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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30.03.2016

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LPA 226/2014

DELHI DEVELOPMENT AUTHORITYAppellant

Through: Sh. Arun Birbal, Advocate.

Versus

M/S. KARAMDEEP FINANCE AND INVESTMENT (I) PVT. LTD.
AND ORS.Respondents

Through: Sh. Manish Vashisht and Sh. Sameer
Vashisht, Advocates, for Respondent No.1.

Ms. Rubal Maini, for Sh. Balbir Singh, Sr.
Advocate, *amicus curiae*, for IT
Sh. Ashok. K. Manchanda, Sr. Standing Counsel,
for IT Department.

Sh. Shantosh Kumar Tripathi, ASC, for GNCTD,
for Respondent No.4.

Sh. Chiranjiv Kumar, Sr. Panel Counsel with Sh.
Jitendra Kumar Tripathi, Advocate, for UOI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The present appeal is filed by the Delhi Development Authority (DDA) [hereafter referred to as "DDA/lessor"] questioning the judgment and order of the learned Single Judge (dated 26.09.2013) allowing the first respondent's (hereafter referred to as "the purchaser") writ petition.

2. One Trilochan Singh Rana (hereafter "lessee") had bought Plot No.14,

Block A-2, Safdarjung Development Area (SDA), New Delhi (hereafter referred to as “the suit property”) in a public auction by the DDA. Later, a Perpetual Lease Deed in respect of the property was executed on 18.03.1970. The Perpetual Lease Deed enjoined the lessee not to sell, transfer, assign or otherwise part with the whole or part of the suit property without prior permission of the lessor, i.e. the President of India. It also stated that if sale was permitted, it would be subject to payment of 50% of the unearned increase of the market value of the suit property. On 29.09.1988, the lessee entered into an agreement to sell with M/s. Ocean Construction Industries Pvt. Ltd. The permission of the Income Tax Department under Chapter 20C of the Income Tax Act was applied for since the consideration was below the notified rate. The Income Tax Department, Central Government issued an order under Section 269 UD of the Income Tax Act for compulsory acquisition of the property. Later, an amount of ₹17,86,420/-, being the value showed in the agreement was paid to the lessor. Thus, the Union of India (UOI) became the leasehold right owner/lessee in addition to the title held by it. The Central Government put the property to auction; the purchaser was the higher bidder – its offer for ₹1,08,05,000/- was accepted. The physical possession of the plot was handed over on 25.04.1989. Subsequently, the lease deed was executed in its favour, conveying the leasehold rights acquired previously by the Central Government. The unearned increase required to be paid was deposited with the DDA by the UOI. The purchaser applied for conversion of leasehold rights into freehold and deposited ₹3,45,729/- with the DDA. Later, on 28.04.2000, the DDA claimed ₹1,43,90,238/- towards unearned increase and interest payable thereto. The purchaser approached this Court with two-fold contentions, i.e. that the title

conveyed was in fact a freehold one and there was no question of recovery of ₹3,45,729/-, which was initially deposited. Thus, refund of amount was sought. The purchaser also contended that the DDA wrongfully claimed the amounts demanded from it towards unearned increase. The purchaser relied upon a previous decision of the Court, i.e. *Bansal Contractor (I) Ltd. and Anr. v. UOI and Ors.* 76 (1998) DLT 805, in support of the argument that the title had enlarged to that of freehold, the title had vested in it and consequently there was no question of unearned increase or amounts payable to the DDA.

3. The purchaser's argument was opposed by DDA firstly on the ground that what was conveyed was only leasehold property and consequently that the deposit of unearned increase amounts by the Income Tax Department in 1988 meant that the auction which led to the acquisition of the property by the purchaser was really sale for which separate unearned increase was payable. Learned Single Judge considered the previous ruling in *Bansal (supra)*, and having regard to the recitals of the deed presented before him, was of the opinion that since the sale deed was executed by the President of India, who was also the lessor, in fact, there was merger of rights and consequently what was conveyed was freehold rights and not merely leasehold rights. Learned Single Judge, therefore, allowed the writ petition and quashed the demand for ₹1,43,90,348/- made by DDA towards payment of unearned increase charges, Therefore, he directed refund of ₹3,45,729/- to the purchaser.

4. It is argued by Sh. Arun Birbal, learned counsel on behalf of the DDA that the learned Single Judge fell into error in holding that there was merger of interest. Learned counsel relied upon the terms of the Auction Notice

advertised by the Income Tax Department and the recitals in the deed executed in favour of the purchaser to say that in fact only leasehold rights were transferred. It was argued that since such rights were further sought to be conveyed by the Income Tax Department, the latter was also liable to pay unearned increase charges. It was argued further that in the first instance when UOI acquired the property through compulsory purchase, it was liable to pay unearned increase charge which it did. Therefore, when leasehold rights were transferred by the UOI as lessor, further unearned increase charges of ₹1,43,90,348/- was payable. In overlooking these aspects, submitted learned counsel, learned Single Judge fell into error. He also distinguished the judgment in *Bansal (supra)* and submitted that there was no merger of interest and rights of UOI which conveyed not more than what it acquired, i.e. leasehold rights. Learned counsel also relied upon the decision of the Supreme Court in *C.B. Gautam v. Union of India and Ors.* 1993 (1) SCC 78.

5. Learned counsel for the purchaser submitted that no interference with the impugned judgment is called for. It is argued that once the superior right holder acquired limited right of lease, the *Doctrine of Merger* automatically applied. Thus, the conveyance through auction purchaser was of an entire right which the UOI had, as owner of the property. In these circumstances, there was no question of payment of unearned increase. For this reason too, submitted learned counsel for the purchaser, the deposit of conversion charges – initially paid was under mistake.

6. The facts disclosed above would show that the UOI, in essence, acquired leasehold rights, which was earlier sold to the original owner (Trilochan Singh Rana). This was on account of its special powers under

Chapter 20C of the Income Tax Act. Those provisions were conceived and enacted in public interest to ensure that there was no revenue loss on account of undervaluation of properties at the stage of their transfer. The method advised by Parliament was to enable the Central Government – upon its recording satisfaction in terms of the specific provisions of the Income Tax Act that any property or class of properties sought to be sold for less than the ostensible consideration could be acquired by compulsory purchase.

7. Now, the acquisition of title by the UOI can be through different methods. It could be through exercise of exclusive domain; operation of land acquisition laws; reversion; cessation of leasehold rights etc. It could also devolve through *escheat* or on the lapse of certain interests, i.e. grants etc. In such an instance, the mere devolution of such interest wherever it accrues would not necessarily mean that the title or interest enlarges. Likewise, the exercise of statutory power to acquire property divests title of the owner. The mode of acquisition may be different; the exercise of *eminent domain* is one instance. In the present case, the statutory mode applied and the acquisition was through compulsory purchase. The transferee had no contingency or valuation and was bound to sell in accordance with law. Such being the case, the Court is of the opinion that the contention by the DDA that unearned increase was payable is unacceptable. It would be startling to accede to a proposition that the UOI or State's power of *eminent domain*, the form being immaterial, would be a transfer where unearned increase condition (which applies in case of voluntary transfer) would have to be made. The anomaly here is that the UOI, the owner and superior lessor of the property would be made to part with amounts (unearned increase) to a statutory authority which manages its own properties, on the assumption that the acquisition of

property by any statutory mode, amounts to voluntary transfer. The proposition is unsuitable and entirely misconceived. For the above reasons, we hold that the conditions which applies in cases of voluntary transfer, i.e. sale or transfer of leasehold rights by a lessor to another third party would not apply where the UOI itself conveys the rights which exist or vest in it on account of *eminent domain* through reversion to a third party. For these reasons, the Court holds that the impugned judgment cannot be faulted. The unearned increase was not payable by the purchaser to the DDA as is being contended. That unearned increase was deposited by the Income Tax Department may be by mistaken reading of law. Further that mistake would not in any way alter the position that the UOI or the Income Tax department were not bound to deposit that amount. So far as the other aspect, i.e. refund of conversion charges is concerned, the direction here is premised upon the finding that what was conveyed was a larger title, i.e. freehold interest.

8. Here, this Court is unable to accept the purchaser's contention. The advertisement dated 20.03.1989 inviting bids for auction of the suit property reads as follows:

“1. **Property No.B-6, Friends Colony, Reserve Price**
Mathura Road, New Delhi

This is a lease hold residential plot measuring 195.097 sq. mtr. together with buildings and structures thereon and fixtures and fittings therein.

2. **Property No.14, Block A-2, 1.08 crores”**
Safdarjung Development Area, New Delhi

This is a lease hold residential plot measuring (725 Sq. yds.) with a double storeyed building. The Ground Floor

consists of drawing dining, bed room, kitchen and a garage. The First Floor consists of three bed rooms, 3 bath rooms, store and a lobby over the garage. There are 2 floors each having a servant room, W.P. and a cooking verandah.”

9. The conveyance – characterised as “sale deed” in some parts undoubtedly suggests that all rights, title and interest in the suit property was conveyed. However, the express allusion to the purchaser that what is transferred and conveyed is in terms of conveyance transferred dated 29.09.1988 between the previous owner, Trilochan Singh Rana and the proposed transferee, M/s. Ocean Construction Industries Pvt. Ltd. clarifies beyond any doubt that the UOI intended to convey only what was acquired, i.e. leasehold rights and nothing more. The condition reads as follows:

“3. That the vendor hereby represents and assures to the Vendee that his right in the property hereby sold, transferred and conveyed is in terms of agreement for transfer dated 29-9-1988 between Mr. Trilochan Singh Rana and Mrs. Rani Rana transferor and M/s. Ocean Construction Industries Pvt. Ltd. (through its Director Shri Jugal Kishore Malhan) transferee.”

10. Likewise, the recitals also state that what vested in the vendor, i.e. UOI (through acquisition under the Income Tax Act) alone were conveyed and transferred.

11. In these circumstances, keeping in mind what was advertised was sale of leasehold rights and furthermore that what was conveyed was also leasehold rights in terms of what was sought to be conveyed by the original owner to the proposed or indicated purchaser, and there can be no doubt that this was not a case where the *Doctrine of Merger* is applied. We are unable

to agree with the learned Single Judge that the *Doctrine of Merger* applied and conversion charges were to be refunded. For the foregoing reasons, the appeal has to succeed in part. The direction to refund the amount of conversion fee paid by the respondent purchaser is set aside. The appeal is partly allowed to the above extent.

**S. RAVINDRA BHAT
(JUDGE)**

MARCH 30, 2016

**DEEPA SHARMA
(JUDGE)**

