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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on: 23.11.2022

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Judgement pronounced on: 31.05.2023

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LPA 215/2018

M/S ANANTRAJ AGENCIES PVT LTD.

.... Appellant

Through: Mr Saket Sikri with Mr Ajaypal Kullar, Mr Vikas Mudgal and Ms Divya Sharma, Advs.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Harish Vaidyanathan Shankar, CGSC with Mr Srish Kumar Mishra, Mr Sagar Mehlawat and Mr Alexander Mathai Paikaday, Advs. for R-1/UOI.
Mr Vaibhav Agnihotri with Ms Shaurya Punj, Advocate for DDA / R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Court Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.:

Prefatory Facts:

1. This appeal is directed against the judgment dated 06.02.2018 rendered by the learned single judge in W.P. (C) 7570/2017.

1.1 The appeal depicts the unrelenting desire of those who control and manage the appellant company, to pursue the restoration of their rights in an



immovable property, which came to an end with the determination of the lease, as far back as on 02.09.1972, when the Delhi Development Authority [hereafter referred to as "DDA"] refused to renew the lease.

1.2 The immovable property which is the focus of this pursuit consists of a built-up structure and is located at Plot no.2, Jhandewalan, 'E' Scheme, Delhi [hereafter referred to as "subject property"].

1.3 The land underneath the subject property was, to begin with, given on lease by the Delhi Improvement Trust [in short, "DIT"] to, one, Mr Balraj Virmani, *via* lease deed dated 06.01.1951.

1.4 With the enactment of the Delhi Development Act, 1957, and the consequent constitution of DDA, rights in all properties, both movable and immovable, which vested in the DIT, devolved on DDA, including the subject property.

2. The lease deed executed in favour of Mr Virmani had a tenure of 20 years, which spanned between 11.08.1948 and 10.08.1968.

3. Just before the end of the lease tenure, Mr Virmani approached DDA on 23.02.1967, with a request to renew the lease.

3.1 DDA, in turn, on 09.02.1968 and 16.02.1968, issued notices to Mr Virmani, to show cause as to why the subject lease should not be determined, and the land, together with the building, re-entered, *albeit*, without compensation, given the various infractions of the terms of the lease, referred to in the said notices, having been committed.

3.2 Notably, Mr Virmani was granted 15 days to rectify the aforementioned breaches.



3.3 Suffice it to say that the breaches pointed out by DDA were grave.

4. Although Mr Virmani did send communications in response to the Show Cause Notice [in short, “SCN”], DDA chose not to respond to the same, and ultimately, *via* notice dated 02.09.1972, as indicated above, terminated the lease on the grounds indicated in the SCN.

4.1 Mr Virmani reacted by assailing the determination of the lease in a suit action, i.e., Suit No.47/1975, which was decreed in his favour on 07.03.1981.

5. Being aggrieved, DDA preferred an appeal against the said judgment and decree. Its appeal, i.e., RCA No.75/1982, instituted with the learned Additional District Judge, did not meet with success. The appeal was dismissed on 29.09.1982.

6. DDA's second appeal lodged with this court, i.e., RSA No.6/1983, met with the same fate. RSA No.6/1983 was dismissed on 31.05.2011.

7. While RSA No.6/1983 was pending adjudication, the appellant company applied substitution. The prayer for substitution was directed towards Mr Virmani, because of a compromise decree dated 22.07.1988, passed in Suit No.601/1984, preferred by the appellant company against Mr Virmani. The rights in the subject property, it appears, had been transferred by Mr Virmani, in favour of the appellant company.

8. As a matter of fact, a sale deed dated 14.10.1988 was executed by Mr Virmani in favour of the appellant company, whereby the rights in the subject property, which included the building and land underneath, were purportedly transferred in favour of the appellant company.



9. DDA escalated the matter further, by preferring a Special Leave Petition (SLP) against the judgment dated 31.05.2011, passed in RSA No.6/1983.

9.1 The SLP was converted into Civil Appeal No.3783/2016.

10. The Supreme Court allowed the appeal and set aside the judgment and decree, passed both by this court as well as the first appellate court. Importantly, while allowing the appeal, the Supreme Court issued the following explicit directions:

“A. The DDA is allowed to take possession of the property in question immediately and dispose of the same in accordance with the provisions of the DD Act read with the relevant Rules in favour of an eligible applicant by conducting public auction, if it intends to dispose of the property.

B. The DDA is entitled for the recovery damages from both, the original lessee or his legal heirs and the respondent, for the period of their unauthorised occupation of the property at the market rate prevalent in the area.

C. The amount which has been deposited, with the DDA, by the respondent as conversion charges is to be adjusted towards the damages that may be determined by the DDA in accordance with law.

D. The costs of Rs.1 lakh is awarded to the DDA, payable by the respondent for these proceedings.”

11. This should have put an end to the appellant company's attempt at restoration of the lease, and repossession of the subject property.

12. Evidently, this did not happen. The appellant company made several forays in this regard, perhaps enthused by the policy that DDA had framed in and about 09.04.2008, which allowed conversion from leasehold to freehold rights, even in cases where the allotment had been cancelled, or the



lease had been determined on account of unauthorised sale. This policy, which is embedded in a circular of even date, i.e., 09.04.2008, sought to clarify the 1992 conversion policy formulated by the Ministry of Urban Development [in short, “MOUD”].

13. The first attempt at restoration and repossession by the appellant company was in the form of a writ action, i.e., W.P.(C)No.5613/2016, filed before this court. The appellant company, perhaps having realised the futility of having approached this court, withdrew the aforementioned writ action, *albeit*, without liberty to file a fresh action.

14. The order dated 06.06.2016 makes this abundantly clear:

“Learned senior counsel for the petitioner seeks to withdraw this petition and submits that an appropriate application shall be moved before the Hon’ble Supreme Court to seek relief in terms of the circulars dated 09.04.2008, 21.04.2011 and 01.11.2015.

Writ petition is dismissed as withdrawn.

A copy of this order be given dasti under the signatures of the Court Master.”

15. Pertinently, on 10.06.2016, DDA took possession of the subject property.

16. Against this backdrop, the appellant company moved an interlocutory application, i.e., I.A. No.2/2016, in the disposed of civil appeal, i.e., C.A. No.3783/2016. This application was dismissed by the Supreme Court on 02.09.2016, on the ground that it was 'misconceived'.

17. The appellant company, then, sought to take a chance in this court, by moving an application, i.e., CM No.32723/2016 in W.P.(C)No.5613/2016; with an intent to revive the writ petition. Broadly, via this application, the



appellant company sought to recant its request made to the court, for withdrawal of the writ petition.

17.1 Interestingly, the appellant company, thereafter, filed yet another application, i.e., CM No.4483/2017. The prayer made in this application was that it should be allowed to withdraw CM No.32723/2016, with the liberty to pursue a fresh writ action. Both these applications were resisted by DDA.

17.2 Ultimately, the appellant company did not press CM No.32723/2016, as according to it, the same had been rendered infructuous, given the communication dated 21.10.2016 issued by DDA, whereby its representation for restoration of the lease, possession and conversion had been rejected.

17.3 It appears it was the appellant company's understanding that the aforementioned communication gave rise to a fresh cause of action.

17.4 Since CM No.3273/2016 was not pressed, the other interlocutory application was also dismissed by the learned single judge, *via* order dated 28.02.2017, with the clarification that he had neither examined nor commented upon the contentions raised by either party.

17.5 These observations, it appears, were taken as a cue by the appellant company to institute a fresh writ action, i.e., W.P.(C)No.7570/2017.

18. It is this writ petition which resulted in the impugned judgment being passed.



Submissions of Counsel:

19. Mr Saket Sikri, learned counsel, who appeared on behalf of the appellant company, in support of the appeal, made the following broad submissions:

19.1 First, the issue concerning restoration and conversion of the determined lease was not the subject matter of the judgment dated 12.04.2016, rendered by the Supreme Court. Since the issue concerning the determination of the lease by DDA attained finality only on 12.04.2016, the appellant company could take recourse to the policy circulars issued by DDA, permitting restoration and conversion of the lease, only thereafter. That the appellant company could seek restoration and conversion of the lease, is evident upon a perusal of the policy circulars dated 09.04.2008 and 01.01.2015, and the office order dated 21.04.2011.

19.2 Second, the rejection of the appellant company's representation for restoration and conversion by DDA *via* communication dated 21.10.2016 gave rise to a fresh cause of action; an aspect which the learned single judge failed to appreciate.

19.3 Third, the first writ action, i.e., W.P.(C)No.5613/2016, was withdrawn, to seek clarification from the Supreme Court, that its judgment dated 12.04.2016 would not come in the way of the appellant company pursuing its rights concerning restoration and conversion of the lease under the extant policy framed by DDA for the said purpose. The order dated 02.09.2016 passed by the Supreme Court in I.A.No.2/2016 preferred in



C.A.No.3783/2016 fortifies this submission. The said application was dismissed on the ground that it was misconceived.

19.4 Fourth, the fresh writ action, i.e., W.P.(C)No.7570/2017, was pivoted on the cause of action which arose in favour of the appellant company on account of DDA's rejection of its representations for restoration and conversion of the lease. The learned single judge failed to appreciate that the judgment dated 12.04.2016 rendered by the Supreme Court concerned the legal validity of the action taken by DDA in determining the lease. The appellant company's rights under the policy circulars issued by DDA required adjudication in the fresh writ action. Therefore, the withdrawal of the earlier writ, i.e., W.P.(C)No.5613/2016, could not have impacted the second writ action. The representations made by the appellant company *via* communication dated 02.05.2016, 18.06.2016, 20.09.2016 and 03.10.2016, had nothing to do with the communication for renewal of the lease submitted by Mr Virmani on 23.02.1967.

19.5 Fifth, with the dismissal of the appellant company's interlocutory application, i.e., I.A.No.2/2016 [filed in C.A.No.3783/2016], it was only logical that the appellant company approached this court for restoration of its writ petition, i.e., W.P.(C)No.5613/2016. The application in this regard, i.e., CM No.3273/2016, was filed on 05.09.2016, which was not pressed, as in the meanwhile, DDA had rejected the appellant company's representations for restoration and conversion of the lease, *via* communications dated 21.10.2016 and 17.03.2017. The foundation of the



second writ action was the rejection by DDA of the appellant company's request for restoration and conversion, *via* the aforementioned letters.

19.6 Sixth, DDA adopted a discriminatory approach, inasmuch as in a similar situation, concerning an adjoining parcel of land, a determined lease was renewed based on the policy circular dated 09.04.2008 [Reference was made to the DLF Lease Deed] [See *Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust and Another*, (1978) 3 SCC 119].

19.7 Lastly, DDA has not as yet allotted the subject property to any private person or entity. The subject property is presently occupied by the Income Tax Department. The superstructure which forms part of the subject property is owned by the appellant company, which is not impacted by the determination of the lease. DDA continues to retain Rs.96,42,482/- deposited by the appellant company, for conversion of rights from leasehold to freehold.

20. Counsel for both the Union of India and DDA, i.e., Mr Harish Vaidyanathan Shankar and Mr Vaibhav Agnihotri relied upon the judgment of the learned single judge in support of their stand. According to Mr Shankar as well as Mr Agnihotri, the judgment of the learned single judge required no interference, given the facts and circumstances which, obtain in the instant case.



Reasoning and Analysis:

21. Having heard the learned counsel for the parties, it has clearly emerged that the prefatory facts, that have been alluded to in the earlier part of this judgment, are not disputed by the appellant company.

22. On behalf of the appellant company, Mr Sikri attempted to emphasise the fact that rejection of the appellant company's representations for restoration and conversion of the lease gave rise to a fresh cause of action, and hence ought to have been examined by the learned single judge, notwithstanding the judgment of the Supreme Court dated 12.04.2016 [passed in C.A.No.3783/2016].

22.1 At first blush, this argument may have seemed plausible, but for the fact that the appellant company not only withdrew its first writ action, i.e., W.P.(C)No.5613/2016, without liberty to file a fresh action but also failed to persuade the Supreme Court to grant such leeway, when it moved I.A.No.2/2016 in a disposed of civil appeal, i.e., C.A.No.3783/2016.

22.2 That assertions were made by the appellant company in the said application, which adverted to the policy circulars of DDA concerning restoration and conversion of those leases which had been determined, would be evident, *inter alia*, upon perusal of paragraphs 1 and 4 to 18 of the application.

23. The burden of the application was the same as what was articulated before the learned single judge in W.P.(C)No.7570/2017. Briefly, the appellant company adverted to the following:

(i) Policy Circular of 09.04.2008.



- (ii) Office Order No.2 dated 21.04.2011.
- (iii) Policy Circular No.01.01.2015 issued by the MOUD.
- (iv) The alleged uneven-handed approach of DDA in renewing the demised lease in similar circumstances, in the matter of DLF Universal Ltd.
- (v) Failure of DDA to consider the appellant company's representation dated 02.05.2016.

24. The substantive prayer made in the said application reads as follows:

“(a) Clarify that the DDA is free to examine on its own merits, the applicability of the policy circulars of the DDA as referred to in para 5 of this application and to decide the representation dated 02.05.2016 of the respondent applicant in accordance with law.”

25. As noticed above, this application was dismissed by the Supreme Court *via* order dated 02.09.2016, on the ground that it was misconceived. Mr Sikri attempted to persuade us to the contrary.

25.1 In this context, Mr Sikri submitted that because the substantive judgment dated 12.04.2016 dealt with the tenability of DDA's action in determining the lease, quite obviously, it was the Supreme Court's view that since restoration and conversion of the lease was not the subject matter of its judgment, the application would not lie and, hence, was misconceived.

25.2 We may have, perhaps, accepted this submission, if the assertions made in the application did not allude to the aspects concerning the policy circulars which, according to the appellant company, opened a window for seeking restoration and conversion of the lease, despite its determination. What made matters worse for the appellant company was the dismissal of



the review petition [although filed before the institution of I.A.No.2/2016] by the Supreme Court *via* order dated 05.10.2016.

26. In the review petition, the appellant company in paragraph 2.33 had referred to the Supreme Court's interlocutory order dated 01.02.2016 [during the pendency of Civil Appeal no.3783/2016], whereby DDA was asked to produce copies of resolutions regarding conversion policy and allotment of land, in favour of other persons. A careful perusal of the said order would show that not only had Supreme Court asked for such a document, but also gave leave to the appellant company to place on record the demand notice, based on which it had deposited conversion charges with DDA. As noticed above, the appellant company claims that it had deposited Rs.96,42,482/- towards conversion charges with the DDA. Despite the submission of these documents and assertions, the Supreme Court rejected the review petition, as noticed above, *via* order dated 05.10.2016:

“We have examined the grounds urged in support of the prayer for review. We find no error apparent on the face of the record to warrant recall of our order dated 12th April, 2016. The review petition is, accordingly, dismissed.”

27. A bare perusal of the order would show that the Supreme Court had examined the grounds adverted to in the review petition and thereafter proceeded to dismiss the same.

28. The upshot of the aforesaid discussion is that the appellant company would have to accept the fact that the submissions concerning its apparent right to restoration and conversion, which flowed from the policy circulars adverted to above, was in a manner of speech, put to repose with the dismissal I.A.No.2/2016 and review petition no.3155/2016.



29. Therefore, the submission preferred by Mr Sikri that rejection of the representations made in the light of the policy circulars by the DDA gave rise to a fresh cause of action, which ought to have been examined by the learned single judge, is untenable in the facts and circumstances obtaining in the instant case. Precisely for this reason, the other argument advanced by Mr Sikri, that the DDA had discriminated against the appellant company in renewing a lease in similar circumstances concerning ***DLF Universal Ltd.***, could not have been entertained by the learned single judge. The Supreme Court's judgment dated 12.04.2016 and the decisions rendered by it in the Interlocutory Application No.2/2016 and Review Petition No.3155/2016, put paid to future attempts of the appellant company to have the lease restored to it and seek the conversion of the same from leasehold to freehold rights.

30. The learned single judge, in our view, rightly declined to grant any relief(s) in the writ petition.

31. The judgments relied upon by Mr Sikri are distinguishable on facts. The reliance on the judgment dated 21.12.2019 passed in W.P.(C)No 1302/2013, titled ***D.C. Mishra v Union of India and Anr*** [2019:DHC:7188-DB], is misconceived, as the said judgment concerned denial of promotion to the petitioner in that case. One of the defences taken by the official respondents was that the cause of action was barred by limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. The official respondents, in this context, relied upon the judgment of the Supreme Court in ***Union of India v A. Durairaj*** (2011) 1 SCALE 494. The court



distinguished the said judgment on the ground that the representation by the petitioner in the said case was made within the stipulated period, i.e., 15 days.

31.1 Mr Sikri has, in our view, misconstrued the ratio of the aforementioned judgment. In the instant case, the learned single judge has not dismissed the petitioner's writ petition on the ground that since the earlier application for renewal was rejected, the 'limitation act' would have barred the appellant from preferring fresh representations for restoration and conversion of the lease.

32. Similarly, the judgment rendered in *Workmen of Cochin Port Trust* has no applicability, as the instant case was not a case of dismissal of the special leave petition by a non-speaking order.

32.1 The instant special leave petition was, firstly, converted, as noticed above, into a civil appeal, which was disposed of by a detailed judgment.

32.2 Second, an application was filed in the disposed of civil appeal, which was dismissed on the ground that it was misconceived and, as demonstrated above, it raised the very same grounds that were the subject matter of the two writ petitions filed in this court.

32.3 Third, the Supreme Court dismissed the review petition, after observing that it had examined the grounds articulated in the said petition, which as indicated above, concerned, *inter alia*, the policy circular which, according to the appellant company, conferred upon it the right to seek restoration and conversion of the lease.



32.4 Fourth, the first writ petition was withdrawn, without liberty to file a fresh action. As noticed above, the withdrawal of the writ petition was used to move an application before the Supreme Court, i.e., I.A.No.2/2016, as the appellant realised that the only way it could even begin to prevail upon the DDA to consider its representation for restoration and conversion of the lease, was by taking leeway in that behalf from the Supreme Court.

33. The other submissions advanced by Mr Sikri that the subject property had not been allotted to another person or entity; that in similar circumstances lease has been renewed in favour of DLF Universal Ltd.; and that the money deposited by the appellant towards the conversion of the lease had not been returned by DDA as yet, are untenable in the given circumstances.

33.1 Insofar as the subject property having not been allotted to any other person or entity is concerned, that by itself cannot give any right to the appellant to seek a fresh consideration of its representation for restoration and conversion of the lease. The appellant has conceded that the subject property has been put to good use, inasmuch as it is occupied by the Income Tax Department.

33.2 It is unclear as to whether, pursuant to the directions issued by the Supreme Court, damages have been calculated and paid by the appellant company, on the unauthorised occupation of the subject property. In these proceedings, no issue has arisen concerning the costs of the superstructure. As is well-known in these matters, the meat lies in the worth of the land and not the superstructure.



33.3 As regards the other two submissions, as noticed above, these very submissions were the subject matter of the proceedings before the Supreme Court, despite which the appellant company was not granted any leeway by the Supreme Court.

34. Therefore, in our view, the said judgment can have no applicability in the facts obtaining, in the instant case.

Conclusion:

35. Thus, for the foregoing reasons, we are not inclined to interfere with the impugned judgment.

36. The appeal is, accordingly, dismissed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

MAY 31, 2023

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