

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

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Date of Decision: 25.04.2013

+ W.P.(C). No.10616/2009

OM PRAKASH KAPOOR

..... Petitioner

Through Shri Harish Malhotra, Advocate with Shri R.K. Modi,
Advocate for the petitioner.

versus

D.D.A

..... Respondent

Through Ms. Manika Tripathy Pandey, Advocate for
respondent/DDA.

**CORAM:
HON'BLE MR. JUSTICE V.K.JAIN**

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent DDA held an auction on 20.10.1984, for sale of plots meant for running cold storage. The bid of the petitioner having been accepted, plot No.273 New Subzi Mandi Okhla Industrial Area, New Delhi was allotted to him by the Delhi Development Authority for running a cold storage. The building plans for running cold storage were duly sanctioned by Delhi Development Authority. When the petitioner applied for a license to running a cold storage, the request was refused by the Government. Aggrieved from refusal of permission to run a cold storage, the petitioner filed a writ petition before this Court being W.P.(C). No.2935/1987.

It transpired during the hearing of a aforesaid writ petition that since there were sufficient cold storages in Delhi, the Government was not willing to give license to the petitioner for running a cold storage. That position having been accepted by the petitioner, he sought an order for change of land use of the aforesaid plot from cold storage to commercial/office. The counsel appearing for Delhi Development Authority stated that entire building could not be allowed to be used for commercial purpose, whereupon, the counsel for the petitioner sought change of the land user on the extent of 70% of the building. The writ petition was, therefore, disposed of with the following directions.

“In this view of the matter we direct respondent No.1/Delhi Development Authority to allow the petitioner to change the user of the property from cold storage to office purposes to the extent of 70% and the remaining 30%, including basement, for storage. If, however, the petitioner is able to get licence for cold storage in future the petitioner will be allowed to use 30%, including basement, for the cold storage. For the purpose of effecting the aforesaid change, the petitioner would be liable to fulfil necessary formalities as also to pay the additional premium as determined by the Delhi Development Authority on the basis of the extent of the change of the user of the property.”

2. On 24.08.1999, the writ petitioner furnished undertaking to Delhi Development Authority to pay additional premium, if any, for change of user of the property in terms of above referred directions issued by this Court.

3. The proposal for change of land use of the above referred plot was considered by the Technical Committee of Delhi Development

Authority in its meeting held on 21.12.1999 and it was decided that the plot may be allowed as general commercial as per the direction of the Court. Pursuant to the said decision, the respondent/Delhi Development Authority sent a letter to the petitioner on 25.01.2001 intimating him that the Competent Authority had accepted his request for conversion of land used from cold storage to general commercial and permitted user and that his case had been sent to Finance Branch for working out the conversion charges, which would be communicated to him. The demand of use conversion charges however was communicated to the petitioner vide letter dated 07.10.2008, wherein, a sum of Rs.1,53,74,644 (one crore fifty three lakh seventy four thousand six hundred forty four only) was demanded.

4. Vide letter dated 11.10.2008, the petitioner requested Delhi Development Authority to furnish the basis formula for calculating the conversion charges demanded by it. The conversion charges were then communicated to the petitioner and the formula applied by Delhi Development Authority reads as under:

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1	Area of plot	1147.5 sqm.
2	FAR	100 (1147.5 sqm)
3	70% of the area	$1147.5 \times 70\% = 803.2 \text{ sqm.}$
4	The L&DO Rule of Defence	Rs.17,500/- per sq. for 100 FAR

	Colony for the year 1990-91 17500 x 803.25 25% conversion charges	Rs.1,40,56,875/- Rs.35,14,219/- (A)
5	Interest @ 18% w.e.f. 5.2.90 to 31.10.08 i.e. 225 months Rs.52713 x 225	Rs.1,18,60,425 (B)
	Total : A+ B	35,14,219 + 1,18,60,425/- =1,53,74,644/-

5. Since the petitioner was not satisfied with the charges demanded by Delhi Development Authority, he filed the present writ petition claiming the following reliefs:

“(a) The Hon’ble Court may be pleased to issue a writ of certiorari or any other appropriate writ or directions thereby quashing the demand notice dated 7.10.08 and letter dated 20.11.2008.

(b) The Hon’ble Court may be pleased to issue a writ of mandamus or any other appropriate writ or direction thereby directing the respondents to forthwith convert the user of the property-273, Fruit and Vegetable Market, Okhla Industrial Area, New Delhi, on payment of conversion charges i.e. on the basis of 25% of the 70% price paid by the petitioner for the said plot, OR on such terms and conditions as this Hon’ble Court

may deem fit and proper in the facts and circumstances of this case.

(c) The Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ or direction thereby directing the respondent to forthwith execute a lease deed in respect of plot No.273, Fruit and Vegetable Market, Okhla Industrial Area, New Delhi for general commercial purpose as per the Court direction and as approved in the resolution passed in the 208th meeting of Screening Committee of the respondent – DDA was held on 30.11.1999.

(d) Cost of the petition be allowed to the plaintiff.

(e) Any other relief which this Hon'ble Court deems fit may also be granted to the plaintiff.”

6. It would thus be seen that there are two components of charges demanded by Delhi Development Authority. The first being the conversion charges @ 25% of the land rates and the second component being interest @ 18% per annum.

7. The first contention of Shri Harish Malhotra, learned Sr. Counsel for the petitioner was that for calculating conversion charges, Delhi Development Authority should have applied the land rates of Okhla or some nearby area in case the land rates of Okhla commercial plots were not available but it was not justified in applying the land

rates of Defence Colony which is situated quite far from Okhla and is of much more developed colony.

8. A perusal of a relevant noting in the file of Delhi Development Authority, which has been filed with the counter affidavit would show that comparable area to Okhla Industrial Area was Defence Colony prior to 01.04.1991 and thereafter it was Friends Colony. The petitioner has not placed on record any rates fixed by L&DO and DDA in respect of commercial plots in Okhla Industrial Area. The petitioner has not referred to any particular auction by DDA in Okhla Industrial Area, on or after 05.02.1990 when the order for change of land use was passed by a Division Bench of this Court.

Referring to an order passed by the Appellate Tribunal in the case of **HC International Associates Vs. DDA**, Appeal No.237/80 MCD/2207, on 16.12.2009, the learned senior counsel appearing for the petitioner states that DDA itself had sold commercial plots in Okhla during 1989-91 @ of Rs.3412 per square meter and this was noted in para 28 of the above referred order of the tribunal. In my view, the price fetched in the auction held by DDA, at any time prior to 5.2.1990 would not be relevant for the purpose of determining the conversion charges. Nowhere has it been noted in the above referred order of the tribunal that DDA had auctioned commercial plots in Okhla, on or after 5.2.1990, at the rate of Rs.3412/- per sq. mt. In the absence of specific date of the above referred auction, no reliance on the aforesaid rates can be placed particularly in view of the noting of DDA which indicates that no rates in respect of commercial plot for

Okhla Industrial Area were available. This is also not the case of the petitioner that the commercial rates in any colony which was nearer to Okhla Industrial Area as compared to Defence Colony, were less than the commercial rates in Defence Colony on or after 05.2.1990. In these circumstances, I am of the view that DDA was justified in taking the commercial rates fixed by L&DO for commercial properties in respect of Defence Colony while calculating the conversion charges claimed from the petitioner. Therefore, the first component of the demand raised by the respondent cannot be disputed.

9. As regards payment of interest, the matter of fact is that had DDA conveyed the conversion charges payable by the petitioner to him immediately or soon after the order dated 05.02.1990 came to be passed by the Division Bench of this Court, the petitioner would have been required to pay the said amount to DDA. By not paying the aforesaid amount to DDA, the petitioner has utilized the money which in law had become payable to DDA. Therefore, the DDA, in my view, was fully justified in claiming interest from the petitioner while demanding the conversion charges payable by him in terms of the order passed by this Court on 05.02.1990.

10. The learned counsel for the petitioner lastly submits that the rate at which the interest has been charged by DDA is exorbitant since no bank pays that much interest on the deposit made with it. That may be correct, but this is also equally true that the interest charged by the bank for giving loans is much higher than the interest the bank pays on the deposits made with the bank. If the agencies such as DDA do not

get money in time then they may have to borrow money from banks and financial institutions for meeting their requirements and in that case they have to pay such interest as is charged by the banks and financial institutions. However, even considering the lending rates of the bank, rates of 18% per annum appears to be on the higher side. I am of the view that instead of 18% per annum, the petitioner should be made to pay interest @ 15% per annum on the amount of conversion charges, which the petitioner was asked to pay.

11. At this stage, Mr. Harish Malhotra, Senior Counsel for the states on instructions that he does not dispute the conversion charges of Rs.35,14,219/- demanded by DDA and his only grievance is with respect to rate of interest which has been applied @ 18% per annum and which according to him is highly unreasonable.

12. For the reasons stated hereinabove, the impugned demand of Rs.1,53,74,644 is quashed and DDA is directed to issue a fresh demand letter to the petitioner in terms of this order within four weeks.

The interest would be calculated by the DDA till 31.05.2013 on the same rate. A fresh demand letter would be issued to the petitioner within two weeks from today and he shall make payment of the amount demanded by DDA or on before 31.05.2013. On such payment being made, DDA would consider the request of the petitioner for execution of the lease deed for the above referred property as per its rules and policies and take an appropriate decision in the matter.

13. It transpired during the course of hearing that though the order passed by the Division Bench of this Court on 5.2.1990 envisaged payment of additional premium and not any conversion charges by the petitioner, the demand raised by the DDA vide letter dated 7.10.2008 refers to conversion charges and there is no reference to payment of any additional premium. Paragraph 2 of the said letter reads as under:

“In pursuance of direction issued by the Hon’ble High Court Rs.1,53,74,644 (one crore fifty three lakh seventy four thousand six hundred forty four only) has been calculated by the Finance Wing as conversion charges that are payable up to 31.10.08.”

In the subsequent letter dated 20.11.2008 issued by DDA also, there is no reference to any additional premium. Therefore, for the purpose of deciding this petition, the Court has proceeded on the assumption that it is the additional premium envisaged in the order dated 5.2.1990 which has been referred as conversion charges in the communication sent by DDA to the petitioner and that this is not the case of the DDA that in addition to the aforesaid conversion charges, the petitioner is also required to pay some other amount by way of additional premium.

14. It also appears from the communication sent by DDA to the petitioner that some action was sought to be taken by the DDA for levying misuse charges/ damages and against unauthorized construction. It is made clear that no opinion is being expressed in this order with respect to levying misuse charges or in respect of unauthorized construction alleged to have been made by the petitioner,

those issues being beyond the scope of this writ petition and, therefore, DDA would be entitled to take such action, as is open to it in law with respect to levy of misuse charges/ damages and in respect of alleged unauthorized construction.

The petition stands disposed of.

V.K. JAIN, J

APRIL 25, 2013

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