

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

W.P. No.7741/2008

Smt. Pushpa Jajodia
W/o Banwarilal Jajodia and 4 others. Petitioners

Vs.

M.P. Housing Board, Bhopal
and 2 others. Respondents

Shri A.K. Sethi, learned senior Adv. with Shri Rahul Sethi,
counsel for the petitioners.

Shri Rajesh Chourasiya, learned counsel for the
respondents.

Whether approved for reporting :

ORDER

(Passed on 28.6.2011)

1/ This writ petition is directed against the demand notice dated 28.6.2008 (Annexure P/8) issued by the respondents demanding the transfer fee of Rs.1,07,650/-.

2/ Petitioners had purchased plot no.D-35-HIG Colony (Chhoti Khajrani), Indore by registered sale deed dated 30.3.2007 from its previous owner Smt. Nirmal Kumari Bahari and made an application dated 27.3.2008 to respondent Housing Board for transferring plot in their favour. The public notice was got published by the petitioners on 15.5.2008 and an amount of Rs.6,00/- was deposited on

21.5.2008 as lease rent. The respondents thereafter issued notice dated 28.6.2008 requiring the petitioners to deposit the transfer fee of Rs.1,07,650/-. The said notice was issued on the basis of the circular dated 6.5.2008, by which the transfer fee for the residential property was enhanced from 1% to 3% of the sale price. Being aggrieved with the notice dated 28.6.2008, the petitioners have filed the present writ petition.

3/ The writ petition has been opposed by the respondents by taking the plea that the transfer fee has been demanded from the petitioners on the basis of the lease conditions, Collector guidelines and the relevant circular, therefore, the demand of fee is in accordance with law.

4/ Learned counsel appearing for the petitioners submits that the transfer fee has wrongly been charged at the rate of 3% of the sale price on the basis of the circular dated 6.5.2008 ignoring the fact that the petitioners had moved an application for transfer on 27.3.2008, therefore, the rate which were prevailing as on the date of the filing of the application would apply and subsequent circular enhancing the rate will not be applicable. He submitted that the circular dated 27.3.2008 is not retrospective, therefore, it has no application to the case of the petitioners.

5/ Learned counsel appearing for the respondents opposing the writ petition submitted that the transfer fee has rightly been demanded in accordance with law and the circular squarely applies to the case of the petitioners since on the date of consideration of the petitioners' application, the

circular was in force.

6/ I have heard the learned counsel for the parties and perused the record.

7/ The sole issue which arises for consideration is as to whether the petitioner is liable to pay transfer fee at the rate prevailing on the date of filing of the transfer application or at the enhanced rates in force at the time of consideration of the petitioners' application?

8/ It is undisputed that the petitioners had filed an application on 27.3.2008 and the circular dated 6.5.2008 enhancing the transfer fee from 1% to 3% of the sale price was subsequently issued and was in force at the time of consideration of the petitioners' application.

9/ On the examination of the entire material on record, it is found that in the present case the petitioners had no vested right to get the plot transferred in their name by paying 1% transfer fee. The transfer is done on fulfillment of certain conditions. The transfer fee is charged by the respondents for affecting the transfer of plot/lease in the name of the respective purchaser, therefore, the rates prevailing at the time of taking a decision to transfer the name, will be applicable. In the absence of any vested right, the transfer fee chargeable as per rate prevailing on the date of consideration of the application, is payable and the petitioners' contention that they are liable to pay the fee at the rate in force at the time of making of the application, can not be accepted.

10/ Some what similar issue had come up before the Supreme Court in the matter of **State of Tamil Nadu Vs. M/s. Hind Stone and others** reported in **1981(2) SCC 205**, where the application for grant of mining lease was kept pending by the authorities and in the meanwhile the rules were changed and a claim was made by the applicant for deciding the application on the basis of the rules in force at the time of making of the application. The Supreme Court held that :-

“13.While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant of renewal of a lease dealt with in a particular way, by applying particular provisions. in the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal leases made long prior to the date of G.O. Ms. No.1312 should be dealt with as if Rule 8-C did not exist.”

11/ In the matter of **P.T.R. Exports (Madras) Pvt.**

Ltd. and others V. Union of India and others reported in **AIR 1996 SC 3461** there was a change in the export and import policy for the textile sector and a claim was made for issuing the licence on the basis of the previous policy existing on the date of the application. The Supreme Court took the view that such an applicant has no vested right to have export or import licences in terms of the policies in force on the date of his making the application but grant of licence depends upon the policy prevailing as on the date of grant of licence and the Court would not bind the Government with a policy which was existing on the date of the application.

12/ In the matter of **Union of India and others V. Indian Charge Chrome and Another** reported in **1999(7) SCC 314** while considering the similar issue in reference to the registration of the contract, the Supreme Court held that mere making of an application for registration does not confer any vested right on the applicant. The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is called upon to apply its mind to the prayer for registration.

13/ In the matter of **Howrah Municipal Corpn. and others V. Ganges Rope Co. Ltd. and others** reported in **2004(1) SCC 663** a claim was made for sanction of building plan on the basis of the building rules as they stood on the date of making of application for sanction regardless of the subsequent amendment before consideration of the application. The Supreme Court considered the meaning of

vested right in detail and held that the petitioner had no vested right to obtain sanction and amended building rules will apply.

14/ In the matter of **State of Kerala and Another V. B. Six Holiday Resorts Private Limited and others** reported in **2010(5) SCC 186** there was a change in policy decision pending the applications for grant of licence. The Supreme Court took the view that where the applicant does not have a vested interest for grant of licence and where grant of licence depends on various factors, eligibility criteria and public interest, the consideration should be with reference to the law applicable on the date when the authority considers applications for grant of licences and not with reference to the date of application.

15/ Though the aforesaid judgments of the Supreme Court are in reference to the different enactments but ratio of these judgments is relevant for deciding the present controversy. It has been constantly held in these judgments if an applicant has no vested right to the claim made in the application, then a change in law, before consideration of the application, will apply while deciding the application.

16/ In the present case also, as stated above, the petitioners had no vested right to pay the transfer fee at a particular rate, therefore, increased transfer fee in force at the time of consideration of transfer application, would be payable.

17/ Even otherwise it is worth noting that the

respondents have placed on record the circular dated 27.1.2009 as R-1 (additional document), which clarifies that the circular dated 27.5.2008 would be applicable to the pending applications and the applications decided after the said circular will be charged with the enhanced transfer fee. This circular is not under challenge, hence no case is made out in favour of the petitioner.

18/ In view of the aforesaid, I do not find any merit in the writ petition and the same is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
J u d g e

Trilok.