

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6079 OF 1999

U.O.I. & ANR

Appellant (s)

VERSUS

M/S.MAHAJAN INDS. LTD. AND ANR.

Respondent(s)

Date: 22/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. Aarohi Bhalla, Adv.
Mr. V.K. Verma, Adv.
Mr. Shreekant N. Terdal, Adv.

For Respondent(s) Mr. B.S.Mann, Adv.

Mr. Jai Prakash , Adv.
Mr. M.A.Chinnasamy, Adv.

Mr. R.K. Maheshwari , Adv(NP)

UPON hearing counsel the Court made the following
O R D E R

Appeal is dismissed in terms of the signed order.

(Parveen Kr. Chawla)
Court Master

(Kanwal Singh)
Court Mast

er

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6079 OF 1999

Union of India & Another

Appellant (s)

Versus

M/s Mahajan Inds. Ltd. & Another

Respondent (s)

O R D E R

This appeal, by grant of special leave, is directed against the final judgment of the Division Bench of the High Court of Delhi dated 27th October, 1998. By the impugned order the High Court has directed the Union of India, appellant herein (hereinafter referred to as the 'appellant') to grant permission for the construction of a multi-storeyed commercial complex at 27, Kasturba Gandhi Marg, New Delhi with reference to the application filed by the respondents dated 23.3.1981, filed on 25.3.1981.

Facts:

A Perpetual Lease was executed by the appellants under the Government Grants Act, 1895, granting a perpetual lease of Property No. 27, Kasturba Gandhi Marg, New Delhi to Dr. Raghunath. Under the terms of the lease deed, the lessee could not construct a multi-storeyed building without taking permission from the appellant. Appellant modified the Master Plan for Delhi in the year 1962, according to which a multi-storeyed commercial complex could be constructed on the said property and other similarly located properties. The Zonal Development Plan also prescribed for the commercial use of

the property in question and other properties in Connaught Place area.

Original lessee Dr. Raghunath died on 25.2.1972. The legal

heirs, being the successors, of Dr. Raghunath executed a General Power of Attorney in favour of one Praveen Nayyar and Ashok Malik.

In the said G.P.A., there is a mention of an agreement to sell dated 19.5.1980 executed by the legal heirs of Dr. Raghunath in favour of M/s Mahajan Woolen (P) Ltd., i.e. respondent No.1 herein.

One Shri B.L.N.Sastry, informed the appellant on 16.12.1980 that Dr. Raghunath had executed a registered power of attorney in his favour on 7.1.1972. In the said power of attorney also, there was a reference of agreement to sell dated 4.1.1972 with Ram Lal Jaggi and Narinder Anand, who were the promoters of M/s Indu Peoples Theatre Company Ltd. B.L.N.Sastry did not file an application for conversion of land use from residential to commercial. He is no longer in the picture.

On 25.3.1981, an application which was dated 23.3.1981 was submitted by Praveen Nayyar, one of the G.P.A. holder, to the appellant for and on behalf of the original owners requesting for permission for change in the land use of the property in question from residential to commercial. Permission was sought to put up a multi storeyed complex. It seems that the appellant vide different communications asked the respondent No.1 to produce a certified copy

of the G.P.A. dated 19.5.1980 executed in his favour and cancellation of the general power of attorney in favour of B.L.N.Sastry. The requisite information was not supplied. Respondent No.1 was informed by the appellant by four different communications that since he had failed to furnish a certified copy of G.P.A. Dated 19.5.1980 and also failed to furnish the information regarding cancellation of the G.P.A. in favour of B.L.N.Sastry, his application for change of land use could not be considered/re-considered.

Respondent No.1 filed Writ Petition No. 4695 of 1996 in the

High Court of Delhi with the following prayers:

"(a) that a writ in the nature of mandamus and/or any other appropriate writ/order or directions setting aside and/or quashing the policy of the respondents as contained in the guidelines dated 11.1.1995 or any other guidelines of the respondents to demand conversion charges and revision of ground rent as a condition to granting permission for construction of multi-storeyed commercial complex under lease deed dated 8.2.1939 in respect of 27, Kasturba Gandhi Marg, New Delhi, be issued;

(b) that a writ or mandamus or in the nature of mandamus and/or any other appropriate writ/order/directions, directing the respondents to permit the petitioner for redevelopment/conversion of the property bearing No. 27, Kasturba Gandhi Marg, New Delhi into a multi-storeyed building without demanding any conversion charges or revised ground rent, be issued;

© that in the alternative a writ or mandamus or in the nature of mandamus and/or any other appropriate writ/order/directions, directing the respondents to permit the petitioner for

redevelopment/conversion on the basis of the policy for determination of conversion charges on 10.12.1970, be issued;

(d) that in the alternative a writ or mandamus or in the nature of mandamus and/or any other appropriate writ/order/directions, directing the respondents to permit the petitioner for

redevelopment/conversion of the property bearing No. 27, Kasturba Gandhi Marg, New Delhi, into a multi-storeyed building on the basis of the application dated 23.3.1981, be issued;

(e) that interim orders and/or directions, directing the respondents to issue necessary 'No Objection Certificate' to New Delhi Municipal Council, intimating that the respondents have no objection to the sanction of plans by NDMC for construction of multi-storeyed commercial complex on property bearing No. 27, Kasturba Gandhi Marg, New Delhi be passed/issued; and

(f) such further order/orders may be made and/or directions be given as this court may deem fit and proper in the facts and circumstances of the present case."

The successors of Dr. Raghunath had executed a registered sale deed in favour of the respondent No.1 on 30th October, 1987.

The High Court has recorded a finding of fact that the application filed on 25.3.1981 on behalf of the original owners through the G.P.A. holder requesting for permission for conversion of land use of the property from residential to multi storeyed complex had not been finally decided/disposed of by the appellant and the same was still pending. The High Court in the impugned order has observed that the counsel appearing on behalf of the appellant in the High Court did not dispute that the application filed by the G.P.A. holder for change of land use had not been decided/finally disposed of. On merits the High Court formulated the following two questions for its consideration arising in the writ petition.

"(a) What is the right point of time(crucial date) which should be considered as the basis for grant of permission, requested by the petitioner, for the change of user of the property in question from residential to multi storeyed commercial building; and

(b) on what terms and conditions the petitioner, in terms of the lease, can be granted the permission for the change of user (conversion) of the property in question from residential to multi storeyed commercial building."

The High Court came to the conclusion that both these points

were concluded by a judgment of the Division Bench of High Court of

Delhi in Ansal & Saigal Properties (P) Ltd. & Ors. vs. L&D.O. & Ors.

[74 (1998) DELHI LAW TIMES 152]. In the said case, it has been

held that 'crucial date' for calculating the conversion charges has to be

the date of the receipt of the application for conversion'. Point 'b'

formulated by the High Court, referred to above, was also concluded by

the judgment in Ansal & Saigal Properties (P) Ltd. & Ors. vs. L&D.O.

& Ors. (supra).

Since the point stood covered by a judgment of the Division

Bench of the High Court, the High Court following the said judgment

allowed the writ petition and disposed of the same with the following

directions:

"that the respondents, consistently with the observations made by us in CW 1233/72 - M/s Ansal & Saigal Properties (P) Ltd. & Anr. vs. L&DO & Ors. [74 (1998) DELHI LAW TIMES 152] shall within six weeks from the date of this order give terms and conditions to the petitioner for construction of a multi-storeyed commercial complex at 27, Kasturba Gandhi Marg, New Delhi in terms of the lease deed with reference to application dated 25.3.81 submitted by the Attorney of the legal heirs of Dr. Raghu Nath (predecessor-in-interest of the petitioner), seeking permission for the change of user(conversion) of the property in question from residential to multi-storeyed commercial complex. The petitioner, within thirty days from the receipt of such offer from the respondents, shall complete the formalities and shall

also deposit the amount in terms of the offer. Thereafter the respondents shall take a decision in the

matter with utmost expedition, preferably within six weeks. However, if the petitioner fails to complete the formalities and deposit the amount in terms of the offer within the above said period of thirty days, the above said application dated the 25th March, 1981, seeking permission for the change of user (conversion) of the property in question from residential to multi-storeyed commercial complex at 27, Kasturba Gandhi Marg, New Delhi shall be deemed to have been rejected."

Learned counsel Shri Aarohi Bhalla, appearing for the Union

of India tried to persuade us to take the view that application filed by respondent No.1 on 25.3.1981 for change of land use stood rejected finally on 21.1.1984 which cannot be accepted. The fact that the application filed on 25.3.1981 was still pending and had not been finally disposed of was not disputed before the High Court. This was a finding on facts and if the appellant was aggrieved against the said finding being incorrect, inasmuch as that no such concession was made by the counsel before the High Court, then, the appellant should have filed a review application before the High Court stating that such a concession had not been made by the learned counsel appearing on behalf of the appellant before the High Court. Even in the special leave petition it has not been stated that this finding has been incorrectly recorded. This apart, we have perused the letters dated 4.5.1982, 18.5.1982, 28.6.1982 and 21.1.1984 (annexures P4 to P6 & P8 to the special leave petition) written by the appellant to respondent No.1. In neither of these letters it has been written that the application filed by respondent No.1 on 25.3.1981 stood rejected. In this view of the

matter, we uphold the finding recorded by the High Court that the application filed on 25.3.1981 was still pending and had not been finally disposed of.

Counsel for the appellant has not disputed the correctness of the law laid down by the High Court of Delhi in Ansal & Saigal Properties (P) Ltd. & Ors. vs. L&D.O. & Ors. (supra) in which it has been held that the crucial date for calculating the conversion charges has to be the date of receipt of application for conversion of land use. Since we have held that the application filed on 25.3.1981 for conversion of land use from residential to multi storeyed complex is still pending, appellant is bound to grant the permission for change of land use by charging the rates prevalent as on the date of the filing of the application i.e. 25.3.1981.

Accordingly, the appeal is dismissed. Stay granted by this Court on 10/05/1999 is vacated and the appellant is directed to take a final decision on the application for conversion of the use of land from residential to multi storeyed commercial complex filed by respondent No.1 on 25.3.1981 as expeditiously as possible and in any case within a period of eight weeks from today. Respondent No.1 shall deposit the amount of conversion charges demanded by the appellant within six weeks of the receipt of the communication demanding the conversion charges failing which the application will be deemed to have been dismissed.

The order passed by the High Court is upheld. Appeal is

dismissed with no order as to costs.

.....J.
(ASHOK BHAN)

New Delhi;
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February 22, 2005.

.....J
(A.K. MATHUR)