SUPREME COURT OF INDIA

Delhi Devt.Authority

Vs.

Ram Prakash

SLP(Civil)No.27278 of 2009

(Altamas Kabir and Cyriac Joseph,JJ.,)

15.03.2011

JUDGMENT

Altamas Kabir,J.,

1. The Delhi Development Authority, hereinafter, referred to as "DDA" is the petitioner in this Special Leave Petition, which is directed against the judgment and order dated 2.5.2008 passed by the Delhi High Court in L.P.A. No.22 of 2008.

2. The respondent herein, along with his mother and wife, purchased a property in No.7, Community Center, East of Kailash, New Delhi, in an open auction conducted by the DDA on 10.8.1969. Possession of the plot was made over to the purchasers on 5th March, 1972, and a lease deed in respect of the said plot was executed on 5th April, 1972. In terms of the Lease Deed, the auction purchasers were required to construct the building upon the demised plot within two years from the date of delivery of possession.

3. It appears that on a routine inspection by the petitioner's staff on 8th August, 1983, it was noticed that the respondent was using the basement of the building for office purposes which was in contravention of the prescribed usage. A Show-Cause Notice was issued on the same day calling upon the respondent to Show-Cause within 10 days as to why action for cancellation of lease should not be taken for violation of clause II(13) of the Lease Deed. The respondent replied to the said Show- Cause Notice on 10th August, 1983, denying misuse of the property. No further action was taken on the said Show-Cause Notice till seven years later when on 28th June, 1990, another Show-Cause Notice was issued stating as to why the lease should not be determined for violation of clause II(13) of the Lease Deed on the ground that the basement of the building was being misused as an office for Frooti/Atash Industry, instead of storage, and the mezzanine floor was being used for the office of M/s Ferrow Alloys Forging & M/s Green Land, instead of storage.

4. In response to the second Show-Cause Notice the respondent replied stating that the portion in question had been leased to the above-named companies for storage purposes and

their failure to abide by the terms of the lease has been brought to the notice of the tenants for taking appropriate steps.

5.Since the reply was not found to be satisfactory, further Show-Cause Notices were issued to the respondent on 3.9.1990 and 11.12.1990 in relation to the violation of the provisions of the Lease Deed and to remove the breaches which had been pointed out, in default whereof the lease would be determined. The respondents replied to the Show- Cause Notice dated 3.9.1990 on 5.11.1990 stating that the tenant was using the basement for storage of Frooti juices and was not operating any office therefrom. It was also mentioned that the tenant in the mezzanine floor had not yet replied to the notice which had been issued to him.

6.However, on the basis of another inspection of the premises conducted in December, 1990, where it was noticed that both the floors were still being misused, notices were issued for joint inspection which was fixed for 18.2.1991, 12.3.1991 and 22.4.1991. However, the respondents did not join the inspection and ultimately an inspection was carried out on 24.4.1991 and another Show-Cause Notice was issued to the respondents on 8.5.1991. In response to the said Show-Cause Notice the respondents wrote back on 21.5.1991 that they have no control over the tenants, except to inform them of their violations. Ultimately, the respondents in its letter dated 9.7.1991 stated that the mezzanine floor was being used as offices. In reply to the said letter written on behalf of the respondent the petitioner informed the respondent that as per architectural design the mezzanine floor could be used only for storage and unless the misuse was stopped the lease would have to be determined. In response on 13.11.1991 the respondent once again asserted that the mezzanine floor in the Community Centre was not being misused.

7.Thereafter, there was a series of correspondence exchanged on the same subject. In the meanwhile, Smt. Kamla Ahluwalia, the wife of the respondent, died on 23.4.1994, as did Smt. Saraswati Devi on 6.8.1994.

8.On 20.5.2004 the respondent applied to the DDA for mutation of the property in favour of the legal heirs of the deceased co-auction purchasers. In response thereto the respondents were asked by a letter dated 20.5.2004 to pay misuser charges and were called upon to clear the dues in respect thereof. Aggrieved by the said demand notice the respondents filed a Writ Petition, being W.P.No. 8464 of 2006, in the High Court for quashing the demand of misuser charges amounting to Rs.1,78,85,001/-. The same was allowed by the High Court on 17.8.2007 and the demand of misuser charges raised by the DDA, by its letter dated 20.5.2004, was quashed.

9.The DDA filed Letters Patent Appeal, being LPA No.22 of 2008 on 12.12.2007, challenging the order of the learned Single Judge dated 17.8.2007, which was dismissed on 2.5.2008.

10. It is against the said order of dismissal of the LPA by the Delhi High Court that this Special Leave Petition has been filed by the DDA.

11. Appearing for the DDA, Mr. A. Sharan, learned Senior Advocate, submitted that, although, under the terms of the lease deed, the respondent was allowed to use the premises for commercial purposes, he had misused the same and that the premises was being used for running an office. Furthermore, a construction had been raised on the terrace which was unauthorized and in direct violation of the lease agreement. It was submitted that the misuser of the property came to the notice of the DDA during inspection, as such misuser of the demised premises had been carried on without notice to and the leave of the DDA. Mr. Sharan also submitted that as many as 14 Show-Cause Notices had to be issued to the respondent on account of such misuser. Since the respondent failed to comply with the requisitions contained in the said notices, the DDA issued a notice for Rs.1,78,85,001/-, on account of misuser charges against which the respondent filed a writ petition, being W.P.(C)No.8464 of 2006, which was allowed by the learned Single Judge and the demand of misuser charges raised by the petitioner by its letter dated 20th May, 2004, was quashed.

12. The DDA filed Letters Patent Appeal No.22 of 2008 against the said order of the learned Single Judge before the Division Bench which dismissed the same on the ground that while according to the petitioner-Authority, a portion of the premises was being used for office premises, according to the respondent the said portion of the premises was being used only to store computers. There was no office as such, but a small establishment was maintained by the tenant for accounting purposes of the goods brought to the premises for storage purposes only. It was not as if a regular office was being run from the said premises.

13. As far as the other part of alleged misuse relating to construction raised on the terrace of the premises is concerned, it was stated on behalf of the respondent that such construction had been raised by the tenant without obtaining the sanction of the lessee and consequently, the respondent had initiated action against the said tenants for their eviction therefrom.

14. What also weighed with the Judge is the fact that the first Show-Cause Notice issued to the petitioner was in regard to alleged misuse of the basement from 30th July, 1983, the mezzanine floor from 20th June, 1990, and the terrace from 7th September, 1992, till 13th January, 2003. However, although, the first Show-Cause Notice was issued to the respondent on 8th August, 1983, regarding misuse of the basement and a reply was also submitted by the respondent on 10th August, 1983, no decision was taken by the DDA on the said Show-Cause Notice. On the other hand, in June 1990, upon an alleged inspection by the DDA, another Show-Cause Notice was issued to the respondent on 28th June, 1990, only in respect of the alleged misuse of the basement and the mezzanine floor. Despite a reply being sent, again no action was taken by the DDA except for issuing Final Notices to the respondent on 3rd September, 1990 and 11th December, 1990, requiring him to stop violation of the conditions of the lease deed, failing which it would be terminated. The respondent sent a reply to the first Final Notice on 5th November, 1990, but again no decision was taken on any of the two Final Notices which had been sent to the respondent. Periodical inspection was thereafter carried out, but no action was at all taken by the DDA and its authorities against the respondent for alleged misuse of the premises in question.

15. Ultimately, on a question of limitation being raised in respect of the demand of misuser charges, the Division Bench observed that where no period of limitation is prescribed, action has to be taken by the authorities within a reasonable period of time, but by no stretch of imagination, could it be said that after a lapse of almost 25 years that the DDA had not acted arbitrarily or at least unfairly in so far as the respondent is concerned. In addition, the respondent was never informed by the DDA that he was required to pay any misuser charges. On the basis of such reasoning, the Division Bench of the High Court dismissed the appeal and upheld the order of the learned Single Judge.

16. Mr. Sharan submitted that both the learned Single Judge and the Division Bench had misconstrued the principles relating to limitation in holding that the DDA had acted arbitrarily and unfairly in so far as the respondent was concerned, and, in any event, the respondent was never informed by the DDA that he was required to pay misuse charges.

17. Mr. Sharan urged that both the Single Judge and the Division Bench of the High Court failed to consider the core issue relating to the user of the premises in keeping with paragraph 13 of the lease deed executed by the DDA in favour of the respondent on 5th April, 1972. In this regard Mr. Sharan referred to paragraph 13 of the lease deed which reads as follows :

> "13) The lessee shall not without the written consent of the lessor carry on or permit to be carried on, on the plot or in any building thereon any trade or business of manufacture which in opinion of the lessor may be noisy, noxious or offensive or the same or permit the same to be used for any purpose other than those specified or do or suffer to be done therein any act or thing whatsoever which in the opinion of the lessor may be a nuisance annoyance or disturbance to the lessor or the person living in the neighbourhood. Provided that, if the lessee is desirous of using the said plot or the building thereon for a purpose other than those specified the lessor may allow such change or user on such terms and conditions including payment of additional premium and additional rent, as the lessor may in his absolute discretion determine."

18. Mr. Sharan submitted that having regard to the above, the respondent was not entitled to use the demised premises in a manner which was contrary to paragraph 13 of the lease deed. It was contended that the respondent was carrying on a business in the demised premises in respect whereof there was no feed back whatsoever from the lessee. Mr. Sharan urged that the order of the learned Single Judge dated 17th August, 2007, could not be sustained and the same was liable to be set aside, along with the order of the Division Bench impugned in the Special Leave Petition.

19. Appearing in person, the respondent, on the other hand, submitted that after the Show-Cause Notices were issued no action whatsoever was taken on the basis thereof and all of a sudden the exorbitant misuser charges, amounting to Rs.1,78,85,001/- was demanded from him. Professor Ram Prakash submitted that from 1983, nothing had been done by the DDA on the basis of the Show-Cause Notices which had been issued, to which the respondent had promptly replied stating that the construction on the terrace had been effected by the tenants

and not by him and in respect whereof proper proceedings had been initiated for their eviction from the premises. The respondent submitted that it is only under severe compulsion, that he had to move the Writ Court for relief in relation to the demand of misuser charges of Rs.1,78,85,001/-. The respondent submitted that for the last 25 years he had been made to face various problems and uncertainties, but that it was entirely unjustified on the part of the DDA to raise the claim of alleged misuser charges of Rs.1,78,85,001/-. The respondent submitted that after a long period of 25 years, a quietus was required to be given to the matter.

20. The respondent submitted that after issuance of Show-Cause Notices, the DDA should have taken further steps in the matter within a reasonable time and that too relating to misuser chargers where he was not at fault. The respondent submitted that he had taken prompt steps not only to reply to the Show-Cause Notices issued to him, but to initiate action against the tenants who had used the property in a manner which was different from the purpose for which the property had been let out. The respondent submitted that this was a case where both the learned Single Judge and the Division Bench decided the matter in the crucible of events peculiar to the facts of this case, having particular regard to the length of the period for which the misuser charges had been demanded.

21. Having considered the submissions made on behalf of the DDA and by the respondent appearing in-person, and also having considered the reasoning of the learned Single Judge and the Division Bench in repudiating the claim of misuser charges by the DDA, we are unable to convince ourselves that the decisions rendered by the High Court, both by the learned Single Judge as also the Division Bench, require any interference in these proceedings. The materials on record will show that the respondent took prompt steps against the tenants for their transgression. During arguments it was indicated that, in fact, one of the tenants had already vacated the portion of the premises occupied by him. It is also very clear that after issuing the Show-Cause Notices, the petitioner did not take any follow-up action thereupon. Instead, after a lapse of 25 years, the petitioner set up a claim on account of charges for the entire period. It would be inequitable to allow the petitioner which had sat over the matter to take advantage of its inaction in claiming misuser charges.

22. Even as to the contention raised on behalf of the petitioner that there was no limitation prescribed for making a demand of arrear charges, the Division Bench relying on the decision of this Court in *State of Punjab & Ors. Vs. Bhatinda District Cooperative Milk Producers Union Ltd*[1]observed that even where no period of limitation is indicated, the statutory Authority is required to act within a reasonable time. In our view, what would construe a reasonable time, depends on the facts and circumstances of each case, but it would not be fair to the respondent if such demand is allowed to be raised after 25 years, on account of the inaction of the petitioner.

23. We do not, therefore, find any reason to interfere with the judgment either of the learned Single Judge or of the Division Bench of the High Court and the Special Leave Petition is, accordingly, dismissed.

24. There will, however, be no order as to costs.

Judgment Referred.

[1](2007) 11 SCC 0363