

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 662/2009

MAJOR GENERAL ANIL SAWHNY (RETD) ..... Petitioner  
Through: Mr. N.K. Kantawala, Advocate.

versus

UOI & ANR. .... Respondents  
Through: Mr. Jatan Singh, Central Govt.  
Standing Counsel.

**CORAM:**  
**HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether reporters of local paper may be allowed to see the judgment? ☒
2. To be referred to the report or not? ☒
3. Whether the judgment should be referred in the digest? ☒

**ORDER**  
**12.01.2010**

**S. Muralidhar, J.**(open court)

1. The prayer in this writ petition is for the quashing of a demand raised by the Respondent No.2 Land and Development Office (L&DO) dated 21<sup>st</sup>/25<sup>th</sup> October 2002 with respect to the unearned increase payable by the Petitioner regarding the property at 25 Babar Lane, New Delhi (hereinafter 'the property'). The other prayers are incidental to the above relief.

2. The Petitioner states that his father late Mr. S.P.R. Sawhny was killed in Lahore on 12<sup>th</sup> August 1947 during the India-Pakistan partition riots.

Signature Not Verified

Digitally Signed By: AMULYA  
Certify that the digital file and  
physical file have been compared and  
the digital data is as per the physical  
file and no page is missing.

As the Petitioner's father had left several movable and immovable

8

properties in Pakistan, the mother of the Petitioner filed a claim before the Special Claims Officer, Gurgaon for compensation on behalf of herself and also on behalf of the Petitioner, Major General Anil Sawhny and his brother Mr. Satish Sawhny. It is stated that on 14<sup>th</sup> February 1952, the Special Claims Officer passed an order assessing the share of the late S.P.R. Sawhny at Rs.4,92,750/- as claimed against the properties lost by him. Forty-two acres of land were also allocated in Tehsil Jagadhari, District Ambala to the legal heirs of late Mr. S.P.R. Sawhny. The aforesaid compensation amount was utilized by the Petitioner's mother Mrs. Sita Sawhny for the purchase of the property at 25, Babar Lane, New Delhi. It is stated that in view of Section 19 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 the Petitioner became an associate owner of the said property along with other LRs of late Mr. S.P.R. Sawhny, including the Petitioner's mother, and his brother.

3. On 18<sup>th</sup> December 1976 a family settlement was effected between the Petitioner and his mother and his brother whereby various movable and immovable properties of the HUF were distributed among the legal heirs of late Mr. S.P.R. Sawhny. However, disputes arose between them resulting in the filing of legal proceedings by one against the other. In Suit No.309 of 1998 filed by Satish Sawhny against his siblings Ms. Usha Vijh, Major General Anil Sawhny (Petitioner herein) and Rahul Sawhny, a compromise was arrived at. IA 3103 of 2001 was filed under Order XXIII Rule 3 CPC in the said suit. The compromise between the parties was taken on record and by an order dated 29<sup>th</sup> March 2001, the

9

suit was disposed of by the learned Single Judge of this court in terms of the compromise. The terms of the compromise will be adverted to later in this judgment.

4. However, it requires to be noted at the present moment that the parties agreed that the property would fall entirely to the share of the Petitioner. The remaining heirs of late Mr. S.P.R. Sawhny, who were parties to the said suit, executed relinquishment deeds, relinquishing their rights in favour of the Petitioner as far as the property was concerned. On 14<sup>th</sup> July 2001, the Petitioner wrote to the L&DO seeking mutation of the property in the name of the Petitioner. Reminders were sent by him on 7<sup>th</sup> February 2002 and 8<sup>th</sup> May 2002.

5. By a letter dated 16<sup>th</sup> October 2002, the Respondent No.2 required the Petitioner to pay 50% unearned increase on the 2/3<sup>rd</sup> share of the property. The Petitioner wrote letters on 30<sup>th</sup> November 2002; 12<sup>th</sup> May 2003; 30<sup>th</sup> June 2003; 15<sup>th</sup> October 2003 and 12<sup>th</sup> February 2004 seeking withdrawal of the letter of demand of unearned increase. The Petitioner pointed out that in respect of the other property at Nizamuddin, which fell to the share of the Petitioner under the same compromise, no unearned increase had been demanded by the Respondent No.2 for mutation. However, by a letter dated 9<sup>th</sup> August 2004 the Respondent No.2 reiterated the demand for unearned increase as raised in the earlier letter dated 16<sup>th</sup> October 2002. This was followed by a letter dated 3<sup>rd</sup> December 2004 by Respondent No.2 informing the Petitioner that the claim for mutation of the property in the Petitioner's

*WP(C) No.662/2009* *Page 3 of 14*

name had been closed and that steps were being taken for recovery of the dues. 10

6. The Petitioner made representations on 24<sup>th</sup> January 2008, 4<sup>th</sup> September 2008 and 4<sup>th</sup> November 2008 reiterating his request for withdrawal of the demand. By a letter dated 21<sup>st</sup>/25<sup>th</sup> November, the Respondent No.2 informed the Petitioner that his case had been closed.

7. Counsel for the Petitioner refers to certain Office Orders dated 30<sup>th</sup> March 1964 and 13<sup>th</sup> December 1966 issued by the Ministry of Works and Housing and an Office Order dated 2<sup>nd</sup> March 1993 issued by the Ministry of Urban Development stating that where the transfer of a property is from one co-lessee to another by way of a deed of release, no unearned increase would be charged. It is further submitted that since the other heirs of late Mr. S.P.R. Sawhny have relinquished their rights in favour of the Petitioner pursuant to the settlement arrived at between the parties to the suit, no unearned increase is liable to be paid by the Petitioner.

8. The prayer of the Petitioner has been resisted by the Respondent essentially on the ground that the terms of the compromise showed that the Petitioner paid a sum of Rs.9 lakhs each to the other legal heirs; viz., Ms. Usha Vijh and Mr. Satish Sawhny. It is submitted that the opinion of the Law Ministry was sought. It was opined by the Law Ministry that Rs.9 lakhs had been paid to each of the other legal heirs and that the payment of such a "heavy amount may be in consideration

against the undivided 2/3<sup>rd</sup> share of the property at 25, Babar Lane". 12

The decision on whether unearned increase should be recovered, was, however, left to the Ministry of Urban Development.

9. In its counter affidavit dated 21<sup>st</sup> May 2009, the L&DO refers to affidavits submitted by Mr. Satish Sawhny and Ms. Usha Vijh in which they categorically stated that sum of Rs.9 lakhs had been received "as an overall settlement of the division of the family's movable assets and sale proceeds of property at Ambala". Each of them have further stated that "I affirm that this amount is not in respect of premises No. 25 Babar Lane, New Delhi, which has been inherited by my brother, Major General Anil Sawhny under the will of my late mother Mrs. Sita Sawhny".

10. Nevertheless, the L&DO in its counter affidavit concludes that:

"It is quite clear that the money was given by Major General Anil Sawhny to Smt. Usha Vijh and also to Sh. Satish Sawhny for self and on behalf of defendant No. 3 and 4 in Suit No. 3209 of 1998 with the purpose of securing relinquishment deed for their claims in respect of property No. 25, Babar Lane, New Delhi in favour of Major Genral Sawhny. This undeniable truth counters the clarification given by Major General Anil Sawhny vide his letters dated 7<sup>th</sup> February 2002. As it had been a normal settlement of properties and other assets among the brothers and sisters at the time of succession, without involving claims or counter claims in a court proceedings, things would have been different and the instructions contained in Para III of the office order 21/76

and that contained in office order No. 13/91 would have applied in this case".

13

Consequently the L&DO decided to recover the unearned increase from the Petitioner.

11. I have heard the submissions of Mr. N.K. Kantawala, the learned counsel for the Petitioner and Mr. Jatan Singh, the learned counsel for the Respondents.

12. Mr. Kantawala refers to the Office Orders in question and submits that this was purely a transfer of rights by two of the heirs of late Mr. S.P.R. Sawhny in favour of the Petitioner and that the sum of Rs.9 lakhs was not paid with specific reference to the property at 25, Babar Lane. Consequently the conclusion arrived at by the L&DO that this transaction would attract liability to pay unearned increase was wholly untenable in law.

13. In support of his case, Mr. Jatan Singh refers to the perpetual lease deed dated 4<sup>th</sup> April 1961 under which the land on which the property at 25, Babar Lane stands, was given on lease to the mother of the Petitioner. He refers to clause II (13) of the said lease deed and submits that the power to recover unearned increase stems from the said provision of the lease deed. Referring to the judgment dated 4<sup>th</sup>

December 2008 passed in LPA No.512 of 2006 by the Division Bench of this Court (in *Union of India v. Raj Kumar Govil*), Mr. Jatan Singh submits that unearned increase would have to be paid even where a sale deed is executed for consideration by a father in favour of the son. It is accordingly submitted that the Respondents were justified in making a demand for 50 per cent of the unearned increase from the Petitioner. M

14. The submissions have been considered. In the first place, it must be noticed that Clause 13 of the lease deed does permit the Government to recover the unearned increase in the event of the transfer of the by the lessee in favour of someone else. Clause 13 reads as under:-

“(13) The Lessee shall before any assignment or/transfer of the said premises hereby demised or any part thereof obtain from the Lessor or such officer or body as the Lessor may authorise in this behalf approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the Lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects therefor.

Provided also that the Lessor shall be entitled to claim and recover a portion of the unearned increase (*i.e.*, the difference between the premium already paid and current market value) in the value of land and decision of the Lessor in this behalf shall be final at the time of transfer (where such transfer is an entire site or only a part thereof), the amount to be recovered being 50 per cent of the unearned increase.

✓

The Lessor shall have pre-emptive right to purchase the property after deducting 50 per cent, of the unearned increase as aforesaid.”

15. However, what is important to note in the present case is that there is no sale deed executed by either Ms. Usha Vijh or Mr. Satish Sawhney in favour of the Petitioner in respect of the property at 25, Babar Lane. The terms of compromise which have been recorded in the order dated 29<sup>th</sup> March 2001 passed by this Court in IA No.3103 of 2001 in Suit No.309 of 1998 read as under:-

“(i) Shri Satish Sawhney withdraws all his claims whatsoever with respect to property No. 25, Babar Lane, New Delhi as associate owner of the same or otherwise;

(ii) Smt. Usha Vijh withdraws all her claims whatsoever on the basis of will dated 14<sup>th</sup> January 1990 of her mother Smt. Sita Sawhney propounded by her;

(iii) Defendant No.3 and Defendant No.4 through his mother and duly constituted attorney withdraw their suit being No. 2173/91 challenging settlement and they confirm that all their rights, claims, titles whatsoever in the estate of their grandfather S.P.R. Sawhney of in the estate of their grandmother Smt. Sita Sawhney have been fully met and satisfied by allocation of property No. B-8, Nizamuddin East, through their father Satish Sawhney and as such they now have no claim against property No. 25, Babar Lane, New Delhi. Defendants 3 and 4 have agreed to indemnify Major General Anil Sawhney and his heirs/successors against claims, if any, of Rohit Sawhney or his heirs and undertake to satisfy claims, if any, from their own assets.

16

(iv) Satish Sawhney and Smt. Usha Vijh give up their claim against Major General Anil Sawhney regarding the share of Smt. Sita Sawhney in respect of property No. 25, Babar Lane, New Delhi and admit that Smt. Sita Sawhney had left a validly executed Will dated 18<sup>th</sup> January/27<sup>th</sup> March 1978 with respect to her share in said property in favour of Major General Anil Sawhney. Defendants 3 and 4 confirm the same. Satish Sawhney and Smt. Usha Vijh undertake not to claim any right, title or interest in said property bearing No. 25, Babar Lane, New Delhi of which Major General Anil Sawhney is the sole absolute owner and as a precautionary measure they undertake to execute and register the disclaimer deed/relinquishment deed as per draft annexure A in favour of Major General Anil Sawhney to ratify the partition. They have no objection if Major General Anil Sawhney gets the same mutated in his name in official records.

(v) Smt. Usha Vijh and Major General Anil Sawhney undertake not to claim any right, title or interest in property No. B-8, Nizamuddin East whereof Satish Sawhney is the absolute owner and as a precautionary measure they undertake to execute and register disclaimer deed/relinquishment deed as per draft annexure B in his favour and they would have no objection if Satish Sawhney gets the same mutated in his name in official records. Said relinquishment deed shall be executed and registered within seven days from today. Original relinquishment deed with respect of said Babar Lane property shall be handed over to Major General Anil Sawhney and original of relinquishment deed with respect to Nizamuddin property shall be handed over to Satish Sawhney.

(vi) Major General Anil Sawhney has already adequately compensated Satish Sawhney and his sons, i.e. Defendants 3 and 4 and Smt. Usha Vijh with respect to sale of HUF

17  
properties sold in Ambala out of the share of Smt. Sita Sawhney in full and final settlement of all claims of Satish Sawhney and defendants 3 and 4. Further in full and final settlement of all claims of Major General Anil Sawhney having got a larger/unequal share and further in full and final settlement of all claims of Smt. Usha Vijn with respect to said properties at Babar Lane and Nizamuddin, Major General Anil Sawhney will pay a sum of Rs.9 lacs through a pay order in the name of Satish Sawhney for self and on behalf of defendants 3 and 4. Likewise Major General Anil Sawhney will pay a sum of Rs.9 lacs through a pay order in the name of Smt. Usha Vijn.

(vii) Parties have already distributed between themselves the remaining estate of Smt. Sita Sawhney i.e. jewellery, cash and household goods have been distributed between Satish Sawhney Major General Anil Sawhney and Smt. Usha Vijn and their respective heirs and the parties are left with non-claims against each other.

(viii) It has been further agreed that Satish Sawhney, Defendants 3 and 4 shall be exclusively liable for all dues of past and future with respect to said property No. B-8, Nizamuddin East and Major General Anil Sawhney shall be exclusively liable for all dues of past and future with respect to said property No. 25, Babar Lane, New Delhi.

(ix) It is further agreed that Major General Anil Sawhney shall withdraw all his applications/objections filed with MCD or any other authority with respect to property No. B-8,

Nizamuddin East and shall not interfere in any manner in the proceedings vis-à-vis MCD with respect to said property.

18

It is agreed that Satish Sawhney has also moved an application for withdrawal of FAO(OS) No. 42/92 and he undertakes that he will get the appeal dismissed in view of present compromise within a week from today.”

16. Clauses (vi) and (vii) above are relevant. Clause (vi) clearly indicates that the said amount of Rs.9 lakhs each was paid by the Petitioner to Ms. Usha Vijh and to Mr. Satish Sawhney not particularly with reference to the property at 25, Babar Lane but as part of an overall settlement with respect to the properties at Babar Lane and Nizamuddin. The clause also acknowledged the fact that same amount had already been paid by the Petitioner to his siblings in relation to his getting the property at Ambala.

17. Consequently it is not possible to accept the submission of Mr. Jatan Singh that the relinquishment of the rights of Ms. Usha Vijh and Mr. Satish Sawhney in the property in favour of the Petitioner was for consideration of Rs.9 lakhs each and therefore the liability to pay unearned increase stood attracted.

18. The office order dated 30<sup>th</sup> March 1964 relied upon by the counsel for the Petitioner reads thus:

“No. Co-ord (13)  
Government of India

19

Ministry of Works Housing & Rehabilitation  
Land Development Office Exhibition Grounds  
New Delhi

Dated the 30<sup>th</sup> March 1964

OFFICE ORDER

A case in which there were two co-lessees in a plot and one of them transferred his right and title in the property to the other through a Release Deed was referred to the Ministry of Law for advice whether 50% of the unearned increase was recoverable in such cases. The Ministry of Law have stated that the principle in such cases is that the covenant is attracted only where the lessees let into possession any one not previously approved of as tenant by the Lessor, and since the release by one co-lessee in favour of the other does not attract the covenant, no share in the unearned increase can be demanded in such cases no permission of the lessor being required for such release.

The above advice of the Ministry of Law may be kept in view while dealing with such case in future.

Sd/-  
(P.D. Garg)  
Land & Development Officer “

19. This is further modified on 13<sup>th</sup> December 1966. The said Office Order nevertheless reiterated that unearned increase would be recovered where a lessee transfers his rights through “sale deed, gift deed or release deed etc.”. Later on 2<sup>nd</sup> March 1993 Office Order No.7/1993 was issued which again reiterated that no unearned increase would be payable “in the case of release by one co-lessee in favour of the other if such lessees have acquired the leasehold interests jointly with others by way of succession, intestate or testamentary”.

20. As far as the present case is concerned, although it appears that the parties had sought to claim their rights with reference to certain wills

20  
stated to have been executed by their mother, yet they arrived at a compromise as they were prepared to give up those contentions. For all practical purposes, the case proceeded as if the mother of the parties died intestate. She was the lessee of the property in question. Her legal heirs who were entitled to equal shares in her estate, would therefore have become co-lessees of the property. By way of a relinquishment Ms. Usha Vijn and Mr. Satish Sawhny have transferred all their rights, title and interests in favour of the Petitioner.

21. In the considered view of this Court, the conditions of Office Order No.7 of 1993 dated 2<sup>nd</sup> March 1993 would stand attracted.

22. Viewed from any angle, this Court is of the view that in the present case demand for unearned increase from the Petitioner by the Respondents was not justified. The decision of the Division Bench of this Court in *Union of India v. Raj Kumar Govil* was in a different factual context. Para 3 of the said judgment in *Raj Kumar Govil* shows that the property in question was sought to be transferred by way of a sale deed. Moreover, the provisos to clause (11) of the perpetual lease deed which permitted recovery of unearned increase were not noticed by the Bench for some reason. Be that as it may, the facts of the present case do not involve transfer by way of a sale deed at all. Consequently the judgment in *Raj Kumar Govil* cannot help the Respondents.

23. For all of the aforementioned reasons, this writ petition is allowed.

2002, issued by Respondent No.2 demanding unearned increase from the Petitioner are hereby quashed. The Respondent No.2 is directed to grant mutation in respect of the property at 25, Babar Lane, New Delhi in favour of the Petitioner in accordance with law within a period of eight weeks from today without insisting on demand of unearned increase from the Petitioner. 21

24. The writ petition is allowed with costs of Rs.3000/- which will be paid by the Respondents to the Petitioner within a period of four weeks from today.



**S. MURALIDHAR, J.**

**JANUARY 12, 2010**  
ak