

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.07.2015

+ **W.P.(C) 2366/2011 & CM No. 2155/2013**

SUMAN BANSI DHAR AND ORS.

..... Petitioners

versus

UOI

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Vikas Dhawan, Mr S. P. Das and Mr S. Panda.

For the Respondent : Ms Monika Arora, CGSC with Mr Harsh and Mr Abhishek.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*, impugning the demand raised by the respondent by a letter dated 19/27.01.2011 for conversion of the property bearing no.16, block No.48, Diplomatic Enclave, New Delhi from lease hold to free hold. The petitioners further pray that the respondent be directed to execute a conveyance deed in respect of the said property in favour of the petitioners.

2. The property bearing no.16, block No.48, Diplomatic Enclave, New Delhi, now known as 27, Sardar Patel Marg, Chanakyapuri, New Delhi-110011 (hereafter the 'said property') was leased to one Shri Bansi Dhar and a perpetual lease deed dated 30.11.1971 was executed in his favour by the President of India through Land and Development Office, Delhi. Shri

Bansi Dhar had applied for conversion of the said property from lease hold to free hold pursuant to the respondent's policy for such conversion. The application for conversion was accepted by the respondent. However, Shri Bansi Dhar expired prior to the execution of the conveyance deed for the said property. The petitioners, who are legal heirs of Late Shri Bansi Dhar, claim the benefit of the application filed by Late Shri Bansi Dhar as well as the conversion granted in his favour. The respondent on the other hand, contends that as Shri Bansi Dhar expired prior to the execution of the conveyance deed, the conversion of the said property in favour of the petitioners would have to be considered as a fresh case. According to the respondent, the petitioners are required to pay the conversion charges as per the current rates.

3. In the aforesaid circumstances, the controversy to be addressed is whether the petitioners are entitled to conveyance of the said property in their name pursuant to the conversion granted in favour of their predecessor, Late Shri Bansi Dhar.

4. Briefly stated, the relevant facts necessary to consider the controversy are as under:-

4.1. A perpetual lease deed in respect of the said property was executed in favour of Late Shri Bansi Dhar on 30.11.1971. On 28.06.1999, the respondent issued a notification spelling out its policy for conversion of lease hold property to free hold. In conformity with the said policy, by an application dated 22.12.1999, Late Shri Bansi Dhar applied for conversion of the said property from lease hold to free hold. As per the respondent's

policy, the conversion charges could be paid in installments and Late Shri Banshi Dhar opted for payment of conversion charges in five equal installments. Four installments were duly paid by him in the following manner:-

Date	Installment No.	Amount
22.12.1999	1 (along with application)	₹6,05,500/-
20.12.2000	2	₹6,05,500/-
21.12.2001	3	₹6,05,500/-
16.12.2002	4	₹6,05,500/-

4.2. On 25.03.2003, the respondent issued a letter calling upon Late Shri Banshi Dhar to pay the balance amount aggregating to ₹7,22,703/-. This amount included interests, penalty, revised ground rent and additional ground rent. Late Shri Banshi Dhar paid a sum of ₹4,69,259/- in respect of the balance conversion charges. Thereafter, the respondent issued another letter dated 07.05.2004 acknowledging the receipt of the aforesaid amount and calling upon Shri Banshi Dhar to pay the balance charges. Late Shri Banshi Dhar disputed the additional ground rent as claimed by the respondent and requested that the additional ground rent be re-computed at normal rates instead of at penal rates charged by the respondent. Thereafter, on 10.11.2004, the respondent issued another letter re-computing the charges payable and raised a demand of ₹2,57,866/-. In the meantime, Shri Banshi Dhar expired on 26.06.2004. However, the said demand was duly discharged by the petitioners on 25.11.2004.

4.3. The respondent issued a letter dated 21.12.2004 calling upon Late Shri Banshi Dhar for execution of the conveyance deed in his favour on

03.01.2005. The petitioners state that the said letter was received by them on 04.01.2005. It is further stated that the petitioners deposited the requisite fees on 02.02.2005 and informed the Deputy Land Development Officer of the demise of Shri Banshi Dhar. Thereafter, the respondent issued another letter dated 27.05.2005 addressed to Shri Banshi Dhar scheduling the date of execution of the conveyance deed to 14.06.2005.

4.4. On 03.06.2005, the petitioners filed an application for substitution of title of Late Shri Banshi Dhar. It is also asserted that the petitioners requested that a date be fixed for execution of conveyance in their favour. However, it is not disputed that the petitioners were advised to wait till their names are substituted in place of Late Shri Banshi Dhar.

4.5. The names of the petitioners were substituted in place of Late Shri Banshi Dhar on 18.10.2005.

4.6. On 29.10.2005, the petitioners addressed a letter to the Assistant Engineer of the respondent, informing him that their names had been substituted in place of Late Shri Banshi Dhar and requested that date and time be fixed for execution of the conveyance deed in their favour in respect of the said property.

4.7. In response to the aforesaid, the respondent sent a letter dated 25.11.2005, which reads as under:-

“I am to refer to your letter dated 29.10.05 on above subject and to inform you that recently the property has been substituted in your names while the conversion was earlier applied by Sh. Banshi Dhar which cannot be acted upon now.

You are therefore, requested to submit a fresh conversion application in your names along with the processing fee and indemnity bond within 15 days from the date of issue of this letter.”

4.8. The petitioners contested the above stand of the respondent and by a letter dated 09.10.2005, pointed out that the application for conversion had been accepted and the entire conversion amount had already been paid and subsequently, the names of the petitioners had been substituted in place of Late Shri Banshi Dhar. The petitioners contended that only the execution of conveyance deed remained and in these circumstances, a fresh conversion application was not required.

4.9. In response to the aforesaid letter dated 09.10.2005, the respondent sent a letter dated 27.03.2006 once again calling upon the petitioners to submit a conversion application in their names along with processing fee. The said letter reads as under:-

“I am to refer to your letter dated 9.12.05 on above subject and to inform you that the conversion was earlier applied by Sh. Banshi Dhar in his name but he expired and property has now substituted in your names. Therefore, you are required to submit a conversion application in your names along with processing fee only so that your case for conversion could be processed further.”

4.10. Pursuant to the aforesaid letter, the petitioners submitted a fresh conversion application along with the processing fee.

4.11. The petitioners, thereafter, sent letters requesting that a time and date be fixed for execution of the conveyance deed. However, the same did not elicit any satisfactory response.

4.12. On 06.12.2007, the respondent sent another letter, *inter alia*, alleging that there were certain contraventions of the lease deed. Thereafter, the petitioners sent several letters calling upon the respondent for execution of the conveyance deed. This request was not acceded to and instead the respondent demanded the original completion plans along with a bank draft of ₹100/-. This direction was also complied with by the petitioners.

4.13. Finally, the respondent issued a letter dated 19/27.01.2011 raising a fresh demand of ₹32,39,403/-. This amount was computed after adjusting the conversion charges paid by late Shri Bansi Dhar. The petitioners impugn the said demand.

5. The petitioners contend that the application filed by Shri Bansi Dhar for conversion had been accepted on 19.05.2000 and the respondent had agreed to execute the conveyance deed on payment of the full conversion charges. It is contended that since the conversion charges had been paid in full, the respondent was obliged to execute the conveyance deed. The petitioners further contend that in terms of the circular dated 26.03.2001 further demands of misuse charges etc. could not be raised after the substitution and the respondent could only collect the charges as demanded prior to substitution. The petitioners relied upon the decision of a Coordinate Bench of this Court in **R. L. Sethi v. Union of India: (2010) 170 DLT 159** in support of their contention.

6. The respondent contends that as per the policy, the benefit of the application made by the recorded lessee would be available to his/her legal heirs only if there is no delay due to fault of the recorded lessee or his/her

legal heirs. The respondent further contends that the benefit of the earlier application could not be made available to the petitioners as they had delayed the execution of the conveyance deed.

7. There is no dispute that the application for conversion filed by Late Shri Banshi Dhar had been accepted by the respondent and the same was also communicated to Late Shri Banshi Dhar by a letter dated 19.05.2000, which reads as under:-

“I am to refer to your application No. 2528 dt. 22.12.99 on the above cited subject, your request for conversion from lease hold to free hold has been accepted but conveyance deed will be executed as and when full and final payment is made by you.”

8. It is apparent from the above that the said property was agreed to be converted and the only obligation on the part of the recorded lessee (late Shri Banshi Dhar) was to pay the conversion charges.

9. Before proceeding further, it is necessary to understand the transaction contemplated in conversion of the lease hold property to free hold. In substance, the transaction involves the relinquishment of the rights vested with the lessor in favour of the lessee. By virtue of the lease deed, the lessee had already acquired substantial rights in the property and the conversion entailed the transfer of the balance rights in respect of the property from the lessor (who is akin to a seller) to the lessee (who is akin to a purchaser). The conversion rates are determined on the basis of the value of the property at the relevant time. This is also clearly discernible from the conversion policy which provides for computation of the

conversion fee as under:-

“(2) Computation of Conversion Fee

(i) In respect of properties with land area upto 500 sq. mtrs. the conversion fee will be charged on the basis of already approved graded scale circulated vide Ministry’s letter dated 14.2.1992 and land rates as applicable with effect from 1.4.1987, as indicated in the Annexure.

(ii) In respect of properties with area above 500 sq. mtrs. Conversion fee will be charged on the basis of slab rates as per Annexure and land rates as applicable with effect from 1.4.1987.

(iii) In respect of premium free leases, the conversion fee will be computable on the basis of the prevailing land rates as notified by the Government, from time to time, on a graded basis as applicable to other leases.”

10. In the present case, there is no dispute that Shri Bansi Dhar/the petitioners had paid the conversion charges as demanded along with interest. Thus, the respondent had received the entire consideration for its residuary rights in respect of the said property and the only act remaining was execution a conveyance deed. The respondent had also called upon Shri Bansi Dhar to execute the conveyance deed but by the said time, Shri Bansi Dhar had expired. It is not disputed that Shri Bansi Dhar would be entitled for execution of the conveyance deed in his favour. The contention that the respondent is absolved from its obligation of executing the conveyance deed on account of delays is not sustainable. Undisputedly, Shri Bansi Dhar and the petitioners had discharged their obligation and paid the entire consideration. Clearly, there were no delays in respect of discharge of the obligations by late Shri Bansi Dhar/the petitioners and the

entire consideration i.e. the conversion charges had been accepted by the respondent.

11. In the aforesaid circumstances, had Shri Banshi Dhar been alive, it would not be open for the respondent to resile from its obligation to execute the conveyance deed in his favour. It would be completely dishonest on the part of the respondent to claim that since the conveyance deed had not been executed, the respondent was absolved from executing the same after receiving the entire consideration for their title and interest in the property.

12. Bearing the aforesaid in mind, the question to be addressed is whether the said benefit would be available to the petitioners as legal heirs. Undeniably, the petitioners have stepped into the shoes of Late Shri Banshi Dhar as his legal heirs and were entitled to the benefits of all contracts and arrangements executed by Late Shri Banshi Dhar. Since the application filed by Shri Banshi Dhar for conversion of the said property was accepted, the petitioners, being the legal heirs, would also be entitled to pursue the said application. This is also, clearly, the respondent's policy as embodied in the Office Order issued on 12.04.1999. The said Office Order clearly indicates that the benefit of the application made by the recorded lessee would also be available to the legal heirs in whose favour the property is substituted. The said policy is reproduced as under:-

“OFFICE ORDER No. 10/99

Sub: Conversion from lease-hold to free-hold instructions thereof.

With reference to administration of Conversion Scheme being implemented by this office Clarifications on the following issue was sought from the M/O Urban Affairs & Employment:

ISSUE:

The recorded lessee applies for conversion and before the application for conversion could be finalized/settled, the recorded lessee dies. Subsequently the property is substituted in favour of the legal heirs either on the basis of a Will or by succession as per Hindu Succession Act. The question raised is as to how the application for conversion made by the deceased lessee should be treated.

The Ministry has accordingly clarified the position as under:

“It would be most logical to extend the benefit of the old application to the legal heirs/subsequent recorded lessees in whose favour the property was submitted as long as the delay is not due to the fault of the recorded lessee. However in those cases where the record prove that the delay in conversion was due to the fault of the recorded lessee, the application for conversion may be rejected and the party be advised to make fresh application for conversion and the conversion fee be accordingly calculated as per the prevailing prescribed fee at the time of making fresh application”.

B.O/Supdts. of the section concerned may kindly see the above decision for strict compliance while disposing of the pending cases of conversion.”

13. The respondent’s contention that the benefit of the said policy is not available to the petitioners as they had delayed the execution of the conveyance deed, is wholly unsustainable. Clearly, the aforesaid policy addresses the issue where the application for conversion has not been finalized or settled by the recorded lessee, prior to his demise. In such cases, where the application has not been finalized or settled, the delays

would undoubtedly be fatal to the application for conversion itself. In such cases, even if the recorded lessee was alive the application would not be processed in his favour on account of delays. Obviously, in such cases, the benefit of the application would also not be available to the legal heirs or subsequently recorded lessees. In the present case, there has been no delay in finalizing or settling the application for conversion. The application filed by Late Shri Bansi Dhar had been duly accepted and the payments as demanded had been discharged in full. In the aforesaid circumstances, the petitioners, being legal heirs, would be fully entitled to the benefit of the application filed by Late Shri Bansi Dhar.

14. At this stage, it is also relevant to refer to the Office Order dated 19.06.2009 issued by the respondent, which reads as under:-

“Office Order No. 9/2009

Subject:- Conversion from Leasehold to Freehold-Instructions thereof.

In some cases, where the lessee has applied for Freehold, the lessee expires and his/her legal heirs apply for substitution alongwith the new conversion application then the issue is whether the old or new application is to be treated for conversion.

It has now been decided that the decision of rejection is the responsibility of this office. If the decision has not been taken and any intention was not conveyed to the applicant, the application stands live in this office. In all such cases, the applications can not be treated as rejected and to be dealt with according to the policy in vogue on the date of submission of the application.”

15. Admittedly, the application filed by Shri Bansi Dhar had not been

rejected but on the contrary had been duly accepted and also duly settled way back in 2004. In view of the above, the communication dated 25.11.2005, issued by the respondent, calling upon the petitioners to submit a fresh conversion application on the ground that the earlier application filed by Late Shri Bansi Dhar, could not be acted upon, clearly, militates against the aforesaid policy. In my view, there was no occasion for the respondent to call upon the petitioners to submit a fresh conversion application to the respondent. And, the respondent was obliged to execute the conveyance deed in favour of the petitioners, as they were the legal heirs of Late Shri Bansi Dhar.

16. Before concluding, it is also necessary to add that the impugned demand issued by the respondent is also contrary to its circular dated 26.03.2001. Clause 4 of the said circular reads as under:-

“4. In these cases had there been no death of the recorded lessee, the property would have been made free-hold without asking for fresh demand or inspection etc. But as mentioned earlier some sections/dealing hands are taking a plea that in these types of cases since substitution/mutation is involved fresh demand can be sent to them for misuse or unauthorized construction. These leads to inequalities as pointed out above. The correct interpretation of the instruction dated 28th June, 1999 should have been that wherever an application for conversation has been filed on or before 31st March, 2000 the charges demanded earlier should only be recovered and no fresh inspection or asking for sanction building plan etc. to calculate further charges should be demanded.”

17. In view of the aforesaid, there was no requirement for a fresh inspection or for seeking sanction of the building plans since the

application filed by Late Shri Bansi Dhar had already been processed and finalized.

18. In view of the aforesaid, the impugned demand letter dated 19/27.01.2011 is set aside and the respondent is directed to execute the conveyance deed in respect of the said property, in favour of the petitioners within a period of six weeks from today.

19. The learned counsel for the petitioners has not pressed the prayer for compensation and the same is rejected.

20. The petition is disposed of with the aforesaid directions. Pending application also stands disposed of.

JULY 10, 2015
MK

VIBHU BAKHRU, J

