

(2009) 01 DEL CK 0223

Delhi High Court

Case No: Writ Petition (C) 6565 of 2007 and C.M. No. 12401 of 2007

Himalaya Estate P.
Ltd.

APPELLANT

Vs

Ministry of Urban
Development

RESPONDENT

Date of Decision: Jan. 14, 2009

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: Ravi Gupta Reema Kalra and Ankit Jain, for the Appellant; Suhel, for the Respondent

Judgement

S. Ravindra Bhat, J.

Rule. Counsel for respondent waives notice of rule; with consent of Counsel for parties, the writ petition was heard finally.

2. The petitioner seeks direction to the respondent Land & Development Officer (L&DO) to issue a No Objection Certificate to it in order to enable sanction of building plans by the Municipal Corporation of Delhi (MCD) in regard to Property No. 1/1, Kirti Nagar Industrial Area, New Delhi (hereafter referred to as the ♦Suit Property♦).

3. The facts necessary for deciding the case are that on 31st March, 1985, Madan Lal and Mohan Lal S/o Nihal Chand were allotted the suit Property and lease deed was executed by the L&DO. The demise was for 99 years according to the recitals, commencing from 5th May, 1952. The recitals also stated that the ground rent was payable at Rs. 32/- per annum from 05.05.1952 to 15.01.1986 and Rs. 8/- per annum thereafter.

4. Clause I (ii) stated as follows:

(ii) within the period of 24 calendar months next after date of these presents _____ day of ____ to for habitation on the site hereby demised one building single storeyed

containing one residential flat or double storeyed consisting of one or two residential flats in all with a barsati on top they be approved by the chief Commissioner, Delhi or such officer or body as the lessor or Chief Commissioner, Delhi, may authorize in this behalf together with all necessary out-hoses, sewer drains and other appurtenances in accordance with a plan or plans to be approved of in writing the Chief Commissioner, Delhi or such officer or body as the lessor or the Chief Commissioner Delhi may authorize in this behalf. And all the drains and sewers for the said premises shall constructed, laid and connected to the satisfaction of the Chief Commissioner and the appropriate Municipal authority and in such position as shall be directed by the said Chief Commissioner and may be required by the said Municipal Authority.

The first sentence contained in first three lines commencing as ♦within the period of 24 calender months next after the date of these presents____ day of ____♦ were scored off. This was also counter signed by the executant on behalf of the L&DO, Settlement Officer Cum Managing Officer i.e. Mr. B.P. Mathani, Department of Re-habilitation (A) Wing, New Delhi.

5. The petitioner purchased and acquired right, title and interest in respect of the suit Property through a Sale Deed, executed on 6th February, 1987. According to the lease conditions such a deed could be executed only after prior approval and no objection by the paramount lessor i.e. L&DO. It is not in dispute that the Assistant Settlement Commissioner of the L&DO by the order dated 09.12.1986 granted such approval. The petitioner contends that a part of the property was acquired on 07.10.2002, by the Central Government for widening of the road to an extent of 62x32 feet. In this factual background the petitioner applied for sanction of building plans. It relies upon a letter dated 28.10.2002 given to the L&DO for this purpose.

6. On 04.04.2003, L&DO permitted mutation of the property in the petitioner♦s favour in the following terms:

No. L& DO/PS-I/ 206

Dated 04.04.2003

To

M/s Himalaya Estate Pvt. Ltd.,
(through its Directors Shri Subhash Chander Kathuria
and Shri Ramesh Chander Kathuria)
1/1, Kirti Nagar Industrial Area,
New Delhi

Subject : Mutation of Property No. 1/1, Kirti Nagar, Industrial Area,
New Delhi.

Memorandum :

With reference to its application dated 28.10.2002 on the above cited subject M/s. Himalaya Estate Pvt., Ltd., through its Director Shri Subhash Chander and Shri Ramesh Chander, sons of Shri Ram Chander Kathuria, are hereby, informed that in view of the Sale deed executed between S/ Shri Madan Lal Rawal and Mohan Lal Rawal, sons of Shri Nihal Chand Rawal and M/s. Himalaya Estate, Pvt. Ltd., through its Director Shri Subhash Chander Kathuria and Shri Ramesh Chand Kathuria, son of Shri Ram Chander Kathuria duly registered with the Sub-registrar Delhi, Delhi under registration No. 681 Addl. Book No.I, Vol. No. 4698 on pages 110 to 125 dated 17.02.1987 the mutation in the records has been carried out on the same terms and conditions as laid down in the lease deed executed on 31.10.1985 by the original lessee.

The property now stands in the books of this office in the name of M/s. Himalaya Estate Pvt. Ltd., through its Director Shri Subhash Chander Kathuria and Shri Ramesh Chander Kathuria, sons of Shri Ram Chander Kathuria.

Sub Division of the property will not be allowed at any stage.

They are liable to pay penalty of Rs. 200 for belated intimation for change of possession and belated applied for certified copy of sale deed from sub-registrar.

Sd/-

(Devinder Kumar)

Dy. Land & Development Officer

Copy to :

1. MCD Zonal Office, Rajouri Garden, New Delhi

2. Account Section

3. The Commissioner of Income Tax, ITO, New Delhi.

7. Since the petitioner's application for No Objection was pending and it was awaiting response on it, for a long time, an application for supply of information was made under the Right to Information Act, on 05.02.2007. Instead of a reply, the petitioner was issued a demand letter on 05.04.2007, for the sum of Rs. 34,77,569/-. This demand letter has been questioned as untenable and entirely arbitrary. The break-up of the demand was stated as penalty for non- construction on the suit property.

8. Mr. Gupta, learned Counsel for the petitioner contends that the demand is unjustified and arbitrary. He points to the fact that in terms of Clause I (ii) of the lease deed, there was no condition of construction within any time frame since the requisite details in that regard had been duly scored out and counter signed by the concerned official. It was emphasised that if L&DO had any doubts on this aspect, it could have been clarified at different stages such as when permission to execute the

sale deed was sought and granted in 1986; when the mutation was granted on 04.04.2003 or on such similar occasions. Yet, L&DO chose to do none of those and for the first time after the petitioner sought information under the RTI Act made the impugned demand.

9. It was submitted in the absence of any notice regarding violation of terms of the lease and in the facts of this case, having regard to the condition in Clause I (ii), no penalty could have been demanded from the petitioner as a pre-condition for the No Objection Certificate.

10. The respondent L&DO in its counter affidavit contends that the lease deed had clearly stipulated that construction had to be completed within 24 calendar months from the commencement of the lease i.e. sometime in 1952. It is further submitted that there was no provision of exemption to the petitioner or any other lessee at the relevant point of time.

11. According to the L&DO, although the date of commencement of the lease deed could not be mentioned in the document due to clerical error yet the same was executed on 31.10.1985. Within a period of 24 calendar months from the date of execution of deed, if the lessee did not raise construction, penalty was attracted. As far as position of Clause 1 (ii) is concerned, the L&DO avers as follows:

In the present case the date of commencement of the lease is not indicated in Clause 1(ii) of the lease deed due to clerical error. However, it is stipulated that the construction should be completed within a period of 24 calendar months. As such charges for belated construction have been rightfully demanded.

12. In these circumstances, it is contended that the demand made as a pre-condition for issuance of No Objection Certificate is neither arbitrary nor discriminatory but consistent with the L&DO's policies and the terms of the lease deed.

13. This Court by an order dated 26th September, 2008, after hearing learned Counsel for the parties directed that the respondent should furnish a calculation sheet in support of the demand of Rs.34,77,569/- made in this case. Apparently at this stage, the Court desired that the calculation should be in respect of the period after the two years from the date of execution of the lease deed i.e. 31.10.1988 till the petitioner sought the no objection certificate i.e. sometime in 2002. Consequently, the counsel for L&DO furnished a calculation sheet showing the demand of Rs.7,04,579/-. The note and calculation sheet produced in Court have been taken on record.

14. It can be seen from the above discussion that the demise of the property by the lessor took place in 1952; however, the lease deed was executed in 1985. The conditions inter alia stipulated that for the period between 1952 and 1986, the ground rent payable was Rs. 32/- per annum after which it was Rs. 8/- per annum. The lease deed was registered on 14th November, 1985 with the office of the

Sub-Registrar. It is in printed format. It was duly executed by the concerned Settlement Officer. It is also not in dispute that the expression "within the period of 24 calendar months next after the date of these presents" was scored off and counter signed. The Court, is therefore, now required to examine the effect of such scoring off.

15. The L&DO contends that the scoring off, which led to there being no time limit for the construction was an inadvertence and a clerical mistake. Learned Counsel has produced a copy of the note-sheet, contained in the file of the L&DO. While recording the calculation for the period from 30.06.1976 to 2007, (since it records that there was a general exemption available till 1974) after which a two year period was exempted from calculation of penalty, the note also adverts to an office order. It interestingly states as follows :

As per the note of PRO at above, it is clear that the date is not indicated in Clause 1(ii) of the lease deed only in about 10-15% of the leases. However, it is stipulated that the construction should be completed within a period of 24 months of the date of execution of lease deed. So charges for belated construction is recoverable in all these type of cases in which the date is not mentioned in Clause 1(ii) of the lease deed.

(emphasis supplied)

16. It can be discerned from the above noting that the position of the L&DO in the counter affidavit (which is that the scoring off was an inadvertence/mistake or a clerical error in regard to deletion of relevant printed clause), is not supported by its record. The note concedes that in about 10-15% cases did not contain any date or time limit. Now as far as the Clause in this case is concerned, it is structured in such a manner that the period has to be specified failing which it becomes open ended, and meaningless. There cannot be any manner of dispute as to the fact that none of the four blanks in the concerned lease deed were filled. Learned Counsel for L&DO had contended that the copy available on the official file did not disclose any scoring off. The copy produced along with the counter affidavit, also reflects a similar position as far as the scoring off the first sentence is concerned. Facially the scoring off is supported by counter signature of the person who signed the document. In the circumstances, the position of the L&DO at this stage that the striking off or scoring off was either unauthorized or a clerical error is unacceptable. Clearly, L&DO's note states that in 10-15% cases, there is no time limit or date, fixed within which the leasee has to construct upon the plot.

17. Another facet of this case is that the petitioner had applied for permission for the sale in 1986; and for mutation subsequently in the year 2002 which was granted on 04.04.2003. These have not been denied. It was nowhere disclosed at those stages by the L&DO that there was an error as is being contended now. In view of the above, the Court is of the opinion that the L&DO cannot now demand entire

amount for the period from 1976 to 2007 as is done. 18. In view of the previous order of the Court the L&DO produced a calculation sheet, which indicates that the total amount payable for the period, after expiry of the two year period commencing from the date of the lease deed till the period when the petitioners sought for a No Objection Certificate works out to i.e. Rs. 7,04,579/-. The break-up of the same is as follows :

1. Plot area : 722 Sq. yrds or 603.88 sq. mtrs.
2. Date of execution of Lease deed : 31.10.1985
3. Exempted period as Per % 7/98 : 3 years

As per the directions of the Court, charges for belated construction has been drawn as under :

For 1st year	(31.10.88 ■ 30.10.89)	603.68 x Rs. 5/-	Rs. 3018/-
For 2nd year	(31.10.89 ■ 30.10.90)	603.68 x Rs. 10/-	Rs. 6037/-
For 3rd year	(31.10.90 ■ 30.10.91)	603.68 x Rs. 60/-	Rs. 36221/-
For 4th year	(31.10.91 ■ 30.10.92)	603.68 x Rs. 65/-	Rs. 39239/-
For 5th year	(31.10.92 ■ 30.10.93)	603.68 x Rs. 70/-	Rs. 42258/-
For 6th year	(31.10.93 ■ 31.10.94)	603.68 x Rs. 75/-	Rs. 45276/-
For 7th year	(31.10.94 ■ 30.10.95)	603.68 x Rs. 80/-	Rs. 48294/-
For 8th year	(31.10.95 ■ 30.10.96)	603.68 x Rs. 90/-	Rs. 54331/-
For 9th year	(31.10.96 ■ 30.10.97)	603.68 x Rs. 95/-	Rs. 57350/-
For 10th year	(31.10.97 ■ 30.10.98)	603.68 x Rs. 100/-	Rs. 60368/-
For 11th year	(31.10.99 ■ 30.10.00)	603.68 x Rs. 105/-	Rs. 63386/-
For 12th Year	(31.10.01 ■ 30.10.02)	603.68 x Rs. 110/-	Rs. 66405/-
For 13th Year	(31.10.03 ■ 07.10.02)	603.68 x Rs. 145/-	Rs. 87534/-
For 14th year	08.10.02 ■ 30.10.02)	603.68 x Rs. 150/-	Rs. 84846/-
For 14th year	08.10.02 ■ 30.10.02	410.44 x Rs. 150/-	Rs. 3880/-
For 15th Year	31.10.02. ■ 02.12.02	410.44 x Rs. 155/-	Rs. 5752/-
Total			Rs. 704195.00
Ground Rent @ Rs. 8/- p.a. w.e.f. 15.01.86 to 14.01.2009 Rs. 184/-			
Penalty as per mutation letter dated 4.4.03 (p.34/c) Rs. 200/-			
Total			Rs. 704579/-

19. Learned Counsel for the petitioner submitted that although the claim is for quashing the entire amount, he has instructions to submit that the reduced amount indicated in the note furnished to the Court, pursuant to the previous directions would be paid and claim to that extent given up.

20. From the above discussion, the Court is of the opinion that the L&DO could not have demanded the sum of Rs. 34,44,769/-, on the ground that Clause 1(ii) was

incorrectly scored off, or that there was no rationale to grant such exemption. It should have adopted a reasonable procedure to put the lessee, in this case the petitioner to notice, about the amount, if any, payable for not constructing on the suit property. It did not do so and chose to wait for more than six years after the application for No Objection Certificate was given, demanding for the first time and that too without break-up for an amount of Rs. 34,44,769/-. Plainly this action is arbitrary. Whilst there can be no doubt that the L&DO can, as lessor, insist on penalty ♦ in agreed or notified terms ♦ for non-compliance with terms of a lease deed, its actions have to conform to standards of fairness, non-arbitrariness and reasonableness, which are the cornerstones of the principle of equality.

21. In view of the above discussion, the Court is of the opinion that the impugned order to the extent it is in excess of Rs. 7,04,579/- deserves to be quashed. The petitioner shall deposit the said amount with the L&DO within a period of four weeks upon which its case for issuance of No Objection shall be processed and the necessary documents furnished to it within a period of six weeks thereafter.

22. The writ petition and pending applications are allowed in the above terms.