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

Decided on : 18.02.2016

+ **LPA 610/2011, C.M. APPL.14051/2011**

DELHI DEVELOPMENT AUTHORITY

.....Appellant

Through: Sh. Rajiv Bansal, Sh. Siddhant Gupta, Sh.
Keshav Dutta, Ms. Arpita and Ms. Ritu Gautam,
Advocates.

Versus

UNISONS HOTEL LTD.

.....Respondent

Through: Sh. Kumar Shashank, Advocate.

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 Delhi Development Authority (DDA) is in appeal against the judgment and order of a learned Single Judge dated 08.03.2011 whereby the impugned judgment directed payment of 9% simple interest on the sum of ₹12,54,53,300/- for the period 28.07.2008 to 08.03.2011. The respondent in the present matter [hereafter “the allottee writ petitioner”) was allotted a commercial plot for construction of a hotel on 03.02.1994. The possession of the property was handed over to it on 26.04.1995. The title was transferred earlier in favour of the writ petitioner on 10.03.1995. The DDA had demanded Ground Rent in terms of the lease deed executed in that regard upto December 1999, and sometime in 2000; the sum demanded was

₹76,09,975/-. A further demand for payment of ₹7,61,40,925/- was made on 03.06.2008. This was subject matter of W.P.(C) 5326/2008. During pendency of that writ petition, the allottee writ petitioner paid the conversion charges of ₹12,54,53,300 on 28.08.2008 to the DDA along with the requisite application. The dispute as regards the Ground Rent liability was referred for arbitration and the writ petition, W.P.(C) 5386/2008 was consequently disposed of on 14.12.2009.

2. In a fresh grievance – articulated in W.P.(C) 2029/2010, the allottee writ petitioner contended that its conversion application ought not be held up for arrears of Ground Rent, which was in dispute. DDA resisted the relief claimed, contending that since the allottee writ petitioner had undertaken in its application to pay arrears of Ground Rent, the conversion application was not effective/deemed to be null and void and that DDA was entitled to recover the entire arrears of Ground Rent. During the course of hearing, the allottee writ petitioner submitted that it was willing to furnish an undertaking that it would pay the Ground Rent as finally determined and that it would also not sell the property without prior permission of the Court.

3. The DDA opposed this, stating that in principle, such an offer was unacceptable because the conditions for conversion envisioned deposit of arrears of Ground Rent as a prerequisite for consideration of the conversion benefit itself. It was, therefore, insisted that the allottee writ petitioner should deposit the entire arrears without prejudice to its rights in arbitration and that the DDA would abide by the final outcome of arbitral proceedings. The Court, however, sought to balance the rights and liabilities in the form of equitable directions which is in appeal before us. The said direction reads as follows:

“8. It appears to this Court to be appropriate to direct that the arrears of ground rent as demanded by the DDA should be deposited by the Petitioner, in terms of the undertaking given by it to the DDA without prejudice to its rights and contentions. In order to balance the equities, it is directed that while making payment of the said amount of arrears of ground rent, the Petitioner will be entitled to adjust a sum equivalent to 9% simple interest on the sum of Rs.12,54,53,300/- from 28th July 2008 upto today, i.e., 8th March 2011.”

4. Sh. Rajiv Bansal, learned counsel appearing for the DDA submits that the directions given are contrary to the terms of the Scheme in as much as its express condition, i.e. Clauses 5 and 10(i), which read as under:

“5. The arrears of ground rent alongwith interest @ 10% per annum wherever applicable would have to be paid by the applicant before conversion can be permitted. In cases where revision of ground rent has become due, the revised amount of rent will be notified to the lessee for depositing the amount before the execution of the conveyance deed.

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10(i) Conversion will be allowed only when all dues including charges towards misuse, damages, ground rent, service/maintenance charges etc. have been paid by the applicant in respect of the property.”

5. He also submitted that the Conversion Scheme clearly indicated that any incomplete or defective application would have to be cured in the first instance within 30 days after which the request for conversion itself would not be entertained. The said condition reads as follows:

“If any application is found incomplete or defective in any manner, the applicant shall be given an opportunity to furnish the prescribed documents not enclosed to the application and to remove the defects within a period of 30 days. On the failure of

the applicant to remove the defects within the period specified, the application shall be deemed to have been rejected. Applications found in order will be disposed of within a maximum period of 90 days from the date on which the prescribed formalities are completed. Conveyance deed shall be sent to the applicant/person in whose name conversion is sought by registered post. The recipient shall then get it stamped from Collector of Stamps and submit it within 45 days from the receipt thereof at the specified counter located at 'D'Block, Vikas Sadan, INA for signature of the authorised person."

6. It is contended that the direction to pay interest cannot be deemed an equitable one given that the Conversion Scheme has to be seen as a whole. The DDA was within its rights to reject the application in entirety – in effect, it stood automatically rejected and was of no consequence since no right for conversion enured in law but was conditional upon the fulfilment of stipulations of the Conversion Scheme. It was submitted, therefore, irrespective of the rights and liabilities of parties *vis-a-vis* payment of arrears of Ground Rent by the allottee writ petitioner, it was bound to deposit the amounts due from it in order to claim due consideration of the conversion application itself. Learned counsel submitted that as a result, the learned Single Judge overlooked these salient aspects in directing payment of 9% simple interest as it did by the impugned directions.

7. The factual discussion would reveal that the allottee writ petitioner's initial dispute with the DDA was with respect to the period of time when the enhanced Ground Rent was recoverable in terms of the lease deed and the allotment letter since a five year moratorium was permissible for payment of normal Ground Rent @ ₹ 5/- per month. After that period, the liability was fixed @ 2.5% of the premium paid by the allottee writ petitioner – in this

case, ₹32.5 crores. The dispute pertained to the period when the allottee writ petitioner was not in possession of the property; it contended that it could not be saddled with the burden between the date of allotment and the handing over of the possession. This dispute concededly became the subject matter of arbitration proceedings. During the pendency of that dispute, the allottee writ petitioner sought benefit of the Conversion Scheme and again admittedly deposited the conversion charges, a sum of ₹12,54,53,300/- on 28.07.2008. The DDA's contention is that the deposit was of no consequence since the application itself was not maintainable. The DDA's argument here is that the conditions of the Conversion Scheme required deposit of the entire amount rather than only the conversion charges and that failing such compliance, there was no question of even consideration of the application.

8. Learned Single Judge in this case was conscious of the fact that the dispute as to the extent of liability towards Ground Rent was pending consideration. What appears to have impelled him to direct payment of 9% simple interest on the amounts kept with the DDA, i.e. ₹12,54,53,300/- from 28.07.2008 is the fact that the DDA was ambiguous as to the status of that deposit.

9. During the hearing, it was urged that the allottee writ petitioner never approached DDA for refund and that the DDA was not under a liability to intimate the allottee writ petitioner about the status of application given the express nature of conditions in the Conversion Scheme. However, the fact remains that the DDA accepted the amount and kept it with itself. If the DDA were to really say that the application was of no avail, in such circumstances, retaining the money on the one hand and rejecting the application was not an option. In other words, if the DDA had really sought

to repay the amount within reasonable time with effect from 28.07.2008, say within 2-3 months, the question of saddling it with any liability would not have arisen. If one keeps in mind this perspective, this Court is of the opinion that no fault can be attributed with the learned Single Judge's direction to make over 9% simple interest for the limited period of about 2 ½ years. Such a direction, in the opinion of this Court, was to balance the equities of parties, having regard to the rights and interest of the parties which was undetermined as to the exact extent of the allottee writ petitioner's liability. It is now a matter of record that by the award, though the entire claim of the allottee writ petitioner, which included damages towards alleged escalation etc. was not accepted, the Tribunal held that it was not liable to pay enhanced Ground Rent for the period @ 2.5% prior to the period 25.04.2000.

10. For the above reasons, this appeal is without merit. It is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

FEBRUARY 18, 2016