

2025 LiveLaw (SC) 306

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

ABHAY S OKA; J., UJJAL BHUYAN; J.

CIVIL APPEAL NO. 1972 OF 2011; March 07, 2025

Delhi Development Authority *versus* S.G.G. Towers (P) Ltd. & Ors.

Agreement to Lease - An agreement to lease does not automatically confer leasehold rights until a formal lease deed is executed. Where the Delhi Development Authority ("DDA") executed an agreement to lease in 1957 but a formal lease deed was never executed, and the property was subsequently sold through liquidation proceedings, the auction purchaser acquired only those rights, if any, held under the agreement to lease. The auction sale, conducted on an "as is where is" basis, did not confer ownership or leasehold rights upon the auction purchaser. The DDA retained the right to pursue remedies for possession and unearned income, and that any regularization of the transaction would require the auction purchaser to apply to the DDA and for the DDA to consider such application in accordance with law. Funds held in liquidation proceedings could not be appropriated for unearned income payments without considering the claims of other creditors, particularly where the liquidation was still ongoing. (Para 10 - 16)

For Appellant(s): Mr. Abhinav Mukerji, Sr. Adv. Ms. Mitali Gupta, Adv. Mr. Ishaan Sharma, Adv. Mr. Nitin Mishra, AOR

For Respondent(s): Mr. Anand Sukumar, AOR Mr. Harish Malhotra, Sr. Adv. Mr. Dhruv Kapur, Adv. Mr. Maharshi Kaler, Adv. Ms. Shruti Goyal, Adv. Ms. Ritika Sethi, AOR Mr. Hitesh Malik, Adv. Mr. Jitesh Malik, Adv. Ms. Anisha Dahiya, Adv. Mr. Jatin Hooda, Adv. Mr. B C Bhatt, Adv. Mr. N D Kaushik, Adv. Mr. Satish Kumar, AOR

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant, Delhi Development Authority (formerly known as the Delhi Improvement Trust), executed an agreement of lease (for short, "the lease agreement") dated 17th July 1957 in respect of plot no.3 (for short "the said Plot"), measuring 2044.4 sq. yards, situated in Industrial Area Scheme, Najafgarh Road, New Delhi in favour of M/s Mehta Constructions and Industrial Corporation Private Limited (for short, "M/s Mehta Constructions"). On 25th November 1972, M/s Mehta Constructions entered into an agreement to sell with M/s Pure Drinks Private Limited, the second respondent. A registered sale deed cum Assignment dated 15th February 1985 was executed by M/s Mehta Constructions in favour of the second respondent. In Execution Proceedings, i.e. Co Ex 8 of 1981, the Company Judge of the Delhi High Court passed an order on 4th February 1985. Pursuant to the said order, the Registrar of the High Court lodged the sale deed for registration in the office of the Sub-Registrar, Delhi.

2. Even the second respondent went into liquidation, and the plot was sold to the first respondent in the auction on 24th August 2000 in liquidation proceedings before the Delhi High Court. The auction was held pursuant to the notice of proclamation of sale issued by the High Court of Punjab and Haryana on 9th June 2000.

3. On 7th December 2000, the first respondent applied for confirmation of the sale made in the auction. The appellant appeared in the said proceedings and filed a reply. The

appellant contended that at no point of time had M/s Mehta Constructions acquired any interest in the plot, and therefore, the plot could not have been sold in the auction. By the order 19th October 2001, the learned Single Judge allowed the application filed by the first respondent and confirmed the auction sale. Aggrieved by the said order, the present appellant preferred an appeal before the Division Bench. By the impugned judgment dated 21st January 2010, the appeal was dismissed.

SUBMISSIONS

4. The learned senior counsel appearing for the appellant urged that what was executed on 17th July 1957 in favour of M/s Mehta Constructions was only an agreement to lease. The agreement provided that the lease deed was to be executed only upon certain compliances being made by M/s Mehta Constructions. As no such compliance was made, the lease deed was not executed, and therefore, leasehold rights were never acquired by M/s Mehta Constructions with respect to the said plot. He relied upon Clause 24 of the lease agreement, which clearly provided that unless the lease is executed, the agreement will not create any right, title or interest in respect of the said plot in favour of M/s Mehta Constructions.

5. The learned senior counsel submitted that the plot is Nazul land, which belongs to the Union of India and is in the care and custody of the appellant. He submitted that a Nazul land can be sold only in accordance with Section 22 of the Delhi Development Act, 1957 (for short, "the said Act") and the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (for short, 'the 1981 Rules'). The learned counsel submitted that though no right, title or interest was created in favour of M/s Mehta Constructions, it purported to execute an agreement for sale in favour of the second respondent. It appears that in Company Application pending before the learned Single Judge, M/s Mehta Constructions was represented by one Shri R.P. Dutt, its Managing Director who stated that an absolute irrevocable authority has been conferred upon Shri S.Daljit Singh and Shri S.Charanjit Singh of the second respondent to take steps to get the title of M/s Mehta Constructions perfected. An order was passed by the learned Company Judge of the High Court on 4th February 1985, directing the Registrar of the High Court to appear before the Sub-Registrar of Assurances and to admit execution of a sale deed in favour of the second respondent. Accordingly, the deed of Conveyance and Assignment dated 15th February 1985 executed by and between M/s Mehta Constructions and the second respondent was registered. He pointed out that the Company Court was not made aware that even leasehold rights regarding the said plot were not available with M/s Mehta Constructions. He submitted that that is how, in the liquidation proceedings of the second respondent, the plot was put to public auction and sold to the first respondent. He submitted that under Rule 43 of the 1981 Rules, the lessor's prior consent was required to transfer the said plot. Placing reliance on a decision of this Court in the case of **Delhi Development Authority v. Vijaya C. Gurshaney & Anr.**,¹ he submitted that the sale in favour of the first respondent was illegal. The learned senior counsel also relied upon the decisions of this Court in the cases of **Food Corporation of India & Ors. v. Babulal Agrawal**², **Delhi Development Authority v. Anant Raj Agencies Pvt.Ltd.**³, **State of**

¹ (2003) 7 SCC 301

² (2004) 2 SCC 712

³ (2016) 11 SCC 406

Rajasthan & Ors. v. Gotan Lime Stone Khanij Udyog Pvt. Ltd. and Anr.¹ and Delhi Development Authority v. Nalwa Sons Investment Ltd. & Anr.²

6. The learned counsel appearing for the respondents submitted that until the first respondent applied for confirmation of sale, the appellant never filed any proceedings to challenge the transactions between M/s Mehta Constructions and the second respondent. It was submitted that the appellant never challenged the auction process. It was submitted that no interference is called for with the impugned judgment.

CONSIDERATION OF SUBMISSIONS

7. There is no dispute that the Delhi Improvement Trust executed an agreement to lease dated 17th July 1957 in favour of M/s Mehta Constructions regarding the said plot. Various terms and conditions were included in the said agreement. The agreement provided for the execution of the lease deed in favour of M/s Mehta Constructions. Clause 24 of the agreement is relevant which reads thus:

“24. Nothing in these presents contained shall be considered as a demise at law of the said piece of land hereby agreed to be demised or any part thereof so as to give the said intended lessee any right, title or interest therein other than as may be conferred by these presents until the said lease shall have been executed and registered.”

8. Admittedly, a lease in terms of the lease agreement was never executed. On 25th November 1972, M/s Mehta Constructions executed an agreement for sale in favour of the second respondent for a consideration of Rs.3,06,700/-. It appears that on 15th February 1985, M/s Mehta Constructions executed a sale deed in favour of the second respondent in respect of the said plot. As per the order dated 4th February 1985 passed by the learned Single Judge of the High Court, the High Court Registrar presented the sale deed for registration before the sub-Registrar of Assurances at Delhi. On 9th June 2000, a notice for Proclamation of Sale was published by the High Court of Punjab and Haryana of the said plot. Accordingly, in the auction sale, the highest bid of the first respondent was accepted by the High Court. The auction sale was confirmed by the learned Single Judge. The order of the learned Single Judge had been confirmed by the impugned order of the Division Bench.

9. An order dated 4th October 2023 passed by this Court read thus:

“After arguments were heard for some time of the learned counsel appearing for the appellant, the learned senior counsel appearing for the first respondent and the learned counsel appearing for the second respondent, this Court noticed that the first respondent while filing an application bearing Company Application No.744 of 2000, showed willingness to pay the unearned income in terms of the Resolution No.S/2(31)(57) of the Delhi Development Authority in respect of a transaction of auction. Therefore, we posed a query to the learned senior counsel appearing for the first respondent about the payment of unearned income based on the first transaction of transfer between M/s. Mehta Construction and Industrial Corporation and M/s. Pure Drinks Limited. The learned senior counsel appearing for the first respondent seeks time to take instructions from the first respondent.

We permit the appellant to implead Mr. Prashant Baliyan, Provisional Liquidator, Office of the Official Liquidator, Ministry of Corporate Affairs, Corporate Bhawan, Plot No.4B, Second Floor, Sector 27B, Madhya Marg, Chandigarh-160019, as party respondent.

The amended cause title be filed within three days from today.

¹ (2016) 4 SCC 469

² (2020) 17 SCC 782

Issue notice to the newly added respondent.

Mr. Prashant Baliyan, Provisional Liquidator, will have to make a statement about the availability of the amount deposited by the first respondent pursuant to the auction and, if such amount is available, whether it has been invested in a fixed deposit.

As the service of notice will take time, we direct the appellant to inform Mr. Prashant Baliyan to appear before this Court on the next date of hearing by forwarding a copy of this order to him.

We also direct the appellant to communicate to the learned counsel for the first respondent the amount payable in respect of both the transactions.

List on 18th October, 2023, as parheard matter at the top of the Cause

List.”

10. An affidavit was filed by the Provisional Liquidator of the second respondent in terms of the order. The Provisional Liquidator relied upon the orders passed by the Company Court. The Provisional Liquidator pointed out that as per letter dated 7th November 2023 addressed to the Provisional Liquidator by the Registrar General of Punjab and Haryana High Court, out of the amount deposited by the first respondent towards confirmation of sale, amounts of Rs.70,49,036/- and Rs.14,00,579/- have been invested in fixed deposits. The Registrar General pointed out that the maturity value of the fixed deposits was Rs.2,14,06,677/- and Rs.51,43,324/-, respectively. It is true that the aforesaid amounts which are invested in fixed deposits are available. However, the liquidation proceedings are still pending. In the report, the liquidator stated that a number of parties had made claims against the second respondent, including the Income Tax Department. The total claims are of Rs.60.66 crores or more. The total amount available is approximately Rs.10 crores. The amount available will be governed by the orders passed by the Company Court. When the High Court is seized of liquidation proceedings, and as there are other creditors of the second respondent, it will not be appropriate to direct that a part of the amount paid towards consideration by the first respondent should be appropriated towards unearned income payable to the appellant.

11. It is an accepted position that the lease was never executed by the appellant in favour of M/s Mehta Constructions, and no rights, title, and interest were created in favour of M/s Mehta Constructions in respect of the said plot. Therefore, at the highest, the second respondent, by virtue of the sale deed dated 15th February 1985, executed by M/s Mehta Constructions, can claim benefits under the lease agreement, provided in law, the second respondent is entitled to it in accordance with law.

12. We may note here that as far as the auction conducted in the liquidation proceedings of the second respondent is concerned, the notice of proclamation itself records that the sale of the said plot was on “as it is basis”. Moreover, the order dated 19th October 2001 of the Company Judge making sale absolute in favour of the first respondent reads thus:

“From the record, it transpires and it stands proved that the property in question which is in the shape of the land is the property of DDA which entered into a wrong agreement of lease dated 17.7.57 in favour of M/s Mehta Construction and in pursuance of that agreement the possession was delivered to M/s Mehta Construction and

Industrial Corporation Ltd., which was a limited company. Unfortunately, M/s Mehta Construction could not discharge its liability as a result of which it went into liquidation and its lessee rights virtually were sold in public auction which were purchased by M/s Pure Drinks (New Delhi) Ltd., vide a deed of conveyance dated 15.2.1985. This auction was conducted under the direction of Hon'ble Delhi High Court. Meaning thereby, that M/s Pure Drinks (New Delhi) Ltd., was substituted

in place of M/s Mehta Construction. It also ran into financial difficulty running into financial deficiency and company petition for winding up was filed in this Court which was ordered to be admitted vide order dated 28.8.1997. The publication has been affected under the orders of this court. The lessee rights which were given to M/s Mehta Construction and which were assigned to M/s Pure Drinks (New Delhi) Ltd., under the orders of the High Court were auctioned and purchased by the applicant. **In this manner, it can be safely held that the present applicant has acquired whatever the lessee rights were acquired either by Mehta Construction or by Pure Drinks (New Delhi) Ltd.”**

(emphasis added)

Therefore, the first respondent will get only those rights which M/s Mehta Constructions had under the lease agreement, provided the rights can be claimed at this stage. In fact, in the impugned judgment, the Division Bench of the High Court had observed that the auction would not amount to sale of the said plot. The impugned judgment leaves the remedy of the appellant open to proceed against the concerned parties. These findings have been accepted by the first respondent.

13. As regards the unearned income, the Division Bench was right in not passing any order on that behalf. We cannot direct the funds available in liquidation proceedings for payment of the unearned income as large number of claims have been submitted.

14. Thus, the scenario which emerges is that the first respondent is not entitled to either ownership or leasehold rights in respect of the said plot. The first respondent cannot claim to be a lessee as the lease in terms of the lease agreement was never executed. At the same time, if according to the case of the appellant, M/s Mehta Constructions had committed breach of the lease agreement, notwithstanding the impugned orders, it will be always open for the appellant to adopt appropriate remedy for recovery of possession and/or recovery of unearned income against the first respondent.

15. If the first respondent desires to get the transaction regularised, it is for the first respondent to apply to the appellant to accept unearned income or any other amount. If such a request is made, the appellant will consider the same in accordance with the law.

16. Subject to the findings recorded as above, there is no reason to interfere with the impugned judgments.

Accordingly, the appeal stands dismissed in the light of the findings recorded as above.