

(2016) 05 DEL CK 0145

In the Delhi High Court

Case No : W.P.(C) No. 9281 of 2015

M/s Moolchand Kharaiti Ram Trust & Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Citation : (2016) 157 DRJ 164

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : Mr. Shanti Bhushan, Sr. Advocate with Ms. Ritu Bhalla, Mr. Kartik Seth, Ms. Medha Sachdev and Mr. Anupam Prakash, Advocates, for the Appellant; Mr. Akshay Makhija, CGSC with Mr. Rahul Jain, Ms. Mahima Bahl, Mr. Siddharth Thakur and Ms. Sanjugeeta Moktan,

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the decision of the respondent Union of India (UOI) through the Land and Development Office (L&DO) communicated to the petitioners vide letter dated 1st September, 2015 that the application of the petitioner No.1 Moolchand Khairati Ram Trust and of which the petitioners No.2 to 6 viz. Vibhu Talwar, K.C. Narang, Veena Talwar, Shravan Talwar & Moolchand Healthcare Foundation are trustees, for conversion of leasehold rights in land ad-measuring nine acres at Lajpat Nagar, New Delhi on which Moolchand Khairati Ram Hospital and Ayurvedic Research Institute is constructed into freehold cannot be considered for the reason of i) pending litigation between the petitioner No.1 Trust and the L&DO, and, ii) there being no policy for conversion of leasehold into freehold in respect of Hospitals and institutions.

2. On a reading of the paper book, prima facie not finding any case in favour of the petitioners to entertain the writ petition, the senior counsel for the petitioners was heard at length on 29th September, 2015 when the petition first came up before this Court and orders were reserved.

3. It is the case of the petitioners:

(i) that the petitioner No.1 Trust was running a charitable hospital of great repute in undivided India and which was on partition left behind in Lahore, Pakistan;

(ii) that in pursuance to the policy of the Government of India, Ministry of Rehabilitation, to incentivize and rehabilitate "displaced institutions", the petitioner No.1 Trust was allotted nine acres of land at Lajpat Nagar, New Delhi by Letter of Allotment dated 17th April, 1951 of the Ministry of Rehabilitation and upon which a hospital was built by the petitioner No.1 Trust;

(iii) that a formal Lease Deed dated 24th April, 1968 was executed between the President of India and the petitioner No.1 Trust for a term of 99 years from 17th April, 1951 and for the purpose of constructing and running a hospital;

(iv) that the lease aforesaid is a rehabilitation lease;

(v) that the land aforesaid is a commercial land / property;

(vi) that the petitioner No.1 Trust on 1st June, 2015 applied to the respondent L&DO for conversion of leasehold hospital land into freehold as per the Conversion Brochure issued by the respondent L&DO in June, 2003 and also made payment of Rs.5,27,75,109/- towards conversion fee;

(vii) that the two grounds on which the respondent L&DO has rejected the said conversion application are misplaced;

(viii) that the Conversion Brochure requires an applicant to disclose whether there is any dispute pending in a Court of law regarding the title of the property; thus the only litigation on the ground of pendency whereof freehold conversion can be denied is a litigation challenging the title of the land and no litigation with respect to title of the subject land is pending and there is no dispute as to the title of the petitioner No.1 Trust as lessee of the subject land; the litigation pending between the petitioner No.1 Trust and the respondent L&DO has got no nexus to the conversion of the land into freehold;

(ix) that the Conversion Brochure of the respondent L&DO detailing the policy of conversion from leasehold to freehold is applicable to all built-up commercial and mixed land use properties allotted by the Department of Rehabilitation, L&DO or the Directorate of Estates and thus the ground of there being no policy for conversion of the subject land is also erroneous;

(x) that the leases granted under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 were classified into Residential, Commercial and Industrial and since the subject land is neither residential nor industrial, it has to be necessarily Commercial; the respondent L&DO itself in its inspection reports has been treating and showing the use of the land for commercial lease.

4. The senior counsel for the petitioners drew attention to the following passages of the Conversion Brochure titled "Conversion from Leasehold into Freehold"

including Application Form published by the respondent L&DO in June, 2003.

"The Government had decided to sanction the conversion to freehold in respect of purely residential leases of all flats / tenements and built up plots up to 500 sq. mts. of area and the orders conveying the sanction of the President of India for such conversion were issued on 14-2- 1992 by the Ministry of Urban Development. In June 1999, it was also decided to remove the ceiling of area of the plots for the conversion. It was also decided that w.e.f. 1.4.2000 the conversion fee would be charged / calculated based on the land rates prevailing on the date of submission of the conversion application.

In response to the long pending demand of the lessees in respect of leases other than "residential", it has now been decided to allow conversion of Industrial, Commercial and mixed land use premises also. Further, keeping in view the request of lessees in residential colonies, it has also been decided to rationalise the remission of conversion fee available to the lessees.

This brochure gives information that a lessee would like to know before applying for the conversion to freehold. It is expected that the public will find the Brochure useful and helpful in getting their properties converted into freehold.

What are the properties under the control of Land and Development Office eligible for conversion from leasehold to freehold?

1.1 ??????????????????????..

1.2 ??????????????????????..

1.3 ??????????????????????

1.4 ??????????????????????

1.5 All built up commercial and mixed land use properties allotted by the department of Rehabilitation, L&DO or the Directorate of Estate, for which ownership rights have been conferred and lease deed executed and registered.

Note: The properties which are not specifically mentioned above are not covered under the conversion policy (e.g. institutional allotment including allotment to press, hotels, cinemas, properties covered under the disinvestment policy of the Govt., Petrol pumps, Fuel Depots, CNG Station etc.)"

5. Attention was next invited to the following passages of the Compendium of Information published by the respondent L&DO:

"Types of Leases

There are three types of leases in respect of old Nazul lands namely (i) residential, (ii) commercial, and (iii) institutional. In respect of rehabilitation colonies, leases granted under the Displaced Persons (Compensation & Rehabilitation) Act are for residential, commercial and industrial and are in Appendix-XI, Appendix-XII, Appendix-XIII and Appendix-XXXI.

Nazul leases are perpetual whereas Rehabilitation leases are for 99 years. In the case of Nazul leases, Ground Rent is revisable at the option of the lessor at the end of each span of 30 years in accordance with the procedure laid down in the Lease Deed and M/o UD's letter No.J-22011/1/70-L-I dated 24.12.1983. Ground Rent in Appendix-XI leases is nominal i.e. Rs.1/- per 100 sq. yds. or as fraction thereof and is revisable @2% of the value of the land at the time of 2nd sale / assignment shall be completed and thereafter at the end of each successive period of not less than thirty years. In case of leases in Appendix-XII and XIII, for the first 20 years, the ground rent is the sum equivalent to the interest on the cost of land at the Govt. borrowing rate of interest prevailing on the date of lease. For the remaining 76 years of lease, the ground rent is the sum equivalent to the interest on the market value of land calculated at Govt. borrowing rate of interest on the 1st April of 21st year of the lease. Appendix-XXXI-A, XXXI-B and XXXI-C leases are also nominal leases granted for "A" type and "C" type tenements or three storeyed markets in various Rehabilitation colonies in Delhi. In these nominal leases also, ground rent is revisable, as in the case of Appendix-XI leases, at the time of 2nd sale / assignment on the same lines as in the case of Appendix-XI leases."

6. Attention was next invited to the lease of the subject land to show that the same is for 99 years and is not a perpetual lease and it was contended that read with the passage aforesaid, it is clear that the lease of the subject land is a Rehabilitation lease and which can be either for Residential, Commercial or Industrial purpose only.

7. Attention was lastly invited to the report dated 4th October, 2013 of the technical inspection of the subject property carried out where against the Column "Property Type", "Nazul" is written and against the Column "Property Sub-Type", "Commercial" is written.

8. It was argued that all Rehabilitation leases have to be given the same treatment and there cannot be any discrimination.

9. With respect to the other ground, of pending litigation on which conversion of the land to freehold has been denied, it was informed that the only litigation is i) with respect to the condition imposed by the Directorate of Health, Delhi on the hospital of the petitioner No.1 Trust for free treatment of poor / indigent persons, by way of W.P.(C) No.1478/2012 which was decided in favour of the petitioner No.1 Trust vide judgment dated 28th April, 2014 and against which judgment SLP No.9959/2015 is pending before the Supreme Court, and, iii) the challenge by way of W.P.(C) No.2544/2015 to the refusal of the respondent L&DO to furnish No Objection Certificate to the petitioners for making additional construction over the said land. It was contended that neither of the said two litigations cast a cloud on the title of the petitioners as lessee of the subject land and thus cannot be a ground for refusal of conversion.

10. I had during the hearing drawn attention of the senior counsel for the

petitioners to the judgment of the Division Bench of this Court in *Union of India v. Hotel Excelsior Ltd.*, 2012 SCC Online Delhi 4758. However neither any arguments thereon were made nor after the judgment was reserved, any written synopsis with respect thereto filed.

11. The Division Bench of this Court in judgment *supra* was concerned with the right of the lessees of the land underneath disinvested hotels to have the same converted into freehold. A Single Judge of this Court held the leasehold land underneath the disinvested hotels and cinema to be entitled to freehold conversion under the policy introduced by the Government and quashed the decision of the respondent L&DO refusing freehold conversion of such land on the ground of the L&DO being not entitled to discriminate between lands underneath the disinvested hotel and cinema and other leasehold lands which were being converted into freehold. Setting aside the said judgment of the Single Judge, the Division Bench held:

(a) that a lessee has no right to claim conversion of the leasehold into freehold or to compel the lessor to so grant conversion;

(b) that it is not as if the L&DO allows such conversion with respect to all leases ? the Policy / Scheme for conversion was first introduced in the year 1992 qua residential plots only and that too of size not exceeding 500 sq. mtrs; subsequently, in the year 1999 all residential plots irrespective of size were brought within the ambit of the Scheme; in the next stage, in the year 2003, the Policy/Scheme was extended to commercial/mixed use plots of land;

(c) that even now, the Scheme / Policy does not state that all leaseholds under the L&DO are eligible for conversion to freehold, as would have been the case, had the intent been so;

(d) that instead, in Clauses 1.1 to 1.5 of the Scheme/Policy, the leases eligible for freehold conversion are specified;

(e) that under the said Policy, while leases of all residential properties are eligible for conversion, irrespective of whether the ownership rights thereunder were conferred or not, it is not so qua the commercial/mixed land use properties; only those commercial/mixed land use properties under the Scheme/Policy, are eligible for conversion, "where ownership rights have been conferred"

(f) that the question of discrimination does not arise as no lessee has a right of such conversion and merely because the lessor has granted such privilege to some lessees, does not entitle others, who form a distinct class/category, to also claim such privilege / benefit;

(g) that a lease, even if for 99 years, does not confer ownership rights on the lessee; reliance in this regard was placed on *The Collector of Bombay v. Khatizabai Dharsi Somji Dossa*, *Subramanya Chettiar v. Subramanya Mudaliyar*, AIR 1929 PC 156, *Kamal Kumar Datta v. Nandalal Dubey*, AIR 1929 Cal 37, *Chapsibhai Dhanjibhai Danad v. Purshottam*, AIR 1971 SC 1878 and *Kiran*

Tandon v. Allahabad Development Authority, (2004) 10 SCC 745;

(h) that once the Policy/Scheme for freehold conversion had made only such commercial and mixed land use properties eligible for freehold conversion where ownership rights had been conferred, a meaning is required to be given to the said words and the same cannot be rendered otiose and redundant;

(i) that freehold conversion is in the absolute discretion of the lessor and if the lessor in its wisdom does not want to allow such conversion to certain categories of lease, no case for judicial review thereof is made out;

(j) that the Policies / Schemes such as of freehold conversion are enunciated in the exercise of executive function; it is up to the L&DO as lessor of the land to grant or not to grant freehold rights in the land that was granted on leasehold ? the only rider being that the L&DO being the State cannot discriminate arbitrarily;

(k) that the Policy for conversion of leasehold rights into freehold is an executive instruction and does not have a legislative colour;

(l) that even if it were to be held that the subsequent decision to not allow freehold conversion of land underneath disinvested hotels is not borne out from the policy, the same is at best a modification/amendment of the Policy;

(m) that L&DO in the matter of implementation / working of such a policy is always entitled to exclude certain persons who may be forming a class by themselves and there is no bar to such modification/amendment of the policy;

(n) what the applicants, by claiming freehold conversion are seeking is, to become absolute owners of the prime commercial properties belonging to the people at large held by the appellant L&DO in trust and which absolute ownership rights were not intended to be given; L&DO in the matter of disposal of public properties partakes the character of a trust and is entitled to the best price of such properties and ownership cannot be smuggled in through the backdoor of lease.

12. As would be noticed axiomatically from the above, the issue raised by the petitioners, if not fully, is at least partly covered by the dicta aforesaid of the Division Bench of this Court. This writ petition was filed, perhaps, in ignorance of the said judgment and for this reason only, neither does the petition deal with it nor the counsel for the petitioners, after attention being invited thereto, has not submitted anything with respect thereto. The only thing which remains for investigation is the contention of the senior counsel for the petitioners, of the subject lease being a commercial lease eligible for conversion under the Policy aforesaid.

13. The petitioners in the paper book have annexed a copy of the judgment dated 28th April, 2014 of the Division Bench of this Court in W.P.(C) No.1478/2012 supra filed by the petitioner No.1 Trust impugning the applicability of the Policy of the Government providing for treatment free of cost to 25% OPD

patients and 10% IPD patients of the hospital of the petitioner No.1 Trust on the subject land. On a perusal thereof, it appeared that the stand of the petitioners as in this petition, of the lease of the subject land being for commercial purpose and being thus eligible for conversion into freehold under the Policy contained in the Brochure aforesaid of the respondent L&DO, is contrary to the stand taken by the petitioner No.1 Trust in W.P.(C) No.1478/2011. While reserving judgment, the file of W.P.(C) No.1478/2012 was requisitioned and has been perused. The petitioner No.1 Trust in the said writ petition is not found to have anywhere pleaded that the lease in its favour is a commercial lease. Rather, the flavour of that petition is that the lease is for the purpose of setting up and running of a hospital on secular / non-sectarian and non-communal basis.

14. The petitioner, as Annexure P-5 to the petition, has filed the Minutes of the Meeting held on 10th June, 1949 of the Ministry of Rehabilitation regarding allotment of sites at concessional rates to charitable institutions in pursuance to which the land aforesaid was allotted and leased to the petitioners. I highlight that the same was for allotment of land to charitable institutions and not for commercial institutions. The same also shows that the premium of the land so allotted was determined taking into consideration that the premium at a market rate may not be easily payable by a charitable institution much less by a displaced institution. It was also directed that a close scrutiny of the charitable institution seeking allotment should be made.

15. The petitioners have similarly also filed the Summary dated 15th April, 1953 prepared by the Ministry of Works, Housing and Supply, Government of India for the Cabinet on the subject of "Grant of land on concessional terms". The recital thereto notices that a number of requests "for concessional grant of land in Delhi, from social, cultural, charitable and political or semi-political organisations" were pending. The same also notices that the earlier decision for allotment of land to trusts and institutions at "nominal premium" was approved and it was further stipulated that the institutions being granted concession should be charitable institutions to "be run for good of the public and should be non-profit making". It was further stipulated that it should be entirely in public interest to locate the institution in Delhi. It was yet further stipulated that while the schools and hospitals should be given lands at nominal costs, the other non-profit making institutions for social or cultural purpose may be allotted land at market value.

16. A perusal of the lease deed dated 24th April, 1968 in favour of the petitioner No.1 Trust also shows the demise of the premises and building thereon to be only for purposes of hospital and for the construction of residential accommodation for the House Surgeons, Nurses, Compounders and some menial staff forming a part of the Hospital Staff and no other purpose.

17. The petitioners have shied away from pleading whether the property aforesaid for the purposes of Property Tax is assessed at commercial rates or the petitioners have claimed exemption from payment of Property Tax on account of

being a charitable institution. Similarly, the petitioners have shied from disclosing how its income is assessed for tax under the Income Tax laws. The petitioners cannot, in this petition, contend that the lease of the land is a commercial one and before other authorities contend their activities to be non-commercial and charitable.

18. Under the Master Plan - 2021 also, institutional land is distinguished from commercial land. The user prescribed of the subject land under MPD- 2021 is found to be institutional and not commercial.

19. Note under Clause 1.5 supra of the Brochure, expressly provides that the properties which are not specifically mentioned in Clauses 1 to 1.5 above are not covered by the concerned Policy and expressly mentions institutional allotments. The allotment in favour of the petitioners clearly is an institutional allotment. The allotment for the purposes of a hospital is more akin to the allotments for institutions, press, hotels, cinemas etc. as mentioned in the note, rather than commercial allotments.

20. Merely because the L&DO, for the purpose of standardising the format of the leases to be granted by it has in its Compendium of Information clubbed the leases granted under the Displaced Persons (Compensation and Rehabilitation) Act into residential, commercial and industrial only, will not change the nature and character of the lease granted in favour of the petitioner No.1 Trust from what it otherwise expressly professes, as evident from aforesaid documents. Moreover, the lease aforesaid is a Government grant which, as per Section 3 of the Government Grants Act, 1895, takes effect according to its own tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding and to which, as per Section 2 of the Government Grants Act, the provisions of Transfer of Property Act, 1882 do not apply. The subject grant in the form of lease of land for 99 years in favour of petitioner No.1 Trust, as per its own tenor is for hospital purpose only and which hospital, as per other documents afore-noticed was to be a charitable one and not a commercial one. The petitioner No.1 Trust having obtained the lease on terms as applicable to charitable institutions, is now estopped from contending the lease in its favour to be falling in the category of "commercial". In fact I doubt that the petitioner No.1 Trust can at all engage in commercial activities.

21. It is also a term of the lease of the land in favour of petitioner No.1 Trust that if it is proved to the satisfaction of the lessor i.e. the President of India or the Chief Commissioner of Delhi whose decision shall be final that the demised premises have ceased to be used for the purpose of hospital or that the said hospital is improperly or inefficiently managed then it shall be lawful for the lessor to re-enter the land and building thereon and the petitioner No.1 Trust as lessee would then only be entitled to compensation not exceeding the premium paid along with value of the building. The said clause also unequivocally indicates that no ownership rights were conferred on the petitioner No.1 Trust as lessee and that the lease is not commercial. Moreover, once the land is converted to

freehold, the UOI will loose this important right under the lease, ensuring continued availability of a properly and efficiently managed hospital for the citizens of Delhi.

22. I have in *Sachin J. Joshi v. Lieutenant Governor*, 187 (2012) DLT 317 noticed that the Delhi Development Act, 1957 does not define "commercial" and the classification in Delhi Master Plan for 2001 was also found to be confined between residential, industrial, commercial and other purposes only. It was further noted that Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 also provide for allotment of Nazul Land for public utilities, community facilities, open spaces, parks, playgrounds, residential purposes, industrial and commercial uses only.

23. However, a perusal of Master Plan for Delhi, 2021 shows that under the head "Major Highlights of the Plan", "Health Infrastructure" is listed separately from "Trade and Commerce" and in Clause 3.3.2 titled "Guidelines for Redevelopment Schemes", hospitals, dispensaries, colleges, schools, police stations, fire stations, post offices, local Government offices, parking etc. have been clubbed under "Public and Semi-public uses and services". Similarly in Table 7.2 thereof prescribing the "Norms for Land Distribution in Industrial Areas", hospital is listed under the head of "Facilities" i.e. separately from "Commercial" which includes Shopping Centre, Petrol Pumps, Guest House / Budget hotels, Lodging and Boarding, Service and Repair shops, Communication / Telephone Exchange, etc. Even in Chapter 13 thereof titled "Social Infrastructure", hospitals are dealt with separately. Even while sub-dividing use zones under Chapter-17 titled "Development Code", hospitals find mention under the head "Public and Semi-Public" facilities as distinct from commercial. It is thus obvious that the hospital would not fall in the category of "commercial".

24. Mention may be made of the *Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam*, 1973 in relation to the town of Jabalpur, under consideration of the Supreme Court in *K.K. Bhalla v. State of M.P.*, (2006) 3 SCC 581 and Section 2(e) thereof defines commercial use as the use of any land or building or part thereof for the purpose of carrying on any trade, business or profession or sale or exchange of goods of any type whatsoever and includes running of with a view to making profit, hospitals, nursing homes, infirmaries, educational institutions, hotels, restaurants and boarding houses, making a distinction between hospitals to make profit and hospitals which are for charitable purposes. The hospital on the subject land is not for the purposes of profit and for this reason also would not fall in the category of commercial use.

25. The land allotted and leased for a charitable hospital would thus fall in a distinct class from land leased for commercial purpose and no merit is found in the argument of the petitioner of discrimination also.

26. No grounds for entertaining the petition are thus made out.

27. Dismissed.

28. No costs.