

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.12.2014

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W.P.(C) 3086/2013 & CM No.5850/2013

SHRI KRANTI KUMAR JAIN

..... Petitioner

versus

**DELHI STATE INDUSTRIAL AND
INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD. & ANR.**

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Pankaj Gupta.

For the Respondents : Ms Renuka Arora.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner impugns a notice dated 17.09.2012 issued by the DSIIDC (hereafter "impugned notice") calling upon the petitioner to pay unearned increase charges amounting to ₹ 9,72,500/- as well as penalty charges at the rate of 18% per annum amounting to ₹ 87,285 (hereafter the 'impugned demand').
2. The impugned demand was raised by the DSIIDC pursuant to a request made by the petitioner to record a change in the constitution of the firm, which was allotted the property in question.
3. It is stated that the firm M/s Rosy Rubber Industries was constituted on 03.04.1972 as a partnership firm between three family members,

namely, the petitioner, his elder brother and his father. The partnership deed was subsequently re-written on 06.11.1992. Thereafter, the constitution of the firm was changed on the demise of the petitioner's elder brother (Sh. Kewal Kumar Jain) on 22.02.2001 and his wife (Smt. Sudesh Jain) was introduced as a third partner. The reconstituted firm was allotted an industrial plot bearing No. 143, Pocket-P, Sector-5, Bawana Industrial Area, Bawana, Delhi on 02.01.2004 (hereafter 'the property'), in terms of the policy floated in the year 1996 to relocate industries to conforming areas. A perpetual lease deed in respect of the property was also executed on 27.11.2007. Thereafter, on 03.06.2008, the petitioner's father expired. The petitioner's sister-in-law, the wife of the petitioner's elder brother, also decided to dis-associate herself from the firm and, accordingly, executed a retirement deed on 27.08.2008. Thus, the petitioner remained the sole constituent of the firm; now a sole proprietorship concern.

4. The petitioner, accordingly, applied for recording the change of constitution of the firm by a letter dated 27.11.2008 and, thereafter, followed the same with a letter dated 10.07.2012.

5. The learned counsel for the petitioner submits that unearned increase charges are not payable on account of re-constitution of the firm as the transfer, *inter se*, family members is exempt and in any event the reconstitution of the firm would not amount to a transfer.

6. It is not disputed by the respondents that transfers *inter se* family members do not attract payment of unearned increase charges. However, according to the respondents, the expression 'family' as defined under the Land Management Guidelines does not include a sister-in-law. In the

circumstances, the respondents have contended that retirement of Smt. Sudesh Jain, the wife of the deceased elder brother of the petitioner, would attract levy of unearned increase charges in respect of her share which stood transferred to the petitioner on her retirement.

7. I have heard the learned counsel for the parties.

8. The term family has been defined under the Land Management Guidelines as under:-

“(vii) The term 'family' in relation to the lessee(s) means the individual, the wife or husband as the case may be, father, brother, major son, unmarried daughter/sister and minor children of the lessee(s).”

9. In my view the above definition has to be read in a meaningful manner keeping in view the objective of introducing such definition. The clear import of the definition is to indicate that the expression family must not be read in an expansive sense and be limited to immediate family members. The immediate family members must, obviously, include not only the ones as expressly indicated under the definition but also other members, transfers between whom may be exempt by means of combinations of successive transfers. A transfer between a wife and her husband is, indisputably, a transfer *intra* family and a successive transfer between the said husband and his brother is also exempt as being between family members. It would be completely irrational to thus levy unearned increase charges, on transfers between a lady and the brother of her husband, as the same would otherwise be exempt if done in two stages. Thus, the proximity of the family members, for the purposes of exempting transfers from levy of unearned increase charges, must be viewed in the

context of object sought to be achieved; the definition of “family” must be considered as a guide for determining transfers which are sought to be exempted.

10. This view was also accepted by a division bench of this court in **DDA v. M/s Mahabir Prasad and Sons**: LPA no. 28/2004 decided on 08.12.2009. The court noted the following passage from the decision of the single judge, with approval:

“14. A specific exception has been carved out in case of substitution of family members where no charge is to be levied. The object of this clause is to exclude inter se arrangement between the family members where really no transfer takes place. The term "family-member" has been further explained in the policy and includes almost all the blood relations. Thus father, brother, son and grand-son fall in this definition. In my considered view, they definitely fall within the concept of a family member. Brother does fall within the definition directly under the family member and so does the son and the grandson. In the present case the partners are sons of two brothers and grandsons of one of the brothers whose sons are also partners in the partnership firm. A true interpretation of the definition of the family members should include such members and there cannot be a question of any unlimited expansion of clause. This aspect has to be considered taking into consideration the family members involved, their relationship and the very basis of this policy to exclude such parties in the family members.”

The division bench further held as under:

“14. Suffice would it be to state that the learned Single Judge has held that under the restrictive clause in the lease deed the intention was to prevent transfer of holding to third parties; and the transfer being for consideration. Therefrom, the learned Single Judge has deduced that where the transfer is within the family members ‘as conventionally understood’

and there is no consideration involved, the transfer would not attract the levy of unearned increase. The learned Single Judge has given a second reason; being that, between father and son, between brothers and sisters, between grandsons and granddaughters, their parents and grand-parents, the policy circulated by DDA excluded liability to pay unearned increase by treating all of them to be family members.

15. With reference to the pedigree of the family, the learned Single Judge, in para 16 of the decision, has highlighted that if the route adopted was that the sons of Ajit Prasad, Mahinder Prasad and Narender Prasad relinquished their respective shares in favour of their fathers, then as defined under the policy, the said transfer had to be treated as within the family members and hence said relinquishment of interest would not have attracted the levy of unearned increase. Thereafter, if Ajit Prasad, Mahinder Prasad, Vijendra Prasad and Narender Prasad transferred their interest in favour of their brother Sham Lal even the same would not have attracted the levy of unearned increase for the reason it would have been a case of brothers relinquishing their shares in favour of a brother. Thereafter, if Sham Lal relinquished his share in favour of Satendra Jain and likewise Jitender Prasad relinquished his share in favour of Satendra Jain; said relinquishments between father and son and brother and brother would not have attracted the levy of unearned increase. The learned Single Judge has held that merely because the afore-noted route of relinquishment was not adopted it would make no difference for the reason Mahabir Prasad's family consisting of his five sons and his grandsons was an extended family."

11. The above decision, although in the context of a policy circular issued by Delhi Development Authority, would be equally applicable to the facts of this case.

12. There is yet another relevant aspect which needs to be noted. The firm in question consisted of the petitioner along with his elder brother and

his father. The first change in the constitution was occasioned on the demise of petitioner's elder brother in 2001. At the material time, the right of the firm for being considered for allotment of industrial plot in conforming area had already accrued. Admittedly, petitioner's sister-in-law was not a member of the firm at that stage and was brought in as a partner only on the demise of petitioner's elder brother. The petitioner's sister-in-law succeeded to the share of petitioner's elder brother. In the circumstances, her retirement from the firm would represent the release of the share she had acquired from her husband i.e. the elder brother of the petitioner who, undisputedly, would qualify to be family as per the Land Management Guidelines.

13. The petitioner has also contended that the retirement of petitioner's sister-in-law from the firm could not, in any event, be considered as a transfer. However, in view of the decision above, it is not necessary to examine this aspect of the matter.

14. In view of the aforesaid, the impugned demand is not sustainable and is, accordingly, set aside. The respondents are further directed to process the petitioner's application in accordance with law.

15. The writ petition is allowed in the aforesaid terms. The pending application stands disposed of.

VIBHU BAKHRU, J

DECEMBER 05, 2014

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