(2012) 07 DEL CK 0355

Delhi High Court

Case No: Writ Petition (C) No. 10519 of 2009

Videocon Industries Ltd. and Another		APPELLANT
	Vs	
The Delhi Development Authority and Others		RESPONDENT

Date of Decision: July 16, 2012

Hon'ble Judges: A.K. Sikri, Acting C.J.; Rajiv Sahai Endlaw, J

Bench: Division Bench

Advocate: Brahm S. Nagar, for the Appellant; Rajiv Bansal with Ms. Swati Gupta, for DDA and Mr. Jatan Singh, CGSC and Mr. Tushar Singh, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

One M/s Banganga Investments Pvt. Ltd. (BIPL) was the perpetual lessee of the plot of land ad measuring 2548 sq. mtr. bearing No. E-1, Jhandewalan Extension, New Delhi. M/s BIPL raised construction of a multistoried building on the said plot of land and a completion certificate with respect thereto was issued on 8th March, 1999. BIPL initiated proceedings for merger/amalgamation with the petitioner No. 1 M/s Videocon Industries Ltd. and in which proceedings vide order dated 10th May, 1999 merger/amalgamation was allowed. Upon intimation thereof being given to the respondent DDA, the respondent DDA raised a demand inter alia of unearned increase and impugning which W.P.(C) No. 14961-62/2004 was preferred by the petitioner herein. It was inter alia the contention of the petitioner in that writ petition that it was not liable to pay any unearned increase. The said writ petition was decided vide judgment dated 29th January, 2007 of a learned Single Judge. Though the challenge to leviability of unearned increase was negatived but the demand of Rs. 15,09,31,495/- on that account was set aside and the petitioner was held liable for unearned increase in the sum of approximately Rs. 1,500/- only. Impugning the said judgment of the learned Single Judge the respondent DDA filed LPA No. 411/2007 which was admitted for hearing.During the pendency of the

aforesaid appeal the petitioner on 11th September, 2008 applied for conversion of the leasehold rights in the land aforesaid into freehold. The respondent DDA however vide its letter dated 26th May, 2009 informed the petitioner that since the leasehold rights had not been mutated in favour of the petitioner for the failure of the petitioner to pay the demanded unearned increase of Rs. 15,09,31,495/-, its request for freehold conversion could not be accepted. It appears that the petitioner had also applied for freehold conversion offering to pay a surcharge of 33 1/3% on conversion fee, as payable under the Freehold Conversion Policy/Scheme by a power of attorney holder of a lessee. The respondent DDA however vide letter dated 26th May, 2009 informed the petitioner that the said provision of conversion directly in the name of power of attorney holder of a lessee was not applicable in the case of the petitioner. It was then that the present writ petition was filed contending inter alia that the Policy/Scheme allowing freehold conversion directly in the name of power of attorney holder of a lessee on payment of surcharge of 33 1/3% over the conversion fee should be applied to the facts of the present case also and seeking direction for conversion of the leasehold rights in the land into freehold.

2. Notice of this petition was issued and the same was being listed along with LPA No. 411/2007 (supra) preferred by the respondent DDA.

3. However when the LPA No. 411/2007 as well as this petition were listed before us on 20th October, 2011, on the contention of the counsel for the petitioner herein that the controversy in the appeal and in this writ petition were independent of each other and that the hearing of this writ petition be adjourned awaiting the hearing and decision of the appeal, the two were segregated.

4. We have since, vide our judgment dated 14th November, 2011 allowed the appeal of the respondent DDA and set aside the order of the learned Single Judge limiting the unearned increase to Rs. 1,500/- only. Review was sought by the petitioner (who was the respondent in the appeal) of the said judgment and which has also been dismissed vide order dated 11th May, 2012.

5. When this writ petition came up for hearing on 15th May, 2012 and 18th May, 2012, the petitioner sought adjournment of this petition sine die on the ground of approaching the Supreme Court against the judgment in appeal aforesaid. The said request was however declined finding that the question raised in this writ petition was not related to the question adjudicated in the appeal.

6. The petitioner has now filed CM No. 8679/2012 for permission to file additional affidavit along with writ petition. The petitioner in the said additional affidavit has stated that though it was liable to pay conversion charges only of Rs. 6,42,91,536/- but has without prejudice to its rights and contentions paid conversion charges of Rs. 14,28,66,358/- with a right to seek refund of excess amount paid with interest; that notwithstanding the same, conversion has not been effected. It is further stated in the said affidavit that the petitioners have challenged the judgments dated 14th

November, 2011 and 11th May, 2012 (supra) in appeal aforesaid before the Supreme Court in SLP (Civil) No. 9236/2012 and 18456/2012 and that "the Hon''ble Supreme Court issued notice to the respondents and passed an interim order in the aforesaid Special Leave Petitions on 02.07.2012". The petitioners now seek a direction for conversion of leasehold rights into freehold subject to the finality of the issue of the amount of unearned increase pending before the Supreme Court and a direction for refund of the excess amount of Rs. 7,85,74,822/- which the petitioners claim to have paid.

7. We may at the outset state that thought the petitioners in the additional affidavit (supra) of the petitioner No. 2 Shri V.N. Dhoot has stated that the Supreme Court on 2nd July, 2012 while issuing notice of the SLPs aforesaid of the petitioner has passed an interim order but we, on perusal of the order of the Supreme Court filed along with the additional affidavit, are unable to find any interim order therein. On confronting the counsel for the petitioner with the same, though he admits that there is no interim order in writing but states that there is a verbal interim order and seeks to give details of the same. We take strong exception to such arguments. The Courts speak through their orders in writing and no cognizance can be taken at least by this Court of a so-called verbal order of the Hon''ble Supreme Court.

8. Seen in the aforesaid light, as far as this Court is concerned, the orders in the appeal have attained finality. As per those orders, the petitioner No. 1 is liable to pay unearned increase as demanded by the respondent DDA and which the petitioners have not paid till now. As aforesaid, there is no stay by the Supreme Court of the said demand.

9. The petitioner today has no status vis-�-vis the aforesaid land qua the respondent DDA. The respondent DDA is the owner/lessor of the said land, perpetual lease whereof was granted to BIPL. The petitioner No. 1 has till date not complied with the conditions imposed by the respondent DDA and flowing from the perpetual lease deed for transfer of the leasehold rights in favour of itself. The petitioner No. 1 is thus today a stranger.

10. We have today asked Mr. B.S. Nagar, counsel for the petitioners as to what he has to say on the challenge made in the writ petition to the letter dated 26th May, 2009 (supra) on the ground that the policy of freehold conversion directly in the name of attorney holder of a lessee on payment of 33 1/3% surcharge is applicable to the facts of the present case also. Mr. Nagar has repeatedly stated that the petitioner is now not pressing the said aspect and gives up the said challenge to the letter dated 26th May, 2009. He contends that the only intention of the petitioner now is to keep the challenge to the rejection of the application for freehold conversion made on 11th September, 2008 alive in as much as if the petitioner is to ultimately make a fresh application for freehold conversion, will have to pay the rates as applicable on the date of the application.

11. Once the petitioners have given up the ground on which the rejection by the respondent DDA of the freehold conversion application was challenged, we fail to understand as to what survives in the present petition and as to how we can accede to the request today made by the petitioner.

12. Though the petitioners applied for freehold conversion claiming to be at par with the attorney holder of a lessee and upon rejection by the respondent DDA of the said plea filed this writ petition but the petitioners have today given up the said challenge also. The counsel for petitioners has filed written submissions, in which also the claim for conversion as attorney holder of BIPL is sought to be substituted by claim for conversion by payment of unearned increase demanded by DDA, subject to decision of the SLPs aforesaid and as "orally directed" by the Supreme Court.

13. Once that is the position, the petitioners today have no status even to apply for freehold conversion. Though the petitioners claim to have paid a sum of Rs. 14,28,66,358/- but the same was paid as conversion charges and not as unearned increase. Moreover the petitioners today are also seeking refund of Rs. 7,85,74,822/- out of the said amount. It is thus not as if the petitioners have already paid the unearned increase demanded by the respondent DDA. Moreover, it is not for us to, subject to the orders to be made by the Supreme Court in the SLPs aforesaid, allow the prayer now made. We therefore fail to see as to how the reliefs claimed in the additional affidavit / written submissions can be granted.

14. Before parting with the matter, we feel it our duty to notice another disturbing fact. As aforesaid, though the appeal and this writ petition were earlier being listed together but were segregated on the request of the petitioners. We have now, on going through this writ petition, discovered the reason therefor. The petitioner argued the appeal contending that the respondent DDA, in the matter of computation of unearned increase, was bound by the land rates notified by the Government of India from time to time and which were much lower than that applied by the respondent DDA. In fact that was the basis on which review of the judgment in appeal was sought. The question of the respondent DDA being bound by the land rates notified by the Government of India arises only in the case of Nazul land i.e. land belonging to the Government of India placed at the disposal of the respondent DDA for management. On the basis of other material, we in our judgment dated 11th May, 2012 in the review, independently concluded the subject land to be not Nazul land and the respondent DDA thus being not bound by the land rates notified by the Central Government. We may mention that though in the appeal paper book there were no clear cut pleadings in this regard, we, in the pleadings in the present petition find a unequivocal plea to the said effect. It thus appears that the reason for the petitioner to have the present writ petition segregated from the appeal was to prevent us from noticing the unequivocal stand of the respondent DDA in the present case of the land being not Nazul land. To say

the least, such practices by a litigant are not appreciated. We therefore find ourselves unable to grant the relief sought by the petitioner in the additional affidavit / written submissions and accordingly dismiss the writ petition. We refrain from imposing costs.