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

+ W.P.(C) 9393/2009

Date of decision: 29th October, 2009

PRAMOD KUMAR JAIN Petitioner
Through Ms. Shobhana Takiar, Advocate.

versus

LT. GOVERNOR & ORS. Respondents
Through Ms. Anju Bhattacharya, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

1. The petitioner is a subsequent purchaser of the leasehold rights of industrial plot No. M-1, Badli Industrial Estate, measuring 1457.4 square yards. Due to non-construction and other faults, leasehold rights were cancelled by the respondents.

2. By letter dated 17th May, 2004, the respondents agreed to restore the leasehold rights on payment of transfer charges, restoration charges, regularization charges and lease amount in total amounting to Rs.94,23,727. Certain other formalities were also required to be completed by the petitioner. This letter further stipulated that the

aforesaid amount should be paid within sixty days of the date of issue of the letter, otherwise compound interest @ 18% would be charged on the delayed payment.

3. The said letter was made subject matter of challenge before the High Court in W.P. (C) No. 18752/2005. This writ petition was disposed of vide order dated 20th July, 2007, which reads as under:-

“ The parties have advanced arguments at length. The learned counsel for the petitioner stated on instructions from the petitioner Mr. P.K. Jain, who is also present in court, that he would now be willing to pay the amount mentioned in the document annexed as Annexure P-1 dated 17th of May 2004 issued by the office of the Commissioner of Industries. However, he seeks some time to make the said payment. Having considered the arguments advanced by the counsel for the parties and noting the fact that this case has had a very long winded and chequered history in which the petitioner has somewhat been shortchanged by his erstwhile partner, it appears that the request of the Ld Counsel for the petitioner is not unreasonable.

Accordingly, this writ petition is disposed of with the direction that the payment required to be made by virtue of the said letter dated 17 May 2004 be made within six months from today.”

4. On 18th January, 2008 the petitioner deposited sum of Rs.94,23,727/-. Thus, the petitioner claims that the entire amount was deposited by him in terms of order dated 20th July, 2007. On the other hand, the claim of the respondents is that the petitioner is also liable to pay compound interest @ 18% per annum for the delay in deposit of

Rs.94,23,727/-.

5. The petitioner had filed CM No. 2559/2009 seeking clarification in W.P. (C) No. 18752/2005. The said application was disposed of vide order dated 8th May, 2009. The said order reads as under:-

"CM No. 2559/2009

This writ petition was disposed of on 20.07.2007. By way of this application, the petitioner is seeking restoration of the lease and transfer of the property in the name of the petitioner/applicant. Certain subsequent events have also been stated by the respondents in their reply, including an order passed by the Lieutenant Governor on 23.02.2009. I feel that it would be proper for this court not to entertain this application and to direct the petitioner to file a substantive writ petition, if he so chooses, to challenge the subsequent order passed by the Lieutenant Governor. It would be open to the petitioner to take up the plea that no interest ought to be charged from the petitioner in respect of the letter dated 17.05.2004 read alongwith the order dated 20.07.2007.

This application stands disposed of with the aforesaid liberty."

6. The question of rate of interest was, therefore, left open to be decided in a separate writ petition. Learned Judge did not opine and give any decision whether in terms of the earlier order dated 20th July, 2007, the petitioner was liable to pay interest on the belated payment, in spite of the fact that liberty was granted to the petitioner to make payment within six months.

7. The respondents on 31st January, 2009 modified their existing policy

relating to restoration charges. As per the modified policy, the restoration charges were drastically reduced from 25% of the market rate as decided by the lessor from time to time to a fixed charge @ Rs.300/- per square metre, the rate applicable in the case of the petitioner. The said policy also provided for calculation of rate of interest. Paragraphs 2 and 3 of the policy in this regard read as under:-

"2. 18% simple interest shall be charged on all belated payments except in those cases where specific rate of interest has been prescribed in the lease/rent agreement. However, cases where compound interest has already been charged shall not be reopened.

3. Further, interest rate on belated payment of Restoration Charges shall be charged @ 12.5% per annum where delay is 30 days or less or @ 15% per annum for the period exceeding 30 days."

8. The question of charging of rate of interest remained pending with the respondents from 18th January, 2008 till 23rd February, 2009 when the note put up by the Legal Assistant in the Law Department of Government of NCT of Delhi, which states that interest should be charged @ 18% per annum compounded annually, was accepted. The grievance of the petitioner today is two-fold. The respondents should not charge interest @ 18% per annum compounded annually in view of their new policy and paragraphs 2 and 3 thereof. It is further stated that the petitioner has already suffered and has not been given benefit of the policy decision

dated 31st January, 2009 in respect of restoration charges. The second contention of the petitioner is that the respondents delayed the decision on the question of quantum of interest from 18th January, 2008 till 23rd February, 2009 as a result of which the petitioner has not been able to enjoy the property as he could not get the building plan sanctioned and construction started for failure of the respondents to decide the question of rate of interest. Thus the respondents' should compensate the petitioner by reducing the rate of interest.

9. There is unreasonable delay on the part of the respondents in deciding the question of rate of interest and request of the petitioner to levy lower restoration charges. The respondents have taken more than a year to decide this question and communicate their decision to the petitioner. The petitioner had deposited Rs.94,23,727/- with the respondents way back on 18th January, 2008, which by no means is a small amount. The respondents should have immediately thereafter processed the case in case they felt that the petitioner is liable to pay interest in terms of the order dated 20th July, 2007 disposing of W.P. (C) No. 18752/2005. They were also required to consider the case of the petitioner on the question of rate of interest in terms of their new policy dated 31st January, 2009. Even if the petitioner was not to be given benefit of the drastically reduced restoration rates mentioned in the new policy, the decision should have been communicated within a reasonable time

frame. The aforesaid decision took almost 13 months and was communicated to the petitioner on 23rd February, 2009.

10. Clauses 2 and 3 of the policy decision dated 31st January, 2009 relating to rate of interest have been quoted above. It is admitted position that as per the lease deed itself, interest is payable @ 6% per annum. Clause 2 stipulates that 18% simple interest on belated payments shall be charged except where specific rate of interest has been prescribed in the lease/rent agreement. Exception has been made in cases where compound interest has already been charged. In the present case, compound interest was demanded and payable in terms of letter dated 17th May, 2004 but the same had not been paid by the petitioner till the new policy dated 31st January, 2008 was enforced.

11. The petitioner may not be entitled to benefit of the contractual rate of interest mentioned in the lease/rent agreement as in the present case what has been demanded from the petitioner in terms of the letter dated 17th May, 2004 are the restoration charges, transfer charges and regularization charges and not any fixed contractual charges. Accordingly, I feel the case of the petitioner will be covered by clause 3 of the latest policy decision dated 31st January, 2009 and the petitioner will be liable to pay 12.5% interest for delay beyond thirty days from the date payment was due in terms of letter dated 17th May, 2004, i.e., sixty days after the date of the issue of said letter. After expiry of ninety days, the petitioner

will be liable to pay interest @ 15% per annum till payment was made on 18th January, 2008. The policy quoted above is applicable to all applications and cases where request for regularization is made. The petitioner could have withdrawn their earlier application and filed another application under the new policy. However in the present case, there is a decision of this Court dated 20th July, 2007. The question of rate of interest as held in the order dated 8th May, 2009 was left open. The petitioner is accordingly held entitled to benefit under clause 3.

12. The respondents will compute the interest as directed above within a period of fifteen days from the date copy of this order is received and the petitioner will make payment of the said demand in three equal monthly installments. The first installment will be paid within thirty days of the date of receipt of the letter of demand. Extension of period of construction of two years will be counted from the date the petitioner is liable to pay the last installment of interest in terms of the present order. In the facts and circumstances of the case, there will be no order as to costs.

Copy of this order be given dasti to the learned counsel for the parties.

SANJIV KHANNA, J.

**OCTOBER 29, 2009
VKR/NA**