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(2002) 12 DEL CK 0038

In the Delhi High Court

Case No : CW No. 2175 of 1999

Vishnu Dev Bhagat and Others — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Citation : (2003) 67 DRJ 64

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Atul Kumar, for the Appellant; Jayant Bhushan, for the Respondent

Judgement

Manmohan Sarin, J.—Rule

2. Petitioner, numbering, 2, who are allottees of shops at Vasant Vihar Shopping Complex have filed the present petition, seeking a writ/direction to restrain the respondents from cancelling their licenses and recovering the license fee from the date of allotment of the shops. It is also prayed that the payment of license fee be waived till the water and electricity is made available for the shopping complex, without which it is impossible to carry on business activities.

3. Petitioners submit that the Directorate of Estates, Marketing Section had called for sealed tenders for allotment of shops/stalls at Vasant Vihar Complex in July, 1998. Shops/stalls were allotted to the highest bidders. Respondent had also fixed a minimum fee and as such the bidder had to quote a figure higher than the minimum/reserved fee. Petitioners'' grievance is that while inviting tenders, respondents did not disclose that water and electricity were not available. Upon issuance of allotment letters, successful bidders were asked to deposit money equivalent to six months'' license fee and advance fro one month and thereupon license deeds were executed.

4. Learned counsel for the petitioner submits that there was no water and electricity and in the present time, it is impossible to carry on and transact any business in the absence of these basic amenities. There were other hindrances

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and difficulties like the absence of a proper approach. It is claimed by the petitioner that access only through a by-lane. The main access being blocked by a boundary wall raised by the CBI Residents Welfare Association. It is urged that there was no provision for emergency services like the fire service. Despite the absence of these basic amenities, exorbitant license fee was sought to be demanded from the date of allotment.

5. Petitioners agitated at various forums with a view to get relief and even the matter was raised in the Parliament. DVB had taken the decision that premises fell under unelectrified area and connection could not be granted. On the other hand, respondents issued demand-cum-show cause notices on 11.2.1999. Petitioners claim that the demand-cum-show cause notices were not served in accordance with law. Petitioners, Therefore, by this petition sought waiver of license fee till the provision of water, electricity and other basic amenities.

6. Mr. Jayant Bhushan, learned counsel for the respondents submits that there was no representation made in the notice inviting tender that water and electricity supply were available for the shops/stalls. Mr. Bhushan submits that the shops/stalls were auctioned on "As is whereas Basis". Petitioners were fully aware of the factual situation at site. He further submits that in fact petitions had been carrying on their business. Water was available from 10.7.1999. Electricity provision was also made on 11.12.1999. Thereafter it was for the individual allottees to apply for and obtain electric connection.

7. Show cause notice in this case was issued on 16.4.1999. By the interim order, respondents were restrained from cancelling the licenses. Pleadings were completed. Vide order dated 29.02.2000, in view of the non-availability of electricity, respondents were directed to consider the feasibility of reducing the license fee. Respondents, in the month of October, 2000, moved CM.No. 6147/2000 for vacation of the restraint order against cancellation of the licenses. Respondent in the application reiterated their earlier argument of the shops/stalls having been auctioned on "As is whereas Basis" and the shopkeepers having been carrying on their business. it was asserted that electrification work was completed on 11.12.1999. Petitioners joint issue with regard to the said date and claim that it was only on 17.4.2000 that electric supply could be made available.

8. The Court purely as an interim measure and without prejudice to the rights and contentions of the parties, directed the petitioners to deposit 50% of the license fee from the date of allotment up to end February, 2000 and from 1.3.2000 petitions were directed to deposit the entire license fee. Time of two months was granted to the petitioners for making the payment of entire arrears. The entire arrears were required to be cleared before 31.12.2000. Petitioners were also directed to continue to pay the license fe as per the license agreement on or before 10th of each month. In the event of default, stay against the cancellation of the license granted was to automatically stand vacated. Mr. Bhushan submits that petitioners failed to comply with the order dated 1.11.2000 and accordingly the licenses of allottees were cancelled in accordance

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with law, as the restraint order automatically stood vacated upon their default in complying with the order dated 1.11.2000. Three of the petitioners approached the Court, namely, Mr. Manoj Kumar Gupta, petitioner No.2, Mr. Gaurav Sethi, petitioner No.5 and Ms. Kanchan Sharma, petitioner No. 20, allottees of shops No. 3, 6 and 26 respectively The aforesaid three petitioners prayed that their default be condoned and they were willing to pay the interest at the rate of 12% per annum and thereafter abide by the order. Vide order dated 21.11.2002, the aforesaid three petitioners were directed to do so.

9. The possession which emerges is that the petitioners'' claim that electricity was made available only on 17th April, 2000 while the respondents contend that it was available on 11th December, 1999. Thus, disputed period is of four months. In this view of the matter, the Interim order fixing liability to pay complete license fee from the month of February, 2000 is fair and equitable. Now I am coming to the question as to whether the petitioners are liable to pay andy license fee or not? There is some merit in the contention of the petitioners that when the respondent announced the availability of shops with the caption "Vasant Vihar Shopping Complex", in present time,s one can proceed on the assumption that there would be no such complex without the availability of basic amenities such as electricity. Yet at the same time, the terms and conditions on "As is whereas basis" and the petitions were expected to have inspected the site and seen the factual position. It is also not in dispute that all the petitions duly took possession and occupied the premises. Petitions also claims to have set up the fittings, fixtures and furnishings for carrying on the business. Water is stated to have been available from the very beginning. The respondents contend that the petitioners were carrying on business and in some of the trade business could be carried out without electricity also. The fact remains that the petitioners continued to be in possession. In these circumstances a fair, just and equitable order would be that the petitions are charged 50% of the license fee up to the end February, 2000. Ordered accordingly. All the petitions except petitions No.2, 5 and 20 have failed to comply with the interim order and avail the benefit there under. Accordingly, all petitioners, except petitions No.2, 5 and 20, are not entitled to any relief, as their licenses already stands cancelled on account of the default in compliance with the order of payment of license fee. However, petitioners No. 2, 5 and 20 are stated to have complied with the order and paid 50% of the license fee up to end February, 2000 together with 12% interest for the period of default. The licenses only of these petitions be restored within four weeks, without payment of any restoration fee, subject to verification of payment of license fee. As regards the remaining petitioners, they are not entitled to any relief and their petitions stands dismissed.

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