

City Montessori School

v.

State of U.P. & Ors.

(Civil Appeal No. 8355 of 2024)

02 August 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

The issue pertains to rights of the parties to a lease of a Plot vested with the State Government and the manner in which the said rights can be transferred.

Headnotes[†]

State Largesse – Grant of – Method to be adopted:

Held: Rights of the State as the owner and lessor of a Plot can be transferred only by adopting a fair and transparent process by which the State fetches the best possible price – Rights of the State as the lessor can only be sold by a public auction or by any other transparent method by which, apart from the lessee, others too, get a right to submit their offer – Selling the plot at a nominal price will not be a fair and transparent method and shall be arbitrary and violative of Article 14 of the Constitution of India. [Para 9]

Lease – Transfer of Property Act, 1882 – Section 109 – Rights of Lessee – Sale of Plot by the Lessor – Consequence of:

Held: In case of the sale of a leasehold plot by the lessor, the rights of the lawful lessees do not get affected, as their tenancy will be attorned to the purchaser in view of Section 109 of the Transfer of Property Act, 1882. [Para 9]

Case Law Cited

Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Others [\[2011\] 5 SCR 77](#) : (2011) 5 SCC 29 – relied on.

List of Acts

Constitution of India, 1950; Transfer of Property Act, 1882.

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Digital Supreme Court Reports**List of Keywords**

State Largesse; Leasehold land; Auction; Free hold rights; Section 109 of Transfer of Property Act, 1882.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8355 of 2024

From the Judgment and Order dated 25.09.2014 of the High Court of Judicature at Allahabad, Lucknow Bench in CWP No. 2101 of 1996

With

Civil Appeal No. 8356 of 2024

Appearances for Parties

Ravindra Raizada, Sr. Adv./A.A.G., Jayant Bhushan, Vinay Navare, Sr. Advs., Ashim Vachher, Shantanu Kumar, Pritish Kumar, Vaibhav Dabas, R. P. Gupta, Shaurya Sahay, Aditiya Kumar, Abhishek Chaudhary, Honey Jain, Ashish Batra, Advs. for the appearing parties.

Judgment / Order of the Supreme Court**Judgment**

Abhay S. Oka, J.

1. Leave granted.

FACTUAL ASPECTS

2. These appeals take an exception to the same judgment of a Division Bench of Allahabad High Court. The dispute is essentially between the City Montessori School (for short, 'the school') and one Shri M.M. Batra regarding plot no.90-A/A-754, measuring 2238.5 sq. ft. situated at Maha Nagar, Lucknow (for short, 'the plot'). It is not in dispute that the plot vests in the State Government. By a lease dated 4th January 1961, the Hon'ble Governor of Uttar Pradesh, through Nazul Officer, Lucknow, granted the lease of the plot to one Gursharan Lal Srivastava which was described as a 'garden lease.' A separate lease was granted on the same day in respect of the building on the plot. By a registered sale deed dated 26th June 1962, Gursharan Lal Srivastava sold his leasehold interest in the plot to Shri M.M. Batra (the alleged lessee). Rajat Batra and Raman

City Montessori School v. State of U.P. & Ors.

Batra are the sons of the alleged lessee. It appears that the plot is a Nazul property. Several Government Orders (G.Os.) have been issued, either providing for the conversion of leasehold lands into freehold or auction thereof.

3. The alleged lessee filed a Civil Suit in the year 1994 in the Civil Court. The suit was filed to protect possession. Later on, by amendment, he sought the benefit of G.O. of 17th February 1996 and 1st December 1998, which permitted the conversion of Nazul properties given on lease into freehold properties. On 13th March 1995, an auction notice was published for the auction of various Nazul lands, including the plot. The school and the sons of the alleged lessee submitted their bids. The school was found to be the highest bidder and therefore, the bid offered by the school was accepted. As provided in the auction notice/tender notice, the tender document had to be purchased by 23rd March 1995 since 24th March 1995 was a holiday, and the auction was fixed for 25th March 1995. It was alleged that the school purchased the tender document on 25th March 1995. The acceptance of the school's bid was cancelled. However, the authorities again called upon the school to deposit the bid amount. Ultimately, on 20th June 1996, the State Government cancelled the bid offered by the school on the ground of the failure to purchase the tender form within the outer limit provided in the tender notice. While cancelling the school's bid, the State Government decided to accept the bid offered by the sons of the alleged lessee.
4. Aggrieved by the action of the rejection of the bid, the school filed a Writ Petition under Article 226 of the Constitution of India before the Allahabad High Court. The impugned judgment is the final judgment in the said Writ Petition. By an interim order dated 18th July 1996, Allahabad High Court directed the status quo to be maintained with respect to the plot. Also, it directed that the Lucknow Development Authority (for short, 'the authority') shall not execute the sale deed in favour of the sons of the alleged lessee. The school applied for impleadment in the suit filed by the alleged lessee. The said application was rejected. However, on 3rd February 2011, the school impleaded the alleged lessee as a party to the Writ Petition. The alleged lessee's suit was dismissed by the Civil Court by judgment dated 24th July 2000. The alleged lessee preferred an appeal against the decree of dismissal of the suit before the High Court. By recording statements of the counsel representing the alleged lessee and the authority, a

Digital Supreme Court Reports

Division Bench of the High Court, by order dated 6th December 2000, disposed of the appeal by directing the authority to expeditiously consider the application of the alleged lessee for conversion of his leasehold rights into freehold in accordance with law. The High Court also directed that the alleged lessee can be dispossessed only in accordance with the law. However, the High Court did not interfere with the findings recorded by the Trial Court on merits.

5. Based on the application made by the alleged lessee on 26th November 2001, the Special Nazul Officer of the authority converted the plot into freehold subject to the alleged lessee depositing a total amount of Rs.67,022.21. On the basis of the said order, on 29th January 2002, a deed of freehold was executed on behalf of the Governor of the State in respect of the said plot in favour of the alleged lessee. After becoming aware of the deed and conversion of the plot during the pendency of the Writ Petition, the school applied for amendment of the Writ Petition seeking to incorporate the additional prayers for challenging the order dated 20th June 1996 of cancellation of the highest bid of the school, for challenging the order of conversion in favour of the alleged lessee and consequently, the deed dated 29th January 2002. There is some controversy about whether the amendment was allowed. By the impugned judgment, the High Court held that the order of conversion from leasehold to freehold was illegal as even the market value of the plot was not ordered to be paid by the alleged lessee. Therefore, the High Court held that the deed executed in favour of the alleged lessee was a nullity. However, the High Court kept open the question of whether the plot could be subjected to a fresh auction. Both the school and the alleged lessee have filed these two appeals.

SUBMISSIONS

6. Shri Vinay Navare, the learned senior counsel appearing for the school, has taken us through the relevant documents. He also pointed out that the plot is a garden plot, which is adjacent to the land held by the school. He pointed out that the High Court has not accepted that the bid offered by the school could have been cancelled on the ground that the school purchased the tender document on the last date. The learned counsel submitted that the order dated 6th December 2000 passed by the Allahabad High Court in the appeal filed by the alleged lessee against dismissal of his suit is a collusive order. He submitted that the Trial Court decided all issues framed

City Montessori School v. State of U.P. & Ors.

against the alleged lessee except the issue of his possession. The learned counsel urged that the lease claimed by the alleged lessee is not in subsistence. He pointed out that the alleged lessee is a defaulter who has not paid rent for a long time. He submitted that, in any case, the original lessee could not have transferred the leasehold rights regarding the plot to the alleged lessee. The learned senior counsel, therefore, submitted that, firstly, the order of cancellation of the highest bid offered by the school was bad in law. Secondly, during the pendency of the Writ Petition, the authority had no right to consider the prayer made by the alleged lessee for conversion. He submitted that the conversion order and consequent deed executed in favour of the alleged lessee are entirely illegal. He would, therefore, submit that the order of acceptance of the bid offered by the school be passed.

7. Shri Jayant Bhushan, the learned counsel representing the alleged lessee and his sons, submitted that the order of conversion was passed in favour of the alleged lessee in terms of the prevailing policy of the State Government and there is nothing illegal about the same. He submitted that the deed executed based on the order of conversion is legal and valid. He submitted that the school belatedly made the application for amendment of the Writ Petition for challenging the conversion and for the sale deed, which was never allowed. Therefore, the High Court committed gross illegality by setting aside the order of conversion and the sale deed executed by the authority in favour of the alleged lessee. He submitted that there was a delay on the part of the school in purchasing the tender document, and as the same was purchased after the expiry of the outer limit provided in the tender notice, the school's bid could not have been accepted. He urged that, as the alleged lessee has been in possession for decades, the conversion order cannot be faulted. Shri Ravindra Raizada, learned senior counsel representing the State Government, stated that the present legal position is that such leasehold plots cannot be converted to freehold and cannot be auctioned.

CONSIDERATION OF SUBMISSIONS**GRANT OF STATE LARGESSE**

8. Before we consider the rival contentions, the legal position regarding the State largesse succinctly laid down by this Court in the case of **Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh**

Digital Supreme Court Reports

and Others¹ needs to be reiterated. In paragraphs 65 to 67 of the said decision, this Court held thus:

“65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. **Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner** and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. **Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.**

City Montessori School v. State of U.P. & Ors.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/ organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/ organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.”

(emphasis added)

9. In the facts of the case, there is no dispute that the plot vests in the State. Even assuming that the alleged lessee has leasehold rights concerning the plot, the rights of the State as the owner and lessor can be transferred only by adopting a fair and transparent process by which the State fetches the best possible price. In case of the sale of a leasehold plot by the lessor, the rights of the lawful lessees do not get affected, as their tenancy will be attorned to the purchaser in view of Section 109 of the Transfer of Property Act, 1882. Therefore, the rights of the State as the lessor can only be sold by a public auction or by any other transparent method by which, apart from the lessee, others too get a right to submit their offer. Selling the plot to its alleged lessee at a nominal price will not be a fair and transparent method at all. It will be arbitrary and violative of Article 14 of the Constitution of India.

ISSUE OF AMENDMENT OF THE WRIT PETITION

10. There is a controversy raised by the alleged lessee about whether the application to amend the Writ Petition made by the school to incorporate the challenge to the conversion and the deed was allowed. However, on page 12 of the impugned judgment, the High Court recorded the submission of the learned counsel for the alleged

Digital Supreme Court Reports

lessee that there was a delay on the part of the school in challenging the order of conversion. The submissions recorded in the impugned judgment show that the parties proceeded on the footing that there was a challenge to the conversion order. The counter filed by the alleged lessee before the High Court shows that it refers to the amended Writ Petition and paragraph 45 of the counter raises a contention of the delay in challenging the conversion deed. Therefore, the argument that the amendment was not allowed need not detain us.

ON MERITS

11. Coming back to the facts of the case, the plot was put to auction in 1995. The Special Nazul Officer accepted the highest bid offered by the school of Rs. 8,51,043.15, out of which a sum of Rs. 85,105 was paid along with the tender. We have already stated the facts leading to the cancellation of the highest bid of the school and acceptance of the second-highest bid of the sons of the alleged lessee. It is important to note that the Special Nazul officer passed an order on 26th November 2001, by which the consideration for converting leasehold rights into freehold rights was fixed at Rs.67,022.21. This amount was less than 10% of the bid offered by the school about 16 years before the order dated 26th November 2001. On the face of it, this cannot be a fair and transparent process of transferring the State's ownership rights.
12. We have perused the judgment of the Civil Court dated 24th July 2000 which dismissed the suit filed by the alleged lessee. The Trial Court held that the alleged lessee was not entitled to the benefits of G.Os. dated 17th February 1996 and 1st December 1998. In the suit, the alleged lessee sought conversion from leasehold to freehold based on these two G.Os. All findings were recorded against the alleged lessee except the finding that he was in possession of the plot. Being aggrieved by the decree of dismissal of the suit, the alleged lessee preferred First Appeal No.81 of 2000. The appeal was disposed of by the order dated 6th December 2000. The said order makes an interesting reading. The High Court heard the counsel for the alleged lessee, the authority, and the State Government. The first paragraph refers to the appearances of the learned counsel. The second paragraph gives the facts in brief. The same paragraph also notes that the alleged lessee sought the relief of mandatory injunction for the grant of conversion in terms of the G.Os. dated

City Montessori School v. State of U.P. & Ors.

17th February 1996 and 1st December 1998 and that the Trial Court declined to grant the said relief. The further paragraphs of the said order, which are relevant, read thus:

“.....

During the course of hearing learned Counsel for the Parties agreed that in case the Plaintiff makes an application to the Vice Chairman of the Lucknow Development Authority, Respondent No. 3, in terms of the Government Orders dated 17.2.1996 and 1.12.1998, the same shall be considered by the Vice-Chairman, Lucknow Development Authority in accordance with law expeditiously. It was further stated on behalf of the Respondents that they shall not evict the Plaintiff from the property in question except in accordance with law.

In this view of the matter, although we do not consider it expedient to interfere in the findings recorded in the Trial Court, yet in view of the statements made at Bar, the Vice-Chairman, Lucknow Development Authority has to consideration application of the Plaintiff for conversion of leasehold into Freehold rights in respect of the Garden Lease in question and pass appropriate order expeditiously and it goes without saying that the Respondents entitled to evict the Plaintiff-Appellant, as stated by them only in accordance with law.

Subject to these observations, the Appeal is dismissed. No order as to costs.”

(emphasis added)

13. Thus, only the statements of the parties were recorded, and it was observed that the authority would have to consider the application made by the alleged lessee for the conversion of leasehold rights into freehold rights and to pass appropriate orders expeditiously. It is important to note that the High Court specifically recorded that it did not interfere with the findings recorded by the Trial Court. Subject to the direction to consider the application made by the alleged lessee to the authority for conversion in accordance with the law, the appeal preferred by the alleged lessee was dismissed. There was no binding order passed by the High Court giving a mandate

Digital Supreme Court Reports

to the authority or to the State Government to grant the application which the alleged lessee may make for conversion. On the contrary, the High Court upheld the decree passed by the Trial Court, which held that the alleged lessee was disentitled to the benefit of G.Os. issued in 1996 and 1998.

14. The order dated 26th November 2001 does not refer to any G.O. under which conversion was permitted. The conversion was allowed against payment of the consideration, which was less than 10% of the price offered in a public auction, 16 years back. Therefore, we agree with the High Court that the order was illegal. There is another aspect of the matter. When the aforesaid order and the order of conversion were passed, the Writ Petition filed by the school was pending. The alleged lessee's sons were parties to the Writ Petition. After hearing all the parties, on 18th July 1996, an interim order was passed in the Writ Petition directing maintenance of the status quo and restraining the State Government and the authority from executing a sale deed in favour of the alleged lessee's sons. It was the duty of the State Government and the authority who were parties to the appeal preferred by the alleged lessee to point out to the Court that a Writ Petition filed by the school arising out of the auction of the plot was pending. The said fact was suppressed from the High Court by all the parties to the appeal. When the Writ Petition was pending, the propriety demanded that before directing conversion in favour of the alleged lessee, the State Government should have applied to the High Court, to seek permission to do so, in the pending Writ Petition. That was not done. The alleged lessee cannot plead ignorance about the knowledge of the Writ Petition as the interim orders were passed in the Writ Petition after hearing his sons. The alleged lessee and his sons were together, and the same counsel represented them even before this Court. The order passed by the State Government of conversion is a covert method of defeating the High Court's interim order of 18th July 1996.
15. Now, we come to the school's argument to restore the earlier order of 1995 accepting the bid offered by it. We must note that more than 20 years have passed since the auction. During this period, the property prices in Lucknow must have been substantially increased. Even assuming that the learned senior counsel appearing for the school is right in contending that illegality has been committed by

City Montessori School v. State of U.P. & Ors.

setting aside the highest bid of the school, now it will be unjust to restore the order of acceptance of the bid passed in favour of the school, about 20 years back. If, at this stage, the school is allowed to purchase the plot at the price offered by the school 20 years back, the sale will not be fair, as it is a property of the State.

16. Therefore, in our view, the impugned judgment of the High Court, by which the order of conversion and the deed of conversion in favour of the alleged lessee were set aside, calls for no interference.
17. We, therefore, dismiss both the appeals. Whether the lease claimed by the alleged lessee is valid and subsisting and whether the plot can be put to auction are the questions left open which can be agitated by the parties in appropriate proceedings. However, the alleged lessee shall not be dispossessed without due process of law. It is for the State Government to decide, whether it is permissible to put the plot to fresh auction in the light of the current policies/laws prevailing. It will be open to the school to apply for a refund of the money paid towards the bid amount. It will also be open to the alleged lessee to apply for a refund of the amount paid for converting the plot from leasehold to freehold. The State Government/authority will issue the necessary refund within six weeks of making such applications.
18. There will be no order as to costs.

Result of the case: Appeals dismissed.

[†]*Headnotes prepared by:* Prastut Mahesh Dalvi, Hon. Associate Editor
(Verified by: Abhinav Mukerji, Sr. Adv.)