

(2006) 10 DEL CK 0032

In the Delhi High Court

Case No : Writ Petition (C) 16026 of 2004

Sagar Enterprises P. Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 21

Citation : (2009) 93 DRJ 470

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Harish Malhotra and Tanuj Khurana, for the Appellant; Arvind Sah, for R1 and R2 and Sanjay Katyal, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The writ petitioner claims a quashing order to set aside the rejection of its application, for conversion of its property into freehold, by the impugned letter dated 13.5.2002. It also seeks an order to set aside the demand raised by letters dated 7.7.2004, issued by the Respondent Land & Development Office, (hereafter "L& DO").

2. The petitioner acquired rights in respect of the suit property, Plot No. 3-D Block No. 88, known as 10 Lady Harding Road in May 1980. The sale deed, pursuant to permission granted by the L&DO was executed on 30.6.1980. The suit property was mutated in favor of the petitioner, on 1.5.1981. It requested for permission to construct a group housing building on the suit property, by a letter dated 20.12.1985. The L&DO, after almost two years demanded an amount of Rs. 18,46,098/- (of which Rs. 3,22,624/- were on account of additional premium) towards damages for unauthorized construction or misuse charges for using the suit property, letting it out to a bank and permitting the premises to be used as a guest house. The petitioner denied its liability to pay the amounts and again requested permission for construction of group housing,

on 3.5.1988. The L&DO further persisted with its demand through letter dated 7.10.1988 but this time it granted credit/adjustment for a sum of Rs. 1.85 lakhs, paid by the petitioner as additional premium, in anticipation, to construct group housing structures.

3. The L&DO by its letter dated 17.10.1988 stated that the amounts could be cleared in 20 installments. This demand too was resisted by the petitioner through its letter dated 17.11.1988. It cited four other instances where, in the vicinity, or nearby areas, guest houses were permitted. It claimed that the portion of the premises leased to the Canara Bank were yielding only Rs. 3750/- per month and Therefore the demand for alleged misuse charges was excessive and also not maintainable.

4. The petitioner had applied for building sanction, parallel to the respondent New Delhi Municipal Committee (hereafter referred to as the "NDMC"). The approval was granted subject to the conditions indicated in the letter i.e. the NDMC permitted construction through its resolution dated 22.5.1996 and that the plans were valid till 21.5.1998. On 21.3.1997, the portion of the suit property used by the guest house was vacated and such use, ceased. The petitioner informed the L&DO about this event and that the guest house had been shut down w.e.f. 1.1.1997. In the meanwhile, the revised plan for construction of building on the plot was submitted to the NDMC which was approved on 31.3.1999.

5. The L&DO had formulated a policy for conversion of property from lease hold to free hold; the petitioner sought to take advantage under it, applied in that regard and submitted the first installment of the conversion fee on 27.11.1999. The three installments of Rs. 8,86,100/- each were paid/deposited with the L&DO.

6. It is alleged that the Respondents did not indicate their position on the petitioner's application for conversion. Consequently, the petitioner kept visiting the office of the L&DO to find out the reasons for the delay. It is alleged that the office of the L&DO informed the petitioner that a demand was pending on account of damages/misuse charges communicated by letter dated 17.10.1988 and unless the amounts claimed were deposited the application would not be considered. It is alleged that on 13.5.2002 the L&DO rejected the request for conversion stating that column No. 24 of the conversion application was left unfilled. The petitioner requested for permission to fill it up or cure any other deficiency and cited precedents where other applicants were granted opportunity to do so. Yet the L&DO did not accede to the request and by letters dated 6.6.02, 13.6.02 and 14.8.02 conveyed the decision not to retain the amounts aggregating Rs. 26,58,057/- deposited as conversion charges, and directed their refund. The petitioner returned the cheque without encashing it and reiterated its demand that the rejection of the application for conversion was not correct.

7. It is averred that when the petitioner's request for reconsideration of the

application for conversion was pending and there was correspondence between the parties, the L&DO issued a letter demanding a sum of Rs. 3,06,60181/- on account of misuse, damages, interest. It is alleged that the demand was raised after the previous demand issued on 17.10.1988 and that the petitioner was not liable to pay any amount. It is alleged in terms of the conversion policy, after the filing of the application the L&DO could not demand any amount on account of damages for unauthorized construction or due to misuse. The petitioner denied liability by its letter dated 18.5.2004. Instead of withdrawing the claim for the charges, the respondents substituted their demand with the impugned letter dated 7.7.2004, now claiming an amount of Rs. 1,79,45,453/-. The petitioner avers that this claim is arbitrary, unjustified and entirely unfounded as per the circulars and policies of the L&DO. The petitioner also alleges that the refusal to restore the application for conversion, consider it and issue appropriate orders acceding to the request is based on palpably unreasonable considerations. The petitioner further alleges that the L&DO is arbitrarily and unreasonably withholding its no objection certificate from the NDMC and that the same is needed for constructing upon the suit property.

8. The petitioner has relied upon the terms of office order No. 24/93 which, it is alleged debars the L&DO from claiming the misuse charges/damages which remain unpaid. The relevant part of the office order No. 24/93 is reproduced below:

In cases, where misuse charges/damages claimed earlier have not been paid by the lessee, such charges need not be reassessed/worked out or updated along with interest but instead the amount as per the demand raised earlier should be recovered before conversion is allowed.

9. The petitioner also relies upon the terms of office order No. 7/2003 issued by the Union Ministry of Urban Development to the effect that where minor mistakes or omissions exist in applications for conversion applicants ought to be given opportunity to carry out necessary corrections. The relevant condition namely para 2 of the said office order reads as follows:

It is necessary that a uniform policy is followed in dealing with such cases to avoid complaints and unnecessary harassment of the lessees. Therefore, it has been decided that in cases where minor mistakes are made or some columns are left blank in the conversion applications, the lessees/applicants may be given an opportunity to attend this office along with proper proof of identification for carrying out necessary corrections in the conversion applications. If the applicant does not rectify the mistakes within one month from the date of intimation of the same, the application may be rejected with the approval of Branch Officer.

10. In addition to the above, the policy of the Union Urban Development Ministry on conversion, contained in order No. J20011/12/77-LIT dated 28.6.1999, particularly clause 6 has been relied upon. The same reads as follows:

Misuse and Unauthorized Construction

It has been decided that unauthorized construction or misuse of the buildings constructed on leased premises ought to be taken care of by the NDMC/MCD/DDA, etc. under their laws/regulations. Accordingly, the lease administering authorities may permit conversion of all leased properties irrespective of any building violations or use violations that may exist.

In view of the large scale misuse of residential premises and unauthorized construction, DDA and Local Bodies should take coordinated action to deal with the situation effectively.

Respondent's pleadings

11. The L&DO alleges that the petitioner firm through Sh. V.S. Anand applied for permission to construct group Housing Building by letter dated 20.12.1985. The L & DO offered terms of constructing group housing by letter dated 31.3.1987 in accordance with its policy. Since the petitioner was liable to pay damages for unauthorized construction and misuse charges the L& DO conveyed that the request for constructing Group Housing would be considered upon payment of those charges. It was also stated "that the construction of multi storeyed group housing building will not be started until the exemption under Sections 20 & 21 of the Urban Land (Ceiling & Regulation) Act, 1976 is obtained under Municipal Bye Laws from the Local Body and got approved from the Lesser under the terms of lease deed."

12. It is alleged that in response, the petitioner requested for payment in installments, which was considered and the facility to deposit payments in installment was offered on 3.12.1987. However, the petitioner failed to comply with the terms of letter dated 31.3.1987 and was requested to make the payment by letter dated 25.4.1988, failing which action was to be taken in terms of the lease deed. As the petitioner never complied with the terms and conditions for constructing the group housing building, in spite of various opportunities given, the terms and conditions were withdrawn by letter dated 24.7.1992.

13. The L& DO submits that the petitioner, instead of complying with terms and conditions communicated by it acted in total disregard of and in violation of the law by starting construction without the issue of NOC by it. It is submitted that any issue regarding the extent of unauthorized construction or the extent of misuse of the property and consequently the quantum of the damages to be paid by the petitioner is a disputed question of fact which would require investigation and determination on the basis of evidence which can be lead only in properly instituted civil suit.

14. Under the Master Plan 2001 the petitioner secured sanction of the Respondent No. 2 by letter dated 1.8.1996 to develop the plot, but not amounting to group housing. As per Clause 12 of the sanction letter issued by the respondent No. 2, the petitioner had to get the plans approved separately under the terms of lease from the Lesser, i.e. L & DO. Clause 14 of the said letter also clearly stated that the "sanction will be void ab initio if auxiliary conditions

mentioned above are not complied." The petitioner never approached the L & DO for the approval. The letter and the sanction issued by the respondent No. 2 was Therefore void ab initio. It is submitted that the development which undertaken by the petitioner was illegal and without sanction.

15. The petitioner applied for conversion of leasehold rights into freehold right by application No. 2041 dated 24.11.1999 under the conversion policy. The application form was incomplete and not in accordance with requirements. It is submitted that in the application form, the petitioner intentionally left several columns blank, even though it was aware that there were breaches of unauthorized construction and that the L & DO had earlier demanded misuse charges and damages for unauthorized constructions which were never paid. Accordingly, the conversion application was rightly rejected by the answering respondent on 13.5.2002 and the conversion amount was also refunded to the petitioner by letters dated 6.6.2002 and 13.6.2002. It is further submitted that any contention regarding the legality of the rejection of conversion application suffers from laches and delay and is liable to be rejected. It is averred that the power of the High Court to be exercised under Article 226 of the Constitution is discretionary and its exercise must be judicious and reasonable.

16. Mr. Harish Malhotra, learned senior counsel submitted that the L&DO was unjustified in demanding misuse charges at astronomical rates, and denying the petitioner's application for conversion of the suit property into freehold. It was submitted that the L&DO's insistence on recovery of misuse charges is not justified; reliance was placed upon a judgment of this Court in *Shri Ashwni Kumar Khanna Vs. Delhi Development Authority*, where it was held as follows:

I find force in the contention of the learned Senior Counsel for the petitioner. In fact, this aspect of user of the residential premises for residence of more than one person has been considered in *R. Ramanujam's case* (supra) and *Bawa Holiday Home's case* (supra). It has been held that character of the residential lease does not change and remains residential. It may also be noticed that it would make no difference to the residential use merely by reason of the fact that instead of the owner running the guest house himself, it is the tenant running the same. It is the user which is the relevant and not who runs the guest house. It may also be noticed that in the judgments in question, it is the tenant who was running the guest house. Insofar as plea of the respondent in this behalf is concerned, the same is based on a letter issued to one of the persons and which has been filed along with the rejoinder of the petitioner. However, different letters have also been placed on record with the rejoinder where there is no such restriction. There are restrictions in terms of the number of uses, the number of rooms used and the number of guests in a room. The common thread, however, which runs through them is that no restaurant or eating place could be open except to the occupants of the building. The judgments mentioned above have also considered this aspect and came to the conclusion that it is only when non-residents are permitted use of restaurant and eating place, the user becomes a

commercial user.

Once the Master Plan itself prescribes the residential user as residences, hotels and boarding houses, this provision cannot be watered down. I am also unable to appreciate the contention of the learned Counsel for the respondent that the guest house should be a part of the approved lay-out plan or some special permission should be obtained when it is a permissible residential user. Even if there is a requirement of seeking permission for running the guest house, running of the same without such permission cannot convert the user from "residential" to "commercial".

17. Learned Counsel also relied upon Para/ clause 6 of the circular order No. J20011/12/77-LIT dated 28.6.1999, to say that existence of any unauthorized construction did not inhibit processing of applications for conversion into freehold property, and that the respondents were bound to grant the request. Learned Counsel also relied upon office order No. 7/2003 to say that the petitioner could not be denied the opportunity to rectify the omission or mistake, in filling the form.

18. Counsel submitted that the respondent could not have calculated fresh amounts as interest, and/ misuse or unauthorized construction charges, in view of the application having been lodged. He relied upon Order No. 24/93, which empowered the respondents to recover unpaid charges, but not update them.

19. Learned Counsel lastly contended that the determination that the premises were being misused, is not only an error, but contrary to law, and judgments of the court. He said that the police authorities had granted license for using the premises as guest house. He relied on the judgment of this Court in *Vikramjit Kapoor v. Union of India* (WP No. 2004/1997, decided on 17-1-2006) where, after considering the decision in *Ashwini Kumar's* case, and the judgment in *Savitri Devi v. A.M. Bose* 1972 RCJ 815, as well as the judgment of the Supreme Court in *N.D.M.C. Vs. Sohan Lal Sachdev* (Dead) Represented by Mrs. Hirinder Sachdev, , held that use of guest houses was not prohibited as per provisions of the Delhi Master Plan and that there was no impediment in granting the request for conversion of property into freehold.

20. Mr. Sanjay Katyal, learned Counsel for the L&DO defended rejection of the application for conversion, and also the demand made for Rs. 1.79 crores. He submitted that the petitioner had no doubt filed the application for conversion in 1999; however, it did not make a grievance of the rejection, and waited for almost three years in approaching the court. He submitted that this amounted to delay and defeated its right to question the rejection. On the merits, it was submitted that the non-disclosure about the pending misuse charges, and the submission of an incomplete form led to its rejection. He submitted that the petitioner did not fill up the relevant column. The information sought was not as innocuous as was made out. The petitioner was seeking valuable right of conversion of its property; Therefore, it had to disclose all the relevant

information.

21. Learned Counsel submitted that the impugned demand was perfectly justified, as it was issued after the rejection. It was submitted that the petitioner never cared to clear the dues, even after being extended the benefit or facility of payment through 20 installments. Under these circumstances the petitioner could not make a grievance, having slept over the matter, for more than a decade. He also submitted that a notice was issued in 1992, outlining the misuse and other irregularities.

22. Learned Counsel submitted that the petitioner could always apply afresh under the new policy, formulated in June 2003. However, as per the latest policy, under clause 11, the benefit of freehold could be granted subject to payment of misuse charges, whether previously demanded or not.

23. The first question is whether the stand of the respondents in rejecting the application of the petitioner as not being filled in all particulars is correct. The terms of the Office order No. 7 of 2003, as far as the relevant part is concerned, reads as follows:

it has been decided that in cases where minor mistakes are made or some columns are left blank in the conversion applications, the lessees/applicants may be given an opportunity to attend this office Along with proper proof of identification for carrying out necessary corrections in the conversion applications.

24. The above condition shows that the L&DO was of the view that where minor mistakes were committed in conversion applications, or where some columns were left blank, the applicants ought to be given an opportunity to attend the office along with proper proof of identification to carry out necessary correction. This order, in my opinion, negates the stand of the respondent that only minor mistakes or omissions could be corrected. The reference to blank columns is not only in relation to minor deficiencies. Besides, the respondents, in every case, are bound to examine the file relating to the property while granting or refusing the request for conversion. In these circumstances, the position of the L&DO that the application had to be rejected, is unacceptable. The respondent was duty bound to give effect to the Office Order, and grant opportunity to the petitioner to correct or fill in the particulars in, the form.

25. As to use of the property, it in my opinion, could not be termed as "misuse" in the light of the law declared by the Supreme Court, and the view taken consistently in two judgments, i.e. Ashwini Kumar's case and Vikramjit Kapoor's case (supra). The petitioner had, besides, obtained license from the concerned authorities for carrying on the activity of guest house.

26. The petitioner has relied upon the office order No. 24/93 to say that where misuse charges/damages claimed earlier were not paid by the lessee, such charges need not be reassessed/worked out or updated along with interest but instead the amount as per the demand raised earlier should be recovered before

conversion is allowed. There is no denial in the counter affidavit of the averments relating to this Office order. Further, the L&DO has also not denied that the use of the premises as guest house ceased in 1997, much before presentation of the conversion request. In these circumstances, there is no Explanation as to why the charges sought to be recovered in 1987, were not insisted upon till the petitioner applied for conversion. Indeed, apart from the demand, no Explanation is also forthcoming as to how such large sums of money are sought to be recovered, without the respondents having taken any action to enforce their rights under the lease deed. Therefore, the petitioner is justified in its grievance that the respondents have used the occasion of its request for conversion, to extract amounts.

27. The above conclusions, however do not lead to the relief as claimed by the petitioner being automatically granted. The petitioner admittedly was asked to pay amounts, in 1987; it was even given the facility of installment payment. The basis of that levy was not challenged at that time. It is one thing to say that extra, or "updated" amounts cannot be recovered, after submission of the conversion application; it is another thing altogether to submit, as the petitioner is seeking to do now, that it has no liability to pay the amount. The demands were not challenged all this while; the petitioner's main grievance is that interest, and higher amounts cannot be recovered now, after submission of the conversion application. In these circumstances, the petitioner ought to have paid the amount demanded as per the letter dated 31.12.1987, less the adjustments granted by L&DO on 7-10-1988, within the time granted, i. e. in 20 Installments. I am, Therefore, of the view that such amounts have to be paid together with interest at 15% from 1-11-1988 till the date of submission of the application for conversion.

28. In the light of the foregoing discussion, subject to the petitioner paying the balance amounts as demanded by the letter dated 31-12-1987, after giving the adjustments towards the amounts paid, and its paying further amounts as interests, as per the preceding paragraph, the L&DO shall process the application submitted in 1999 and issue appropriate orders of conversion, within 8 weeks of receipt of the amounts. The L&DO shall also issue the necessary No objection certificate, for the construction subject to other provisions of law, unconnected with the issue of recovery of charges towards damages, as claimed by it. The certificate shall be issued within 10 weeks.

29. The writ petition is allowed in the above terms. No costs.