

[MANU/DE/1843/2001](#)

Equivalent Citation: 2002IIIAD(Delhi)545, 96(2002)DLT477, 2002(61)DRJ838

IN THE HIGH COURT OF DELHI

Civil Writ Petition No. 522 of 1997

Decided On: 19.12.2001

Appellants: **Common Cause (A Registered Society)**

Vs.

Respondent: **Union of India and Ors.**

Hon'ble

[A.D. Singh](#) and [Madan B. Lokur](#), JJ.

Judges/Coram:

Counsels:

For Appellant/Petitioner/plaintiff: [Bidyarani](#) and [Smita Bankoti](#), Advs [Jagmohan Sabharwal](#), Sr. Adv. and [Maneesh Goyal](#), Adv

Subject: Property

Catch Words

Mentioned IN

Acts/Rules/Orders:

CONSTITUTION OF INDIA - Article 14

Cases

U.P. Pollution Control Board and Ors. v. Kanoria Industrial Ltd. and Anr., (2001) 2 Supreme Court Cases 549

Referred:

Disposition:

Petition Dismissed

Case

Note:

Constitution of India, 1950 - Article 226--Writ--Circular by DDA lowering the conversion charges from leasehold to freehold--Petitioner seeks relief against, the DDA for refund of monies to the persons whose properties were made free hold and conveyance deeds were executed and registered prior to, issuance of the impugned circular--Circular aimed at making scheme popular and acceptable--Lease already converted to free hold from a separate class--Circular cannot be considered as arbitrary or irrational--Persons holding free hold properties acquired marketable title--No discrimination--Petition dismissed.

Held:

Thus it is clear that modification of the scheme of 1992 was ordered for affording some relief to the lessees to make the scheme popular and acceptable. In other words the Government of India and the DDA wanted to encourage conversion of properties from leasehold to freehold. In such a situation if conversion fee was reduced to give incentive to the lessees to convert their properties to freehold, the impugned circular cannot be considered as arbitrary or irrational. The lessees who got their properties converted to freehold before June 25, 1996 constitute a separate class from the ones whose properties were yet to be converted on that date. Therefore, they cannot attack the constitutionality of the circular by claiming the circular to be inequitable and discriminatory as the same concession was not made available to them as was afforded to the lessees governed by the circular, A closed and completed transaction where the property already stood converted stands on a different footing than the transaction which had not been so completed. Those who acquired marketable title in

the property earlier than the persons in whose favor the conveyance deeds not had been executed and registered till the circular came into existence stood to gain.

JUDGMENT

Anil Dev Singh, J.

1. By this writ petition, the petitioner calls in question the circular dated June 25, 1996 issued by the Delhi Development Authority, based on a decision of the Union Cabinet dated August 1, 1995, to the extent of the reduction effected in respect of the conversion charges from leasehold to free hold having not been made applicable to persons who had already paid conversion charges and in whose favor deeds of conveyance had been executed earlier to the issuance of the circular in question.

2. The facts giving rise to the petition are not many. The first respondent Ministry of Urban Development, Government of India, on February 14, 1992 issued a circular containing scheme of conversion of properties from leasehold to free hold on payment of prescribed conversion charges. The second respondent Delhi Development Authority (DDA) and the third respondent Land and Development Authority, being the land owning agencies and fourth and fifth respondents, being the civic authorities, namely, New Delhi Municipal Council (NDMC) and Municipal Corporation of Delhi (MCD) were required to administer the scheme. Pursuant to the aforesaid circular, the second respondent notified the scheme for conversion of leasehold properties into freehold (for short 'Scheme of 1992'). Four years later, on June 25, 1996 the second respondent issued a circular (for short 'the Circular') based on the decision of the Union Cabinet dated August 1, 1995 whereby conversion charges payable under the scheme of 1992 were reduced for a limited period of time. The circular was given a prospective operation and the cases already decided were not to be reopened. The circular also applied to applicants whose applications were pending as on the date of the notification. The circular was applicable even to cases where conversion charges were deposited in consonance with the scheme of 1992 and the conveyance deeds were yet to be executed.

3. To grievance of the petitioner is that the circular modifying the scheme of 1992 ought to have been made applicable to the lessees who had applied for conversion of properties from leasehold to free hold, paid conversion charges under protest in consonance with the scheme of 1992 and the conveyance deeds of the properties were executed before issuance of the circular. Basically the petitioner seeks a direction to the second respondent to refund monies to such lessees who had paid in excess of the rate prescribed by circular of June 25, 1996.

4. We have heard learned counsel for the parties. Ms. Bidya Rani, learned counsel appearing for the petitioner, submitted that the persons who acted in conformity with the scheme of 1992, by paying the conversion charges promptly and diligently, were denied the benefit of the circular modifying the scheme while persons who delayed payment of conversion charges and in whose favor the conveyance deeds could not be executed on account of their lapses were given a better deal by asking them to pay concessional rates for securing conversion of their properties from leasehold to free hold. She submitted that the circular is violative of Article 14 inasmuch as the former category of persons were subjected to hostile discrimination. She further contended that vice of discrimination can be removed by directing refund of monies in accordance with rates prescribed by the circular dated June 25, 1996 to those persons whose properties were converted to freehold and conveyance deeds were executed and registered prior to the issuance of the said circular. On the other hand, Mr. Sanjay Jain, learned counsel appearing for the first respondent submitted that the impugned circular has a clear rationale behind it. In order to make good his submission, he invited our attention to para 10 of the counter affidavit of the first and the third respondents. Para 10 of the counter affidavit reads as follows:-

"The averment that the impugned circular excludes the persons who acted promptly in compliance with the conversion scheme from taking

the benefits of concession is not tenable on account of the following reasons:

a) The conversion scheme being optional, the discretion of opting for complying with the same rests with the allotted/lessee.

b) Since the decisions regarding grant of concessions was pending, it was available to the allotted/lessee to await the said decision .However, if the payments were made by the allotted/lessee with a view to avoid an enhanced conversion fee in case of upward revision, the Government cannot be blamed for any arbitrariness.

c) Another option available to the allottee/lessee in the conversion scheme is to pay conversion fee in Installments Along with an interest @ 12% thus avoiding payment of the conversion fee at revised rates if so prescribed by the Government and the impugned circular clearly extends the benefit of concession to the pending cases where the conveyance deed is yet to be executed/registered.

Therefore in view of the above, it is clear that there is no arbitrariness by the answering respondents if the allottees/lessee paid the conversion fee prior to the issue of the impugned circular and got their properties converted prior to issue of the circular dated 25.06.1996."

5. Mr. Jain contended that the persons in whose favor conveyance deeds were executed before the issuance of the circular were placed in an advantageous position. According to the learned counsel, the persons in whose favor the conveyance deeds were executed and registered prior to the issuance of the impugned circular form a distinct and separate class and do not fall in the group of persons in whose favor the conveyance deeds were not so executed and registered till then. The latter category of persons could not enjoy the status of absolute owners of the properties and could not deal with the same in the manner they liked. According to the learned counsel when the two classes were separate from each other, the latter class of persons cannot claim to be victims of discrimination on the basis that circular gave concessions to the former class of persons. According to the learned counsel, this is not a case where equals were being treated unequally or where unequals were being treated equally.

6. We have considered the submissions of the learned counsel for the parties. Before we deal with the submissions ,it will be necessary to refer to the background in which leasehold rights were given to the lessees of government land and properties. In order to provide shelter to persons and for the development of the land in Delhi in accordance with the Master Plan, the Government of India, in the year 1962 undertook steps to acquire vast areas of land. The development and disposal of land was undertaken by the Government through the second and the third respondents. Lands were allotted to persons for construction of houses. Besides the second respondent constructed residential flats for persons seeking allotments of the same. Lands were also allotted to co-operative societies for construction of flats for allotment to its members. The allotments, whether of land or flats was made on leasehold basis. On February 14,1992, the first respondent Union of India notified its decision to the concerned authorities for permitting conversion of properties from leasehold to free hold on payment of prescribed conversion fees. In view of the decision of the first respondent the second respondent introduced a scheme for allowing conversion of certain leasehold properties to free hold. The scheme of 1992 made it obligatory for certain class of properties to be converted from leasehold to free hold on payment of stipulated amount of conversion fee. There were some provisions of the scheme which were considered to be onerous by the

leaseholders. Writ petitions, being writ petition No. 2363/92 and 146/93 were filed in this court challenging certain provisions of the scheme. These writ petitions were disposed of by an order dated May 27, 1994. Thereafter on June 25, 1996, the impugned circular was issued. As already pointed out, the circular has carried out certain modifications in the conversion scheme of 1992. It may be noted that the circular was issued by the second respondent keeping in view the representations received by it and also having regard to the observations made by the court in the aforesaid order dated May 27, 1994 for modification of the scheme. The circular reads as follows:-

"The question of modification in the scheme of conversion of lease hold tenure into freehold in Delhi has been under consideration of the Government for quite sometime. In view of the various representations received and also the observation of the Hon'ble Delhi High Court for modification of the scheme, the entire issue was examined by the Union Cabinet in its meeting held on 01.08.1995. In partial modification of earlier instructions on this subject, it has been decided to continue conversion rates as originally fixed vide this Ministry's letter of even number dated 14.2.92 and to allow further concessions asunder:-

(i) Remission of conversion fee @ 50% of the prescribed rate by the Government in respect of original lessees in rehabilitation colonies, who have not transferred or parted with the properties and are paying nominal ground rent and in whose cases first sale is exempted from payment of unearned increase as per lease terms; (ii) Remission of conversion fee @ 33-1/3% in respect of ready built flats allotted by various lease administering authorities or constructed by co-operative group housing societies ;

(iii) Remission of conversion fee by 25% in respect of original lessees of properties allotted by the lease administering authorities other than original lessees of rehabilitation colonies. This concession will also be available to the lessees where the properties had changed hands after seeking sale permission etc. as per the terms and conditions of lease.

(iv) Conversion of leasehold tenure of land to freehold in respect of flats in Asiad Village Complex ;

2. The above mentioned concessions for payment of conversion charges would be available for a period of two months from the date of issue of this letter.

i) Thereafter, w.e.f. 1.9.96 the conversion charges will be calculated and recovered by lease administering authorities after reckoning the same at the rate notified by the Government/Lease Administering Authorities as were effective from 01.04.1989.

ii) Accordingly the conversion fee in respect of ready built tenements/flats will also be increased in proportion to the increase in land values between 1.4.87 to 1.4.89 w.r.t. location where such flats are situated.

It is further clarified that these orders will have prospective effect and the cases already decided will not be reopened.

Note:

In respect of pending applications, where conveyance deeds are yet to be executed/registered, refund on account of these concessions should be allowed.
xxx xxx xxx xxx"

7. As already pointed out, the petitioner is aggrieved of the fact that the circular does not benefit the lessees who had already paid the conversion charges and in whose favor conveyance deeds were executed and registered earlier to the issuance of the circular. The petitioner actually seeks relief against the DDA for refund of monies to the persons whose properties were made free hold and conveyance deeds were executed and registered prior to issuance of the impugned circular. It claims for them parity with the persons whose applications for conversion of their properties to free hold were pending at the time of issuance of the circular. The only question for our determination is whether the persons whose applications for conversion of leasehold tenures to free hold tenures stood decided before the coming into existence of the circular constitute a separate class from those whose applications were yet to be decided and in whose favor the conveyance deeds were neither executed nor registered.

8. It appears to us that the classification between persons who got the properties converted from leasehold to freehold before the issuance of the circular and those who did not, cannot be said to be in any way unreasonable.

9. As is apparent from the above quoted circular, the original scheme was modified inter alia on the basis of the representations of the lessees of the flats and built up plots. At this stage it will be useful to notice the averments made in the counter affidavit of the first and third respondents in this regard:-

"xx xx xx xx xx

Initially, the scheme was compulsory in respect of ready built flats and built up plots up to 150 sq. mts. However, on representations of lessees/allottees, the scheme was made optional in respect of all categories of ready built flats and built up plots up to 500 sq. mts.

Further representations were received and court cases instituted by lessees of rehabilitation colonies and others contending that the lessees of rehabilitation colonies were on different footing because in their case nominal ground rent of Rs. 31/- was payable and first sale was exempted from payment of unearned increase .

Similar representations were made by the allottees/lessees of DDA flats pleading that in the case of built up plots, the applicants could construct more area on the plots measuring up to 50 sq. mts. in respect of which no conversion fee is payable. It was, therefore ,requested that remissions in conversion fee should be allowed in the case of lessees of flats at a higher rate as compared to plot holders.

Further, it was represented that the original lessees in other colonies need also be afforded some relief so as to make the scheme popular/acceptable.

All these factors were considered by the Govt. and it was decided with the approval of the Cabinet to allow remissions in conversion fee to the specified categories as mentioned in the orders dated 25.06.96 wherein

it was inter alia clarified that conversion at the originally prescribed rates Along with concession was available up to 31.08.96 and w.e.f. 01.09.96 fee was to be calculated on the basis of land rates applicable on 01.04.1989."

10. Thus it is clear that modification of the scheme of 1992 was ordered for affording some relief to the lessees to make the scheme popular and acceptable. In other words the Government of India and the DDA wanted to encourage conversion of properties from leasehold to freehold. In such a situation if conversion fee was reduced to give incentive to the lessees to convert their properties to freehold, the impugned circular cannot be considered as arbitrary or irrational. The lessees who got their properties converted to freehold before June 25, 1996 constitute a separate class from the ones whose properties were yet to be converted on that date. Therefore they cannot attack the constitutionality of the circular by claiming the circular to be inequitable and discriminatory as the same concession was not made available to them as was afforded to the lessees governed by the circular. A closed and completed transaction where the property already stood converted stands on a different footing than the transaction which had not been so completed. Those who acquired marketable title in the property earlier than the persons in whose favor the conveyance deeds had not been executed and registered till the circular came into existence stood to gain. The former category of persons could deal with the properties in the manner they liked. They could avail of financial assistance from banks or financial institutions against the properties in respect of which conveyance deeds had been executed prior to the issuance of the circular and could sell their properties without any impediment. Therefore acquisition of marketable title by them was of immense value to them.

11. As already pointed out, the petitioner is interested in claiming the excess monies paid by the lessees whose properties were converted into freehold before the coming into operation of the circular dated June 25, 1996. Since we do not find that such persons were subjected to hostile discrimination the refunds will not be available to them. In any case it needs to be noticed that even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund of money is not the necessary consequence and does not follow as a matter of course. In this regard the following observations of the Supreme Court in U.P. Pollution Control Board and Ors. v. Kanoria Industrial Ltd. and Anr., [MANU /SC/1449/2001](#) need to be noticed:-
"However, it must not be understood that in all cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund should necessarily follow. We wish to add that even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case."

12. Assuming the argument that the circular metes out discriminatory treatment to the lessees who had paid the amounts before the coming into force of the circular dated 25th June, 1996, were to prevail, even then it would not be in the fitness of things to ask the second respondent to refund the excess amount, the transactions having taken effect as a consequence of which the lessees would have enjoyed the benefits of the conversion scheme and would have dealt with the property in the manner they liked.

13. In view of the aforesaid discussion, we find no merit in the writ petition. Accordingly the same is dismissed.