

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 28.05.2015

+ **W.P.(C) 571/2008**

M/S. VULCAN INDUSTRIES & ANR.

..... Petitioners

versus

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

..... Respondents

AND

Advocates who appeared in this case:

For the Petitioners : Mr B.K. Sood and Mr Gourav Garg.

For the Respondents : Mr Amiet Andlay.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petition impugning an order dated 10.12.2007 (hereafter 'the impugned order') passed by the District Judge whereby the petitioners' appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereafter 'the Act') filed against the Eviction Order dated 14.07.2003 passed by the Estate Officer, was dismissed. The Estate Officer had passed the Eviction Order dated 14.07.2003 in respect of property situated at 231, Okhla Industrial Estate, Phase-III, Delhi (hereafter the 'said property') as the Directorate of Industries had determined the lease of the said property on the ground of sub-letting the said property in violation of the lease deed. In

the circumstances the Estate Officer had concluded that the petitioners were unauthorized occupants of the said property.

2. During the pendency of the petition, the petitioners put up their case for regularization of unauthorized sub-letting of the said property and agreed for payment of charges for the regularization as per the calculation provided by the Dy. Commissioner of Industries (Land-Okhla) in his affidavit dated 19.04.2010. The petitioners, however, have claimed that interest at the rate of six percent per annum is payable in terms of lease deed and have disputed the claim of the respondent no.1 for charging interest at the rate of eighteen percent per annum.

3. The brief facts that are relevant to examine the controversy in the present petition are as under:-

3.1 Sh. B.L Gupta was running a factory at Turkman Gate - a non conforming area - under the proprietorship firm namely M/s Vulcan Industries. In terms of the policy framed at the material time, factories in non conforming area were directed to be closed and option to rehabilitate the same in conforming area was provided. In terms of the said policy, M/s Vulcan Industries made an application dated 10.08.1966 for allotment of a plot in confirming area. This application was accepted and the Directorate of Industries allotted a plot of ½ acres to M/s Vulcan Industries by its letter dated 27.09.1966.

3.2 Subsequently, a perpetual lease deed dated 02.12.1969 was executed between the President of India and M/s Vulcan Industries whereby the said property measuring 2489 Sq. Yds. was leased in favour of M/s Vulcan

Industries. A Supplementary Lease Deed dated 09.07.1973 was executed as M/s Vulcan Industries was converted into a partnership firm with Sh. B.L Gupta and Sh. V.K Gupta as constituent partners of M/s Vulcan Industries.

3.3 The Deputy Secretary (Industries) issued a show cause notice dated 18.05.1984 to the petitioner no.1 alleging that the petitioner no.1 had sub-let the said property to M/s Indira Exports and M/s Dolphins Exports in violation of Clause II(4)(b) and II(5)(a) of the lease deed without obtaining prior consent of the concerned authority and called upon the petitioner no. 1 to show cause as to why the lease should not be determined. By a letter dated 29.05.1984, the petitioner no.1 replied to the said show cause notice denying the allegation that the said property was sub-let.

3.4 Thereafter, the Deputy Secretary (Industries), by an order dated 28.04.1986, determined the lease of the said property. The appeal filed by the petitioner no.1 before the Lt. Governor against the order dated 28.04.1986 was also dismissed and this was communicated to the petitioner no.1 by the Deputy Secretary (Industries) by a letter dated 24.09.1986. The petitioner no.1 was further directed to hand over the vacant possession of the said property.

3.5 After the determination of the lease, the respondent no.1 initiated proceedings before the Estate Officer under the Act to recover the possession of the said property. On 14.07.2003, the Estate Officer passed the Eviction Order under Section 5(1) of the Act directing the petitioners to vacate the said property. The petitioners preferred an appeal under Section 9 of the Act before the District Judge, challenging the Eviction Order dated

14.07.2003 passed by the Estate Officer, which was dismissed by the impugned order.

4. During the pendency of the present petition, the petitioners filed an application (being CM No.14181/2009), *inter alia*, praying for calculation of dues in terms of the Office Order dated 14.11.1990 for regularization of sub-letting of the said property. Thereafter, the petitioners filed an affidavit dated 15.04.2010 stating that an amount of ₹30,61,644/- is payable in terms of Office Order dated 14.11.1990 for regularization. The Deputy Commissioner of Industries (Land-Okhla) filed an affidavit dated 19.04.2010 stating that charges payable for unauthorized sub-letting of the said property were ₹70,59,960/- and in addition, interest amounting to ₹1,51,64,678/- calculated at the rate of eighteen percent per annum, was also payable. The said affidavit also annexed a statement indicating the calculation and bifurcation of the sub-letting charges applicable for different periods. The relevant extract of the affidavit reads as under:-

“Area Sublet: 7500 sq ft since 1976 (1.1.76) & 13500 sq ft (7500 sqft + 6000 sqft) since 1980 (1.1.80) sublet area exceeds 50% of total covered area since 1980 (1.1.80).

Rate: Re. 0 20 per sq ft per month from 1.1.76 to 31.12.79 & Re. 0.40 per sq ft per month from 1.1.80 to 7.11.90 & Rs. 2.00 per sq ft per month from 8.11.90 to 31.03.10.

Interest: 18% p a (SIMPLE)”

5. On 20.12.2010, the counsel for the petitioners submitted before the Court that the petitioners are agreeable for payment of sub-letting charges in terms of calculation and rate provided by the respondent no.1 in its affidavit dated 19.04.2010. Insofar as interest is concerned, the petitioners

stated that they were agreeable to pay interest at the rate of eighteen percent per annum without prejudice to their rights and contentions and subject to the condition that at least two years be provided for the payment of amount towards interest. After considering the contentions of the parties, this court, by an order dated 20.12.2010, directed the petitioners to pay the principal amount (i.e. the subletting charges) within six months and permitted the payment of entire interest amount at the rate of eighteen percent per annum in terms of the policy of the respondent no.1 dated 31.01.2008 without prejudice to its rights and contentions.

6. Therefore, the only controversy that needs to be addressed is whether the petitioners are liable to pay interest at the rate of six percent per annum in terms of proviso to Clause III of the lease deed or at the rate of eighteen percent per annum as claimed by the respondent no.1 in terms of policy dated 31.01.2008.

7. The learned counsel for the petitioners contended that the policy of answering respondent which entails levy of eighteen percent per annum interest is contrary to the express terms of the perpetual lease deed which limits the rate of interest to six percent per annum. The petitioners further submitted that the perpetual lease deed was executed under the Governments Grants Act, 1895 and by virtue of Section 3 of the said Act, all provisions, conditions and limitations contained in the grant would be valid and would take effect notwithstanding any other rule of law, statute or enactment. The learned counsel submitted that in view of the aforesaid, it is not open for the answering respondent to charge interest at a rate higher than as specified under the perpetual lease deed. The learned counsel for

the petitioners relied upon the decisions of this Court in Jor Bagh Association (Regd.) and Ors. v. Union of India and Ors.: AIR 2004 Delhi 389 and Municipal Corporation of Delhi and Ors. etc. v. Smt. Damyanti Sahni and Ors.: AIR 2000 Delhi 432 in support of this contention.

8. The learned counsel for the answering respondent contended that the proviso to Clause III of the lease deed relates to the option of the Lessor, who may in his absolute discretion, without prejudice to the right of re-entry, accept the premium and yearly rent together with interest @ six percent per annum. He contended that the said clause is not applicable in the present case as the amount on which interest was claimed was not for non-payment of premium or yearly rent as envisaged in the lease deed but for payment of 'sub-letting charges'. It was submitted that the present case is covered by the policy dated 31.01.2008 and simple interest at the rate of eighteen percent per annum is payable. It was submitted that the said policy is applicable to all similarly situated persons and no deviation can be made for one particular case.

9. Clause XI of the lease deed clearly indicates that the lease is granted under the Governments Grants Act, 1895. It is settled law that by virtue of Section 2 & 3 of the Governments Grants Act, 1985, the transfer of interest in favour of a lessee would be valid notwithstanding the provisions of the Transfer of Property Act, 1882 or any other law, statute or enactment to the contrary. In Hajee S.V.M. Mohd. Jamaludeen Bros. & Co. v. Govt. of T.N.: (1997) 3 SCC 466, the Supreme Court had stated the above in the following manner:-

“9. Section 2 of the Grants Act insulates all grants and all transfers of land or any interest therein made by the Government from the checks of the provisions of Transfer of Property Act. Section 3 of the Grants Act protects the terms of such grant from the provisions of any other law. We extract the above two provisions hereunder:

“2. Transfer of Property Act, 1882, not to apply to Government grants.—Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

3. Government grants to take effect according to their tenor.—All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.”

10. The combined effect of the above two sections of the Grants Act is that terms of any grant or terms of any transfer of land made by a Government would stand insulated from the tentacles of any statutory law. Section 3 places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law or even the equitable principles of justice, equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. The two provisions are so framed as to confer unfettered discretion on the Government to enforce any condition or limitation or restriction in all types of grants made by the Government to any person. In other words, the rights, privileges and obligations of any grantee of the Government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law.”

10. In view of the aforesaid, it is necessary to examine Clause III of the lease deed, which is relied upon by the petitioners in support of their contention that the rate of interest chargeable by the answering respondent cannot exceed 6% per annum. The said clause III of the lease deed reads as under:-

“III If the sum or sums payable towards the premium or the yearly rent hereby reserved for any part thereof shall at any time be in the arrears and unpaid for calendar month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is discovered that this lease has been obtained by suppression of any fact or by any mis-statement, misrepresentation or fraud or if there shall have been, in the opinion of the lessor, whose decision shall be final, any breach by the lessee or by any person claiming or under him of any of the covenants and conditions contained herein and on his part to be observed or performed, then in any such case, it shall be lawful for the lessor, notwithstanding the waiver of any previous cause or right of re-entry upon the industrial plot hereby demised and the building thereon, to re-enter upon and take possession of the industrial plot and the building and fixture thereof, and thereupon this lease and everything herein contained shall cease and determined and the lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him.

Provided that, notwithstanding anything contained therein to the contrary, the Lessor may without prejudice to his right of re-entry as aforesaid, and in his absolute discretion, waive or condone breaches, temporarily or otherwise, on receipt of such amounts on such terms and conditions as may be determined by him and may also accept the payment of the said sum or sums or the rent which shall be in arrear as aforesaid together with interest at the rate of six per cent per annum.”

11. A plain reading of the aforesaid clause indicates that the lessor has the right to re-enter the plot and to take possession thereof if the lessee has breached any covenant of the lease. In the present case, it cannot be disputed that the terms of the lease deed had been breached. The answering respondent had determined the lease and, thereafter, initiated proceedings for obtaining the possession of the said property.

12. The Estate Officer had passed an Eviction Order on 14.07.2003 directing the petitioners to vacate the said property within 15 days of the said order. It is, only subsequent thereto that the petitioners requested for regularization of the breaches. The petitioners had further sought benefit of the policy of regularization to avoid eviction from the said property.

13. It is in the aforesaid context that the answering respondent was called upon to consider restoration of the lease in terms of its policy. The policy, as existing prior to 30.01.2008, did not provide for restoration as a general rule. However, the Lieutenant Government of Delhi could allow for restoration on payment of 25% market rate as decided from time to time. By a policy decision dated 31.01.2008, it was decided that in cases where restoration is granted, the lessee would have to pay the restoration charges. In addition, paragraph 2 of the said policy also provides for levy of eighteen percent per annum simple interest. Paragraph 2 and 3 of the policy dated 31.01.2008 reads as under:-

“2. 18% simple interest shall be charged on all belated payments except in those cases where specified rate of interest has been prescribed in the lease/rent agreement. However, cases where Compound Interest has already been charged shall not be reopened.”

3. Further, interest rate on belated payment of Restoration Charges shall be charged @ 12.5% per annum where delay is 30 days or less or @ 15% per annum for the period exceeding 30 days.”

14. A plain reading of the proviso to Clause III of the lease deed indicates that the lessor has the absolute discretion to waive or condone breaches on receipt of such amounts and on such conditions as may be determined by him. Undeniably, the decision of the lessor to accept restoration of the lease on payment of charges as determined by the lessor, is within the discretion of the lessor in terms of the lease deed. Although the proviso to Clause III of the lease deed expressly states that the lessor may accept the payment of the “*said sum*” or “*such sums*” together with interest at the rate of six percent per annum, the same would not fetter the right of the lessor to levy interest at the rate of eighteen percent per annum. As it is apparent from the plain language of the proviso to Clause III of the lease deed, a lessor would have the discretion to determine the amounts and the terms and conditions on which the breaches on the part of the lessee may be condoned. This would also include the discretion to levy interest. Although it is mentioned in the proviso to Clause III of the lease deed that such sums may be accepted together with interest at the rate of six percent per annum, the use of word “may” clearly indicates that lessor is not bound to limit the interest charged only to six percent per annum and it would always be open for the lessor to accept the amounts as determined on such terms as it may deem fit.

15. Having stated the above, the policy decision taken by the answering respondent itself indicates that the lessor has agreed to restrict the rate of

interest to the rate as specified in the agreement. In terms of the policy of the answering respondent, interest at the rate of eighteen percent per annum is chargeable on belated payments except in cases where a specific rate has been prescribed under the lease deed. In the present case, the lease deed prescribes interest at the rate of six percent per annum.

16. The learned counsel for the petitioners contended that the rate of six percent per annum is only applicable to the arrears of rent and not to any other sum. However, the plain language of the proviso to clause III of the lease deed does not support this interpretation. The relevant portion of the said proviso reads as *“and may also accept the payment of the said sum or sums or the rent which shall be in arrear as aforesaid together with interest at the rate of six per cent per annum.”* The words, *“with interest at the rate of six percent per annum”*, cannot be read as referring only to the *“rent which shall be arrear”*. This is so because, if it is so read, the sentence would not make sense. This can be tested by ignoring the words, *“or the rent which shall be in arrear as aforesaid together with interest at the rate of six per cent per annum”* and reading the remaining words of the proviso to clause III of the lease deed; it is at once clear that the words, *“and may also accept the payment of the said sum or sums”*, are surplusage and do not add to the meaning of the proviso to clause III of the lease deed. Thus, the provision to charge interest at the rate of six percent per annum would apply to the *“said sum or sums”* as used in the proviso to clause III of the lease deed. The lessor has the right to determine such amounts that may be acceptable by the lessor for condoning the breaches and the proviso to clause III of the lease deed, plainly, reads that the said sums or sums may

be accepted with interest at the rate of six percent per annum. Thus, clearly, the lease deed does prescribe the rate of interest, which may be charged by the lessor. Since it is the lessor's decision to charge interest at the rate of eighteen percent per annum only in cases where the lease deed does not prescribe a rate of interest, the lessor would be bound by its own policy and it would not be open for the lessor to charge interest at a rate in excess of the prescribed rate.

17. In view of the aforesaid, the rate of interest payable by the petitioners on the arrears of the restoration charges as determined by the answering respondent would be six percent per annum.

18. In the aforesaid circumstances, the present writ petition is disposed of by directing the answering respondent to calculate the interest on restoration charges at the rate of six percent per annum and communicate the same to the petitioners within a period of four weeks from today. The petitioners are directed to pay the aforesaid charges, if not already paid, within a period of two weeks thereafter. It is clarified that if the charges are not paid as aforesaid, the answering respondent would be at liberty to take such steps as may be available in law. It is further clarified that the Eviction Order passed by the Estate Officer as well as the Impugned Order will not be given effect to if the petitioners discharge the liability as aforesaid.

VIBHU BAKHRU, J

MAY 28, 2015

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