

(2009) 01 AHC CK 0150

In the Allahabad High Court

Case No : Writ Petition No. 3066 (M/B) of 2007 with W.P. Nos. 5325 (M/B) of 1993, 938 of 1991, 3075 of 2000, 2803 of 1982 and 2785 of 1980

Mirza Javed Murtaza

APPELLANT

Vs

U.P. State Industrial Development Corporation Ltd., Kanpur &
Ors.

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Citation : (2009) 01 AHC CK 0150

Hon'ble Judges : Devi Prasad Singh, J and V.D.Chaturvedi, J

Final Decision : Allowed

Judgement

1. In all these writ petitions, since the common question of law and facts are involved and are related to each other, the same are being decided by present common judgment.

2. Heard Sri Mirza Javed Murtaza, the petitioner in person, Sri Asit Kumar Chaturvedi, Advocate, appearing for U.P State Industrial Development Corporation Ltd. and Sri Prashant Kumar, learned Standing Counsel for opposite party No. 2.

3. The U.P. State Industrial Development Corporation Ltd. (in short, U.P.S.I.D.C.) allotted plot No. C19, to the petitioner on lease in the year 1977. A copy of lease agreement dated 19111977 has been filed as Annexure No. 4 to the writ petition. Alongwith the leased deed there is a sketch map of plot No. C19 which has been submitted by Sri Mirza Javed Murtaza. The petitioner, in person, submits that initially the plot No. C20 was allotted to petitioner but later on it was re numbered as plot No. C19 after addition of certain more area. The petitioner continued in possession over the industrial plot in question. However, in the year 2006, the petitioner executed deed of assignment for the remaining period of lease in favour of the respondent No. 4 who applied for mutation of his name. Earlier, the petitioner has approached this Court by filing a number of writ petitions alleging various grievances against the arbitrary action. Lastly, the present writ petition

has been filed with the grievance that U.P.S.I.D.C. is not mutating the name of the respondent No. 4. The impugned order dated 2262007 has been passed by the Managing Director of U.P.S.I.D.C. (Annexure No. 33) by with a demand of Rs. 39,51,000 being cost of 2610 sq. meters land allegedly occupied by the petitioner and an amount of Rs. 17,24,231 being transfer levy charge has been raised from the petitioner. It has been submitted by the petitioner that he was having right to transfer the industrial plot in question in favour of respondent No. 4 and there is no provision for imposing transfer levy charge. It has also been submitted by the petitioner that he is continuing in possession over the plot No. C19 and he has not claimed possession of any additional land. It has been submitted that the impugned order has been passed on unfounded grounds without giving any opportunity of hearing. The impugned order does not disclose as to in what circumstances and on what rate the respondent UPSIDC is imposing transfer levy charges.

4. On the other hand, it has been submitted by the learned Counsel for the respondents that the petitioner has acquired an additional land of 2610 sq. meters. Since the petitioner confined his claim of lease which was allotted to him, in the lease bearing plot No. C19 for which assigning deed was executed in favour of the opposite party No. 4, the respondents have no right to impose the cost of additional land which according to respondent comes to 2610 sq. meters.

5. Sri Asit Kumar Chaturvedi, learned Counsel for the U.P.S.I.D.C. submits that under the policy of U.P.S.I.D.C. framed in the year 1998 the U.P.S.I.D.C. has a right to charge transfer levy and the transferee has to pay maintenance charges and lease rent as per rates applicable from the time during the period of lease apart from transfer levy. He has relied upon Annexures No. CA4 and CA5 to counteraffidavit. It has also been submitted that the petitioner has got no right to transfer the land in favour of any person.

6. We have considered the arguments and perused the record.

7. From perusal of Annexures No. CA4 and CA5 to the counter affidavit, it appears that rate of transfer levy varies and how the respondents have calculated the amount in question i.e., Rs. 17 lakhs and odd, as emerged from the impugned order, is not clear. Moreover, Sri Murtaza, the petitioner submits that the respondents have no right to impose transfer levy in view of Article 265 of the Constitution of India as well as judgment of the Hon'ble Supreme Court reported in (a) AIR 2005 SC 1879, Calcutta Municipal Corporation v. M/s Shrey Menrcantile Pvt. Ltd., (b) 2006 (1) JCLR 812 (All), Virendra Kumar Tyagi v. Ghaziabad Development Authority, (c) 2003 (2) JCLR 370 (All), Shaukat Ali v. Allahabad Development Authority and (d) 2004(3) JCLR 159 (All) : 2004 (1) AWC 300, International Hospital Pvt. Ltd, v. State of U.P. & Anr. It has also been submitted that the respondents have no right to charge for the alleged additional land. The impugned order passed by the U.P.S.I.D.C. seems to be bad in law. The impugned order does not disclose as to in what manner and on what rate the transfer levy has been calculated and imposed upon the petitioner. On that

account, the impugned order seems to be cryptic and nonspeaking.

8. So far as the petitioner's submission that he has confined his claim for plot No. C19 and is not interested to acquire additional land, is concerned, we are of the view that the respondents have got no right to compel the petitioner to pay the charges for any additional land. The petitioner's right is confined to only to the area which was given to him in the lease deed in question. It has also been submitted by the petitioner in person that since the leased deed specifies the boundaries, the petitioner has a right to remain in possession over the land without payment of any additional cost. Whether before execution of the assignment deed in favour of the respondent No. 4 the respondent has taken any step for payment of additional cost, seems to be a question which requires consideration. Needless to say that the land which was allotted to the petitioner, is having specific boundary as averred in the leased deed and continued in petitioner's possession since 1977 and only that land may be subject matter for transfer under the assignment deed of the year 2006 and the petitioner does not have any right to transfer any land which is not covered by the leased deed in question. Moreover, once respondents have tried to charge transfer levy, prima facie, no objection may be raised to petitioner's right of transfer. All these aspects of the matter should have been considered by the authorities after giving an opportunity of hearing to the petitioner while passing the impugned order. No other ground pressed.

9. In view of the above, we allow this writ petition. A writ in the nature of certiorari is issued quashing the impugned order/letter dated 22/6/2007 (Annexure No. 33) whereby a demand of Rs. 39,51,000 and Rs. 17,24,231.30 has been raised from the petitioner as cost of 2610 sq. meters land as well as transfer levy with all consequential benefits. A writ in the nature of mandamus is also issued to the opposite party No. 1, the Managing Director of U.P.S.I.D.C. to decide the controversy afresh after providing due opportunity of hearing to the petitioner. It is open to the petitioner to represent his cause afresh while making representation within two weeks from today. The Managing Director shall decide the controversy on merit on the basis of the evidence and the material on record independently. While deciding the controversy, the Managing Director shall also consider the case laws referred by the petitioner.

10. No other point has been pressed by the parties. However, it shall be open to the petitioner to raise all other relevant issues before the Managing Director which have not been adjudicated by this Court, by submitting fresh representation alongwith the present judgment.

11. In the meantime, the status quo, as exists today, shall be maintained by the parties and the possession of the land shall not be disturbed by the opposite parties.

12. All the writ petitions are allowed accordingly. No cost. Petitions allowed.