
(1987) 12 DEL CK 0016

In the Delhi High Court

Case No : Criminal Miscellaneous Appeal No. 1538 of 1987 and Letter Patent Appeal No. 38 of 1987

Union of India and Others

APPELLANT

Vs

Kamla Bakshi and Others

RESPONDENT

Date of Decision : 03-12-1987

Acts Referred:

Citation : (1988) ILR Delhi 4

Hon'ble Judges : Yogeshwar Dayal, C.J.;Gian Chand Jain, J

Bench : Division Bench

Advocate : W. Singh, A.C. Aggarwal, R.K.P. Shankar Das, M.G. Ramachandran and D.D. Sharma, for the Appellant;

Judgement

Yogeshwar Dayal, C.J.

(1) Though learned counsel for the respondents have filed Cm No. 1538 of 1987 for recalling the order of this Court dated 28th October 1987 passed in Cm No. 218 of 1987, in view of the observations of the Hon"ble The Supreme Court of India in its order dated 24th November, 1987 passed in SLP (Civil) No. 13530 of 1987, since the main Letters Patent Appeal itself can be disposed of, we find it fit and proper to dispose of the appeal itself.

(2) The order under appeal is an order dated 28th October, 1986 passed by learned single Judge while disposing of Cm No. 1114 of 1984 in C.W No. 857 of 1984. By the impugned order the learned single Judge has by ad interim order stayed the re-entry of the premises in dispute i.e. Plot No. 13, Tolstoy Marg, New Delhi.

(3) Government of India is the owner of the plot in dispute. It was leased in perpetuity in favor of Sh. N. D. Sanon and Sh. H. R. Sanon, predecessor-in-interest of the respondents in this appeal, by lease deed dated October 16, 1936. Subclasses (5) and (6) of clause 2 of the lease deed read as under :- ""2. The Lessee for himself, his heirs, executors, administrators and assigns covenants

with the Lesser in manner following (that is to say)-- (5) The Lessee will not without the previous consent in writing of the Chief Commissioner of Delhi or duly authorised officer as aforesaid erect or suffer to be erected on any part of the said demised premises any buildings other than and except the building erected thereon at "the date of these presents. (6) "The Lessee will not without such consent as aforesaid carry on or permit to be carried on the said premises any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a residence or do or suffer to be done thereon any act or thing whatsoever which in the opinion of the Chief Commissioner of Delhi may be an annoyance or disturbance to be Secretary of State or his tenants in the New Capital of Delhi."

(4) On or about .February 9, 1977 the respondents made an application to the Land & Development Officer intimating their intention to construct a multi-storeyed building on the said plot of land and seeking its permission for conversion of the user of the said plot of land from residential to commercial in accordance with the master plan and the zonal development plan. The Land & Development Officer vide its letter dated March 1, 1980 informed the respondents lessees that they had no objection to the development of the said plot. of land for construction of multi-storeyed building in accordance with the master/zonal development plan on the condition that the respondents agreed to pay additional premium and ground rent and other charges as may be levied by the I-and & Development Officer. The actual amount of the additional premium and ground rent was intimated by letter dated May 19, 1980. The Land & Development Officer demanded a sum of Rs. 23,30,192 plus Rs. 6,82,459 towards interest on account of additional premium in Iumpsum; Rs. 59,529.60 plus Rs. 10,599.60 towards interest on account of payment of original revised ground rent and Rs. 59,823.20 on account of revised ground rent payable with effect from 10th February, 1980 besides interest. The respondents represented that the conditions were onerous and also requested for payment of the amount in Installments. This request was rejected.

(5) Feeling aggrieved the respondents lessees filed a petition under Article 226 of the Constitution seeking a writ quashing the notices issued by the Land & Development Officer demanding various amounts and for an order directing the Land & Development Officer to determine the additional premium and other charges payable in accordance with the law laid down by this Court in the case of Daya Wanti Punj and Others Vs. New Delhi Municipal Committee and Others, .

(6) In this petition the lessees filed a civil miscellaneous petition No. 1114 of 1984 seeking an ad-interim order restraining the Land & Development Officer from enforcing the payment of additional premium or the threat of re-entry and from interfering in any manner with the possession of the property or with the construction of the multi-storeyed building on the said plot. This application was disposed of by a learned single judge (SS Chadha J.) by order dated 14th August, 1984. He others directed the stay of re-entry proceedings conditional on

the lessees" depositing the additional premium of Rs. 23,30,192 with the Land and Development Officer within two months from the date of the order. For the balance amount of the claim made by the Land & Development Officer in their demand notice dated May 19, 1980 the lessees were directed to furnish a bank guarantee in the round figure of Rs. 10 lakhs within two months to the satisfaction of the Registrar of this Court.

(7) The lessees filed an appeal against the said order. The Division Bench allowed the appeal and remitted the case for re-hearing on C.M. 1114, 84.

(8) After the remand learned single Judge (Mahinder Narain J.) heard the matter again and unconditionally stayed the re-entry of the premises in dispute, as stated above. This ad interim order has been passed in view of the findings of the learned single judge which are as under :-

"I do not need to consider further contentions which have been urged regarding the rates on the basis of which "conversion charges" had to be paid. as I find that the statutory provisions of the Delhi Development Act, which bind the Government. have resulted in statutory direction which also enables the use of the plot in question for commercial purposes. The statutory addition of additional purpose, eliminates the need for conversion, and in view of the statutory conversions which have already taken place, there is no question of further permission being needed for "conversion" of purposes for which plot No. 13. Tolstoy Marg, New Delhi can be used. Consequently no question of payment of "conversion charges" arises."

(9) "PRIMA facie we are of the view that neither Section 14 of the Delhi Development Act, 1957 nor the Master Plan or Zonal Plan prepared under that Act has any effect on clauses 2(5) and 2(6) of the lease deed between the parties. The reason is simple. The Master Plan or the Zonal Plan. which are statutory plans, may have permitted commercial user of the plot in dispute also but the fact remains that the terms of the lease between the parties prohibited any user other than that of a residence without the prior consent in writing of the Lesser. The power which the Lesser has reserved in the lease is to permit a change of user or conversion of user only with its express permission. It is a contractual power or right of the Lesser. The master plan or the zonal plan have not the effect of wiping off the contractual right. We, Therefore, do not agree with the finding of the learned single judge that no permission of the Lesser was required for conversion of the user.

(10) Surely the Lesser will grant permission in accordance with the law but it can put conditions which the contractual clauses permit. When the lessee is going to make money by constructing a multi-storeyed building on the said plot and changing the user from residential to commercial the Lesser has a right to ask for its share. The lessees who were building the multistoried building are still lessees and have not become the owners. They are prima facie bound by the express terms of the lease.

(11) We are, Therefore, constrained to set asides the order of the learned single Judge.

(12) Mr. Shankardass. learned counsel for the respondents, points out that there are other points also as mentioned in the order of learned single Judge, which were not gone into while granting the relief to the petitioner in the writ petition-

(13) We would accordingly set aside the order dated 28th October, 1987 and remand C.M. No. 1114 of 1984 in C.W. No. 857 of 1984 for fresh decision on other points. It is made clear that the learned single Judge would be entitled to pass any fresh appropriate orders in accordance with law.

(14) By our order dated 28th October, 1987 the respondents in this appeal were restrained by ad interim injunction from continuing with the construction of the multi-storeyed building on the plot in dispute till they comply with the terms and conditions for grant of permission to convert the user contained in the appellants' letter dated 19th May, 1980 fully, Respondents were further restrained from transferring in any manner any portion of the premises in dispute till further orders. The re-entry was directed to stand stayed if the respondents comply with these conditions. It was also directed that if the respondents fail to comply with these conditions, the appellants would be free to re-enter after taking orders from the Court.

(15) Even though we have accepted the appeal of the appellants against the impugned order of the learned single Judge, it is directed that the re-entry will be done only after taking orders from the Court. It is made clear that there is a serious dispute as to what the charges ought to be and this we are leaving to the learned single Judge to decide whether to stay re-entry or not and if stayed on what terms. The learned Single Judge is free to decide the same.

(16) Let the CM. No. 114 of 1984 in C.W. No 857 of 1984 be listed before a single Judge sitting on writ side on 7th December, 1987.