

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

Date of decision: 26th September, 2013

+ **W.P.(C) 4152/2000**

M/S. KARAMDEEP FINANCE & INVESTMENT (I) PVT. LTD.

..... Petitioner

Through: Mr. Manish Vashisht, Adv. with
Mr. Sameer Vashisht, Adv. &
Mr. Abhinav Sharma, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondents

Through: Ms. Shobhana Takiar, Adv. with
Ms. Ritagya Riti, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL J. (ORAL)

1. This writ petition reflects the predicament in which a person is placed on account of ignorance of law and apathy on the part of the instrumentality of the State, Delhi Development Authority (DDA) in this case.
2. One Trilochan Singh Rana purchased plot No.14, Block A-2, Safdarjung Development Area, New Delhi measuring 725 sq. yards in a public auction held by the DDA. A Perpetual Lease Deed was executed in his favour on 18th March, 1970. As per clause 4-A of the Perpetual Lease Deed, the lessee was not entitled to sell, transfer, assign or otherwise part with the possession of the whole or any part of the plot except with the previous consent in writing of the lessor, that is, the President of India. In the event of the consent being given, the lessor was entitled to impose such terms and conditions as he deems fit and the lessee was under an obligation to pay 50% unearned increase of the market value of the plot.

On 29.09.1988, the lessee (Trilochan Singh Rana) entered into an agreement to sell with one Ocean Construction Industries. Necessary clearance for sale of the property was applied under Section 269 UD of the Income Tax Act, 1961 (the Act). On 13.12.1988, the Income Tax Department/Central Government passed an order under Section 269(1) UD of the Act for compulsory acquisition of the property. On 30.01.1989, the Income Tax Department paid an amount of ₹17,86,420/- to the DDA towards unearned increase.

3. The property was put to public auction by the Income Tax Department declaring that the property was being sold free from all encumbrances and with vacant possession. There were no terms and conditions specified for making any payment towards unearned increase pursuant to the auction.
4. The Petitioner was the highest bidder in the auction held on 20.03.1989 on his bid of ₹1,08,05,000/-. In pursuance of the bid having been accepted and the price paid, the Petitioner was put in actual physical possession of the property No.14, Block A-2, Safdarjung Development Area, New Delhi on 25.04.1989. On 25.09.1997, a registered sale deed was executed in favour of the Petitioner by the President of India through the Director, Department of Revenue, Ministry of Finance. The terms and conditions of the sale deed, *inter alia* included:-

“1. That in pursuance of the said auction and consideration of the sum of ₹1,08,05,000/- (₹ One Crore Eight Lakhs and Five Thousand only) already paid by the Vendee/Auction purchaser to the Vendor as aforesaid, the receipt of which the Vendor hereby acknowledged, the Vendor hereby transfers, conveys and sells to the Auction Purchaser, the Vendee, by way of sale of that plot of land admeasuring 725 sq. yds. Bearing No.14 in Block A-2 in the

lay out plan of Safdarjung Development Residential Scheme, Ring Road, South Delhi (villages Mohammadpur Munirka and Hu7mayunpur Revenue Estate, together with all rights, titles, interests, appurtenances, easements, privileges in and pertaining to the aforesaid property in favour of the Vendee absolutely and forever, with the provisions of Section 269 UE(1) of the Income Tax Act, 1961 and all the powers, rights and interests vested in the Vendor with regard to the sale, transfer and conveyances of the aforesaid property to the Vendee herein.

2. That on the execution of this sale deed, the Vendee has become the absolute and exclusive owner of the property hereby sold, conveyed and transferred to it and that the Vendee shall have absolute rights and title to the same and to deal with the property in any manner it likes. It is made clear that the Vendor has no right and is left with no right, interest, claim or title of any nature whatsoever into or upon the aforesaid property.”

5. It was also stated in the sale deed that the vendor had already paid an unearned increase of ₹17,86,420/- to the DDA at the time of acquisition of the property.
6. Unfortunately the Petitioner, unaware of the fact that a sale deed vesting the property absolutely in him had already been executed in his favour by the President of India on 15.12.1999, applied for conversion of leasehold rights to freehold rights and deposited a sum of ₹ 3,45,729/- with the DDA. Thereupon, the DDA by a letter dated 28.04.2000 raised a demand of ₹1,43,90,348/-.
7. The Petitioner realised his mistake and approached this Court with the instant writ petition urging that the President of India having executed a sale deed in his favour, the property did not require conversion to freehold as the scheme of conversion from leasehold to freehold will apply only in respect of leasehold property. By an amendment, the Petitioner also sought refund of the amount of ₹3,45,729/- deposited with

the DDA under a mistaken belief with interest @ 12% per annum w.e.f. 17.12.1999, i.e. from the date of the deposit.

8. In the counter affidavit filed by the DDA, it is admitted that an amount of ₹17,86,420/- had been deposited by the Income Tax Department towards 50% unearned increase. The Respondent/DDA took a plea that there were two sales. Firstly, the property was purchased by the Income Tax Department for which the unearned increase was paid and the second transaction was when the Petitioner purchased the said property. Thus, it is stated that even on the second transaction, the Petitioner would be obliged to pay 50% of the unearned increase and the decision of the lessor in respect of the market value will be final.
9. Referring to the judgment of a Division Bench of this Court in *M/s. Bansal Contractors (I) Ltd & Anr. v. Union of India & Ors.*, 76 (1998) DLT 805, Mr. Manish Vashisht, learned counsel for the Petitioner urges that on the first sale of the property (by acquisition) in favour of the Income Tax Department on which the unearned increase was paid, the Central Government who was the lessor and the absolute owner of the property, the lease came to an end by operation of doctrine of merger. The Central Government through President of India executed a sale deed vesting the property absolutely and free from all encumbrances in favour of the Petitioner. Thus, there was no question of payment of any liability of unearned increase by the Petitioner who was a purchaser of the property from the Central Government. Mr. Manish Vashist submits that even if there was any liability, it was the liability of the seller (although there could be none in view of the fact that the lessor became the absolute owner on account of merger).

10. In *M/s. Bansal Contractors*, a similar question fell for consideration before a Division Bench of this Court. In para 18, the Division Bench held as under:-

“18. The property having been acquired by the Appropriate Authority, the same vested in the Central Government and the Central Government was at liberty and authorised to deal with the property in any manner as it deemed fit. It was competent to either make an out-right sale of the said property or to sell the lease hold rights, as it had done earlier when the property was purchased by Surjit Singh in 1955. Once the lease hold rights reverted back to the Central Government who was the lessor and absolute owner of the property, the lease came to an end by operation of doctrine of merger. While making a sale of the said property after acquisition the Central Government transferred to the auction purchaser by way of sale all its rights, title and interest in the said property and it was a covenant of the sale deed that the property vested in the auction purchaser and the Central Government was left with no right, title and interest therein. What was conveyed to the auction purchaser was all the estate, rights, title, interests of the Central Government in or upon the said property as is evident from reading of the various clauses of the sale deed executed by the President of India in favour of the petitioner, the relevant clauses whereof are set out in para 6 above. The Central Government did not revive nor create afresh the lease. It purported to sell and demise its absolute estate, rights, title and interests in the property sold to the petitioners and in their hands it is a free hold property. The nature and extent of transfer is to be determined on the basis of the recitals in the sale deed, reading the sale deed as a whole. The President of India was the paramount lessor/owner of the property and while exercising his powers in respect of the sale of the property sold all the rights, title and interest in the said property to the petitioner.”

11. Subsequently, a learned Single Judge of this Court in *Monoflex India Pvt. Ltd. V. Commissioner of Income Tax & Anr.* 107 (2003) DLT 786, in similar circumstances held that when any sale is held under auction, the same is governed by the conditions of the auction. If it was not a

condition of the auction, the auction purchaser cannot be saddled with the liability of an unearned increase of the sale amount.

12. Referring to *M/s. Bansal Contractors* and another judgment of this Court in *Sujan Singh Oberoi v. Commissioner of Income Tax & Ors.*, Civil Writ Petition No.7514/2001, decided on 27.01.2003, the learned Single Judge held as under:-

“20. Learned counsel for the petitioner has more or less made the same submissions as set out in the writ petition. Learned counsel has further relied upon a Division Bench judgment of this Court in Bansal Contractors (India) Ltd. and Anr. v. Union of India and Ors., 1998 VII AD (Delhi) 315. In the said case, the property was compulsorily acquired by the appropriate authority under Section 269-UD of the said Act. The Division Bench held that the property vested absolutely with the Central Government and even if the property was subject to payment of some ground rent to the Central Government, before the acquisition took place, the property once vesting in the Government is exonerated of such liability and the subsequent purchaser is not required to pay such ground rent or enhanced ground rent to the Settlement Commissioner to whom the land was subjected before acquisition. The Division Bench noted that a sale deed has been executed in pursuance to the public auction and, thus, no reference could be made to the documents earlier executed.

21. Learned Counsel has also referred to another judgment dated 27.01.2003 of this Court in CWP No. 7514/2001 titled 'Sujan Singh Oberoi v. Commissioner of Income Tax & Ors.', which was also a case of compulsory acquisition of the property under Section 269(UD) of the said Act. In the said case, the sale deed executed by the President of India in favor of the petitioner therein provided for payment of unearned increase and the clause stated that in case of such demand by DDA, the same was to be paid by the Vendor. Despite this and the demand raised by DDA, the Chief Commissioner of Income Tax had not paid the unearned increase. In those circumstances, it was directed that the Tax Department should deposit the unearned increase with DDA for execution of

the documents in favor of the petitioner therein leaving it open for the tax authorities to challenge the decision of DDA to impose the unearned increase.”

13. In the instant case, it was not a condition of sale that the unearned increase is the liability of the purchaser. Moreover, the sale deed itself being executed by the President of India who himself was the lessor and on the doctrine of merger, the leasehold rights having reverted to the absolute owner; there was no question of payment of any amount as absolute rights were transferred in favour of the Petitioner.
14. The Petition, therefore, has to be allowed. The impugned demand of ₹1,43,90,348/- raised by the DDA vide demand letter dated 28.04.2000 is set aside being illegal. The Petitioner had deposited a sum of ₹3,45,729/- with the DDA on 15.12.1999 without any liability. The DDA ought to have woken up at least on filing of the instant writ petition and *suo moto* refunded the said amount to the Petitioner. This shows a callous attitude of the officers of the DDA, which ultimately has to suffer for the inefficiency of its officers.
15. The Petitioner has claimed interest @ 12% per annum which, considering that this amount is lying deposited since 1999, is slightly on the higher side. It is directed that the Petitioner shall be entitled to interest @ 8% per annum on the amount of ₹3,45,729/- from the date when this writ petition came up for hearing, that is, 31.07.2000. The DDA is directed to pay the amount aforesaid along with simple interest within two months. If the amount is not paid within a period of two months, as stated earlier, the Respondent/DDA shall be liable to pay interest @ 15% per annum for the period subsequent to the period of two months.

16. The DDA shall be entitled to fix the responsibility upon the officers/officials at fault and to recover the amount of interest from him/them.
17. *Dasti* to the counsel for the DDA for bringing this order to the notice of the Chief Legal Adviser of the DDA.
18. The writ petition allowed in above terms.

(G.P. MITTAL)
JUDGE

SEPTEMBER 26, 2013

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