

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 12292/2009 & CM Nos. 12623/2009 & 12452/2010

Reserved on: April 20, 2011

Date of decision: April 25, 2011

VIJAY JAIN

..... Petitioner

Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and
Mr. Ajay Shekhar, Advocates.

versus

THE HON'BLE LT. GOVERNOR,

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through: Mr. MP Singh, Advocate for UoI
Ms. Renuka Arora, Advocate for
DSIIDC.

W. P. (C) 12226/2009 & CM No. 12506/2009

ANIL KUMAR JAIN

..... Petitioner

Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HONBLE LT GOVERNOR

OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Sachin Datta, CGSC with
Ms. Gayatri Verma, Advocates
for UOI.
Ms. Renuka Arora, Advocate for
DSIIDC.

W. P. (C) 12287/2009 & CM Nos. 12614/2009 & 12450/2010

BASANT KUMAR SOMANI

..... Petitioner

Through: Mr. Sanjiv Bahl with Mr.
Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HONBLE LT. GOVERNOR GOVT. OF
NCT OF DELHI AND ORS

..... Respondents

Through: Mr. MP Singh, Advocate for UoI
Ms. Renuka Arora, Advocate for
DSI IDC.

W. P. (C) 12288/2009 & CMs. 12616/2009 & 12454/2010

VIRMATI

..... Petitioner

Through: Mr. Sanjiv Bahl with Mr.
Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HON'BLE LT GOVERNOR , GOVT OF
NCT DELHI & ORS

..... Respondents

Through: Mr. MP Singh, Advocate for UoI
Ms. Renuka Arora, Advocate for
DSI IDC.

W. P. (C) 12301/2009 & CM Nos. 12627/2009 & 12459/2010

SUNITA GUPTA

..... Petitioner

Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HON'BLE LT GOVERNOR ,
GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. MP Singh, Advocate for UoI
Ms. Renuka Arora, Advocate for
DSI IDC.

W. P. (C) 12302/2009 & CM Nos. 12630/2009 & 12449/2010

KRISHAN KUMAR

..... Petitioner

Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HONBLE LT. GOVERNOR
GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Mr. MP Singh, Advocate for UoI
Ms. Renuka Arora, Advocate for
DSI IDC.

W. P. (C) 12308/2009 & CM No. 12654/2009

MANOJ VIJ & ANR Petitioners
Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HON'BLE LT GOVERNOR,
GOVT. OF NCT OF DELHI & ORS Respondents
Through: Mr. MP Singh, Advocate for UoI
Ms. Renuka Arora, Advocate for
DSI IDC.

W. P. (C) 12309/2009 & CM Nos. 12656/2009 & 12457/2010

RITU JAIN Petitioner
Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HONBLE LT.GOVERNOR
GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Ms. Zubeda Begum, Addl.
Standing Counsel with Ms. Sana
Ansari, Advocate for GNCTD.
Ms. Renuka Arora, Advocate for
DSI IDC.
Mr. Sachin Datta, CGSC with
Ms. Gayatri Verma, Advocates
for UOI.

W. P. (C) 12333/2009 & CM Nos. 12683/2009 & 12456/2010

BALA DEVI Petitioner
Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HON'BLE LT GOVERNOR GOVT OF
NCT DELHI & ORS Respondents
Through: Ms. Renuka Arora, Advocate for
DSI IDC.

W. P. (C) 14062/2009 & CM Nos. 16139/2009 & 12455/2010

DEEPAK GUPTA Petitioner
Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HON'BLE LT GOVERNOR
GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Ms. Zubeda Begum, Addl.
Standing Counsel with Ms. Sana
Ansari, Advocate for GNCTD.
Ms. Renuka Arora, Advocate for
DSI IDC.
Ms. Sonia Sharma with
Mr. Mirza Aslam Beg,
Advocates for UOI.

W. P. (C) 14065/2009 & CM Nos. 16146/2009 & 12448/2010

VINOD KUMAR JAIN Petitioner
Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HON'BLE LT GOVERNOR GOVERNMENT
OF NCT OF DELHI AND ORS Respondents

Through: Ms. Zubeda Begum, Addl.
Standing Counsel with Ms. Sana
Ansari, Advocate for GNCTD.
Ms. Renuka Arora, Advocate for
DSIIDC.
Ms. Sonia Sharma with Mr.
Mirza Aslam Beg, Advocates
for UOI.

W. P. (C) 14066/2009 & CM Nos. 16148/2009 & 12460/2010

MANJU GARG Petitioner

Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HON'BLE LT GOVERNOR
GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Ms. Renuka Arora, Advocate for
DSIIDC.

W. P. (C) 14067/2009 & CM Nos. 16150/2009 & 12458/2010

RAM KUMAR JAIN Petitioner

Through: Mr. Sanjiv Bahl with Mr.
Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HON'BLE LT GOVERNOR
GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Ms. Zubeda Begum, Addl.
Standing Counsel with Ms. Sana
Ansari, Advocate for GNCTD.
Ms. Renuka Arora, Advocate for
DSIIDC.

W. P. (C) 755/2010 & CM Nos. 1576/2010 & 12453/2010

TILKA DEVI Petitioner

Through: Mr. Sanjiv Bahl with

Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

LTGOVERNOR GNCT OF DELHI AND ORS Respondents

Through: Mr. Rajiv Nanda, Addl. Standing
Counsel with Ms. Rachna
Saxena, Advocate for
R-1 and R-2.
Ms. Renuka Arora, Advocate for
DSI IDC.
Mr. H.C. Bhatia, Adv for UoI

W. P. (C) 757/2010 & CM Nos. 1588 & 12451 of 2010

MANEESH JAIN

..... Petitioner

Through: Mr. Sanjiv Bahl with
Mr. Eklavya Bahl and Mr. Ajay
Shekhar, Advocates.

versus

THE HON'BLE LT.GOVERNOR GOVERNMENT
OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Rajiv Nanda, Addl. Standing
Counsel with Ms. Rachna
Saxena, Advocate for
R-1 and R-2.
Ms. Renuka Arora, Advocate for
DSI IDC.
Ms. Sonia Sharma with Mr.
Mirza Aslam Beg, Advocates
for UOI.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT
25.04.2011

1. The common challenge in all these petitions is to a Circular dated 10th July 2008 issued by the Commissioner of Industries ('COI') fixing the rates of conversion of industrial plots in Narela Industrial Area from leasehold to freehold at Rs. 19,800/- per sq. m. for the year 2007-08. The further prayer of the Petitioners is that a direction should be issued to the COI to process the pending applications of the Petitioners for conversion @ Rs. 7,500/- per sq. m. or in the alternative to charge Rs. 9,900/- per sq. m. as per the circular of the DDA @ for the year 2007-08. The third prayer is for a direction to the Respondents not to charge composition charges on account of non-execution of lease deeds and delayed construction in terms of the decision taken in the meetings dated 6th July 2006 and 22nd August 2007 of the Committee constituted for the purpose, comprising of the representatives of the Government of National Capital Territory of Delhi ('GNCTD') (Respondent No. 1), the COI (Respondent No. 2) and the Delhi State Infrastructure & Industrial Development Corporation Limited ('DSIIDC') (Respondent No. 3).

2. When notices were issued in these petitions on 26th October 2009, this Court granted the Petitioners liberty to deposit the entire amount demanded by the DSIIDC in terms of the impugned Circular dated 10th

July 2008 of the COI within four weeks. It was directed that the aforementioned deposit would be subject to the outcome of the present writ petitions. However, it is directed that Respondents would not be entitled to claim any amount towards non-execution of the lease deed or composition fee towards late construction contrary to the minutes of the meeting dated 22nd July 2007. It was further clarified that the DSIIDC would be entitled to charge composition fee for late construction/non-execution of lease deed in terms of Resolution dated 22nd August 2007. The Petitioners would pay the amount due and payable in terms of the said Resolution within four weeks.

3. After completion of pleadings when the matter was heard on 29th November 2010 this Court passed the following order:

“1. There are two points urged by learned counsel for the Petitioners. The first one relates to the levy of composition charges for non-execution of the lease deeds within the stipulated time by Delhi State Infrastructure & Industrial Development Corporation (‘DSIIDC’).

2. The submission on behalf of the Petitioners is that even according to the DSIIDC, the time for the allottees to come forward to get the lease deed executed was extended from time to time. The last extension was up to 15th September 2007 subject to

payment of penalty of Rs. 50,000/-. Reference is made to minutes of two meetings dated 6th July 2006 and 22nd August 2007 which records the fact that a decision had been taken to permit conversion from leasehold to freehold even in those cases where a lease deed had not been executed. It is accordingly submitted that in such cases where no lease deed had been executed, conversion should be permitted without insisting on payment of composition charges for non-execution of the lease deed.

3. The reply filed by the DSIIDC points out that at no point of time any decision was taken to waive the requirement of the execution of the lease deed. Even when there was an extension of time for execution of the lease deed, the composition charges were being collected. As far as the last extension up to 15th September 2007, the penalty of Rs. 50,000/- was in addition to the composition charges. As regards the minutes of the two meetings held in July 2006 and August 2007, it is submitted that the minutes of meeting were not approved by the competent authority and there was no Notification for waiving the requirement of execution of any lease deed.

4. As regards this issue, this Court is of the view that the Petitioner cannot escape the requirement of having to pay the composition charges for non-

execution of the lease deed. It appears that in November 2005 the conversion policy was launched. Although the allottees were permitted to raise construction even without formal execution of the lease deed, throughout this period lease deeds were in fact being executed. Composition charges were collected from the allottees as and when they executed lease deeds. There appears to have been no notification or circular issued at any point of time either waiving the requirement to pay composition charges or permitting the allottees to straightaway be granted conversion without executing the lease deeds. Consequently, this Court is not impressed with the submission that such of the Petitioners, who may have raised construction and who are now opting for conversion of the property from freehold to lease hold should not be required either to execute a lease deed or to pay the composition charges. The first point urged by the Petitioner is accordingly rejected.

5. The second point urged by the Petitioner is that the conversion charges have been increased arbitrarily from Rs. 7500/- per sq. mtr. in 2005-06 to 18,000/- per sq. mtr. in the year 2006-07 and Rs. 19,800/- per sq. mtr in 2007-08. It is submitted that the relevant notification itself states that the DSIIDC would follow the Delhi Development Authority ('DDA') pattern and even in respect of commercial

properties in Narela, the DDA were charging for conversion only at the rate of Rs. 13,300/- per sq. mtr and for industrial plots, at Rs. 9900/- per sq. mtr. It is accordingly submitted that the increase in the conversion charges by the DSIIDC is arbitrary and irrational.

6. As regards the second point concerning the increase in the conversion charges from Rs. 7500/- per sq. mtr in 2005-06 to Rs. 18,000/- per sq. mtr in 2006-07 and Rs. 19,500/- per sq. mtr in 2007-08, this Court finds that there is no proper explanation offered by the DSIIDC indicating the basis on which this increase was effected. In its reply to Writ Petition (Civil) No. 12226/2009 the DSIIDC has explained that only 10% of the conversion charges have to be actually paid. Where the plot holder is an original allottee a further rebate of 40% has been granted. The formula for calculation of the conversion charges for a plot size of 350 sq. mtr is indicated as under:

'P x R x 10 - 40% rebate (original allottee)

100

P = Plot area

R = Rates notified by the Govt. of NCT of Delhi (GNCTD).'

7. If indeed the rates are those notified by the GNCTD and are not those determined by the DSIIDC, a further question arises as to what the

notified rates of the GNCTD were at the relevant point of time. This is not clear from the reply of the DSIIDC.

8. A second question that arises is in the context of the fact that the relevant circular of the DSIIDC mentions that the DDA pattern of rates would be followed. However, the actual conversion charges fixed by the DSIIDC appear to be much higher than the rates notified by the DDA both for industrial and commercial plots in Narela (i.e. Rs. 9,900/- per sq. mtr and Rs. 13,300/- per sq. mtr respectively).

9. Ms. Arora, learned counsel for the DSIIDC states that she may be permitted to file an additional affidavit explaining the basis on which the conversion charges were fixed for the years 2006-07 onwards. She states that the relevant documents containing the calculations or the formula on the basis of which enhanced conversion charges were fixed would also be enclosed. The additional affidavit with documents be filed by the DSIIDC within four weeks. The Petitioners are permitted to file a reply to the said additional affidavit of the DSIIDC within two weeks thereafter.

10. List on 18th February 2011.”

4. Pursuant to the above order, an affidavit was filed by the DSIIDC on 14th February 2011 and a reply thereto was filed by the Petitioner on 3rd

March 2011. Thereafter when the matter was again heard on 15th March 2011, the following order was passed:

“1. It is seen from the affidavit filed by the DSIIDC that the Committee constituted to revise the conversion rate adopted the DDA’s rates and made its recommendation on that basis on 19th June 2008. For Narela Industrial Area the Committee recommended a conversion rate of Rs. 9,000/- per sq. m. for the year 2006-2007 based on the prevalent DDA rates. For the subsequent years 2007-2008 and 2008-2009 a 10% increase in each year was proposed. When the Committee’s recommendation was seen by the Minister of Industries he took the view that going by the past practice the conversion rates for plots in the Narela Industrial Area should not be different from the rates recommended for the Badli Industrial Estate, i.e. Rs. 18,000/- per sq. m.

2. It is seen from the tabular chart which forms a part of the Circular dated 10th July 2008 issued by the Commissioner of Industries, that a uniform conversion rate at Rs. 18,000/- per sq. m. has been proposed for the year 2006-07 industrial plots in industrial areas in three zones, i.e., East, North and West. For the industrial plots in the South Zone for the year 2006-07 the uniform conversion rate recommended is Rs. 25,920. This has been followed in the subsequent years 2007-2008 and 2008-2009 with a 10% increase for each year.

3. The Petitioner’s contention is that Narela Industrial Area is to be considered as a separate zone. It cannot be

equated with the Badli Industrial Estate for the purposes of fixation of conversion rates. On the other hand, Ms. Salwan states that Narela Industrial Area and Badli Industrial Estate are in the North zone and the consistent past practice has been to treat them at par for the purposes of conversion rates. She states that she will file a supplementary affidavit explaining why Narela Industrial Area and Badli Industrial Estate continue to be treated at par for the purpose of conversion rates. The supplementary affidavit be filed within two weeks.

4. List on 20th April 2011.”

5. Pursuant to the aforementioned order dated 15th March 2011, the DSIIDC has filed a supplementary affidavit on 18th April 2011 in which it is stated as under:

(i) The DDA does not have any industrial estate at Badli or Narela. Consequently, certain other factors had to be taken into account while fixing the conversion rates for the industrial estate at Narela;

(ii) The DSIIDC and the Industries Department, GNCTD had been fixing the land rates based on the rates fixed by the DDA in the nearby estates falling in the same zone. Since Narela and Badli are in the same zone, the conversion rates fixed by the DDA in its north zone have been adopted for Narela and Badli;

(iii) even prior to the launch of the conversion scheme there has been parity in rates fixed by the government for disposal of lands in the industrial estates at Badli and Narela; and

(iv) the circle rates fixed by the Revenue Department of the GNCTD are the same for Badli Industrial Area and Narela Industrial Area. As per the categorization of colonies by the Municipal Corporation of Delhi ('MCD'), Badli and Narela Industrial Area are at par, as both fall in the category 'G'.

6. Mr. Sanjiv Bahl, learned counsel appearing for the Petitioners submitted that the above explanation offered by the DSIIDC is mere reiteration of the earlier stand taken by it in the matter. He further submitted that the circle rates relied upon in the aforementioned supplementary affidavit dated 18th April 2011 were notified as recently on 4th February 2011 and therefore, would not be relevant for the purpose. He submitted that circle rates, if at all, pertaining to the relevant period 2007-08 had to be considered. He further pointed out that in terms of the recent announcement of circle rates in Delhi announced on 4th February 2011 effective 8th February 2011, all industrial areas have been categorized in Zone 'G'. This, therefore, would not have a bearing on the conversion rates. Mr. Bahl referred to the notings on the file which showed that the Committee constituted for

the purpose had made a categorical recommendation that the conversion rates of 2006-07 for Narela Industrial Area should be at Rs. 9,000/- per sq. m. He pointed out that in the letter written by the COI to the DDA on 19th May 2008 the queries raised pertained to corresponding zones of the DDA within which the industrial estates in Badli and Narela fell. In reply thereto on 3rd June 2008 the DDA left the zone in which the Badli Industrial Estate should be slotted to be decided by the COI itself. As regards the Narela industrial area the letter clearly mentioned that this area was within the Narela zone of the DDA. The minutes of the meeting of the Committee held on 18th June 2008 also took note of the fact that the conversion rates of 2005-06 both for Badli and Narela Industrial Area at Rs. 7,500/- per sq. m. acknowledging that Narela was a separate zone. The Committee recommended the conversion rate of Rs. 18,000/- per sq. m. It is submitted that it is only because the Minister of Industries raised a query as to why the conversion rates for Narela should not be the same as for the Badli Industrial Area that the prices were equated. It is further submitted that there was no basis to equate Narela with the Badli Industrial Estate for the purposes of fixation of conversion rates. Mr. Bahl further submitted that the commercial rates for properties in Narela has been fixed by the DDA as on 15th February 2009 at Rs. 15,112/- sq. m. which is far less than the rates fixed by the COI for

industrial plots in terms of the Circular dated 10th July 2008 for the same year 2007-08. He submitted that it is unlikely that rates for an industrial area can be more than those for a commercial area. He further submitted that having decided to adopt the rates fixed by the DDA, the COI should not be permitted to change its stand and fix different rates for conversion for the Narela Industrial Area.

7. Appearing for the DSIIDC, Ms. Renuka Arora, learned counsel submitted that the COI was not bound to follow the DDA's rates since in any event the DDA does not have an industrial estate in Narela. She pointed out that Narela and Badli industrial estates are in the same zone, categorized by the MCD as falling in category 'G'. She submitted that various factors were considered before equating the conversion rates for Narela and Badli industrial areas. She further submitted that there is no reason to keep the conversion rates for Narela industrial area lower than those for other industrial areas in the North zone. She submitted that there is nothing arbitrary in the decision of the COI to fix the conversion rates for industrial plots in Narela for the year 2006-07 at Rs. 18,000/- per sq. m. at par with the Badli industrial estate.

8. The above submissions have been considered. It is correct that the Committee in its meeting on 18th June 2008 recommended the fixation

of conversion charges as per the rates charged on provisional basis by the DDA. It is also not in dispute that the DDA identified the Narela industrial area as falling in the Narela zone whereas the Badli industrial estate was not assigned any particular zone. However, the above categorization of industrial plots by the DDA into different zones was not necessarily binding on the COI. As already noticed, the DDA did not have an industrial estate in Narela. It was, therefore, not obligatory for the COI to adopt the categorization of the DDA. On the other hand, the MCD recognized both Badli and Narela industrial areas as falling in the 'G' zone. The latest notification regarding circle rates places all industrial areas including Narela and Badli in Zone 'G. The decision of the Committee was only in the form of a recommendation. The query raised by the Minister of Industries as to why the conversion rates in Narela should not be at par with Badli industrial estate cannot in the circumstances be said to be unjustified or irrelevant. Moreover, the scope of interference by this Court with administrative decisions concerning fixation of conversion rates is limited. The Court is satisfied that relevant materials have been accounted for, and irrelevant considerations kept out, in arriving at the decision to fix the conversion rate for the industrial plots in Narela for 2006-2007 at Rs. 18,000 per sq. m. and increase it by 10% for every subsequent year.

9. Consequently, this Court does not find any ground to interfere with the impugned circular dated 10th July 2008 issued by the COI fixing the rates of conversion of industrial plots in Narela Industrial Area from leasehold to freehold at Rs. 19,800/- per sq. m. for the year 2007-08.

10. Consequently, there is no merit in these petitions and they are dismissed as such. The pending applications are disposed of.

S. MURALIDHAR, J

APRIL 25, 2011

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