

47.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 20th January, 2011

+ **LPA 76/2011**

GOVT OF NCT OF DELHI & ORS. Appellants
Through Ms. Avnish Ahlawat, Advocate.

Versus

WBM SYSTEMS PVT LTD & ORS. Respondents
Through Mr. I.S. Alag, Mr. J.S. Lamba &
Mr. R.S. Bisht, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J.:

In this intra-Court appeal, Government of National Capital Territory of Delhi assails the order dated 5th October, 2010 passed in Writ Petition (Civil) No. 2957/1998 allowing the writ petition filed by the respondent-M/s WBM Systems Private Limited and others. By the impugned judgment, learned single Judge has quashed the order dated 6th May, 1998 passed by the appellant canceling allotment of plot No. 72, Functional Industrial Estate for Electronics, Okhla Industrial Area, Phase-II, New Delhi (plot, for short). By the impugned order, the

respondent-company who was one of the writ petitioners has been granted the following consequential reliefs:-

- “(i) The Respondents shall within eight weeks from today carry out the necessary changes to the lease deed in respect of the plot in question to reflect the change in the name of the lessee as M/s. WBM Systems (P) Ltd.
- (ii) Within the said period of eight weeks, the Respondents will communicate to the Petitioner the unearned increase that is required to be paid by the Petitioner as on 21st April 1986.
- (iii) The amount of unearned increase as communicated by the Respondents will be paid by the Petitioner within a period of eight weeks thereafter.
- (iv) Subject to the aforesaid payment of unearned increase, the Respondents will carry out necessary changes in the lease deed.
- (v) The Respondents will also consider extending the time for completion of construction for a further period of one year.”

2. The plot was allotted to one Mr. P.D.S. Sawhney vide perpetual lease deed executed on 9th February, 1984 as sole proprietor of M/s World Business Machines. The plot was subsequently mortgaged with Delhi Financial Corporation and a loan of Rs.9,88,000/- was sanctioned. The lessee was required to raise construction within two years from 9th February, 1984, i.e., by 8th February, 1986. The plot, it appears was encroached by jhuggi dwellers and after some difficulty, the jhuggi dwellers vacated the plot in October, 1985. By letter dated 22nd January, 1986 the lessee sought extension of time by one year for

making construction.

3. By an earlier letter dated 18th January, 1986 the lessee had sought permission for transfer of the leasehold rights in the name of M/s WBM Systems Private Limited, i.e., the respondent No. 1 company herein. Mr. P.D.S. Sawhney and his wife, viz., Ms. Achla Sawhney were the Directors of the said company. Vide letter dated 14th February, 1986 Mr. P.D.S. Sawhney was informed that he should be ready to pay 50% unearned increase in the value of the property and submit an undertaking. On 19th February, 1986, Mr. P.D.S. Sawhney accepted the offer and submitted an undertaking to pay 50% unearned increase. The appellant wrote another letter dated 21st April, 1986 that they had in principle agreed to allow the lessee to transfer the land to the private company consisting of Mr. P.D.S. Sawhney and his wife, as directors with equal shares and subject to payment of unearned increase, as and when demanded by the department.

4. The respondent company vide letter dated 3rd May, 1988 requested the appellant to issue No Objection Certificate for mortgaging the plot with Punjab and Sind Bank Limited and to obtain loan. Another letter dated 23rd June, 1988 was issued by the respondent company to Deputy Director (Land) making the same request.

5. Mr. P.D.S. Sawhney had died in a road accident on 14th December, 1987.

6. By letter dated 4th August, 1988 the appellant asked the respondent company to file list of existing shareholders and directors. On 10th August, 1988, the respondent company filed a certificate issued by the Chartered Accountant mentioning the name of directors and shareholders. On 20th September, 1988 the appellant wrote to the respondent company asking for the following details:-

- “i. Succession Certificate/Will form late Mr. P.D.S. Sawhney;
- ii. Affidavit and Indemnity Bonds from the legal heirs;
- iii. Conveyance Deed by legal heirs, conveying the property in the name of the company;
- iv. Affidavit by legal heirs in regard to the payment of unearned increased and additional sum chargeable, etc.”

7. The respondent company replied that pursuant to agreement dated 1st October, 1985 amongst late Mr. P.D.S. Sawhney and his wife Ms. Achla Sawhney and the respondent company all the assets and liabilities of the proprietorship concern of late Mr. P.D.S. Sawhney had been taken over by the respondent company as a going concern. Therefore, succession certificate, indemnity bonds etc. of late Mr. P.D.S. Sawhney were not required. Copy of the agreement was enclosed. It was reiterated that the respondent company was ready and willing to pay 50% unearned increase.

8. In spite of the said letter, the appellant required the respondent

company to furnish succession certificate. The respondent company responded by letter dated 10th February, 1999 stating that the succession certificate had not been received. Another letter dated 22nd August, 1989 was written by the respondent requesting for formal change of name of Lessee in the lease deed and extension of time for completion of construction. Subsequently copy of the succession certificate dated 17th February, 1990 issued by the Sub-Judge First Class, Delhi in favour of the Ms. Achla Sawhney and her two minor children was filed with the appellant. Learned single Judge has recorded that the said certificate was on record.

9. On 6th August, 1991, show cause notice was issued by the appellant alleging that the respondent company had not filed documents as required vide letter dated 20th September, 1988 and there was violation of the lease deed as the lessee had failed to construct on the plot within the period of two years. It was also alleged that the lessee had failed to apply for and pay composition charges for default/delay in construction of the building. It was alleged that three more directors had been inducted during the period 1986-87. The respondent company responded by their detailed letter dated 10th October, 1991. A subsequent letter dated 12th October, 1993 was written.

10. After a gap of nearly five years vide order dated 6th May, 1998

the lease was cancelled. The cancellation order was addressed to Ms. Achla Sawhney and World Business Machines. In the said cancellation order the only reason and cause given is as under:-

“4. Whereas a Show Cause Notice was accordingly issued on 06.08.1991 for the violation of clause II 4(a) of the lease deed as the lessee has failed to erect the factory building within stipulated period. To verify the facts the report of the Estate Manager, Functional Industrial Estate for Electronics was asked and he confirmed that no construction activity was taken (sic) and the plot is still lying vacant.

5. Since the maximum permissible period has already expired on 08.02.91 and the allottee has failed to complete the construction of the factory building on the allotted plot, the Lessor i.e. Hon'ble L.G. of Delhi is pleased to cancel the allotment of the above said plot and determine the lease deed of plot No.72, FIEE, Phase-II, Okhla, New Delhi in favour of Sh. PDS Sawhney under the powers vested with him under clause III of the lease deed. The lessee is accordingly ordered to hand over the vacant possession of plot No.72, FIEE to the Estate Manager within a week of issue of this order. In case lessee fails to hand over the vacant possession of the said plot as ordered above, re-entry shall be affected by the lessor and possession of the said plot taken under the provision of law including Public Premises (eviction and unauthorised occupant) Act.”

11. It may be noted here that during the gap between 1993 to 1998, the respondent company had written letters asking the appellant to inform them about the unearned increase for transfer of the plot. They had all along prayed to extension of time for carrying out construction. The answering respondent company had submitted a pay order of

Rs.2,33,500/- towards extension of construction period without any demand being raised by the appellant.

12. The respondent company filed the writ petition No. 2957/1998 and vide order dated 15th June, 1998 status quo with regard to possession was ordered to be maintained. The said order continued till the impugned judgment was passed in favour of the respondent company.

13. Learned counsel for the appellant has submitted that new and unknown persons viz., Mr. Thomas Mathew, Mr. A.S. Duggal, Mr. K.L. Chadha and Ms. Achla Sawhney were inducted as directors of the respondent company. As far as the induction of Ms. Achla Sawhney is concerned, the same cannot be objected to by the appellant. However, as is clear from the order dated 6th May, 1998 quoted above, the lease has not been cancelled on the ground of sub-letting or induction of new directors. The lease has been cancelled on the ground of non-construction and failure to construct within seven years. The appellant cannot add or plead new grounds and reasons to the order dated 6th May, 1998. The said order has to stand on its own legs and for the reasons stated therein. The appellant cannot improve upon or make a new or different case (refer in this regard *Mohinder Singh Gill v Chief Commissioner* (1978) 1 SCC 405; *R. S. Garg v State of Gujarat* (2006) 6 SCC 430). In any case the respondent company has to pay

unearned increase as per the impugned judgment.

14. As far as non-construction or delay in construction is concerned, the default and the delay have been caused because of inaction and failure of the appellant themselves. The detailed facts have been stated above. The appellant had agreed to transfer the plot in the name of the respondent company subject to payment of unearned increase. The unearned increase was never communicated. Transfer/change in the name of the lessee was never made. In the meantime, Mr. P.D.S.Sawhney died on 14th December, 1987. In spite of the agreement dated 1st October, 1985 between late Mr. P.D.S. Sawhney and his wife and the respondent company, the appellant insisted on documents including succession certificate vide their letter dated 20th September, 1988, though once the transfer in the name of the respondent company was accepted, there was no need for the said documents. The succession certificate dated 17th February, 1990 was also furnished. Written requests for extension of period of construction were made and a pay order dated 26th March, 1997 of Rs. 2,33,500/- towards composition fee was submitted by the respondent company to the appellant but the extension was not granted. Without extension of time and NOC from the appellant, construction could not have been made on the plot. The appellant cannot take advantage of their defaults and wrongs.

15. In view of the aforesaid factual matrix, we do not find any merit in the present appeal and the same is dismissed. No costs.

SANJIV KHANNA, J.

CHIEF JUSTICE

**JANUARY 20, 2011
VKR**