(2007) 04 DEL CK 0092

In the Delhi High Court

Case No : Writ Petition (C) 1476 of 1990

Stead Electronics Industries and Others APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Citation : (2007) 04 DEL CK 0092

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Raman Kapur and F. Hassan, for the Appellant; Avnish Ahlawat and Latika Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This writ petition challenges a show cause notice dated 17.8.1988 issued by the Commissioner of Industries, Delhi

Administration asking the petitioner to show cause why the lease of plot No. S-73, Badli Industrial Estate, Delhi measuring 560 sq. yards in favor

of the petitioner by deed dated 27.11.1970 should not be cancelled. The writ petition also challenges an order dated 13.6.1989 passed by the

Commissioner of Industries cancelling the lease and a subsequent order dated 8.2.1990 passed by the Deputy Secretary Industries communicating

the decision of the Lt. Governor rejecting the appeal of the petitioner against the cancellation of the lease.

2. The facts narrated in the petition are that the petitioner was allotted the aforementioned plot for which a perpetual lease deed dated 27.11.1970

was executed by the President of India as Lesser in favor of the petitioner firm. The relevant clauses of the lease deed read as under:

4 (a) The Lessee shall within a period of two years from the 27th day of November, One thousand nine hundred Seventy (and the time so

specified shall be the essence of contract) after obtaining sanction of the building plan, with necessary designs, plans and specifications from the

proper municipal or other authority, at his own expense, erect upon the industrial plot and complete in a substantial and workman like manner an

industrial building for carrying on the approved manufacturing process or industry with the requisite and proper walls, sewers and drains and other

conveniences in accordance with the sanctioned building plan and to the satisfaction of such municipal or other authority.

5(a) The lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the industrial plot except with the

previous consent in writing of the Lesser which he shall be entitled to refuse in his absolute discretion.

...

VIII(a) All powers exercisable by the Lesser under this lease may be exercised by the Lt. Governor. The Lesser may also authorize any other

officer or officers to exercise all or any of the powers exercisable by him under this lease.

(b) The Lt. Governor may authorize any officer or officers to exercise all or any of the powers which he is empowered to exercise under this lease

except the powers of the Lesser exercisable by him by virtue of Sub-clause (a) above.

It is seen from a copy of the lease deed which is annexed at Annexure P-1 to the petition that there is no clause in the lease deed for a demand of

unearned increase and for levy of the composition charges.

3. The petitioner was facing difficulties in getting its plans for construction of a building approved by the Municipal Corporation of Delhi (MCD)

since the area was not developed. On 4.2.1978 the petitioner wrote to the Director of Industries pointing out its difficulties in getting the building

plans approved by the MCD. That letter pointed out that the land use as per the master plan was agricultural land and till such time it was changed

to industrial the MCD would not approve the plans. The second problem was that the MCD was insisting that the period by which the building had

to be constructed as per the lease deed was required to be extended by the Delhi

Administration.

4. When the petitioner did not hear anything in response to this letter it again wrote to the Delhi Administration on 21.2.1978. It was followed by

numerous letters dated 3.3.1978, 28.6.1978, 22.7.1978, 16.12.1979, 14.1.1980 and 21.3.1980. On 28.4.1990 the Director of Industries

informed the petitioner that its request was still under consideration and a decision would be communicated in due course. By a letter dated

7.5.1980 the petitioner was informed by the respondents that extension was granted for completing the building up to 31.12.1980. Since this time

was just about enough to meet the objections of the MCD, the petitioner sought further extension of time. Nothing was heard in response to this

request.

5. On 5.8.1983 the respondents served a notice upon the petitioners asking them to show cause why the lease deed should not be cancelled. This

was replied to by the petitioners on 16.8.1983. A personal hearing followed. By an order dated 7.5.1984 passed by the Deputy Secretary

Industries Delhi Administration the lease deed stood terminated. Following the representations made by the petitioner against the cancellation, on

22.4.1985 the petitioner was informed that the earlier decision to cancel the lease had been reviewed and that the cancellation order should be

treated as withdrawn. The text of the letter dated 22.4.1985 reads as under

DIRECTORATE OF INDUSTRIES: DELHI ADMINISTRATION

C.P.O. BUILDING: KASHMERE GATE: DELHI

No. F. Land-BIE/3 (305)/S-73/77/DI Dated

To

M/s. Stead Electronics Industries,

17-UA Jawahar Nagar,

Subzi Mandi,

Delhi.

Subject: Plot No. S-73, Badli Indl. Estate, Delhi

Dear Sir,

In continuation of this office letter No. Land-BIE/3 (305)/S-73/77/DI/1931 dated 30.1.85 on the above noted subject, I am directed to inform you that the Lesser is pleased to review his earlier decision and has withdrawn the cancellation orders determining the lease rights of plot No. S-

73, Badli Indl. Estates, Delhi. The earlier orders issued vide office order No. Land-BIE/3 (305)/S-73/77/DI/9078 dated 7.5.84 may be treated as

withdrawn.

Yours faithfully,

Sd/-

(G.K. Dikshit)

DEPUTY SECRETARY (INDUSTRIES)

Est. No. Land-BIE/3 (305)/S-73/77/DI/8303-8 Dated 22-4-85

6. On 10/12.8.1985 the partner of the petitioner wrote to the Director of Industries stating that they had not been able to commence construction

since the Delhi Administration had not given two years'' clear extension for completing construction. This was followed by reminders dated

7.4.1986 and 11.6.1987. Meanwhile, the petitioner''s plans for construction was again rejected by the MCD on 14.1.1986 and one of the

grounds was that the extension of time from Lesser had not been obtained.

7. The petitioners were directed by a letter dated 27.5.1985 to deposit composition charges of Rs. 4681.60. Although the petitioners refuted this

demand, they nevertheless deposited the sum on 27.2.1989. Again Rs. 1362 was demanded as ground rent although the petitioner had already

deposited the sum by that time.

8. A fresh show cause notice was issued to the petitioners on 17.8.1988 stating that since no composition fee and lease money had been paid and

the construction had not been raised, the lease was liable to be cancelled. By their letter dated 13.6.1989 Deputy Secretary Industries informed

the petitioner of the cancellation of the lease deed. It was mentioned in the cancellation order that when the petitioner appeared before the

Commissioner Industry on 16.11.1988 he was directed to submit an affidavit undertaking to pay 25% of the unearned increase in the market value

of the plot as on 22.4.1985 i.e. the date of restoration of the plot and to pay composition charges amounting to Rs. 4681.81 for the time extension

from 22.4.1986 to 20.4.1990. Since the petitioner had neither paid the composition charges, nor given the undertaking to pay unearned increase, the lease was cancelled.

9. The petitioner then filed an appeal before the Lt. Governor. By the third impugned order dated 8.2.1990, the petitioner was informed by the

Deputy Secretary (Industries) that the appeal had been rejected. Thereafter the present petition was filed.

10. When this writ petition was admitted on 11.5.1990, the Court while directing notice to the respondents formulated two questions for

determination:

(1) whether there was any delegation of power by the Lt. Governor to the Commissioner of Industries to hear the appeal filed by the petitioners

against the order cancelling the leasehold rights of the petitioners in the plot in question; and

(2) whether the respondents could charge unearned increase to be calculated @ 25% of the market value as in 1985 as the earlier order cancelling

the lease was withdrawn.

The court also directed the parties to maintain status quo.

11. An affidavit was filed by the Deputy Secretary (Industries) on 18. 1.1991. In this affidavit it was conceded that there was no clause in the lease

deed that permitted the levy of unearned increase on the petitioner. Nevertheless, a reference was made to Clause III of the lease deed which

empowers the Lt.Governor (LG) to re-enter and take possession of the premises upon finding a breach of the condition of the lease. A reference

was also made to para 4 (IV) of the Guidelines framed by the Delhi Administration for management of industrial land which reads as under:

Whereas default continues after 7 years from the date of lease, the lease/sub-lease shall be cancelled. On notice for cancellation of lease hold rights

after seven years, the sub-lease/lessee can appeal for it''s restoration within 30 days of issue of the notice. In such cases the Lesser can review his

decision on payment of sum calculated @ 25% of the market value of the plot. In case of restoration of lease hold rights, the sub-lessee will be

entitled to composition free period of one year and thereafter extension charges @ Rs. 2/-, Rs. 2/-, Rs. 2/- & Rs. 4/- per sq. mtr. for every

successive year up to 4 years.

12. A reference made to the guidelines to justify the hearing of the appeal of the petitioner by the Commissioner of Industries. A copy of the

guidelines was also placed as an annexure to the affidavit.

13. In its rejoinder the petitioner pointed out that these guidelines were not of a statutory character and could not supplant the lease deed.

14. This Court proposes to first take up for consideration the second question formulated by the Order dated 11.5.1990 i.e. in this writ whether

the respondents were justified in demanding the unearned increase from the petitioner in the sum of 25% of the market value of the property as on

the date of restoration of the lease, i.e. 22.4.1985.

15. The fact that the lease deed itself contains no clause that permits the respondents to demand unearned increase is not denied even by the

respondents. In fact the lease deed only permits re-entry by the LG on behalf of the President if any breach of the terms of the lease is found. If the

failure to pay unearned increase is not in fact a breach of the conditions of the lease deed that cannot constitute the ground on which the

cancellation of lease deed can be ordered. The respondents trace the power to impose a condition for payment of unearned increase only to the

guidelines.

16. Viewed from any angle it appears that the guidelines framed by the Delhi Administration are just that, i.e. guidelines and nothing more. They

neither have a statutory character nor can they be seen as supplementing or supplanting the conditions of the lease deed. The Guidelines do not

even have a date. They do not cite the authority under which they have been issued. It is not clear whether these Guidelines were ever

communicated to any one. Further, the show cause notice issued in the present case prior to the cancellation of the lease or the orders made do

not make any reference to these Guidelines. Obviously the respondents themselves do not contend that these Guidelines have a statutory character

and are binding on the petitioner. If that is the status of these Guidelines, then the respondents certainly cannot justify their action only with

reference to such Guidelines.

17. The power to cancel the lease is circumscribed by the specific clauses of the lease. Outside of the lease deed itself, absent any statutory power

governing such leases, it would be impermissible for the respondents to rely on some internal Guidelines to recover either composition charges or

''unearned increase'' as a pre-condition to restoring the lease. The reliance on

Clause (viii)(a) and (b) of the lease is also not helpful to the

respondents since it only enables the LG to exercise powers that can be exercised by the President under the lease. It does not enable the LG to

impose a condition not contained in the lease.

18. Interestingly the letter dated 22.4.1985 by which the earlier cancellation order dated 7.5.1984 was withdrawn was unconditional. It laid no

stipulation or pre-condition as to payment of either composition charges or unearned increase. The demand for composition charges was made on

27.5.1985 which the petitioner resisted but ultimately paid. The demand that the petitioner should file an affidavit undertaking to pay unearned

increase was admittedly made only on 16.11.1988 when the petitioner appeared before the Commissioner (Industries) in response to the

impugned show cause notice dated 17.8.1988. In other words, this was not even contemplated as a ground of cancellation when the show cause

notice was issued and no letter making such a demand was admittedly issued. The Explanation in the counter affidavit of the respondents for not

incorporating these conditions in the restoration letter dated 22.4.1985 is extremely weak. It states: ""Though the said letter mentioned about the

withdrawal of the orders of the determination but for all practical purposes, the intention was to communicate the restoration of leasehold rights."" A

condition for restoration of a lease that is not justified with reference to any clause in the lease deed itself cannot, if breached, lead to a

determination of such lease.

19. Consequently, this Court holds that the entire premise on which the show cause notice was issued and the cancellation order passed, is not

sustainable in law. There was no condition of the lease deed which can be said to have been breached by petitioner, that warranted the

cancellation of the lease. Therefore the order of cancellation ought to be quashed on this ground alone.

20. In view of the conclusion reached by this Court that the cancellation of the lease itself was illegal and unsustainable in law, it is not necessary to

examine the other question viz., whether the Commissioner of Industries could have exercised the appellate power on behalf of the LG in terms of

the lease deed. That question is left open to be examined in an appropriate case.

21. For the aforementioned reasons, this petition deserves to be allowed. The

impugned show cause notice dated 17.8.1988 is quashed and the

order dated 13.6.1989 cancelling the lease and the order dated 8.2.1990 passed by the LG rejecting the appeal of the petitioner against the

cancellation are hereby set aside. The writ petition is allowed with costs of Rs. 5,000 which will be paid by the Respondents 2 to 4 to the

petitioner within a period of four weeks from today.