

CASE DETAILS

LAL BAHADUR SHASTRI EDUCATIONAL SOCIETY & ANR.

v.

DELHI DEVELOPMENT AUTHORITY & ORS.

(Civil Appeal No. 5647 of 2023)

SEPTEMBER 05, 2023

[A. S. BOPANNA AND PRASHANT KUMAR MISHRA, JJ.]

HEADNOTES

Issue for consideration: Claim for payment of interest on refund of the amount deposited by the appellants-charitable institutions with the respondent to avail the benefit of the construction based on additional FAR, if justified.

Interest – Claim for, on refunded amount – Propriety:

Held: On facts, as on the date when the writ petition was filed and the petitioner had voluntarily offered to deposit the amount, the amount was to be paid and recoverable under the notification dated 10.10.2008 and 23.12.2008 if the benefit of additional FAR was to be availed – Petitioners being desirous of availing the same and to proceed with the construction on obtaining the Sanctioned Plan in-curred the expenditure by offering to deposit the amount and avail the benefit instead of awaiting adjudication and thereafter availing – Thus, when as on the date the deposit was made, the notification remained valid and even subsequently there is no declaration that the notification and the demand made is illegal, but through the subsequent notification an exemption was granted by the respondents themselves to a certain category of institutional plots to avail additional FAR without levying such charges – Thus, the circumstances in which the deposit was made is not in a situation where the appellant suffered any loss due to the ‘Act of Court’ – Further, insofar as the respondent is concerned, the notification providing for additional FAR charges was in force on the date when the deposit was made – Even though in the interim order dtd.07.05.10 passed by the High Court there was an indication that the question of refund of

amount with interest would be examined at the stage of conclusion of the writ petitions, on facts, when there was no adjudication and determination with regard to the right of the appellant and a declaration that the amount was illegally demanded and retained by the respondent, either the direction to pay interest or to compensate in any other manner for the *pendente lite* period would not arise. [Paras 13 and 14]

Contempt petition – Scope – Amount refunded:

Held: In a circumstance where subsequently the amount has been refunded and the contempt, if any, to that extent is purged, the ultimate conclusion to dispose of the contempt petition by the High Court is justified – No error committed – However, insofar as the contention relating to the retention of the money belonging to the appellant in the second of the cases herein subsequent to the expiry of the period indicated in the order dated 27.08.2012 passed in W.P. (C) No.2823 of 2010 before the High Court and as to whether such retention has caused loss to the appellant and conversely the benefit derived from the same by the respondent, if any, and the manner in which the same is to be compensated or not as also the rate at which it is to be done are matters which would have to be considered in appropriate proceedings and in accordance with law wherein the parties will avail all opportunities to put forth their contentions and place material – Therefore, in a similar manner in which the appellants in the first of the appeals have availed their remedy, it would be open for the appellant in the second of the appeals also to avail the remedy before the appropriate forum, in accordance with the law – All contentions of both parties in that regard are left open. [Para 16]

LIST OF CITATIONS AND OTHER REFERENCES

Central Bank of India v. Ravindra & Ors. (2002) 1 SCC 367 : [2001] 4 Suppl. SCR 323; *South East-ern Coalfields Limited v. State of Madhya Pradesh and Ors.* (2003) 8 SCC 648 : [2003] 4 Suppl. SCR 651; *Rajasthan Housing Board & Ors. v. Krishna Kumari* (2005) 13 SCC 151; *Food Corporation of India and Anr. v. M/s Seil Ltd. & Ord.* (2008) 3 SCC 440 : [2008] 1 SCR 663 – held not applicable.

Prithawi Nath Ram v. State of Jharkhand & Ors. (2004) 7 SCC 261 :
[2004] 3 Suppl. SCR 740 – relied on.

**OTHER CASE DETAILS INCLUDING IMPUGNED
ORDER AND APPEARANCES**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5647 of 2023.

From the Judgment and Order dated 31.10.2013 of the High Court of Delhi at New Delhi in WPC No. 3099 of 2010.

With

Civil Appeal No. 5648 of 2023.

Appearances:

Ms. Meenakshi Arora, S. Niranjan Reddy, Sr. Advs., Ankit Jain, Mohit D. Ram, Ms. Monisha Handa, Bhagirath N. Patel, Anubhav Sharma, Kamal Gupta, Harshvardhan Jha, Mrs. Yugandhara Pawar Jha, Abhishek Chaudhary, Sparsh Aggarwal, Aman Pathak, Advs. for the Appellants.

Kailash Vasdev, Sr. Adv., Nitin Mishra, Ms. Mitali Gupta, Ishaan Sharma, Ms. Shagun Sabharwal, Ms. Niharika Ahluwalia, Ms. Binu Tamta, Ms. Namita Choudhary, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

A.S. BOPANNA, J.

Delay condoned.

I.A. No.159570/2019 is allowed.

1. Leave granted in both matters.

2. The common issue arising for consideration in these appeals is with regard to the claim for payment of interest on refund of the amount which had been deposited by the appellants with the respondent – Delhi Development Authority to avail the benefit of the construction based on additional FAR. The appellants in both these appeals are charitable institutions. The

respondent through the notification dated 10.10.2008 issued in exercise of the powers conferred by Section 57 of the Delhi Development Act, 1957 had notified the fixation of rates to be applied for use conversion, mixed land use and other charges for enhanced FAR arising out of MPD 2021. In respect of the institutional plots also, the additional FAR charges were provided therein.

3. The appellant in the Civil Appeal arising out of SLP(C) No.31548 of 2014 had assailed the said notification insofar as an imposition of the additional FAR charges, in W.P.(C) No.3099 of 2010 before the High Court. The appellant in Civil Appeal arising out of SLP (C) No.2009 of 2015 had assailed the same, in W.P. (C) No.2823 of 2010 before the High Court of Delhi. In the said writ petitions, application seeking interim orders had been moved. Towards consideration of the said application for grant of interim relief to permit sanction of Revised Plan so as to enable construction and completion, the appellants offered to deposit the disputed amount being the amount demanded towards additional FAR charges which had been assailed in the writ petition. The High Court having accepted the suggestion permitted the appellant to pay the said amount and avail the benefit. The appellants having deposited, availed the benefit and proceeded with the construction.

4. During the pendency of the writ petition, the respondent issued a notification dated 17.07.2012 whereby an amendment was made in para 6(g) to the notification dated 10.10.2008 and 23.12.2008 which were assailed before the High Court. By such amendment, it was provided that no additional FAR charges would be recovered from Educational Societies/ Health Care and Social Welfare Societies having Income Tax Exemption. The said benefit became available to the appellants herein and as such the writ petitions pending before the High Court did not warrant an adjudication on the disputed questions. Therefore, the High Court in all the writ petitions which were pending before it had taken note of the change made through the subsequent notification and had accordingly disposed of the analogous matters in W.P.(C) No.8572 of 2009 and other petitions through the order dated 20.07.2012. In the said proceedings the deposit which had been made either before the High Court or by way of bank guarantees were permitted to be withdrawn.

5. In that background the writ petitions filed by the appellants herein before the High Court were also disposed of. We take note of the order dated 31.10.2013 in the case of the appellant in first of the appeals herein, whereby the High Court having extracted the earlier order had disposed of the writ petition. Insofar as the amount deposited with the respondent, it was directed that the refund be made within the period of eight weeks but the prayer for payment of interest was declined. It is in that light the appellant is before this Court.

6. At this juncture it is relevant to note that in the case relating to appellant in the second of the appeals herein, the writ petition in W.P.(C) No.2823 of 2010 had been disposed of in similar terms through the order dated 27.08.2012 and the deposited amount was directed to be released. In that view, an application was taken out by the said appellant herein on the aspect relating to interest and had sought refund of the amount with the interest at 15% per annum. The High Court having considered the matter was of the opinion that since the writ petitions were not ultimately adjudicated, the claim for interest would not be justified. The appellant in the second of the above noted cases had therefore assailed the said order passed by the High Court in W.P.(C) 2823 of 2010, before this Court in SLP (C) Nos.7907-7908 of 2013. The said SLP came to be dismissed on 22.02.2013. In that view, insofar as the claim for pendente lite interest being declined insofar as the appellant in the second of the above-noted matters, it has attained finality.

7. In the above backdrop we have heard Ms. Meenakshi Arora, learned senior counsel and Shri S. Niranjan Reddy, learned senior counsel for the respective appellants, Shri Kailash Vasdev, learned senior counsel, and Ms. Niharika Ahluwalia, learned counsel for the respondents and perused the appeals papers.

8. In the light of the contentions put forth and the sequence of events mentioned above being kept in perspective, the matter requires examination. At the outset, it would be appropriate for us to take note of the legal position on which the emphasis was laid by the learned senior counsels for the appellants by placing the decisions of this Court for our consideration.

- (i) The decision of the Constitutional Bench of this Court in the case of ***Central Bank of India vs. Ravindra & Ors.*** (2002) 1 SCC 367 is relied upon with specific reference to para 37 wherein the purport

of the terms ‘interest’ as compensation has been taken note of in the context of the definition of interest being compensation fixed by agreement or allowed by law for the use or retention of money or for the loss of money by one who is entitled to its use. In that regard, we note that the consideration in the said proceedings was predicated in the context of the phrases ‘the principal sum adjudged’ and ‘such principal sum’ in the background of the provision contained in Section 34 of the Code of Civil Procedure, 1918.

- (ii) The decision of this Court in ***South Eastern Coalfields Limited vs. State of Madhya Pradesh and Ors.*** (2003) 8 SCC 648 with specific reference to paras 26 and 28 is placed to emphasize the principle of restitution whereby the parties are put to the same position and to contend that no one shall suffer by an Act of the Court which was considered and applied in the said case for the benefit of grant of interest.
- (iii) The decision in the case of ***Rajasthan Housing Board & Ors. vs. Krishna Kumari*** (2005) 13 SCC 151 is placed with reference to para 5 wherein, even while providing benefit to the allotting authority and denying relief to the allottee to waive interest over the arrears, this Court had emphasized the legal maxim ‘Actus Curiae Neminem Gravabit’.
- (iv) Further on the same principle of application of the Principle of Actus Curiae Neminem Gravabit and providing relief to the party altering the position during the pendency of the litigation, the decision in the case of ***Food Corporation of India and Anr. vs. M/s Seil Ltd. & Ors.*** (2008) 3 SCC 440 with specific reference to para 25 is placed for our consideration.

9. In that backdrop while getting back to the facts on hand, in order to consider whether the benefit of the legal proposition enunciated in the above cases would be applicable to the instant facts, what would be relevant to be taken note herein and which has in fact been emphasized by the learned senior counsel for the appellant is the interim order dated 07.05.2010 passed by the High Court in W.P.(C) No.3099 of 2010, on C.M. No.6215 of 2010, an application filed seeking for interim order in the said writ petition.

10. In the writ petition, it is recorded that notice was issued to the respondents and insofar as the application for interim order it would indicate that the notice was accepted by the counsel for the respondents therein but there was no hearing of both sides, in that sense. It would be relevant to extract the portion as contained in the order relating to deposit of the amount:

“The petitioner states that he will deposit the disputed amount but in case excess amount is found to be deposited at the stage of final decision in the writ petition, the same should be refunded to the petitioners by the respondents with appropriate interest.

We are of the view that the aforesaid is a fair suggestion and **in case the petitioners succeed in the petition, the question of refund of amount with interest would be examined at that stage.** On deposit of the amount and on completion of requisite formalities by the petitioners, the respondents will proceed to grant Revised Sanction Plan as well as the Completion Certificate.”

(Emphasis Supplied)

11. If the above-noted order is deciphered, it indicates that the amount to be deposited was voluntarily offered to be done on behalf of the appellant. Since obviously the learned counsel for the respondent had taken notice just then and no submission on his behalf has been recorded the respondents at that stage had not played any part. Further, there is no indication that the Court had insisted for the deposit. It is no doubt true, it is however indicated in the order that the said suggestion was accepted as a fair one by the Court and it was also observed that the question of the refund of the amount with interest would be examined at that stage in case the petitioners succeed in the petition. If the said aspects are kept in view and the nature of the issues raised before the High Court in the writ petition is taken note of, the prayer in the writ petition was for quashing the demand dated 09.03.2010 raising the demand for Rs. 7,67,79,600/- . The basis to challenge such demand is also due to the fact that the notification dated 10.10.2008 and 23.12.2008 issued by the respondent due to which such demand was raised was also assailed and sought to be quashed as not being sustainable. Therefore, it is evident that the quashing of the demand for the amount would only follow if the notification imposing the additional FAR charges was quashed by adjudicating it to be unsustainable and consequently the demand not being in accordance with the law.

12. Pending consideration of the adjudication with regard to the validity of the said notifications dated 10.10.2008 and 23.12.2008, the respondents through a subsequent notification dated 17.07.2012 had exempted certain categories from the imposition of additional FAR charges and had indicated in the said notification that the other contents of the notification dated 23.12.2008 will remain unchanged. Since, through the said notification the benefit was available to the writ petitioners, the writ petitions insofar as the challenge to the notifications dated 10.10.2008 and 23.12.2008 not being necessary to be considered on merits had been disposed of and the amount which had been deposited was directed to be refunded.

13. Therefore, in the present facts as on the date when the writ petition was filed and the petitioner had voluntarily offered to deposit the amount, the amount was to be paid and recoverable under the notification dated 10.10.2008 and 23.12.2008 if the benefit of additional FAR was to be availed. The petitioners being desirous of availing the same and to proceed with the construction on obtaining the Sanctioned Plan had proceeded at ‘breakneck’ speed and had incurred the expenditure by offering to deposit the amount and avail the benefit instead of awaiting adjudication and thereafter availing. In that view, when as on the date the deposit was made, the notification remained valid and even subsequently there is no declaration that the notification and the demand made is illegal, but through the subsequent notification an exemption has been granted by the respondents themselves to a certain category of institutional plots to avail additional FAR without levying such charges, it is not the case where any of the principles as enunciated in the above-noted decisions would apply herein.

14. As noted, the circumstances in which the deposit was made is not in a situation where the appellant has suffered any loss due to the ‘Act of Court’ in the sense it ought to be construed. Further, insofar as the respondent is concerned, the notification providing for additional FAR charges was in force on the date when the deposit was made. Even though in the interim order dated 07.05.2010 passed by the High Court there is an indication that the question of refund of amount with interest would be examined at the stage of conclusion of the writ petitions, in the circumstances as has unfolded and noted above, when there was no adjudication and determination with regard

to the right of the appellant and a declaration that the amount was illegally demanded and retained by the respondent, either the direction to pay interest or to compensate in any other manner for the *pendente lite* period would not arise. However, insofar as the non-refund of the amount for a longer period even after the expiry of the period permitted by the Court, admittedly the appellant in the first of the above cases has initiated separate proceedings. In that regard, all contentions are kept open and none of the observations made in deciding the issue herein would prejudice the parties in seeking adjudication of their contentions therein.

15. Apart from the fact that the appellant in the second of the appeals has failed in the proceedings before this Court in an earlier SLP insofar as the *pendente lite* interest, in view of the conclusion above, the same would apply to their case as well and for the subsequent period they may avail their remedy. Insofar as the order impugned in the second of the above appeals, it is seen that the said order dated 15.10.2009 is arising out of the contempt proceedings. Contempt Case No.326 of 2020 was filed alleging wilful disobedience of the order dated 27.08.2002 whereby a direction had been issued to refund the deposit which had been made. In that light, the appellant had sought for a direction, to be compensated. The High Court while disposing of the contempt petition has taken into consideration that there was no adjudication on merits and, therefore, the payment of interest or compensation would not arise.

16. Be that as it may, as rightly contended by the learned counsel for the respondent by placing reliance on the decision of this Court in the case of *Prithawi Nath Ram vs. State of Jharkhand & Ors.* (2004) 7 SCC 261 relating to the scope of the proceedings in a contempt petition and in a circumstance where subsequently the amount has been refunded and the contempt, if any, to that extent is purged, the ultimate conclusion to dispose of the contempt petition by the High Court, in any event, is justified and we see no error committed so as to interfere. However, insofar as the contention relating to the retention of the money belonging to the appellant in the second of the cases herein subsequent to the expiry of the period indicated in the order dated 27.08.2012 passed in W.P. (C) No.2823 of 2010 before the High Court and as to whether such retention has caused loss to the appellant and conversely the benefit derived from the same by the respondent, if any, and

the manner in which the same is to be compensated or not as also the rate at which it is to be done are matters which would have to be considered in appropriate proceedings and in accordance with law wherein the parties will avail all opportunities to put forth their contentions and place material. Therefore, in a similar manner in which the appellants in the first of the above appeals have availed their remedy, it would be open for the appellant in the second of the above appeals also to avail the remedy before the appropriate forum, in accordance with the law. All contentions of both parties in that regard are left open.

17. The appeals are disposed of in the above terms, without any order as to costs.

18. Pending application, if any, shall stand disposed of.

Headnotes prepared by:
Divya Pandey

Appeals disposed of.