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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1047/2007 & CM APPL No. 1838/2007

DALIP SINGH

..... Petitioner

Through Mr. S.D. Singh with Mr. Rahul Kumar
and Ms. Bharti Tyagi, Advocates

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through Mr. V.K. Tandon, Advocate

And

✓ 12+ **W.P. (C) 8298/2007 & CM APPL 15685/2007**

DALIP SINGH

..... Petitioner

Through Mr. S.D. Singh with
Mr. Rahul Kumar and
Ms. Bharti Tyagi, Advocates

versus

LT GOVERNOR OF DELHI & ORS

..... Respondents

Through Mr. Darpan Wadhwa with
Ms. Sheena Iype, Advocate

CORAM: JUSTICE S. MURALIDHAR

ORDER

04.05.2010

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1. These two petitions between the same parties arise out of a common set of facts and are being disposed of by this common order.

2. The prayer in Writ Petition (Civil) No. 1047 of 2007 is for a direction to the Respondents to supply to the Petitioner the application form and other relevant documents to enable him to apply for

conversion of Plot No.6, Functional Industrial Estate, Patparganj, New Delhi ('the said property') from leasehold to freehold.

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3. The prayer in Writ Petition (Civil) No. 8298 of 2007 is for quashing the impugned order dated 11th September 2007 passed by the Deputy Commissioner of Industries, Land II Branch determining the lease deed in respect of the said property. The challenge is also to show cause notice dated 5th May 1998 which led to the passing of the impugned order dated 11th September 2007.

4. This is the second round of litigation. The brief facts are that the said property measuring 450 sq.m was leased out to the Petitioner by a lease deed executed on 8th October 1991 for running the industry of PVC cables. A show cause notice dated 5th May 1998 was issued to the Petitioner by the Deputy Commissioner of Industries alleging violation of Clauses II (13), 5 (a) and 11 (3) of the lease deed. The specific grounds were:

- “(i) Building sold to Shri Naveen Jain.
- (ii) One single building has been constructed on two plots i.e. Plot No. 6 and Plot No. 15.”

5. In response to the above show cause notice the Petitioner submitted a reply on 5th June 1998. He was asked to appear before the Commissioner of Industries, Govt. of NCT of Delhi (‘GNCTD’) for a personal hearing on 12th November 1998. However, he did not appear. Thereafter by an order dated 3rd February 1999 the lease deed was cancelled. The Petitioner filed an appeal before the Lieutenant Governor (‘LG’) which was rejected by an order dated 24th June 1999.

6. The Petitioner filed Writ Petition (Civil) No.4280 of 1999 in this

Court challenging the orders dated 3rd February 1999 and 24th June 1999. By an order dated 14th January 2005 this Court set aside both these orders and remanded the matter to the competent authority for a fresh decision. The Petitioner was permitted to appear through an authorized representative. A direction was issued for completion of proceedings before the competent authority, Deputy Secretary (Industries), within three months.

7. Pursuant to the above order hearings were held before the Deputy Secretary (Industries) on 28th February 2005 and 10th May 2005. Documents were submitted by the Petitioner in respect of his claim and a fresh inspection was carried out at the said property. It was reported that "the occupant is running a Banquet Hall in the name and style of Sanjog and also a restaurant/bar under the name and style of Rajmundra. Considering the persistent violations in terms of the above inspection reports, an order dated 17th January 2006 was passed determining the lease of the said property.

8. Aggrieved by the above order dated 17th January 2006 the Petitioner filed Writ Petition (Civil) No. 1454 of 2006 on 31st January 2006. By the order dated 20th March 2007 the said order was set aside on the short ground that it was passed by one Shri S.K. Singh whereas the Petitioner has been heard by Ms. Rashmi Krishnan, Deputy Secretary, Industries (Land). The matter was again remanded to the Deputy Commissioner of Industries (Land).

9. The Deputy Commissioner of Industries (Land) by the impugned order dated 11th September 2007 arrived at the following conclusions:

(a) The claim of the Petitioner that Mr. Naveen Jain was only a Chartered Accountant by profession and the plot has not been sold to him and the subsequent filing of the affidavit of Mr. Naveen Jain to the same effect was "nothing but a mere afterthought and an attempt to camouflage the same on receipt of the show cause notice." Moreover the non-appearance of the Petitioner before the Deputy Commissioner of Industries to verify the above facts would lead to an adverse inference being drawn against the Petitioner.

(b) The documents produced to show that a separate building existed on the Plot No. 6 were all for the period prior to the date of show cause notice" and therefore, could be relied upon for appreciating the claim of the applicant in rebuttal to the allegations made in the show cause notice. Further, even if it was presumed that the Petitioner carried out initial construction as per plan "he seems to have deviated from the same" and "the said deviation was noticed during inspection resulting in issue of show cause notice."

(c) The statement made by the Petitioner in his reply dated 5th June 1998 that for a temporary period i.e. till the completion of construction activity, "a very narrow opening in between (That too without any type of frame and door)" showed that there was amalgamation.

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(d) Subsequent visits to the said property at the time of consideration of appeal revealed that there were two banquet halls and restaurant functioning in the said plots by amalgamating them, giving credence to the department's contention.

10. This Court has heard the submissions of Mr. S.D. Singh, learned Counsel for the Petitioner, Mr. V.K. Tandon and Mr. Darpan Wadhwa, learned counsel for the Respondents respectively.

11. At the initial stage on 11th December 2007 this Court passed an interim order directing the Respondents not to dispossess the Petitioner subject to his filing an affidavit undertaking not to use the premises for any purpose other than what was permitted in the lease deed and the Master Plan for Delhi ('MPD'). An affidavit of undertaking has been filed by the Petitioner in those terms.

12. This Court first takes up for consideration the question of the legal validity of the impugned order dated 11th September 2007 passed by the Deputy Commissioner of Industries terminating the lease deed. If the Petitioner succeeds on this aspect then the question of the Petitioner's prayer for conversion can be considered.

13. In the show cause notice dated 5th May 1998 there were two principal allegations concerning breach of the terms of the lease deed by the Petitioner. The first was that the building constructed thereon had been sold to one Mr. Naveen Jain. As regards this aspect the stand

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of the Petitioner was that Mr. Naveen Jain was a companion of the Architect Mr. Sarad Jain and visited the site for the purpose of supervision of construction work and consultancy. It was further pointed out that Mr. Naveen Jain was a Chartered Accountant by profession and was only helping the Architect Mr. Sarad Jain. The Deputy Commissioner doubted his claim on the ground that a Chartered Accountant cannot supervise and provide consultancy on construction work "which is not his field of expertise". This Court fails to appreciate this conclusion of the Deputy Commissioner of Industries. Mr. Naveen Jain obviously did not have expertise in construction. He was, however, known to the Architect Mr. Sarad Jain and was helping out Mr. Sarad Jain. Further Mr. Naveen Jain filed an affidavit stating as under:

"1. That I am Chartered Accountant by profession and I have never purchased any property owned by Dalip Singh, such as Plot No. 6, FI Patparganj, Delhi.

2. That Mr. Sharad Jain, Architect was carrying out the supervision and construction at the above said plot at relevant point of time and I was consultant to Mr. Jain and as such I used to visit the site frequently for the purpose of supervision of construction and consultancy in the year 1997-98. I have no concern with the said property at all.

Sd/-
Deponent"

14. There was no basis on which the Deputy Commissioner of Industries could have disbelieved the above affidavit. There was no need for the Petitioner to verify the said facts.

15. If there were doubts about transfer of ownership of the said property, the property records could have been examined or information sought from the registering authority. It is not understood why the non-appearance of the Petitioner should result an adverse inference being drawn against him. Mr. S.D. Singh, learned counsel for the Petitioner had appeared before the Deputy Commissioner of Industries having been duly authorized by Mr. Raj Kumar Gupta, the power of attorney holder of the Petitioner. An affidavit to this effect has been filed by him before this Court in Writ Petition (Civil) No. 4280 of 1999. By an order dated 14th January 2005 passed in the said writ petition this fact was acknowledged and the following order was passed:

“The relevant affidavits have been filed by Shri Dalip Singh and Raj Kumar Gupta in pursuance to the orders dated 19th August 2004 stating that there is no transaction between the parties for consideration and that no agreement to sell has been executed between the parties or with any third party and the possession has not been parted with by Shri Dalip Singh.

In view of the aforesaid position as well as the fact that in the earlier proceedings in WP (C) 3435 of 1999 passed on 27th May 1999 as also proceedings held prior to that before the competent authority, it is agreed that the impugned orders of the competent authority be set aside and the matter be remanded back to the competent authority to determine the matter afresh in pursuance to the show cause notice dated 3rd May 1998. It will be open to the Petitioner to request for an inspection of the property and to file any further response to the show cause notice within a period of four weeks from today.

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The Petitioner shall appear in person or through duly authorized representative before the competent authority being Deputy Secretary (Industries) on 28th February 2004 at 3.00 pm for further proceedings. The competent authority shall endeavour to competent proceedings within a maximum period of three months of the said date. Needless to say that in case of any adverse finding, it will be open to the Petitioner to impugn the said decision in accordance with law."

16. After the above order by this Court, it was not open for the Deputy Commissioner of Industries to draw an adverse inference on account of the non-appearance of the Petitioner when he was represented through a power of attorney by a lawyer who had been permitted to appear on his behalf.

17. In the considered view of this Court, the first ground on which the breach of lease was alleged by the Respondents, was not, therefore, substantiated.

18. As regards the construction of one building on two plots i.e. Plot No. 6 and Plot No. 15 resulting in amalgamation, the Petitioner has been maintaining throughout that these are two separate buildings. While the Petitioner's plot is Plot No. 6, the Plot No. 15 belongs to one Mr. Ajay Gupta. His case has been that except for a narrow opening in between two properties for a temporary period till the completion of construction, there is no inter connection between the two properties.

19. Since this was one of the main grounds on which the lease was

sought to be terminated, this Court, after hearing the matter at some length, passed the following order on 27th April 2010 at the instance of learned counsel for the Respondents. The said order reads as under:

“1. At the request of Mr. Tandon, learned counsel for the Respondents, the case is adjourned for two purposes:

(a) a Senior Officer of the Respondent will be deputed to the site and to take photographs of whatever construction has been effected on Plot Nos. 6 and 15. The Petitioner is also permitted to produce a set of photographs.

(b) production of a report, if any, of any inspection carried out of either of the plots by the Estate Officer, either previous to the issuance of the show cause notice to the Petitioner or subsequent thereto. In any event, the entire records of the case be kept ready for perusal by this Court on the next date of hearing.

2. List on 4th May 2010. Order be given dasti to learned counsel for the parties under the signature of the Court Master.”

20. Pursuant to the above order, an inspection was carried out of the said property. A copy of report dated 30th April 2010 has been placed on record together with photographs. These leave no manner of doubt that the buildings in the said properties i.e. Plots No. 6 and 15 are separate and are not amalgamated. The Deputy Commissioner of Industries as well as the Estate Manager who carried out the inspection have confirmed this fact. Also placed on record are copies of the earlier inspection reports dated 4th February 1999, 20th May 2005 and 9th July 2009. As regards the report dated 4th February 1999 it simply

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states that "construction of one building on two plots i.e. Plot Nos. 6 and 15 have already been indicated." No photographs have been enclosed. There is no rough sketch plan or any other document to support the above conclusion. A status report dated 20th May 2005 states that "it also appeared that there is an interconnected way/door that amalgamate the plot." It was suggested that "we may either got the videography or took photographs for strengthen our side." However that was obviously not done. Again in the report dated 9th July 2009 it is stated as under:

"Enquiry from adjacent premises reveals that there is no activity of any kind in the premises since several years.

There appears to be amalgamation with Plot No. 6 which is behind the Plot No. 15."

21. To say the least, the above reports hardly constitute convincing proof that the two plots have been amalgamated. On the other hand the photographs produced with the report dated 30th April 2010 clearly show that there is no such amalgamation of the plots. This exercise of taking contemporaneous photographs by spot visits to the said property would have easily resolved the issue for the Deputy Commissioner of Industries. Instead he has chosen to proceed entirely on conjectures and surmises.

22. About the use of the suit property for a banquet hall and restaurant, again there is absolutely no videograph or photographs placed on record to substantiate this. In any event the Petitioner has filed an affidavit by way of undertaking that he will use the said property strictly in accordance with the conditions as stipulated in the lease deed

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and the MPD.

23. For all the above reasons this Court concludes that the impugned order dated 11th September 2007 terminating the lease deed of the Petitioner is unsustainable in law. The impugned order is hereby set aside.

24. Taking up Writ Petition (Civil) No. 1047 of 2007, learned counsel for the Petitioner submits that the Respondent shall communicate to the Petitioner the arrears of ground rent required to be paid by the Petitioner. Thereafter the Petitioner will clear those arrears of ground rent and proceed to apply for conversion. This submission of the Petitioner appears to be reasonable.

25. In view of the fact that the order dated 11th September 2007 cancelling the lease deed has been set aside, it is directed that the Respondents will communicate to the Petitioner within a period of two weeks from today the arrears of ground rent that are liable to be paid by the Petitioner. Within a further period of four weeks the Petitioner will deposit the entire arrears of ground rent with the Respondents. Within two weeks of the deposit of the said arrears of ground rent, the Respondents will supply to the Petitioner the necessary forms to enable him to apply for conversion. If the Petitioner makes an application for conversion of the said property from leasehold to freehold, the Respondents will process such application in accordance with law and convey the decision to the Petitioner within eight weeks thereafter.

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26. With the above directions, both writ petitions are allowed with costs of Rs. 10,000/- each which will be paid by the Respondents to the Petitioner within four weeks from today.

27. Order be given dasti to learned counsel for the parties.



S. MURALIDHAR, J

MAY 04, 2010

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