

\$~J

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 10.12.2015

Pronounced on: 16.03.2016

%

+ LPA 445/2009

EAGLE THEATRES & ANR

..... Appellants

Through: Mr.Amir Singh Pasrich and Ms.Vinita
Chhatwal, Advocates

Versus

UOI & ANR

..... Respondents

Through: Mr.Vivek Goyal, CGSC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. The present appeal is filed seeking to impugn the order dated 21.07.2009 of the learned Single Judge in W.P.(C)1842/2006. The appellant had filed a Writ Petition seeking appropriate writ/direction to respondent No.2 i.e. Land and Development Officer, Ministry of Urban Development (L&DO) to convert the property of the appellant Eagle Theatres, Plaza Cinema Building, H-Block, Connaught Place, New Delhi-110001 from leasehold to freehold for which an application for conversion had been submitted on 26.2.2004 and for withdrawal of the impugned communication of L&DO dated 2.12.2005.

2. The brief facts as stated in the petition by the appellant are that the respondents/Secretary of the State of India in Council granted a lease for the said property on 16.04.1937 to one M/s. Mangal Dass Verma and others. The

lease was for a plot measuring 32710 sq.ft. or 0.75 acre or thereabout. The appellants subsequently purchased the leasehold rights.

3. In June 2003 the respondents issued a brochure for conversion of leasehold land into freehold land. The conversion scheme was made applicable to commercial and mixed land use properties allotted by L&DO for which ownership rights have been conferred and lease deed executed and registered.

4. It is the contention of the appellants that relying on the said conversion scheme, on 26.2.2004 the appellants applied for conversion of their leasehold land into freehold. A demand draft for Rs.10,54,213/- being the stated 1/5th of the amount of conversion charges was also deposited. It is contended that the appellant received a communication from L&DO dated 12.04.2004 stating that the property of the appellant would be converted into freehold on payment of full conversion fees and all other government dues.

5. Hence, it is contended that on 10.09.2004 the appellant paid another sum of Rs.10,53,713/-. On 16.12.2004 the entire balance amount of Rs.31,61,138/- was deposited. It is further contended that despite these steps taken by the appellant, the respondents took no steps to convert the property into freehold. Several reminders were sent to the respondent by the appellant.

6. On 2.12.2005, the appellant received a communication from the respondents pointing out that the request of the appellant for conversion has been examined and could not be acceded to as Clause 26 of the Scheme is not applicable to the appellant's case inasmuch as the respondent's policy for conversion from leasehold to freehold of cinema plots is still awaited. The

appellant in protest is said to have addressed a detailed representation/communication dated 08.12.2005 to the respondents demanding that appropriate steps be taken by the respondents to convert the property to freehold. It was urged that the brochure issued in 2003 does not state that it is not applicable to cinema plots or that the scheme regarding cinema plots is yet to be finalized. In response to the representation of the appellant, the respondents on 18.01.2006 sent a response reiterating the earlier stand of the respondents as communicated vide letter dated 2.12.2005. It was in this background that the present writ petition was filed by the appellant.

7. The respondents filed a counter-affidavit before the learned Single Judge. In the counter-affidavit it was stated that the scheme for conversion of leasehold properties into freehold pertained only in respect of residential and commercial properties and not for cinema plots and hotels. Reliance was also placed on schedule of market rates notified from time to time, the list of such rates was stated to have been lastly notified prior to launch of the scheme of June, 2003 by the respondent on 16.4.1999. The said notification it is urged clearly provides that no market rates are prescribed regarding hotels and cinema sites and such cases have to be specifically considered in consultation with the Ministry of Finance. As conversion charges payable by an applicant are based on notified market rates, no conversion to freehold was possible in the absence of such market rates.

8. As no specific market rates are specified for cinema and hotels, it was urged that the June 2003 Scheme for conversion was not applicable to cinema plots. Reliance was also placed on the Master plan 2001 to contend

that hotel sites and cinema sites have not been shown as falling under commercial properties.

9. The learned Single Judge vide impugned order noted that the Circular dated 16.04.1999 regarding land rates specifically carves out an exception regarding hotel and cinema sites. As per the said Circular, rates fixed for commercial sites were not applicable for cinema and hotel sites. Hence, it was clear, the impugned order concludes that the respondents have been treating cinema and hotel sites as separate and distinct from other commercial sites for the purpose of calculating unearned increase. The order further concludes that the difference between commercial lease and cinema and hotel sites is apparent inasmuch as cinema and hotel plots command premium rates being more valuable and having a higher market price. Hence, the respondent would enjoy flexibility and freedom to decide the concerned charges inasmuch as L&DO can fix different charges for commercial plot, hotel plots and cinema hall plots respectively. The learned Single Judge relying on an earlier judgment of a learned Single Judge of this Court in ***J.R.Sood vs. Union of India & Another, 132(2006) DLT 355*** issued a writ of mandamus to the respondents directing the respondents to fix the land rates applicable to the appellant's plot/cinema plot/site and thereafter process the appellant's application for conversion.

10. We have heard learned counsel for the parties and gone through the record. Learned counsel appearing for the appellant has stressed that the impugned order is erroneous for the following reasons:

- i. The impugned order ignores that the brochure issued in June 2003 is dealing with the scheme for conversion of industrial,

commercial and mixed land use premises. It is urged that usage of a property as a cinema hall would clearly be covered by the description of a commercial property and hence the brochure would be applicable to the case of the appellant. The decision of the respondent declining to treat the property of the appellant as a commercial property was arbitrary and illegal as a cinema hall is also a commercial property. The respondents have unjustly disallowed the application of the appellant.

ii. It is further urged that the property of the appellant is predominantly commercial, the cinema hall being only a small component of the property. 80% of the built up area is being utilized for commercial purpose and only 20% is being used for cinema. It is urged that the predominant purpose being commercial, the brochure issued in June 2003 will clearly be applicable to the appellant.

iii. It is further submitted that the appellant applied for conversion to freehold on 26.02.2004 and made the payment of Rs.10,54,213/-. It is only after receipt of the letter from the respondent dated 12.04.2004 holding out that the conversion would take place after full payment is made, that a balance sum of Rs.42,14,851/- has been deposited with the respondent. In case the brochure for conversion to freehold issued in June 2003 was not applicable to the appellant, the respondents should not have written letter dated 12.04.2004 nor should have accepted the application of the appellant and the amount of Rs.52,69,164/-. The appellant acted on the letter dated 12.04.2004 of the respondent and arranged the funds to pay the respondent. Having

accepted the full amount of Rs.52,69,164/-, the respondents are now estopped under the doctrine of promissory estoppel from resiling and refusing to convert the property to a freehold property. The respondents are now obliged to permit conversion to freehold. Reliance was placed on the judgment of the Supreme Court in the case of *State Financial Corporation vs. Lotus Hotels Pvt. Ltd., 1983 (3) SCC 379* to elaborate the concept of promissory estoppel.

iv. It was lastly stressed that the earlier judgment of the Division Bench of this Court in *UOI vs. Excelsior Ltd. & Anr. (2013) ILR 1 Delhi 157* where one of the judgments impugned was the case of *J.R.Sood vs. UOI (supra)*, would not be applicable to the facts of this case inasmuch as that judgment pertained to conversion of hotel lands which had been disinvested by ITDC.

11. We may first see some of the applicable paras of the brochure issued by the respondents for conversion from leasehold to freehold in June 2003. They are as follows:

“In response to the long pending demand of the lessees in respect of leases other than ‘residential’, it has now been decided to allow conversion of Industrial, Commercial and mixed land use premises also. Further, keeping in view the request of lessees in residential colonies, it has also been decided to rationalize the remission of conversion fee available to the lessees.”

....

1. WHAT ARE THE PROPERTIES UNDER THE CONTROL OF LAND AND DEVELOPMENT OFFICE ELIGIBLE FOR CONVERSION FROM LEASEHOLD TO FREEHOLD”

.....

1.5 All commercial and mixed land use properties allotted by the department of Rehabilitation, L&DO or the Dte. Of Estate, for which ownership rights have been conferred and lease deed executed and registered.

....

28. HOW LONG DOES IT TAKE TO GRANT CONVERSION AND ISSUE CONVEYANCE DEED?

The grant of conversion will be communicated within three months from the date the application complete in all respects is submitted along with complete payments.”

12. Similarly, reference may be had to the circular dated 16.04.1999 issued by the respondent regarding fixation of market rates of land in different areas of Delhi/New Delhi. Paragraph 3 of the same states as follows:-

“2. The market rates for residential/commercial purposes are based on existing FARs prescribed for various areas.

NOTE: These rates will be increased proportionate to increase in FAR

3. In so far as hotel and cinema sites are concerned, each case should be specifically considered in consultation with the Ministry of Finance.”

13. We may now first deal with the contention of the appellant that the June, 2003 Scheme of conversion, deals with cinema plots also, as such plot would be a commercial property. Perusal of the notification dated 16.04.99 reproduced above clearly reveals that though market rates for commercial properties had been notified, no rates have been specifically notified regarding hotel and cinema sites. Hence, a distinction has been in operation

much prior to the issue of the June, 2003 Scheme of conversion by the respondent whereby hotel and cinema sites are being treated differently from commercial properties. The appellant cannot insist that the respondents cannot make a distinction between the commercial properties and the properties/plots being used for cinema/hotel. The distinction is reasonable. The respondents can prescribe different rates/charges for conversion of cinema plots which are leasehold properties to freehold as compared to commercial properties. In fact, the impugned order of the learned Single Judge has directed the respondents to notify the land rates applicable for the appellant's plot and thereafter process the application of the appellant for conversion to freehold. There is no challenge by the respondents to the said direction of the learned Single Judge. In fact, we had been told that the respondents have notified the market rates for cinema/hotel plots based on which the conversion charges would be calculated. The respondents are ready to comply with the direction in the impugned order based on the newly notified market rates. It is the appellant who are now insisting that the land rates for commercial properties are to be applied for conversion of his plot to freehold instead of the newly notified rates for cinema/hotel plots. We see no merit in the said contention of the appellant. We are informed that a challenge has been made to the said scheme/rates now notified by the appellants for cinema/hotel sites, which is a subject matter of CWP No.7230/2014 which is pending before the learned Single Judge. We need not go into the said issue any further.

14. Coming to the next submission of the appellant that the property is substantially being used for commercial purpose and the cinema hall is only

20% of the area. No such plea has been raised by the appellant before the learned Single Judge. Hence, the respondent never had an opportunity to rebut/accept this contention on facts or to deal with this submission. The appellant cannot be permitted to now raise this plea before us. However, the record had been produced before us by the respondent. The record shows the conversion charges were being calculated by the L&DO based on the area used by the appellant for commercial/cinema hall respectively. Hence there is no merit in this contention.

15. The next contention of the appellant is that the respondents are estopped by their conduct in rejecting the application of the appellant. It is the contention of the appellant that the communication sent by the respondent/L&DO dated 12.04.2004 amounted to acceptance of the application for conversion of the appellant and that based on this communication/representation of the respondent, the appellant paid the balance conversion fees, which was also duly accepted by the respondent. In our opinion, there is no merit in the said contention. A perusal of the brochure issued in June 2003 shows that under Clause 28 on approval of the application for grant of conversion, a communication will be sent to the applicant. Admittedly, no such communication was sent to the appellant. The appellant has placed heavy reliance on the letter dated 12.04.2004 issued by the L&DO wherein it is stated that the property will be converted into freehold on payment of the full conversion fees and other government dues only. The letter does not state that the application of the appellant has been accepted or that the conversion fees, first instalment of which till then had been deposited, was the correct calculation. The construction of this

communication, as done by the appellant as a consent from the respondent for the application of the appellant, is misplaced. In the absence of any proper communication accepting the request of the appellant to convert the property into freehold, no rights accrued in favour of the appellant. No case of promissory estoppel is made out or can be pleaded.

16. Further merely because the application and alleged conversion fees were accepted by the respondent cannot mean that there was any representation on the part of the respondent accepting the application for grant of conversion of the appellant. The application for conversion of leasehold property into freehold which is attached with the brochure dated June 2003 clearly provides that the conversion charges are being determined on “self assessment” basis. The appellants have on their own assumptions calculated the conversion charges and deposited the same and now cannot turn around and state that mere acceptance of the said charges by the appellant would tantamount to acceptance of their application for conversion.

17. We will now look at the judgment of the Division Bench of this Court in *Union of India & Anr. vs. Hotel Excelsior Ltd. & Anr (supra)*. In the impugned order the learned Single Judge had relying upon certain directions in an earlier judgment made by this court in the case of *J.R.Sood vs. UOI (supra)*, issued similar directions to the respondent in the present case. The said judgment of the learned Single Judge in the case of *J.R. Sood vs. UOI (supra)* was also challenged before the Division Bench and was heard along with a batch of appeals by the Division bench which led to the judgment in the case of *Union of India & Anr. vs. Hotel Excelsior Ltd. & Anr (supra)*.

Most of the cases that were disposed of by the said judgment pertained to hotel sites which had been disinvested by ITDC. The said hotels had applied for conversion from leasehold to freehold. However, one of the matters in that bunch decided by the Division Bench pertained to a cinema plot, i.e. Eros Cinema. The case of *UOI vs. J.R. Sood* (supra) pertained to this cinema plot and the conversion policy of the respondents as elaborated in the brochure of June 2003. The learned Single Judge in his judgment in that case was of the view that the concept of commercial land as used in the said policy of June 2003 would include a cinema site and the scheme was applicable to cinema sites. However, the Division Bench reversed the said judgment. Relevant portions of the said judgment of the Division Bench read as follows:

“13. It is not as if the appellant L&DO allows such conversion, with respect to all leases. Judicial notice can be taken of the fact that the Policy/Scheme for conversion, when first introduced in the year 1992, was qua residential plots only and that too of size not exceeding 500 sq. mtrs. Subsequently in the year 1999 all residential plots irrespective of size were brought within the ambit of the Scheme. It is only in the next stage in the year 2003 that the Policy/Scheme was extended to commercial/mixed use of plots of land. Even now, the Scheme/Policy does not state that all leaseholds under the L&DO are eligible for conversion to freehold, as would have been the case, had the intent been so. Instead, in Clauses 1.1 to 1.5 of the Scheme/Policy, the leases eligible for freehold conversion are specified.....

.....

25. We are of the opinion that the aforesaid differences are sufficient to belie any case of discrimination and it is not for this Court to go into the insufficiency even if argued of the differences to mete out a different treatment to the respondents.

These are policy matters and freehold conversion, as aforesaid is in the sole discretion of the lessor and if the lessor in its wisdom does not want to allow such conversion to certain categories of lease, no case for judicial review thereof is made out in the face of differences aforesaid. The Supreme Court recently in *Union of India v. Nitdip Textile Processors Pvt. Ltd.* (2012) 1 SCC 226 held that 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.....

.....

29. We therefore do not find any right in the respondents to compel the appellant L&DO to convert the leasehold rights in the land underneath disinvested hotels and cinema aforesaid into freehold. We also do not find any arbitrariness or discrimination in the refusal of the appellant L&DO to grant freehold conversion sought by the respondents.....”

The aforesaid judgment of the Division Bench, which also deals with the cinema plots, squarely covers the case of the appellant. In the light of the said observations of this court, no relief as sought for by the appellant in the present appeal can be granted.

18. Similarly, reference may also be had to the judgment of another Division Bench of this Court in *Aggarwal and Modi Enterprises (Cinema Project) Pvt. Ltd. and Anr. vs. New Delhi Municipal Council, 123(2005) DLT 154/MANU/DE/1087/2005* where the Division Bench held as follows:-

“57. Once we hold this view, the argument of discrimination would also fail. It would not be open to the appellants to say that the NDMC has been giving long drawn leases to the hotels and this treatment should be extended to the cinema site in question as well. Likewise comparison with the shops in shopping

complexes and alleging that license is renewed in their cases would also be of no avail to the appellants. If the appellants' case is dealt with in accordance with law keeping in view the statutory provisions and when there is no arbitrariness in the impugned action while rejecting the appellants' proposal, the appellants cannot contend that they should be given favorable treatment disregarding legal position by comparing their case with other persons and trying to make an attempt that those persons are given a particular treatment. It cannot be lost sight of that the concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favor of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them [State of Bihar v.Kameshwar Prasad Singh, AIR2000SC2306.”

19. In the light of the above, in our opinion, we see no reason to differ with the views of the learned Single Judge. We see no discrimination in the act of the respondent in demanding separate conversion charges for cinema halls and hotels as compared to commercial properties.

20. The appeal is without merits and is dismissed.

**(JAYANT NATH)
JUDGE**

(CHIEF JUSTICE)

March 16, 2016

n/v