
(2002) 10 DEL CK 0041
In the Delhi High Court
Case No : CW No. 2136 of 2001

Shri Amar Nath Uthra

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Government Grants Act, 1895 — Section 3

Citation : (2002) 10 DEL CK 0041

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : P. Chakraborty, for the Appellant; Anil Sapra, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioner has filed the present writ petition seeking quashing of the impugned public notice dated 13.3.2001 threatening to cancel the allotment if no building is constructed by the allottees of warehousing plots before 30.6.2001 and for declaration that the use of plot for warehousing as separate and distinguished from industrial use and thus respondent DDA should not insist on construction of building. A further plea has been raised restraining respondent DDA from recovering composition fee/penalty for non-construction of building.

2. At the stage of issuing show cause notice on 9.4.2001 the court had set down the points urged on behalf of the petitioner as under:-

"(i) Petitioner submits that his case is governed by the applicable FAR of 150 as per MPD 1962; (ii) the FAR as per MPD 2001, which stands reduced to 60 as against 150, is not applicable to his case; and thirdly the petitioner is not required to raise any construction in terms of a policy dated 8.7.1979, applicable to warehousing business.

Learned counsel for the petitioner after some deliberation submits that he is not

pressing his last plea."

3. The mother of the petitioner was allotted plot No. B-6, Kirti Nagar, Delhi measuring 450 sq. yards on leasehold basis in pursuance to the letter dated 9.3.1976. Possession was taken over on 11.3.1976 and a perpetual lease deed was executed on 30.5.83. Since the mother of the petitioner passed away, the mutation was carried out in favor of the petitioner vide letter dated 10.3.2000. The mother of the petitioner did not construct upon the property and paid composition fee from time to time. On 14.8.2000 the petitioner stated that since timber business was being carried out in the plot in question no construction was required to be made earlier. However, since for operation of saw mill puce construction is necessary the petitioner intended to construct a building on the plot. The petitioner also sought waiver of the composition fee. This was followed by a legal notice dated 19.2.2001.

4. Learned counsel for the petitioner contended that there is a difference between warehousing business and industrial user though the perpetual lease deed refers to plots as industrial plots.

5. It was further contended that there was no provision for levy of composition fee which was being charged.

6. Learned counsel for the petitioner also sought to rely upon office noting dated 18.6.79 of the then Vice-Chairman of DDA to the following effect:-

"1. A representation has been made to me that in certain markets like Iron & Steel, timber etc. trade is done in bulk items, DDA is issuing notices for termination of lease on account of non-construction.

2. These are items which require stockyard not covered space, provided that in such markets the plot is being put to the use for which it was allotted, we should not cancel the lease on account of non-construction. Only if the plot is vacant, the lease of conditions having been violated, or the plot is being misused, action should be taken for cancellation of the lease."

7. Learned counsel thus contended that there can be no question of recovery of composition fee in view of the aforesaid noting.

8. Learned counsel for the petitioner also stated that it is the FAR as per the earlier Master Plan which would be applicable to the petitioner.

9. Learned counsel for the petitioner lastly urged that even if the composition fee is to be charged, the same should not be charged for the whole plot but only for the area on which no construction had taken place.

10. Learned counsel for the respondent on the other hand, referred to the perpetual lease deed to contend that the deed itself provided that construction had to take place within a period of two years. This was so in terms of Clause II(4). Learned counsel contended that in terms of Clause III of the lease deed the respondent had the right to re-enter the property on the petitioner not

complying with the terms of the lease. Admittedly the petitioner had not constructed on the property which was a violation of the terms of lease. However, the respondent had instead of re-entry imposed only composition charges in terms of proviso to Clause III which is as under:-

"Provided that, notwithstanding anything contained herein to the contrary, the Lesser may without prejudice to his right of re-entry as aforesaid; and in his absolute discretion, waive or condone breaches, temporarily or otherwise, on receipt of such amount and on such terms and conditions as may be determined by him and may also accept the payment of the said sum or sums of the rent which shall be in arrear as aforesaid together with interest at the rate of ten per cent per annum."

11. In this behalf learned counsel for the respondent also referred to office noting dated 18.6.1979 sought to be relied by learned counsel for the petitioner and contended that even assuming the said noting applied to only consequences of the same was that the lease should not be cancelled on account of non-construction but the same did not prohibit recovery of composition fee. In the present case the lease had been cancelled but only compensation fee had been charged.

12. In the counter affidavit reliance has also been placed on the office order dated 3.1.1984 issued by the DDA declaring the period up to 31.12.1981 as penalty free period in respect of allottees in Kirti Nagar Warehousing Scheme and thus the earlier noting of the year 1979 did not continue to be in force and stood superceded. The said noting is as under:-

"The Lt. Governor is pleased to order the period for construction up to 31.12.81 as penalty free period in respect of allottees of plots in Naraina and Kirti Nagar Warehousing Scheme who were given alternative allotments during the clearance operation of Motia Khan in the year 1975-76. Normal penalties shall, however, be charged for the period of belated construction w.e.f. 1.1.82 onwards."

13. Learned counsel for the respondent contended that the predecessor in interest of the petitioner had in fact on numerous occasions sought extension of time for construction on payment of penalty/composition fee as per the policy of the respondent and had paid the composition fee without any objection. It is further stated that the composition fee is levied for violation of the terms of the perpetual lease deed and it has no co-relation with FAR to be covered which is not constructed for calculation of the composition fee. It is in fact urged that there is no plea raised in this behalf about the composition fee being charged not in relation to the FAR.

14. I have considered the submissions advanced by learned counsel for the parties.

15. It is relevant to note that the stage of issuance of show cause notice on 9.4.2001 the petitioner did not press the plea to the effect that no construction

was required to be raised by the petitioner in terms of the policy dated 18.6.1979 (wrongly mentioned as dated 8.7.1979) applicable to the warehousing business. In view of this statement it is not open to the petitioner now to raise the said plea.

16. It may also be noted that with the counter affidavit respondents have filed the subsequent office order dated 3.1.1984 in respect of the scheme in question declaring certain period as penalty free period. Further the office noting only talks about the non-cancellation of the lease deed and not non-recovery of composition fee.

17. In so far as the user of the plot is concerned, the plot in question is an industrial plot given for warehousing business. The predecessors in interest of the petitioner executed the lease deed and subsequently the property was mutated in the name of the petitioner. To contend that there can be no requirement of construction on the property in question would be unsustainable. This is a specific term of lease deed which prescribes construction to take place within a period of two years. The consequence of not complying with the said term is also prescribed as re-entry but the proviso to Clause III of the perpetual lease deed given an option to the respondent to condone the same temporarily by accepting the payment of the sums on such terms and conditions as may be determined. The composition fee thus arises as a consequence of this term and would thus have no co-relation with the FAR to be constructed. It is the consequence of the petitioner not complying with the terms and conditions of the lease deed.

18. It is also relevant to note that the original allottee and the predecessor in interest of the petitioner in fact paid the composition fee and sought the extensions but did not construct upon the property. It is only when the composition fee was levied subsequently that the petitioner on mutation of the property in his name sought to raise this issue.

19. In so far as the issue of coverage under the permissible FAR is concerned the same has to be governed by the policy in existence when the petitioner seeks sanction of the plan and starts construction. If larger FAR was permissible and the petitioner did not construct at the relevant stage of time, the petitioner cannot take advantage of the same by subsequent change of policy. It is the permissible FAR at the relevant date which would be material. It is the petitioner who is in default in construction on the property.

20. A plea has also been raised in the writ petition arising from the provisions of Section 3 of the Government Grants Act, 1895 which is as under:-

"Section 3 of the Govt. Grants Act reads as under:

Section (3) "Government Grants to take effect according to their tenor- all provisions, restrictions, conditions and limitations, ever contained in any such grant or transfer as aforesaid, shall be valid and take effect according to their

tenor, any rule of law, statute or enactment of the legislature to the contrary notwithstanding."

21. This plea is based on the fact that lease deed being a Government grant, the same should take colour from its terms and conditions. I fail to appreciate how the same supports the plea of the petitioner. On the other hand it is contrary to the pleas raised by the learned counsel for the petitioner in as much as the perpetual lease deed itself prescribes the requirement of construction and the consequence of failure of construction including recovery of charges as per proviso to Clause III of the perpetual lease deed.

22. In view of the aforesaid I find no merit in the writ petition. The same is dismissed leaving the parties to bear their own costs.