

(2012) 11 DEL CK 0240

In the Delhi High Court

Case No : Writ Petition (C) No. 3464 of 2010

Sanjeev K. Bhatia

APPELLANT

Vs

Govt. of NCT of Delhi and Another

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 265

Citation : (2012) 10 AD 149 : (2013) 1 ILR Delhi 609

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Tarun Sharma, for the Appellant; Sandeep Aggarwal and Mr. K.A. Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J.—The petitioner, in this case has been seeking the transfer of the land in issue, being plot no. A-131, situate at Narela Industrial Complex, Narela, Delhi-110 040 admeasuring 350 sq.mtrs. (in short the plot) in the records of respondent no. 2, and consequent execution of a lease deed in its favour, since June, 2001. The petitioner has already approached this court twice, once by way of a writ petition, and the second time, by way of a contempt petition. Respondent no. 2, which is the main contesting respondent, has shown in this case, as the facts narrated hereinafter would disclose, a complete inability to convey to the petitioner as to what are the exact charges he is required to pay.

1.1 The plot in issue has been transferred three times over. The petitioner acquired ownership of the plot when it was sold the third time around. Respondent no. 2 had, at one stage, conveyed to the petitioner that he was required to pay a sum of Rs. 73,02,291/- towards unearned increase vis-a-vis all three transfers which, had taken place qua the plot. This figure was scaled down to Rs. 15,15,693/-, and thereafter, brought down to a further sum of Rs. 6,79,700/- in respect of charges towards unearned increase. In addition, a sum of Rs. 14,22,250/- was sought to be imposed towards interest, calculated upto

28.04.2010. As of now, though, respondent no. 2 is seeking to charge Rs. 11,80,200/- towards unearned increase charges, in addition to interest amounting Rs. 1,70,556/-.

1.2. The aforesaid synoptic view of the matter, is given, to bring to fore the inability of respondent no. 2 to firm up its position on the issue.

With the aforesaid preface in place, let me give a brief background as to how the present writ petition came to be filed in this court.

1.3 The plot in issue, was provisionally allotted on 07.09.1990, to one Sh. Man Bhawan Singh Jain, by respondent no. 2. This allotment was made under a Development Scheme, which required establishment of an industrial park. Sh. Man Bhawan Singh Jain, was handed over possession of the said plot on 23.02.1992.

1.4 On 18.04.1994, Sh. Man Bhawan Singh Jain sold the said plot, to one, M/s. J.M. Sons, for a sum of Rs. 3,25,000/-. M/s. J.M. Sons, in turn, sold the said plot, on 07.08.1996, to one Satinder Pal Bhatia, for a sum of Rs. 3,70,000/-.

1.5 Mr. Satinder Pal Bhatia, who is the father of the present petitioner, sold the said plot, to the petitioner, on 12.06.2001, for a consideration of Rs. 3,90,000/-.

1.6 The petitioner, immediately thereafter, vide letter dated 25.06.2001, approached respondent no. 2, with a request to effect the change in ownership, and convey the charges, if any, he was required to pay, in that behalf. The said letter evidently was followed by several other letters dated 12.08.2002, 19.04.2005, 07.06.2005, 19.04.2006 and 07.08.2007.

1.7 Evidently, respondent no. 2 made no attempt to comply the request made by the petitioner. In the meanwhile, the petitioner built a factory shed, on the said plot. Consequent thereto, on 27.05.2005, the petitioner got sanctioned, an industrial electricity connection from the North Delhi Power Limited (NDPL), vide demand note no. 89734. Similarly, the Municipal Corporation of Delhi (MCD), in its records, has, it appears, mutated the super structure built on the said plot, in favour of the petitioner. As a matter of fact, the MCD has also assessed, as on 31.03.2006, the built up area qua the super structure erected on the said plot for the purpose of payment of property tax.

1.8 The petitioner, claims that he paid, what according to him, were the requisite dues payable, in the present case, and also, deposited with respondent no. 2, true copies of the original title documents alongwith an undertaking to pay applicable unearned increase charges.

1.9 In view of what, the petitioner claims, was a case of deliberate procrastination by respondent no. 2 (in not responding to its request for effecting transfer and conveying the charges to be paid in that regard), the petitioner, having been left with no choice, approached this court by way of writ petition, under Article 226 of the Constitution of India. This writ petition was numbered as

WP(C) 6841/2007. A single Judge of this court, vide order dated 21.01.2008, disposed of the writ petition, with a direction to respondent no. 2, to consider the request of the petitioner, in accordance with applicable policy, subject to the petitioner depositing all lawful charges. Respondent no. 2, was required to do the needful within four weeks, and similarly, the petitioner was required to pay the requisite charges within the same time period. On payment of charges and removal of objection, the said respondent was required to pass orders within four weeks, which was required to be communicated in writing to the petitioner. In case, the petitioner was aggrieved by the order eventually passed, he was given liberty to challenge the said order in accordance with law.

1.10 On 04.02.2010, the petitioner had to write to the respondents to comply with the order of this court dated 21.01.2008. It is claimed by the petitioner that even though the concerned officer of respondent no. 1, requisitioned the file pertaining to the plot in issue, on 08.02.2008, no orders were passed for reasons best known to the respondents.

1.11 Respondent no. 2, however, claimed that it had issued a letter dated 12.03.2008, to the petitioner, (though, the said letter, has not been placed on record) whereby, it evidently communicated to the petitioner that, based on the policy in vogue, the petitioner will have to pay for a single transfer a sum of Rs. 24,34,097/- (as on 31.03.2009), and since, the petitioner was the third transferee, he was required to pay three times the amount; which was quantified, as Rs. 73,02,291/-.

2. The petitioner, in these circumstances, approached this court for the second time; albeit by way of a contempt petition, on 02.04.2008. The petition was registered as : Cont. Cas (C) 207/2008.

2.1 Evidently, while the contempt petition was pending, respondent no. 2 issued yet another communication dated 13.05.2008, to the petitioner, which was in response to the letter of the petitioner dated 13.04.2008. It is in this letter that, a reference was made by respondent no. 2, to its earlier letter dated 12.03.2008. There was also a reference to the fact that, a legal notice had been issued on behalf of the original allottee Sh. Man Bhawan Singh Jain, and that, no reply had been received from the petitioner, despite the same being forwarded to him.

2.2 In the contempt petition, on 19.01.2010, a single Judge of this Court directed the respondents to transfer the plot in issue, in terms of order dated 21.01.2008 within four weeks, failing which respondent shall "lose all revenue" and it shall, be deemed the plot in issue is owned by the petitioner.

2.3 It is pertinent to note that respondent no. 2, sought to explain the delay by trotting up the excuse that, the original allottee, had raised a dispute by issuing them a legal notice, in 2008. This court, however, brushed aside the said ground taken by respondent no. 2, and went on to observe that, no cognizance of a notice issued in 2008 by a person who had been allotted a plot in issue in 1992, could be taken. The learned Judge observed that, a mere issuance of a notice in

2008, would not result in creation of any right in favour of the original allottee.

2.4 Respondent no. 2, evidently, was not sure of the unearned increase charges conveyed by it to the petitioner, and therefore, the issue was revisited at the meeting of the Industrial Land Management Advisory Committee (in short Committee), held on 15.02.2010. The minutes of the meeting dated 16.02.2010, would show that, apparently, the petitioner was called to the meeting.

2.5 The minutes also show that, respondent no. 2 recognized the fact that, the petitioner had, intimated to it, the factum of the plot in issue, being transferred to his name on 25.06.2001. The minutes, also record the fact that, the demand letter conveying the charges payable by the petitioner, to effect the transfer of the plot to his name, could not be intimated, because of the purported dispute raised by the original allottee. Having regard to the orders of this court passed on 21.01.2008 and 19.01.2010, the respondent no. 2 recognized the fact that, qua plot in issue its record had to reflect the name of the petitioner as the transferee.

2.6 Based on the recognition of the fact that, three transfers had taken place after the original allotment in 1992 (i.e., on 18.04.1994, 07.08.1996 and thereafter, in favour of the petitioner on 12.06.1996), a decision qua charges to be levied was taken in the following terms:-

..After the sales/transactions as per the respective date/year of execution of the sale, i.e., April, 1994, August, 1996 and June, 2001 as per provision of Land Management Guidelines. Further, regularization charges for late intimation will be applicable as per clause 2(iii) with of Land Management Guidelines with regard to first and second sale, till June, 2001 i.e., when the present applicant intimated the transaction. Subject to the payment of the UEI charges and any other dues as payable in accordance with policy, the branch concerned may process the case for change of constitution in terms of the High Court order today itself...

2.7 Evidently, pursuant to the aforesaid decision taken at the meeting of the committee, a communication was sent to the petitioner, on the very date when, the aforesaid meeting was held i.e., on 15.02.2010. In the said communication, the petitioner was informed that the recommendations of the committee were being put up before the competent authority for approval and, therefore in the meanwhile, he should deposit Rs. 79,594/- towards other charges; the details of which were provided in the said communication.

2.8 A formal communication, with regard to the transfer charges payable by the petitioner, pursuant to the decision taken at the aforementioned meeting of the Committee, was sent, on 02.03.2010. The petitioner, was directed to deposit a sum of Rs. 15,15,693/-. The amount, was directed to be paid within a period of 30 days from the date of issuance of the said communication; failing which, interest at the rate of 18% p.a. was to be charged.

2.9 The petitioner, appears to have asked for a break-up of the transfer charges,

quantified at Rs. 15,15,693/- vide communication dated 25.03.2010. Respondent no. 2, evidently, vide letter dated 29.03.2010, sent a communication enclosing therewith a break-up of the charges demanded of the petitioner. It is important to detail out the break-up, as it would assist in appreciating, why and how the final conclusion is arrived at in this case by me:-

2.10 Importantly, it would be noted that, both communication dated 02.03.2010 and 29.03.2010 was issued by, one, Mr. V.K. Bhatia, Divisional Manager (Narela); an officer of respondent no. 2. Respondent no. 2, followed the aforesaid communication with yet another communication dated 16.04.2010, calling upon the petitioner to pay the said transfer charges as per its earlier communication dated 02.03.2010.

3. The petitioner, by a letter dated 23.04.2010, made a grievance to respondent no. 2, qua the quantification of the transfer charges. The petitioner, conveyed to respondent no. 2 that, the charges were exorbitant and unreasonable, and that, he was willing to pay the transfer charges, in accordance with the applicable rules and guidelines, as indicated in the judgment of this court dated 15.09.2004, passed in WP (C) 3087/2003. A copy of the judgment in that case, was annexed to the said letter. It would be important to note that, evidently, in the said case, respondent no. 2 had conceded that, transfer charges were not leviable on each sale, and that, 50% of the unearned increase was payable, based on the difference in the value of the plot on the date on which the premium was first paid, and the date of transfer. It was also observed in said case that since, as per the policy letter of 27.09.2001 rates had been enhanced, the enhanced rates would be charged and paid; albeit on a single transfer basis.

3.1 However, the aforesaid communication of the petitioner yielded no result, and consequently on, 28.04.2010, respondent no. 2 communicated the impugned demand to the petitioner vide demand notice of even date. The impugned demand letter was also issued, pertinently, by Mr. V.K. Bhatia, Divisional Manager (Narela).

3.2 In the meanwhile, Contempt Case (C) No. 207/2008, came up for hearing before a Single Judge of this court, on 04.05.2010. Having regard to the fact that a formal demand letter was issued to the petitioner on 28.04.2010, the petitioner chose to withdraw the contempt petition, and assail, the demand made, by way of an appropriate remedy.

4. It is in this background that the petitioner has filed the present writ petition.

4.1 On the very first date, i.e., 20.05.2010, when the writ petition was moved in this court, the impugned letter dated 28.04.2010 was stayed subject to the petitioner depositing Rs. 6,79,700/- which, he admitted, as the amount which was payable by him towards transfer charges.

4.2 Thereafter, the matter was listed from time to time. The material date being : 06.08.2012. On 06.08.2012, when the matter was heard by me, the

stand of the parties was recorded. On that date, I was shown a copy of the letter dated 13.12.2010 issued by Mr. V.K. Bhatia, Divisional Manager (Narela) (to whom I have made a reference above) wherein, it was indicated that having regard to the policy contained in circular dated 05.10.2010, the "total UEI charges" in the petitioner's case worked out to a sum of "Rs. 21,01,950/-" out of which "Rs. 6,79,000/-" having already been paid by him, he was required to pay, a balance sum of Rs. 14,22,250/-. With this letter, a calculation sheet, showing a break-up of the revised dues, was also appended. The contents of the calculation sheet are as follows:-

4.3 In so far as, the petitioner was concerned, his counsel took the stand before me that, having paid the principal amount demanded i.e. Rs. 6,79,700/-, which was obviously towards unearned increase charges, the only issue which survived was the payment of interest. The interest, as per communication dated 13.12.2010, was quantified at Rs. 14,22,250/-. The petitioner's counsel submitted that the petitioner would be liable to pay interest, for the period 07.08.1996 to 25.06.2001, since no intimation with regard to second sale had been issued to respondent no. 2.

4.4 It is in this background that on 06.08.2012, Respondent no. 2, was directed by me, to file an affidavit bearing in mind the dates of intimation given at page 12 of the writ petition, in particular, with regard to intimation of first sale (which was transacted between Sh. Man Bhawan Singh Jain and M/s. J.M. Sons). A reference in this regard was made to letter dated 24.11.1994 (sic 24.10.1994), in my order of 06.08.2012.

4.5 It may also be noted that in the first paragraph of my order, there is an inadvertent reference to the fact that demand, in the impugned letter, towards unearned increase charges was Rs. 21,01,950/-. To be noted, as indicated above, in the impugned letter the demand raised, towards unearned increase charges is Rs. 15,15,693/- which, by the letter of 13.12.2010 (qua unearned increase charges) was brought down to Rs. 6,79,000/- (To be noted, as per the table annexed to the said letter the figure apparently ought to be Rs. 6,79,700/-). As noticed above, the figure of Rs. 21,01,950/- was in fact : referred to in the letter of 13.12.2010. The said demand of Rs. 21,01,950/- was inclusive of unearned increase charges of Rs. 6,79,700/- and interest amounting to Rs. 14,22,250/-.

4.6. In accordance with the aforementioned directions, contained in my order of 06.08.2012, respondent no. 2 filed an additional affidavit on 29.08.2012. After detailing out the history of the case, in paragraphs 3(k), 4 and 5 of its affidavit, it accepted the fact that, the concerned Divisional Manager (who as pointed out earlier was, Sh. V.K. Bhatia) had conveyed through two letters, one dated 03.12.2010, and the other, dated 13.12.2010 (to which I have already made a reference above) that, the total charges demanded of the petitioner was a sum of Rs. 21,01,950/- which included unearned increase charges of Rs. 6,79,700/- and interest quantified at Rs. 14,22,250/- calculated upto 28.04.2010.

4.7. In the very same affidavit, it is averred that letters dated 03.12.2010 and 13.12.2010, were issued by the said Divisional Manager Mr. V.K. Bhatia, without formal approval of the Management; specially since the matter was pending before the court. It is also averred that, it was a clear case of "negligence" on his part.

4.8 It is, however, admitted in the affidavit that, the said letters are, on the record of respondent no. 2, though there is no noting on the file that the said Divisional Manager, was authorised to issue, the aforementioned letters. It is further averred that, after considering the matter, the management had decided to withdraw the letters dated 03.12.2010 and 13.12.2010.

4.9 It is, however, conveyed by the very same affidavit that since, it has now come to light that, respondent no. 2 had intimation of the first sale, the amount charged towards regularization charges/interest is scaled down to Rs. 1,70,556/-.

5. In effect, against the total amount of Rs. 15,15,693/- which included Rs. 11,80,200/- towards unearned increase and Rs. 3,35,493/- towards interest was now pegged at Rs. 13,50,756/-, which included Rs. 11,80,200/- towards unearned increase charges and Rs. 1,70,556/- towards regularization charges/interest.

5.1 Therefore, according to respondent no. 2, since the petitioner had already paid a sum of Rs. 6,79,700/-, after adjusting the said sum from the total charges, quantified at Rs. 13,50,756/-, he was liable to pay a sum of Rs. 6,71,056/-. The latest calculations appended to the affidavit dated 29.08.2012 are as follows:-

SUBMISSIONS OF COUNSELS

6. In the background of the aforesaid facts, the learned counsel for the petitioner submitted that, all that the petitioner was required to pay, if at all, was the money towards unearned increase charges which, as per respondent no. 2's own communications of 03.12.2010 and 13.02.2010, stood quantified at Rs. 6,79,700/-.

6.1 The learned counsel further submitted that the petitioner, if at all was liable to pay interest for the period 07.08.1996 till 25.06.2001 i.e., for the second sale. It is submitted that, in so far as, the first and third sales are concerned, admittedly respondent no. 2, as it now transpires was aware of the same. Special emphasis was laid by the learned counsel for the petitioner on the judgment of a single Judge of this court dated 15.09.2004, passed in WP(C) 3087/2003. It was contended by the learned counsel for the petitioner that, respondent no. 2 could not have imposed unearned increase charges, on each sale, as was sought to be done. This according to the petitioner amounted to unjust enrichment.

6.2 As a matter of fact, in the writ petition, though grounds have been taken to challenge the imposition of unearned increase, as being violative of Article 265 of the Constitution of India and a reference in this behalf is made to other

concomitant articles and entry 49 in list II of Schedule VII; during the course of the arguments, it was limited to calculation of appropriate unearned increase payable by the petitioner and appropriate interest/regularization charges.

7. On the other hand, the learned counsel for the respondent no. 2 addressed arguments based on the pleadings filed before the court by the said respondent. In particular, reliance was placed on the averments made in the latest affidavit dated 29.08.2012. In sum and substance, it was argued by learned counsel for respondent no. 2 that, transfer could be effected in favour of the petitioner if, he were to pay the balance sum of Rs. 6,71,056/- to respondent no. 2.

REASONS

8. Having heard the learned counsels for parties and perused the record at great length, according to me the following aspects emerge in the present case:-

8.1. Respondent no. 2 had, in the first instance, vide letter dated 12.03.2008 communicated to the petitioner that he would be liable to pay Rs. 24,34,097/-, (as on 31.03.2009), for each transfer. Since there were three sale transactions involved, he would have to pay three (3) times the amount i.e., Rs. 73,02,291/- besides other amounts. This stand was reiterated in respondent no. 2's letter of 13.05.2008.

8.2. After the meeting of the Committee of 15.02.2010, respondent no. 2 drastically scaled down its demand from Rs. 73,02,291/- to Rs. 15,15,693/-. A break-up of the transfer charges of Rs. 15,15,693/- was supplied to the petitioner vide letter dated 29.03.2010. The details furnished by the petitioner showed that, respondent no. 2 intended to collect a sum of Rs. 11,80,200/- towards unearned increase charges, in addition to, Rs. 3,35,493/- towards interest/regularization charges.

8.3. Respondent no. 2, evidently was, wanting to collect charges towards unearned increase in terms of a policy letter dated 27.09.2001. What is required to be noticed is that, all three sale transactions took place prior to 27.09.2001. The last sale transaction, in favour of the petitioner, took place on 12.06.2001. This stand of respondent no. 2 is demonstrable from the impugned demand letter of 28.04.2010.

8.4. The demand letter of 28.04.2010, was issued by Sh. V.K. Bhatia, Divisional Manager (Narela), an officer of respondent no. 2.

8.5. The very same Divisional Manager i.e., Sh. V.K. Bhatia, admittedly issued the two letters dated 03.12.2010 and 13.12.2010 whereby, while scaling down the demand for unearned increase from Rs. 11,80,200/- to Rs. 6,79,700/-, he increased the interest/regularization charges to Rs. 14,22,250/-.

8.6. It is admitted in the affidavit filed on 29.08.2012, on behalf of respondent no. 2 that, these letters are on record of respondent no. 2. Respondent no. 2, however, has taken the stand that the said letters were issued without the

approval of the Management, specially in the circumstances that the matter was sub-judice. It was further contended that a decision was taken to withdraw the said letters. There is no averment whatsoever in the said affidavit as to when such a decision was taken to withdraw the said letters, and as to whether, the same was communicated to the petitioner. There is an eloquent silence, in the affidavit of respondent no. 2, on this aspect of the matter. By the very same affidavit, the respondent no. 2 has reverted to the position of 29.03.2010; albeit with a further modification. While the unearned increase charges have been maintained at Rs. 11,80,200/-, the interest/regularization charges have been scaled down in favour of the petitioner, from Rs. 3,35,493/- to Rs. 1,70,556/-.

8.7. Finally, the record also shows that, the petitioner's reliance on the judgment of this court dated 15.09.2004 passed in WP(C) 3087/2003 may not help his cause as respondent no. 2 had filed an appeal being : LPA No. 1047/2006 wherein, the Division Bench disposed of the appeal without examining the issue as to whether respondent no. 2 had made a concession before the learned Single Judge, in view of the fact that, the judgment of the learned Single Judge had already been implemented. The Division Bench, confined the judgment of the learned Single Judge to the facts and circumstances of that case, without it being held as a binding precedent, in other matters.

9. In view of the above, I have no doubt in mind that, respondent no. 2, will have to be held to the figure of unearned increase charges as communicated by Sh. V.K. Bhatia, Divisional Manager (Narela). The said officer has all along communicated with the petitioner; he was, as a matter of fact, instrumental in issuing letters dated 02.03.2010, 29.03.2010 and 16.04.2010, as also the impugned demand dated 28.04.2010.

9.1 The petitioner, therefore, was entitled to believe that, Sh. V.K. Bhatia had the ostensible authority to convey to him what were the charges payable by him towards unearned increase. Apart from this what is pertinent to note, is that, Mr. V.K. Bhatia has not apparently conjured up the figure but has placed reliance on respondent no. 2's policy circular of 05.10.2010. There is nothing disclosed in the affidavit of 29.08.2012 which would show as to why the figure of Rs. 6,79,700/-, calculated by Sh. V.K. Bhatia, towards unearned increase charges was incorrect, and that, the correct amount towards the unearned increase charges ought to have been Rs. 11,80,200/-. Where, admittedly, Sh. V.K. Bhatia went wrong though, was in, in calculating regularization/interest charges. Mr. V.K. Bhatia, overlooked the fact respondent no. 2 had knowledge qua the first sale and the third sale. Therefore, as acknowledged by respondent no. 2, the figure of regularization charges/interest was wrongly calculated in its record. What is, however, disconcerting is that respondent no. 2 kept back these facts, till such time it was directed to file an affidavit by me. State and its instrumentalities are not, in the pure sense, adversarial litigants. They have a far greater onus, to place on record all facts as appearing on record, however, inconvenient and unpalatable they may be. This was not how respondent no. 2,

approached the matter in the present case.

9.2. Apart from the above, even otherwise, I find there is merit in the contention of the petitioner that if, the impugned demand of 28.04.2010, was based on the policy letter of 27.09.2001, how could it be given effect qua transactions in which the petitioner was not involved, being the third purchaser in the entire chain of sale and purchase effected vis-a-vis the plot in issue. However, this aspect need not detain me, in view of the fact that, the petitioner has already agreed to pay unearned increase charges to the extent of Rs. 6,79,700/-.

9.3 Thus, having regard to the fact that, the petitioner has also agreed to pay regularization/interest charges for the period 07.08.1996 till June, 2001 which, respondent no. 2 has calculated at Rs. 1,70,556/-, all that the petitioner can be called upon to pay is the said amount. Accordingly, the demand letter dated 28.04.2010 is quashed. Respondent no. 2, is directed to effect transfer of the plot in issue, in the name of the petitioner, in its record, on the petitioner paying a sum of Rs. 1,70,556/- to respondent no. 2 towards regularization charges/interest within a period of two weeks from today.

9.4 Respondent no. 2 is also directed to execute a lease deed, in favour of the petitioner qua the plot in issue, on payment of the aforementioned amount and fulfillment of other formalities. Respondent no. 2 shall do the needful, within two weeks, of the petitioner fulfilling the requisite formalities.

10. In addition, respondent no. 2 is directed to pay a sum of Rs. 20,000/- towards costs to the petitioner. The cost shall be paid within one week from today. The writ petition is disposed of, in the aforesaid terms.