

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 419/2013

S.K.BAHL Appellant

Represented by: Mr.R.M.Sinha, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

and ORS Respondents

Represented by: Mr.Arun Birbal, Advocate for R-1

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

O R D E R

03.09.2013

1. Learned counsel for the respondents concedes to the following:-

(i) There exists a conversion policy under which lease-hold tenure of land can be converted into free-hold upon conversion charges paid by the original lessee and even by a person to whom the lease-hold tenure has been conveyed under an agreement to sell and power of attorney executed without paying the un-earned increase and without the permission of DDA, but upon paying not only the conversion charges but further sum equivalent to 33.333% of the conversion charges.

(ii) Since the single entity of the lease-hold plot has to be maintained, if there are more than one persons who have acquired the lease-hold interest in the land under agreement(s) to sell and power(s) of attorney, all of them can join together to have the lease-hold tenure converted into free-hold tenure in their names.

(iii) If there are misuse charges the same have to be cleared together with interest before conversion is allowed.

(iv) If on account of violation of the terms of the perpetual lease-deed, the same has been determined but possession not resumed, upon payment of charges, the re-entry has to be withdrawn.

2. The historical backdrop would be that on account of the influx of refugee population in Delhi post 1947, a large scale acquisition policy was framed by the Government to acquire land for residence, commerce and industry and allot plots after developing the raw land to the migrants. The allotment was at concessional rates containing a term in the perpetual lease- deed that the lease-hold interest would not be transferred to any person without the permission of the Government and that if the permission was granted the Government reserved a right to recover 50% of the unearned increase in the price of the land. To overcome said payment of 50% unearned increase in the price of the land, people resorted to the strategy of entering into agreement to sell

recording full sale price received and handed over possession of the land or the building constructed thereon with an irrevocable power of attorney executed in favour of the purchaser. In this manner the purchaser would claim benefit of Section 53A of the Transfer of Property Act and simultaneously would exercise the right under the power of attorney to deal with the plot. It was practically a case of a sale.

3. To regularize the malpractice, a conversion policy was notified in the year 1992 by the Ministry of Urban Development for the properties under the control of the Land and Development Office, a wing of the Ministry of Urban Development, which policy was adopted by all land owning agencies in Delhi including the Delhi Development Authority: the respondent.

4. Learned counsel for DDA concedes that if the purchasers of different portion of the building constructed on plot of land bearing No.135 Block K-I, Chittranjan Park, New Delhi were to submit the agreement(s) to sell and the power of attorney(s) and pay the conversion charges + 33.333% more, as also clear the misuse charges together with interest thereon from the date of the demand till when payments were made and additionally cleared the arrears of ground rent and such other charges, but not the unearned increase, they would be entitled a conveyance deed being executed in their favour conveying free-hold tenure in the land in their names.

5. Regretfully, the learned Single Judge has not dealt with the conversion policy of DDA. Reliance upon the decision of the Supreme Court reported as (2012) 1 SCC 656 Suraj Lamp and Industries Pvt.Ltd. vs. State of Haryana and Ors. by the learned Single Judge is misconceived for

the reason the conversion policy of DDA is the foundation of the claim in the writ petition.

6. Learned counsel for the appellant states that certain payments have been made by the appellants, a fact admitted by learned counsel for the respondent; the exact amount being in dispute, we do not note the same for the reason the final direction which we are now issuing with consent of counsel for the parties would render noting of said fact irrelevant.

7. The appeal stands disposed of with consent, setting aside the impugned order dated May 20, 2013. WP(C) 16305/2004 filed by the appellant stands disposed of on the following consent terms:-

(i) Demand towards unearned increase shall be withdrawn by DDA.

(ii) Upon all owners having purchased interest in the land comprising Plot No.135, Block K-1, Chittranjan Park, New Delhi, applying for conversion of the lease-hold tenure into free-hold tenure and paying the misuse charges together with interest thereon @ 9% per annum from the date when demand was raised till payment was made and additionally paying the conversion charges + 33.333% thereof and such other amounts as are payable to DDA as per demand letter dated March 09, 2005; with ground rent and interest thereon updated till when application for conversion is filed, upon satisfaction by DDA to the genuineness of documents submitted, the conveyance deed would be executed in favour of the applicants conveying free-hold tenure in their names of the plot in question.

(iii) With respect to the misuse charges and past dues, DDA would be entitled to interest @ 9% per annum from the date when the respective amounts became due and payable and till when payment was/is made.

(iv) With respect to the amounts paid by the appellant or any other purchaser(s) of part interest in the land, adjustment would be given by DDA and if any excess amount is found paid the appellant as also the co-applicants would be entitled to a refund thereof with 9% interest per annum.

8. No costs.

CM No.9298/2013

Dismissed as infructuous.

CHIEF JUSTICE

PRADEEP NANDRAJOG, J.

SEPTEMBER 03, 2013

skb

LPA No.419/2013 Page 4 of 4

\$ 6