
(2011) 09 DEL CK 0176
In the Delhi High Court
Case No : Writ Petition (C) 8569 of 2007

Metal Forging P. Ltd.	Vs	APPELLANT
D.D.A. and Another		RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0176

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Kamal Mehta, for the Appellant; Renuka Arora, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner was on 2nd March, 1976 granted a perpetual lease of plot bearing No. 1/1, Warehousing Scheme, Kirti Nagar, New Delhi. It was inter alia a term of the said lease that the Petitioner shall within a period of two years from 16th September, 1974 i.e the date the Petitioner was put into possession of the said plot, after obtaining the sanction to the building plan, erect upon the said industrial plot and complete an industrial building for carrying on the approved manufacturing process or industry.

2. The Petitioner admittedly did not raise construction and a notice dated 12th June, 1979 to show cause was issued to the Petitioner as to why action therefor be not taken. The Petitioner submitted a reply thereto stating that he was using the open plot for storage purposes. A letter stated to be dated 6th November, 1979 at page 120 of the paper book was issued by the Respondent DDA withdrawing the said show cause notice subject to condition that the Petitioner will use the plot exclusively for storage purposes and the condition aforesaid of the perpetual lease deed will also not apply if the plot is used for storage purposes.

3. The Petitioner earlier filed W.P. (C) 5580/2002 in this Court impugning the demand made by the Respondent DDA of composition fee on account of non

construction on the plot. The said writ petition was disposed of vide order dated 19th May, 2003. It appears that there was then in force a decision of the Lt. Governor, Delhi for a grace period and waiver of composition fee on account of non-construction. The writ petition was disposed of with the direction to the Respondent DDA to amend the demand against the Petitioner for composition fee for non-construction in terms of the said decision of the Lt. Governor, Delhi.

4. The Petitioner thereafter applied for extension of time till 31st December, 2007 for raising construction. The Respondent DDA vide letter dated 20th August, 2007 granted extension till 31st December, 2007 for raising construction but warned the Petitioner that no further extension will be granted as per the Policy and the Press Notice dated 18th June, 2006. This writ petition is filed impugning the said condition requiring the said condition requiring the Petitioner to raise construction before 31st December, 2007. The Petitioner claims that he could not be so compelled to complete the construction till 31st December, 2007. The Petitioner also claims a declaration that the term of the perpetual lease deed aforesaid requiring to raise construction within two years is now unenforceable in view of the letter dated 6th November, 1979 (*supra*). Alternatively mandamus claiming extension till December, 2010 on payment of composition fee as per the Policy of the Respondent DDA from time to time is claimed.

5. Notice of the petition was issued. During the pendency of the petition the parties were referred to the Mediation Cell of this Court. A settlement agreement dated 23rd July, 2010 was signed by the parties settling all disputes regarding composition fee up to the period of 31st December, 2007.

6. The counsel for the Petitioner states that the Respondent DDA still has a Policy for extending the period for construction on payment of composition fee and the Petitioner in accordance with the said Policy of the Respondent DDA which is extended from year to year has already paid the composition fee till the period ending on 31st December, 2011.

7. The counsel for the Respondent DDA states that she has no instructions as to whether composition fee for the period after 31st December, 2007 and till 31st December, 2011 as claimed has been paid.

8. Now the period till December, 2010 till when extension was sought for raising construction has also elapsed. Construction has admittedly not been raised till now.

9. As far as the plea of the Petitioner of having paid composition fee for period after 31st December, 2007 is concerned, the same does not fall for consideration in this petition. If there is any such Policy and the petitioner entitled to benefit thereof and complies with terms thereof, would certainly be entitled thereto.

10. The only question which remains to be thus determined is whether the clause in the perpetual lease limiting the time within which the Petitioner was to raise construction stands superseded by the letter dated 6th November, 1979 (*supra*).

If the said term of the perpetual lease so stands superseded, the Petitioner would not be liable to any action, even in the event of the Policy extending time for construction subject to payment of composition fee lapsing. Else, till the time such Policy exists and the Petitioner in compliance thereof makes payment, the Petitioner would be exempt from raising construction.

11. The counsel for the Petitioner invites attention to the order dated 16th April, 2009 in the present proceedings as under:

Parties will exchange computation sheets on the amount payable as composition fee for non-construction as per the decision of this Court in the case of S.K. Kapoor v. DDA.

The Petitioner will also take instructions whether he is ready and willing to give an undertaking to this Court and DDA that presently he has no intention of carrying out any construction on the plot and the same will be used exclusively for storage purposes. If on a later date, the Petitioner wants to construct on the plot, he will approach DDA and if the request is rejected, he will be at liberty to approach this Court or initiate appropriate proceedings. List on 13th July, 2009.

12. He contends that the Petitioner has already filed an undertaking in terms of the said order and the writ petition be disposed of in terms thereof.

13. I have enquired whether the Respondent DDA has taken any other action against the Petitioner and/or with respect to the plot. The counsel for the Respondent DDA has no instructions. The counsel for the Petitioner states that since composition fee till 31st December, 2011 stands paid, the occasion for taking any action for the reason of non-construction does not arise.

14. The counsel for the Petitioner contends that the question whether in view of the letter dated 6th November, 1979, even in the absence of a Policy extending the time for construction on payment of composition fee, the Petitioner cannot be forced to raise construction or proceeded against therefor be left to be adjudicated as and when the Policy ceases to exist and the Respondent DDA threatens any action against the Petitioner.

15. The Petitioner having raised the said question in this petition, unless the Petitioner itself gives up the same, cannot be left unadjudicated. The procedure suggested by the counsel for the Petitioner is a procedure which would lead to endless litigation. It was for the Petitioner to take a decision as to whether in view of the Policy it was not required to take up the said plea; once the said plea has been taken, it cannot be left unadjudicated.

16. The counsel for the Petitioner has argued that the Respondent DDA as a contracting party to the perpetual lease has vide letter dated 6th November, 1979 waived for all times the right to take any action for non construction on the condition that the Petitioner uses the plot for storage purposes.

17. I am unable to accept the aforesaid contention. The Petitioner is precluded

from raising the said plea in this writ petition. The Petitioner had taken the same ground in the earlier writ petition also. However a reading of the order dated 19th May, 2003 in the earlier writ petition shows that the Petitioner did not press the said ground and sought adjudication of the earlier writ petition only on the computation of the composition fee in accordance with the then decision of the Lt. Governor, Delhi. The petitioner having taken the said ground in the earlier writ petition and having not pressed the same cannot now be permitted to agitate the same in the second round of litigation.

18. The counsel for the Petitioner contends that no relief regarding the said letter dated 6th November, 1979 was claimed in the prayer paragraph in the earlier writ petition. However a ground in the earlier writ petition having been taken and the demand then of composition fee having been impugned, the non mentioning of the said letter in the prayer paragraph is irrelevant.

19. Not only so, the Petitioner even thereafter, and as per its claim till 31st December, 2011, has paid the composition fee. The said conduct of the Petitioner again shows that the Petitioner is not pressing the plea on the basis of the said letter. Though the counsel for the Petitioner states that such payments were without prejudice but the settlement agreement dated 23rd July, 2010 does not show that the Petitioner had kept open to itself the said plea. The counsel for the Petitioner in this regard refers to para 6 of the settlement agreement but the same is not found to contain any "without prejudice" clause as aforesaid. The same refers to the order dated 16th April, 2009 and which also does not contain any without prejudice clause.

20. Moreover, the waiver of a clause of a registered document could be by another registered document only and not by issuance of a letter as alleged.

21. Moreover, the perpetual lease in clause III thereof provides that waiver of any term of lease at any occasion will not create any right in favour of the lessee and not prohibit the lessor from enforcing the said right in future.

22. There is thus no merit in the claim of the Petitioner that the Respondent DDA is not entitled to enforce the clause aforesaid of the perpetual lease deed for the reason of the letter dated 6th November, 1979.

23. The petition therefore fails and is dismissed. No order as to costs.