
(2000) 09 DEL CK 0072
In the Delhi High Court
Case No : LPA No. 371 of 2000

St. Andrews Scots Education Society

APPELLANT

Vs

DDA

RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Citation : (2000) 56 DRJ 258

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. U.L. Watwani, for the Appellant;

Judgement

Arijit Pasayat, CJ.

1. In this appeal under Clause 10 of the Letters Patent, judgment of Learned Single Judge dated 19.4.2000 in CWP No. 2532/95 is under challenge.

Factual position, which is almost undisputed is as follows:

A demand was made by the Delhi Development Authority (in short the DDA) from the petitioner society for an amount of Rs. 3,19,554.35 as additional cost of the land allotted to it. The said demand was challenged and a prayer was made for a direction to the DDA to calculate the cost of land payable in the light of judgment in Delhi Development Authority Vs. Lala Amar Nath Educational and Human Society and another, . Petitioner pleaded in the writ petition that it is a society registered under the Society Registration Act with the object of working for welfare, education and betterment of the children. With the aforesaid objective, it intended to start a middle school for providing education to the weaker sections of the society. It obtained an essentiality certificate from the Directorate of Education in 1989. It's name was sponsored for allotment of land by the Directorate of Education of Delhi. On the basis thereof, the DDA by letter dated 11.2.1991 allotted a land to the petitioner on perpetual leasehold basis measuring 4794.24 sq. mts. out of which 2397.12 sq. mts. was for school building and balance was for play-field. Aforesaid allotment was made subject to

various conditions, one of which reads as under :

"That the St. Andrews Scots Education Society will be required to pay provisional premium of land measuring 2397.12 sq. mtrs. For school building at the rate of Rs.14.25 lacs per acre with annual rent at 2.5% per annum of the total premium. The revision of rates of land is under consideration of the Central Government. The allottees shall have to pay balance premium for the land as per rates determined by Central Government under Rule 5 of DDA (Developed Nazul Land) Rules. 1981 and within the time fixed by DDA. The rates of land determined by Central Govt shall be binding upon the allottee and shall not be called in question by in any proceedings."

Another relevant condition was that premium of land, as demanded, was provisional and the petitioner was required to give an undertaking that it would pay the balance premium as may be demanded on the basis of rates as may be determined by the Central Government. On 7.1.1992, a revised demand on account of additional amount of Rs. 3,57,954.85 was issued. An undertaking was given by the petitioner in form of a notarised affidavit. The said undertaking, inter alia, stated that the petitioner had paid Rs. 8,65,159/- to the DDA towards cost of land and the DDA had demanded a further amount of Rs. 3,53,954.85 on account of difference of premium of land. Para 4 thereof reads as under :

"4. That the Society undertakes to pay the difference of premium of land of Rs.3,19,554.35 to DDA, out of its own funds along with the interest charge @ 18% per annum of the belated period and other dues if any, from the date of mortgage permission within three months time."

2. Petitioner's stand is that it denied its liability to pay any additional premium and has withdrawn the undertaking. Reliance was placed on Lala Amar Nath's case (supra) for re-fixation of the valuation. During the pendency of the writ petition, petitioner stated its willingness to pay the premium of land and stated that on payment of such amount writ petition should be closed. By order dated 24.3.2000, the aforesaid statement was recorded. It was also noted that payment would be made without payment of interest thereon. The DDA's stand was also recorded that the petitioner may approach the Director (Land) DDA with the request for waiver of interest and a decision was to be taken on the request of the petitioner. Thereupon, petitioner was allowed to deposit the difference of the premium. But, the prayer to waive the interest was declined on the ground that policy decision was that interest is to be paid and additionally the petitioner had given an undertaking to that effect. A copy of the undertaking dated 4.1.1982 was also placed on record. The said undertaking contains a stipulation that payment of interest @ 18% p.a. may be charged uniformly on all delayed payments of premium regarding industrial, commercial and residential plots. As petitioner had given the undertaking without any reservation, liability of the petitioner to pay interest @ 18% p.a. remains.

Petitioner's further stand before the learned Single Judge was that in view of the

decision of Allahabad High Court in Smt. Vrinda Gujarati and others Vs. Bareilly Development Authority and others, , no interest could be charged on the principal amount from the date of stay till the date of final disposal of the writ petition. Stand of the DDA, on the contrary, was that the petitioner was liable to pay interest on the delayed payment in terms of the policy of the DDA issued on 4-1-1982 which was in operation without any exception and in terms of the undertaking. It was also submitted that the decision of this Court in R.R. Mehta Educational Trust Vs. DDA and Anr 81 (1990) DLT 925 was clearly applicable. Learned Single Judge observed that difference of cost as may be decided by the Central Govt. would mean the basis of charges which would remain the same, i.e. no profit no loss basis. Allotment letter was issued on 11.2.1991 and Therefore, decision of this Court in Little Angles Public School Society and Others Vs. Union of India (UOI) and Others, was applicable. Merely because the order of stay was granted that did not stop running of the liability for interest. In view of the under- taking to pay interest @ 18% writ petition was not entertained."

3. Stand taken before the learned Single Judge were reiterated in this appeal. Two points were urged, namely one that there can be no charge of interest during the period of order of stay was operative, and two rate of 18% was excessive. Reliance was placed on Kashyap Zip Ind. Vs. Union of India (UOI) and Others, and M/s. Sohan Lal and Co. and others Vs. Lt. Governor of Delhi and others, to contend that interest @ 18% was not payable.

4. We shall first deal with the question whether the liability for interest is operative in respect of the period during which the order of stay was operating. The liability had accrued and had continued. On the dismissal of the writ petition any interim direction that was given stood vacated. The result is that the liability was always there as the judgment of the Court cannot be said to have created the liability. Liability to pay does not accrue from the date of judgment but from the moment the liability had been created earlier on the basis of demand raised. Running of time for payment of interest cannot be stopped because at a point of time an order of stay was operating. Recovery of the amount stayed during the pendency of a proceeding can be made upon dismissal of the writ petition and as such recovery cannot be challenged on the ground of stay. Operation of the stay order does not prevent the running of time. The amount in respect of which the order of stay was passed would have otherwise gone to the respondent and could have been utilised by it for public purposes. The appellant had the advantage of keeping the amount without paying to the respondent only because an order of stay was operating restraining recovery. No act of the Court shall cause prejudice to any party. The pristine doctrine couched in the maxim "act us curiae neminem gravabit" has ever remained a salutary and guiding principle. The principle was succinctly stated by the Apex Court in Calcutta Jute Manufacturing Co & another Vs. Commercial Tax Officer and others, (1997) 106 ITR 433 We, Therefore, reject the contention of the appellant that for the period covered by the order of stay, no interest would be charged.

5. So far as the rate of interest is concerned, the decision in Kashyap's case (supra) and Sohan Lal's case (supra) referred to learned counsel for the appellant do not assist the appellant in any way. In the first case, the Apex Court, on the facts of the case, reduced the interest from 17.5% to 12%. There was no agreed rate in that case and in any event, on the peculiar circumstances, the Apex Court thought it appropriate to reduce the rate of interest. In Sohan Lal's case, (supra) the Apex Court took note of the fact that recovery of the balance was stayed upon furnishing bank guarantee and Therefore rate of 10% was fixed. A decision is a determination arrived at after consideration of facts, and in the legal context, law related to the facts of a particular case. It is an authority for what is decided and not what consequentially or incidentally flows from the conclusion. A case is an authority for what it actually decides and not for what may seem to follow logically from it. Above being the position, we find no merit in this appeal which is accordingly dismissed.