

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

Judgment Reserved on: August 29, 2012

Judgment Pronounced on: September 12, 2012

+ W.P.(C) No. 3115/2008

SMT. HARJINDER KAUR Petitioner

Through: Mr. Akshay Makhija &
Ms. Sanjugeeta Moktan, Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Sangram Patnaik, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGEMENT

1. Quashing of DDA's demand of 22nd February, 2008 for additional unearned increase and composition fee with interest as a pre-condition to convert premises no. D-79, East of Kailash, New Delhi (*henceforth referred to as 'subject premises'*) from leasehold to freehold, is sought in this petition.

2. The background facts as projected by the petitioner are that subject to petitioner undertaking to pay additional unearned increase if demanded by DDA after finalization of the policy, the subject property was mutated in May, 1990 in the name of petitioner upon payment of unearned increase of ₹18,750/-. Thereafter, petitioner claims to have requested the respondent to extend the time for raising construction on the subject premises and vide representation of 16th September, 1991 had sought exemption from payment of composition

fee as petitioner's request for mutating the subject premises was pending with DDA for a decade. As per the petitioner, she was granted an audience by the then Lt. Governor of Delhi in December, 1991 and an assurance was given that the demand of composition fee would be waived and thereafter the respondent had remained silent. Petitioner had applied in January, 2005 for conversion of subject premises from leasehold to freehold, alongwith conversion charges and relevant documents to the DDA.

3. In February, 2008, petitioner had received DDA's demand of ₹6,51,018/- as unearned increase with interest thereon @ 18% per annum with effect from 10th June, 1990 up to date of deposit with further demand of ₹1,18,145/- as composition fee with interest thereon @ 18% per annum with effect from 19th December, 1990 up to date of deposit, which is impugned in this petition.

4. To justify the impugned demand of 22nd February, 2008 (Annexure –S), the stand taken by the respondent is that when petitioner had applied for mutation of the subject premises in the year 1980, there was no policy to mutate the DDA properties on the basis of the Will, in the name of persons who were not in the line of succession and since the Will was probated, the mutation of the subject premises was carried out in the name of petitioner subject to payment of unearned increase, which petitioner did and had also undertaken to pay the additional unearned increase upon finalization of DDA's policy in respect of the unearned increase chargeable. Thus,

according to respondent, petitioner cannot wriggle out of the liability to pay the unearned increase and the composition fee as demanded. Though, initially the stand of the respondent was that the Will in favour of petitioner had not suggested any monetary consideration but in the Additional Affidavit of 21st April, 2011, filed by respondent in terms of the order of 4th February, 2011, upon reconsideration of the Demand, it was scaled down to ₹ 2,26,685/- and true factual position was disclosed, which was duly supported by documents.

5. Respondent's aforesaid Additional Affidavit reveals that the subject premises had changed hands not simply on basis of the Will of 29th August, 1973 in favour of petitioner but was accompanied by *Special Power of Attorney* in favour of husband of the petitioner. Though consideration for the execution of the *Special Power of Attorney* is not disclosed in this document (*Annexure A-5*), but its bare perusal reveals that on the strength of this document coupled with the aforesaid Will (*Annexure A-4*), respondent had reasonably concluded in its Additional Affidavit that through the aforesaid *Special Power of Attorney* and Will, the subject premises was actually sold to petitioner. Respondent's office noting of 20th January, 1989 (*Annexure A-11*) to the Additional Affidavit does indicate that the opinion of respondent's Deputy Director of the Will in question seemingly not disclosing any monetary consideration was not accepted by the Vice-Chairman of respondent and rightly so, as on perusal of respondent's Additional Affidavit and the documents accompanying it, what emerges is that the subject premises had come in the hands of petitioner not by way of

an innocuous Will but was, infact an attorney transaction.

6. Aforesaid conclusion is arrived at, after duly considering the submissions advanced by both the sides and on perusal of the material on record and the decisions in '*J.K. Bhartiya & Ors. UOI & Anr.*' 126 (2006) DLT 302; '*Delhi Development Authority Vs. Aditya Kumar Jajodia*' 119 (2005) DLT 477 (DB) & '*H.R. Vaish Vs. UOI & Ors.*' 100 (2002) DLT 370 cited on behalf of petitioner.

7. In view of the conclusion arrived at as aforenoted, petitioner's reliance upon *DDA's Policy Guidelines (Annexure- T)* and the decisions cited are of no avail. The pertinent observations made by the Apex Court on this aspect in *Delhi Development Authority Vs. Vijaya C. Gurshaney & Anr* 2003 (7) SCC 301, are as under:-

“10. The rationale behind the formulation of its policies and guidelines issued by DDA is to curb illegal transactions in favour of persons not of blood relations of the allottee, being practiced rampantly and the property being transferred by an under hand sale in the garb of Will and power of attorney etc. DDA has formulated a policy that in such cases the department would ask for 50% of unearned increase in the value of property. It is always open to appellants to inquire whether an alleged Will is in actuality a sale in the garb of Will in total disregard of the policy decision of the authority. Merely because Probate/Letters of Administration are granted would not preclude DDA from so inquiring. It must be grasped that DDA has been given no notice of the testamentary proceedings. Therefore, it would have no right to appear or oppose such proceedings. As already

said, DDA is a creature of the Statute and any policy decision or guidelines formulated by such authority will have a binding effect on the parties, in absence of rules to the contrary.

11. Furthermore, Clauses 4, 5 and 8 of the lease deed, as extracted, envisage that the lessee cannot sell, transfer or part with the possession of the whole or any part of the commercial plot except with the previous consent of the lessor in writing, with a rider that the lessor can refuse the transfer. It is also provided in proviso to Clause 4(b) that in the event of sale or foreclosure of the mortgaged or charged property, the lessor shall be entitled to claim and recover the 50% of unearned increase in the value of the plot. It is further provided in Clause 8 that in the event title of lessee in the plot is transferred in any manner whatsoever the transferor and the transferee shall within three months of the transfer give notice of such transfer in writing to the lessor. The respondent herein has not complied with any of the conditions stipulated in the lease agreement and, therefore, it was within the competence of DDA to invoke the terms and conditions stipulated in the lease agreement by charging 50% of unearned increase in the value of the plot. The letters dated 19.6.1992 and 17.9.1992, impugned in the Writ Petition before the High Court, were in the terms of invoking of Clauses 4, 5 and 8 of the lease agreement and policy decision and guidelines of DDA as noticed above. The impugned judgment and order of the High-Court runs contrary to the terms and conditions stipulated in the lease agreement and the same is unsustainable. It is accordingly set aside.”

8. At the hearing of this petition, no worthwhile arguments were

addressed to justify the execution of *Special Power of Attorney* in favour of the husband of petitioner, which fortifies the conclusion of subject premises coming into the hands of petitioner by virtue of attorney transaction and not merely by way of a Will as projected by petitioner. The *ratio decidendi* of a Division bench of this Court while dealing with the issue of imposition of unearned increase at the time of conversion of a property from leasehold to freehold, in *LPA No.415/2005, UOI & anr. Vs. Jor Bagh Association Regd. & ors.*, rendered on 28th February, 2012, is that *Lessor shall be entitled to raise demand towards unearned increase if lease deed contained clause for the same*, which squarely applies to the instant case as the lease herein permits the Lessor to demand the unearned increase.

9. In light of the aforesaid narration, this Court is of the considered view that respondent's demand of additional unearned increase is well justified, particularly in view of the fact that petitioner had earlier paid unearned increase at the time of mutation of the subject premises, without demur.

10. With respect to the composition fee demanded, even if it is taken that petitioner could not have possibly completed the construction within one month but still the demand of composition fee cannot be repelled by merely relying upon an oral purported assurance by the then Lt. Governor of Delhi that the composition fee would be waived. Such an impression of the petitioner cannot be said to be *bona fide*, hardly justifying avoidance of payment of the composition fee. The revised charges demanded by DDA as detailed in its

Additional Affidavit of 21st April, 2011, are duly supported by the Policy Guidelines (Annexure A-13) and Circular (Annexure A-14).

11. Consequentially, I find no justification to quash respondent's aforesaid revised demand and so this petition is dismissed with no order as to costs.

(SUNIL GAUR)
Judge

September 12, 2012

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