanctioned by the concerned Municipal authority, i.e. New Delhi Municipal Committee."

(15) It is too well settled that a question of law can be raised at any stage of the proceedings, especially when it has not been given up, and it has been specifically taken in the petition, or in the grounds. In this view of the matter, as all obligations have to be based upon some law, or contract, the contract in this case having been modified by statutory provisions, I think that interest of justice and balance of convenience require that the demands made by the respondents for payment of conversion charges be stayed.

(16) I do not need to consider further contentions which have been urged regarding the rates on the basis of which "conversion charges" had to be paid, as I find that the statutory provisions of the Delhi Development Act, which bind the government, have resulted in statutory direction which also enables the use of the plot in question for commercial purposes. The statutory addition of additional purpose, eliminates the need for conversion, and in view of the statutory conversions which have already taken place, there is no question of further permission being needed for "conversion" of purposes for which plot No. 13, Tolstoy Marg, New Delhi, can be used. Consequently no question of payment of "conversion charges" arises.

(17) In view of the above, the order dated 22/3/1984 which has stayed the re-entry into plot No. 13, Tolstoy Marg, New Delhi is confirmed.

(18) The views expressed herein, would not prejudice the contentions of the parties in the writ petition.

(19) C.M. 1114 of 1984 stands disposed of.