
(2010) 12 DEL CK 0193

In the Delhi High Court

Case No : Writ Petition (C) No. 17855 of 2004

Sh. Subhash Chander Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Citation : (2010) 12 DEL CK 0193

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Madan Gera, for the Appellant; Nitin Kapur, for Himanshu Upadhyay, for MCD, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The father of the Petitioner was the perpetual lessee under the Respondent No. 2 Land & Development Office (L&DO) with respect to the land admeasuring 3302 sq. ft. situated at Plot No. 33-34, Block No. 80 known as 65-67, Panchkuiyan Road, New Delhi. Upon the demise of the father of the Petitioner, the name of the Petitioner and his mother Smt. Bhagwati Devi was substituted as perpetual lessee with respect to the aforesaid plot of land. It is the claim of the Petitioner that his mother Smt. Bhagwati Devi executed registered Relinquishment Deed and relinquished all her rights and title in the said leasehold and the construction thereon in favour of the Petitioner. The Petitioner applied for mutation for recording his name as sole perpetual lessee and for deletion of the name of his mother as perpetual lessee. The Petitioner also applied for conversion of the leasehold rights in the land into freehold in accordance with the Policy introduced by the Respondent No. 1 and deposited conversion charges with the Respondent No. 2 L&DO. However the said conversion was not processed, according to the Petitioner for the reason of the claim of the Respondent No. 2 L&DO for damages for alleged unauthorized construction on the land. This writ petition was filed contending that the claim of the Respondent No. 2 L&DO for damages for alleged unauthorized construction

was not tenable as also held by this Court in *Jor Bagh Association (Regd.) v. Union of India* (2004) 112 DLT 690 and seeking a direction to the Respondents to convert the leasehold rights in the land underneath the property to freehold and for mutation of the property in the sole name of the Petitioner.

2. Notice of the writ petition was issued. The Respondent No. 2 L&DO during the hearing of the writ petition vide letter/memorandum dated 14th February, 2005 carried out the mutation in the sole name of the Petitioner. The petition insofar as the said relief was claimed thus stands satisfied.

3. The Respondent No. 2 L&DO however filed a counter affidavit averring that the Petitioner/his predecessor for the reason of having raised unauthorized construction on the plot of land were in breach of lease conditions; that on account thereof the lease of the land was at one time re-entered but upon the Petitioner paying the regularization charges till then, and undertaking to remove the breaches and to pay the regularization charges till the date of removal of breaches, the re-entry was withdrawn; that the Petitioner/his predecessor had however neither removed the breaches nor paid further regularization charges and thus were not entitled to conversion of leasehold right into freehold. Along with counter affidavit copies of the letters issued from time to time demanding temporary regularization charges were annexed.

4. The Respondent No. 2 L&DO during the pendency of the writ petition, vide letter dated 25th October, 2005 also rejected the application of the Petitioner for freehold conversion and refunded the charges therefore deposited by the Petitioner.

5. CM No. 15315/2005 was moved by the Petitioner in this regard for stay of said rejection. This Court vide order dated 12th December, 2005 restrained the Respondent No. 2 L&DO from cancelling the perpetual lease deed and made the rejection of the application for conversion to freehold subject to further orders in this writ petition.

6. The counsel for the Petitioner on 8th May, 2006 informed that the Panchkuiyan Road Market has been transferred from the L&DO for management and control to MCD and the issue of conversion to freehold was also required to be considered by the MCD. On oral request of the counsel for the Petitioner, MCD was also impleaded as Respondent No. 3 to this writ petition.

7. The Petitioner thereafter applied for amendment of the writ petition to also seek the relief of impugning the rejection of the application for freehold conversion and for declaration that the demand for regularization charges of the alleged breaches and on the basis whereof freehold conversion was being withheld is illegal. The said amendment was allowed on 18th January, 2007 and counter affidavit to the amendment writ petition was filed by the Respondent No. 3 MCD but the contents whereof are more or less the same as that of the counter affidavit earlier filed by the Respondent No. 2 L&DO. Rejoinder thereto has been filed by the Petitioner.

8. The petition thereafter though was listed for final hearing, was being adjourned from time to time for the reason of judgment of Single Judge Bench in Jor Bagh Association (supra) pending consideration in an Intra Court Appeal before the Division Bench of this Court. The counsel for the Petitioner on 6th July, 2010 contended that there was no stay by the Division Bench in the appeal aforesaid; that in a number of other cases, other Single Bench Judges of this Court have been following the judgment in Jor Bagh Association have struck down such demands and directed freehold conversion. He thus sought hearing of this writ petition without waiting for the decision of the Division Bench in appeal (supra). As such on 24th September, 2010 it was made clear that the writ petition shall be heard.

9. The counsel for the Respondent No. 3 MCD today admits that the question entailed in the present writ petition is the same which has been decided in favour of the perpetual lessee by a Single Bench of this Court in Jor Bagh Association (supra) and stated that he will prefer an appeal against the judgment in the present writ petition also if allowing the claim of the Petitioner.

10. This Bench, not disagreeing with the view taken in the Jor Bagh Association is of the opinion that the present writ petition ought not be kept pending. The Respondent if aggrieved from the decision would have the remedy of appeal and rather it is expedient that the Division Bench while considering the matter, considers the facets arising in different matters/contexts.

11. It is not the case of the Respondents that the perpetual lease in the present case is different from the perpetual lease under consideration in Jor Bagh Association. In the said judgment it was held that the terms and conditions of the perpetual lease do not provide for imposition of any charges by the superior lessor for temporary regularization of the alleged unauthorized construction; the said demand was accordingly quashed.

12. The same is the position here also. The perpetual lease does not provide for recovery of the damages on account of demand whereof the conversion of leasehold rights into freehold has been rejected.

13. The counsel for the Petitioner has also referred to the judgment dated 19th November, 2004 in titled Onkar Nath v. Union of India W.P.(C) No. 2504/1993 in which following Jor Bagh Association (supra) similar demand was quashed.

14. Accordingly the present writ petition is allowed; it is held that the L&DO/MCD is not entitled to recover any damages/regularization charges on account of alleged unauthorized construction over the land; the said demands are quashed; consequently, the rejection dated 25th October, 2005 of freehold conversion is also held to be bad and the Respondents are now directed to consider the application earlier filed by the Petitioner for freehold conversion de hors the claim for damages/regularization charges which have been quashed and subject to the Petitioner complying with other formalities, convert the leasehold rights in the land underneath into freehold on or before 31st March, 2011.

15. Though the Respondents, inspite of judgment of this Court having contested the writ petition are liable for costs of these proceedings also but I refrain from imposing any costs.