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

% **Reserved on: 06th December, 2018**
Pronounced on: 07th January, 2019

\+ **<u>W.P.(C) 10074/2015 & CM APPL No.24677/2015</u>**

CENTRAL BANK OF INDIA ..... Petitioner
Through : Mr.Jaswinder Singh, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL (SOUTH) AND ORS. ..... Respondents
Through : Ms.Puja Kalra, Advocate for NDMC/ Respondent No.1
Mr.Santosh Tripathi, ASC and Mr.Rishabh Oswal, Advocate for GNCT of Delhi.
Ms.Aknksha Choudhary, Mr.S.Katyal and Mr.Akshay Sapra, Advocates for respondent No.4.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

<u>YOGESH KHANNA</u>, J.

1. This writ petition is for quashing the impugned order dated 02.01.2013 passed by respondent no.2 while disposing of the representation dated 29.10.2012 made by the petitioner pursuant to an order dated 15.10.2012 in W.P.(C) 6268/2012.

2. The brief facts are:

a) In the year 1970 the petitioner was inducted as a tenant in property No.8, Shaheed Bhagat Singh Marg, Gole Market, New Delhi;

b) on 28.08.1986 a fresh lease deed was executed between the petitioner and the erstwhile owner of the property;

c) on 12.12.1994 the respondent no.4 purchased the property from the erstwhile owner. In the year 2011 respondent no.4 instituted a suit for possession and mesne profit against the petitioner bank;

d) on 29.08.2012 the impugned notice was issued by the respondent no.2 demanding penalty and also threatened sealing;

e) on 04.09.2012 a notice of attachment was issued by respondent no.1 and the rent was proposed to be attached;

f) on 22.09.2012 a representation was made by the petitioner. On 26.09.2012 a letter requesting extension of time was sent to respondent no.2;

g) on 15.10.2012 the W.P.(C) 6268/2012 was filed challenging the notice dated 29.08.2012. The same was disposed of with a direction the communication dated 29.08.2012 shall be treated as a show cause notice and the petitioner shall have a right to give a reply and a personal hearing;

h) on 29.10.2012 the petitioner bank thus filed a detailed representation and appeared for personal hearing but on 01.01.2013 the impugned order was passed and consequently the notice dated 29.05.2015 was issued for recovery of the said amount.

3. The learned counsel for the petitioner referred to the representation made to the respondent no.1 raising four issues:

> *"i. We wish to bring to your knowledge that we are merely tenants in the premises since the year 1970 and our Bank has attorned to different landlords at different periods of time. Moreover, our tenancy is a statutory tenancy protected under Delhi Rent Control Act. The present landlord of the premises is M/s.Innovative Builders Pvt. Ltd. who is notice No.1 to your notice dated 29.8.2012. It is pertinent to mention that the last lease deed executed with the erstwhile owners of the property was on 28.8.1986. In terms of the said lease, the Central Bank of India was liable to pay a sum of Rs.2.14 lakhs to the Land and Development office on account of change of purpose of user for the period 18.12.1969 to 14.7.1981 and our bank had further agreed to pay user charges that may be levied by the said office beyond 14.7.1981 on account of change of user. In the very same lease deed it was agreed between the parties that the landlord shall take all the steps necessary to changes the user of the premises from residential to commercial and undertakes to do so. It is very clear that the liability if any as started in your notice dated 29.8.2012 is of the landlord M/s Innovative Builders Pvt. Ltd. and no liability can be fastened upon the Central Bank of India. A copy of the lease deed in enclosed with the present letter for your perusal and reference.*
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> *ii. That your notice dated 29.8.2012 refers to the approval of the Monitoring Committee of the Hon'ble Supreme Court. However, despite our requests, a copy of the order of the Monitoring Committee has not been shown to us. Your notice dated 29.8.2012 is not a statutory notice issued under NDMC Act, 1994 and in absence of any order from the Monitoring Committee, your action in issuing the said notice would be without any authority of law, it is needless to state that any administrative action is taken on the basis of written orders which depend upon relevant material and factors as well.*
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> *iii. We also wish to point out that as a tenant we are not in a position to comply with conditions (b) and (c) of your aforesaid notice as that conditions can only be complied with by the landlord. Moreover we wish to point out that the Bank has not carried out any construction activity since the Inception of tenancy. Again the onus to bring the*

> *premises within the 2/3rd of the permissible FAR lies on the landlord who has taken no steps in this direction.*
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> *iv. That the imposition of penalty amounting to 18.77 lakhs (approx) against the bank is also unsustainable for the reasons which have been elaborately set out hereinabove. Moreover, there is no provisions of law which permits ten times penalty as indicated in your notice dated 29.8.2012 . Without prejudice to the same, the imposition of penalty against the bank is not warranted in the facts and circumstances of the present case.*
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> *v. That your office has also issued a notice under Section 108 of NDMC Act, 1994 dated 4.9.2012. The bank reserves its right to challenge the same if so advised. However, we wish to point out that in terms of the lease deed dated 28.8.1986, it is the liability of the landlord to bear and pay and discharge all existing and future rates, taxes, assessments, dues, duties, impositions and outgoing whatsoever imposed or charged upon the demised premises. You are requested to refer to the terms of the Lease Deed for the said purpose."*

4. However on 02.01.2013 a speaking order was passed to the following effect:

> *"Upon hearing both the parties and documents produced by them, it was made clear to both the parties that the charges levied are on account of violations of the provisions of the MPD-2021 and regarding responsibility for payment of penalty amount in terms of the lease deed dated 28.08.1986, NDMC has nothing to say since, it is not the matter under consideration as per the Court orders dated 15.10.2012. The violation of the provisions of MPD-2021 is proved as the branch of Central Bank of India was running from the said premises without registration and requisite payment on account of conversion charges & one time parking charges which attracts penal action as per Para 15.9 (V) of MPD-2021.*
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> *Therefore, the payment on account of penalty for amounting to Rs.18,77,696/- has to be made to NDMC. Besides this the area put under Mixed use for running Bank Activity needs to be restored within 2/3rd of the permissible FAR i.e. 163.42 sq.m including registration of the premises.*

In view of the aforesaid observations, the representation dated 29.10.2012 is decided and have nothing to add further."

5. It is submitted by the learned counsel for the petitioner his objections/representations were rejected by the respondent no.1 without application of mind and without looking into the terms of the lease deed.

6. However clause 2(g) of lease deed dated 28.08.1986 executed between the petitioner and the erstwhile owner notes:

> *"g) The LESSEE shall pay Rs.2,14,569-72p as demanded by to Land & Development office, New Delhi on account of change of purpose for user for the period 18.12.1969 to 14.7.1981 and further agrees to pay user charges that may be levied by the said office beyond 14th day of July 1981 on account of change of purpose for user for maintenance and running its Branch Office for purpose of Banking on the clear and categorical undertaking that the LESSOR shall take all the steps necessary for the landlord/LESSOR to change the categorization of the premises from residential to commercial as undertaken by him to get it changed and the LESSEE will, of course, support him in this behalf."*

As above clause clearly show it was the responsibility of the petitioner to pay the user charges if levied between 18.12.1969 to 14.07.1981 and even beyond 14^{th} day of July 1981, hence now it cannot deny and say the charges may be recovered from the lessor and the petitioner has no responsibility to pay the same. The learned counsel for the petitioner sought to take the benefit of the clause *3(a)* which notes:

> *"3.a) To bear, pay and discharge all existing and future rates, taxes, assessments, dues, duties, impositions and outgoings, whatsoever imposed or charged or to be charged upon the demised premises and whether payable by the owner or occupier thereof."*

7. This clause of course, would be subject to clause *2(g)* above and is in addition to it and hence would not cover the liability to pay user charges as demanded by the respondent.

8. The only issue now which remains is if the penalty of 10 times of the user charges can be levied or not.

9. The Central Government has notified the Master Plan for 2021 on 07.02.2007, in exercise of powers under the Delhi Development Act, 1957. Apart from areas like infrastructure, housing, transport, industries and environment, key areas like water, power, drainage and solid waste management are all part of Master Plan. The policy acknowledges the need for permitting use of land for purposes other than that for which it was originally envisaged and it lays down the conditions under which this may be applied in different situations. The general procedure to be followed for implementation of policy and mitigating measures to be taken to counter the effect of such non included use in such area to be described, the Apex Court has been passing various directions in matter titled as M.C.Mehta vs. Union of India and Ors. W.P.(C) 4677/1985, from time to time, regarding, the permissibility of activities in residential area, and running of factories from non confirming area.

10. So far as MPD is concerned, vide publicity has been given through electronic and print media. Even the apex court has given sanctity to the Master Plan Delhi-2021. It has statutory binding. The banking is covered in Chapter 15 of MPD 2021, relevant clause is *15.7.1,* with the banks at clause *(d).* This activity is permitted, subject to conditions at clause *15.7.2*. Then there is registration clause for mixed use charges and payment of charges. The relevant clause is 15.9 which is as under:

> *"15.9 REGISTRATION OF MIXED USE PREMISES AND PAYMENT OF CHARGES*
>
> *i) xxxxx*

ii) The premises under mixed use shall also be liable for payment of mixed- use charges every Year to the local body concerned at the rates notified with the approval of Central Government, for the period during which the property is put 1 & 3. Added vide S.O. 1135(E) dated 14-05-2008 2. Modified vide S.O. 2034(E) dated 12-08-2008 187 to mixed use. Such payment will be made by the property owner / allottee voluntarily before 30th June of every year in respect of the previous assessment year (April - March). [For mixed use for the year 2006-07 and 2007-08, the property owner / allottee shall be allowed to pay one time registration charges and annual conversion charges without payment of any penalty under Clause 15.9 (v) for mixed use on or before 30.6.2009].

iii) xxxx

iv) xxxx

v) In addition to other penal action available under the relevant act, properties found to be under mixed use, without registration or in violation of the terms of this notification shall be liable to pay, to the local body, a penalty amounting to 10 times the annual conversion charges for mixed use.

vi) xxxx"

11. In the circumstances the charging of penalty 10 times the annual conversion charges for mixed use has a statutory force and hence can not be set aside.

12. The petition thus has no merit, hence is dismissed. Pending application, if any, also stands disposed of.

YOGESH KHANNA, J.

JANUARY 07, 2019
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