

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 9928/2006 & CM APPL No. 7417/06

R.L.SETHI

..... Petitioner

Through: Mr. Harish Malhotra, Senior Advocate
with Mr. Tanuj Khurana, Advocate

versus

UNION OF INDIA

..... Respondent

Through: Mr. Neeraj Chaudhari, CGSC with
Mr. Akshay Chandra, Advocate

CORAM: JUSTICE S. MURALIDHAR

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| 1. | Whether reporters of the local newspapers be allowed to see the order? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the order should be reported in the Digest? | Yes |

ORDER
12.05.2010

1. The Petitioner is aggrieved by the refusal of the Respondent to grant his prayer for conversion of the property at Plot No. 8, Site No. 7, New Rajinder Nagar, New Delhi from leasehold to freehold.

2. On 15th July 1996 the Petitioner was handed over possession of the property in question pursuant to the directions issued by the Supreme Court of India in IA No. 18 of 1985 in Writ Petition (Civil) No. 4677 of 1985. It must be mentioned that under the Gadgil Assurance Scheme, the Petitioner had been allotted property at Aram Bagh. Since the said property was a part of 11 plots which were on the ridge area the Petitioner was, in terms of the orders of the Supreme Court, required to vacate the Aram Bagh property and

hand over possession of the said property subject to opting for the alternative plot, which was the property in question, allotted to him by way of draw of lots. In the meanwhile on 15th July 1996 the possession of the property in question was handed over to the Petitioner. On 30th January 1997 a lease deed was executed in terms of which the petitioner lessee was required to complete construction over the plot by 14th July 1998 and to furnish the completion certificate. Although the Petitioner was to hand over possession of the Aram Bagh property by 4th September 1996, he ultimately did so on 30th October 1999 in terms of a further order by the Supreme Court.

3. According to the Petitioner, he submitted the building plans to the Municipal Corporation of Delhi ('MCD') on 30th October 1996 for approval in respect of the construction to be raised on the property in question. This was even prior to the execution of the lease deed. On 18th September 1997 the building plans were sanctioned after a delay of 11 months. Although the Petitioner had time to complete the construction within two years from the date of sanction, he completed the construction on 18th November 1998 itself. A 'D' Form was issued on 19th November 1998.

4. In July 1999 the Government of India, Ministry of Urban Development, Land & Development Office (L&DO) announced a policy for conversion of leasehold properties into freehold. The Petitioner applied for conversion on 21st December 1999. He also deposited the conversion fee of Rs. 23,400. On 19th December 2000, the Petitioner was asked to deposit various charges under the head of damages not only in relation to the unauthorized occupation of the Aram Bagh property but misuse of the property in

question as well. In the said letter although the subject matter read as “damages charges and conversion charges in respect of Plot No.8, New Rajinder Nagar, New Delhi” it had two distinct portions. One was under the heading “damages charges for unauthorized occupation of Government land at Aram Bagh” for which the following damages sought to be recovered:

“1. Damages charges for an area 311 sq.yards w.e.f. 1-10-1996 to 31-5-1997 @ Rs.62.20 p.m.	Rs.498.00
2. From 1-6-1997 to 31-3-1998 @ Rs.22.752.63/ p.m.	Rs.2,27,526.00
3. From 1-4-1998 to 29-10-1999 (i.e. one day before the date of demolition) @ Rs. 25,027.89/- pm	Rs.4,74,696.00”

5. Under a separate heading “short amount of conversion charges” the following amounts were sought to be recovered:

“Conversion charges for area of 200 sq.yds	Rs. 46,113.00
25% rebate (-)	Rs. 11,528.00
Recoverable conversion charges	Rs. 34,585.00
Conversion charges paid along with application	Rs. 23,100.00
Short amount of conversion charges	Rs. 11,484.00
12% interest on short conversion i.e. Rs. 11,485.00 from 21.12.1999 to 20.12.2000	Rs. 1,379.00

In addition, ground rent of Rs. 5/- was sought to be recovered.

6. According to the Petitioner, however it was only for the first time i.e. 6th July 2001 that the Petitioner was asked to submit proof of construction. This was followed by another letter dated 24th January 2002 asking the Petitioner to submit the proof of completion of construction and a cloth-mounted copy of the plans duly attested by the local body. Thereafter a letter was received from the L&DO, Ministry of Urban Development & Poverty Alleviation

(‘MoUD’) stating that it proposed to undertake an inspection of the property in question. According to the Petitioner, inspection was carried out satisfactorily.

7. This Court has been shown a copy of inspection report dated 21st February 2002 in which two comments were made. One was that “whole basement is being misused as commercial godown of cement and marble chips” and the second was that “party has constructed basement plus ground floor plus first floor plus barsati floor without leaving setbacks i.e. 100% construction on each floor.” A letter dated 8th March 2002 was sent to the Petitioner drawing his attention to the above breaches. The Petitioner wrote to the Respondent on 29th April 2002 pointing out that construction work had been completed to the satisfaction of MCD and house-tax had also been assessed by the MCD in relation to the property in question. On 10th October 2002 he again furnished a copy of the building plans duly mounted on the cloth as approved by the MCD. On 23rd October 2002 he again wrote a letter to the Respondent enclosing a photocopy of ‘D’ Form issued by the MCD. One more attested copy of the D Form was furnished to the Respondent on 8th November 2002. According to the Petitioner, he met the concerned personnel of the MoUD and explained to them that there was neither misuse nor unauthorized construction. In regard to some columns in the application form for conversion that were inadvertently left blank, the petitioner acknowledged the mistake and by a letter dated 28th November 2002 indicated how the blank columns should now be read. Column 21 was to read: “As per Plan”.

8. When the Petitioner again met the officers at the L&DO on 29th January 2003 (being public meeting day) he was informed that he had to pay certain charges for unauthorized construction and breaches which were noticed by the L&DO only after the receipt of sanctioned copy of the plan.

9. It appears from the documents now furnished to this Court that an inspection was purportedly carried out in the property on 11th November 2002 by the L&DO in which it was mentioned that the misuse reported in the earlier inspection report dated 21st February 2002 “is not running at site.” Basement is lying vacant except some finishing items i.e. marble chips bags etc. for the flooring purpose of the basement and upper floors.” However, it was again stated that unauthorized construction existed in the basement, ground floor, first floor and the barsati.

10. Learned counsel for the Respondent answered in the negative when asked if prior to the above inspection being carried out any intimation was sent to the Petitioner and whether after the inspection the above alleged breaches were brought to the notice of the Petitioner. If that is the position, then it was unfair on the part of the L&DO to expect the petitioner to have rectified the alleged ‘breaches’.

11. The Petitioner wrote a letter to the Respondent on 5th February 2003 drawing their attention to the Circulars dated 30th June 1999 and 26th March 2001 in terms of which unauthorized construction or misuse of the buildings constructed on leased premises ought to be taken care of by the New Delhi Municipal Council (‘NDMC’)/MCD/Delhi Development Authority

(‘DDA’) etc. under their laws and regulations. The policy was that the conversion could take place irrespective of there being a breach of the building bye-laws. The Petitioner informed the L&DO that “being senior citizen at the age of 73 years I find it difficult to follow the case personally again and again due to old age in capabilities.”

12. At this stage it is necessary to refer to the following information concerning the conversion policy of the L&DO as set out in a brochure issued in July 1999 by the L&DO, MoUD:

“11. Whether conversion will be granted even if there is a misuse of the property?”

Yes. Conversion will be granted even where a portion of residential property is being put to non-residential use.

12. Whether conversion will be granted even if there is unauthorized construction?

Conversion will be granted to the lease hold properties even if there unauthorised construction. However, the applicant will be liable for action under Municipal Bye-laws. The conversion to free hold in the presence of unauthorized construction does not act as a waiver of any action which is liable to be taken under the building bye-laws by the local bodies.

13. If past misuse and unauthorized constructions were taken cognizance of by the lessor and misuse charges and damages charges were levied by the lessor and not paid by the lessee, how these cases will be handled?

Any amount earlier claimed by the lessor and not paid by the lessee will have to be paid before the application for conversion can be considered.”

13. Para 18 of the brochure indicated the grounds on which an application

for conversion could be rejected. The amount to be paid by the applicant seeking conversion included the conversion fee, the arrears of ground rent and any other dues “earlier levied by the lessor and not paid by the lessee.” This meant that an application for conversion could be rejected only if there was already a demand for damages for breaches of the conditions of the lease as on the date of the application which could then be recovered. Since there were doubts if such a demand could be raised after the making of the application for conversion, the MoUD came out with a clarificatory circular dated 26th March 2001. Clause 4 of the said circular which is relevant for the present case reads as under:

“4. In these cases had there been no death of the recorded lessee, the property would have been made freehold without asking for fresh demand or inspection etc. But as mentioned earlier some sections/dealing hands are taking a plea that in these types of cases since substitution/mutation is involved fresh demand can be sent to them for misuse or unauthorized construction. These leads to inequalities as pointed out above. The correct interpretation of the instruction dated 28th June 1999 should have been that wherever an application for conversion has been filed on or before 31st March 2000 the charges demanded earlier should only be recovered and no fresh inspection or asking for sanction building plan etc. to calculate further charges should be demanded.”

14. Thus in terms of the above clarification if the L&DO had not raised any demand prior to the filing of the application for conversion, then it could not raise a fresh demand thereafter and insist that the demand should be paid before conversion could be granted. There is another aspect of the matter. Once the conversion takes place, the relationship of lessor and lessee ceases.

The MoUD goes out of the picture and the applicant becomes the absolute

owner of the property in question. For any breaches by way of unauthorized construction, the property holder would be accountable to the local bodies or the DDA as the case may be. Therefore, unless prior to the filing of the application for conversion a demand was already raised for the unauthorized construction and breaches, the L&DO cannot raise a demand thereafter and insist on its payment as a pre-condition to the grant of conversion. However, that is what appears to have happened in the present case.

15. The Petitioner had admittedly submitted copies of the sanctioned building plan in October 2002 itself. The L&DO was, during the inspection undertaken thereafter, required to examine whether with reference to the said sanctioned plan there was unauthorized construction. Yet, neither in the inspection that it undertook on 11th November 2002, nor in the subsequent inspection on 20th November 2003 was any reference made to the sanctioned plan. The third inspection which took place on 17th November 2005 was also undertaken in the same manner. In both inspections the same remarks were made as regards ‘unauthorised’ construction whereas the misuse was acknowledged as having stopped. The entire building was found vacant although construction was complete. Yet, no reference was made to the sanctioned plan. Incidentally, neither of the latter two inspections took place with prior intimation to the petitioner. He was also not informed of the breaches noted in those inspections.

16. To this Court it appears that the L&DO was in the above circumstances unjustified in repeatedly recording that the construction was unauthorized, in seeking to recover damages for alleged ‘misuse; and ‘unauthorised

construction’ and refusing to grant conversion till the charges for such breaches were paid. No satisfactory explanation is forthcoming as to why during the inspections that took place after 21st February 2002, without any prior intimation to the Petitioner, the construction found at site was not checked with reference to the sanctioned plan which was already available with the Respondents. The second aspect of the matter is despite the Petitioner’s pointing out that in terms of the Circular dated 26th March 2001 no demand could be raised for the first time for the alleged misuse and unauthorized construction after the date of the application for conversion, the Respondent clearly chose to ignore that circular.

17. At this juncture it must be pointed out that during the pendency of the case the Petitioner offered to pay, and in fact did pay, whatever demand was raised by the Respondent under protest so that the conversion could be granted. This was recorded in the following order dated 27th March 2008 passed by this Court:

“CM No. 7214/2008

This is an application which has been filed seeking a direction from this Court to the Respondent i.e. Land & Development Officer to process the application of the Petitioner filed with the office of the Land & Development Officer for conversion of the leasehold rights in the property situate at Plot No. 8, Site No. 7, New Rajinder Nagar, New Delhi (in short the said property) to freehold.

The applicant/writ petitioner has averred in the application that without the prejudice to his rights and contentions in the writ petition, he has now deposited a sum of Rs. 21 lakhs towards misuse charge; on account of which, the Respondents

purportedly withhold the process of dealing with his application for conversion of the said property. To buttress his case the writ petitioner has also annexed to the application, a letter dated 26th February 2008 addressed to the Land & Development Officer wherein the detail of the drafts whereby the sum of Rs. 21 lakhs has been remitted to the Land & Development Officer, is set out.

Mr. Gaurav Duggal, Standing counsel appearing for the Land & Development Officer has accepted the position as contained in the letter, insofar as the payment of the dues towards misuse charges is concerned. He also accepts the position that the entire dues payable towards misuse charges, stand remitted.

In view of the aforesaid I do not find any justifiable reason for the Land & Development Officer to withhold the process of dealing with the writ petitioner's application for conversion of the leasehold rights to freehold rights in respect of the said property.

In these circumstances, I direct the Land & Development Officer to do the needful in accordance with the law within a period of three weeks from today.

The CM stands disposed of. Dasti.”

18. Pursuant to the above order the property was converted to freehold and a conveyance deed was executed on 10th July 2008. The question that remained to be addressed was whether the Petitioner was entitled to refund of the sum of Rs. 21 lakhs which had been paid by him on 26th February 2008 under protest and without prejudice to his rights and contentions.

19. At the hearing of the case on 11th March 2010 this Court was informed

by learned counsel for the Respondent that the Petitioner had still not paid the charges for the misuse of the Aram Bagh property. This was submitted in the context of the revised conversion policy announced in June 2003 wherein in para 13 it was stated as under:

“13. If past misuse and unauthorized construction were taken cognizance of by the lessor how these cases will be handled?”

In respect of these properties where any amount earlier claimed by the lessor and not paid by the lessees will have to be paid before the application for conversion can be considered. In respect of those properties where misuse any/or unauthorized construction exists, conversion may be allowed only after recovering the misuse charges and/or damages charges, irrespective of whether earlier demanded or not.”

20. In the first place it must be noticed that the revised conversion policy cannot apply to the case of the Petitioner since he had applied for conversion in December 1999 itself. In any event, there was no misuse even as noted in the inspection reports of the L&DO. Also, there was no basis for the conclusion that the construction was unauthorized. Nevertheless at the hearing on 11th March 2010 this Court required the Petitioner to file an affidavit to clarify the following aspects:

(1) whether there were any charges for misuse/charges for unauthorized construction pending/communicated to the Petitioner qua the property in question i.e. Plot No. 8 Site No. 7, New Rajinder Nagar, New Delhi on the date when the Petitioner applied for getting the above property converted from leasehold into freehold i.e. 21st December 1999

(2) whether there was any demand pending qua the Aram Bagh property on the date when the Petitioner applied for getting Rajinder Nagar property converted from leasehold to freehold

and

(3) to place on record the basis of payment of Rs. 21,00,000/-

21. Pursuant to the above order the Petitioner filed an affidavit dated 27th March 2010 along with supporting documentary proof to show that:

(i) It was only on 19th December 2000, after the application for conversion of the property in question made on 21st December 1999, that the L&DO demanded damages for the unauthorized occupation of government land at Aram Bagh;

(ii) By a letter dated 21st November 2001 the Petitioner enclosed demand drafts totaling Rs. 7,02,725/- being the entire damage charges for the unauthorized construction of the government land at Aram Bagh;

(iii) The Petitioner was asked by a letter dated 24th January 2002 to pay interest on the above amount @ 18% per annum in the sum of Rs. 1,16,787/-. By a letter dated 26th July 2002 he deposited the entire amount so demanded towards interest. Therefore, as regards the Aram Bagh property, the Petitioner had made full payment for the unauthorized occupation of the said property.

(iv) The Petitioner was asked by a letter dated 14th March 2005 of the L&DO to pay a sum of Rs.14,21,055/- for the damages in relation to the property in question. The Petitioner deposited a sum of Rs. 21 lakhs on 26th February 2008 indicating clearly that he was doing so

under protest, reserving his right to claim refund.

(v) By a letter dated 18th June 2008 the L&DO acknowledged receipt of the above sum of Rs. 21 lakhs but insisted that a sum of Rs. 84,788/- was still owing to it. The Petitioner deposited the said amount on 18th June 2008.

22. Thus it is plain that the Petitioner had paid all the amounts as and when demanded by the Respondent. There was no justification for the demand raised for the sum of Rs. 14,21,055/- together with interest by the letter dated 3rd May 2008. This Court is satisfied that neither was there misuse nor any unauthorized construction. It was an erroneous demand raised on the account of the abject failure on the part of the Respondent to examine the sanctioned plan that was submitted to it before concluding that the construction was unauthorized. It was sheer harassment of the petitioner. The inescapable conclusion is that entire action of the Respondent in repeatedly demanding charges for unauthorized construction and misuse was wholly without the authority of law.

23. This Court has, therefore, no hesitation in directing that the Petitioner should be refunded a sum of Rs. 21 lakhs paid by him to the Respondent under protest on 26th February 2008 during the pendency of this writ petition. The impugned demands dated 14th May 2005, 31st May 2008 and 19th June 2008 are hereby quashed to that extent. It is accordingly directed that the sum of Rs. 21 lakhs will be refunded to the petitioner by the Respondent within four weeks from today together with simple interest @

6% per annum from the date of deposit i.e. 26th February 2008 till the date of refund. If there is a failure on the part of the Respondent to refund the said amount together with interest within the period as directed, the Respondent shall pay penal simple interest @ 12% per annum for the period of delay.

24. With the above directions the writ petition is allowed with costs of Rs. 10,000/- which will be paid by the Respondent to the Petitioner within a period of four weeks from today. The petition and the pending application are disposed of.

S. MURALIDHAR, J.

MAY 12, 2010

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