

(1990) 11 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Appeal No. 1201 of 1990

Krishan Kumar

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 13-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Development Act, 1957 — Section 26

Citation : (1991) 43 DLT 218

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : S.K. Luthra and P. Dewan, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge in this writ petition is to the notice dated 27th February, 1990 issued by the respondents imposing penalty/composition fee of Rs. 1,56,788.15.

(2) Briefly stated the facts are that perpetual lease in respect of plot of land measuring over 800 sq. yards was executed by the respondents in favor of the petitioner on 5th June, 1981 for constructing a factory. This land was situate at A-60, Okhla Industrial Area, Phase-11, New Delhi. According to the terms of the lease the petitioner was required to construct a factory within a stipulated period. The factory was not constructed but the petitioner got the building plans sanctioned and applied for extension of time for completing the construction. The respondents, from time to time, did extend the period within which the petitioner could raise the construction and according to the last extension, the petitioner was required to construct the factory by 31st December, 1987.

(3) According to the terms of the lease, the petitioner could not mortgage or create encumbrance on the land without the prior permission in writing from the Lesser, namely, the respondent. On 2nd April, 1987 the petitioner wrote a letter to the respondent inter alia, stating that the said plot was under construction and

permission may be granted to mortgage the same so as to raise loan for completing the construction. No reply was received to this letter and on 28th December, 1987 another representation was made asking for permission to mortgage the plot and also seeking extension of time for completing the construction by the period of one year i.e. till 31st December, 1988.

(4) The petitioner then received a letter dated 23rd February, 1988 informing the petitioner that the request for grant of mortgage permission could not be accorded because the petitioner had not applied in a prescribed proforma. The petitioner thereafter continued to make representation for extension of time and permission to mortgage. It is not necessary to refer to all the correspondence except to note that on 5th September, 1988 the respondents wrote to the petitioner whereby the petitioner was required to pay composition charges of Rs. 53,538.15 up to 31st December, 1988. This demand was challenged by the petitioner in the writ petition No. 2771/88 but the same was dismissed and thereafter SLP was filed. Thereafter, the Supreme Court remanded the matter to this court and at the time of hearing of Civil Writ No 2771/88 it was suggested that the Vice-Chairman would consider the question of extension as per the guidelines which had been issued. The petition was accordingly dismissed as withdrawn. The representation was filed by the petitioner and by the impugned letter dated 27th February, 1990 the petitioner was required to pay composition fee of Rs. 1,56,788.15 and it was further stated that mortgage permission in respect of the said plot will be considered only after receipt of the said amount.

(5) The respondent has submitted, in response to notice issued by us, that the petitioner had not applied in a prescribed proforma for permission to mortgage the land. On a query raised by us we are informed by the respondents' counsel today that there are no rules of the Dda prescribing an application to be filed for permission to mortgage in any prescribed proforma. Reference is, however, made to some departmental guidelines on the subject. Learned counsel stated that these guidelines have, however, not been notified nor has any public notice been issued. These guidelines, according to us, have only remained with the department itself. It is further stated by the learned counsel for the respondent that the petitioner himself had in fact applied for permission to mortgage in a prescribed form u/s 26(1) of the Urban Land (Ceiling and Regulation) Act, 1956. It is contended that the said application should have been filed earlier.

(6) The lease deed which has been executed between the parties does not prescribe that application for permission to mortgage as to be in any prescribed proforma. The so-called guidelines of the Dda have not been made public and nor do they prescribe for any application for permission under the lease being filed in any proforma. It is no doubt true that the petitioner has applied in a proforma u/s 26(1) of the Urban Land Ceiling Act. But this application is not an application as envisaged by the terms of the lease deed. This is an application envisaged by statute, namely, Urban Land Ceiling Act and the application has been made to the statutory authority, namely, the Competent Authority. It is

immaterial that the competent authority dealing with an application u/s 26(1) happens to be Commissioner (Land) of the DDA. In fact, the petitioner could not have made application u/s 26(1) of the Urban Land Ceiling Act without having first got the permission from the Lesser, namely, the Dda to mortgage the land which was requirement of the terms of the lease. Counsel for the respondent states that both application ions under the terms of the lease as well as under the Land Ceiling Act have to be made together. We find no such requirement on the record. The lease deed does not say so and no public notice to this effect has been issued.

(7) It has been stated by the respondents in their reply affidavit that in case of vacant land permission to mortgage is normally granted. In the present case the respondents, like Shylok, are asking for more than what it should have been. They have raised a demand of over Rs. 1,50,0 0.00 without having suffered any loss. They have not even promised, as per the impugned letter, that the permission for mortgage will be granted. The demand has been raised on the ground that the petitioner has not constructed on the plot of land within the stipulated period. But the petitioner could not construct without raising loan and the loan could not be raised because the respondents did not grant permission. The respondents cannot take advantage of their own wrong. The respondents were obliged to decide the petitioner's application for permission to mortgage on merits. No such decision has till today been given by the respondents. The application of the petitioner for permission to mortgage the land has yet to be disposed of. This application was made as far back as on 2nd April, 1987. The respondents are only interested in demanding money without discharging their corresponding duties, functions and obligations. In our opinion rejecting the application of the petitioner by stating that the said application had not been applied on the prescribed proforma is bad in law. As we have already noted there was no proforma which was prescribed by the Dda in terms of the lease deed and the proforma prescribed under the Urban Land Ceiling Act would come into play only after permission has been granted by the Dda to the petitioner to mortgage the land. The decision of the respondent not to consider the petitioner's request for mortgage as communicated by it vide their letter dated 23rd February, 1988 was not, Therefore, valid. Consequently, any demand raised by the respondents by way of composition charges has also to be regarded as unwarranted. If the respondents had given permission, as sought for, the petitioner would have been able to construct the factory by 31st December, 1987. The amount demanded by the respondent for granting extension till 31st December, 1987 had already been paid by the petitioner. Because the request of the petitioner contained in its letter dated 2nd April, 19 87 for permission to mortgage the land was wrongly rejected, Therefore, the petitioner cannot be penalised by the respondents. The respondents are not justified in demanding any composition charges from the petitioner in this regard. We are not going into the validity per se of the demand for composition charges by the respondents, perhaps, on the question may have to be gone in another case, but we find that the composition charges up to 31st

December, 1987 had been paid by the petitioner and if the request contained in the petitioner's letter dated 2nd April, 1987 had been considered within a reasonable time the factory would have been constructed by 31st December, 1987. Therefore, it is unreasonable to demand composition charges from the petitioner with effect from 1st January, 1988. The impugned demand, Therefore, which has been raised by the revised demand notice dated 27th February, 1990 has to quashed. The respondents were under obligation to consider the petitioner's request for grant of permission to mortgage the land. This request has still not been considered on merits. We, Therefore, issue a writ of mandamus directing the respondents to consider the petitioner's application for permission to mortgage the land within a period of six weeks from today.

(8) The respondents will also allow the petitioner reasonable time of about one year to raise the construction after the petitioner has been granted permission to mortgage the land. The respondents at that time would be entitled to charge composition fee which should not be more than Rs. 35,541 which was levied by the respondents on the petitioner with effect from 1st January, 1988 to 31st December, 1988 vide its notice dated 7th March, 1988. It is made clear that present order does not amount to grant of any permission to mortgage in favor of the petitioner either under the lease or the Urban Land Ceiling Act which application will be decided by the competent authority on its own merits. That application should also be disposed of within six weeks.

(9) The petition is disposed of in the aforesaid terms. Order accordingly.