

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 7858/2005 & CM 5605/2005

Reserved on: 8th March 2011
Decision on: 21st March 2011

P.R. NAIR

..... Petitioner

Through Mr. K.T. Anantharaman with
Mr. R. Vasudevan, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

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

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

JUDGMENT
21.03.2011

1. This petition concerns the application made by the Petitioner for conversion of the property of the Petitioner at 85, Jor Bagh, New Delhi (hereafter 'the property in question') from leasehold to freehold.

2. The Petitioner challenges the decision as communicated by the letter dated 4th November 2004 rejecting the application for conversion on account of non-payment of the balance conversion charges and other

government dues. The Petitioner also challenges the communication dated 4th January 2005 requiring the petitioner to pay the balance conversion charges and rejecting her request for levy of token penalty in terms of the Office Order No. 23 of 1976 dated 31st March 1976.

3. The property in question was purchased by the Petitioner from the Respondents on a perpetual lease basis. It is stated that after the untimely death of her husband the Petitioner let out the ground floor (as one unit) and the first floor with the barsati floor (as the second unit) on rent to different tenants and went away to reside in her village at Kerala and with her married daughter at Hyderabad. The second unit was let out to one Shri Maneck N. Dastur on a rent of Rs. 650/- per month for residential purposes. It is stated that till the said premises were vacated by Mr. Dastur in 1999, the rent remained unchanged. The Petitioner states that under the Delhi Rent Control Act, 1958 ('the DRC Act') till the year 1988 there was a prohibition on raising the rent during the currency of the tenancy. Thereafter a landlord was permitted to increase the rent only by ten per cent once in three years. It is stated that Mr. Dastur was using the premises for office purposes also, and this came to the knowledge of the Petitioner when in 1976 he sent her a notice of demand received from the Land & Development Office ('L&DO') for misuser charges in the sum of Rs. 26,000/- in respect of the portion of the premises under his occupation. The

Petitioner claims that Mr. Dastur offered to make the said payment and the

Petitioner signed the documents without understanding the import thereof. When the Petitioner received a further demand in the sum of Rs. 47,740/- in 1981 towards the misuser charges, she sent a legal notice dated 7th July 1981 to Mr. Dastur asking him to stop the misuser of the premises and pay the misuser charges as demanded by the L&DO. The Petitioner also terminated the tenancy with effect from 31st August 1981. The Petitioner then instituted Eviction Petition No. E-775 of 1981 (later renumbered as E-208/92) on 31st October 1981 in the Court of Rent Controller, Delhi under the DRC Act. Before the Rent Controller, counsel for Mr. Dastur submitted that he ought to be given another chance to pay the misuser charges and continue the tenancy. The Rent Controller directed the notice to be issued to the L&DO requiring it to explain whether the breaches in question could be regularised permanently or temporarily and on what terms and conditions.

4. By a letter dated 4th July 1989 the L&DO informed the Petitioner that she would have to pay Rs. 5.26 lakhs for the temporary regularization of the breaches till that date. The breaches would have to cease and further amounts would have to be paid. Mr. Dastur who was in effect to pay the amounts, was not agreeable to do so. The Petitioner had filed another eviction petition on 21st November 1989 in terms of the amendments to the DRC Act. During the pendency of both the eviction petitions, Mr. Dastur expired on 15th June 1998. His legal heirs appointed one Shri Y.H. Tata as

W.P. (C) No. 7858 of 2005

their attorney. On 24th August 1999 Shri Tata compromised the matter with the Petitioner agreeing to vacate the premises and hand over the keys on the condition that the Petitioner withdrew both the eviction petitions. In the circumstances, a joint application was made under Order XXIII Rule 3 CPC in the Court of the Rent Controller and statements of both the parties were recorded.

5. On 13th June 2003 the Petitioner wrote to the L&DO seeking conversion of the premises from leasehold to freehold. She had deposited Rs. 2,90,171/-, i.e., Rs. 56,040/- that was already paid towards conversion charges along with application seeking conversion and Rs. 2,34,131/- as balance conversion charges. However, the L&DO informed her that she would have to pay the misuser charges with penal interest.

6. The Petitioner relied upon Paras 7 and 8 of the Office Order No. 23 of 1976 dated 31st March 1976 and stated that only a token penalty of one per cent of the charges be levied and the misuser be regularised. By a letter dated 2nd June 2004 the L&DO rejected the Petitioner's request and on 9th July 2004 raised a further demand in the sum of Rs. 12,51,621/- towards misuser charges. On 4th November 2004 the L&DO informed the Petitioner that her conversion application had been rejected. By a letter dated 4th January 2005 the L&DO informed the Petitioner that the conversion amount would be adjusted towards other government dues and

W.P. (C) No. 7858 of 2005
Page 4 of 11

that the Petitioner should deposit the balance amount within thirty days. It is in the above circumstances that the present writ petition was filed.

7. During the pendency of the petition the Petitioner died. By an order dated 6th November 2006 Mr. P.R. Nanda Kumar the son and the legal representative of the deceased Petitioner, was substituted in her place. Thereafter the matter kept getting adjourned because the Court was informed that against the judgment in *Union of India v. Vinay Kumar Aggarwal 2005 (80) DRJ 307*, a Special Leave Petition had been preferred in the Supreme Court which was pending. Subsequently this Court was informed that the said SLP was dismissed by the Supreme Court. Consequently on 21st July 2010 this Court set the matter down for final hearing. Pursuant to the directions of this Court, the Respondent has disclosed to the Petitioner the calculations on the basis of which the demand was raised.

8. On 10th December 2010 the following submissions were recorded by the Court:

“1. Counsel for the Petitioner states that without prejudice to the Petitioner’s rights and contentions he is ready to pay any reasonable demand. It is, however, submitted that the base figure as shown in the demand raised on 9th July 2004 does not account for the actual rent received by the Petitioner from the tenants during the period of its misuse. It is submitted that

premises was subject to the Delhi Rent Control Act, and the Petitioner was unable to charge a rent higher than Rs. 650/- per month. It is submitted that the demand ought to be reworked on this basis in terms of para 7 of the Notification No. 23 of 1976 dated 31st March 1976.

2. Counsel for the Respondent No.1 states that he will have to seek instructions.

3. List on 8th March 2011. Order dasti.”

9. Mr. K.T. Anantharaman, the learned counsel for the Petitioner submits that the Petitioner wishes to bring an end to the litigation and was, therefore, not contesting the power of the Respondent to levy misuser charges in terms of the lease notwithstanding the appeal against the judgment of this Court in *Jor Bagh Association (Regd) v. Union of India 2004 V AD (Delhi) 354* pending before the Division Bench. It is submitted that when the matter was pending before the Rent Controller the L&DO wrote a letter to the Petitioner on 4th July 1989 indicating the misuser charges. However, the tenant was unwilling to pay the amount and instead decided to vacate the premises. The order dated 24th August 1999 records the fact that the possession of the premises was handed over to the Petitioner by the tenant. Therefore, the misuser stopped with effect from that date. Significantly, no demand was raised by the L&DO thereafter on the Petitioner for misuser charges. It was only when the Petitioner applied for conversion that by a letter dated 9th July 2004 the L&DO required the

W.P. (C) No. 7858 of 2005

Petitioner to pay a sum of Rs. 12,51,621/-. It is pointed out that the calculation sheet submitted on 29th October 2010 by the L&DO to this Court showed that the L&DO had computed the misuser charges applying a rate ranging between Rs. 122/- per annum to Rs. 56,380/- per annum for varying periods between 28th January 1977 to 14th January 1990 applying the formula in para 3 of the Office Order No. 23 of 1976 dated 31st March 1976 read with Chapter 18 of the manual. However, the L&DO did not apply para 7 of the said Office Order No. 23 of 1976 in terms of which the misuser charges were to be reduced where it worked out to more than the income of the lessee and while doing so the reasons for the inability of the lessee to increase the income from the leased premises should be considered. It is submitted that in the present case the Petitioner had demonstrated that as long as the tenant occupied the premises she could collect a rent of only Rs. 650/- per month and this has not been controverted by the Respondents. It is further submitted that not having raised any demand for misuser charges till 9th July 2004, it is not open to the L&DO to collect such misuser charges from 28th January 1977 onwards and also collect interest with effect from 4th July 1989 @ 10% per annum. The interest and other charges were being collected even beyond the date on which the misuse admittedly stopped.

10. Appearing for the Respondents Mr. Akshay Chandra, learned Advocate submitted that “inability on the part of the lessee to increase the income
W.P. (C) No. 7858 of 2005 *Page 7 of 11*

from leased premises was not convincing as no effort was made in that regard.” It is pointed out that in terms of the Office Order No. 23 of 1976 the L&DO was within its rights to demand misuser charges as a condition for grant of conversion. In a non - re-entered area 10% penalty in addition to the charges for change of use could be levied. Where the lessee was successful in evicting the tenant the penalty gets reduced to 1% but the misuser charges are not waived. As regards para 7 and 8 of the Office Order No. 23 of 1976 the L&DO decided not to grant the benefit of those paras since no effort had been made by the lessee to get the income from the leased premises increased.

11. The above submissions have been considered. The admitted position is that the Petitioner did institute an eviction petition against the tenant. The proceedings ended with the tenant vacating the premises on 24th August 1999. That was effectively the date on which the misuse stopped. Pursuant to the order of the Rent Controller, the L&DO communicated to the Petitioner, by its letter dated 4th July 1989, the charges for the regularization of breaches. The misuser charges ranged from Rs. 122/- per annum to Rs. 56,380/- per annum for varying areas for the varying periods from 28th January 1977 to till 14th January 1990. The ten per cent penalty was also levied up to 5th August 1989, i.e., the date for offering the terms in the court plus 30 days. Although it is contended that the above calculations are in terms of para 3 of the Office Order No. 23 of 1976, the *W.P. (C) No. 7858 of 2005*

L&DO does not appear to have applied para 7 and 8 of the said Office Order which read as under:

“7. In cases where the charges on account of change in use are found, beyond any doubt, to be more than the income of the lessee from the leased premises the charges will be reduced suitably according to the circumstances of each case in consultation with Ministry of Works and Housing and Finance. While doing so, the reasons for the inability on the part of the lessee to increase the income from the leased premises will, no doubt, have to be fully considered.

8. In case where the lessee/ex-lessee files suit for eviction against defaulting tenants on receipt of our notice for misuse and are successful in evicting such tenants one per cent of the charges will be recovered as token penalty in consultation with the Ministry of Works & Housing and Finance.”

12. The explanation given by the L&DO that the lessee had not made any effort to have the rent increased is really not a valid ground. There is nothing placed on record to controvert the Petitioner’s submission that throughout the period when the premises in question were occupied by the tenant, the rent paid was Rs. 650/- per month. Given the conditionalities for increase of rent under the DRC Act, the explanation offered by the Petitioner as to why a higher rent could not be charged from the tenant appears to be a plausible one. Clause 7 of the Office Order No. 23 of 1976 is intended to acknowledge the difficulties faced by landlords in seeking to

increase the rent charged from tenants under the DRC Act. This Court is of the view that the benefit of para 7 of the Office Order No. 23 of 1976 ought to be extended to the Petitioner in the instant case. In other words, in applying the formula in para 3 of the Office Order No. 23 of 1975, the fact that the Petitioner received the amount of only Rs. 650/- per month in respect of the premises in question, should be accounted for.

13. There is no valid explanation offered by the Respondents for not raising the demand for misuser charges earlier than 4th July 2004. There is also no legal justification shown for charging 10% interest on the misuser charges. Nevertheless in view of the willingness expressed by the Petitioner to pay any reasonable sum, the above questions are left open to be decided in an appropriate case.

14. In view of the above submissions, it is directed that the L&DO will now recalculate the misuser charges as indicated in its letter dated 9th July 2004 by taking the actual income earned by the Petitioner from the premises to be Rs. 650/- per month, i.e., Rs. 7800/- per annum for the period of misuse, by giving the benefit of para 7 of the Office Order No. 23 of 1976. The other items of demand in the letter dated 9th July 2004 will be reworked accordingly. The recalculated demand will be communicated to the Petitioner by the L&DO within a period of four weeks. Upon the Petitioner making payment within the time granted for that purpose and

W.P. (C) No. 7858 of 2005
Page 10 of 11

completing all formalities, the necessary orders will be passed by the Respondents granting conversion of the property in question from leasehold to freehold within a further period of eight weeks thereafter.

15. The writ petition is disposed of in the above terms. The application stands disposed of.

S. MURALIDHAR, J

MARCH 21, 2011

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