
(2014) 04 DEL CK 0066

In the Delhi High Court

Case No : LPA 1099/2011

Metal Forging Pvt. Ltd.

APPELLANT

Vs

DDA

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 04 DEL CK 0066

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : Kamal Mehta, Advocate for the Appellant; Sanjeev Sabharwal, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—A plot bearing No. 1/1, WHS, Kirti Nagar, New Delhi ad-measuring 2039.56 square yards was purchased by the appellant at an auction conducted by the then Delhi Administration under its scheme for augmenting Warehouses in Delhi. The possession of the plot was taken over by the appellant and a perpetual lease-deed dated March 02, 1976 was executed by the Land and Housing Department, Delhi Administration in its favour. As per clause II (3) of the perpetual lease-deed the lessee i.e. the appellant was required to construct an industrial building on the plot to the satisfaction of such Municipal or other Authorities after obtaining sanction within a period of 2 years. The appellant could not do so.

2. A show cause notice dated June 12, 1979 was issued by the lessor exercising power under clause II (3) of the lease-deed, calling upon the appellant to construct a building on the plot under pain of re-entry.

3. At this stage it may be noted that the management of the area was since handed over to the Delhi Development Authority and thus the show cause notice referred to was issued by DDA.

4. Vide reply dated September 17, 1979 the appellant responded to the show

cause notice and represented that the property was to be used as an open godown which did not warrant any construction as per clause II (3).

5. In view of the reply of the appellant on November 06, 1979 DDA withdrew the show cause notice and allowed the appellant to use the property for storage purposes in terms of the said letter dated November 06, 1979. The relevant part of the letter reads as under:-

With reference to your letter dated 25.6.1979 on the subject mentioned above, I am directed to inform that the show cause notice for non-construction issued on 12.6.1979 has been withdrawn subject to the condition that you will use the plot exclusively for storage purposes. Section II(3) of terms and conditions of lease deed will also not apply if the plot is used for storage purposes and if the plot is used for manufacturing purposes with 10 H.P. power load, the aforesaid lease clause will again be in force.

6. Thereafter vide a demand notice dated July 22, 2002 DDA issued a provisional demand raising a composition fee claim in sum of Rs. 31,52,889/- which was challenged by the appellant vide W.P. (C) No. 5580/2002. The said writ petition was decided on May 19, 2003 by the learned Single Judge. It was directed that the demand be re-calculated as per the decision of this Court in W.P. (C) No. 1327/2000 S.K. Kapur Vs. DDA decided on February 18, 2003. Notwithstanding the exemption/waiver granted by DDA vide DDA's letter dated November 06, 1979, the appellant without prejudice to its rights agreed to pay the composition fee as calculated in terms of the judgment dated May 19, 2003 in W.P. (C) No. 5580/2002. The demand raised was complied with and the composition fee was duly paid till the composition fee policy was in force i.e. December, 2011.

7. But prior thereto the appellant had to file W.P. (C) No. 8569/2007 against DDA impugning a communication dated August 28, 2007 whereunder on account of alleged non-construction, DDA threatened to re-enter the premises. Inter-alia, in the said writ petition, the appellant sought for a declaration declaring that the terms as contained in clause II(3) of the perpetual lease-deed, in view of the letter dated November 06, 1979, resulted in granting of exemption/waiver from clause II(3) of the perpetual lease-deed.

8. An interim order was passed on April 16, 2009 by the learned Single Judge in the said writ petition 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 Vs. 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.

9. Pursuant to the said order passed by the learned Single Judge on April 16, 2009 the appellant filed an undertaking in terms thereof. After filing of the undertaking, since the limited controversy with regard to the computation of the composition fee remained, as suggested by the parties they were referred for mediation to the Delhi High Court Mediation Cell. Needless to state the purpose of the mediation was to work out an agreed composition fee payable by the appellant.

10. On July 23, 2010 the parties arrived at a settlement with regard to the composition fee and in pursuance thereof the appellant deposited the further composition fee in sum of Rs. 11,08,471/- on February 25, 2011.

11. The matter thereafter came to be listed before the learned Single Judge. In spite of the settlement being reported and it being informed that further composition fee has been paid, vide impugned judgment dated September 30, 2011 the learned Single Judge dismissed the writ petition denying the exemption/waiver of clause II(3) granted vide letter dated November 06, 1979.

12. The appellant filed the present appeal impugning the order dated September 30, 2011 on the grounds that the benefit of the letter dated November 06, 1979 granting novation/exemption/waiver of clause II(3) on a specified term ought to be extended/granted to the appellant. More particularly when issue with regard thereto has already been adjudicated upon by the learned Single Judge vide order dated April 16, 2009, pursuant to which an undertaking was also filed on record. It is asserted in the appeal that the only issue left for the learned Single Judge to decide when the matter was listed before the learned Single Judge on September 30, 2011 was with respect to calculation of the composition fee, which in fact was earlier referred to mediation, and the settlement thereof was also reported on the said date of hearing. It is also pleaded in the appeal that the composition fee was being paid without prejudice to the rights of the appellant to claim the exemption/novation/waiver in terms of the DDA's letter dated November 06, 1979 with respect to which an undertaking had also been filed pursuant to order dated April 16, 2009.

13. In order to set the controversy at rest and to avoid further litigation the appellant has since decided to submit a plan for grant of sanction to enable it to raise a construction at the subject property.

14. The said act of the appellant has given birth to another issue. The concerned Municipality i.e. North Delhi Municipal Corporation to which the application for grant of sanction has been filed made a reference to DDA as also to its Town Planning Department concerning the approved layout of the area and it transpires that whereas, as noted above, the size of the plot at site is 2039.56 square yards which is also the area mentioned in the perpetual lease-deed dated

March 02, 1976, for unexplainable reasons in the approved site plan the plot size is shown to be of a lesser size.

15. The approval to the layout being the domain of the Delhi Development Authority, the Town Planning Department of the Municipality has written a letter to the Town Planning Department of DDA on March 05, 2012 requesting as under:-

The matter has been examined and it is observed that the DDA has executed a perpetual lease dated March 02, 1976 for industrial plot area measuring 2039.56 square yards at WHS, Kirti Nagar, New Delhi. A copy of the approved modified plan of this areas is not available in this office.

In view of the above, it is requested to provide two copies of modified approved layout plan authenticated of WHS Kirti Nagar, New Delhi showing the site in question at the earliest so that the pending building case could be processed.

16. It is apparent that the resolution of the issue would require the layout plan to be amended because at site the plot ad-measures 2039.56 square yards. The perpetual lease-deed dated March 02, 1976 in favour of the appellant also so records the plot size. De jure must conform to de facto.

17. The matter pertaining to sanction of the building plan has remained pending since October 11, 2011. The appellant has no role in the delay, but unfortunately for it the sword of Damocles would be hanging over its head because in the absence of a sanction plan it cannot construct a building on the plot and the lessor would insist on further composition fee on account of non-construction of a building.

18. Since the appellant has paid the composition fee till the year 2011 and the delay in constructing a building is not attributable to the appellant after 2011, we are of the opinion that taking into account the facts which have come into existence during the pendency of the appeal, the appeal needs to be disposed of declaring that the appellant would not be liable to pay any further composition fee. DDA is directed to modify the layout plan within 4 months from today and communicate the same to the North Delhi Municipal Corporation which shall proceed to sanction the building plan. Needless to state within the time granted for completion of the building when the plan is sanctioned, the appellant shall construct a building on the plot as per sanction granted.

19. We declare that DDA cannot invoke clause II(3) of the perpetual lease-deed to re-enter the plot for the reason it has accepted composition fee up to the year 2011 and further delay in construction over the plot is solely attributable to DDA which is not within reasonable time amending the layout plan. In fact the layout plan has not been amended till date.

20. The appeal stands disposed of without there being any orders as to costs.