

(2011) 08 DEL CK 0377
In the Delhi High Court
Case No : LPA No. 636 of 2011

Kanhaya Lal Madan

APPELLANT

Vs

N.D.M.C. and Another

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0377

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Vijaynder Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—By the impugned decision dated 4th April, 2011, learned single Judge has dismissed Writ Petition (Civil) No. 1862/2011 and given liberty to the Appellant to sue for refund of money. Learned single Judge has further clarified that observations made in the decision were only to deal with the contention of the Appellant on the question of maintainability of the writ petition and would not affect the claim/proceedings which may be instituted by the Appellant for refund of money.

2. Having heard the learned Counsel for the Appellant, we are entirely in agreement with the finding recorded in the impugned decision. Learned single Judge has refused to exercise discretion and entertain the writ petition for refund of money, which has been deposited/paid towards misuse/damages to the Respondent NDMC. Learned single Judge has noticed that the Appellant had unequivocally and unconditionally deposited part payment towards misuse/damages with the NDMC on 13th April, 2009. By another letter of the same day relied upon by the Appellant, he had informed the Respondent NDMC about deposit and requested them for conversion of rights into free-hold rights and execution of the conveyance deed. He had further offered to pay balance dues, if any, and sought more time to pay the balance amount. Thereafter on 28th April,

2009, he deposited the balance amount unconditionally and without any demur. By a letter written on the same date, he informed the Respondent NDMC about the deposit and requested them for execution of the Conveyance Deed. This letter was not written without prejudice or under protest or with a right to claim refund. In the third letter dated 3rd July, 2009, the Appellant did not mention whatsoever about any protest or the fact that the deposit was made without prejudice to his rights. Consequently, the conveyance deed of free hold rights was executed by the Respondent NDMC in favour of the Appellant on 28th June, 2010. Six months thereafter on 16th December, 2010, the Appellant made first claim for refund of the payments.

3. Whether or not the payments were made under protest or without prejudice to the rights of the Appellant, or under undue influence etc., are disputed questions of fact which have to be gone into and examined. The Appellant has contended that the clause relating to prescribed user of the property as "Coal Depot" was mistakenly inserted in the Lease Deed executed between L&DO and his father way back on 11th January, 1983. This again, is a disputed question of fact and the Appellant has raised the said contention alleging the mistake nearly 27 years after the Lease Deed was executed. Reliance placed by the Appellant on filing notings, has been rejected by the learned single Judge in view of the judgments of the Supreme Court in Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, Jasbir Singh Chhabra and Others Vs. State of Punjab and Others, , and Union of India (UOI) and Others Vs. Vartak Labour Union, .

4. Regarding other reliefs claimed in the writ petition, learned Single Judge has observed as under:

17. As far as the other reliefs claimed in the petition are concerned, No. blanket stay against the Respondents from taking action against the property of the Petitioner as sought can be granted. If any action is threatened or taken, the Petitioner shall have remedies in law. Similarly, if it is the plea of the Petitioner that it is entitled to additional FAR and the unauthorized construction in the property is regularizable, it is open to the Petitioner to apply for the same and if the said application is rejected, to prefer an appeal there against and a writ again would not lie. Rather, it appears that the said two prayers have been added merely to have the notice of the petition primarily claiming refund of monies issued.

5. In view of the aforesaid facts, we do not think that the order of the learned single Judge requires any interference. The present intra court appeal has No. merit and is accordingly dismissed.