

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.3631/2008**

% **Date of Decision: 19.11.2009**

Hans Raj Batheja Petitioner
Through Mr.Neeraj Jain, Advocate.

Versus

Delhi Development Authority and another Respondents
Through Ms.Sangeeta Chandra, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J.

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1. The petitioner has sought quashing of demand notice dated 17th August, 2005 bearing No.F13(9)/Saini/CS/79/DDA/2546, raising demand of Rs.34,57,552/- and letter No.F13(9)/Saini/CS/79/DDA/5404 dated 20th February, 2008, demanding misuse charges including interest amounting to Rs.47,32,483/- and to quash the show cause notice dated 15th June, 2001 and a direction to the respondents to convert the property bearing No.9, Saini Enclave, Delhi-110092 from leasehold to freehold and execute the conveyance deed.

2. The petitioner contended that he is the owner of the residential property bearing No.9, Saini Enclave, Delhi hereinafter referred to as 'Property'. He had become the owner by virtue of General Power of Attorney which was executed in his favour by the perpetual sub lessee Sh.Tara Singh in whose favour a lease deed dated 22nd May, 1976 was executed. According to the petitioner he is in possession of the same since then and is using the property for residential purpose for his entire family.

3. Respondent DDA had started conversion scheme from leasehold to freehold, The petitioner applied on 30th June, 1994 and deposited conversion charges of Rs.43,337/- pursuant to the petitioner's application for conversion from leasehold to freehold of the said property, he received a letter dated 20th December, 1994 from the respondents directing the petitioner to deposit a sum of Rs.10,561/- as composition fee which was deposited by the petitioner on 30th December, 1994.

4. The application of the petitioner was processed by the respondents according to their policy and was allowed after approval of the competent authority by order dated 7th March, 1995 and a communication dated 7th March, 1995, was received along with the conveyance deed and the petitioner was asked to get the conveyance deed stamped from the Collector of Stamps.

5. The petitioner has stated that after the gap of six years, he received a show cause notice dated 15th June, 2001, alleging that it has been reported that the property is misused and directed the petitioner to stop the misuse and on failure of which could result in determination of sub-lease deed. By letter dated 18th July, 2001, in reply to notice dated 15th June, 2001, the petitioner communicated that they found no misuse in the property. The petitioner also got the conveyance deed which was received by him along with the letter dated 7th March, 1995 stamped on payment of Rs.5655/- and the conveyance deed was submitted to the respondents by letter dated 30th October, 2001. The petitioner asked the respondent to intimate him the date of execution of the conveyance deed.

6. The petitioner received a letter dated 22nd November, 2001 for the joint inspection of the premises to confirm the misuse of the property and by another letter dated 9th April, 2003 after almost two years the petitioner received another communication that the joint inspection of the premises shall be conducted on 23rd April, 2003 at 11 AM. The inspection was carried out on 24th April, 2003 and at the time of inspection, ground floor and basement were found to be vacant and first floor was used for residential. Before the inspection was carried out pursuant to notice dated 22nd November, 2001, the petitioner had already intimated on 21st January, 2002, that a fine of Rs.4000 was imposed which was paid on 6th May, 1998 for misuse charges and the

alleged misuse activity was closed since then. The petitioner also agreed to give a copy of the Court order.

7. The petitioner had paid the fine of Rs.4000/- and had stopped the alleged misuse on 6th May, 1998, therefore, petitioner sent various representations for conversion of his property from leasehold to freehold.

8. Though the inspection was carried out on 24th April, 2003 and no commercial activity was found to be carrying out by the petitioner, he received a letter dated 17th August, 2005 for payment of Rs.34,57,552/- within 60 days for conversion of his property. It was also intimated to him that in case the amount is not paid by the petitioner shall also be liable to pay interest on the same.

9. The further assertion of the petitioner is that he made several representations, however, nothing was done. The petitioner also relied on a circular No.F.1(2)2002/A.O.(R) Misc./Pt.89 dated 11th August, 2003. The circular contemplating that misuse charges would be levied upto date or the actual date of closure whichever is earlier. The circular had further clarified that misuse charges will be levied upto the date of receipt of last instalment or upto date of closure whichever will be earlier in those cases where it has been preferred by the lessee/GPA to

deposit the conversion charges in instalments. The relevant circular is as under:-

CIRCULAR

The issue of levy of misuse charges was discussed during the course of meeting held in the chamber of Vice Chairman, DDA on 17.7.03 and following decisions were taken.

- a) Misuse charges shall henceforth be levied upto date or the actual date of closure whichever is earlier. In such cases in which the lessee/GPA has applied for conversion of the property the misuse charges shall be levied upto the date of receipt of complete application for conversion along with all annexures and documents. It is further clarified that misuse charges be levied upto the date of receipt of last instalment or upto the date of closure whichever is earlier in those cases where it has been preferred by the lessee/GPA to deposit the conversion charges in instalments.
- b) Generally the misuse charges are levied from the date of detection as per the survey report/site report etc. however, in such cases where any proof indicating the misuse of property from an earlier date is available misuse charges will be charges from such earlier date, irrespective of actual date of detection.
- c) The demand notice for raising the demand of misuse charges will specifically contain the condition that "if the payment is not received within 30 days of issue of said demand letter, the outstanding amount will attract interest @ 12.5% p.a."
- d) The decision as mentioned above will not be applicable to all such cases where the payment on account of misuse charges pursuant to application for conversion has been received by 17.7.03 all other cases where payment has not been received, revised demand on account of misuse charges may be raised."

10. The petitioner asked for conversion, however, the conversion has been denied by the respondents and another demand was raised on the

petitioner by communication dated 20th February, 2008 demanding a total sum of Rs.47,32,483/- comprising of Rs.34,57,522/- on account of misuse charges and 15% interest thereon.

11. The petitioner aggrieved by the demands raised by the respondents filed the present petition and also contended that in case of another property No.14, Anand Lok, New Delhi, here all the misuse charges levied were withdrawn and conversion from leasehold to freehold was allowed on the ground that conveyance deed papers were issued before the misuse was detected. The petitioner asserted that the Vice Chairman of the DDA took the decision which was in consonance with the practice followed by L&DO and the Government. The petitioner reproduced the order passed by the Vice Chairman which is as under:-

“This was discussed with CLD. I had asked him to ascertain the practice being followed by L&DO. He indicated as per the procedure the cases are not re-examined once CD papers are issued. We may also take action accordingly.”

Sd/- (VC)
27.5.2005

Sd/- (CLD)

12. The petitioner also placed reliance on page 71/N of DDA's file, where DA/CS, Shri Brahmanand had observed"-

“In the sub para 3 of para IV of the above order, it is mentioned as under

‘It is further clarified that these orders will have prospective effect and the cases already decided/settled will not be reopened.’

Later on, in the circular dated 11.8.03, it was clarified that the misuse charges shall be levied upto the date of receipt of complete application for conversion alongwith all annexure and documents.

Further, it is submitted that in a recent case pertaining to property No.14 of Anand Lok, V.C. DDA has passed orders on 27.5.2005 that cases in which CD papers have been issued are not to be re-examined and action may be taken accordingly.

In view of the facts narrated above, request of the applicant for waiver of mis-use charges is submitted for consideration and orders please.”

13. The petitioner contended that misuse charges could not be claimed from him as the conveyance deed had already been issued to him and payment of conversion charges is contrary to the policy circular dated 11th August, 2003 of the respondent which has been followed and there have been consistent practice in respect of that circular. It is contended that petitioner could not be singled out and discriminated. The petitioner also challenged the circular of the respondents in not permitting the conversion on the ground that after having accepted the conversion charges paid in 1994 and after approving his application for conversion in 1995, his application could not be rejected after a gap of 10 years. The petitioner also relied on a decision of this Court in case of Rattan Kaur reported as 145 (2007) DLT 283. The petitioner has also challenged the action of the respondents on the ground that they never tried to ascertain the misuse

if any or the extent of misuse except one report dated 24th September, 2001 by the Junior Engineer which was also without the presence of the petitioner and even the said report does not establish misuse of property. It was asserted that the inspection report dated 24th September, 2001, could not be relied on as the complete go by to the procedure of site-inspection adopted by the respondents/DDA.

14. The petition is contested by the respondents and a counter affidavit of Sh.S.S.Gill, Director (Residential Lands) has been filed. Reliance was placed on the letter dated 7th march, 1995 stipulating that the conveyance deed paper duly stamped had to be returned within 45 days, whereas the petitioner has submitted the CD papers on 30th October, 2001 after a gap of more than 6 years. It is further contended that the CD papers were submitted by the petitioner after receipt of show cause notice intimating the petitioner about the existence of misuse of the site. Relying on the report dated 18th May, 2001 it is contended that the premises was misused for commercial purpose under the name and style of 'Bath Jewellery', 'NITCO Tiles', 'Hans Bath Fitting' and 'Orient Tiles'. The respondent asserted that after show cause notice dated 15th June, 2001 it was replied by the petitioner by letter dated 8th July, 2001. Two attempts were made for joint inspection, however, it could not be carried out due to the premises found locked though it was noticed that the sign boards named Bath Jewellery, NITCO Tiles and Hans Bath Fitting were found existing at the

site. It is also contended that the local enquiry also revealed that the said shop was still running. It is contended that the field staff along with the Assistant Engineer visited on 21st December, 2001, however, no inspection was allowed by the son of the petitioner and the site was revisited on 4th January, 2002, when the petitioner was also present and during inspection it was found that a shop was on the ground floor and the area of the shop was measured as 157.4 sq.mtrs. It is contended that no inspection of the basement was approved on the ground that the key was not available with the petitioner, however, the first floor was being used as residential.

15. The respondent also contended that misuse was detected on 26th September, 1996 and area under misuse was 157.46 sq.mtrs and date of closure of misuse is 24th April, 2003. The alleged misuse charges were allegedly calculated and approved by the Finance Member, DDA and by his approval dated 27th May, 2005, a demand of Rs.34,57,522/- was raised which was revised to Rs.47,32,483/-.

16. Relying on the circular dated 11th August, 2003, it is contended that under the circular the misuse charges are leviable upto the date of complete application for conversion along with all annexures and documents. According to the respondents the complete application was received only on the receipt of CD papers as the conveyance deed could be executed only when the CD papers were issued duly stamped.

17. The respondent also placed reliance on a circular dated 9th March, 2007, to contend that the respondent is liable to pay misuse charges upto the date of its closure.

18. The instance of property no.14, Anand Lok, New Delhi was also distinguished on the ground of considerable time gap between the issue of CD papers and its processing as also the refusal by the petitioner to allow site inspection and, therefore, the petitioner cannot claim parity with the property at 14, Anand Lok, New Delhi. Regarding the reliance of the petitioner on the judgment of Rattan Kaur (Supra) it is contended that a Letters Patent Appeal has been filed and the applicability of law of limitation is still under consideration. Reliance was rather placed on J.K.Bhartiya & Ors v. Union of India & Ors, 126(2006) DLT 302. The respondent also filed the calculations for demanding a sum of Rs.34,57,521.79/- as the misuse charges.

19. From the perusal of the writ petition and the counter affidavit, it is apparent that a sum of Rs.43,337/- as conversion charges were deposited by the petitioner on 30th June, 1994. The petitioner pursuant to his application No.344427 dated 29-06-1994 was further directed to deposit a sum of Rs.10,554/- as arrears of composite fee with effect from April 1992 to December 1992 and to further deposit a sum of Rs.7/- as short payment of conversion charges. An amount of

Rs.10,561/- was also deposited by the petitioner on 30-12-1994, consequent to which the application of the petitioner for conversion had been accepted and the copies of unsigned conveyance deed were sent for stamping from the Collector of Stamps.

20. Though the communication No.F13(9)76/Saini/CS/D/2171 communicating acceptance of conversion of Plot No.9, Saini Enclave, Delhi dated 7th March, 1995 was sent, however, it also contemplated return of conveyance deed duly stamped by Collector of Stamps within 45 days. Admittedly, the petitioner did not return the conveyance deed for some time and they were stamped on payment of Rs.5,655/- and submitted to the Delhi Development Authority vide receipt dated 30th October, 2001. Once the application had been accepted and the amount on account of conversion charges and composite fee were paid, the same could not be declined on the ground that the conveyance deed which was sent was not got stamped by the petitioner from the office of Collector of stamps and returned within 45 days to the respondent. In J.K. Bhartiya & Ors. Vs. Union of India and Another, 126(2006) Delhi Law Times 302, it was held that the conversion policy as modified direct conversion in favour of transferee provided surcharge of 33.5% and conversion fee is paid and on payment of conversion fee and surcharge, conversion had to be allowed in such cases. Reliance was placed on

clarificatory directive dated 28.04.1994 and 16.05.1994 and a circular issued by the respondent on 23.06.1995 which reads as under :-

“DELHI DEVELOPMENT AUTHORITY

(CO-ORDINATION BRANCH/LANDS)

95/Cordon/Land Disposal Dt. 23.6.1995.

Sub: Conversion of leasehold tenure of land into freehold to deal with cases connected with sale permission etc.

In pursuance of Government of India, Ministry of Urban Development letter No. 1101017/26/93-LD dated 23.10.1993 and No. J-20011/12/III dated 16.5.1994 regarding conversion of leasehold tenure of land into freehold in cases connected with earlier sale permission, etc., the matter has been examined in detail and the following decisions have now been taken to dispose of all such pending cases.

ISSUES	DECISIONS
(i) Where lessee/sub-lessee has applied for sale permission, but DDA has not conveyed the unearned Increase.	(i) and (ii) In such cases conversion may be Allowed by treating the earlier Application for sale permission as infructuous/ withdrawn.
(ii) Where lessee/sub-lessee has applied for sale permission and DDA has conveyed unearned increase, but the same has not been paid.	
(iii) Where lessee/sub-lessee has applied for sale permission and DDA has conveyed unearned increase and the same has been paid in full or partly by the lessee but the sale deed has not been registered.	(iii) The amount of unearned increase/sub-lessee with reference to sale permission would be refundable if the original lessee/sub-lessee has applied for conversion and he/she is in physical possession of the property in question.
(iv) Where all the action as	(iv) Conversion to freehold

mentioned above have been completed including registration of sale deed.	may be allowed after carrying out mutation with reference to sale deed executed by the lessee and after realising prescribed conversion charges.
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This issues with the approval of Vice-Chairman, DDA.

(K.C. Saxena)

Jt. DIR (CO. ODN) LANDS”

21. Though request of the petitioner for conversion had been accepted by letter dated 7.5.1995 and only the conveyance deed had to be accepted, however, on account of alleged misuse a notice dated 18.6.2001 was given to the petitioner alleging that the property is used for bath and jewellery business before the petitioner submitted the conveyance deed duly stamped on 30.10.2001 after paying the stamps of Rs.5,655/-.

22. In reply to the show cause notice dated 18.06.2001, the petitioner by communication which was duly received by the respondent by diary No.5525 on 19.07.2001 denied that the property was being misused. It was asserted by the petitioner that there was no misuse and no annoyance or disturbance had been caused to the persons living in the neighbourhood and the family members of the petitioner are residing in the premises.

23. What was the basis for the show cause notice dated 18.06.2001 that the premises was misused on that date has not been disclosed. The show cause notice dated 18.06.2001 is also vague as no details have been given as to which portion of the property was misused. The petitioner was intimated by letter dated 22.11.2001 to be present on 21.12.2001 for inspection of the premises, however, the inspection was not carried out on that date. The petitioner, thereafter, intimated by letter dated 21.01.2002 reiterating that the premises was not being misused and the alleged mis-use was stopped in 1998, when the petitioner had paid a sum of Rs.4,000/- on 6.5.1998. Though the premises was to be inspected in December, 2001, however, nothing has been produced to show that the inspection was carried out. Nothing has been produced by the respondent to show that on 21.12.2001 the alleged date of inspection pursuant to notice of inspection dated 22.11.2001, the misuse had been continuing. The inspection was, however, carried out two years later on 23.04.2003 and it was found that basement and ground floor were vacant and first floor was used for residential purposes.

24. In the circumstances, is the respondent entitled to claim from the petitioner misuse charges i.e. 26.9.1996 up to 24.4.2003 and claim an amount of Rs.34,57,522/-. The respondent has claimed misuse charges

on the basis that misuse started on 26.9.1996 and was stopped on 24.4.2003. If the show cause notice was given on 18.6.2001 which was replied by the petitioner on 19.7.2001 contending that there was no misuse, the respondent ought to have visited the premises and should have inspected the same to ascertain the stoppage of alleged mis-use. In case the respondent did not visit the premises for inspection despite the categorical request by the petitioner to visit the premises for ascertaining that premises was not mis-used, the respondent should not be allowed to contend that mis-use continued till it was inspected on 24.4.2003. No plausible explanation has been given as to why the inspection was not carried out by the respondent expeditiously. No inspection report has been produced by the respondent to substantiate their allegations that the premises was mis-used nor the copies of the alleged inspection reports were given to the petitioner so that the petitioner could refute them. Merely on the basis of an assertion made in the counter affidavit which has been denied by the petitioner, it cannot be held that the mis-use started on 26.9.1996 and it was stopped on 24.4.2003 nor the respondent should be allowed to charge mis-use charges for the staid period on the basis of their bald allegations for such period. The respondent has failed to establish any mis-use of the property by the petitioner.

25. The learned counsel for the respondent has relied on the alleged admission on the part of the petitioner that there was a mis-use and,

therefore, the petitioner is liable to pay the mis-use charges as demanded by the respondent. The alleged admission has to be considered in totality. The petitioner's contention is that he had paid a fine of Rs.4,000/- on 6.5.1998 and thereafter he had closed the mis-use. As the respondent has failed to establish that there had been misuse of the property, on the basis of admission of the petitioner that the property had been misused, it cannot be inferred that the admission of the petitioner is that the misuse of the property had continued even after 6th May, 1998. In the circumstances, the respondent can claim misuse charges only up to 6th May, 1998 and not for any period thereafter.

26. The next question for consideration is for what period prior to 6th May, 1998 the respondents are entitled for misuse charges? The petitioner had already paid a fine of Rs.4,000/- on account of misuse of the property. The petitioner has not disclosed as to since when he started misusing the property. The respondent has contended that misuse was started by the petitioner on 26.9.1996 almost a year after conveyance deed was sent to the petitioner for getting it stamped from Collector of stamps and returning it to the respondents. In the circumstances, it has to be accepted that the misuse was started by the petitioner on 26.9.1996.

27. From DDA's circular dated 23.6.1995 it is apparent that where the lessee had applied for sale permission but DDA had not conveyed the unearned increase or where the lessee was conveyed unearned increase but the same was not paid, application for sale permission was to be treated as infructuous/withdrawn and conversion had to be allowed by the Authority. Further, where the lessee had applied for the sale permission and DDA had conveyed the unearned increase and the same had been paid in full or part but sale deed had not been registered, unearned increase paid with reference to the sale permission had to be refunded.

28. The Government of India had taken another policy decision notified on 28.6.1999 in respect of cases where proceedings were pending pursuant to detection of misuse of the property. Clause 6 of the policy decision dated 28.6.1999 was as under :-

“(6) Misuse and Unauthorised Construction

It has been decided that unauthorised construction or misuse of the building constructed on leased premises ought to be taken care of by NDMC/MCD/DDA, etc. under their laws/regulations. **Accordingly, the lease administering authorities may permit conversion of all leased properties irrespective of any building violations or use violations that may exist.**

In view of the large scale misuse of residential premises and unauthorized construction, DDA and local bodies would take coordinated action to deal with the situation effectively.

2. In view of the above, lease administering authorities are requested to make all efforts to clear the pending cases within the prescribed period of 3 months and take effective steps to deal with the fresh applications that may be received in future. Special drives may be launched to dispose of applications for freehold conversion. The lease administering authorities are requested to give due publicity to the scheme.

3. It is further clarified that these orders will have prospective effect and the cases already decided will not be re-opened.”

29. On 26.6.2001, another circular was issued by the respondents dealing with the issue of misuse. The same reads as under :-

“No. F.4(43)99.Coordn. Dated 26.6.2001

CIRCULAR

In partial modification of Circular No. F.4(43)99/Cordon./L.D. dated 3.2.2000 the clarification to the para No. 3 of the Circular No. F.4(43)99/Coord./L.D. dated 15.7.99 is as follows—

1. All cases of conversion where the past misuse/unauthorized construction was reported or the misuse is continuing are to be processed for conversion.

2. **The misuse charges would be payable for the period of misuse from the date of direction of misuse till the date of vacation of misuse or up to 28.6.1999 whichever is earlier.**

3. All the applications for conversion which had been rejected on account of misuse/unauthorized construction after 28.6.1999 shall be reopened and processed for conversion after recovering misuse charges as per para (2), if applicable.

4. In cases where conversion applications were received and due to continuing misuse/unauthorised construction leases were determined, all such cases would be restored and conversion allowed after recovering misuse charges as per para (2) if applicable. No restoration charges would be recoverable.

5. Where the conversion has been allowed and misuse/unauthorized construction still continuing the matter shall be referred to the concerned Enforcement Agency for further necessary action.

6. Cases wherein the conversion has already been allowed, misuse charge already paid shall not be reopened.

This issues with the approval of Vice Chairman, DDA.”

30. Under the said circular, the misuse charges were payable for the period of misuse from the date of detection of misuse till the date of vacation of misuse or up to 28.6.1999 whichever was earlier. The show cause notice regarding stoppage of misuse dated 18.6.2001 was given prior to said circular. According to the petitioner, the misuse had been stopped on 6.5.1998 and in the circumstances, the case of the petitioner should be covered under the policy decision notified on 28.6.1999 which does not contemplate payment of any misuse charges.

31. The respondent has demanded the misuse charges according to circular dated 9.3.2007 contemplating that conversion application received up to 31.12.2006, the misuse charges shall be recovered up to 31.12.2006 or closure of misuse whichever is earlier. Prior to circular dated 9.3.2007, another circular dated 11.8.2003 was issued by the

respondent modifying its circular dated 26.6.2001. The said circular dated 11.8.2003 bearing No.F1(2)2002/AO(R)Misc./Pt.89 was as under:-

“CIRCULAR

The issue of levy of misuse charges was discussed during the course of meeting held in the chamber of Vice-Chairman DDA on 17.7.2003 and following decisions were taken.

(a) Misuse charges shall henceforth be levied up-to-date or actual date of closure, whichever is earlier. In such cases in which the lessee GPA has applied for conversion of the property, the misuse charges shall be levied up to the date of receipt of complete application for conversion along with all annexure and documents. It is further clarified that misuse charges will be levied up to the date of receipt of last instalment or up to the date of closure whichever is earlier in those cases where it has been preferred by the lessee/GPA to deposit conversion charges in instalments.

(b) Generally the misuse charges are levied from the date of detection as per the survey report/site report, etc. However, in such cases where any proof indicating the misuse of property from an earlier date is available misuse charges will be charged from such earlier date, irrespective of actual date of detection.

(c) The demand notice for raising the demand of misuse charges will specifically contain the condition that — if payment is not received within 30 days of issue of said demand letter the outstanding amount will attract interest @ 12.5% p.a.

(d) The decision as mentioned above will not be applicable to all such cases where the payment on account of misuse charges pursuant to application for conversion has been received by 17.7.2003. All other cases where payment has not been received, revised demand on account of misuse charges may be raised.

32. In J.K. Bhartiya and Another (Supra) relied on by the respondents, considering the circulars dated 28.6.1999; 26.6.2001; 11.08.2003 and 24.6.2003, it was held that even in case of misuse and unauthorised construction, on payment of misuse charges from the date of detection till misuse was stopped, conversion had to be allowed. This Court had held that the conversion policy as modified and clarified from time to time contemplated ethos of liberalization.

33. In the present facts and circumstances it has been held that the misuse was stopped on 6.5.1998. According to the respondents, the misuse had started on 26.9.1996, therefore, the respondent shall only be entitled for misuse charges in respect of the property No.9, Saini Enclave, Delhi from 26.9.1996 till 6.5.1998. The respondents have claimed a sum of Rs.1,71,770.29 from 26.9.1996 to 31.3.1997; another sum of Rs.4,12,438.44 has been claimed as misuse charges for the period 1.4.1997 to 31.3.1998. The respondent has also claimed misuse charges from 1.4.1998 till 31.3.2001 for 36 months amounting to Rs.16,09,194.59. However, since the misuse was stopped on 6.5.1998, therefore, the respondent shall be entitled for misuse charges only for one month and six days which amount comes to Rs.52920/-) (Rs. 1470 per day). In the circumstances, the respondents even according to these circulars could claim only a sum of Rs.637123.73 as misuse charges for the period 26th September, 1996 up to 6th May, 1998.

34. The petitioner has relied on a circular bearing No.F1(2)2002/AO(R)Misc./Pt.89 dated 11.8.2003 regarding levy of misuse charges. The relevant portion of that circular reads as under:-

“(a) Misuse charges shall henceforth be levied up to date or the date of closure, whichever is earlier. In such cases in which the lessee/GPA has applied for conversion of the property, the misuse charges shall be levied up to the date of receipt of complete application for conversion along with all annexure and documents. It is further clarified that misuse charges will be levied up to the date of receipt of last instalment or up to the date of closure whichever is earlier in those where it has been preferred by the lessee/GPA to deposit conversion charges in instalments.”

35. The petitioner has also relied on the circular dated 11th August, 2003 of the respondent bearing No.F1(2)200 O(R) Misc./Pt./89 which contemplated that misuse charges shall be levied up to that date or the actual date of closure whichever was earlier. The said circular further contemplated that where the lessee/GPA had applied for conversion of the property, the misuse charges would be levied up to the date of receipt of complete application for conversion along with all annexure and documents and where the misuse charges were payable in instalment, the liability of the misuse charges shall be date of receipt of last instalment or up to the date of closure whichever would be earlier.

36. According to the petitioner since his application for conversion along with documents was filed prior to 7th March, 1995 along with all

annexure and his application was accepted by letter dated 7th March, 1995 which intimated the petitioner about acceptance of his application and consequently copies of unsigned conveyance deed/forms were sent to him for getting the same stamped from the Collector of stamps, therefore, the petitioner is not liable to pay any misuse charges as the alleged misuse was detected after the complete application with annexure was filed and which was accepted and unsigned conveyance deed for stamping was sent by the respondent to the petitioner and received by him. The petitioner has also cited and relied on the case of property No.14, Anand Lok where the misuse charges demanded were withdrawn on the ground that the case for misuse was not to be re-examined once the CD papers were issued. The order to follow the practice being followed by L&DO was passed by the Vice Chairman of respondent on 27th May, 2005. The respondent had waived the misuse charges of Rs.34,57,552/- as the CD papers were sent by the GPA/Lessee before detection of the misuse in the case of said property at Anand Lok.

37. The respondent has contested the plea to waive the entire misuse charges on the ground that since the CD papers duly stamped within the time prescribed by the respondent were not returned, therefore, the respondent was entitled to demand the misuse charges in terms of circular dated 9th March, 2007. The case of the property 14, Anand Lok was distinguished on the ground that it was on different footing and no

parity could be drawn with the said property by the petitioner as the draft conveyance deeds were not returned within the stipulated time after getting them stamped from the Collector of Stamps.

38. This cannot be disputed that the circular dated 11th August, 2003 contemplated receipt of complete application for conversion along with annexure and documents. Since the application of the petitioner was accepted, however, without completion of conveyance deed, the copies of which were sent to the petitioner for stamping purposes, it will be difficult to infer that the application of the petitioner was complete for conversion. The object of the said circular seems to be that in case steps to be taken by an applicant were completed, no charges were to be recovered from such a GPA/lessee. In case of petitioner the copies of unsigned conveyance deeds were sent by communication dated 7th March, 1995 with a stipulation to return them after getting them duly stamped from the office of Collector of Stamps within fifteen days, however, the same were not sent by the petitioner for about six years and the draft conveyance deeds were sent in 2001. During this interregnum the petitioner is alleged to have started misusing the property. In the circumstances, the petitioner cannot be allowed to capitalise on his own lapse and contend that under the circular dated 11th August, 2003 since an application was sent by him along with the annexure, he is not liable to pay misuse charges for the purpose of conversion of his property from leasehold to freehold.

39. The circular dated 9th March, 2007 contemplates that the applications received up to 31st December, 2006, misuse charges shall be recovered till the closure of misuse. The application of the petitioner for conversion along with documents was submitted which was accepted was returned by the petitioner by letter dated 30th October, 2001 after getting them stamped from Collector of Stamps. It has been held that the petitioner had stopped the misuse by 6th May, 1998, therefore, the petitioner shall only be liable to pay misuse charges for conversion of his property from leasehold to freehold till 6th May, 1998. The plea of the petitioner that he is not liable to pay any misuse charges on the ground that in case of property No.14, Anand Lok, the mis-use charges were waived on account of submission of the complete application by the GPA/lessee of the said property, cannot be a ground to waive the mis-use charges of the petitioner, as it is not clear as to when the draft conveyance deed after stamping were sent in case of the GPA/lessee of 14, Anand Lok. The plea of discrimination in the facts and circumstances by the petitioner cannot be accepted nor on this basis, the petitioner can be absolved of his liability to pay the misuse charges till 6th May, 1998 when the petitioner had stopped the misuse. This has already been held that according to the circulars of the respondent, the petitioner is liable to pay a sum of Rs.6,37,123.73/- as misuse charges for the period 26th September, 1996 up to 6th May, 1998.

40. In the circumstances, for the foregoing reasons the writ petition is allowed. The demand notice dated 17th August, 2005 raising a demand of Rs.34,57,522/- and demand dated 20th February, 2008 demanding misuse charges with interest in the sum of Rs.47,32,483/- and show cause notice dated 15th June, 2001 are quashed and set aside. The respondent shall be liable to pay a sum of Rs.6,37,123.73/- as misuse charges to the respondent for conversion of their property bearing No.9, Saini Enclave, Delhi-110092 from leasehold to freehold. Consequently on payment of a sum of Rs.6,37,123.73/- as misuse charges within a period of two months, the respondent is directed to execute the conveyance deed in favour of the petitioner for property bearing No.9, Saini Enclave, Delhi-110092 within one month after payment of above noted misuse charges. The writ petition is disposed of in terms hereof. Parties are, however, left to bear their own costs.

November 19, 2009
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ANIL KUMAR J.