
(2009) 03 DEL CK 0244
In the Delhi High Court
Case No : Writ Petition (C) 8137 of 2007

R.N. Dhawan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0244

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Jitender Chaudhary, for the Appellant; Gaurav Duggal and Saroj Bidawat, for Resp-4, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—Heard the counsel for the parties.

2. The petitioner seeks a direction to the respondents to convert the lease hold in relation to his property being No. 11, Shiv Mandir Marg, Jal Vihar Road, Lajpat Nagar into free hold.

3. The facts necessary to decide the case are that the lease deed was executed pursuant to an allotment, made of the suit property on 5.5.1973, by the office of the Settlement Commissioner, to the petitioner. The documents were registered later on 1.6.1973. The management of the said property was handed over to the Land and Development Office (L and DO). Apparently, the terms of the initial lease deed were amended by supplementary lease deed dated 26.11.1973. Clause 1(vi) of the original lease deed dated 5.5.1973 read as follows:

Not without the written consent of the Chief Commissioner, Delhi, to carry on or permit to be carried on, on the said land and buildings erected thereon during the said lease any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a "double storeyed building consisting of one or two residential flats in all, with a barsati on top, as may be approved for the locality or as provided in the building already erected on the

said land;

4. It is common ground that the L and DO introduced policies for conversion of the leases administered by it - and in which the Central Government was the lessor - from time to time. The first of these schemes of conversion was published in 1992. Similar schemes were formulated and published later. On 24.6.2003, the L and DO published a scheme under which the petitioner applied for conversion of the concerned plot. It is contended that the conversion fee of Rs. 1,45,364/- was also paid.

5. The Supplementary deed (referred to earlier) had deleted the reference of residence in the following terms:

That in the principal deed in clause No. I(vi) on page No. 3 of the principal deed the word residence shall stand deleted and the premises shall not be used for any purpose other than the purpose of business only

6. The petitioner contends that despite his having complied with the terms of the L and DO's policy, the respondents displayed inaction and are not passing consequential orders for conversion of the property. The petitioner also refers to a letter dated 4.8.2006 whereby the Central Government (through the L and DO) clarified that the word "residence" had been omitted from the supplementary lease deed for the period, as the allotment was for the purpose of running a fuel depot, which is a business activity.

7. The L and DO's contention is two fold. It submits that Fuel Depot is not "commercial" and hence cannot be considered for conversion under the head "commercial property". It is submitted that Fuel Depot can be converted from lease hold only after conversion in to commercial property. It is further contended that a proposal was made by the DDA for use of four Fuel Depots for its purposes. The L and DO has referred to and produced a letter dated 18.7.2006 by the DDA requesting the handing over of such Fuel Depots, to it.

8. This Court has considered the submissions of the parties and the documents as well as pleadings carefully. The facts pertaining to allotment of plot to the petitioner, execution of lease deed on 5.5.1973; and execution of the supplementary lease deed on 26.11.1973 are undisputed. The L and DO also does not deny having stated in response to the query under the Right to Information Act, 2005 made by the petitioner, as follows:

No. L and DO/PS-II/979

dated 4.8.2006

To,

Shri R.N. Dhawan

K-II/38A, Lajpat Nagar New

Delhi-110 024.

Sub: Application under RTI Act, 2005 in respect of Property No. 11, Shiv Mandir Marg, Lajpat Nagar-II, New Delhi -110 024.

Sir,

I am directed to refer to your letter dated 12.6.2006 on the above subject and to say that since the re-development plan of the area is under consideration and not finalized, the request of conversion was not examined.

As regards supplementary lease deed for the property word "Residence" was deleted because the allotment was made for Fuel Depot which is Business Activity.

9. This Court finds insubstantial the respondents' plea put forward now that the property is not commercial property. The supplementary lease deed expressly deleted all reference to residential use of the property. The letter dated 4.8.2006 also expressly stated that the petitioners' allotment was made for a business activity. In these circumstances, the insistence of the L and DO that the property is not commercial, is not only unacceptable, but also misconceived. As far as the other impediment sought to be put forward namely, the DDA's requisition is concerned, the L and DO's position is that matter is engaging attention of both the agencies.

10. The letter of the DDA upon which the L and DO places reliance was written on 18.7.2006. No effort has been made to show as to why any decision was arrived at. It is not as if the L and DO requires permission of the DDA to convert the property - concededly the title to the property is that of the L and DO, who is administering the land on behalf of the President as a paramount lessor. In the circumstances, the existence or pendency of a request for requisition of the Fuel Depot - i.e. the suit property, for purposes of the DDA itself cannot be construed as an impediment in processing of the conversion application. At any rate, there is no restriction on the processing of such applications by the L and DO in its policy; the conversion application too cannot be rejected on such grounds as is evident on a textual reading of para 20 of the brochure pertaining to conversion from lease hold into free hold published by the L and DO.

11. In view of the above discussion, it is held that the L and DO's objections cannot be sustained in law; they are arbitrary. A direction is accordingly issued to the respondents to process the petitioner's application in accordance with the Scheme earlier existing when he applied for conversion, of the property and after ensuring completion of necessary formalities issue the order of conversion and take all consequential steps within eight weeks from today.

12. The writ Petition is allowed in the above terms, but without any order as to costs.

Order dasti.