(2010) 10 DEL CK 0273

In the Delhi High Court

Case No : Writ Petition (C) 8389-91 of 2003

Maya Daryani and Others — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:
Government Grants Act, 1895 — Section 3

Citation : (2010) 10 DEL CK 0273

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Amitabh Chaturvedi and Ajay Tejpal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The prayer in this writ petition is for setting aside the impugned orders dated 11th April 2000, 8th August 2002 and 5th March 2003 passed by the Land & Development Office (''L&DO''), Ministry of Urban Development & Poverty Alleviation, Government of India, Respondent No. 2 herein. The impugned orders demanded from the Petitioner No. 3 M/s. Peejay Industries Pvt. Limited (''PIPL'') ''unearned increase'' and ''interest'' with respect to the freehold conversion and mutation of the property at No. 28, Prithviraj Road, New Delhi in favour of PIPL. The Petitioners also seek refund of the amount of ''unearned increase'' and ''interest'' paid to the L&DO.

2. The plot of land admeasuring 1.988 acres, of which the property at 28, Prithviraj Road forms part, was originally leased to Sardar Shivdev Singh son of Sardar Bishan Singh on 16th March 1932 by the Secretary of State for India in Council. The deed of lease was registered on 23rd/26th August 1932.

3. Between 1932 and 1933 the above plot was built upon. A bungalow, garages, outhouses, servant quarters and appurtenances came to be constructed. According to the Petitioners, by a registered transfer deed dated 14th September

1933 Sardar Shivdev Singh sold and transferred all his rights, title and interest under the said agreement for lease dated 16th March 1932 as well as rights in the built up part to one Mr. Cyril William Grant. By an Indenture of Perpetual Lease dated 19th November 1937 the said transfer was duly recognised by the Governor General-in-Council. In terms of Clause 2 (11) of the said deed of perpetual lease, the lessee was required to obtain the previous approval in writing of the Chief Commissioner of Delhi for assigning, transferring, subletting a part of the said premises. Clause 2 (11) also provided that upon assignment, transfer or sublease of the whole of the said premises or any part thereof, the lessee would within one month thereafter deliver a copy of the lease deed of assignment, transfer or sublease to the lessor or the Chief Commissioner of Delhi.

4. It is stated that upon the death of Mr. Grant, his rights in the said premises devolved upon his wife Mrs. K.G. Grant who sold her rights on 22nd July 1943 to Nawab Malik Akbar Hayat Noon by a transfer deed of that date which was registered on 11th August 1943 with the Sub-Registrar of Delhi. On 5th March 1945 the premises were transferred by Nawab Malik in favour of the partnership firm of M/s. Sardar Bakshi Dalip Singh Mohan Singh. The rights in the said premises were further transferred in favour of Sardarni Avtar Mohan Singh by a registered sale deed dated 4th/5th November 1948.

5. Sardani Avtar Mohan Singh sub-divided the said plot into two portions. This according to the Petitioners was approved by letters dated 25th May 1954 and 14th February 1958 of the L&DO. One portion was a plot measuring 0.771 acres which was subsequently numbered as 28-A, Prithviraj Road, New Delhi and the remaining portion admeasuring 1.217 acres which was numbered as 28, Prithviraj Road, New Delhi.

6. It is stated by the L&DO that on 8th December 1959 Sardani Avtar Mohan Singh executed a gift deed gifting her 6/7th share in the property to three of her minor sons, Dr. Parvinder Singh, Bhati Manjit Singh and Mr. Anjaljit Singh. She retained 1/7th share for herself. This gift deed was found by the L&DO to be in violation of Clause 2 (11) of the perpetual lease deed which required the previous approval in writing of the Chief Commissioner of Delhi. The Petitioners have however denied in their rejoinder that there was any such gift deed. According to Petitioners, Sardani Avtar Mohan Singh sold 6/7th share of her share and interest in the plot admeasuring 1.217 acres known as 28, Prithviraj Road, New Delhi with the structures built thereon to her three sons by a sale deed dated 21st September 1963 which was registered on 25th September 1963. Consequently, while each of the sons held a 2/7th share, Sardani Avtar Mohan Singh held 1/7th share in the said property.

7. Petitioner No. 1 Maya Daryani entered into an agreement to sell on 16th September 1975 with Sardani Avtar Mohan Singh and her three sons whereby she agreed to purchase the property at 28, Prithviraj Road, New Delhi. It is stated that the possession was handed over to Petitioner No. 1 on the same date. The transaction of sale was to be completed and sale deed registered on or

before 30th April 1976. Meanwhile, Petitioner No. 1 Maya Daryani nominated her husband Jetha Daryani, her son Ashok Daryani, Petitioner No. 2 and PIPL, Petitioner No. 3 as the parties in whose favour the documentation in respect of the sale of the said property was to be completed. For some reason the sale transaction could not be completed. Maya Daryani then filed Suit No. 1820 of 1986 in this Court seeking specific performance of the agreement to sell dated 16th September 1975.

8. It may be mentioned here that on 22nd January 1963 the L&DO informed Sardani Avtar Mohan Singh that the Chief Commissioner of Delhi had re -entered the premises on 14th January 1963 on the ground that the terms of the lease deed were not complied with and no sufficient cause was shown in reply to its show cause notice dated 17th July 1962. This re-entry order was subsequently withdrawn by the L&DO on 20th March 1980. On 3rd March 1982 Sardani Avtar Mohan Singh applied for mutation of the property in accordance with the gift deed. While applying for mutation, Sardani Avtar Mohan Singh enclosed along with her letter dated 3rd March 1982 an attested copy of the gift deed and requested that the mutation be carried out "in accordance with this gift deed." PIPL wrote a similar letter on 23rd August 1983 to the L&DO. By a letter dated 9th August 1984 the L&DO informed Sardani Avtar Mohan Singh that neither the gift deed nor the sale deed was acceptable to the lessor as "the transactions are in contravention of Clause 2 (11) of the Lease Deed." She was informed that the lessor was willing to consider the request for mutation of the property in favour of her sons making them as co-lessees with her and further provided the "unearned increase, penalties and other government dues are paid by you on this account."

9. It may be mentioned here that the writ petition makes no mention of either the gift deed or of the above correspondence of 3rd March 1982 and 9th August 1984 exchanged between Sardani Avtar Mohan Singh and the L&DO. In the rejoinder affidavit it is simply stated that this is not relevant for the present case.

10. On 3rd December 1996 Sardarni Avtar Mohan Singh informed the L&DO that certain differences had cropped up between her husband and her elder son which resulted in disputes being referred to arbitration. An Award dated 24th May 1994 was given by the learned Arbitrator which was made rule of the Court by an order dated 6th December 1995 of this Court. In terms of the said award the properties including the ones at 28 and 28-A Prithviraj Road were to be joint Hindu Family/coparcenary properties. On 6th December 1996 Sardarni Avtar Mohan Singh withdrew her request to make her three sons co-lessees. Sardani Avtar Mohan Singh requested that supplementary lease deed for the sub-divided plot No. 28A be prepared in her individual name.

11. On 4th May 1998 the Petitioner No. 1 Maya Daryani requested L&DO to mutate the property at 28, Prithviraj Road in her name. On 10th June 1999 the L&DO executed a supplementary lease deed in favour of Sardani Avtar Mohan Singh recognizing the sub-division of the property at 28 and 28A, Prithviraj Road,

New Delhi measuring 1.277 acres and 0.771 acres respectively.

12. In July 1999, the MoUD announced a policy for conversion of Immovable leasehold properties to freehold. Conversion was permitted either in favour of the original lessee or a subsequent purchaser under an agreement to sell who had acquired possession. On 12th December 1999 Sardarni Avtar Mohan Singh requested the L&DO to inform her of the amount of unearned increase which had to be paid as a pre-condition for the grant of mutation. An application for conversion dated 24th December 1999 was also made by PIPL which was countersigned by Sardarni Avtar Mohan Singh. A total conversion amount was calculated at Rs. 1,65,33,200/- which PIPL chose to pay in five instalments. Accordingly, a pay order of Rs. 33,10,800/- dated 24th December 1999 was deposited by it in favour of L&DO. On 11th April 2000 the L&DO informed Sardarni Avtar Mohan Singh that they had to pay a sum of Rs. 52,45,390/- including 50% unearned increase amounting to Rs. 42,40,005/- as pre-condition for carrying out the mutation. Incidentally, this is one of the orders challenged by the Petitioners. On 19th April 2000 the L&DO rejected the application for conversion dated 24th December 1999 on the ground that PIPL was neither the lessee nor the GPA holder of the original lessee. The conversion charges deposited by PPL were stated to be refunded separately.

13. A compromise was arrived at in Suit No. 1820 of 1986 in which Sardarni Avtar Mohan Singh and her sons had filed counter claims No. 420 of 1990. By an order dated 17th July 2000 in IA No. 6036 of 2000 this Court took the said compromise on record and disposed of the suit. One of the terms of the compromise was Clause 3 (v) which reads as under:

(v) The parties agree that L&DO''s unearned increase or freehold conversion charges, will be paid by the plaintiffs. In other words, the unearned increase of freehold conversion charges for 1.217 acres, will be paid by the plaintiffs and L&DO charges, if any, for 28-A, Prithviraj Road, (0.771 acres) will be paid by Defendant 4 Bhai Manjit Singh. Cost of stamp duty and registration for 28, Prithviraj Road shall be borne by plaintiff No. 4.

14. By the same order dated 17th July 2000, this Court appointed Mr. N.K. Kantawala, learned Advocate as Receiver "to carry out and complete the formalities/requirements of L&DO towards conversion to freehold and to en able the mutation/conveyance of property No. 28, Prithviraj Road, New Delhi in favour of plaintiff No. 4 (PIPL)." Thereafter a series of letters were exchanged between the L&DO and the Receiver.

15. On 8th August 2002 the L&DO wrote to the Receiver that the application for conversion can be considered by it on payment of certain amounts in full and in advance within thirty days including interest on balance amount @ 12% from 28th December 1999 to 31st July 2002. This demand has also been challenged by the Petitioners in this petition. The Receiver insisted that no interest could be demanded. By a subsequent letter dated 30th September 2002 the L&DO

demanded the pending instalments along with interest @ 12% per annum in terms of Clause 24 of the conversion policy brochure. It is stated that on 27th January 2003 the Petitioners paid a sum of Rs. 1,72,92,787/- to L&DO by a pay order under protest. On 5th March 2003 the L&DO demanded a further sum of Rs. 7,76,470/- as interest for period 1st August 2002 to 26th January 2003. This demand is also challenged in the present writ petition. This amount was paid by the Petitioners on 11th March 2003. A conveyance deed was executed in favour of PIPL on 17th July, 2003. Thereafter PIPL wrote to the L&DO requesting refund of the unearned increase and interest charged towards conversion from leasehold to freehold. A reminder was also sent on 5th November 2003. The present petition was filed thereafter.

16. The submissions of Mr. Amitabh Chaturvedi, learned Counsel for the Petitioners have been considered. None appeared for the Respondents.

17. It was first submitted that since there was no clause in the perpetual lease deed permitting the lessor to demand unearned increase and interest thereon, the impugned demands were without the authority of law. The decision in The State of U.P. Vs. Zahoor Ahmad and Another, was relied upon to urge that a perpetual lease deed was in the nature of government grant and it was open to the government to impose conditions which were an exception to the rule. In particular, attention was drawn to the following observation of the Supreme Court: "Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter as the general law of the land be." Reliance is also placed on the decision in Hajee S.V.M. Mohamed Jamaludeen Bros. and Co. Vs. Govt. of T.N., which upheld Clause 7 of the agreement in that case, in view of the Government Grants Act.

18. According to the Petitioners, when the government chose not to incorporate a condition permitting it to recover unearned increase in the event of any assignment/transfer, it could not do so subsequently. With regard to the term of compromise in Suit No. 1820 of 1986 recorded by this Court in its order dated 17th July 2000, it is submitted that there was no estoppel against law; merely because the parties had agreed that unearned increase would be paid to L&DO did not mean that they had waived their right to challenge the demand of unearned increase. Reliance is also placed upon the decision of this Court in Sunil Vasudeva v. Delhi Development Authority 34 (1988) DLT 37 which held that where, by a gift deed, the original lessee had gifted the property in equal shares in favour of her children and mutation had also taken place on that basis, DDA would not be justified in charging unearned increase. Reliance is also placed on the decision in Ganga Malhotra Vs. Land and Development Officer and Others, which held that unearned increase demanded as a condition for grant of conversion need not be paid if it was not part of the terms of the perpetual lease deed. Reliance is also placed on the decision of this Court in Municipal Corporation of Delhi and Others and Delhi Development Authority Vs. Smt.

Damyanti Sahni and Others, In support of the proposition that there can be no charge of ''unearned increase'' reliance is placed on the decisions in H.R. Vaish Vs. Union of India (UOI) and Others, DMA Nursing Home and Medical Establishment Forum Vs. Union of India and others, Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, Delhi Development Authority v. Aditya Kumar Jajodia 119 (2005) DLT 477, Deepak Lamba and Another Vs. Delhi Development Authority, and Daya Wanti Punj and Others Vs. New Delhi Municipal Committee and Others, In respect of the proposition that no interest can be collected unless there was a specific clause in the lease deed reliance is placed on the decision of this Court in Link Engineers Pvt. Ltd. Vs. N.S. Nizzer and Another,

19. This Court has considered the above submissions. There are certain facts which are not in dispute. This is not a case where ''unearned increase'' is being charged in respect of a transfer of property between blood relations. The Petitioners are no blood relations of Sardarni Avtar Mohan Singh. To overcome this obvious hurdle the Petitioners have sought to place reliance on the sale deed dated 21st September 1963 by which Sardarni Avtar Mohan Singh purportedly sold her 6/7th share to her three sons in equal shares. However, the said transaction is not as simple as it seems.

20. The Petitioners have been denying that a gift deed was executed by Sardarni Avtar Mohan Singh on 8th December 1959 in favour of her three sons. To compound matters further in the rejoinder affidavit filed on 22nd September 2004 the Petitioner No. 1 stated as under:

(iii) It is admitted on both hands that Mrs. Avtar Mohan Singh had, sometime in the 1950s or 1960s, transferred undivided and impartible 6/7th share of the whole of the property measuring 1.988 acres to her three minor sons namely Parvinder Singh, Bhai Manjit Singh and Analjit Singh, each of them getting an equal undivided and impartible 2/7th share. There is some controversy regarding the mode of transfer. The Petitioner claims that the mode of transfer was sale recorded in the sale deed dated 21st September 1963. The Respondent claim that the mode of transfer was a gift recorded in gift deed dated 8th December 1959. The Respondent further claims that the donor (Mrs. Avtar Mohan Singh) later on sought to revoke the gift deed but a gift once given cannot be revoked and, therefore, such revocation was invalid. The Respondents further claims that thereafter certain disputes arose between Mrs. Avtar Mohan Singh and her husband, which were referred to arbitration and resolved by the arbitration award dated 24th May 1994, which was made a rule of Court on 6th December 1995, and as per the said arbitration award, the whole of the said property vested in HUF/Hindu Co-parcenary of Bhai Mohan Singh (husband of Mrs. Avtar Mohan Singh).

21. The shifting stand of the Petitioners shows that they have not made a full and true disclosure of the facts. The exchange of correspondence between Sardarni Avtar Mohan Singh and the L&DO on 3rd March 1982 and 9th August

March 1984 does show that there was indeed a gift deed which appears not to have been revoked. Without that happening, no sanctity can possibly be attached to the purported sale deed dated 23rd September 1963. Moreover, with the property at 28, Prithviraj Road being a leasehold one on that date, it is not clear how a sale deed could be executed and registered. This makes the case of the Petitioners that even the subsequent transfer by Sardarni Avtar Mohan Singh and her sons on the one hand in favour of Petitioner No. 1 Maya Daryani on the other as being between blood relations, difficult to be accepted.

22. The Petitioners seek to explain away the clause in the compromise agreement on the basis of which the Suit No. 1820 of 1986 was disposed of by this Court on 17th July 2000 as the mistake of counsel. According to Petitioners, rights of the Petitioner No. 1 as purchaser in the agreement to sell dated 16th September 1995 were not affected and were the same as enjoyed by Sardani Avtar Mohan Singh and her sons. This Court finds the above explanation too simplistic to be accepted. A compromise was entered before this Court on 17th July 2000 by the parties in full awareness of what their respective rights and liabilities were. Consciously they incorporated a clause in the compromise whereby the Petitioners herein agreed that unearned increase and interest would be paid by them. By this time the L&DO had already raised a demand for unearned increase and communicated it to the Petitioners by letter dated 11th April 2000. The Petitioners ought to have questioned that demand at that stage and not agreed before this Court that they would pay the unearned increase. The inescapable conclusion is that the Petitioners had waived their challenge to the demand of unearned increase already raised on them on 11th April 2000 by the L&DO. It is difficult to guess if the compromise would have been approved by this Court if dues owing to the government were at that stage questioned by either party. The fact however remains that it was not . The agreement by the Petitioners to pay the unearned increase forms an inextricable part of the compromise. The parties accepted and acted upon the said compromise. The Petitioners cannot thereafter be permitted to turn around and question their liability to pay the unearned increase and consequent interest.

23. The demand for unearned increase and interest flows from the clause in the conversion brochure which in any way is relied upon by the Petitioners. For the delay in making the payment of conversion charges interest is leviable. This Court finds no illegality committed by the L&DO in raising the demand for unearned increase and interest by the letters dated 11th April 2000, 8th August 2002 and 5th March 2003.

24. In the considered view of this Court, none of the aforesaid decisions cited by learned Counsel for Petitioners is applicable in the facts and circumstances of the present case.

25. Accordingly, this Court finds no ground having been made out for grant of any of the reliefs prayed for. The writ petition is dismissed, but in the circumstances, with no orders as to costs.

