AGGARWAL AND MODI ENTERPRISES PVT. LTD. AND ANR. A

v.

NEW DELHI MUNICIPAL COUNCIL

AUGUST 31, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.] B

NDMC Act, 1994 : s.141(2)—Premises given on lease to run a uniplex—Non-renewal of lease after its expiry—NDMC-lessor seeking vacant possession of premises and its public auction to pursue with its resolution to run retail mall cum multiplex—High Court dismissing writ petition filed by lessee—Interference with—Held: Interference not called for as NDMC is obligated to adopt procedure by which it can get maximum possible return for such immovable property—Methodology for receiving maximum consideration in normal and fair competition would be public auction which is transparent mode of disposal of public property—Public property—Mode of disposal.. C D

Words and phrases: Expression 'normal and fair competition'—Connotation of in the context of s.141(2) of NDMC Act, 1994.

The suit premises was given on lease for particular period to appellant No.1 by the respondent-NDMC. The offer of further renewal beyond 1.10.1990 (third block) was initiated by NDMC but the same was not accepted. The offer was challenged by filing writ petition. Appellants continued in possession because of stay orders granted in writ petition and without a contract. Even the third block contained in the offer dated 2.12.1991 expired on 30.9.2000. Thus there was no subsisting lease or agreement written or oral which gave any right to the appellants to seek further renewal under the lease. On 13.11.2001, respondent passed order that the appellants were in unauthorized occupants of the premises. Against this, appellants filed writ petition. High Court dismissed the writ petition. NDMC passed a resolution dated 30.8.2000 that land on which suit premises was standing was transferred by Ministry of Urban Development to NDMC for developing multiplex buildings. E F G

In appeal to this Court, appellant contended that they have been ousted, discriminated and subjected to hostile treatment as in no other case purported

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A intention of public auction has been resorted to.

The respondent contended that after 2000 there was no agreement for lease; that one of the objectives of NDMC was to have retail mall cum multiplex; that the financial capacity of the appellants is not sufficient, they have no expertise in the intended activities and in that sense, the auction would be B the first time exercise.

Dismissing the appeal, the Court

HELD: 1. The mandate of Section 141(2) of NDMC Act, 1994 is that C any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair competition". In other words, NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property. The methodology D which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. E The courts have accepted public auction as a transparent mean of disposal of public property. [Para 22] [684-C-E]

State of UP v. *Shiv Charan Sharma,* AIR (1981) SC 1722; *Ram and Shyam Company* v. *State of Haryana,* (1985) 3 267; *Sterling Computers Ltd.* v. *M & N Publications Ltd.,* [1993] 1 SCC 445; *Mahesh Chandra* v. *Regional* F *Manager, UP Financial Corporation,* [1993] 2 SCC 279; *Pachaivappa's Trust* v. *Official Trustee of Madras,* [1994] 1 SCC 475; *Chairman and M.D. SIPCO, Madras* v. *Contromix Pvt. Ltd.,* [1995] 4 SCC 595; *New India Public School* v. *HUDA,* AIR (1996) SC 3458; *State of Kerala* v. *M. Bhaskaran Pillai,* [1997] 5 SCC 432 and *Haryana Financial Corporation* v. *Jagdamba Oil Mills,* [2002] G 3 SCC 496, relied on.

Jamshed Hormusji Wadia v. *Board of Trustees, Port of Mumbai and Anr.,* [2004] 3 SCC 214, referred to.

2. Disposal of public property partakes the character of trust and there

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is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach. [Para 23] [684-G, H] A

3. Above being the position, the judgments of Single Judge as affirmed by the Division Bench do not suffer from any infirmity to warrant interference. However, considering the long period of occupation, which is presently without legal sanction, the appellants are granted time till 31.12.2007 to deliver vacant possession to the respondent-NDMC. [Para 24] [685-A] B

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4002 of 2007.

From the final Judgment and Order dated 30.8.2005 of the High Court of Delhi at New Delhi in LPA No. 596/2003.

Ashok Desai, Vishnu Mehra, Mahesh Agarwal, Rishi Agrawala, E.C. Agrawala, Gaurav Goel and Amit Kumar Sharma for the Appellants. D

Arun Jaitely, Surya Kant, Rashmi Khanna, Jhanvi Wohra, Neeraj Kumar Sharma, Shafali Jain and Anjana Gosain for the Respondent.

The Judgment of the Court was delivered by E

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Delhi High Court dismissing the Letters Patent Appeal filed by the appellants. Challenge before the Division Bench was to the order passed by a learned Single Judge dismissing the Writ Petition filed by the appellants. Challenge in the Writ Petition was to the order dated 13.11.2001 passed by the respondent-New Delhi Municipal Council (in short 'NDMC'). By the said order, the appellants were held to be unauthorized occupants of the premises in dispute namely, that of Chanakya Cinema Complex situated in Diplomatic Enclave, New Delhi. Prayer was also to set aside the letter dated 22.1.2002 issued by the NDMC seeking the vacant and peaceful possession of the aforesaid complex. The resolution passed by the NDMC dated *28.8.2001 was* also impugned to the extent it allowed the appellants to continue in possession from 1st October, 2000 to 30th September, 2003 only. Prayer was also made F G H

A for renewal of the lease/licence of the appellants with the usual option for renewing the lease/licence on appropriate terms and conditions. It is to be noted that appellant No.1 (hereinafter referred to as the 'company') was the original lessee while appellant No.2 is the shareholder of appellant No.1-Company. The writ petition was filed by the company through one of its B Directors Shri Rajesh Khanna.

3. Learned Single Judge noted that whatever may have been the situation in the past, the basic issue was whether the terms of lease permitted the tenancy beyond 30th September, 2003 as contended by the appellants. It was held that the appellants' case was that renewal due in 2000 was to be effective C from 1st October, 2000 on mutually agreed terms. Since the terms have not been mutually arrived at, in essence parties have not agreed to renewal in 2000. Undisputedly, the appellants' case was a lease for fixed terms. The earlier two renewals were therefore of no consequence. The licence granted to appellant No.1 was from time to time and without premium. Specific periods were indicated in the terms of licence itself. The writ application was accordingly D dismissed. The order was questioned before the Division Bench.

4. After analyzing the basic issue formulated for the dispute, the Division Bench found no merit in the LPA and dismissed the same. The following observations were made by the Division Bench.

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"27. No formal licence deed was also executed and there was no unqualified acceptance to the offer contained in the NDMC's letter dated 2nd December, 1991. Therefore, in the eyes of law, no valid licence was granted for the third block i.e. 1st October, 1990 to 30th September, 2000.

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28. Be as it may, vide order dated 25th May, 2001 stay granted in CWP No. 3244/1992 was also vacated on the ground that even the period of third block had come to an end. This petition was also dismissed as withdrawn on 20th May, 2002. Even otherwise the NDMC's letter G dated 2nd December, 1991 did not contain any renewal clause. Therefore, contractually there was no entitlement to seek renewal after 30th September, 2000 and in fact there was no such lease in operation under which this right could be exercised. However, while vacating the stay vide order dated 25th May, 2001 since the Division Bench observed that request of the appellants for renewal of the licence H agreement for further period be considered, the NDMC adverted to

this aspect. Request of the appellants included allowing them to convert the cinema complex into a multiplex. Again, it was not in terms of lease that the question of 'extension' of lease period was considered. But it was the request of the appellants which was to be considered, and NDMC agreed to bestow its consideration in view of the observations of this court in its order dated 25th May, 2001. As consideration of this request was to take some time, the Council first passed resolution dated 28th August, 2001 extending the lease for a period of three years i.e. from 1st October, 2000 to 30th September, 2003 pending final decision on the proposal of the appellants to redevelop the complex as multiplex-cum-commercial center. This proposal was, thereafter, considered and vide impugned order dated 13th November, 2001 rejected the offer".

5. It was noted that though offer of further renewal beyond 1st October, 1990 (third block) was initiated by NDMC letter dated 2nd December, 1991, the response dated 5.12.1991 was not an acceptance in the eyes of law and no further licence deed/agreement was executed although *offer dated 2nd* December, 1991 clearly stipulated that the same was subject to execution of fresh agreement. The offer itself was challenged by the appellants by filing CWP No.3244/1992 clearly meaning thereby that it did not accept the said offer. They continued in possession because of stay orders granted in the writ petition; and in this manner without a contract. Even the third block contained in the offer dated 2nd December, 1991 expired on 30th September, 2000. In that sense, there was no agreement in existence and there was no subsisting lease or agreement written or oral which gave any right to the appellants to seek further renewal under the lease.

6. Though many points were urged in support of the appeal, primary stand was that true scope and ambit of Section 141(2) of the NDMC Act, 1994 (in short the 'Act') has not been kept in view and the manner in which NDMC is interpreting it, goes against the intended legislative object. In any event, the appellants have been ousted or discriminated or subjected to hostile treatment as in no other case purported intention of public auction has been resorted to.

7. The appellants had themselves suggested that they should be permitted to develop the property on the basis of the consultant's report. NDMC owns various properties but the complex in question is the only

A cinema hall it has.

8. For the purpose of renewal, the parameters are different and it cannot only be restricted to public auction. Appellants have been in occupation for long period. If ultimate object is development, the present occupants would have preference. If the scheme is acceptable to the occupants its offers
B should be accepted.

9. The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal
C and fair competition

10. In essence, it means that the lease amounts should not be less than the market value. The expression in the renewal clause on which great emphasis is led speaks of "terms and conditions to be mutually agreed upon". According to the appellants it cannot mean that one of the parties can stipulate
D unreasonable terms and conditions. In essence, the terms and conditions have to be fair. While determining the fair value the amount is what the existing tenant is required to pay. NDMC itself had required payment of Rupees two crores per year. The requirements of Section 141 (2) cannot apply to a case of renewal. It is submitted that the appellants have been spent more
E than rupees three crores after 2000. Though there has been no renewal the High Court noted that discriminatory treatment is being meted out to the appellants and, therefore, it had directed the respondent-NDMC to give instances where public auction had been resorted to.

F 11. In essence, it is submitted that the appellants should be given an opportunity first to pay the fair price and not the public auction price. The public body cannot resort to public auction just with profit making motive.

12. Learned counsel for the NDMC on the other hand submitted that initially there was a licence deed containing renewal clause. For the subsequent
G tenures also there was such a deed with renewal clause. After that no agreement or lease had been actually executed. For 18 years beginning from 1981-82 the appellants were indulging in litigation and the prayer was to set aside the licence deed. In fact, in the plaint originally filed in the suit, it was averred that the deed was executed under coercion. Similar was the plea in the subsequent suits. It is pointed out that there was no pre-emptive right.
H One of the objectives of NDMC was to have retail mall cum multi-plex. The

financial capacity of the appellants is not sufficient, they have no expertise in the intended activities. At the most, they have some experience in running a uniplex. There was no unconditional acceptance of terms offered in 1990 and no licence or agreement was executed after 1990. The writ petition was filed in 1992.

13. Several factors need to be noticed before we deal with the scope and ambit of Section 141(2).

14. What in essence the appellants are seeking for is specific performance of the purported contract without filing a suit. Admittedly, there is no renewal since long and in any event if appellants' case is accepted there is no agreement after 2003. In that sense, the auction would be the first time exercise. Undisputedly, NDMC is proposing to have multiplexes whereas the present arrangement is one of uni-plex. The reason as to why NDMC wanted to have resort to public auction is spelt out in the resolution dated 30th August, 2000. Para 2 of the resolution reads as follows:

> "During the period of Asian Games, Ministry of Urban Development transferred some plots of land to NDMC for construction and commissioning of Hotels on certain terms and conditions and later on NDMC licensed these premises for above purposes to eminent companies for long periods of 99 years subject to renewal of license fees after every 30 years. Likewise, there are other establishments, like cinema in Chankya Complex where the land was transferred long back by the Ministry of Urban Devselopment to NDMC for developing multiplex buildings. The premises have been transferred on license for particular periods. Above premises had been licensed before the enactment of NDMC Act 1994."

15. Similarly, in respect of specified group of premises with the Ministries/ Government Departments, renewal was to be done at enhanced rate of 10% p.a. or the Central PWD enhanced rates, whichever is higher.

16. Strong reliance has been placed by learned counsel for the appellants on a decision of this Court in *Jamshed Hormusji Wadia* v. *Board of Trustees, Port of Mumbai and Anr.*, [2004] 3 SCC 214, more particularly, para 14. The same reads as follows:

"The Bombay Port Trust is an instrumentality of State and hence an

A "authority" within the meaning of Article 12 of the Constitution. (See *Dwarkadas Marfatia and Sons* v. *Board of Trustees of the Port of Bombay*). It is amenable to writ jurisdiction of the court. This position of law has not been disputed by either party. The consequence which follows is that in all its actions, it must be governed by Article 14 of the Constitution. It cannot afford to act with arbitrariness or capriciousness. It must act within the four corners of the statute which has created it and governs it. All its actions must be for the public good, achieving the objects for which it exists, and accompanied by reason and not whim or caprice."

C 17. Undisputedly, there was no provision like Section 141 (2) involved in that case. The parameters of limitation in Section 141 (2) relate to public auction. Undisputedly, the appellants have participated in the public auction originally. In *Wadia's* case (supra) the tenancy continued but in the present case there is fresh auction.

D 18. For appreciating the true scope and ambit of Section 141(2), it is to be noted that by nature of the proposed changes it has to be treated as fresh transaction particularly when not only the nature of property changes but also the lease has expired. Though strong reliance was placed on a resolution dated 18.3.1999 by the appellants, it is to be noted that the said resolution E has practically no effectiveness in 2006.

19. In the order of Chairman, NDMC dated 13.11.2001 it was noted as follows:

"Chanakya Cinema complex is one of the prestigious buildings owned F by the NDMC, which is located in Chanakyapuri area on a part of land parcel measuring several acres wherein prestigious buildings such as Akabar Hotel etc. are situated.

Licence was given for running the cinema to M/s Aggarwal & G Modi Enterprises (Cinema Project) Pvt. Ltd., hereinafter referred to as the Company vide Agreement dated 03.10.1967 which was renewed from time to time and which finally expired on 30.9.2000. The licence fee last paid was fixed at Rs. 15,15,000/- per annum.

The Company is, however, still in occupation of the aforesaid H premises and has sublet various portions of the Chanakya Cinema

complex to others such as Nirulas Hotel, Jewellery shops besides permitting advertisement even inside the cinema complex to other parties at huge premiums. Besides this, they have also leased out parking lot inside and outside cinema complex. The company has also been in constant litigation with NDMC in all these years primarily questioning licence fee though it was fixed in accordance with terms of the agreement initially entered into between the parties and as per the policies of the NDMC laid down by the Council from time to time. In any event, the licence fee stands paid by company till 30.9.2000 though two matters are still pending which pertain to the revision of the licence fee. During the course of litigation, the courts had been passing interim order restraining the NDMC from taking any action against the company to dispossess them from the cinema complex but the said orders were vacated on 25.05.2001 subject to the condition that NDMC will consider the representation made in the meanwhile by company giving certain proposals to redevelop cinema complex and/ or continuation of licence in their favour for running the cinema.

In a meeting of Council held on 30th August, 2000, a decision has already been taken that the present term of licences of hotels/cinemas and other similar commercial complexes, shall not be renewed on the expiry of the present term and fresh licence shall be as per the provisions of Section 141(2) of NDMC Act, 1994.

With a view to comply the directions of the Hon'ble High Court, feasibility of developing the property as Multiplex as proposed by the company was also considered by NDMC. We also decided to give personal hearing to an authorized representative of the company before disposing of their representation dated 05.04.2000 and 14.03.2001. Shri Aditya Khanna & Vikas Jalan appeared before me personally on 17.10.2001 and reiterated the submissions made in the representations i.e.

1. To renew the licence of the cinema complex on the existing terms and/or;

2. To permit the company to develop the cinema complex in a Multiplex by investing their own funds and assured the Council that they will be in a position to pay Rs.1.80 crores per annum as licence fee.

A 20. It is to be noted that the lease deed prior to 1994 was to be renewed in the light of 1994 Act. That being so, the resolution dated 30.8.2000 as quoted above has certain significant relevance.

21. Section 141(2) of the Act reads as follows:

B "(2) The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition."

C 22. The mandate of Section 141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair competition". In other words, NDMC is obligated to adopt the procedure by which it can get maximum possible return/ D consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities E while giving grant for disposing of public property. The courts have accepted public auction as a transparent mean of disposal of public property. (See *State of UP* v. *Shiv Charan Sharma,* AIR (1981) SC 1722, *Ram and Shyam Company* v. *State of Haryana,* (1985) (3) 267, *Sterling Computers Ltd.* v. *M & N Publications Ltd.,* [1993] 1 SCC 445, *Mahesh Chandra* v. *Regional Manager, UP Financial Corporation,* [1993] 2 SCC 279, *Pachaivappa's Trust* v. *Official* F *Trustee of Madras,* [1994] 1 SCC 475, *Chairman and M.D. SIPCO, Madras* v. *Contromix Pvt. Ltd.,* [1995] 4 SCC 595, *New India Public School* v. *HUDA,* AIR (1996) SC 3458, *State of Kerala* v. *M. Bhaskaran Pillai,* [1997] 5 SCC 432 and *Haryana Financial Corporation* v. *Jagdamba Oil Mills* [2002] 3 SCC 496.

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23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond H reproach.

24. Above being the position, the judgments of learned Single Judge as affirmed by the Division Bench do not suffer from any infirmity to warrant interference. The appeal is sans merit, deserves dismissal which we direct. However, considering the long period of occupation, which is presently without legal sanction, the appellants are granted time till 31st December, 2007 to deliver vacant possession to the respondent-NDMC. A B

25. We have not expressed any opinion on the aspect relating to dues of the appellants to the NDMC, as they are stated to be pending adjudication in other disputes.

D.G. Appeal dismissed. C