

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

Date of decision: 3rd October, 2011

+ **W.P.(C) No.12515/2005**

% **SH. BHAGWAN DAS KALIA** **....Petitioner**
Through: Mr. Sanjiv Bahl & Mr. Eklavya Bahl,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY **.... Respondent**
Through: Mr. Ajay Verma & Mr. Mukesh
Kumar, Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The writ petition is filed impugning the demand dated 20.05.2005 of the respondent DDA on the petitioner of ₹27,12,452/- towards misuse charges of Plot No.32, Community Centre, East of Kailash, New Delhi; the petitioner also seeks mandamus commanding the respondent DDA to convert the leasehold rights in the said land into freehold without insisting on payment of the said misuse charges. Notice of the petition was issued and counter affidavit filed by the respondent DDA. The petitioner in spite of opportunities chose not to file the rejoinder. The counsels have been heard.
2. The respondent DDA vide indenture dated 17.11.1971 had granted

perpetual lease of the land admeasuring 148.64 sq. mtrs. bearing No.32, Community Centre, East of Kailash, New Delhi to the petitioner. The petitioner raised construction on the said plot and claims to have let out the same to various tenants. The petitioner admits receipt of notice dated 22.01.1991 from the respondent DDA asking the petitioner to show cause as to why proceedings be not initiated against him for use of the basement of the said premises as Office of Exporter and Showroom / Sample Room of Garments instead of for storage purpose and in contravention of Clause II (13) of the Perpetual Lease Deed. The petitioner claims to have immediately on receipt of show cause notice aforesaid initiated proceedings for eviction under Section 14(1)(k) of the Delhi Rent Control Act, 1958 against the tenant misusing the property. The petitioner vide replies dated 13.05.1991 & 29.06.1991 to the show cause notice so informed the respondent DDA and assured to keep the respondent DDA informed of further progress in the eviction proceedings. The respondent DDA according to the petitioner also (see para 6 of the petition) from time to time enquired the status of the said case from the petitioner and claims that he so kept the respondent DDA posted about the progress of the case initiated against the tenant misusing the basement aforesaid. Yet another notice to show cause dated 08.01.1996 was issued by the respondent DDA to the petitioner averring sub-division of the basement and use of part thereof for packaging and re-packaging of clothes instead of for storage purposes and in contravention of Clauses II(2) & (13) of the Perpetual Lease Deed. The petitioner again vide reply dated

30.01.1996 informed the respondent DDA that legal proceedings against the tenant for misuse were underway. The petitioner claims that finally on 31.08.1999, he entered into a compromise with the tenant who was misusing the property and as per which compromise, the tenant vacated the basement and handed over the possession thereof to the petitioner and the petitioner fully and finally settled accounts with the tenant and gave discharge to the tenant.

3. At this stage, it may be highlighted that though, the respondent DDA ever since the issuance of the show cause notice had been enquiring the status of the case initiated by the petitioner against the tenant misusing the property and the petitioner also had been assuring the DDA that the petitioner will keep the respondent DDA posted about the said case, but the petitioner neither before entering into the compromise with the tenant nor thereafter gave intimation thereof to the respondent DDA. The petitioner in the year 2004 applied for conversion of the leasehold rights in the land underneath the property into freehold and when the demand aforesaid impugned in this petition for misuse charges was made by the respondent DDA on the petitioner.

4. The petitioner impugns the said demand on the ground that the same is illegal and against the terms of the lease; no basis thereof or calculations have been given; it has not even been disclosed it is for what period; that the petitioner immediately, on objection being raised by the respondent, took all steps against the tenant misusing the property; that no misuse was ever

proved to have taken place; that the only remedy of the respondent DDA was to ask for re-entry of the premises for misuse and DDA is estopped from claiming any charges therefor; that as per the policy of the respondent DDA in such a situation only a nominal 1% charge is to be levied and reliance in this regard is placed on Clause (8) of order No.23/76 of the L&DO, Government of India and it is argued that the same ought to apply to respondent DDA also.

5. The respondent DDA in its counter affidavit has referred to the Policy for Conversion of leasehold rights into freehold which provides that the application for conversion shall not be entertained / allowed when dues including towards misuse are to be paid in respect of the property; the demand for misuse charges is otherwise sought to be justified. It may however be mentioned that no computation of misuse charges has been given in the counter affidavit also.

6. The counsel for the petitioner besides what is pleaded hereinabove has contended that demand for misuse charges is time barred. Reliance is placed on the judgment dated 15.03.2011 of the Apex Court in SLP(C) No.27278/2009 titled **DDA Vs. Prof. Ram Prakash**. It is also argued that had the demand been made in time, the petitioner could have recovered the same from the tenant. It is contended that no demand of money was made at any earlier point of time.

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.
8. As far as the present case is concerned:
- (i) The petitioner at no point of time since the issuance of the show cause notice of the year 1991 (supra) controverted the claim of the respondent DDA of the basement of the property being misused;
 - (ii) Rather the petitioner admitted the said claim of the respondent DDA of misuse by initiating proceedings against the tenant who was in misuse of the property and assured the respondent DDA that the misuse being not by him and he having taken action against the tenant in misuse, the respondent DDA should await the outcome of the said proceedings and continued to meet out the said assurance to the respondent DDA;
 - (iii) However, as aforesaid, the petitioner rather than taking the said

proceeding to their logical conclusion chose to settle with the tenant. The petitioner at the time of the said settlement, in contravention of his assurance to the respondent DDA, did not intimate the respondent DDA or take any permission from the respondent DDA;

- (iv) The petitioner did not controvert the claim of the respondent DDA, neither in the replies to the show cause notices nor has placed anything before this Court, that the basement of the property was intended for storage purposes;
- (v) The petitioner has not even placed before this Court the documents of letting out the said basement to show that he had let out the same for storage purposes only; in this regard it may be stated that petition for eviction under Section 14(1)(k) of the Rent Act can be initiated even when the landlord has consented to the misuse;
- (vi) The petitioner as aforesaid did not allow the eviction proceedings to go to their logical conclusion. If the proceedings had been allowed to reach the logical conclusion, it would have been determined / adjudicated therein whether the petitioner had consented to the misuse or not;
- (vii) The petitioner was even though aware that under Clause II(2) and under Clause (13) of the Perpetual Lease Deed DDA was entitled to claim additional premium or additional rent or waive

or condone breaches on receipt of such amount and on such terms and conditions as respondent DDA in its absolute discretion may determine, while settling with the tenant did not impose any liability on the tenant for the said charges and on the contrary discharged the tenant. The only conclusion can be that the petitioner absolved the tenant of the misuse and took all responsibility thereof on himself;

- (viii) The argument that the petitioner if had been informed of misuse charges could have collected the same from the tenant is not open in the present case in view of the petitioner having inspite of knowledge of the objection by the respondent DDA absolved the tenant fully.

9. As far as reliance by the petitioner on ***Prof. Ram Prakash*** (supra) is concerned, in that case finding that the DDA after issuing show cause notice had not taken any follow up action, the claim for misuse charges after 24 years was held to be bad and direction for conversion of leasehold rights into freehold issued. However, as far as the present case is concerned, it is the case of the petitioner himself that since the issuance of the show cause notice in the year 1991 and reply of the petitioner thereto informing the respondent DDA of initiation of proceedings, the respondent DDA from time to time had been enquiring the status of the Court case. In the present case, thus it cannot be said that the petitioner was not aware of the claim of the respondent DDA of violation of lease conditions.

10. I may notice that in a proceedings under Section 14(1)(k) of the Rent Act, upon finding the tenant guilty of violation of terms and conditions of the lease of the land, opportunity is given to the tenant to *inter alia* pay the misuse charges so demanded by the superior lessor as the respondent DDA and only if the tenant fails to pay the same, does the order of eviction follow. The computation of misuse charges in such cases falls in the domain of the Rent Controller. However, the petitioner by compromising with the tenant did not allow such a stage to be reached in the proceedings. The respondent DDA was justified in awaiting the outcome of the proceedings which the petitioner had informed had been initiated.

11. 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 rested 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.

12. Also, as already observed above, the said misuse charges are public dues. The claim therefor 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 judgment in ***Ram Prakash*** is sub silentio.

13. In so far as the plea of the petitioner of computation of misuse charges having not been furnished, it is always open to the petitioner to seek the same from the respondent DDA. I may add that even if any dispute with respect to the same persists, the Perpetual Lease Deed itself provides for arbitration thereof and for such disputes of computation, this writ petition is not the appropriate remedy.

14. I am therefore of the view that no error is found in the demand of the respondent DDA for misuse charges and or in refusal of respondent DDA to convert the leasehold rights into freehold for non payment thereof. The petition to the said extent is dismissed. The remedy for disputes if any as to computation of misuse charges is by way of arbitration and not in this petition.

15. The petition is accordingly dismissed. No order as to costs.

PS: I may add that in the interregnum between the dictation of the judgment and its correction, I have in *Laj Gandhi Vs. DDA* MANU/DE/4236/2011 also dealt with a similar controversy.

RAJIV SAHAI ENDLAW, J

OCTOBER 03, 2011

‘gsr’..

(corrected and released on 7th January, 2012).