

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: January 10, 2018
Judgment delivered on: January 29, 2018

+ W.P.(C) 9603/2017

BIRLA ACADEMIC OF ART AND CULTURE Petitioner
Through: Mr. Ankit, Proxy Counsel for Mr. H.D.
Sharma, Adv.
versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent
Through: Mr. Ajay Digpaul, Standing
Counsel.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. Present petition has been filed by the petitioner with the following prayers:

“In the facts and circumstances of the case, it is, respectfully prayed that this Hon’ble Court may graciously be please to issue writ(s), order(s), or direction(s) directing the respondent Corporation to refund amount of Rs.1,71,54,000/- (Rupees One Crore Seventy One Lakh Fifty Four Thousand only) along with interest to petitioner and / or pass any other relief or order which this Hon’ble Court may deems fit, proper and expedient in the circumstance of the case.”

2. It is the case of the petitioner that it is having a plot at Sector-4, Pushp Vihar, New Delhi. The plans were sanctioned for construction of building, subject to the petitioner depositing with the respondent corporation amongst other amounts, additional FAR charges of Rs. 1,71,54,000/-. It is the case of

the petitioner that the petitioner has been granted income tax exemption under Section 80(G)(5)(VI) of Income Tax Act in perpetuity valid from assessment year 2013-2014 onwards. The amount demanded by the respondent Corporation was deposited by the petitioner vide receipt no. 061000 dated September 30, 2013. The corporation collecting amount on account of additional FAR was by virtue of notification dated December 23, 2008 whereby holders of Institutional Plots including Hospital Plots were required to pay additional FAR charges as mentioned in Para 6 of the notification. It is also noted from the record that members of Association of Self-Financing Institutions had met the Hon'ble the Lt. Governor of Delhi on March 30, 2009 against levy of additional FAR charges upon educational institutions. It has also come on record, a fresh notification dated July 17, 2012 was issued by the DDA amending the earlier notification stating that no additional FAR charges are to be recovered from Educational Societies / Health-Care Institutions and Social Welfare Societies having income tax exemption. It is also noted that the collecting of amount on account of additional FAR charges became subject matter of different writ petitions filed by various Educational Societies. It is the case of the petitioner that the respondent's action was held to be violative by this Court and Corporation was directed to refund the amount. A reference is made to the orders passed by this Court on November 22, 2013 in W.P.(C) 1149/2013; order / judgment dated April 30, 2014 in LPA 107/2014 and other connected writ petitions; order of the Supreme Court dated July 25, 2014 in appeal filed by the DDA against the order dated April 30, 2014; SLP filed by South Delhi Municipal Corporation against the order dated April 30, 2014 in W.P.(C) 915/2014. It is the case of the petitioner that it had made various representations to the respondent for refund of the amount deposited by it. Learned counsel for the petitioner referred to communications dated September 19, 2016, December W.P.(C) No. 9603/2017

5, 2016, February 9, 2017, February 27, 2017 and August 25, 2017. According to him, despite such representations, request has not been acceded to. Learned counsel for the petitioner also refers to the judgment of the Coordinate Bench of this Court dated March 16, 2017 in the case of ***Foundation for Organizational Research and Education Fore School of Management v. South Delhi Municipal Corporation & Anr. W.P.(C) 8467/2015*** wherein this Court has allowed the plea of the petitioner therein for the refund of the amount of Additional FAR deposited.

3. I may state here that when the matter was listed on January 3, 2018, this Court had passed the following order:-

“Learned counsel for the petitioner states that the issue in the present petition is covered by the judgment of this Court dated November 22, 2013 in the W.P.(C) No.1149/2013 which has also been upheld by the Division Bench in LPA No.915/2014 and connected writ petitions and the Supreme Court.

Mr. Ajay Digpaul, learned counsel for the respondent by conceding that the issue is covered, states he require some time to take instructions as to whether the petitioner had in fact deposited the FAR charges in terms of Notification dated December 23, 2008.

At his request, adjourned to 10th January, 2018.

Dasti.”

4. A counter-affidavit was filed by the respondents in the Registry on January 9, 2018. The same has been requisitioned and placed on record. It is the case of the respondent in the counter-affidavit and also contended by Mr. Ajay Digpaul, Standing Counsel that the present petition is liable to be dismissed on the ground of delay and laches inasmuch as it is the case of the petitioner that it had deposited the additional FAR charges on September 30, 2013 whereas the petition has been filed after a period of 3 years from the

date of payment. That apart, it is his submission that the petition is also beyond the period of 3 years from the date of DDA notification dated July 17, 2012. He seeks the dismissal of the writ petition on this ground as well. He also submitted, petitioner at the time of making payment of additional FAR charges in the year 2013 had not submitted any letter indicating that the said payment is being made under protest. According to him, petitioner having voluntarily taken the benefit of the notification dated December 23, 2008 with respect to additional FAR charges, cannot turn around and claim that the notification of 2012 shall be applicable. He also stated, petitioner who had not submitted the income tax exemption certificate as required at the time of submission of their proposal for sanction of the building plans, now cannot seek the refund back. He stated, petitioner has erred in relying upon the orders / judgments referred to in the writ petition. The same are not applicable to the facts and circumstances of the case. The said orders have been passed in the petitions filed by those persons who had not accepted the DDA notification dated December 23, 2008 and had in fact challenged the same.

5. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the petitioner is entitled to the relief as prayed for in the petition for the refund of the amount of Rs. 1,71,54,000/-.

6. In so far as the plea of Mr.Digpaul that the present petition has been filed beyond a period of 3 years from the date of deposit of the additional FAR charges on September 30, 2013 and also beyond a period of three years from the date of notification dated July 17, 2012 is concerned, the same is not appealing. Mr. Digpaul may be correct in stating that petitioner had deposited the amount subsequent to the notification dated July 17, 2012, but the fact remains that the respondent except stating that the petitioner had not

submitted the income tax exemption certificate under Section 80 (G) at the time of submission of proposal for sanctioning building plans, does not dispute the fact that the petitioner is not entitled to the benefit of the notification. That apart, even after the issuance of the notification of 2012, the respondent had not given the benefit of the same. The benefit was given to those educational societies, who had approached the Court, including petitioner in W.P.(C) 9572/2009 decided on July 20, 2012. This resulted in further petitions being filed in the Court including W.P.(C) 1149/2013, which was decided on November 22, 2013, wherein, this Court has given parity to the petitioner in that writ petition in view of benefit having been given to a Society in W.P.(C) 9572/2009. Even otherwise, in view of notification dated July 17, 2012, the respondent could not have claimed, the amount against Additional FAR. In any case, it was only on November 22, 2013, when the Single Judge had decided the issue on parity, which order was upheld by the Division Bench of the High Court on April 30, 2014 and by the Supreme Court on July 25, 2014, when one of the SLP was dismissed, the issue had attained finality. It was after that only the petitioner could have made any claim for the refund. It is not disputed that thereafter, the petitioner had made representations for refund, starting from September 19, 2016 onwards. The representation of September 19, 2016, was within a period of three years of the date of the deposit of the additional FAR amount of Rs.1,71,54,000/- on September 30, 2013. Having waited for response for some time and on not receiving any reply, the petitioner has approached this Court. This Court cannot loose sight of the fact that in writ petitions, no limitation is applicable. The facts as noted above surely answers the delay if any occurred in filing of the writ petition in 2017. Further, the issue having attained finality in the cases referred above, till the Supreme Court, there is no reason for the respondent to with hold the amount. Accordingly, I note the Coordinate

Bench of this Court has considered the aspect of limitation in a writ petition, wherein, similar relief was sought. The Co-ordinate Bench in its judgment dated March 16, 2017 in **W.P.(C) 8467/2015, Foundation for Organizational Research and Education Fore School of Management vs. SDMC & Anr.** has held the following:-

“13. On the ground of limitation learned senior counsel for the petitioner submits that a writ petition is not specifically guided by the law of limitation and for this proposition he had relied upon a judgment of the Apex Court reported as (2016) 3 SCC 422 KV Ramachandra Raje Urs (Dead) by legal representative Vs. State of Karnataka and Ors. On the aspect of limitation, the Apex Court was of the following view.

“Time and again it has been said that while exercising the jurisdiction under Article 226 of the Constitution of India the High Court is not bound by any strict rule of limitation. If substantial issues of public importance touching upon the fairness of governmental action do arise, the delayed approach to reach the Court will not stand in the way of the exercise of jurisdiction by the Court. Insofar as the knowledge of the appellant – writ petitioner with regard to the allotment of the land to Respondent 28 Society is concerned, what was claimed in the writ petition is that it is only in the year 1994 when Respondent 28 Society had attempted to raise construction on the land that the fact of allotment of such land came to be known to the appellant –writ petitioner.”

14. This Court notes that the present writ petition has been filed on 24.08.2015. The notification is dated 17.07.2012. Even if the law of limitation is strictly applied (which would be applied to a suit and not applicable to a writ petition) there would be delay of only 38 days. This Court has ample powers to deal with this aspect of limitation and the Court in the instant case is of the view that the interest of justice demands that the prayer has to be answered in favour of the party; the question of delay would not be a hurdle.”

Even on merits, I note, the petitioner has placed before the court the

exemption granted by the Income Tax Authority, on April 3, 2013, which is much before the deposit of the amount by the petitioner. It is the case of the petitioner that a primary school plot is held by the petitioner for which building plans have been sanctioned. It is also not the case of the respondent that petitioner does not fulfill the requirement for seeking benefit of notification dated July 17, 2012. If that being the position, this Court notes that the learned Single Judge while dealing with the Writ Petition (Civil) No. 1149/2013 had on similar issue raised before it allowed the writ petition. The contention of the petitioner in that case was also for the return of the money which was paid to the respondent as additional FAR charges. The Court held that the second notification dated July 17, 2012 was applicable to the case of the petitioner and the payment deposited by it on September 24, 2009 was liable to be refunded to the petitioner as the notification would relate back to the issuance of original notification dated December 23, 2008. The said judgment has been upheld by the Division Bench of this Court in LPA 107/2014 vide order dated April 30, 2014. The SLP against the said order was dismissed on July 25, 2014 (similar SLP was dismissed on September 15, 2014). In this regard it is relevant to quote Para 24 of the order of the Division Bench as under:

“24. In the instant case the moment the notification dated December 23, 2008 was promulgated, representations were made to do away with the condition of paying extra premium for the extra FAR. A committee was constituted to look into the issue, which decided that for three category of bodies; (i) Educational, (ii) Health Care and (iii) Social Welfare, the additional charges need to be withdrawn. The Central Government accepted the same. The notification dated July 17, 2002 was promulgated. The object of the legislation is to consider a benefit without taking away anybody's vested right and without inflicting a corresponding detriment on some other person or on the public generally. To confer a benefit is the express object of the legislation. The presumption thus would

be that the intent was to give a retrospective effect.”

7. Further a Coordinate Bench of this Court in ***W.P.(C) 8467/2015 Foundation for Organizational Research Education Fore School of Management (supra)*** decided as recently as March 16, 2017, has allowed the writ petition by holding that petitioner therein was entitled to the refund of the amount paid by the petitioner therein on parity. Accordingly, this Court also directs the refund of the amount of R.1,71,54,000/- to the petitioner within a period of 12 weeks from today, failing which the amount shall be returned to the petitioner with interest @ 9% per annum.

The petition is disposed of.

CM No. 39076/2017 (for direction)

In view of the order passed in the writ petition, the application has become infructuous and disposed of as such.

V. KAMESWAR RAO, J

JANUARY 29, 2018/jg