

(1992) 04 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Petition No. 1300 of 1992 and Civil Miscellaneous Appeal No. 1950 of 1992

Prabhat Construction Company

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 27-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Development Act, 1957 — Section 40A
Punjab Land Revenue Act, 1887 — Section 6
Revenue Recovery Act, 1890 — Section 5

Citation : (1992) 47 DLT 67

Hon'ble Judges : R.L. Gupta, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : S.N. Kumar, G.D. Goel and K.B. Soni, for the Appellant;

Judgement

R.L. Gupta, J.

(1) In this petition filed under Article 226 of the Constitution, the petitioner, a partnership firm, prays for quashing the demand of Rs. 54,90,089.00 raised by letter dated 24/03/1992 issued by the Assistant Collector ,Nazul, u/s 68 of the Punjab Land Revenue Act, 1887, as extended to Delhi. The demand is admittedly towards arrears of ground rent and interest accrued thereon respecting plot of land bearing No. 6, Nehru Place ,New Delhi, purchased by the petitioner on perpetual leasehold basis in an auction conducted on 5/08/1980 by the first respondent Delhi Development Authority. The bid of the petitioner in the sum of Rs. 5,18,00,000.00 had been accepted by letter dated 21/08/1980 of the DDA. This premium was to be paid within a certain period for which, it appears, there is no dispute .

(2) The terms of auction stipulated that the petitioner would have to erect a building in accordance with the plans prescribed within two years of the date of possession of the plot. the possession of the plot was handed over to the

petitioner on 8/05/1981. In addition to the premium the petitioner was to pay yearly ground rent. The ground rent was at the rate of rupee one per annum for first two years allowed for the purpose of construction and thereafter it was to be charged at the annual rate of 2-1/2% of the amount of premium. The petitioner constructed the building and sold flats to various persons. On our direction the petitioner filed the purchase agreement entered into between it and the purchasers of the flats. This agreement also provides that ground rent is payable to Dda at the rate of 2-1/2% per annum on the premium of the plot w.e.f. 8/05/1983. The agreement provides that the ground rent has to be paid by the buyers to the petitioner in proportion to the area of their respective flats and the share payable by each buyer shall be determined by the petitioner on the basis of the total saleable area in the building. This share is to be paid by the buyer on or before the first April of every year. The agreement also stipulates that if the ground rent is revised by the Dda it shall be payable by the buyers proportionately when increased/enhanced.

(3) The petitioner contended that in the letter dated 21/08/1980 the Dda while accepting the bid of the petitioner also stated that the yearly rent would be payable in advance at the time of the execution of the lease deed. Since the lease deed has not so far been executed, the petitioner says it is not bound to pay any ground rent. This to our mind is misreading of the letter. We have set out the terms of the auction. It is not that petitioner has not paid any ground rent so far. He has done so without any protest. He is, however, in arrears. It has also not been disputed that the petitioner in turn would have recovered ground rent proportionately from various buyers. The petitioner has, however, not cared to file any such statement as to how much ground rent he has recovered from various buyers of the flats though half-heartedly it was contended by Mr. Kumar, learned Counsel for the petitioner, that the buyers were not paying their shares of ground rent and the petitioner had to file about 200 suits. There are no such particulars and we are unable to accept any such submission.

(4) It may be noted that the petitioner earlier filed writ petition in this Court on 16/05/1989, it being C.W. No. 1412/89. In this writ petition, which was also respecting the same plot of land, the petitioner said that moratorium of ground rent should be for five years and not two years. This plea was rejected by this Court and the petition was dismissed in limine. The letter dated 21/08/1980 now sought to be taken advantage of was also one of the annexures in that writ petition, but no such plea, as now being raised, was ever raised there which clearly is an after thought and without merit. Mr. Kumar, however, submitted that a SLP against the order dismissing the earlier writ petition was filed in the Supreme Court.

(5) When this writ petition was filed, apart from filing the impugned demand, the petitioner filed no document if there was any demand raised, earlier. We adjourned the matter to find out if the petitioner did not receive any letter

regarding payment of ground rent by this period and what would be the rate of interest for delayed payment of ground rent. Then a letter dated 22/03/1990 of the Dda was brought on record wherein the DDA had raised a demand for payment of. Rs. 22,14,488.75 towards arrears of ground rent and interest. The petitioner sent a reply to this letter which is dated 2/04/1990 in which it mentioned filing of the earlier writ petition which made us to look into that petition.

(6) Then Mr. Kumar contended that after the impugned notice was received from the Assistant Collector a partner of .the petitioner "met the respondents" and he was threatened that in case the demand was not paid by 31/03/1992 the partners would be arrested and their property attached. It is stated that the partner met the respondents on 30/03/1992. Though we will give no credence to any such meeting, we do not find any infirmity in the impugned notice of demand

(7) Mr. Kumar said that provisions of the Revenue Recovery Act, 1890, and the Punjab Land Revenue Act, 1887 as extended to Delhi, have been violated inasmuch as the Assistant Collector had no authority to issue such a notice u/s 68 of the Punjab Land Revenue Act, 1887. He said somewhat similar point was taken by him in Criminal Writ No. 54-D/64 filed by him in the Circuit Bench of the Punjab High Court, at Delhi. We sent for that file also. In that case the petitioner had been detained for recovery of arrears of land revenue, he having been held to be a defaulter .In that case the petitioner himself pleaded that procedure laid down in Section 5 of the Revenue Recovery Act and Section 69(2) of the Punjab Land Revenue Act had not been followed. The petitioner had been detained by the Tehsildar, Nazul, in that case. That writ petition was dismissed as having been infructuous and there is nothing in that writ petition to our mind supports the contention raised by Mr. Kumar.

(8) u/s 40A of the Delhi Development Act, 1957, any amount due to Dda can be recovered as arrears of land revenue if no other mode is specifically prescribed for the purpose. It is not disputed that the arrears of ground rent and the interest accruing thereon are recoverable, as arrears of land revenue. u/s 5 of the Revenue Recovery Act, DDA could request the. Collector of the District for recovery of the amount due to it as if it was an arrear of land revenue. Then the mode of recovery has to be exercised under the provisions of the Punjab Land Revenue Act, 1887, as extended to Delhi. For the time being only a notice of demand has been raised .For the purposes of this petition, it is not disputed before us that the amount as contained in the notice is not due to the DDA. The petitioner cannot sit over such a huge amount when particularly he must have recovered the same from the buyers of the flats and utilised the money for his own benefit .In spite of our specific order the petitioner did not file all the correspondence leading to his payment of ground rent and interest thereon. Rather he filed an affidavit that this Court directed him to give particulars of the correspondence only after 1989. This is not correct. With such a conduct of the petitioner we would not like to interfere in exercise of our jurisdiction under

Article 226 of the Constitution. The petition is, Therefore, dismissed in liming .