(2014) 05 DEL CK 0150

In the Delhi High Court

Case No : W.P.(C) 5360/2013 & CM 11993/2013

Rohini Educational Society (Regd.) APPELLANT

Vs

Delhi Development Authority and Another RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:
Delhi Development Act, 1957 — Section 3, 57

Citation : (2014) 143 DRJ 94

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Maninder Singh, Sr. Advocate and Mr. Kamal Gupta, Advocate for the Appellant; Rajiv Bansal for Respondent No. 1/DDA, Mr. Neeraj Chaudhari, CGSC and Mr. Ravjyot Singh for Respondent No. 2/UOI, Advocate for the Respondent

Final Decision : Allowed

Judgement

Siddharth Mridul, J.—The present writ petition has been filed challenging the demand notice for penalty charges amounting to Rs. 91,94,049/- vide letter dated 12.07.2013 issued by Delhi Development Authority to the petitioner Society. The challenge to the said notice is premised on being ultra vires the notification dated 17.07.2012 as well as in disregard of the orders passed by this Court on 20.07.2012 and 09.11.2012.

2. Brief facts relevant to the present adjudication are enunciated hereinafter.

3. The respondent/DDA issued Notifications u/s 57 of DDA Act, providing for fixation of rates for availing Additional FAR provided under MPD 2021, inter alia, with respect to Institutional Plots. The petitioner received a communication/ demand letter from the respondent/DDA calling upon it to deposit a sum of Rs. 3,98,40,879/-(Rupees Three Crore Ninety Eight Lacs Forty Thousand Eight Hundred Seventy Nine only) as charges for sanctioning Additional FAR. However, the calculation, basis, bifurcation and/or the constituents of the said demand were not disclosed by the respondent to the petitioner.

4. The petitioner (as well as many other Educational Societies running schools and colleges) impugned the demand raised by the DDA for sanctioning Additional FAR as permitted under the MPD 2021, by filing WP(C) No. 14094/2009 with the primary and basic ground of challenge being that the Notifications dated 10.10.2008 and 23.12.2008 issued by DDA, in its purported exercise of power u/s 57 of DDA Act, only specify the rates/amounts for sanctioning of Additional FAR, etc. without any Regulations having been framed by DDA permitting or authorizing any such levy in the first place.

5. Vide order dated 20.07.2012, this court disposed of a batch of similar writ petitions, as filed by the petitioner, taking on record the Notification dated 17.07.12 proposed to be published in the Official Gazette by DDA thereby exempting Additional FAR charges in respect of educational institutions/trusts and other societies having income tax exemption.

6. WP(C) No. 14094/2009 filed by the petitioner also came to be disposed of by this court on 09.11.2012 relying upon its earlier judgment dated 20.07.2012.

7. The respondent/DDA then issued the impugned communication/demand letter dated 12.07.2013 thereby again demanding a sum of Rs. 91,94,049/- on account of purported penalty charges for availing Additional FAR without sanction.

8. The scope of controversy in the instant case is confined to whether penalty charges for availing additional FAR without sanction is permissible in view of the notification dated 17.07.2012 specifying that no additional FAR charges are to be recovered from Educational Societies/Health care and Social welfare societies having Income Tax exemption.

9. Counsel for the respondent has argued that the demand of Rs. 91,94,049/- has not been made pursuant to item 6(g). It has in fact been made under the head "Penalty for availing additional FAR" under item 8 which remains untouched by the notification dated 17.07.2012.

10. Counsel for the petitioner society argues that in view of the order dated 09.11.2012 passed by this Court in WP(C) No. 14094/2009, wherein the respondent could not dispute that the notification dated 17.07.2012 is applicable to the present petitioner society, the respondent cannot claim additional FAR charges subsequently.

11. We have heard arguments on behalf of parties. The notification dated 17.07.2012 is reproduced below:-

DELHI DEVELOPMENT AUTHORITY

LAND COSTING WING

VIKAS SADAN INA

NEW DELHI

NOTIFICATION

Subject: Exempting additional FAR charges in respect of Educational institutions/ Trusts, Health-care and other social welfare societies etc. having exemption from income tax.

In exercise of powers conferred by section 57 of the Delhi Development Act, 1957 (No. 61 of 1957), the Delhi Development Authority with the previous approval of the Central Government hereby makes the following modification to Notification S.O. 2432(E), dated 10-10-2008 and S.O. 2955 (E), dated 23-12-2008 published in the Gazette of India, Part II, Section 3, Sub-section (ii) with regard to fixation of rates to be applied for additional FAR charges for Institutional plots. 6(g) for Educational Societies/Health-care, Social Welfare societies etc. where mode of disposal of land is still allotment.

Accordingly Para 6(g) of these notifications dated 10-10-2008 and 23-12-2008 shall be amended by the following:

The other contents of the notification dated 23/12/2008 will remain unchanged.

The exemption of additional FAR charges will remain in force till further modification and notification by the Government of India.

File No. F2[163] 07/AO(P)/Pt-II/

Dated: 17 July, 2012

D. Sarkar

Commissioner-cum-secretary

Delhi Development Authority

12. This notification has amended Item 6(g) of the notification dated 23.12.2008 consequently exempting recovery of any additional FAR charges from educational societies/health care and social welfare societies having income tax exemption. Let us now see item 8 of the notification dated 23.12.2008:-

DELHI DEVELOPMENT AUTHORITY

NOTIFICATION

New Delhi, the 23rd December, 2008

Fixation of rates to be applied for used conversion, mixed land use and other charges for enhanced FAR arising out of

MPD-2021

S.O. 2955(E) In exercise of powers conferred by Section 57 of the Delhi Development Act, 1957 (61 to 1957), the Delhi Development Authority with the previous approval of the Central Government, hereby makes the following Regulations in pursuance to Notification No. S.O. 2432(E) dated 10th October, 2008:-

No. F20(4)05/MP/Pt-II/Pt.

V.M. Bansal, Pr. Commissioner-cum-Secy.

13. Item 8 specifies that the penalty for availing additional FAR without sanction shall be 30% over and above FAR charges. The respondent has argued that waiving of additional FAR charges from educational societies does not bar levy of separate charge in the form of penalty as the application of the amending notification is limited to item 6(g).

14. We do not agree with this argument. As is evident from the notification dated 23.12.2008, the mode of computing penalty for availing additional FAR charges without sanction is 30% of such additional FAR charges. In effect the calculation would work out to be additional FAR charges plus penalty, which is 30% of the additional FAR charges. Admittedly, the penalty is not a specified gross sum, instead it is dependent on the computation of the additional FAR charges. The respondent in all its wisdom and generosity took the decision to waive additional FAR charges in case of educational societies/health care and social welfare societies having income tax exemption. Once this decision was taken, the logical and obvious corollary is that any penalty imposed for availing such additional FAR charges without sanction and quantified as 30% over and above additional FAR charges would stand waived as well. To interpret otherwise would be opposed to the object of granting the benefit at all.

15. In view of the aforesaid discussion, item 8 in the notification dated 23.12.2008 issued by the respondent does not apply to inter alia Educational Societies having income tax exemption. Consequently, the demand notice seeking penalty charges amounting to Rs. 91,94,049/- contained in letter No. F. 13 (40)2001/Bldg/292 dated 12.07.2013 issued by the respondent to the petitioner society herein stands quashed being arbitrary, illegal and contrary to the notification dated 17.07.2012. The writ petition allowed. There shall be no order as to costs.

