
(2012) 09 DEL CK 0074

In the Delhi High Court

Case No : Writ Petition (C) 2823 of 2010

Kanta Devi Charitable and Aeducational Society

APPELLANT

Vs

DDA and Another

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0074

Hon'ble Judges : D. Murugesan, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : R.K. Saini, with Mr. Sitab Ali Chaudhary, for the Appellant; Amit Mehra, for Mr. Ajay Verma, for DDA, for the Respondent

Final Decision : Dismissed

Judgement

C.M. No. 16532/2012

1. The petitioner questions notifications dated 10.10.2008, and 23.12.2008 as well as the consequential demand letter dated 24.12.2009 towards charges for sanction of an additional 30% FAR in the premises in question. Vide order dated 27.04.2010, this Court while considering C.M. No. 5657/2010 for stay directed as follows:-

CM No. 5637/2010 (Stay)

Notice which is accepted by Learned Counsel for the respondents.

Learned Counsel for the petitioner volunteers that the petitioner is willing to deposit the amount demanded by the DDA subject to the final out-come of the Writ Petition and in case, the petitioner succeeds, refund of the amount so deposited will take place with directions for payment of interest.

We accept the said suggestion and direct the petitioner to deposit the amount as demanded by the DDA and thereafter the plans be released duly sanctioned, subject to the fulfillment of all other conditions. The plans to be released within four weeks of such deposit.

In case, it is found that the petitioner is not liable to pay full or part of the amount so deposited, necessary directions would be passed for refund of the amount to the petitioner with appropriate interest at the stage of final decision of the Writ Petition.

Application stands disposed of.

Pursuant to the order, the petitioner deposited the said amount. The writ petition itself was later on taken up for hearing on 27th August, 2012 and having noticed the subsequent notification dated 17.07.2012 as well as the order of this Court made in W.P.(C) No. 9572/2009, this Court disposed of the writ petition on the same terms. The directions reads as under:

In view of the fact that now no FAR charges are to be recovered from 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 no 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.

2. On the above factual background the petitioner has taken out the application seeking for release of the amount deposited together with interest @ 15% p.a.

3. Learned Counsel for the petitioner has submitted that inasmuch as the writ petition has been ordered in favour of the petitioner, they are entitled to interest on the amount already deposited pursuant to the orders of this Court. He also drew our attention to directions of this Court dated 27.04.2010 and submitted that his Court issued directions for refund of the amount with appropriate interest at the stage of final hearing in the writ petition. He would further submit that in view of the said order, the respondent cannot deny the interest on the amount deposited.

4. Having heard Learned Counsel for the respondents, we noticed that the said order of stay came to be passed on the petitioner volunteering to deposit the amount demanded by DDA subject to the final outcome of writ petition with a clear understanding that in case the petitioner succeeds, refund of the amount so deposited will take place with directions for payment of interest. The latter portion of the direction for payment of interest should be read along with the submissions of the petitioner. Even otherwise, going by the direction, the interest could be made available to the petitioner only in the event any decision is taken in the writ petition on its merits. None of the points in challenging the notification in the writ petition was considered in view of the subsequent development whereby a fresh notification was issued and the same was made prospectively. The writ petition came to be disposed of without any decision on the merits of the grievance made in the writ petition. In view of the above, we cannot hold that the writ petition was decided on merits so that the petitioner could take the

advantage of the directions dated 27.04.2010 seeking for appropriate interest, as the said order specifically refers to the payment of interest at the stage of final decision. Hence, we do not find any merit in the application, the same is dismissed.