(2017) 03 MP CK 0124

In the Madhya Pradesh High Court

Case No : 567 of 2012

Rajendra Singh Yadav APPELLANT

Vs

The State Of Madhya Pradesh RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

Citation : (2017) 03 MP CK 0124

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : R.K. Verma, Anjali Shrivastava, Vandana Shrivastava

Judgement

1. With consent of the parties, the matter is heard finally. 1. The petitioner has filed the present petition challenging the order dated 21.12.2011 passed by respondent No. 2- Collector thereby directing the petitioner to deposit an amount of Rs. 66,35,630.40 paisa as additional premium and an amount of Rs. 1,49,311.95 paisa towards ground rent.

2. The State Government has granted a lease in respect of Block No. 4, Plot No. 26 situated at Civil Station, Jabalpur admeasuring to 14135 sq.ft. On 31.03.1953 the lease was renewed from time to time and finally the lease granted was expired on 31.03.1999. The yearly rent and the premium was paid by the lessee. He has given the right to raise construction of the building and also to re-erect the structure over the land by demolishing the earlier one.

3. The petitioner had applied for construction of the building to the Municipal Corporation. The Municipal Corporation vide order dated 05.07.1996 has granted the sanction for construction of the building over which the old structure was already existing to the extent of 7140 sq.ft. The construction was to be completed in pursuance of the said sanction within a period of two years commencing w.e.f. 05.07.1995 to 05.07.1998. The petitioner has raised the construction in accordance with the plan so sanctioned by the Municipal Corporation. The petitioner is running the Bhojnalaya/lodging in the said building

in one of the portions and for that purpose, a due licence was granted by the Municipal Corporation in favour of the petitioner. As the lease of the said plot was expired in the year 1999, therefore, the petitioner has submitted an application on 11.12.2001 before respondent No. 2 for renewal of the said lease. Thereafter, the State Government has issued guidelines on 04.05.2002 for the purpose of renewal of the lease and also in respect of the violation of the terms and conditions of the lease.

4. Clause (8) of the said circular provides that if the use of the land of the premises is changed from residential to commercial or any change is occurred different from the sanction, in that event only the difference of the premium amount as additional premium is required to be ascertained and the same is required to be deposited as also the ground rent @ 7.5% over the said amount. This clause is applicable only if the purpose of the lease for which it is granted, is changed/converted. The petitioner submits that from perusal of the lease-deed, it is clear that the same was sanctioned for the commercial purpose and not for the residential purpose use. It has further been submitted that as per clause (11) of the circular if any breach of the lease is committed, the same would be examined by the competent authority and after preparation of the report, the same would be referred to the Commissioner, Revenue Division and he would decide the matter on merits.

5. In pursuance of the said circular dated 04.05.2002, a show cause notice was issued to the petitioner on 11.09.2009 whereby he was informed that the use of the land has been changed to commercial, therefore, as per the circular dated 04.05.2002, a demand was made of Rs. 66,35,630.40 paisa towards additional premium as per clause (8) and an amount of Rs. 1,49,311.95 paisa towards ground rent. Some other amount has also been claimed. The total amount of Rs. 81,50,283.75 paisa has been claimed. The petitioner submitted objection to the said notice on 01.10.2009. Thereafter, the matter was pending for years together and a notice was issued again to the petitioner on 19.08.2011 whereby the petitioner was calledupon to submit the proof with regard to submission of the application for renewal of the lease.

6. On 21.12.2011, the Collector passed the final order relying upon the clauses of the circular dated 04.05.2002 and observed that after expiry of the lease dated 31.03.1999, the application, if any, put up by the petitioner on 11.12.2001 is not on record. The same is not in the ''Dayra Panji''. The Collector has directed the Sub Divisional Officer to re-assess the premium and also the ground rent in pursuance of the guidelines dated 04.05.2002 on the existing rates of 2010 and 2011 and the petitioner is directed to deposit the same within a period of 15 days from the date of preparation of the report. The petitioner has further submits that on the similar set of facts in which the lease was expired on 31.03.1999 and, thereafter, was not renewed but have been renewed on the basis of the previous rates prevailing in respect of the premium and ground rent. The circular dated 04.05.2002 has not been made applicable in such cases on the

ground that their applications were submitted prior to the issuance of the circular dated 04.05.2002.

7. Learned senior counsel appearing on behalf of the petitioner submits that the order dated 21.12.2011 is illegal and arbitrary. He submits that the respondent No. 2-Collector has not properly considered the objections raised by the petitioner. He further argues that the Collector has passed the order without affording an opportunity of hearing and without considering the factual matrix involved in the matter. The reasons assigned in the objections have also have not been considered. The Collector has not given any finding with regard to change of use of the land as to whether the lease was for residential purpose or for commercial purpose or the use of the land has been changed for residential to commercial or not. He further argues that the circular dated 04.05.2002 would not be applicable in the case of the petitioner, as immediately after expiring of the lease, the petitioner had submitted an application on 11.12.2001 for renewal of the lease, thus, the application was submitted before coming into force of the circular dated 04.05.2002, therefore, this circular would not be applicable in case of the petitioner. He further submits that in similar circumstances the Collector has given the exemptions to one Diocesan Corporation and Vidya Sabha from applicability of the circular dated 04.05.2002 thus, this action on the part of respondent No. 2 amounts to discrimination. He further submits that the lease in question was granted to the petitioner for commercial purposes which is clear from the Sub-clause (a) and (b) of Clause (5). The petitioner has raised the construction after taking the approval from the municipal corporation for commercial purposes. The respondents have not raised any objection at the time of granting the sanction by the corporation. In light of the aforesaid submissions, he prays that the order passed by the Collector be set aside.

8. The respondents have filed reply and in their reply, the respondents have taken a preliminary objection that the petitioner has an alternate remedy of filing an appeal/representation against such order under Clause-18 of the RBC. The respondents further submits that the lease in area was granted to the petitioner purely for residential purposes and accordingly the ground rent and premium was charged from him on the rates prescribed for residential purposes. The respondents further submits that a bare perusal of the aforesaid Dayra Panji would reveal that the ground rent and premium was charged from the original allottee Preetam Singh, Ranbir Singh and others and on the basis of notification dated 11.01.1968, wherein rate of ground rent for residential lease at Jabalpur Civil Station was 1.10 paisa and the same has been charged from the original allottee. The respondents have further submits that the purpose of the land was never changed at any point of time and the same continued to be lease for residential purpose.

9. So far as, the Clause (5) (a) and(b) of Annexure P/1 is concerned, the respondents submits that there is a common format for execution/renewal of lease deed for both i.e. residential as well as commercial and only determinative

factor in the same in order to ascertain as to whether the lease is for the purpose of residential or for commercial is the ground rent which is charged. In the present case, the ground rent was charged @ 91.75 which as per the record of the answering respondents is the rates which is applicable for the lease made for residential use.

10. So far as, contention of petitioner that he had applied for renewal of his lease vide application dated 11.12.2001 i.e. prior to coming into force of circular dated 04.05.2002 is concerned, it is submitted that during the adjudication of the case of the petitioner by the collector, fact finding enquiry was conducted which reveal that the alleged application dated

11. 12.2001 was never received in the office of the answering respondents, as no record pertaining to the same is available. The document does not bear any official seal. In such circumstances, he submits that by no stretch of imagination it could be accepted that the application dated 11.12.2001 was at any point of time actually served in the office of the answering respondents. 11. So far as, the exemption granted to the Diocesan Corporation and Vidya Sabha is concerned, the respondents submits that as they have submitted their applications prior to coming into force of circular dated 04.05.2002 and, therefore, the case is distinguishable from the case of the petitioner. In light of this above such backdrop, learned counsel for the respondents submits that the petition be dismissed.

12. The petitioner has filed the rejoinder and in the rejoinder he has relied on the order passed by the board of revenue in the case of Ambika Charan Dixit Vs. State of M.P. decided on 21.03.2014 in which the Board of Revenue has held that the premium means the amount which is paid at the time of grant of lease. Considering the overall facts and circumstances, the Board of Revenue has set aside the order passed by the Commissioner and remanded the matter back to the Collector with the observation that the difference of the amount of premium on account of use of the land from residential to commercial, at the time of renewal of the lease cannot be claimed on market rate. It is observed that at the time of renewal of the lease, the difference of the premium and the ground rent is to be claimed as was existing on the date of allotment of lease and not on the date of renewal of the same.

13. I have heard learned counsel for the parties and perused the record. From perusal of the record it reveals that lease deed was executed in favour of the petitioner on 18.08.1986 and the said period was to be expired in the month of March 1999. As per Clause (5) (a) and (b) of the said lease deed is read as under:- "5(a) The lessee shall not without the previous permission of the Collector carry on or permit to be carried on, on the premises any trade, business or activity for the regulation of which provision has for the time being made by or under the law relating to municipalities; provide that such permission shall not exempt the lessee from fulfilling any requirements under the said law to which he shall always remain subject.

(b) The lessee may carry on or permit to be carried on, on the premises, any trade, business or activity which has not been so regulated but he shall be bound to discontinue the same, if the lessor, on being satisfied on the complaint of the neighbours that it is a source of annoyance or offence to them, requires the lessee to do so within such time as may be fixed in the requisition."

14. After the execution of the said lease deed, the petitioner has submitted an application before the Municipal Corporation and town and country planning department for sanction of the map as well as for building permission. Accordingly, the permission was granted and the petitioner has raised the construction over the said plot. Primarily, as per Clause (5) (a) & (b), the lease which is granted to the petitioner is for commercial purposes. After expiry of the lease in the year 1999, the petitioner submitted an application on 11.12.2001 before respondent No. 2 for renewal of the said lease. During the pendency of this application the State Government has issued a circular dated 04.05.2002 thereby lying down the guidelines for the purpose of renewal of the lease and also in respect of the violation of the terms and conditions of the lease.

15. The Clause-8 of the said circular provides that, if the use of the land of the premises is changed from residential to commercial or any change is occurred different from the sanction, in that event only the difference of the premium amount as additional premium is required to be ascertained and the same is required to be deposited as also the ground rent @ 7.5% over the said amount. This clause is applicable only if the purpose of the lease for which it is granted is changed or converted. In pursuance of the said circular a show cause notice was issued to the petitioner on 11.09.2009, thereby he was directed to pay an amount of Rs. 66,35,630.40/- paisa towards additional premium and an amount of Rs. 1,49,311.95 paisa towards ground rent. Being aggrieved by that demand notice, the petitioner has submitted his reply on 01.10.2009, however, without considering the reply submitted by the petitioner, the Collector has passed an order dated 21.12.2011 thereby rejected the objections submitted by the petitioner and pass the final order relying on the clauses of the circular. While passing the final order, the Collector has observed that the petitioner has not filed any document to show that he has submitted an application in the year 2001 for renewal of the lease before coming into force of the circular dated 04.05.2002 and on the basis of the this, the Collector has directed the petitioner to deposit the premium on the basis of the guidelines of the year 2010 & 2011.

16. The respondents in their reply has raised an objection that the petitioner has an alternate remedy of preferring an appeal/representation before the Commissioner as per Clause- 18 of the Revenue Book Circular. Clause-18 of the Revenue Book Circular is read as under:- "VERNACULAR MATTER OMITTED"

17. As the impugned order has been passed by the Collector in pursuance of the revenue book circular issued by the State Government and, therefore, the petitioner before filing this petition should have approached to the Commissioner. Thus, in light of the aforesaid objections taken by the petitioner without deciding

the petition on merits, I deem it proper to disposed of this petition with a direction to the petitioner to approach to the Commissioner by filing an appeal / representation.

18. Thus, without entering into the merits of the case, the petition filed by the petitioner is disposed of with a liberty to the petitioner to approach to the Commissioner (Revenue) by filing an appropriate representation/appeal within a period of 15 days from the date of receipt of certified copy of the order. On receiving such an application, the Commissioner shall consider and decide the same in accordance with law within a period of three months thereof.

19. Till the matter is decided by the Commissioner, the interim order passed by this Court on 13.01.2012 shall remain continue.

