

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

Date of decision: 29th September, 2011

+ **W.P.(C) 7244/2011**

% **RAMESH AHUJA & ORS.**

...Petitioners

Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advs.

Versus

DDA & ANR.

..... Respondents

Through: Mr. Rajiv Bansal, 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? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The petition, impugns (i) the demand dated 23.03.2011 of the respondent DDA of ₹76,71,706/- as Permission Fee (PF) for converting the leasehold rights in the land underneath property No.18, Bhera Enclave, Paschim Vihar, New Delhi into freehold; (ii) the order dated 22.09.2011 of the respondent DDA rejecting the representation of the petitioners against

the said demand; and (iii) seeks mandamus commanding the respondent DDA to convert the leasehold rights underneath the land aforesaid into freehold without insisting upon the payment of ₹76,71,706/- aforesaid.

2. As far as the challenge by the petitioners to the demand dated 23.03.2011 is concerned, the petitioners had earlier preferred W.P.(C) No.2790/2011 challenging the same. However, the petitioners in the said writ petition agreed that they will make a representation before the respondent DDA against the said demand and the said writ petition was disposed of on 29.04.2011 with a direction to the respondent DDA to dispose of the said representation to be made by the petitioners and liberty was given to the petitioners to assail the order on the representation, if aggrieved therefrom, in accordance with law. Thus, what is for consideration today is the order dated 22.09.2011 of the respondent DDA.

3. The perpetual sub-lease of the land aforesaid was granted originally in favour of one Mr. K.L. Kapoor on 30.01.1979. The said Sh. K.L. Kapoor is claimed to have agreed to sell the said plot of land in favour of petitioners No.1 to 3 and appointed their father petitioner No.4 as his attorney. The

petitioners claim to have entered into possession of the said land in pursuance to the said Agreement to Sell and raised construction thereon; they, on 23.05.1992 let out the basement and ground floor of the said construction to Allahabad Bank.

4. The petitioners admit that the respondent DDA in December, 1992 itself served a notice to show cause for non conforming use of the premises. Though the petitioners have chosen not to file the copy of the perpetual lease before this Court but it is obvious that the lease was granted for use of the land and construction thereon for residential purpose only and use of the basement and ground floor of the premises for banking purpose was in contravention of the terms and conditions of the lease.

5. Upon promulgation by the respondent DDA in or about the year 1993 of the Scheme for conversion of leasehold rights into freehold, the petitioners in the year 1994 applied therefor. The petitioners also claim to have in the year 1996 issued notices to the Bank referring to the notices of the respondent DDA averring the use of the premises by the Bank to be in contravention of law. The petitioners however claim to have instituted a suit

for eviction of the Bank from the premises only in the year 2003 and which was decreed in the year 2006 and the Bank vacated the premises on 31.05.2007.

6. The petitioners claim that the conversion of the leasehold rights into freehold was held up till the vacation of the premises by the Bank. They further claim to have on 19.08.2008 applied to the respondent DDA for permission for opening a Bank in the said premises.

7. The respondent DDA, as foresaid, on 23.03.2011 demanded ₹76,71,706/- as PF and ₹34,698/- as Misuser Charges as a pre-condition for conversion to freehold. The petitioners though showed willingness to pay the misuse charges of ₹34,698/- but contending that the demand for PF was unwarranted under the lease and under the Policy of the respondent DDA for conversion of leasehold rights into freehold, filed W.P.(C) No.2790/2011 aforesaid.

8. The respondent DDA, in the order dated 22.09.2011 on the representation made by the petitioners in pursuance to the order in the earlier writ petition, has recorded that show cause notices for misuse of the

premises as a Bank dated 22.05.1995 and 26.08.1996 also were issued but remained unreplied; that the petitioners were also prosecuted under Section 29(2) of the Delhi Development Act, 1957 and in which it was held that the petitioners had permitted the Bank to use the premises for non conforming use in contravention of the Master Plan of Delhi-2021; that apart from the banking activities, a Motor Driving School was also running in the basement; that as per the guidelines framed by Ministry of Urban Development, Government of India for running banking / nursing home in non conforming areas and misuse Policy of the respondent DDA, a sum of ₹34,698/- towards misuse charges and a sum of ₹76,71,706/- towards PF (composition fee on account of non conforming use) was worked out and demanded.

9. The respondent DDA had, in response to the queries of the petitioners as to the basis of the claims aforesaid, supplied to the petitioners the calculation of misuse charges and PF. The said calculations are filed by the petitioners as Annexure P-18 to the petition. While the misuse calculation shows the claim for misuse charges of ₹34,698/- as on account of misuse of

an area of 24. sq. ft. from 26.05.1993 to 25.05.1998, the PF calculation shows the claim of ₹76,71,706/- to be for misuse for the period 23.05.1992 to 31.05.2007 by the Bank of a total area of 3100 sq. ft. in the property.

10. Though the counsel for the petitioners has contended that the respondent DDA has not disclosed as to on what account PF has been claimed but in my view it is abundantly clear from the calculations aforesaid furnished to the petitioners in June, 2011 and the order dated 22.09.2011 that though called / termed PF, the claim is for nothing else but charges / composition fee for misuse of the property by the Bank. The argument of the counsel for the petitioners that in the demand dated 22.03.2011, the nomenclature used is of PF and the respondent DDA could not in calculations supplied in June, 2011 describe the same as misuse charges / composition fee is today irrelevant after the petitioners had in the earlier writ petition agreed to make a representation and to invite an order thereon. The disclosure made by the respondent DDA in pursuance to the representation so made by the petitioners clearly demonstrates the nature of the claim,

though titled as PF, to be on account of misuse of the property by the Bank. The challenge thus now by the petitioners to the said demand has to be considered as to misuse charges / composition fees.

11. Attention of the counsel for the petitioners is invited to the judgment dated 10.08.2011 of this Court in W.P.(C) No.6678-81/2005 titled ***Satya Mohan Sachdev Vs. UOI***. The challenge therein also was to a demand for misuse charges as a pre-condition for conversion of the leasehold rights into freehold. In the said judgment perpetual sub-lease executed by the respondent DDA with respect to a plot of land in the residential colony of Safdarjung Development Area was considered. Though the petitioners herein as aforesaid have not produced the perpetual sub-lease of their plot but I have no reason to believe the same to be any different. It was found that the said perpetual lease permitted only a residential building for a private dwelling on the land of which perpetual sub-lease was granted, prohibited use of the land or building thereon for any trade or business and further provided that use other than as a private dwelling may be allowed by the respondent DDA as lessor on the terms and conditions which it may in

its absolute discretion impose including payment of additional premium or additional rent; the perpetual sublease though provided for re-entry, entitled respondent DDA to in its discretion condone the breaches upon payments as it may determine. It was thus held that the respondent DDA was entitled to levy and demand misuse charges and particularly as a condition for conversion of leasehold rights into freehold. It was further held that the perpetual sub-lease provided for arbitration and the dispute if any as to whether there was any misuse and as to what were to be the charges payable therefor has to be settled by way of arbitration.

12. Attention of the counsel for the petitioners is also invited to judgment dated 06.09.2011 in W.P.(C) No.6513/2011 titled *Vikramaditya Bhartia Vs. DDA* also in this respect.

13. The counsel for the petitioners at this stage states that since the petitioners have preferred the petition without comprehending the demand of ₹76,71,706/- being for misuse by the Bank and treating the same as PF, no challenge to the demand as for misuse charges has been made in the present petition. He seeks to withdraw this petition with liberty to file afresh

challenging the demand as for misuse charges.

14. Though the petitioners have in the petition also referred to the recent judgment dated 15.03.2011 of the Apex Court in Special Leave Petition (C) No.27278/2009 titled ***DDA Vs. Ram Prakash*** (2011) 4 SCC 180 but the position therein is found to be different. However, since the petitioners are seeking to withdraw the petition, need is not felt to deal in detail with the said aspect.

15. The petition is dismissed as withdrawn with liberty aforesaid. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 29, 2011

‘gsr’

(corrected and released on 13.10.2011)