
(2012) 02 DEL CK 0575
In the Delhi High Court
Case No : Writ Petition (C) 7097 of 2010

Usha Kumar

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Citation : (2012) 3 AD 266 : (2012) 192 DLT 29

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : A.B. Dial, with Ms. Sumati Anand, for the Appellant; B.V. Niren, Advocate for UOI, for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—The property bearing No. A-68, Shivalik, New Delhi admeasuring 218 sq.yds i.e. about 180.27 sq. mtr. (the said property) was perpetually leased out in favour of Shri S.K. Bajaj, son of Shri Devi Das vide perpetual lease deed dated 20.11.1990 executed by the Rehabilitation Division. Shri S.K.Bajaj executed a General Power of Attorney in favour of the petitioner on 13.01.1992. He also executed his last will in respect of the said property in favour of the petitioner. The possession of the property was handed over to the petitioner by Shri S.K. Bajaj. Thereafter, the petitioner raised construction of a residential house and since then she has been living therein with her family. The respondent came out with a policy for conversion from leasehold rights into freehold rights in respect of residential plots admeasuring upto 500 sq.mt. In the "Introduction" of the said policy, the Govt. stated as follows:-

Considering the long pending demand from the public for converting the lease hold system of land tenure into freehold, the Govt. have decided to sanction the conversion to freehold in respect of purely residential leases of all flats/tenements and built up plots upto 500 sq. meters of area and the orders conveying the sanction of the President of India for such conversion were issued on 14.2.1992 by the Ministry of Urban Development.

To enable maximum number of lessees to take advantage of this offer of conversion to free hold, the Govt. have also decided to charge conversion fee on the basis of notified land rates effective from 1.4.1987, though the present notified land rates are much higher. However, these concessional rates will be available upto 31.3.1993. All applications received along with the necessary payments upto 31.3.1993 will be eligible for these concessional rates. The applications received from 1.4.1993 will be considered with reference to the new land rates to be notified for the relevant period. Further the Govt. have also decided to offer the convenience of the payment of these amounts in a maximum of five equal annual instalments to ease the burden on the public. Therefore, it is hoped that maximum number of lessees will take advantage of this offer at the earliest opportunity.

2. The property which were eligible for conversion were described as follows:-

1.1 All plots of land upto 500 sq. mts. of area for which the allotment/perpetual lease is issued by the Department of Rehabilitation or L & DO for purely residential purpose and the building there-on is constructed and where completion certificate or at least D-form in respect of such construction is obtained from the Local body.

1.2 In addition to above criteria the land use of the area where the property is situated should also be residential under current Master/Zonal plan".

3. The property in question is admeasuring less than 500 sq.mtrs., and falling in residential colony is therefore, eligible for conversion. Under the heading, "Who can apply?", it was stated that, apart from the recorded lessees, General Power of Attorney holders could also apply for conversion. Clause 3.2 is relevant in this regard and read as follows:-

If there was already a transaction regarding the property and the original lessee had given General Power of Attorney to another person for execution of sale deed, the GPA holder himself can apply for conversion. However, in such cases, it should also be specified in the application as to in whose name the conversion is to be granted. If there are a series of GPAs, attested copies of all such GPAs must be furnished to establish the link with the lessees on record and the applicant.

(Emphasis supplied)

4. The amount payable under the said policy for getting the properties converted from leasehold to freehold were set out in clause 17 of the policy, which reads as follows:-

What are the amounts payable for getting the conversion from lease hold to free hold?

1. Conversion fee.

2. Arrears of ground rent, if any.

3. Arrears of any other dues earlier levied by the lessor and not paid by the lessee.
4. A surcharge of 33.1/3% of conversion fee, if the applicant is a GPA holder and conversion is to be granted in favour of a third person.
5. Additional conversion fee, if a portion of the premises is under non-residential use.
6. Processing fee of Rs. 200/-.

(Emphasis supplied)

5. The formula for calculation of the conversion fee for different sizes of built up plots were given in Annexure A to the policy. The amount payable towards conversion fee etc could be paid either in lumpsum or, in not more than five equal annual installments. The amount paid in installments were to carry interest at the rate of 12% per annum on the balance amount payable. Clause 31, inter alia provided that where the applicant for conversion is a GPA holder, the person in whose name the conversion is granted, will have to sign the conveyance deed.

6. The petitioner made an application for conversion of the aforesaid property from leasehold to freehold on the basis of the General Power of Attorney held by her, as issued by the original lessee, under the cover of a letter dated 28.06.1994. As per the formula provided in the policy, she calculated the amount payable towards conversion charges at Rs. 38,617/-, and towards 33.33% surcharge as Rs. 12,872/-. The total amount payable by her, according to her calculation, worked out to Rs. 51,490/-. The petitioner opted to pay the amount in five equal installments and, accordingly, tendered the amount of Rs. 10,498/- along with her application by way of a demand draft. The said application along with the fees tendered by the petitioner was accepted by the respondent. In the meantime, the original lessee passed away in 1994. The petitioner also obtained a probate under the Indian Succession Act in Probate Case No. 112/1997 in respect of the Will dated 07.01.1992 executed by late Shri S.K.Bajaj in her favour.

7. It appears that the respondent called upon the petitioner to pay further amount of Rs. 2272/- which was also paid by the petitioner vide demand draft dated 30.05.1995. However, this demand draft was not encashed by the respondent, and the respondent sought renewal thereof vide letter dated 07.05.1999. It was revalidated and resubmitted by the petitioner under covering letter dated 07.05.1999. The respondent, however, kept the petitioner's application pending. Consequently, the petitioner was driven to move this Court by filing W.P(C) 1997/2008. This writ petition was decided by this Court on 11.08.2009. The operative direction issued by the Court while allowing the writ petition was that the respondent shall process the conversion application of the petitioner within eight weeks. They will communicate to the petitioner the total conversion charges payable by her within the said period. It was also held that

the conversion application would be treated as filed in the year 1994. In the course of its judgment, this Court in para 5 observed that the petitioner would be liable to pay additional amount payable on account of unauthorized transfer made by late Shri S.K.Bajaj in favour of the petitioner contrary to the terms of the sub-lease. It was held that the same was payable in accordance with the judgment of the Supreme Court in Delhi Development Authority Vs. Mrs. Vijaya C. Gurshaney and Another, .

8. Since the amount payable under the conversion policy by an applicant, who is GPA holder, was the conversion charge along with 33.33% surcharge, and not 50% unearned increase in terms of the perpetual lease (to which the decision in the case of Vijaya C.Gurshaney (supra) pertained), the petitioner moved an application to seek clarification/modification of the order dated 11.08.2009. The same was registered as R.P. No. 377/2009 and was disposed of by the Court on 22.09.2009. The Court observed "whether or not 50% unearned increase is payable or 33.33% surcharge is payable, is for the respondents to decide in terms of their policy".

9. The respondent preferred an LPA to assail the judgment of the learned single Judge in the aforesaid case. Before the Division Bench, it was contended by the respondent that the conversion policy was extended to transactions of purchase only in the year 2000. It was also contended that the policy was extended to Shivalik colony only after the year 2000 and, therefore, the application for conversion made by the petitioner could not have been treated as having been made in the year 1994. These submissions of the respondent were rejected by the Division Bench. It was held that the policy in question was also in vogue in 1994. Merely because it was extended to Shivalik colony only in the year 2000, it could not be said that the application should not be treated as having been filed in the year in which it was filed i.e. 1994. The Division Bench found no error in the order of the learned Single Judge. This decision has attained finality.

10. After the decision of the Division Bench was rendered on 16.11.2009, the respondent raised a demand letter dated 11.05.2010, demanding an amount of Rs. 9,02,046/- from the petitioner. Aggrieved by this demand, this petition has been preferred.

11. It is pointed out by learned senior counsel for the petitioner that in the said communication raising the aforesaid demand, it is not even stated that the same was being raised towards payment of conversion charges. In the "Subject" of this letter, the demand was purported to be raised for "temporary regularization of breaches/NOC/Extension of time for completion/Execution of lease deed/Withdrawal of re-entry" in respect of the plot in question. It is, therefore, submitted that the demand letter was issued mindlessly, and on the misplaced premise that the petitioners case fell in one or more of the aforesaid categories. In the breakup of the amount demanded, the respondent computed the conversion charges at Rs. 51,488/-. The interest on conversion charges was computed at Rs. 98,501/-. The respondent also sought to levy unearned increase

of Rs. 7,52,057/- which, when added, came to Rs. 9,02,046/-.

12. The submission of learned senior counsel for the petitioner is that the respondent came out with the general policy for conversion of leasehold rights into freehold rights in respect of residential plots. He submits that since the petitioners case is covered by this conversion policy, and she applied for conversion under the said policy, the respondent cannot seek to levy unearned increase in terms of the perpetual lease, and all that the respondent is entitled to charge is the conversion fee and surcharge of 33.33%.

13. The submission of learned senior counsel for the petitioner is that the action of the respondents in charging the unearned increase from the petitioner is, therefore, completely contrary to the conversion policy which would take precedence over the terms of the perpetual lease executed between the respondent and the original lessee, Shri S.K.Bajaj. The conversion policy does not postulate the levy of unearned increase.

14. Reliance is placed by the learned senior counsel on the decision of this Court in Bal Kishan Chhabra Vs. Union of India (UOI), . In this case, in para 10, the Court observed as follows:-

10. In my considered opinion the existence of unauthorized construction is not an obstacle to conversion of the property into freehold. The duty and responsibility to ensure removal of unauthorized construction shall continue to rest with the local body such as MCD, NDMC, DDA etc. even after the conversion to freehold is carried out. If no damages/charges have been quantified and conveyed to the petitioners, this exercise should be completed within four weeks from today failing which they will be deemed to have been waived. Needless to state the charges shall be quantified strictly in conformity with the conversion policy itself. Reliance has been placed on some of the covenants in the Lease Deed such as Clause I(iii) which prohibits erection of any further direction on the existing structures and (iv) carrying out any alterations or additions either externally or internally without first obtaining the permission of Lessor. The argument is that if these elements exist the Lessor would be competent to re-enter upon the demised premises. It must be presumed that the L&DO, which acts on behalf of the President of India, was fully aware of these covenants when the Policy was devised. If there is any inconsistency between the two, the Policy would override the terms of the lease

(Emphasis supplied)

15. Learned senior counsel points out that the decision the case of Vijaya C.Gurshaney (supra) has no application in the facts of this case, as that was not a case of conversion of the leasehold rights into freehold rights under the conversion policy. It was simply a case where the transfer had been made on the basis of a Will, and the Will had taken effect.

16. The petition is opposed by the respondent. Learned Counsel for the

respondent submits that under the terms of the lease deed unearned increase is payable by the petitioner as she has acquired the said plot for consideration by execution of the General Power of Attorney and Will in her favour. It is also submitted that the petitioner's case is covered by the decision of the Supreme Court in *Vijaya C. Gurshaney* (supra).

17. Having heard Learned Counsel for the parties and perused the decisions relied upon by them as also the conversion policy of the respondent, I am of the view that there is merit in the petitioner's submission that the respondent cannot charge any amount on account of unearned increase from the petitioner and all that the respondent is entitled to charge is the conversion fees along with surcharge.

18. The conversion policy in question not only catered to the demands made by the original leaseholders or those whose names stood mutated in the records of the respondent as the perpetual lessees, but also to the needs of thousands of residents of Delhi who had, with a view to evade stamp duty entered into transactions for acquiring leasehold properties by resorting to the mechanism of entering into agreements to sell, execution of GPAs, SPA, Will etc. In all such transaction, generally, the GPAs were registered instruments, which, at the relevant time did not attract any significant stamp duty. It was to regularize such transactions, and bring them to closure, that the aforesaid policy was formulated by the Government so that in a single stroke, such transactions could be regularized and holders of rights under such agreements/GPAs could be vested with freehold rights in respect of the properties they had acquired in the aforesaid manner. The policy clearly appears to be in the nature of an amnesty scheme, to encourage such like property holders to come forward, pay the conversion fee and charges payable under the scheme, and get their title regularized as freehold owners of the plots. In this manner, the respondent also sought to collect amounts which, but for the scheme, they were not able to collect, even though de facto transfer of thousands and thousands of leasehold properties had taken place all over Delhi.

19. At the time when the said policy was introduced, the Government was well aware of its rights under the perpetual leases granted by it, which entitled it to charge 50% of the unearned increase. However, the Government took a conscious and calculated decision for conversion in its said policy, by providing that where the applications for conversion are made by GPA holders, they would have to pay 33.33% of the conversion fee toward surcharge, while those in whose name the leasehold rights stood mutated in the records of the respondent, while applying for conversion, had to pay only the conversion fee.

20. In *Vijaya C. Gurshaney* (supra), the issue was whether, even in a case where the Will has taken effect, the unearned increase is payable as the Will had been made in favour of a stranger. The Supreme Court held that unearned increase would be payable, and merely because the property stood transmitted by operation of law, the liability to pay unearned increase could not be avoided. The

present case is distinct from the case as *Vijaya C.Gurshaney* (supra). In this case, the petitioner has not sought mutation of the said property in her name on the basis of the Will, or on the basis of the probate obtained by her, but has sought conversion from leasehold to freehold in terms of the respondent's policy.

21. I am, therefore, clear in my mind that the respondent has no justification to charge unearned increase from the petitioner.

22. It appears, the respondent has demanded the overall conversion charges of Rs. 51488/- without granting credit for the amount already paid by the petitioner. The respondent has also demanded interest of Rs. 98501/-. The respondent has charged interest on the balance amount payable by the petitioner towards conversion charges which have been worked out at Rs. 51488/-.

23. Firstly, the petitioner is entitled to get adjustment/credit for the amount already paid by her towards conversion charges on the date of payment. I may note that, strictly speaking, it is the respondent who is responsible for the delay and there may be merit in the petitioner's submission that no interest should be charged by the respondent. However, considering the fact that the balance amount has remained with the petitioner, and she has enjoyed the use of it for all this period, I permit the respondents to charge interest at the rate of 12% per annum on the balance amount. Accordingly, on the balance amount, the respondent may claim interest at the rate of 12% per annum. The respondent is directed to raise a fresh demand in the aforesaid manner within six weeks which may be paid by the petitioner within four week thereafter. The petition is accordingly allowed with costs quantified at Rs. 25,000/-.