

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 30.04.2020

+ **W.P. (C) 7230/2014**

EAGLE THEATRES & ANR

..... Petitioners

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners	: Mr Amir Singh Pasrich, Mr. Amit Ranjan Singh and Ms Kanika Agnihotry, Advocates
For the Respondents	: Mr. Jasmeet Singh, CGSC with Mr. Srivats Kaushal and Mr. Devank Maheshwari, Advocates for the UOI

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*, impugning the notification dated 29.05.2013 (No. F. 24 (372)/2006-CDN/261 – hereafter “the impugned notification”) issued by respondent no. 2 (Land and Development Officer – hereafter “L & DO”), wherein the conversion rates for leasehold property to freehold property of hotel/cinema sites were notified. The petitioners further impugn the Advisory Note dated 20.12.2006 (No. 19(68)2002-EII(B) –hereafter “the impugned advisory”) issued by respondent no. 3 (The Ministry of Finance), wherein respondent no. 3 advised L&DO with reference to

the rates of conversion of hotels and cinema property from leasehold to freehold property.

2. The petitioners contend that it has already paid the entire conversion fee of ₹52,68,564/- as per the land circle rates applicable on the date the petitioner filed its conversion application. L&DO contends that the abovementioned amount was paid on the basis of self-assessment and the said amount is not the final amount that is payable as per the new rates as applicable for cinema sites, which have been notified by the impugned notification dated 29.05.2013.

3. The respondents state that the petitioner's case was examined in the light of the impugned notification dated 29.05.2013 and the impugned advisory and it was decided that the conversion charges would be calculated on the basis of the specific area being used for the specific purpose: the area under cinema would be charged as per the rates stipulated for a cinema site and the area under commercial use would be charged as per commercial rates. It was also decided that the crucial date for calculation of the conversion charges would be 29.05.2013.

4. The principal controversy that arises in this petition is whether the calculation of the conversion charges payable by the petitioner for the conversion of leasehold property to freehold property used as cinema sites, is to be determined as per the land circle rates prevailing on the date on which the application for conversion was made by the petitioner – that is, on 11.03.2004/ 26.02.2004 – or on the date of the issuance of the impugned notification (i.e. 29.05.2013).

Factual Background

5. Petitioner No. 1 (hereafter “the petitioner”) is a partnership firm. Petitioner no. 2 is a constituent partner of petitioner no.1 firm and is one of the lessees under a perpetual lease of land and built up area, commonly known as Plaza Cinema building in Block-H, Connaught Place, Rajiv Chowk. The area used as a cinema hall, the cinema hall’s related offices (ticketing office etc.), toilets and cinema food area (where popcorn and snacks are sold) is about 8550 square feet, out of a total building built-up area of 45,528 square feet.

6. The Government of India granted leasehold rights to Mangal Dass Verma, T.C. Verma & K.C. Verma, for an area admeasuring 32,710 sq. feet or 0.75 acres on Plot No. 10, H-Block, Connaught Circus, New Delhi-110001, by virtue of a Perpetual Lease Deed dated 16.04.1937. The said rights were granted with effect from 02.04.1934. As per Clause 10 of the said Perpetual Lease Deed dated 16.04.1937, the plot consisted of “theatre, cinema and motor shop with flats above”. With the consent of Chief Commissioner of Delhi, a building by the name of ‘Plaza Cinema Building’ was constructed on the said plot.

7. On 24.05.1940, Mangal Dass Verma, T.C. Verma & K.C. Verma assigned the leasehold rights to the Plaza Cinema building and the land appurtenant thereto to Laxmi Insurance Co. On 11.10.1954, Laxmi Insurance Co. assigned the leasehold rights to the Plaza Cinema building and the land appurtenant thereto to Western India Theatres Ltd. On 18.04.1957, Western India Theatres Ltd. assigned the leasehold rights of the Plaza Cinema building and the land appurtenant thereto to

Khan Bahadur C.B. Taraporvala, the financial advisor to the Nizam of Hyderabad.

8. Khan Bahadur C.B. Taraporvala, the financial advisor to Nizam of Hyderabad, assigned the leasehold rights of the Plaza cinema building and 16,300 sq.ft of land appurtenant thereto, vide an indenture dated 15.12.1964 to certain persons (hereafter 'the lessees'), which includes petitioner no. 2.

9. Petitioner no. 2, along with the other lessees, entered into a supplementary Perpetual Lease Deed on 16.01.1974, with the President of India. Through this perpetual lease deed, the Lessees were allowed to build an additional area of 3,211 sq. ft. on the demised premises – Plot No. 10, H-Block, Connaught Circus, New Delhi - 110001.

10. In June 2003, the L&DO issued a brochure allowing the conversion of leasehold land to freehold land for properties that fell in the categories of residential, industrial, commercial and mixed land-use. The petitioners contend that the brochure did not exclude commercial properties used for the purposes of running theatres or hotels.

11. L & DO released a letter bearing no. 24(372)72000- CDN on 24.06.2003. Clause II of the said letter stated that the notified land rates, prevailing on the date of submission of the application would be applicable for the calculation of conversion fees.

12. The petitioner filed an application dated 26.02.2004 with L & DO for conversion of the property in question from leasehold to freehold in terms of the said brochure. However, L & DO contends that the said application was filed on 11.03.2004 and the first instalment of the charges was paid on the said date. The petitioner contends that the total

amount of conversion charges payable by the petitioners was ₹52,68,564/- as per the brochure and the conversion policy detailed in the brochure allowed conversion charges to be deposited in five instalments. In view of the said scheme, the petitioners paid the first instalment of ₹10,54,213/- along with the application. The petitioner also requested L & DO to process the documents for conversion of the property in question from leasehold to freehold.

13. In response to the petitioner's application dated 26.02.2004, L&DO issued a letter No. L&DO/LI-9/H(10)/04/146 dated 12.04.2004 informing the petitioner that the property in question would be converted into freehold on payment of full conversion fees and other Government dues.

14. The petitioner paid a further installment of ₹10,53,713/- on 10.09.2004. The petitioner, thereafter, deposited the balance amount of ₹31,61,138/- under cover of its letter dated 16.12.2004. The petitioner claims that it has paid the entire conversion charges for conversion from leasehold to freehold amounting to ₹52,68,564/-. The petitioner, by its letter dated 16.12.2004, also drew the attention of respondent no. 2 to Clause No. 28 of the brochure, which stated that the conveyance would be completed within three months. L& DO acknowledged the receipt of the abovementioned amount and did not express any reservation as to the charges paid by the petitioner.

15. The petitioner wrote to the L & DO on 20.06.2005 seeking information regarding the status of its application, however it received no response to its letter. Subsequently, the petitioner wrote another letter on 14.11.2005 to L & DO.

16. L & DO, vide letter dated 02.12.2005, responded to the petitioner and stated that the same was a demand letter for the charges on account of temporary regularization of breaches. L & DO now contended that the conversion of the property in question from leasehold to freehold could not be considered, as the government policy regarding grant of freehold rights to cinema sites, was still awaited.

17. The petitioner filed a detailed representation dated 08.12.2005, with reference to the conversion of the cinema plots and stated that it was awaiting conversion of its property from leasehold to freehold. The L & DO, vide its letter dated 18.01.2006, dismissed the contentions of the petitioner and stated that the petitioner was liable to pay ground rent as and when, demanded by L & DO.

18. The petitioner, aggrieved by the above mentioned letter, filed a writ petition bearing W.P. (C) No. 1842 of 2006 captioned '*Eagle Theaters & Anr. v. Union of India & Anr.*', *inter alia*, praying for issuance of directions to L & DO to convert the property in question from leasehold to freehold, pursuant to its application dated 26.02.2004.

19. The L & DO issued a notification bearing No. 24(372)/2000-CDN/121 dated 12.06.2006 and further modified its policy of conversion of properties from leasehold to freehold. The petitioner contends that the changes intimated did not have a bearing on its application as the notification clarified that it would have no bearing on the pending applications.

20. The respondents filed their counter affidavit in W.P. (C) No. 1842 of 2006, wherein they attached a letter dated 16.04.1999, which stated that market rates for hotel and cinema sites would be determined

in consultation with respondent no. 3 (The Ministry of Finance). The petitioner states that the said letter was not mentioned or referred to by L & DO in any of its earlier communications. Respondent No. 3 issued the impugned advisory dated 20.12.2006, whereby it mentioned the land rates for computing the conversion charges for conversion from leasehold to freehold of cinema and hotel sites.

21. By an order dated 21.07.2009, this Court partly allowed the petitioner's petition (W.P. (C) No. 1842 of 2006) and held that cinema sites are also eligible for conversion from leasehold to freehold, but the rates as notified were not applicable to such sites. This Court further directed that the rates for cinema and hotel sites be notified for the purpose of calculating the conversion fees, within a period of six months.

22. Aggrieved by the order dated 21.07.2009, the petitioner filed an appeal bearing LPA No. 445 of 2009 before the Division Bench of this Court. The said appeal was dismissed by an order dated 16.03.2016.

23. The National Association of Motion Picture Exhibitors, aggrieved by the classification of cinemas separately, made a representation to the Ministry of Urban Development dated 27.07.2012, requesting the Ministry to treat plots used for cinemas similarly as other commercial plots.

24. L&DO notified the conversion rates for converting cinema and hotel sites from leasehold to freehold, after a duration of 46 months, by the impugned notification on 29.05.2013.

25. On 26.08.2013, the petitioner sent a letter to the L & DO, specifically asking for the conversion of their property, claiming that it

had already paid the entire conversion fee. However, no reply was received by the petitioner. On 17.09.2014, the petitioner sent another letter with reference to the same. Thereafter, the petitioner filed the present petition challenging the impugned notifications.

Reasons and conclusion

26. The petitioners seek to challenge the impugned notification and the impugned advisory on several grounds, including that the same are discriminatory. The petitioner contends that no distinction can be drawn between commercial enterprises. It submits that no distinction between properties used for commercial purposes can be drawn on the basis that one is used to carry on the business of running a cinema and the other is used for other commercial purposes. It is earnestly contended that such classification violates Article 14 of the Constitution of India as it is, *ex facie*, arbitrary. It is also the petitioner's case that treating sites used to carry on the commercial activity of running a cinema differently from other commercial activity seeks to create a class within a class and such classification is arbitrary.

27. The aforesaid contention is unmerited. The question whether cinema sites could be treated differently from other commercial sites had been considered elaborately in the earlier round of litigation between the parties. In W.P.(C) No. 1842/2006, this Court had rejected the aforesaid contention and had noticed that cinema and hotel sites were treated differently from other commercial sites, for the purposes of calculating of unearned increase. This Court also observed that the difference between commercial leases and cinema and hotel sites was

apparent. Cinema and hotel plots command premium; they are more valuable and their market price is higher. The Court further held that it is for L & DO to determine and decide the conversion charges payable for different types of properties and it enjoys considerable flexibility and freedom to decide the said charges. The Court held, in unambiguous terms, that “*cinema and hotel sites are a different class/category and need not be covered by conversion rates fixed for commercial plots*”.

28. In view of the above, the issue whether the L & DO could treat cinema sites as different from commercial sites for the purposes of charging conversion rates is no longer *res integra*. The said issue stands covered against the petitioner by decision rendered by this Court in W.P. (C) No. 1842/2006.

29. The petitioner was aggrieved by the order passed in W.P.(C) 1842/2006 and had appealed against the same before the Division Bench of this Court (in LPA No. 445/2009 captioned *Eagle Theatres and Anr. v. Union of India and Anr.*). The Division Bench of this Court also did not accept the petitioner’s contention and dismissed the aforesaid appeal by a judgment dated 16.03.2016. The Division Bench held that the petitioners could not insist that the respondents could not make a distinction between commercial properties and properties/plots used for cinema/hotels. This Court held that it was reasonable to draw a distinction and the respondents could prescribe rates/charges for conversion of cinema plots from leasehold to freehold, which are different from rates prescribed for other commercial properties. The Division Bench also rejected the petitioner’s contention that respondents were estopped from rejecting its application for conversion

of the property in question from leasehold to freehold, as the respondents had accepted its application without reservation. The Court held that in absence of any communication accepting the petitioner's request to convert the property into freehold, no rights had accrued in favour of the petitioner.

30. Aggrieved by the said decision, the petitioner preferred a Special Leave Petition before the Supreme Court. However, that petition was also dismissed. Thus, the question whether the respondents can treat cinema plots different from other commercial sites for the purposes of conversion charges, is no longer *res integra*.

31. The essential dispute between the parties relates to the rates to be charged for conversion of the property in question from leasehold to freehold property. There is no dispute between the parties that the petitioner is entitled to conversion of the property in question from leasehold to freehold. In the counter affidavit filed on behalf of the respondents in W.P.(C) 1842-43/2006, the respondents had affirmed that "*the conversion application of the petitioners has been kept in abeyance and not rejected*". Part of Paragraph no. 3 (a to n) of the counter affidavit filed by the respondents in this regard is relevant and is set out below:-

"3. (a to n)The finalization of conversion from leasehold to freehold would be done immediately once the land rates/ conversion fee in respect of Cinema plots/ Hotel sites is decided by the Ministry of Finance. The conversion application of the petitioners has been kept in abeyance and not rejected for want of the same."

32. It is apparent from the above that the respondents concede that the petitioner's application still stands and has not been rejected. The petitioners had filed their application way back on 26.02.2004 and had enclosed therewith a demand draft for a sum of ₹10,54,213/-. In response to the said application, the respondents had issued a letter dated 12.04.2004, informing the petitioners that the property in question would be converted into freehold on payment of the full conversion fee and other Government dues. Following the receipt of the letter dated 26.02.2004, the petitioners had paid a further sum of ₹10,53,713/- under cover of its letter dated 08.09.2004. Thereafter, the petitioners had also paid remaining amount of ₹31,61,138/-. Thus, in all, the petitioner had paid a sum of ₹52,68,564/- towards conversion charges. It is relevant to note that these charges were calculated on the basis of the rates notified for commercial properties.

33. There is no dispute that the petitioner had paid the entire amount due for the property in question as computed on the basis of rates applicable for commercial properties. However, the respondents did not process the petitioner's application because according to them the rates for cinema/hotel sites had not been notified and the rates for commercial properties were not applicable to such sites. As noticed above, the said issue was a subject matter of a writ petition filed by the petitioners (W.P.(C) 1842/2006). This Court rejected the petitioner's contention that the rates notified for commercial properties are applicable for conversion of a cinema site; nonetheless, it also observed that "*the*

conversion rates applicable on the date of filing of the conversion application will be applicable, the petitioner should not be made to wait endlessly”.

34. Thus, although the petitioner’s contention that rates notified for commercial properties were applicable was rejected, this Court was of the view that the respondents were required to notify the rates for cinema sites and process the petitioners’ application. Paragraph nos. 8 and 9 of the order dated 21.07.2009 are relevant and are set out below:

“8. In the present case the petitioner had made the application for conversion way back on 26-27th February, 2004 and had deposited Rs.56,70,179/- on or before December, 2005. Even after three and a half years, the L&DO has not taken any decision till date. In the counter affidavit filed on 4th December, 2005, the plea taken by the L& DO is that the matter was being considered and was under finalization in consultation with the Finance Ministry. Though the conversion rates applicable on the date of filing of the conversion application will be applicable, the petitioner should not be made to wait endlessly.

9. In terms of the aforesaid Mandamus issued in the case of J.R. Sood (supra), the mandamus is also issued in the present case directing the respondent to notify the land rates applicable to the petitioner’s cinema/plot site and thereafter, process the petitioner’s application for conversion. The said process will be completed within a period of six months from the date on which copy of this order is received by the respondent. The writ petition is allowed to the extent indicate above. No costs.”

35. The aforesaid directions were not challenged by the respondents. They accepted the same and therefore, there can be no dispute that the respondents are required to process the petitioner's application on the basis of the land rates as applicable to cinema plot/sites notified by them subsequently. In the appeal preferred by the petitioner against the said order (LPA No. 445/2009), the Division Bench of this Court had taken note of the aforesaid directions and had also observed that the respondents had not challenged the same. The Division Bench was informed that the directions of the Single Judge had been complied with and the respondents had notified the market rates for cinema/hotel plots based on which, the conversion charges would be calculated. Before the Division Bench, the respondents contended that they were ready to comply with the directions issued by this Court. The relevant extract of the decision of the Division Bench of this Court in LPA No. 445/2009 is set out below:

“In fact, the impugned order of the learned Single Judge has directed the respondents to notify the land rates applicable for the appellant's plot and thereafter process the application of the appellant for conversion to freehold. There is no challenge by the respondents to the said direction of the learned Single Judge. In fact, we had been told that the respondents had notified the market rate for cinema/hotel plot based on which the conversion charges would be calculated. The respondents are ready to comply with the direction in the impugned order based on the newly notified market rates.”

36. Before proceeding further, it is also relevant to note that one of the contentions advanced by the petitioner before the Division Bench

was that the property in question was substantially used for commercial purpose and the cinema hall was only occupying about 20% of the area. It was contended on behalf of the petitioners that the substantial usage of the property in question (which is commercial) should be considered for the purposes of applying the conversion rates. The Division Bench did not consider this contention and observed that no such plea had been raised by the petitioners before the learned Single Judge. However, the Division Bench also examined the record and observed that “*the record shows that conversion charges were being calculated by the L&DO based on the area used by the appellant for commercial / cinema hall respectively. Hence, there is no merit in the contention.*”

37. It is, thus, an admitted position that the conversion charges have to be calculated by applying notified rates for commercial properties to the portion of the property in question, which is used for commercial purposes and the rates notified for a cinema site for the portion of the property which is utilized for running a cinema. An affidavit filed on behalf of the respondents in compliance with the directions issued by this Court indicates that the respondents have computed the area being used for commercial purposes at 1189.467 square meters and the area used for the cinema at 324.803 square meters.

38. In view of the above, there is no dispute that the conversion charges in respect of 1189.467 square meters is required to be computed on the basis of rates notified for commercial properties.

39. This Court is of the view that the directions issued by the Coordinate Bench of this Court by the order dated 21.07.2009 passed in W.P.(C) 1842/2006 should be considered in the light of the aforesaid.

Clearly, the rates as applicable for commercial properties had been notified by the respondents and the same were available on record as on 21.07.2009. The petitioner's application could not be processed only for the reason that the charges for the cinema site had not been notified and it is in this context that this Court had directed the respondents to notify the said rate and process the petitioner's application within a period of six months from the date of the said order. The respondents did not notify a separate rate for cinema sites but by the impugned notification prescribed a formula on the basis of which such rate could be computed. The petitioner claims that the said formula must be applied to determine the conversion charges for cinema sites as would be prevalent on the date of its application. In other words, since the formula uses the rates as notified for commercial properties as a variable, the conversion charges for cinema site should be determined by using the notified rates for commercial properties in the said formula. The respondents contend to the contrary.

40. This Court is of the view that although the impugned notification provides for the said formula, it may not be apposite to use the notified rates for commercial properties as applicable prior to the issuance of the impugned notification for the purposes of determining the conversion rates as applicable for cinema sites. If a conversion rate for a cinema site is to be determined on the basis of the impugned notification, the same must necessarily be the rates for commercial properties as applicable on that date. This is for the obvious reason that the conversion rates for cinema sites did not exist prior to the impugned notification. Thus the formula as specified in the impugned notification must be worked by

using the values of the variable (market rate for commercial properties) as applicable at the time of issuance of the impugned notification.

41. In terms of the affidavit filed on behalf of the respondents, the circle rate as applicable in the year 2013 is required to be taken as the market rate of the property for the purposes of computing the conversion charges. And, the circle rate as applicable for the property in question in the year 2013, was ₹19,35,000/- per square meter. Thus, according to the respondents, the conversion charges for cinema sites in the year 2013 was required to be computed on the said basis. The same being 10% of the built-up value of the property computed at that rate.

42. This Court finds no infirmity with the aforesaid view. As stated above, the conversion charges for the property in question was required to be worked out on the basis of the rates that were notified on 29.05.2013. In terms of the impugned notification, the same was the notified rates of land by the L & DO for commercial properties plus 100%; or the latest auction rate of DDA in the same/similar locality plus 50% thereof; or current market rates. The current market rates in the year 2013 would obviously be not less than the circle rates as notified for the said year. This is because circle rates are fixed by taking into account the market value of the properties. There is no scope of imputing a market rate as applicable in the year 2004 since the notification notifying the conversion charges for cinema sites was issued on 29.05.2013.

43. Having stated the above, this Court is of the view that there was no occasion for the respondents to charge conversion charges for the commercial portion of the property in question at notified commercial

rates as applicable on 29.05.2013. This is so, because there is no dispute that the petitioner's application is to be processed in terms of the scheme which expressly provides that the conversion fee would be charged/calculated based on the land rates prevailing on the date of submission of the conversion application. As noticed above, the respondents insist that the petitioner's application still stands and has not been rejected. In terms of the order passed by the Coordinate Bench of this Court on 21.07.2009 in W.P.(C) 1842/2006, the petitioner's application pending with the respondents was required to be processed by notification of the conversion rates. The conversion rates for commercial properties had already been notified and the only rate that was required to be notified was conversion rates for cinema sites. Thus, insofar as that portion of the property in question that is used for commercial purposes is concerned, the necessary land rates were already on record and there is no reason why the said rates should not be made applicable in this case. This is also relevant to note that admittedly the petitioner had paid the charges for the entire property computed on the basis of the notified rates for commercial properties. Therefore, even though approximately 20% of the property was used as a cinema and rates applicable for properties used for the said purpose were not available at the material time; the same cannot be used as a device to deprive the petitioner of availing the conversion rates as applicable on the date of his application and in terms of the conversion policy. More so, considering that the petitioner had paid the entire amount at the material time.

44. In view of the above, this Court directs the respondents to process the petitioner's application by computing the conversion charges in respect of that portion of the property which is used for commercial purposes (according to the respondents 1189.467 square meters) on the basis of rates notified for commercial properties as applicable on the date of the application and the conversion charges for the portion of the property used for cinema (324.803 sq. meters) on the basis of the rates as notified is calculated in terms of the impugned notification and on the basis of the land rates as applicable on the date of the said notification.

45. The petition is disposed of with the aforesaid directions.

April 30, 2020
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VIBHU BAKHRU, J