

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

Reserved on: 25.11.2013
Pronounced on: 29.11.2013

+ **RFA (OS) 28/2003**

MR. R.S. MALHOTRA Appellant
Through: Mr. Rajat Malhotra and Mr. Sunil
Malhotra, Advocates.

versus

MR. SEWA SINGH AND ANR. Respondents
Through: Mr. Preet Pal Singh and Ms.
Priyam Mehta, Advocates.

+ **W.P.(C)2658/2012, C.M. NO. 14582/2013**

R.S. MALHOTRA Petitioner
Through: Mr. Achal Gupta, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Arun Birbal, Mr. Vinit
Malhotra and Mr. D.K. Singh, Advocates,
for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

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1. This common judgment and order will dispose off an appeal (RFA (OS) No. 28 of 2003) directed against the judgment of a learned Single Judge decreeing a suit (Suit No. 1642/1992, hereafter “the suit”) for specific performance. The decree required execution of sale

deed and receipt of the consideration. The same individual, R.S. Malhotra (hereafter referred to as the “original owner”) has also, in a writ petition (No.2658/2012) under Article 226 of the Constitution, claimed a direction in the nature of certiorari to quash the demand made by the respondent Delhi Development Authority (DDA) in its letter dated 12th January 2012 impugned therein, whereby unearned increase quantified by the said Authority has been demanded.

2. The original owner was perpetual lessee of property bearing plot number B-140, Block B, Vivek Vihar, Delhi- measuring 300 sq. yards - acquired through perpetual lease executed on 12th June 1989 by the President of India. The original owner had agreed to sell the property to one Mr. Sewa Singh and Mrs. Pawanjeet Kaur for a sale consideration of ₹7,72,500/-. To complete the said sale the petitioner had to obtain necessary permissions from various authorities viz. ‘No Objection Certificate’ from the Income Tax authorities, the Delhi Development Authority, the Urban Land Ceiling Authority etc. which the original owner agreed to obtain within a period of 365 days. The possession of the said property was to be delivered after the execution of sale deed.

3. Since the sale of transaction could not be completed as per the agreement to sell, Mr Sewa Singh and Mrs. Pawanjeet Kaur filed a suit for specific performance against the original owner being CS (OS) 1642 of 1992. The learned Single Judge passed the decree in favour of Mr. Sewa Singh and Mrs. Pawanjeet Kaur with the direction to the petitioner to apply to the DDA for permission/consent to sell the suit land bringing out the factual position and exceptional

circumstance in which such permission was being requested. The petitioner assailed the said order and judgment in appeal being RFA (OS) 28 of 2003.

4. During the pendency of appeal, a compromise was arrived between the parties. This Court by its order date 29th January 2010 read with the order of 19th March 2010 recorded the said settlement arrived at between the parties. Amongst other terms in the compromise, it was mutually agreed that the sale transaction shall be carried out after completion of the necessary formalities and permission from the DDA. It was agreed between the parties that prior to the sale of the property, the property shall be converted to freehold from leasehold. However, the original owner claims that this conversion could only be done after constructing the plot. Further, it is on record that the said owner had made various representations to the DDA for grant of necessary permission to which there has been no reply.

5. To give the effect to the settlement arrived at between the parties, the Court by its order dated 3rd December 2010 appointed a local commissioner for carrying out the necessary formalities with respect to conversion of property from leasehold to freehold. The local commissioner in terms of the order dated 3rd December 2010 took necessary steps to facilitate the processing of the conversion application and has filed the status report of the same.

6. The DDA, during the course of hearing on 2nd September, 2011 (in RFA(OS) 28 of 2003), proposed demands to be made against the original owner. This Court, whilst taking into the consideration of the

same issued the following directions:

“Learned counsel for the DDA states that as per his instructions, there would be amount(s) payable towards composition fee and a show cause notice is also proposed to be issued for unearned increase. The DDA may take a necessary decision and intimate the same to the respondent through counsel. It would then be open to the respondents to take recourse to appropriate legal remedy to challenge the same in accordance with law as the respondent has interest in the proceedings. The petitioner will cooperate with the respondent in this behalf and sign the necessary authorization so that the litigation can be handled by the respondent.

We also consider it appropriate that the balance amount of sale consideration, which is lying in the Court, be released to the petitioner along with interest accrued thereon. Ordered accordingly.

Learned counsel for the respondent stated that he will move appropriate proceedings once the order of the DDA is received and in view of the pendency of this matter and a settlement being recorded in this matter, the petition may be listed along with this matter. We permit the respondent to seek appropriate directions for such listing.....”

7. It was in this background that the DDA by its letter dated 12.01.2012 demanded ₹3,16,96,262/- towards unearned increase. The demand was made on the premise that the petitioner has sold the property in question. However, the petitioner submitted that he applied for necessary permission in his own name and the sale is to be completed/given effect to only after the conversion of the property to freehold.

8. The DDA, by its impugned letter dated 12th January 2012 (bearing No. F.8(560)66/LAB(R)/193) demanded composition fee on account of non-construction in respect of property No. B- 140 Vivek Vihar. The petitioner submitted that as per respondents' own policy the period under litigation is to be excluded while determining the time for which the plot remains unconstructed.

9. These two letters, i.e demanding unearned increase amounts, and composition fee in respect of construction, are impugned in the writ petition filed before this Court. The issue of unearned increase has become academic, because the DDA has, during the pendency of proceedings, converted the property into freehold without restriction. The conveyance deed too has been executed in this regard. The only issue is with respect to composition fee, payable for late construction upon the property.

10. In this regard, the petitioner's argument is that construction was not possible because of the dispute regarding whether the property had to be subject to a decree for specific performance. Thus, the situation which arose was on account of circumstances beyond the control of the parties. The DDA could, stated counsel, therefore, not claim the composition fee as it has done, by demanding an exorbitant amount.

11. As far as the DDA goes, its submission is that the dispute between the parties, i.e. the owner and the vendee resulted in delay; however there was no order impeding the construction on the plot. Submitting that such composition fee was recovered on the basis of a uniformly applicable policy, counsel argued that the DDA could not

be made to forgo its claims, in public interest, on account of a squabble between the owner and his vendee.

12. This Court is of the opinion that as far as the claim for payment of entire composition charges goes, the DDA's position is unreasonable. The period under consideration for the levy of the composition fee is to be excluded, and the impugned notice is liable to be quashed, because, firstly, the DDA's guidelines for the imposition of composition fee were amended by office order F. No. AO(Proj)Misc./Composition/ Pt. 1/36 dated 31.10.1995, issued by the Lt. Governor. Paragraph 1.4 of the guidelines reads as follows:

“1.4 EXEMPTIONS: The exemption from the levy of annual composition fee in the policy will be available as follows:

(i) Where construction is not possible because the plot has been cancelled by DDA - actual period of cancellation of plot.

(ii) Where the construction is not possible because of specific orders of non-construction of a statutory authority e.g. Registrar, Courts etc. - actual period of operation of such orders.

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13. The composition fee levied by the impugned notice by the DDA relates to the period 29.01.2010 to 02.09.2011 (as per the Calculation Sheet attached to the impugned notice). However, the property in question was under litigation in Suit No. 1642/1992, decided on 13.05.2003 filed by Mr. Sewa Singh against Mr. Malhotra. This suit was decreed, leading to an appeal, being RFA (OS) 28 of

2003. This appeal was disposed off by a compromise between parties, recorded by the Court on 29th January 2010 read with the order of 19th March 2010. Subsequently, till 02.09.2011, Sh. Malhotra attempted to convert the property to freehold, under the terms of the compromise recorded by the Court, which would allow construction on the plot to begin. However, here, due to the DDA's inaction, and implicit refusal to convert the property into freehold despite the appointment of a local commissioner by this Court, or at the very least provide reasons for denying this request (which would put the matter to an end), construction on the said plot was prevented. Accordingly, a host of external factors, beginning with litigation and ending with the DDA's refusal to convert the property to freehold, led to the failure to construct on the plot, which is the legal trigger for the composition fee to be levied. Indeed, these are the precise set of circumstances that are contemplated by Clause 1.4 of the Revised Guidelines to ensure that an individual is not subject to payment of the composition fee for matters that lay beyond his/her control.

14. Indeed, this point was borne by the discussion of these guidelines by this Court in *Hamdard (Wakf) Laboratories (India) v. Delhi Development Authority*, W.P.(C) 4043/1998, 2872/2001 and 3412/2001 and 7372/2002 (decided on 22.11.2004). In considering the question of exemption from the levy of composition fee due to external factors, the Court recognized that the factors must truly be external, in that the individual is incapable of, or, unable to, proceed with construction, rather than it merely being an inconvenience. Indeed, the exemption clauses is not a sword, but rather, a shield, to

protect one from the levy of such fee when it was not possible to avoid non-construction of the plot. Accordingly, the Court there noted as follows:

“27. No one can take advantage of his own wrong and that no one should be penalised for no fault of his are two salutary guiding principles of law while interpreting a policy decision or its applicability. If a party is prevented from doing of an act due to external reasons and for no fault of his, it would be discharged from the obligations imposed upon the party. Policy of the DDA vide clause 1.4 recognises these principles, but places unreasonable restriction of period in case of plot attracting ULCR Act to 3 years exemption, since made 8 years, and delay occasioned due to mutation. In case of cancellation of allotment and restoration and in cases of orders prohibiting construction, policy rightly excludes entire period.

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29. Time to get into the factual matrix. I would proceed to analyze the facts in context of: whether the lessee was prevented from constructing upon the plot due to external factors, be they attributable to DDA or a statutory enactment or due to any other statutory authority or was it due to the in action of the lessee.”
(emphasis supplied)

Accordingly, for the above reasons, the writ petition is allowed, and the impugned show-cause notice dated 12.01.2012 by the DDA imposing a composition fee is quashed. There shall accordingly, be a refund of the amount deposited during the pendency of the litigation, to the party concerned who made the deposit.

15. As far as the appeal goes, the Commissioner, Mr. Kalam Singh,

is directed to hand-over the vacant and physical possession of the suit premises to the vendee/plaintiff within two weeks from today. Likewise, all title documents shall be handed over to the vendee plaintiff.

16. The appeal, RFA (OS)28/2003 is disposed off, and the Writ petition W.P.(C) 2658/2012 is allowed in the above terms; no costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

NOVEMBER 29, 2013