
(2008) 12 DEL CK 0025

In the Delhi High Court

Case No : C.M. No. 4845 of 2008 in Writ Petition (C) No's. 6704-05 of 2004

Parmod Kumar and Another

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 — Rule 42, 42(2), 42(3), 44, 7

Citation : (2008) 13 ILR Delhi 62

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Rajeshwar K. Gupta, for the Appellant; Rajiv Bansal, for DDA and Manpreet Kaur, for V.K. Tandon, for Forest Department, for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—The writ petition had been disposed of by this Court on 15.09.2005. While disposing of the petition the Court had issued the following directions:

(i) If within six weeks from today, DDA and the conservator of forests are not able to resolve the dispute whether the trees should or should not be removed from the site, DDA would allot some other plot to the petitioner in Prashant Vihar. Plot would admeasuring 124 Sq. Mts. or near about, in no case would be less than 120 Sq. Mts. Allotment would be at the same price as was the auction bid. If the plot to be allotted is upto 150 Sq. Mts., additional premium would be paid by the petitioner at the per square meter cost as per auction bid.

(ii) On the petitioner, being either intimated that the plot in question is cleared of the trees or alternative plot as aforesaid offered, petitioner would pay balance bid amount without interest or in case of the alternative plot being a large plot, bid amount + additional amount without any interest within four weeks.

(iii) Possession of the plot in question or the alternative plot would be handed over to the petitioner within 12 weeks from today.

2. The background facts of the case are that the petitioner purchased the plot in question bearing No. E-10, Prashant Vihar admeasuring 124 Sq. Mtrs. in public auction conducted by the DDA for Rs. 31.50 lacs and deposited Rs. 8 lacs as earnest money. He was required to make a deposit of the balance amount of Rs. 23,50,016/- by 24.02.2003. In the meantime the petitioner found that there were various trees on the plot auctioned to him. He required the DDA to obtain permission for cutting of the said trees before possession and balance payment. Admittedly, it was the obligation of the DDA to obtain the said permission from the Tree Officer to remove the trees so that vacant possession of the plot could have been delivered to the petitioner. The respondent for one or the other reason was not able to obtain the permission from the Tree Officer. The petitioner preferred the present writ petition and the same was disposed of in the aforesaid terms. Thereafter, the respondent DDA obtained the permission from the Tree Officer and removed the trees on the said plot. The respondent issued a communication dated 30.06.2007 requiring the petitioner to comply with various conditions. It, inter alia, included deposit of 75% of the premium amount for the plot. The petitioner was required to give his consent to the terms and conditions of auction on a non judicial stamp paper worth Rs. 10/-. The petitioner complied with the said conditions on 06.08.2007.

3. The respondent vide a communication dated 31.08.2007 / 10.09.2007 forwarded the proforma of the lease deed to be executed by the petitioner. The petitioner states that from the said proforma, he could gather that he was being required to pay the ground rent from the year 2002. The petitioner represented against the aforesaid move of the DDA vide communication dated 21.09.2007. In the meantime, the petitioner had already preferred Contempt Case No. 1488-89/2005. That petition was disposed of on 09.01.2008. In that proceeding the respondent DDA stated that they would hand over the possession of the plot to the petitioner upon his making payment of the requisite stamp duty and the ground rent as per the policy of the DDA. The petitioner disputed the demand raised by the respondent towards ground rent. The Court observed that the said issue requires substantive adjudication and that it could not be gone into in a Contempt Case. Thereafter the petitioner has preferred the present application to seek a direction to the respondent to give effect to the lease deed prospectively and consequently to charge the Ground Rent from the date the possession of the plot is handed over to the petitioner.

4. The submission of the learned Counsel for the petitioner is that there is no justification for the respondent to demand payment of ground rent in the facts of this case from 2002 i.e. from the date when demand for balance payment was made by the DDA. He submits that the petitioner was not placed in possession of the plot in question for all these years for no fault of the petitioner, and, if at all, the default was on the part of the DDA. The terms of the lease postulate that for

a period of first five years, the ground rent would be only Re. 1/- per annum, and only thereafter the same is to be paid at the rate of 2.5% per annum of the premium. The petitioner has still not been put in possession of the plot. The ground rent is, however, sought to be recovered by the DDA, even though conveyance deed has not been executed and possession of the plot has not been delivered.

5. The respondent has filed a reply to this application. Reliance is placed on Rule 42(2) of the DDA (Disposal of Developed Nazul Land) Rules, 1981 (for short 'Nazul Land Rules'). It is further argued that the petitioner had already furnished an undertaking that he would pay the ground rent from the date of allotment, and now it is not open to him to raise a dispute in that regard. Mr. Bansal submits that when the petitioner submitted the documents required by the DDA on 06.08.2007, he submitted his consent to comply with the terms and conditions of auction. The said terms and conditions, inter alia, provide that every allottee shall be liable to pay, in addition to the premium payable, ground rent for holding Nazul Land allotted to him/her under the said Rules at the rate of Re. 1/- per annum, per plot for the first five years from the date of allotment i.e. the date of issue of the letter communicating the allotment, and thereafter it shall be payable at the rate of 2 1/2 % of premium originally payable or paid, as the case may be. He submits that the Nazul Land Rules are statutory in character and there is no challenge to the said rules by the petitioner. He is bound to comply with the said rules. Rule 42(3) states that annual ground rent payable after the first five years shall be at the rate of 2.5% of the premium originally payable. He submits that the Court cannot pass a direction which is in contradiction with the statutory rules. In support of the aforesaid submissions counsel for the respondent relies on R.K. Singh Vs. Union of India, .

6. Having heard learned Counsels for the parties, in my view there is merit in the submissions of the petitioner that the respondent cannot charge ground rent from 27.11.2002. It is clear from the facts aforesaid that though the plot had been auctioned in favour of the petitioner in the year 2002, on account of the existence of various trees on the plot, the respondent DDA was not in a position to deliver actual physical and vacant possession thereof to the petitioner. As aforesaid, the petitioner filed the present petition which was disposed of with the direction that either the trees should be removed from the aforesaid plot or another plot admeasuring near-about 124 sq. mts., but not less than 120 sq. mtrs., should be allotted to the petitioner in Prashant Vihar, at the same price at which his auctioned bid was accepted. Thereafter, upon obtaining the permission from the Tree Officer, the plot has been cleared. The petitioner cannot, therefore, be subjected to any liability in respect of the said plot which is yet to be delivered to him, except to require him to pay the balance price, which he has already paid. The respondent cannot seek to charge ground rent for the plot when, as a matter of fact, the respondent was not in a position to deliver possession of the plot to the petitioner, and the possession has not yet been delivered to the petitioner.

7. Rule 42 of the Nazul Land Rules read as follows:

42. Allottee to be lessee of the Central Government.-(1) Save as otherwise provided in Rule 44, all Nazul land allotted under these rules, whether at predetermined rates or at fixed premium under Rule 7, or by auction or by tender, shall be held by the allottee as lessee of the President of India on the terms and conditions prescribed by these rules and contained in the lease-deed to be executed by the allottee.

(2) Every such allottee shall be liable to pay, in addition to the premium payable in accordance with these rules, ground rent, for holding the Nazul land allotted to him under these rules, at the rate of rupee one per annum per plot, for the first five years from the date of allotment:

Provided that in the case of Nazul land allotted to group housing cooperative societies; the ground rent shall be charged at the rate of rupee one per flat for the first five years from the date of allotment.

(3) The annual ground rent payable after the first five years referred to in Sub-rule (2) shall be at the rate of two and half per cent of the premium originally payable.

(4) The rate of ground rent in all cases shall be subject to enhancement after a period of thirty years from the date of allotment.

[Provided that notwithstanding anything contained in this rule, the Authority may allot Nazul land on free hold basis either through auction or by tender for residential purpose or commercial purpose.

Provided further that in the case of allotment on free hold basis, the allottee shall execute a conveyance deed in Form BA.]

8. The Nazul Land Rules, in my view postulate that in case of allotment by auction, the DDA would, upon the payment of the bid amount, execute conveyance in favour of the allottee and, as submitted by Mr. Bansal, contemporaneously place the allottee in possession of the plot. The process of allotment of a plot, the execution of the conveyance in favour of the allottee, and the delivery of possession, it appears, is more or less contemporary, subject to the time that is available to the allottees to make the payment of the amount. In the present case, though the allotment can be said to have been made at the time when the auction was held in the year 2002 wherein the petitioner emerged as the highest bidder, as a matter of fact, on account of the aforesaid circumstances, the petitioner has not been placed in possession of the plot till today. The reasons for this delay are attributable to the respondent, and not to the petitioner.

9. In my view, the endeavour of the respondent to give a literal interpretation to Rule 42(2) and 42(3) and apply the same strictly in all situations is wholly unjustified. If the interpretation suggested by the respondent DDA is adopted, it

would lead to grave injustice to the petitioner. It would amount to putting premium on the respondents own defaults and failures. The said Rule has to be meaningfully and reasonably interpreted. In my view, it can only mean that where the allotment is followed by execution of the conveyance deed and delivery of possession in the normal course, as per the schedule fixed by the respondent for (i) making of payment (ii) execution of the conveyance deed (iii) delivery or possession etc., the respondent would be entitled to charge ground rent from the date of allotment in terms of Rule 42. However, in a case where the date of allotment is separated by a long period from the date when the DDA is in a position to deliver possession of the plot, for reasons attributable to the DDA, the liability to pay the ground rent cannot start from the date of allotment, and must start only from the date when the allottee is placed in possession of the plot under a conveyance. The expression "date of allotment" used in Rule 42 (2) has to be interpreted in the context in which it has been used, i.e. where the "date of allotment" is more or less contemporaneous with the date of delivery of possession upon execution of the conveyance deed in the normal course. Of course, if allottee and not the DDA is responsible for the delay in execution of the conveyance deed or delivery of possession for any reason, the DDA would be entitled under Rule 42 to demand ground rent from the allottee from the date of allotment, because no person can seek to benefit from or to take advantage of his or her own default.

10. The Nazul Land Rules apply to disposal of "developed" land [see the definition of "Nazul Land" in Rule 2(i)]. Can it be said that the land allotted to the petitioner was fully developed when it was auctioned by the DDA? In my view, since there were trees standing on the land, the same was not fully developed. It became fully developed only when the trees were removed by the DDA. This is not to say that auction held by the DDA was irregular. In fact, the DDA should have removed the trees even before the auction.

11. Reliance placed by Mr. Bansal on the fact that the petitioner had expressly consented to the terms of auction as aforesaid, in my view, is not well founded either. The petitioner submits that while agreeing to the terms and conditions of the auction in the prescribed proforma given by the DDA, the petitioner was not made aware of the date from which the ground rent would be charged to him. He also points out that the petitioner raised the objection with regard to the date of start of the ground rent at the earliest possible point of time i.e. when the respondent sent to him the form of the lease deed containing specific dates from which ground rent would be charged, and the rates at which the same would be charged.

12. It is clear that the petitioner disputed the endeavour of the respondent to fasten the liability towards ground rent from 2002 onwards, even at the time of the disposal of the aforesaid Contempt Case. The petitioner has filed the present application before the execution of the perpetual lease deed in his favour. The terms and conditions consented to by the petitioner did not contain any specific

date from which the liability to pay the ground rent was to arise. The condition with regard to ground rent that the petitioner is stated to have agreed to abide by, insofar as it is relevant reads as follows:

(a) Every allottee shall be liable to pay, in addition to the premium payable, ground rent for holding Nazul land allotted to him/her under the said Rules at the rate of Re. one per annum, per plot for the first five years from the date of allotment i.e. the date of issue of the letter of communicating the allotment and thereafter it shall be payable at the rate of two and half percent (2.5%) of premium originally payable or paid as the case may be.

13. The petitioner submits that as per his understanding there was no "letter of allotment" in the present case, since none was issued by the respondent. This position is disputed by the respondent, who submits that the letter dated 27.11.2002 was the demand letter and also constituted the allotment letter. Though there appears to be merit in this submission of Mr. Bansal, at the same time it is probable that the petitioner genuinely did not construe the said letter as an allotment letter, since it was not styled as one. Above all the DDA cannot charge anything over and above what it is legally entitled to charge. The respondent DDA was bound to make the allotment and realize the amounts in terms of the order of the Court aforesaid. It could not have insisted for payment of any further amounts by the petitioner than what was legally recoverable from him.

14. There are two other aspects that need to be noticed. The form of the perpetual lease bearing No. F11(4-A)/2002/LSB(R) sent by the respondent to the petitioner, inter alia, provides "NOW THIS INDENTURE WITNESSETH that, in consideration of the amount of Rs. 3,150,000 (Rupees Thirty One Lac Fifty Thousand only) paid towards premium before the execution of these presents (the receipt where of the Lessor hereby acknowledges) and of the rent hereinafter reserved and of the covenants on the part of the Lessee hereinafter contained, the Lessor, doth hereby demise unto Lessee, ALL THAT plot of land TOGETHER with all rights, easements and appurtenances whatsoever to the said Residential plot belonging or appertaining TO HOLD the premises unto the Lessee in perpetuity from 27.00th day of November Two Thousand Two YEILDING AND PAYING therefore yearly payable in advance of Rs. 1/- (Rupee One only) upto the 26.00th day of November Two Thousand Seven and thereafter at the rate of two and a half percent (2.5%) per annum of the premium....." Therefore, the ground rent is to be paid for the period from which the petitioner would "hold" the premises. Can the petitioner said to "hold" the plot in question from 27th day of November 2002? In my view, the answer is in the negative. The expression "hold" is defined in the Blacks Law Dictionary to mean "To possess in virtue of a lawful title; as in the expression, common in grants, "to have and to hold," or in that applied to notes, "the owner and holder." Chicago Home for Girls v. Carr 300 Ill. 478 : 133 N.E.

344, 346." Merely because the petitioner emerged as the successful bidder in the auction conducted by the respondent for the plot in question and his bid was accepted and he paid the earnest money, it cannot be said that the petitioner "held" the said plot. Possession of the plot under a legal title is essential to constitute the "holding" of the plot. An allottee cannot be said to "hold" a plot where the allottee does not possess the plot on account of the failure or default on the part of the grantor/lessor/vendor to even be in a position to deliver possession of the plot and/or convey the title in the plot. However, in a case where the grantor/lessor is not responsible for the failure of the vendee/lessee to hold the plot, and it is the doing of the vendee/lessee itself, the vendee/lessee would be deemed to "hold" the premises from the day when the same could have been held by him, but for his own failure and default. The ground rent is payable only from the date of holding or deemed holding, as the case may be. That day not having yet arrived in the facts of this case, there is no question of the respondent being entitled to charge the ground rent from the petitioner from the year 2002 onwards.

15. I may also note that according to the directions issued by the Court on 15.09.2005, the petitioner could as well have been allotted another plot, had the permission from the Tree Officer to remove the trees from the plot in question not been received. In case the petitioner would have been allotted another plot in terms of the said directions, obviously the respondent could not have charged ground rent from the petitioner from the year 2002 onwards since the allotment itself would have been made only after the order dated 15.09.2005. Merely because the sale plot has been now offered to the petitioner because in the meantime the permission of the Tree Officer has been received and the trees have been removed from the plot, it does not mean that the petitioner should be saddled with the liability to pay the ground rent from the year 2002 when, as a matter of fact, he has not been placed in possession of the plot till date.

16. Reliance placed by Mr. Bansal on R.K. Singh (supra), in my view, is of no avail. By directing that the respondent cannot charge ground rent from the petitioner in the facts of this case from the year 2002 onwards, all that this Court is doing is to give a reasonable and meaningful interpretation to the Nazul Land Rules. It cannot be said that the direction being given is contrary to the said Rules.

17. Mr. Bansal lastly submitted that the present application is not maintainable since the writ petition had been disposed of on 15.09.2005, and the petitioner has pressed a substantive issue based on a cause of action which has arisen after the disposal of the writ petition. I find that the respondent has not even raised this objection in the reply. If the respondent had raised the objection earlier, the petitioner would have been put to notice and he could have taken a decision whether to pursue this application or to prefer a separate writ petition. The application has remained pending since 26.03.2008. The respondent has had full opportunity to meet the contentions of the petitioner as raised in the application.

Moreover, the nature of jurisdiction exercised by the Court while dealing with this application is no different from that which the Court would have exercised, had a separate writ petition been preferred instead. The exercise of jurisdiction in either case would be under Article 226 of the Constitution of India. Writ proceedings are not bound by strict rules of procedure, and what is of relevance is to see that the parties have had sufficient and proper opportunity to meet the case of the opposite party. It is not the respondent's case that they have been handicapped in any way in defending these proceedings merely because an application, and not an independent writ petition has been preferred by the petitioner.

18. I, therefore, allow this application and direct the respondent to appropriately modify the relevant clause in the perpetual lease deed to be executed in favour of the petitioner to provide for the payment of ground rent from the date of execution of the conveyance. The petitioner would be liable to pay ground rent at the rate of Re. 1/- per annum for the first five years and thereafter at the rate of 21/2 % per annum of the original premium from the date of conveyance. The respondent is directed to provide to the petitioner the fresh form of the conveyance in terms of this order within six weeks from today. The petitioner shall procure the requisite stamp duty and present the perpetual lease deed for execution and registration by the DDA within three weeks thereafter.

19. Cost of Rs. 25,000/- imposed earlier shall also be paid within six weeks.