

Twenty Three and Seventy Three paise only) towards misuse charges to the appellant, the respondent's application for conversion of the property No.9, Saini Enclave, Delhi-110092 (the property, for short) from lease hold to free hold shall be considered.

2. The property was originally allotted to one Mr. Tara Singh. By application dated 16th June, 1994, the respondent applied for conversion of the property from lease hold to free hold and had submitted papers including power of attorney executed by Mr. Tara Singh. The respondent on self-assessment basis had deposited conversion charges of Rs.43,337/- (Rupees Forty Three Thousand Three Hundred Thirty Seven only) and another amount of Rs.10,561/- (Rupees Ten Thousand Five Hundred and Sixty One only) towards composition fee was deposited on 30th December, 1994 pursuant to the letter dated 20th December, 1994 written by the appellant. By communication dated 7th March, 1995, the respondent received unstamped and unexecuted conveyance deed with the direction to get it stamped from the Collector of Stamps. It is admitted that the respondent was required to submit the stamped conveyance deed with the appellant after adjudication by the Collector of Stamps for execution of the sale/conveyance deed. The respondent waited for about six years and got the conveyance deed stamped on payment of

Rs.5,655/- (Rupees Five Thousand Six Hundred and Fifty Five only) and submitted the said document vide receipt dated 30th October, 2001.

3. During this period, the appellant issued show cause notice dated 15th June, 2001, wherein it was alleged that contrary to the terms and conditions of the sub-lease deed, the property was being used for the sale of bath fittings, tiles etc. i.e., as a showroom or a shop. The respondent, by letter dated 18th July, 2001 protested and stated that the allegations were false and baseless and the respondent and his family members were residing in the premises and no such activity, as stated in the notice was being carried out and there was no nuisance and disturbance to the neighbours. It may be noticed here that in one of the columns of the form for conversion of the property from lease hold to free hold, the respondent-applicant was required to state whether the property was being used for residential purpose i.e. the specified purpose mentioned in the lease deed. The respondent had stated that the property was being used for residential purpose.

4. As per the case of the appellant, Deputy Director (Enforcement) vide his letter dated 26th September, 1996 had informed that the property was being used for other purposes, than the permissible residential purpose. Junior Engineer (CS) vide his report dated 18th May, 2001 informed that the premises was being misused for commercial purposes under the name and style of 'Bath Jewellery',

‘NITCO Tiles’, ‘Hans Bath Fittings’ and ‘Orient Tiles’ and it was in these circumstances, the show cause notice dated 15th June, 2001 was issued for misuse of the property.

5. There is merit in the contention of the appellant that the respondent had deliberately delayed submission of papers i.e. the stamped conveyance deed, which was sent by the appellant to the respondent for the purpose of valuation and stamping by their letter dated 7th May, 1995. The conveyance deed was submitted after six years on 30th October, 2001. There is no plausible cause or explanation for this delay as only stamp duty of Rs.5,655/- (Rupees Five Thousand Six Hundred and Fifty Five only) was payable. The only plausible explanation for the same is that the Deputy Director (Enforcement) by his letter dated 26th September, 1996 had informed that the property was being used for other purposes than the residential purposes and, therefore, once the stamped conveyance deed was presented, this aspect would be examined. The stamped conveyance deed as is apparent was filed after six years on 30th October, 2001 i.e., after the show cause notice dated 15th June, 2001 was issued.

6. The appellant tried to inspect the property once again on 21st December, 2001, but no inspection was allowed by the son of the respondent. The property was revisited on 4th January, 2002, when the respondent was present and at that time also it was found that a shop

‘Bath Jewellery’ was still continuing on the ground floor. The shop area was measured as 157.4 sq. meters. Inspection of the basement was not permitted as it was stated that keys were not available with the respondent. The first floor was being used for residential purpose. It may be noted that the respondent had informed the appellant by his letter dated 21st January, 2002 that the field staff of the appellant DDA had visited the premises in his absence. This letter obviously has to be taken with a pinch of salt and does not deserve and merit acceptance. The allegation of misuse should be accepted.

7. The fact that the property was being misused is also affirmed by the fact that the prosecution was launched against the respondent under Section 14 of the Delhi Development Authority Act, 1956 for violation of the Zonal Plan/Master Plan. The respondent was convicted and a fine of Rs.4,000/- was imposed and paid by the respondent on 6th May, 1998. The contention of the respondent is that he had stopped the misuse after paying fine of Rs. 4,000/- (Rupees Four Thousand only) on 6th May, 1998. We are not inclined to accept the said statement and contention. No such contention is raised or stated in the letter, which was written to the DDA in July, 2001 after receipt of notice dated 15th June, 2001. Thereafter, there is another inspection report of the Junior Engineer (CS) dated 18th May, 2001 as well as the inspection report

dated 4th January, 2002. The appellant was not allowed to inspect the property on 21st December, 2001.

8. Liability to pay misuse charges in view of the aforesaid facts cannot be countenanced. The question, which now arises for consideration, is the period for which misuse charges are leviable and the quantum thereof. The area under misuse has been calculated and computed as 157.46 sq. meters. This has been calculated on the basis of the site inspection on 4th January, 2002. There is no ground or basis why this calculation should be disregarded and should not be accepted. The date of closure of misuse as taken by the DDA is 24th April, 2003 and on this basis it is stated as per the policy, a demand of Rs. 34,57,522/- (Rupees Thirty Four Lakh Fifty Seven Thousand Five Hundred and Twenty Two only) was raised by the respondent vide letter dated 17th August, 2005, which was subsequently revised vide letter dated 20th February, 2008 to Rs.47,32,483/- (Rupees Forty Seven Lakh Thirty Two Thousand Four Hundred and Eighty Three only). As noticed above, the learned single Judge has reduced the said amount to Rs. 6,37,123.73/- (Rupees Six Lakh Thirty Seven Thousand One Hundred Twenty Three and Seventy Three paise only). This brings us to the core issue, i.e., which a particular policy of the appellant is applicable and why should it be applied.

9. Policies/guidelines applicable/framed by the appellant have undergone repeated and frequent changes. Experimentation and hit and trial method are sometimes necessary and this may bring about change of policy/guidelines. At the same time, consistency, certainty and uniformity are recognized principles of good governance and are checks on arbitrariness and discrimination.

10. The first policy is dated 28th June, 1999. Clause-6 of the policy decision dated 28th June, 1999 reads 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.”

11. Thus as per this policy nothing was payable but the appellant was required to take effective steps to stop misuse. On 26th June, 2001, another circular was issued by the appellant dealing with the misuse. The said circular reads as under:-

“No.F.4(43)99.Coordn. Dated 26.6.2001

CIRCULAR

In partial modification of Circular No.F.4(43)99/Coordn./L.D. dt. 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.”

12. Subsequently, another circular dated 11th August, 2003 was issued, which for the sake of convenience is reproduced below:-

“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 installment 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 installments.

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 17.7.03. All other cases where payment has not been received, revised demand on account of misuse charges may be raised.”

13. Yet another circular dated 9th March, 2007, the circular dated 11th August, 2003 was modified and it was directed as under:-

“Dated: 9/3/07

CIRCULAR

In partial modification of earlier circular of even No.89 dt. 11.8.03, 152 dt. 18.12.03 and circular bearing No.PS/Dir.(RL)/LD/04/248 dt. 4.6.04, the Lt. Governor, Delhi has been pleased to approve as under:-

- i) For the conversion applications received upto 31.12.06, complete in all respect, misuse charges shall be recovered upto 31.12.06 or closure of misuse whichever is earlier.
- ii) For the conversion applications complete in all respect received after 31.12.06, in cases of continued misuse, the misuse charges shall be recovered up to the date of receipt of conversion application.

2. The cases in which misuse charges as per circular dt. 11.8.03, 18.12.03 & 4.6.04 have already been approved by the Competent Authority and demand raised shall not be re-opened.

Other terms and conditions of earlier circulars dt. 11.8.03, 18.12.03 shall remain the same.”

14. As stated above the question, which arises for consideration, is that which of the circular is applicable in the present case. Clause 6 of the circulars dated 28th June, 1999 stipulated that the lease administering authorities i.e., the DDA should convert all leased properties irrespective of any building violations or use violations. However, this circular does not prescribe or mention about the misuse charges. In any case, we do not think that the respondent is entitled to benefit of this circular as he had submitted the stamped conveyance deed on 6th October, 2001 after the circular dated 26th June, 2001 modifying the earlier policy dated 28th June, 1999 was issued. As per this circular, the misuse charges were payable till the vacation of misuse or up to 28th June, 1999, whichever was earlier. This circular stipulated that all 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 clause 2, if applicable. Clause 5 of the said circular further stipulated that where application for conversion has been allowed and misuse/unauthorized construction still continues, the matter shall be referred to the concerned Enforcement Agency for further necessary action.

15. Clause (d) of the circular dated 17th July, 2003 clarifies that the said circular would be applicable to all pending cases except those

cases where payment on account of misuse charges pursuant to an application for conversion was received by 17th July, 2003. In this manner the circular dated 11th August, 2003 was made applicable to all pending applications. Clause (a) states that the misuse charges would be levied “up to date” or the actual date of closure, whichever was earlier. The words ‘up to date’ were explained in the second part of the clause (a), as the date on which the application for conversion by the lessee or the general power of attorney holder complete in all respects with complete annexures and documents was received. It is further clarified in the said circular that misuse charges would be levied up to the date of receipt of last installment or up to the date of closure, whichever was earlier.

16. In the present case, the payment towards conversion charges including the composition fee applicable as in cases of power of attorney transactions was made on 20th December, 1994. Thereafter, notice along with conveyance deed was sent to the respondent on 7th March, 1995 with a direction to get it stamped from the Collector of Stamps. The aforesaid exercise was required to be completed within 45 days, but the respondent had deposited the original papers after getting the conveyance deed stamped only on 6th October, 2001. We are, in these circumstances, inclined to hold that the date when the respondent had submitted the conveyance deed after stamping should be treated as

the date on which the complete application for conversion was filed. The date on which the respondent had made the payment or had received the copy of the conveyance deed for stamping should be ignored and should not be taken as the relevant point. The gap between the date on which the full payment was made i.e. 20th December, 1994 and when the notice for conveyance deed for stamping was sent on 7th March, 1995 and the date on which the stamped conveyance deed was deposited i.e. 30th October, 2001 is substantial.

17. When the respondent had submitted the stamped conveyance deed, the circular dated 26th June, 2001 was in force and as per the said circular, misuse charges could be calculated up to 26th August, 1999 or up to the date of vacation of misuse, whichever was earlier. As per the appellant, the misuse was continuing on the said date when conveyance deed after stamping by Collector of Stamps was deposited. Nothing prevented the appellant from computing the misuse charges in terms of the circular dated 26th June, 2001. The aforesaid circular dated 26th June, 2001 continued and ruled in the field, till the new circular dated 11th August, 2003 was issued. The time gap between submission of papers i.e. the stamped conveyance deed on 30th October, 2001 and 11th August, 2003 or the date mentioned therein 17th July, 2003 is substantially long and there is a gap of nearly 20 months. Nothing stopped the appellant DDA from raising the demand in terms of the

circular dated 26th June, 2001 during this period. Appellant has not explained this delay. The last inspection was on 4th January, 2002. The circular dated 26th June, 2001 even applied to the cases which had been closed and the applications had been rejected. For the same reasons the 2007 circular will not be applicable. We have applied principles of equity and fair play to arrive at the aforesaid conclusion. Conduct of the both sides has been balanced. While the respondent delayed submission and presentation of the stamped conveyance deed, the appellant also took its own time to compute and calculate the misuse charges. Till the misuse charges were communicated, obviously the respondent would not have made payment. This delay and default on the part of appellant should not prejudice and cast a higher financial burden on the respondent.

18. In view of the aforesaid discussion, the appeal is partly allowed and it is directed that the respondent will be liable to pay misuse charges with effect from 26th September, 1996 till 28th June, 1999. This means, the respondent will be liable to pay misuse charges of Rs.1,71,770.29/- (Rupees One Lakh Seventy One Thousand Seven Hundred Seventy and Twenty Nine paise only) for the period 26th September, 1996 to 31st March, 1997, Rs.4,12,438.44/- (Rupees Four Lakh Twelve Thousand Four Hundred Thirty Eight and forty four paise only) for the period 1st April, 1997 to 31st March, 1998,

Rs.5,36,398.19/- (Rupees Five Lakh Thirty Six Thousand Three Hundred Ninety Eight and Nineteen paise only) for the period 1st April, 1998 to 31st March, 1999 and Rs. 1,31,119.53 (Rupees One Lakh Thirty One Thousand One Hundred Nineteen and Fifty Three paise only) for the period 1st April, 1999 to 28th June, 1999. The respondent is therefore liable to pay misuse charges of Rs. 12,51,726.45/- (Rupees Twelve Lakh Fifty One Thousand Seven Hundred Twenty Six and Forty five paise only). The respondent is given liberty to make the said payment on or before 30th June, 2011 and on such payment being made, the conveyance deed shall be executed. The appeal is accordingly disposed of. There will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

MARCH 30, 2011
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