

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

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Reserved on: 6th May, 2015
Date of Decision: 25th May, 2015

W.P. (C) 2726/2007

HOTEL QUEEN ROAD P.LTD.

..... Petitioner

Through: Mr.Mohit Chaudhary, Adv.

versus

UOI & ANR.

..... Respondents

Through: Mr.Anil Soni with Mr.Naginder
Benipal, Advs.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. This is a petition under Article 226 of the Constitution of India for quashing of order dated 19.10.2006 rejecting the application of the petitioner for conversion from leasehold to freehold of its premise in terms of conversion policy dated 06.08.2003 of the respondents. The petitioner further seeks quashing of the demand notice dated 29.03.2007 issued by the respondent No.2 demanding an amount of Rs.76,05,275/- (Rupees Seventy six lakh five thousand two hundred and seventy five) alongwith a writ of prohibition against respondent No.2 restraining it from appropriating the aforementioned amount out of security deposit against annual lease rent for the year 2006-07 and further restraining respondent No.2 from taking any coercive action against the petitioner allegedly for violation of clause 5 of the lease deed dated 08.10.2002.

2. Brief facts of the case as borne out from the petition are that by virtue of a Scheme of Demerger sanctioned by the Central Government on 05.08.2002, Hotel Indraprastha (the premises in question) was hived off from ITDC and merged into Hotel Queen Road Pvt. Ltd. The petitioner paid a total price of Rs.45,03,33,333/- (Rupees Forty five crores three lacs thirty three thousand three hundred thirty three) for the acquisition of M/s Hotel Queen Road Pvt. Ltd. By way of two share purchase agreements, the ownership and management of Hotel Indraprastha stood transferred to the petitioner. Thereafter, a lease deed dated 08.10.2002 was entered into by & between the President of India acting through the respondent No.2 and the petitioner. The petitioner also executed an undertaking and an indemnity bond. In terms of Clause 3.1 of the lease agreement, the petitioner paid a sum of Rs. 2,28,15,826/- (Rupees Two crores twenty eight lakhs fifteen thousand eight hundred and twenty six) as security deposit by way of demand draft issued in favour of respondent No.2. The aforesaid amount was deposited vide demand draft no. 042175 dated 07.10.2002 drawn on Citibank in the sum of Rs. 17,95,19,097/- (Rupees Seventeen crore ninety five lakhs nineteen thousand and ninety seven) which also included payments towards penalty for unauthorized construction, 50% unearned increase and advance ground rent for the period from 08.10.2002 to 31.03.2003. On 20.09.2002 a completion certificate was issued to the petitioner by the NDMC certifying that the premises was fit for use for which it had been erected. On the same day, respondent No.2 received the intimation from the NDMC with regard to the sanction of plans and completion certificate. On 06.08.2003, the

Central Government, Ministry of Urban Development (respondent No.1 herein) came out with a policy for conversion of property from leasehold to freehold in Delhi. As per clause 1.5 of the scheme for conversion all commercial and mixed land use properties allotted by the Department of Rehabilitation, Land & Development Office (“L&DO” for short) or the Directorate of Estates, for which ownership rights have been conferred and lease deed executed and registered were eligible for conversion from leasehold to freehold.

3. Thereafter, on 13.04.2004, the petitioner paid to respondent No.2 ground rent amounting to Rs. 76,05,275/- (Rupees Seventy six lakhs five thousand two hundred seventy five) vide cheque No. 299204 dated 12.04.2004 in respect of Hotel Queen Road for the period from 01.04.2004 to 31.03.2005 and further an amount of Rs. 76,05,275/- (Rupees Seventy six lakhs five thousand two hundred seventy five only) vide cheque no. 850825 dated 13.04.2005 as ground rent for the period from 01.04.2005 to 31.03.2006. On 27.05.2004, NDMC communicated to the petitioner that revised plans of the petitioner had been approved subject to the condition, amongst others that the petitioner submits a No Objection Certificate (“NOC” for short) from the respondent No.2. On 29.05.2004, the petitioner requested respondent No.2 to provide him with a NOC so that he may be able to carry out the necessary alterations. On 31.08.2004, respondent No.2 communicated the grant of NOC for sanction of building plans and on 12.01.2005, the NDMC released the sanction to erect/ de-erect/ additions to/ alterations in the building along with the sanctioned plan. Thereafter, on 11.08.2006, the petitioner being desirous of taking

advantage of the policies and schemes as issued by respondent No.1 submitted an application duly filled along with the indemnity bond and undertaking and complete in all respects for conversion of its property Hotel Indraprastha, 19, Ashok Road, New Delhi, admeasuring 7121 Sq. mtrs. from leasehold to freehold. Vide impugned order dated 19.10.2006, the respondent No.2 rejected the application for conversion from leasehold to freehold of Hotel Indraprastha on the ground that the property in respect of the disinvested Hotel is not covered under the existing scheme for conversion.

4. Learned counsel for the petitioner contended that in view of clause 1.5 of the conversion policy, disinvested Hotels cannot form a distinct or a separate category and it cannot be stated that disinvested Hotels do not come within the purview of the conversion policy. As per the said clause, all commercial and mixed land use properties allotted by respondent No.2 or Directorate of Estate for which ownership rights have been conferred and lease executed and registered are eligible for conversion from lease hold to freehold. The Master Plan for Delhi includes Hotels within the category of commercial use/properties. Since the petitioner's property falls under category of commercial property under the Master Plan, respondent No. 2 could not have denied its application for conversion.

5. Learned counsel for the petitioner further contended that despite the orders passed by this Court in W.P.(C) No. 15058-59/2004 on 29.08.2005 and also in view of the dismissal of the review petition no. 317/2005 filed against the said order, the action of respondent No.2

rejecting the application of the petitioner for conversion of leasehold into freehold property is completely arbitrary and illegal. This Court vide order dated 29.08.2005 has specifically held that the conversion policy of the government of India applies to disinvested Hotels and also observed that they do not belong to a separate category or class. Any such exception has to be carved out in the conversion policy itself and not by executive instructions.

6. It was lastly contended by the learned counsel for the petitioner that on one hand the government is contending that the property can never be converted from leasehold to freehold which is violative of conversion policy. On the other hand, it is desired by the government that the petitioner should continue to pay ground rent and lease money in perpetuity though the petitioner is entitled to conversion from leasehold to freehold.

7. For establishing his contentions, learned counsel for the petitioner has placed reliance on the order dated 29.08.2005 of this court in '**Hotel Excelsior Ltd. & Anr. v. Union of India & Anr.**', *W.P.(C) 15058-59/2004* and '**Hotel Excelsior Ltd. & Anr. v. Union of India & Anr.**', *RP 317/2005 and CM 15170/2005 in WP(C) No.15058-59/2004 decided on 25.08.2006.*

8. *Per Contra* learned counsel for the respondents contended that the petitioner has resorted to large scale unauthorized construction in violation of specific terms and conditions contained in the lease agreement dated 08.10.2002 and approached this court with unclean hands. The petitioner belongs to a separate category or class namely

disinvested Hotels, which as a whole, is not eligible for conversion into freehold. None of the disinvested Hotels have been converted into freehold and as such no discrimination can be alleged by the petitioner against the respondents. The premises in question were handed over to the petitioner under the disinvestment policy of the Government of India. The category of hotels particularly disinvested hotels form a separate and distinct category which was not included in the conversion policy of the Government. Only commercial and mixed land use properties allotted by the Department of Rehabilitation, L&DO or the Directorate of Estates for which ownership rights have been conferred and lease deed executed and registered are eligible for conversion. Even the Government of India clarified on 12.06.2006 that the disinvested hotels are not covered under the conversion policy and the same have also been duly mentioned in the conversion brochure. The premises occupied by the petitioner and other disinvested Hotels in Delhi do not fall under any of the categories as specified under para 1.5 of the brochure of conversion and therefore not eligible for conversion as per the policy of the government.

9. Learned counsel for the respondents further contended that in the cases of disinvested Hotels, the properties have been leased out only for running/operating Hotels. The petitioner is aware of the fact that since no cost of land or premium was recovered from them, the ownership of the land vested with L&DO. He is bound by the terms of the lease agreement which is a concluded contract and the lease can be terminated by the lessor or persons duly authorized by him if the annual ground rent or any other payment is unpaid for 30 days or the

lessee fails to remedy any breach of the covenant of the agreement. The interest in the land has not been vested in the petitioner as a perpetual lessee. The lease has only been granted with the limited right to run the business of hotels, as per the covenants of the lease agreement. Vide the lease agreement the hotel premises were only rented out to the petitioner company for management and operation of the hotel which on its own footing does not confer a right on the petitioner to get the premises in question converted from leasehold to freehold.

10. It was lastly contended by learned counsel for the respondents that the lease agreement is a concluded contract between the petitioner and the President of India and both the contracting parties are required to act as provided in the contract. Conversion to freehold is not automatic. A premise does not become eligible for conversion into freehold simply on the ground that it is shown as commercial under the Master Plan. It should fulfill other conditions also. The petitioner violated the terms of lease agreement dated 08.10.2002 and therefore, the lease is liable to be re-entered in exercise of powers conferred under Article 12 of the lease agreement. Permitting conversion of the leased premises of disinvested hotel would result in heavy financial losses to the government.

11. I have heard the learned counsel for the parties and have also perused the material on record.

12. The short point for consideration before this court is whether, under the policy floated by respondent No.2, the petitioner is entitled to

conversion of the premises in question from leasehold to freehold or whether the action of respondent No.2 in denying such conversion amounts to a discrimination against the petitioner.

13. A lease in ordinary legal sense contemplates demise or a transfer of a right to enjoy land for a term or in perpetuity for a consideration of a price paid or promised or services or other things of value to be rendered periodically or on specified occasions to the transferor. There is a marked difference between lease and ownership. While the former is only a transfer of a right to enjoyment to a property, latter denotes a complete and total control over the property and not merely a right to enjoyment. The lessee of a property is a tenant. He may be entitled to transfer his interest in the land, but right to transfer ownership vests with the owner of the said land. Tenancy cannot be considered to be a permanent ownership, even when the tenant has made permanent structures at his own cost on the land. Though heritability and transfer may be incidents common to both ownership and lease, however, that by in itself are not sufficient to cloth a person with absolute ownership. The Hon'ble Supreme Court, speaking to the same effect, in '**Mohd. Noor v. Mohd. Ibrahim**', (1994) 5 SCC 562 observed as under:-

“5. ...The theoretical concept of 'ownership', therefore, appears to be that a person can be considered to be owner if he has absolute dominion over it in all respects and is capable of transferring such ownership. Heritability and transferability are not doubt some of the many and may be most important ingredients of ownership. But they by themselves cannot be considered as sufficient for clothing a person with absolute ownership. Their absence

may establish lack of ownership but their presence by itself is not sufficient to establish it. The ownership concept does not accord with the status of a person who is paying the rent. A tenant under various legislations either urban or rural property, agricultural or otherwise, enjoys right of heritability and transferability. At the same time, he does not become owner of the property. Transfer of ownership is distinct and different from transfer of interest in the property. A licensee or even a tenant may be entitled by law to transfer his interest in the property but that is not a transfer of ownership. For instance, a lessee from a corporation or a local body or even Stage Government to raise building may have heritable and transferable right but such a person is not an owner and the transfer in such a case of his interest in the property and not the ownership.....”

14. The right of ownership over a property in cases of lease is not determined on the basis of the duration for which the lease is granted to the lessee. Thus, a lease even if for 99 years, does not confer ownership rights on the lessee, unless they are specifically transferred to him in which case it stops being a lease. Even in the cases of lease for long durations, the residuary rights of a leased land belong to the owner of the land and not the lessor. It is a settled law that the length of the lease is not indicative of even permanency of lease much less of ownership. Even the division bench of the Bombay High Court in ‘**The Collector of Bombay v. Khatizabai Dharsi Somji Dossa**’, 1962(64)*BOMLR*311 has observed:-

“.....The term of a lease may be 5 years, 50 years. 99 years or even 999 years. Nevertheless, the transaction is only a lease and there is always a reversion which

continues to vest in the owner for the entire term of the lease.”

15. At this stage it would be pertinent to reproduce the history of genesis and development of the Conversion Policy/Scheme under which the petitioner has based his present case. The said Policy/Scheme was introduced in the year 1992 and at its inception, its applicability was limited to residential plots only and that too of size not exceeding 500 sq. mtrs. In the year 1999, all residential plots, irrespective of their size were brought within the ambit of the Scheme. Subsequently, it was only in the year 2003 that the Policy/Scheme was extended to commercial/mixed plot of land. However, even now the Scheme does not state that all leasehold under L&DO are eligible for conversion to freehold. In fact, in Clauses 1.1 to 1.5 of the Scheme/Policy of Conversion, the leases eligible for freehold conversion are specified. A perusal of the said clauses shows a marked difference in case of residential plots shown eligible for conversion in Clause 1.1 wherein it is not mentioned that the conversion for such premises would be allowed, "for which ownership rights have been conferred", as has been mentioned in Clause 1.5 while including commercial and mixed land use properties in the list of properties eligible for freehold conversion. Thus what can be inferred from this is that while leases of all residential properties were eligible for conversion, irrespective of whether the ownership rights thereunder were conferred or not, it was not so qua the commercial/mixed land use properties. Only those commercial/mixed land use properties were/are,

under the Scheme/Policy, eligible for conversion, "where ownership rights have been conferred". Clearly with the use of such words, the commercial/mixed land use properties were subject to conversion only on the fulfillment of the rider that the ownership rights in such properties must have already been conferred on the person praying for conversion under the said Scheme/Policy. A meaning is thus, to be given to these words and the same cannot be rendered otiose and redundant.

16. The objective behind introducing the Policy/Scheme for freehold conversion was clarified by this court in '**Bal Kishan Chhabra v. UOI**', 127 (2006) DLT 460 where it was stated:

“3.Properties in the metropolis have already virtually moved out of the hands of the Government because of the execution of long term leases, majority of which have a tenure of 99 years. The rents are so nominal that even administrative costs may not be recoverable. Furthermore, it would be most sanguine to expect that these lands and/or buildings could be resumed by the Government even after the tenure has run out; the public will be incensed to such an extent that political parties are likely to steer clear from any such attempt. The present scheme has the direct effect of earning revenue for the Government through conversion charges, and at the same time, reducing administrative obligations and costs.....”

17. Thus, what can be seen from above is that the aforementioned policy/scheme intended to earn revenue for the government through conversion charges while reducing the administrative charges and costs at the same time. It was primarily aimed towards those properties where the rent of the property was so nominal on the lease that even

the administrative costs were not recoverable. However in the case where the property leased out fetched out rent as high as Rs.76,05,275/- (Rupees Seventy six lakh five thousand two hundred and seventy five) per annum as in the instant case, this court is not convinced with the argument that the rent recoverable is nominal and that the property stands on the same footing as others on which the conversion is allowed as per the said policy.

18. There are differences in the properties on which the conversion is allowed as per the Policy/Scheme of conversion and the property pertaining to present case. On perusal of the lease agreement between the petitioner and respondent No.1, the differences between the properties eligible for conversion and the present property can be summed up as under:-

- a. Leases of which conversion is being allowed do not contain any provision for payment of security deposit by the lessee to the lessor, the petitioner under the lease deed, as per Article 3 of the Lease agreement dated 08.10.2002, has paid a security deposit to the tune of Rs. 2,28,15,826/- (Rupees Two crores twenty eight lakhs fifteen thousand eight hundred and twenty six) to respondent No.2 which is free of interest and refundable on expiry of the lease against delivery of vacant peaceful physical possession.
- b. Also as discussed above, the rent payable under the leases of which conversion is being allowed, is nominal, whereas in the lease agreement of the petitioner hotel the rent payable is not

only substantial but is also subject to increase (Clause 2.2 of Article 2 of the Lease Agreement).

- c. The lease of which conversion is allowed is also by way of a government grant as a development act, however, the lease in favour of the petitioner hotel were in pursuance of a share purchase agreement.
- d. Perusal of the conversion scheme/policy suggests that the leases of which conversion is being allowed, on the expiry of the term of the lease, accretions on the leased land are to vest with the lessor but on a payment of the value thereof to be determined on the basis of prevailing terms and conditions. However, under the lease in favour of the petitioner, the accretions are to vest in the respondent No.2 without any obligation to pay (Article 12 of the Lease Agreement).

19. Alongwith these, the leases of which conversion is being allowed are in consideration of premium and rent to be paid. Whereas, the lease in favour of the petitioner is in a consideration only for payment of rent without payment of any premium whatsoever. Premium as ordinarily understood is a lumpsum payment made outright as a price for lease. In context of lease, premium is in the nature of price for the lease and money that is refundable cannot be called premium. It is not revenue but a capital receipt. In **‘Commissioner of Income Tax, Assam v. The Panbari Tea Company Ltd.’** AIR 1965 SC 1871, the Apex Court was of the view:

“Under s. 105 of the Transfer of Property Act, a lease of immovable property is a transfer of a right to enjoy the property made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share service or other thing to be so rendered is called the rent. The section, therefore, brings out the distinction between a price paid for a transfer of a right to enjoy the property and the rent to be paid periodically to the lessor. When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt.”

As per Clause 2.2 of Article 2 and Article 3 of the Lease Agreement dated 08.10.2002 only consideration amount of Rs.76,05,275/- (Rupees Seventy six lakh five thousand two hundred and seventy five) per annum and Security Deposit of Rs. 2,28,15,826/- (Rupees Two crores twenty eight lakhs fifteen thousand eight hundred and twenty six) respectively is provided. No provision for payment of premium is provided under the said agreement.

20. A perusal of all these differences show that there exists a marked distinction in the cases in which the conversion is allowed as per the Policy/Scheme and the properties like disinvested hotels wherein such conversion is not allowed. Each and every conversion is a discretionary

matter based solely upon the wisdom and understanding of lessor/respondent No.2. If lessor/respondent No.2 does not want to allow such conversion on certain legitimate grounds to specific categories of lease, this court cannot go against these legitimate reasons found to be validly applicable to the said category of lease. The Supreme Court in '**Vasundara v. State of Mysore**', (1971) 2 SCC 22 was of the view that the courts are not expected to interfere with the manner and method of classification once the classification has been made on reasonable basis.

21. The Hon'ble Supreme Court in '**M/s. Murthy Match Works and Others v. The Assistant Collector Of Central Excise and Another**', (1974) 4 SCC 428 held as under:-

"15. ...Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the Court will be reluctant and perhaps ill-equipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly ever accomplished. In this context, we have to remember the relationship between the legislative and judicial departments of Government in the determination of the validity of classification. of course, in the last analysis Courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the Judicature cannot rush in where even the Legislature warily treads. All these operational restraints

on judicial power must weigh more emphatically where the subject is taxation.”

22. Seen from above, it is abundantly clear that the case of the petitioner falls in all together a different category of properties in which no provision for conversion is provided under the existing scheme. The learned counsel for the petitioner has heavily relied upon the judgment of this Court in **‘Hotel Excelsior Ltd. & Anr. v. Union of India & Anr.’**, (*supra*). However in an appeal preferred against the said judgment, the judgment of the Single Judge of this court was set aside in **‘Union of India & Anr. v. Hotel Excelsior Ltd. & Anr.’**, *ILR (2013) I Delhi 157 LPA* which is binding on this court.

23. In **‘Union of India & Anr. v. Hotel Excelsior Ltd. & Anr.’** (*supra*) this court looked at the matter from another perspective and stated that:

“27.What the respondents, by claiming freehold conversion are seeking is, to become absolute owners of the prime commercial properties belonging to the people at large held by the appellant L&DO in trust and which absolute ownership rights were not intended to be given at the time of disinvestment of the hotels standing thereon. The respondents did not come to this Court with the case that instead of lease deeds, sale deeds ought to have been executed. On the contrary, after becoming lessees, they are seeking to become owners. The appellant L&DO in the matter of disposal of public properties partakes the character of a trust and is entitled to the best price of such properties and ownership cannot be smuggled in through the backdoor of lease.”

24. It is another contention of the petitioner that subsequent executive instruction and clarification namely, clarification dated 12.06.2006, cannot over ride the specific representations and warranties of the government as provided under the Scheme/Policy of Conversion. This contention does not find favour with this court. The decision to exclude certain persons or class from the purview of the policy is solely based upon the discretion of respondent No.2, who is entitled to exclude any class of persons and in turn cause modification/amendment of the policy. This Court cannot sit as an appellate authority over the decisions and orders of quasi judicial or administrative authorities. Administrative authorities have the right to take their own decisions on the basis of their discretion and as discussed above this court cannot interfere with the same. In **‘Chairman, Ramappa Gundappa Sahakari Samyakta Besava Sangha Ltd. v. State Of Mysore And Ors.’**, (1974) 2 SCC 221, the Apex Court was of the view that:

“9. If every policy statement or direction of Government regarding disposal of State Property were construed as irreversibly creating right to property in prospective beneficiaries strange consequences would follow. An administrative decision of the last century would hold Government Prisoner perpetually and deny it the power to alter its policies and programmes, according to its understanding of the needs of the people.....”

Thus, the government cannot be held prisoner to its administrative decisions which are required to be altered from time to time.

25. Clearly the petitioner is a tenant of the property falling in the category of disinvested hotel property. Petitioner, in no way, can compel respondent No.2 to convert their leasehold rights into freehold in the disinvested hotel and the land underneath. Respondent No.2 is well within its right to deny freehold conversion to the petitioner. I find no arbitrariness or discrimination in the refusal of respondent No.2 to grant the same to the petitioner.

26. No other arguments have been advanced by the learned counsel for the petitioner.

27. In the light of the above discussion the petition deserves to be dismissed and is hereby dismissed. No order as to costs.

CM APPL No.5083/2007

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

MAY 25th, 2015/gm