

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : PROPERTY DISPUTE

LPA 512/2006

Date of Decision: December 4, 2008

UOI and ORS

Appellants
Through: Mr. S.K. Dubey, Mr. Deepak Kumar,
Mr. Nitin Kumar Sharma and
Mr. K.B. Jakhar, Advocates.

Versus

RAJ KUMAR GOVIL and ORS.

Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

MUKUL MUDGAL,J.

1. Admit. As the respondent has failed to appear inspite of being served, this appeal is taken up for final hearing.

2. This appeal challenges the judgment of the learned Single Judge dated 25th March, 2004 wherein the learned Single Judge construed Clause 11 of the Lease Deed. Clause 11 of the Lease Deed reads as follows:- (11) The Lease shall before every assignment or transfer of the said premises hereby demised or any part thereof obtain from the Lessor or the Chief Commissioner of Delhi or such Officer of body as the Lessor may authorize in this behalf approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the Lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects thereof. (emphasis supplied)

3. The writ petitioner, respondent herein sought permission in view of the aforesaid Clause to transfer the property to a purchaser and the permission was declined, hence, the writ petition was filed in this Court. The learned Single Judge noticed that the reasons given for non-granting the sale permission to the respondent was the demand of appellant towards 50% unearned increase. The learned Single Judge has held that Clause 11 only stipulates the requirement of prior permission and does not stipulate or authorise the respondent to claim any unearned increase for transfer of the plot. For this purpose, the learned Single Judge has relied upon two judgments of this Court titled as Sunil

Vasudeva Etc. v. DDA 1989 RLR 23 and Ramji Dass Guglani V. Delhi Development Authority and Ors. 2003 IV AS (DELHI) 33. Accordingly, the learned Single Judge directed the transfer without any unearned increase.

4. Mr. Dubey, the learned counsel for the appellant has submitted that in arriving at the conclusion that Clause 11 did not stipulate the levy of unearned increase has not taken note of the fact of the circulars which he fairly conceded, were not brought to the notice of the learned Single Judge. Accordingly, since the issue affects a large number of transfers, we have considered the effect of the circular dated 30th August, 1965, the relevant clause of which reads as under: IV. II.8 Sale/transfer of leased premises Permission for sale/transfer of the leased premises will be granted where such permission is required to be obtained under the terms of lease on the following terms and conditions:- (i) Payment of 50% of the unearned increase in the value of land over its value, at the time of last transaction, the amount of unearned increase is recoverable in all cases of restricted leases (see para IV.I.1 above) irrespective of whether a specific provision for the recovery of unearned increase exists in the lease deed or not, unless it is specifically prohibited by the terms of lease as in the case of first sale of some Rehabilitation properties. The Government of India have also relaxed this rule in certain cases of transfer as mentioned hereinafter. (emphasis supplied)

5. A perusal of the above circular and in particular the emphasized portion demonstrates that permission on prescribed condition can be granted when it is required in the terms of the lease. Clause 11 stipulates as under : ..before every assignment or transfer of the said premises hereby demised or any part thereof obtain from the Lessor or the Chief Commissioner of Delhi or such Officer of body as the Lessor may authorize in this behalf approval in writing of the said assignment or transfer Thus the conditions which are contained for transfer could be prescribed by the Government.

6. We have considered the aforesaid circular and also the plea of Mr. Dubey that the aforesaid circular is clearly applicable in view of the law laid down by the Hon'ble Supreme Court in DDA and Ors. V. Joginder S. Monga and Ors. 2003 (10) SCALE 707. The relevant para-44 of the said judgment reads as under:- 44. We, therefore, are of the opinion that the said circular letters are valid. Determination of market value by reason of such circular letters, thus, became a part of the terms of the lease having regard to the finality clause attached thereto.

7. The applicability of circulars which become part of the lease is thus settled by the above judgment of the Hon'ble Supreme Court. In that case, on facts, though an unearned increase was permitted to be levied but the quantum was not specified, nevertheless, the Hon ble Supreme Court laid down a general principle that the Circular would still apply. In our view, the above judgment of the Hon ble Supreme Court squarely applies to the facts of the present case. Consequently, it is not necessary to consider the two judgments of this Court relied upon by the learned Single Judge.

8. We also take judicial notice of the fact that one of the main reasons for exponential increase in prices of land in Delhi is the huge amount of money that the

Government is spending in creating infrastructure facilities, like roads, flyovers, metro and as well as provision of electricity, water, sewage etc. Thus, public interest is also subserved by the incorporation of the terms of the above circular in the existing leases. There is also not valid reason why leases executed prior to the issue of the circular should be treated differently from those leases executed subsequent to the circular dated 30th August 1965. Moreover, in our opinion, the plea that approval in writing of the said assignment or transfer would include any subsequent circular as has been rightly contended by the learned counsel for the appellant. Accordingly, we are satisfied that circulars issued subsequently specifying financial terms for the transfer will have to be read into Lease Deed and therefore, the judgment of the learned Single Judge cannot be sustained on this ground. However, we make it clear that this judgment is only in respect of financial terms as a condition of transfer in view of the original Clause 11 in the Lease Deed and the judgment of the Hon ble Supreme Court in DDA vs. Joginder S. Monga (supra) which was only in respect of ascertainment of market value and the terms of the transfer as per the circulars. This judgment should not be construed in any manner to grant the power to the Government to alter the terms of an existing Lease Deed and only relates to the interpretation of the terms of Clause 11 of the Lease Deed for financial terms.

9. Accordingly, the appeal is allowed. The impugned judgment dated 25th March, 2004 of the learned Single Judge is set aside. Since, the judgment of the learned Single Judge had already been implemented, we direct that as a consequence of this judgment, no recovery shall be sought from the respondent.

Sd./-
MUKUL MUDGAL,J

Sd./-
MANMOHAN,J

December 4, 2008/