

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

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Date of decision: 4th November, 2011

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WP(C) NO.3175/2007

LAJ GANDHI

..... Petitioner

Through: Dr. Bhatia & Mr. S.S. Sastry, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondents

Through: Mr. Ajay Verma, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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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. |

RAJIV SAHAI ENDLAW, J.

1. The petition seeks mandamus to the respondent DDA to convert the leasehold rights in the land underneath the property No.A-1/111, Safdarjung Enclave, New Delhi-110 029 into freehold. Notice of the petition was issued and pleadings have been completed. The counsels for the parties have been heard.

2. The petitioner admits that notwithstanding the term in the Perpetual Lease of the land aforesaid, requiring the use of the construction thereon for residential purposes only, the property was let out to the Institute of Company Secretaries of India (ICSI) during the period from 01.08.1973 to 31.01.1982 for use as office but with the permission of the respondent DDA. The petitioner further admits that thereafter the property was let out vide Lease Deed dated 01.07.1982 to Educational Consultants of India Ltd. (EDCIL) for use as its Consultancy Office, Guest House / Transit Accommodation etc. subject to the permission being granted by the respondent DDA; however no such permission was obtained. It is further admitted that for such non conforming use of the property, prosecution under Section 14 read with Section 29(2) of the Delhi Development Act, 1957 was initiated which resulted in conviction vide order dated 23.07.1985.

3. The petitioner however claims to have filed proceedings under Section 14(1)(k) of the Delhi Rent Control Act, 1958 against the tenant EDCIL in which eviction order was made on 06.08.1988 and pursuant to settlement, the tenant vacated the property on 31.01.1990.

4. The petitioner in the year 1999, in accordance with the Policy of the respondent DDA of the year 1992, applied for freehold conversion and deposited charges therefor. Upon failure of the respondent to process the said application, the present writ petition was filed.

5. The respondent DDA in its counter affidavit has pleaded that upon being summoned in the proceedings under Section 14(1)(k) of the Act, it had clearly intimated that it was not willing to regularize the misuse but could regularize the past misuse on payment of misuse charges. It is further pleaded that action with respect to the misuse is taken in accordance with the DDA Resolution No.546 dated 13.07.1987 (subsequently clarified to be dated 13.07.1967) and the petitioner is liable to pay misuse charges amounting to ₹19,22,060/- for the period 22.05.1983 to 31.01.1990 and permission fee of ₹6,78,667/- i.e. total of ₹ 20,00,727/- for being entitled to have the freehold conversion.

6. The petitioner in its rejoinder has of course pleaded that no demand for misuse charges was raised at any time and there is no basis for the claim for permission fee.

7. The petitioner thereafter filed CM No.4689/2009 enclosing therewith the demand letter dated 19.03.2009 of the respondent DDA on the petitioner of ₹48,38,322/- towards misuse charges from 22.05.1983 to 31.03.1990 for an area of 3780 sq. ft. on basement, ground floor and first floor.

8. Attention of the counsel for the petitioner was invited to *M/S J.S. Furnishing Co. (P) Ltd. Vs. UOI* MANU/DE/3152/2011, *Satya Mohan Sachdev Vs. UOI* MANU/DE/3449/2011 and *Vikramaditya Bhartia Vs. DDA* MANU/DE/3691/2011 laying down:

- (i) That freehold conversion cannot be claimed as a matter of right and can be availed of only on the terms offered;
- (ii) That it being a term of the Policy of freehold conversion that the same will not be entertained without payment of misuse charges, no mandamus for freehold conversion without payment of the said misuse charges can be issued;
- (iii) Even though in accordance with *Jor Bagh Association (Regd.) Vs. Union of India* 112 (2004) DLT 690, L&DO may have been held to be not entitled to claim or recover misuse charges,

since the Policy for freehold conversion is subject to payment thereof, payment of the said charges is a must before availing of freehold conversion. Reliance was placed on ***Madhu Garg Vs. NDPL*** 129 (2006) DLT 213 (DB) and ***BSES Rajdhani Power Ltd. Vs. Saurashtra Color Tones Pvt. Ltd.*** 161 (2009) DLT 28 (FB) holding that even though the claim for electricity charges may be barred by time, it would not prevent the electricity supply company from denying supply of electricity for the reason thereof;

- (iv) That the Perpetual Leases of the respondent DDA are different from those of the L&DO which were for consideration in ***Jor Bagh Association (Regd.)*** (supra). The leases of the respondent DDA empower DDA to recover charges for misuse;
- (v) Misuse charges are in the nature of public money and thus the principle enshrined in ***Saurashtra Color Tones Pvt. Ltd.*** (supra), ***Mrs. Madhu Garg*** (supra) & ***Swastic Industries Vs. Maharashtra State Electricity Board*** AIR 1997 SC 1101 would apply;

(vi) That if a plea of limitation is raised in opposition to the claim of misuse charges, the same becomes a disputed question of fact as to when the cause of action would arise and till when the respondent DDA would have a right to recover and all of which cannot be adjudicated in the writ petition. The arbitration clause in the Perpetual Lease of the DDA was also noticed in this regard.

9. It was thus put to the counsel for the petitioner as to how, in the light of the aforesaid judgments, the present petition can succeed.

10. The counsel for the petitioner has based the case on the judgments of the Single Judge reported in 2007 VIII AD (DELHI) 313 of the Division Bench reported in 2008 (103) DRJ 57 and culminating in the judgment dated 15.03.2011 of the Apex Court in SLP(C) No.27278/2009 titled **DDA Vs. Prof. Ram Prakash** and in which case, finding that the DDA after issuing show cause notice had not taken any follow up action, the claim for misuse charges after 25 years was held to be bad and directions for conversion of leasehold rights into freehold issued. The counsel for the petitioner has contended that the respondent DDA in the present case also did not raise any

demand whatsoever for misuse charges between the year 1983-90 when the property was under misuse and cannot after nearly 18 years make a demand therefor. It is contended that the petition is thus entitled to succeed in accordance with the said judgments.

11. Undoubtedly, the judgments in ***Ram Prakash*** have not been considered in any of the judgments (supra). It thus falls for consideration whether the demand of the respondent DDA for misuse charges and owing to non compliance wherewith the freehold conversion applied for by the petitioner is held up, is bad for the said reason.

12. As aforesaid, I have already in ***Satya Mohan Sachdev*** (supra) held that disputed claims ought to be adjudicated under the Arbitration Clause in the Perpetual Lease and not in writ jurisdiction. However, since in ***Ram Prakash*** the same was dealt with in writ jurisdiction only, it has become necessary to reconsider the matter.

13. The counsel for the respondent DDA has invited attention to the passages in the judgment of the Supreme Court from wherein it is shown that in the case of ***Ram Prakash*** no action whatsoever had been taken by the

respondent DDA for the alleged misuse in question and the respondent DDA had never informed the lessee in that case that it was required to pay any misuse charges. It is contended that it was in such factual scenario that the Supreme Court struck down the demand as barred by limitation. The counsel for the respondent DDA has further contended that on the contrary in the present case, the respondent DDA did take action. It is also contended that the petitioner herself immediately upon initiation of such action by the respondent DDA had initiated proceedings for eviction of the tenant EDCIL under Section 14(1)(k) of the Rent Act.

14. The purport of the contention of the counsel for the respondent DDA is thus that in the present case, it cannot be said that the petitioner was not aware of the claim of the respondent DDA for misuse charges.

15. I may notice that Section 14(1)(k) of the Rent Act, which otherwise prohibits a landlord from evicting a tenant, enables the landlord to evict a tenant if the tenant has dealt with the premises in contravention of the terms and conditions of the perpetual lease of the land underneath the premises. The settled legal position (see *Faqir Chand Vs. Ram Bhanot* (1973) 1 SCC 572 & *Rajinder Prasad Jain Vs. Bal Gopal Das* 77 (1999) DLT 478 (DB))

is that the landlord is entitled to invoke Section 14(1)(k) even if has expressly or impliedly consented to the misuse. Section 14(11) of the Act also gives an opportunity to the tenant to evade eviction if complies with the terms and conditions imposed by the superior lessor as the respondent DDA is.

16. Generally, if the tenant stops the misuse or pays the misuse charges claimed for the past misuse, an order of eviction is not passed. Such eviction follows only where the tenant fails to do so.

17. In the present case, in the proceedings under Section 14(1)(k) of the Rent Act at the instance of the petitioner, the tenant EDCIL was held guilty of contravention of terms and conditions of Perpetual Lease. Thus misuse is established. It is also admitted that in the proceedings under Section 14(11) of the Ret Act, the respondent DDA was summoned by the Rent Controller and had informed that past misuse could be condoned but misuse had to stop. The misuse charges in such cases are in the domain of the Rent Controller. However, in view of the compromise between the petitioner and the tenant, the occasion for such determination did not arise.

18. It was precisely for this reason that the respondent DDA upon receipt of application for freehold conversion enquired from the petitioner the status of the proceedings under Section 14(1)(k) of the Act.

19. The claim of the respondent DDA for misuse charges in the present case has to be thus seen in the light of the aforesaid facts which are considerably different from the facts in ***Ram Prakash*** case. In the present case, the respondent DDA cannot be said to have slept over its right and not taken any action. The respondent DDA admittedly prosecuted not only the lessee but also the tenant and also issued notices under the lease to the petitioner and which resulted in the petitioner seeking eviction of the tenant under Section 14(1)(k) of the Rent Act. The respondent DDA therefore can well be said to have rest assured that the misuse charges have to be determined by the Rent Controller and not by the DDA (See ***Curewell (India) Ltd. Vs. Sahib Singh*** 1993 Supp.(1) SCC 507. The petitioner on the contrary by compromising with the tenant relieved the tenant from liability for any misuse charges. The occasion for the respondent DDA to recover the misuse charges would have arisen only upon knowledge of the said compromise. The petitioner in the present case in view of the compromise

cannot also say that, had she been informed earlier of the misuse charges, she would have recovered it from the tenant.

20. Also, as already observed above the said misuse charges are public dues. The claim therefore may be barred but the respondent DDA can certainly insist upon the payment thereof as a condition for freehold conversion. I fail to see why the principle aforesaid applied by the Apex Court and by the Full Bench of this Court in relation to the electricity dues would not apply. On the said aspect also, the judgments in *Ram Prakash* are sub silentio.

21. There is however some ambiguity as to the assessment of the misuse charges. There is a vast difference in the misuse charges pleaded in the counter affidavit and demanded immediately thereafter. There also does not appear to be any basis for permission fee of ₹6,78,667/- claimed by the respondent DDA in its counter affidavit.

22. Thus while holding the petitioner liable for payment of misuse charges as a pre-condition for conversion of leasehold rights into freehold, the respondent DDA is directed to within three months hereof and after

hearing objections of the petitioner, pass a reasoned order of the misuse charges payable in accordance with its Policy, Rules and Regulations. If the dispute on the quantum of the misuse charges persists, the parties would have their remedies either under the arbitration clause in the Perpetual Lease or otherwise as available in law.

The petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

NOVEMBER 4th, 2011
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