

(1998) 01 DEL CK 0014
In the Delhi High Court
Case No : CWP No. 4695 of 1996

Mahajan Industries Limited

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 01-01-1998

Acts Referred:

Citation : (1998) 01 DEL CK 0014

Hon'ble Judges : R.C. Lahoti, J; Lokeshwar Prasad, J

Bench : Division Bench

Advocate : Mr. Pradeep Aggarwal, for the Appellant; Mr. P.N. Mishra, for the Respondent

Judgement

Lokeshwar Prasad, J.—The petitioner, who is a lessee, in respect of property bearing No. 27, Kasturba Gandhi Marg, New Delhi has filed the present writ petition under Article 226 of the Constitution of India with the following prayers -

(a) that a writ in the nature of mandamus and/or any other appropriate Writ/ Order or Directions setting aside and/or quashing the policy of the Respondents as contained in the guidelines dated 11.1.1995 or any other guidelines of the Respondents to demand conversion charges and revision of ground rent as a condition to granting permission for construction of multi-storeyed commercial complex under lease deed dated 8.2.1939 in respect of 27, Kasturba Gandhi Marg, New Delhi, be issued;

(b) that a Writ of mandamus or in the nature of mandamus and/or any other appropriate Writ/Order/directions, directing the respondents to permit the petitioner for redevelopment/conversion of the property bearing No. 27, Kasturba Gandhi Marg, New Delhi into a Multi-storeyed building without demanding any conversion charges or revised ground rent, be issued;

(c) that in the alternative a Writ of mandamus or in the nature of mandamus and/or any other appropriate Writ/Order/Directions, directing the Respondents to permit the Petitioner for redevelopment/conversion on the basis of the policy for

determination of conversion charges on 10.12.1970, be issued;

(d) that in the alternative a Writ of mandamus or in the nature of mandamus and/or any other appropriate Writ/Order/directions, directing the Respondents to permit the Petitioner for redevelopment/conversion of the property bearing No. 27, Kasturba Gandhi Marg, New Delhi, into a multi-storeyed building on the basis of the application dated 23.3.1981, be issued;

(e) that interim orders and/or directions, directing the respondents to issue necessary "No Objection Certificate" to New Delhi Municipal Council, intimating that the respondents have no objection to the sanction of plans by NDMC for construction of Multi-storeyed commercial complex on property bearing No. 27, Kasturba Gandhi Marg, New Delhi be passed/issued; and

(f) such further order/orders may be made and/or directions be given as this court may deem fit and proper in the facts and circumstances of the present case.

2. Initially the lease of the property, referred to above, was granted in favor of one Dr. Raghu Nath by the then Secretary of State of India in Council and a perpetual lease deed dated the 8th February, 1933 was executed in favor of said Dr. Raghu Nath. Thereafter, by subsequent acts and assignments in law, the perpetual lease hold rights in respect of the above said property have been transferred in favor of the petitioner in the present writ petition. Thus, it is not in dispute that the petitioner in the present writ petition is the recognised lessee in respect of the property in question. Shri Praveen Nayyar, the Attorney of the legal heirs of said Dr. Raghu Nath, on 25.3.81 had submitted an application to the respondents requesting for permission for conversion (change of user) of the property in question from residential to multi storeyed commercial complex. As per the case of the petitioner, the above mentioned application, submitted by the Attorney of the legal heirs of Dr. Raghu Nath has not been finally decided/disposed of by the respondents and the same is stated to be still pending. The correctness of the above fact has not been disputed even by the learned counsel for the respondents while making his submissions during the hearing of the petition.

3. It is further the case of the petitioner that much before the submission of the above said application, the legal heirs of said Dr. Raghu Nath on 19.5.1980 had entered into an agreement to sell the property in question to the petitioner which was followed by a registered sale deed, executed on 30.10.87 by the legal heirs of said Dr. Raghu Nath thereby transferring the lease hold rights in respect of the property in question in favor of the petitioner.

4. In the petition, the New Delhi Municipal Council has been imp leaded as one of the respondents (respondent No.3.). However, on a prayer made by the learned counsel for the petitioner before this Court on 21st August, 1998, the above said respondent has been discharged from the present petition.

5. We have heard the learned counsel for the parties at length and have also

carefully gone through the documents/material on record. In the light of the challenges laid and the contentions advanced at the Bar we formulate the following questions which arise for decision in the present writ petition:-

(a) What is the right point of time (crucial date) which should be considered as the basis for grant of permission, requested by the petitioner, for the change of user of the property in question from residential to multi storeyed commercial building; and

(b) On what terms and conditions the petitioner, in terms of the lease, can be granted the permission for the change of user (conversion) of the property in question from residential to multi storeyed commercial building.

6. Both the above questions came up for consideration before this Court in case *Ansal and Saigal Properties (P) Ltd. and Others Vs. L. and D.O. and Others*, . As regards (a) above, this Court in the above said case of *Ansal & Saigal Properties*, relying on the guidelines/instructions issued by the Government of India, Ministry of Urban Development (Lands Division) vide letter No. J-20011/2/90-LD dated the 11th January, 1995 has already held that the "crucial date" for calculating the conversion charges inter-alia has to be the date of the receipt of the application for conversion. It has also been held by this Court that such an application/request need not necessarily be signed by the lessee himself and can be signed on behalf of the lessee by his Attorney. In the present case it is not in dispute that the Attorney of the legal heirs of Dr. Raghu Nath had made an application on 25.3.81 to the respondents requesting for permission for the change of user (conversion) of the property from residential to multi storeyed commercial building. It is also not in dispute that the above said application has not been finally decided/disposed of by the respondents till date. In the presence of the above facts, the crucial date for calculating the conversion charges for the change of user/conversion of the property in question from residential to multi storeyed commercial has to be 25th March, 1981 i.e. the date of the receipt of the application for conversion by the respondents in respect of the property in question.

7. As regards (b) above, the position is that this aspect of the case also stands fully covered by our decision in the above mentioned case of *Ansal & Saigal Properties (P) Ltd. and Others Vs. L. and D.O. and Others*, , the present petition filed by the petitioner is disposed of with the directions that the respondents, consistently with the observations made by us in *CW 1233/72 - M/s. Ansal & Saigal Properties (P) Ltd. & Anr. Vs. L&DO & Ors.* shall within six weeks from the date of this order give terms and condition to the petitioner for construction of a multi storeyed commercial complex at 27, Kasturba Gandhi Marg, New Delhi in terms of the lease deed with reference to application dated 25.3.81 submitted by the Attorney of the legal heirs of Dr. Raghu Nath (predecessor-in-interest of the petitioner), seeking permission for the change of user (conversion) of the property in question from residential to

multi storeyed commercial complex. The petitioner, within thirty days from the receipt of such offer from the respondents, shall complete the formalities and shall also deposit the amount in terms of the offer. Thereafter the respondents shall take a decision in the matter with utmost expedition, preferable within six weeks. However, if the petitioner fails to complete the formalities and deposit the amount in terms of the offer within the above said period of thirty days, the above said application dated the 25th March, 1981, seeking permission for the change of user (conversion) of the property in question from residential to multi storeyed commercial complex at 27, Kasturba Gandhi Marg, New Delhi shall be deemed to have been rejected.

8. In the facts and circumstances of the case the parties are left to bear their own costs.

9. Writ petition stands disposed of in above terms.