



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

Date of decision: 03rd JULY, 2023

IN THE MATTER OF:

+ **LPA 120/2023 & CM APPLs. 7900/2023, 7901/2023, 11966/2023, 16301/2023**

DELHI DEVELOPMENT AUTHORITY

..... Appellant

Through: Mr. Chetan Sharma, ASG with Mr. Ashim Vachher, Standing Counsel for the DDA and Ms. Shobhana Takiar, Standing Counsel for the DDA along with Mr. Amit Gupta, Mr. Kunal Lakra, Mr. R V Prabhat, Mr. Vinay Yadav, Mr. Saurabh Tripathi, Mr. Vikram Aditya Singh, Mr. Kuljeet Singh, Advocates.

versus

SHRI OM PRAKASH KAPOOR & ORS

..... Respondents

Through: Mr. Harish Malhotra, Senior Advocate with Mr. Rajender Aggarwal and Mr. Anoop Kumar, Advocates for R-1 to R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The Appellant/DDA seeks to challenge the Order dated 28.09.2022 passed by the learned Single Judge in W.P.(C) 5794/2015. The learned Single Judge *vide* the said Order allowed the writ petition and directed the Appellant/DDA to execute the lease deed in respect of Plot No. 273, Fruit



and Vegetable Market, Okhla Industrial Area, New Delhi, in favour of the original Writ Petitioner for general commercial purpose in accordance with the directions already issued by this Court *vide* order dated 25.04.2013 passed in W.P.(C) 10616/2009 and as approved in the resolution passed in the 208th meeting of the Screening Committee held on 30.11.1999, as clarified in the communication dated 25.01.2001. As rightly pointed by the learned Single Judge that the original Writ Petitioner has had to repeatedly approach to this Court and despite being obtaining Orders in his favour, he has not been successful in using his property as a commercial office.

2. Shorn of unnecessary details, facts leading to the filing of the instant LPA are as under:

- a) The original Writ Petitioner, late Om Prakash Kapoor, was allotted a Plot bearing No.273, Fruit and Vegetable Market, Okhla Industrial Area, New Delhi (*hereinafter referred to as 'subject property'*) by the Appellant/DDA. As per the terms and conditions of the auction of the subject property, the property was meant for cold storage and the original Writ Petitioner late Om Prakash Kapoor started raising construction on the subject property. The original Writ Petitioner, thereafter, applied for requisite licence for running a cold storage. However, the Appellant/DDA refused to grant the licence for running a cold storage on the subject property.
- b) Since, the requisite licence for running the cold storage was not granted, the original Writ Petitioner approached this Court by filing a writ petition bearing W.P.(C) 2935/1987 praying for an appropriate direction for changing the use of the subject property from cold storage to commercial/office. During the course of hearing, the



learned Counsel for the DDA submitted that the entire change of user from cold storage to commercial/office cannot be allowed as it violates the Zonal Development Plan. This Court *vide* Order dated 05.02.1990 disposed of the said writ petition by directing the DDA to allow the Writ Petitioner to change the user of the subject property from cold storage to commercial/office to the extent that 70% and the remaining 30% including basement for storage. This Court further directed that if the writ petitioner is able to get a licence for cold storage in future, he will be allowed to use 30% including the basement for cold storage. By the said Order, the Appellant/DDA was also directed to impose a liability upon the Writ Petitioner to fulfil necessary formalities and to pay additional premium as may be determined by the DDA to the extent of change of user of the subject property.

- c) As per the directions given by this Court, a meeting of 208th Screening Committee of the Appellant/DDA was held on 30.11.1999 and while considering the case of the Writ Petitioner, the Screening Committee took the decision i.e., (i) the plot may be allowed a general commercial as directed by the Court; and (ii) the other two plots No.277 and 279 should also be sold for general commercial. The said decision taken in the Screening Committee was communicated to the Writ Petitioner late Om Prakash Kapoor stating that the competent authority has accepted the request for conversion of land user from cold storage to general commercial and permitted use are guest house, storage, godown, warehousing and commercial office, cinema, motor garage workshop, flatted group industries etc.



d) The Writ Petitioner, thereafter, received a demand letter dated 07.10.2008 from the Appellant/DDA wherein the Writ Petitioner was directed to pay a sum of Rs.1,53,74,644/- as conversion charges. Aggrieved by the same, the Writ Petitioner, thereafter, filed another writ petition bearing W.P.(C) 10616/2009 challenging the demand letter dated 07.10.2008 and claiming a sum of Rs.1,53,74,644/- as conversion charges. The said writ petition was disposed of by this Court *vide* Judgment dated 25.04.2013 quashing the demand of Rs.1,53,74,644/- as conversion charges. This Court *vide* the said Judgment dated 25.04.2013 observed as under:

“12. For the reasons stated hereinabove, the impugned demand of Rs.1,53,74,644 is quashed and DDA is directed to issue a fresh demand letter to the petitioner in terms of this order within four weeks.

The interest would be calculated by the DDA till 31 .05.2013 on the same rate. A fresh demand letter would be issued to the petitioner within two weeks from today and he shall make payment of the amount demanded by DDA or on before 31.05.2013. On such payment being made, DDA would consider the request of the petitioner for execution of the lease deed for the above referred property as per its rules and policies and take an appropriate decision in the matter.

*13. It transpired during the course of hearing that though the order passed by the Division Bench of this Court on 5.2.1990 envisaged payment of additional premium and not any conversion charges by the petitioner, the demand raised by the DDA *vide* letter dated 7.10.2008 refers to conversion charges and there is no reference to*



payment of any additional premium. Paragraph 2 of the said letter reads as under:

"In pursuance of direction issued by the Hon'ble High Court Rs.1,53,74,644 (one crore fifty three lakh seventy four thousand six hundred forty four only) has been calculated by the Finance Wing as conversion charges that are payable up to 31.10.08."

In the subsequent letter dated 20.11.2008 issued by DDA also, there is no reference to any additional premium. Therefore, for the purpose of deciding this petition, the Court has proceeded on the assumption that it is the additional premium envisaged in the order dated 5.2.1990 which has been referred as conversion charges in the communication sent by DDA to the petitioner and that this is not the case of the DDA that in addition to the aforesaid conversion charges, the petitioner is also required to pay some other amount by way of additional premium.

14. It also appears from the communication sent by DDA to the petitioner that some action was sought to be taken by the DDA for levying misuse charges/ damages and against unauthorized construction. It is made clear that no opinion is being expressed in this order with respect to levying misuse charges or in respect of unauthorized construction alleged to have been made by the petitioner, those issues being beyond the scope of this writ petition and, therefore, DDA would be entitled to take such action, as is open to it in law with respect to levy of misuse charges/ damages and in respect of alleged unauthorized construction."



e) Pursuant to the Judgment dated 25.04.2013 passed by this Court, a revised demand letter dated 11.07.2013 was issued by the Appellant/DDA wherein the interest claim was reduced from 18% per annum to 15% per annum, and the Writ Petitioner was asked to deposit a sum of Rs.1,58,13,986/- as conversion charges. It is stated that the Writ Petitioner, on receipt of the said demand letter dated 11.07.2013 deposited the said amount with the Appellant/DDA on 03.09.2013. Challenging no action on the part of the DDA in executing the lease deed in respect of the subject property despite the payment of conversion charges as per revised demand letter dated 11.07.2013, the original Writ Petitioner filed another writ petition bearing W.P.(C) 5794/2015 before this Court with the following prayers:

“a. The Hon'ble Court may be passed to issue a writ of mandamus of any other appropriate writ or direction thereby directing the respondent to forthwith execute a lease deed in respect of plot No. 273, Fruit and Vegetable Market, Okhla Industrial Area, New Delhi for general commercial purpose as per the Court direction and as approved in the resolution passed in the 208th meeting of the Screening Committee of the respondent held on 30.11.1999 as well as clarified in letter dated 25.02.2001.

b. Cost of the petition be allowed to the plaintiff.

c. Any other relief which this Hon'ble Court deems fit may also be granted to the plaintiff.”

f) The learned Single Judge *vide* the Order dated 28.09.2022 (impugned herein the present LPA) allowed the writ petition. The learned Single



Judge held that pursuant to the Order dated 05.02.1990 passed by this Court, a meeting of 208th Screening Committee of the Appellant/DDA was held on 30.11.1999 and in the said meeting it was decided that the subject property be allowed as general commercial. The learned Single Judge held that the original Writ Petitioner has admittedly paid a sum of Rs.1,58,13,986/- as conversion charges to the Appellant/DDA on 03.09.2013 as per the revised demand letter dated 11.07.2013 issued by the Appellant/DDA, and therefore, there is no impediment for the Appellant/DDA to execute the lease deed.

g) It is this Order dated 28.09.2022 passed by the learned Single Judge in W.P.(C) 5794/2015 which is under challenged in the instant LPA.

3. Heard learned Counsel appearing for the Parties and perused the material on record.

4. The Appellant/DDA has assailed the Impugned Order passed by the learned Single Judge by contending that the term “general commercial” has not been defined in the Master Plan and, therefore, conversion could not have been allowed for general commercial purpose in the Impugned Order. It is further stated on behalf of the Appellant/DDA that the subject property is a part of Okhla Fruit and Vegetable Market which is designated as “commercial land use” under the sub-category of warehousing and depots as per the Zonal Development Plan and permission to utilise it as a general commercial for the purpose of office could not have been permitted.

5. Learned ASG contended that if permission is granted for general commercial use which is an undefined term in the Zonal Development Plan where the land can be used for any of the purpose like guest house, storage, godown, warehousing and commercial office, cinema, motor garage



workshop, flatted group industries etc. would affect the Zonal Development Plan for the area which is primarily meant for the purpose of warehousing. He, therefore, contends that this Order should not be treated as a precedent otherwise it will open flood gates where people who have been allotted shops for the purpose of cold storage, guest house etc. will all move for permission to convert their property into general commercial, thereby resulting in the change of Master Plan itself.

6. A perusal of the Impugned Order shows that the only contention raised before the learned Single Judge by the Appellant/DDA was that the Appellant/DDA is entitled to charge additional premium over and above the conversion charges already paid by the Writ Petitioner as a pre-condition for execution of the lease deed and no other contentions were raised.

7. Be that as it may, the contentions raised by the learned ASG shows that the DDA is attempting to back out from the three round of litigations, the present one being the fourth. This Court *vide* Order dated 05.02.1990 had directed the Appellant/DDA to allow the writ petitioner to change the use of the subject property from cold storage to commercial/office to the extent of 70% and the remaining 30% including basement for storage. In fact the said Order dated 05.02.1990 was challenged by the DDA before the Hon'ble Supreme Court by filing an SLP bearing No.8532/1990 which was dismissed by the Hon'ble Supreme Court *vide* Order dated 07.09.1995. Thereafter, a meeting of 208th Screening Committee of the Appellant/DDA was held on 30.11.1999 and the Minutes of the said Screening Committee with regard to the Subject property reads as under:

“8. Item No.77:99:208:SC: *Modified Scheme for proposed commercial plots on vacant land*



adjacent to fruit vegetable market Okhla and finalization of plot No.273.

No. SA(SZ)96DDA.

The proposal was explained by Sr. Architect (SZ)/ After detailed discussion following decision were taken:-

- i) The plot may be allowed as general commercial as per the court direction.*
- ii) Other two plots No. 277 & 279 should also be sold as General commercial.”*

8. A perusal of the above Minutes of Meeting shows that the Appellant/DDA had accepted that the plot may be allowed as “general commercial” as per the direction of the Court. It is now too late for the Appellant/DDA to contend that the term “general commercial” has not been defined in the Master Plan. The Appellant/DDA issued a demand letter which was quashed by this Court. The Appellant/DDA, thereafter, issued a fresh demand letter accepting the change of user as “general commercial”. The Writ Petitioner paid a sum of Rs.1,58,13,986/- as conversion charges to the Appellant/DDA on 03.09.2013. Therefore, the attempt by the Appellant/DDA now to turn around and contend that the said area cannot be used for the purpose of “general commercial” and it will result in change of the Master Plan itself is only an attempt by the Appellant/DDA to get over the Judgments and Orders of this Court which have attained finality and has been agreed to be implemented as is reflected in the meeting of 208th Screening Committee held on 30.11.1999. As stated by the learned Single



Judge that this is the third round of litigation and the Writ Petitioner after being successful in getting Orders in his favour from the past 24 years is not in a position to use the subject property as “general commercial”. The Writ Petitioner has already got a declaration for using the subject property for office purpose to the extent of 70%. The Writ Petitioner has also paid the premium in the year 2009 and yet the Appellant/DDA is not executing the lease deed.

9. In the considered opinion of this Court, the present LPA is nothing but an abuse of the process of law.

10. In view of the above, the LPA is dismissed, along with pending application(s), if any.

11. However, it is made clear that this Order will not act as a precedent for change of use of any other property which has been allotted to be used as cold storage in fruits and vegetable markets. Any such application will be dealt with on its own merits without treating the instant case as a precedent.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 03, 2023

S. Zakir