

(2012) 12 DEL CK 0008
In the Delhi High Court
Case No : LPA 847 of 2012

K.B. Chadha

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 12 DEL CK 0008

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

Bench : Division Bench

Advocate : K. Venkatraman, for the Appellant; Ajay Verma, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.

CM No. 21386/2012 (for exemption)

Allowed, subject to all just exceptions.

The applications stands disposed of.

LPA 847/2012 & CM No. 21387/2012 (for interim directions)

1. This intra court appeal impugns the order dated 21st November, 2012 of the learned Single Judge disposing of W.P.(C) No. 14146/2009 preferred by the appellant. Counsel for the respondent appears on advance notice and we have with consent heard the counsels finally. The appellant is the lessee under the respondent DDA of a plot admeasuring 160 sq. yds. bearing No. 312, Dr. Mukerjee Nagar, Delhi. He, in December, 1998 applied for conversion of leasehold rights for the said land into freehold. During the processessing of the said application for conversion, it was detected that the appellant had also encroached upon 75.53 sq. yds. of open land adjacent to the land leased out to him and included the said additional land in his house. Accordingly, conversion was not allowed.

2. Appellant then, in March, 1999 applied to the respondent DDA to allot the said 75.53 sq. yds. of land also to him subject to payment of current market rate. The respondent DDA vide its letter dated 30th September, 1999 demanded premium of Rs. 16,92,565/- from the appellant for the said land. The appellant however instead of paying the same approached the Permanent Lok Adalat of the respondent DDA which recommended charging of premium from the appellant at the pre-determined rates of land in the locality and not at the auction rates as per which the demand had been made. Respondent DDA, however in view of its Policy of 7th January, 2003, did not accept the said recommendation of the Permanent Lok Adalat, which closed the matter as unsettled.

3. The appellant thereafter approached first, the District Consumer Forum which dismissed the complaint, then the State Consumer Disputes Redressal Commission which dismissed the appeal and finally the National Consumer Disputes Redressal Commission which also dismissed the appeal in November, 2009, holding the Consumer Fora to be not having jurisdiction to go behind such policy decision of the respondent DDA.

4. It was thereafter the writ petition from which this appeal arises was filed.

5. It is the contention of the respondent DDA that the aforesaid premium was demanded at the market rate for the year 1998-1999 and it was also entitled to charge interest from the appellant at 18% per annum thereon from 1st April, 1999.

6. Appellant on the contrary relied on the schedule of market rates in Delhi published by Land and Development Office (L&DO) in the year 1998 and offered to pay the rates as prescribed for commercial user even though the subject land and its use is residential in nature. The respondent DDA controverted, contending that the rates relied upon by the appellant were for working out conversion charges and the true market rates are the auction rates which had been made the basis to arrive at the market value of the subject land.

7. The learned Single Judge has accepted the contention of the respondent DDA and held that the premium demanded by the respondent DDA could not be said to be arbitrary or exorbitant. The plea of the appellant of allotments of such additional lands to certain others at the pre-determined rates, was negated by observing that there cannot be any negative equality. However, the learned Single Judge reduced the rate of interest demanded by the respondent DDA from 18% per annum to 12% per annum.

8. Counsel for the appellant has contended before us that the said additional land admeasuring 75.53 sq. yds. adjacent to the appellant's house cannot be used for any other purposes; even the respondent DDA does not allot through public auction plot size of less than 100 sq. yds.; that in fact the respondent DDA had no use therefor and ought not to charge premium therefor at the rates fetched by the DDA in auction held during the relevant year. Again, instances of other cases where such adjacent land had been allotted by the DDA to the lessees to

whose plots such land was adjacent and at pre-determined rates or at the rates of L&DO, are sought to be given. It is yet further contended that the appellant has not constructed upon the said land and has merely included the same in his house and is using the same for the purpose of parking etc.

9. We are not impressed. Though the learned Single Judge has not considered but we may at the outset observe that the appellant is a trespasser over public land and has no equities in his favour. The appellant admittedly has occupied the said public land admittedly since the year 1979 and without paying absolutely anything therefor to the respondent DDA. No citizen has a right to, even if any public land is not being put to any use, grab the same for his own exclusive use and occupation. The mesne profits for use and occupation by the appellant of the said land from the year 1979 onwards will amount to a substantial amount and which the respondent DDA has not demanded from the appellant. In fact, such encroachment/trespass by the appellant may have gone undetected but for the conversion application filed by the appellant. Needless to state, that all this is to the prejudice of general public. Even if the contention of the appellant that the land cannot be auctioned or allotted to anyone is to be accepted, such land can provide the much needed open space to the otherwise congested localities. Thus, the reasoning of the appellant of the said land being of no value to the respondent DDA and the respondent DDA being thus not entitled to charge the market rate therefor from the appellant is without any merit. It is the settled principle of law that this Court would not exercise the discretionary jurisdiction under Article 226 of the Constitution of India against persons who encroach upon public land/properties.

10. We even otherwise do not find any error in the order of the learned Single Judge. Though, the averment of the respondent DDA having allotted such land to other adjoining plot holder have rightly been rejected by the learned Single Judge relying on the principle of "No Negative Equality" but we may also add that there is no real basis for the said averment. There is nothing to show that the appellant has been treated differently from any other person.

11. We therefore do not find any merit whatsoever in this appeal; the learned Single Judge has already granted some relief to the appellant by reducing the rate of interest from 18% to 12% per annum, though there was really no occasion therefor. We however do not deem it appropriate to interfere with the said discretion exercised by the learned Single Judge. The appeal and the application are dismissed. No costs.