
(1987) 11 DEL CK 0008
In the Delhi High Court
Case No : Suit No. 890 of 1985

Sunil Vasudeva and Others

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 23-11-1987

Acts Referred:

Citation : AIR 1988 Delhi 184 : (1988) 34 DLT 37(1) : (1988) 14 DRJ 170 : (1988) RLR 23

Hon'ble Judges : Mahesh Chandra, J

Bench : Single Bench

Advocate : Arun Jaitley, Mukul Rohatagi and Ashok Jain, for the Appellant;

Judgement

Mahesh Chandra, J.

(1) The plaintiffs have filed this suit for recovery of Rs. 2,00,000.00 against the Delhi Development Authority on the allegations that the plaintiffs owned property known as Plot No. 2, Block No. 18, W.E.A. Karol Bagh, New Delhi and the super-structure thereof; that the land beneath the said land is leasehold, on a lease granted initially in favor of Smt.Sita Vasudeva, mother of the plaintiffs by the erstwhile Delhi Improvement Trust, the predecessor of the defendant-Delhi Development Authority vide lease deed dated 31-1-1942; that the plaintiffs became owners/lessees under the defendant on a gift of the said property by their mother in equal shares which gift was accepted by the defendant and accordingly the property was mutated in the records of the defendant in the name of the plaintiffs as owners/lessees to the extent of 1/3rd share each; that in terms of the lease deed dated 31-1-1942 and subsequently renewed from time to time, there is a provision that in the event of sale or transfer of the demised property, the lessees will have to obtain permission of the Lesser, namely, the defendant ; that the plaintiff applied for obtaining sale permission in regard to the suit property by a prescribed application dated 14th August, 1982 ; that by letter dated 12th July, 1982 the defendant through Shri Ashok Bakshi, Director (OSB) informed the plaintiffs that certain conditions would have to be fulfilled

before requisite permission can be granted and one of the conditions imposed was that the plaintiffs would have to pay "transfer levy" to the defendant in the sum of Rs. 1,98,960.00 in consideration for the grant of sale permission ; that the plaintiffs represented to the defendant that no condition requiring payment of "Transfer levy" could be imposed either under the original lease executed on 31-1-1942 or in the subsequent lease, but the said representation was turned down and later the defendant informed the plaintiffs that it was a policy of the defendant to insist upon payment of transfer levy in every case of grant of sale permission, irrespective of the terms of the lease ; that in the meanwhile the plaintiffs had entered into an agreement of sale of the suit property and the vendees were pressing for the execution of the sale deed and as such the plaintiffs were put in an embarrassing situation and consequently the plaintiffs deposited the said amount of Rs. 1,98,960.00 with the defendant on 13-7-1982 vide receipt No. 24417 ; that the plaintiffs initially wanted to deposit the said sum under protest but were told that if the same is done, the sale permission would not be granted ; that the sale permission was in course of time granted on such deposit and the plaintiffs got the sale deed registered in favor of the vendees ; that the defendant had no right to insist upon payment of the said sum of Rs. 1,98,960.00 under the garb of transfer levy in view of terms of the contract incorporated in the lease ; that even otherwise under the lease deed, the Lesser was not empowered to impose any condition, harsh, or extortionate upon the lessee while granting necessary permission ; that the consent could not have been withheld arbitrarily ; that the amount got deposited from the plaintiffs was unauthorised and arbitrary and the defendant has no right to retain the same and the plaintiffs are entitled to get refund of the said amount with interest ; that the plaintiffs served a legal notice dated 3-1-1983 upon the defendant asking for refund but to no avail and hence this suit for recovery of Rs. 2 lacs.

(2) The defendant-Delhi Development Authority has contested the suit, inter alia, on the ground that the plaintiffs have no locus standi to file the present suit ; that the suit is highly belated ; that there exists no cause of action in favor of the plaintiffs and against the defendants ; that the transfer levy was under the lease contract and within the policy and has legal force and is bona fide and without any discrimination; that the plaintiffs are putting wrong interpretation on the lease terms and hence it has been prayed that the suit be dismissed. It may be mentioned here that other facts alleged by the plaintiffs have not been disputed by the defendant.

(3) Upon the pleadings of the parties the following issues were framed. by Sultan Singh, J. vide orders dated 19th March, 1986 :

"1. Whether the plaintiff has locus standi to file the present suit ? 2. Whether the defendant had no right to charge the unearned increase amounting to Rs. 1,98,960.00 ? 3. Whether the plaintiff is entitled to the refund of the sum of Rs. 1,98,960.00 deposited by them with the defendant as unearned increase ? 4.

Whether the plaintiff is entitled to interest ? If so, at what rate ? 5. Relief."

(4) After the issue was framed the following orders were passed by Sultan Singh, J. on 19th March, 1986 in this suit :

" PARTIES "counsel state that the suit may be tried as a "Short cause". They also submit that they be permitted to file affidavits in support of their respective pleas and that leave be granted to them to cross-examine the deponents, if necessary....."

(5) Thereafter the plaintiffs filed an affidavit of Sunil Vasudeva, plaintiff No. 1 in respect of its claim while defendant filed affidavit of one Brij Bala Chadha, Deputy Director (OSB) D.D.A. in support of its contention. The plaintiffs have also produced documents Ex. P.I to P. 4 and the defendant has produced documents Ex. D-1 to D-10. On 11-12-1986 it was stated by the respective counsel for the parties that it was not proposed to cross-examine the witnesses on (their affidavits or counter-affidavits and in consequence arguments were heard in the matter. I have gone through the file and have heard the learned counsel for the parties and after giving my considered thought to the matter before me I have come to the following findings: Issue No. 1:

(6) In the affidavit of Sunil Vasudeva, it has been stated that initially their mother Smt. Sita Vasudeva was the owner of the property as lessee "under the Delhi Improvement Trust vide lease deed executed on 31-1-1942 and thereafter Sunil Vasudeva plaintiff No. 1 along with other plaintiffs became owners under the Lesser consequent upon the gift of the property in question by their mother in equal shares which gift was acknowledged by the defendant and the property was mutated in the records of the defendant showing the plaintiffs as owners/ lessees to the extent of 1/3rd each. This has not been denied in the affidavit of Brij Bala Chadha, Deputy Director (OSB) DDA. Even otherwise para 2 of the plaint has been admitted in written statement. It is also admitted in the written statement that it was the plaintiff who had deposited the sum of Rs. 1,98,960.00. In the face of this situation it would be difficult to accept that the plaintiffs have no locus standi to file this suit. Even otherwise letters Ex. P. 2 and P. 7 which are dated 12th July, 1982 and 17th July, 1982 addressed from the defendant to the plaintiffs go to show that the plaintiffs have locus standi to file the suit. In view of these facts I hold that the plaintiffs have locus standi to file the present suit. Issue Nos. 2, 3 and 4 :

(7) There is no dispute between the parties so far as facts are concerned in this suit. The mother of the plaintiffs had purchased suit property bearing plot No. 18/2, W.E.A. Arya Samaj Road, Karol Bagh, New Delhi on lease-hold basis from the erstwhile Delhi Improvement Trust vide lease deed dated 31-1-1942 which was later on renewed and copy of the renewed lease deed is Ex. P. 1. Later on the lease-hold rights devolved upon the three plaintiffs in equal shares by means of a gift which was recognised by the defendant. Thereafter the plaintiffs decided to sell the suit property and for this purpose they needed "consent of the D.D.A.

to sell the same" in accordance with Clause (vii) of the lease deed Ex. P. 1 which reads as under:

"WITHOUT first obtaining such consent not to sub-divide the said land or to part with the possession or transfer or sub-lease a part only of the said land".

(8) In consequence the plaintiffs approached the D.D.A. for necessary consent vide application copy Ex. D-3 dated 14-4-1982 in this behalf. The plaintiffs addressed letters copies D-1 and D-2 to the defendant. The defendant intimated the plaintiffs vide letter Copy D-4 and P-2 dated 12-7-1982 that sale permission can be granted subject to the fact that the plaintiffs "will have to pay an amount of Rs. 1,98,960.00 on account of transfer levy of the plot in question". It has been alleged by the plaintiffs that they were prepared to deposit the said amount under protest which request was not agreed to and in course of time the plaintiffs made payment on 13-7-82 vide receipt Ex. P. 4 and D-6 and consent for transfer was given vide letter Ex. P. 3 or D-7 on 17th July, 1982. Vide letter Ex. D-8 the sale was intimated by the plaintiffs to the defendant. Now this suit has been filed for recovery of the said sum of Rs. 1,98,960.00 plus interest, although limiting the entire claim to Rs. 2 lacs. These facts have not more or less been denied by the defendants D.D.A.

(9) It is now urged by the learned counsel for the plaintiff that the lease in the instant case partakes as a "grant" under the Be Crown Grants Act, 1895 now the Government Grants Act, 1895. He has in this behalf taken through the clauses of the lease deed and has also relied upon Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, , judgment of Sultan Singh, J. on 1st June, 1986 in Smt. Damyanti Salmi v. M.C.D. and others, (C.W.P. No. 725 of 1975) and Delhi Development Authority and others v. M/s. Nehru Place Hotels Ltd. and others, 2nd (1983) Ii Del 187. In all these cases various leases were considered and it was held that they were grants and were covered by the Government Grants Act, 1895. A perusal of the lease deed Ex. P. I does show that it can be accepted without any difficulty that certainly the lease in question would be a "grant" and would be covered by the provisions of Government Grants Act, 1895. Even otherwise this fact has not been challenged or controverted before me by the D.D.A. Furthermore, the preamble of the Government Grants Act, 1895 shows that the said Act is applicable to "grants and other transfers of land" made by the Government or under its authority. The present is a transfer by the Government and authority of the Government and as such it would be covered by the Government Grants Act, 1895. Once it is held that the lease in question is a grant within the meaning of the Government Grants Act, 1895 then it would attract Sections 2 and 3 thereof.

(10) It has further been urged by the learned counsel for the plaintiff that in accordance with Section 3 of the Government Grants Act, 1895 the terms of the lease are supreme and cannot be superseded even by any law much less by any authority like the D.D.A. and in this behalf also he has drawn my attention to Express Newspapers Pvt. Ltd. and others (supra). It was held as under :

"THE overriding effect of Section 3 is that a grant of property by the Government partakes of the nature of law since it overrides even legal provisions which are contrary to the tenor of the document".

Likewise in Smt. Damyant) Sahni (Supra) the contention of the petitioners that "the plot in question was originally "Government owned site" having been transferred to the petitioners on perpetual lease by the Central Government on behalf of the President of India falls within the meaning of a "Government Grant" as defined in Section 2 of the Government Grants Act, 1895, and consequently no law, rule, regulation or bye-law can in any manner affect the rights of the petitioners under the perpetual lease to construct/build a cinema in view of the mandatory provisions of Section 3 of the Government Grants Act....." and "though the D.D.A. may be a separate legal entity for certain technical or procedural purposes (created for carrying out specific objects entrusted to it by the Central Government) it is in fact and in effect a creation and a delegate of the Central Government bound by all the actions, orders, directions, and decisions of the Central Government. Any Act, Decision or Resolution of the D.D.A. which is contrary to or not consistent with any relevant order, decision or action of the Central Government would Therefore be void and a nullity in the eye of law and would not effect either the said decision etc. of the Government or any right accrued to anyone there under....." were accepted as correct.

(11) Let us now revert to Clause (vii) which is reproduced above and a perusal there of shows that the said clause does not visualise charging of any fee, levy, cess or payment in the matter of grant of consent by the D.D.A. and consequently orders of the D.D.A. to charge fee, levy or payment cannot be held as valid and are rather bad in law. It may be that for cogent reasons it is open to the D.D.A. in the circumstances to refuse to grant its consent, but once it has decided and agreed to grant the consent it cannot make it subject to the condition of payment of any levy, charge or tax. The amount charged in the instant case would partake as levy or transfer cess for the grant of consent which cannot be held to be valid in the circumstances and the language of the lease deed Ex. P. 1. Learned counsel for the D.D.A. has urged that the D.D.A. has evolved a policy of charging such an amount as and when such consent is granted but such policy cannot alter the provisions of Section 3 of the Government Grants Act so as to enable the D.D.A. to charge the amount. The charge in the instant case partakes as sort of tax of the nature as is visualised by provisions of Section 45 of the Income Tax Act, 1961 on capital gains which I am afraid the D.D.A. cannot do except under the authority of law. The learned counsel for the D.D.A. has not been able to draw my attention to any such power which is vested in the D.D.A. by law to enable it to charge the amount as has been done in the instant case. The D.D.A. cannot withhold the consent unreasonably and likewise no unreasonable condition can be imposed while granting the consent. It has been submitted by the learned counsel for the plaintiff that it was for this very reason that the D.D.A. has in all post 1957

leases inserted a specific stipulation for charging of 50 per cent on unearned increase in the event of transfer.

(12) Furthermore, in England also the Crown Estate Commissioners are entitled to lease any land of the Crown Estate for any purpose whatever for term not exceeding 100 years and in the context of such leases as well, it has been laid down in para 367 Halsbury's Laws of England, Fourth Edition,. Vol. 27 as under :

"367.Conditions of landlord's consent to assignment: Where a lease contains a covenant, condition or agreement against assigning, under letting or parting with the possession or disposing of the demised premises without license or consent, then unless the lease contains an express provision to the contrary, the covenant, condition or agreement must be deemed subject to a proviso that no fine or sum of money in the nature of a fine is to be payable for or in respect of such license or consent.....If consent is refused except on payment, the tenant is entitled to assign without consent....."

It has further been observed in para 368 thereof as follows :

"368:Unreasonable withholding of consent : Notwithstanding any express provision to the contrary, a covenant, condition or agreement against assigning, under letting, charging or parting with the possession of the demised premises, or any part of them, without license or consent, is deemed to be subject to a proviso to the effect that such license or consent is not to be unreasonably withheld"

Our legal system is based upon Anglo Saxon jurisprudence and the above principles are based upon justice, equity and good conscience. There is hardly any justification in not following the same. In view of this position also it would be difficult to uphold the transfer levy in the instant case.

(13) It has been urged by the learned counsel for the D.D.A. that the plaintiff has already obtained consent after making payment and now they are estopped from recovering the same. I am afraid the payment in the instant case had been made by the plaintiffs under pain of refusal of permission and in view thereof it cannot be said that principle of estoppel can operate against them. Even otherwise there cannot be estoppel against statute. The defendant had charged the amount which it was prohibited from charging u/s 3 of the Government Grants Act, 1895 and consequently also I do not find any weight in the contention of the learned counsel for the D.D.A. Similarly, I do not find any weight in the contention of the learned counsel for the plaintiffs that Clause (vii) of the lease deed does visualise permission to transfer on conditions and the only thing is that the conditions have not been spelt out. There is no force in this submission. In the end it has been submitted that the conditions of payment of Rs. 1,98,960.00 is not unreasonable. It is difficult to call it reasonable by any standards whatsoever. This payment tantamounts to levy without any services rendered by the D.D.A and as such cannot be permitted to be charged. It partakes as a tax which has no backing of law, A perusal of various terms of the lease deed does go to show

that detailed conditions had been laid down therein and it was open to the Government to further lay down that it would be open to the authority granting the consent to transfer to charge some levy and if it has not so done it would be deemed that it was not intended to do so.)

(14) In view of my discussion and findings above, I hold that the defendant had no right to charge the unearned increase amounting to Rs. 1,98,960.00 from the plaintiffs and as such the plaintiffs are entitled to the refund thereof together with interest @ 12% per annum and these issues are decided accordingly. issue No. 5:

(15) For my discussion and findings above, the plaintiffs are granted a decree for the recovery of Rs. 2 lacs against the defendants together with costs of this suit. It is further directed that the defendant shall also pay interest @ 12 per cent per annum from the date of decree till the date of recovery to the plaintiffs on this sum.