

. * **HIGH COURT OF DELHI: NEW DELHI**

% Judgment decided on: 23.01.2012

+ **W.P.(C) No.6742/2000**

M/S ASHOKA ESTATE PVT. LTD. & ORS. Petitioners

Versus

UNION OF INDIA & ORS Respondents

AND

+ **W.P.(C) No.6671/2000**

PUSHPA VADERA Petitioner

Versus

UOI & ORS Respondents

AND

+ **W.P.(C) No.7636/2000**

KAILASH NATH & ASSOCIATES Petitioner

Versus

UOI & ORS Respondents

AND

+

W.P.(C) No.7649/2000

M/S ANSAL PROPERTIES & INDUSTRY

..... Petitioner

Versus

UOI &ORS

..... Respondents

AND

+

W.P.(C) No.7717/2000

M/S ANSAL PROPERTIES & INDUSTRY

..... Petitioner

Versus

UOI & ORS

..... Respondents

AND

+

W.P.(C) No.7718/2000

M/S ANSAL PROPERTIES & INDUSTRY

..... Petitioner

Versus

UOI & ORS

..... Respondents

AND

+

W.P.(C) No.7747/2000

M/S SAGOON BUILDER P. LTD.

..... Petitioner

Versus

UOI &ORS

..... Respondents

AND

+

W.P.(C) No.1082/2001

BRIG. HARBANS BAHADUR & ORS

..... Petitioners

Versus

UOI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners: Dr. Harish Uppal, Adv. in W.P.(C) No. 6742/2000,
Mr. H.L Tiku, Sr. Adv. with Ms. Yashmeet Kaur, Adv. in
W.P.(C) No. 6671/2000,
Mr Jayant Nath, Sr. Adv. with Mr. Anish Tandon, Adv. in
W.P.(C) Nos.7636,7649 & 7717, 7718/2000,
Mr. Amit Sethi, Adv. in W.P.(C) No.7747/2000, Mr. Amit
Khemka with Mr Ranjit Adv. in W.P.(C) No.1082/2001.

For the Respondents: Mr. Parag P. Tripathi, ASG with Mr. B.V. Niren,
Mr. S. Farsat and Mr. Manikya Khanna, Advs. for
respondent in W.P.(C) No.6742/2000.
Mr Ashutosh Lohia, Adv. for NDMC in W.P.(C)
No.6742/2000.
Mr. Parag P. Tripathi, ASG with Mr Raman
Oberoi, Adv. for respondent in W.P.(C) No.6671/2000.
Mr. Parag P. Tripathi, ASG with Mr. B.V. Niren,
Mr. S. Farsat and Mr Manikya Khanna, Advs.
for the respondent in W.P.(C) Nos.7636, 7649, 7717,
7718, 7747/2000 and 1082/2001.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Since a common question of law is involved in all the writ petitions, the facts and details of the writ petition, being W.P. (C) No.6742/2000, are being taken for disposal of all the writ petitions.

2. The present writ petition has been filed by seventeen petitioners (hereinafter referred to as the 'petitioner') challenging the legality and validity of communication dated 10.04.1999 issued by respondent No.2 demanding Additional Premium of Rs.48,37,415/- and Revised Ground Rent @ Rs.2,42,057/- per annum by applying land rates at four times of the actual notified rates in alleged violation of its own guidelines dated 11.01.1995.

3. The petitioner also seeks to challenge the order dated 31.07.2000 by which respondent Nos. 1 and 2 have sought to determine the lease and the two notices dated 04.10.2000 issued by respondent No.4 under Sections 4 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

4. The controversy revolves around the terms communicated by respondent Nos.1 and 2 in respect of change of user of properties of the petitioners from the residential to commercial.

5. The dispute in the present writ petition pertains to a plot of land being No.24, Barakhamba Road, New Delhi. The said property comprises of

land measuring about 0.956 acres or equal to about 4628 sq. yds. The said property was purchased by Sh. Prem Nath by Registered Sale Deed dated 16.05.1938. The said Original Lessee had taken the property from respondent Nos.1 and 2 vide Perpetual Lease Deed.

6. That under the master plan sanctioned for Delhi, the area around Connaught Place including the area where the plot of the petitioner stood, was declared to be a commercial area. Hence, under the DDA Act and the Master Plan, it was compulsory that use of the premises should be for commercial purposes.

7. The petitioner, in view of the position under the master plan, applied to NDMC (Respondent No.3) for permission for construction of a multi storeyed commercial building on the said plot. Necessary plans were submitted to NDMC on 25.08.1970. The plans submitted to respondent No.3 NDMC were sanctioned, vide Resolution No.37/19 dated 23.10.1970.

8. Thereafter, the petitioner entered into a Collaboration Agreement dated 01.03.1972 with respondent No.5 namely M/s Dewan Chand Builders Pvt. Ltd. The said agreement dated 01.03.1972 also provides that the said M/s Dewan Chand Builders Pvt. Ltd. was responsible to pay commercialisation charges and other dues to the respondent for seeking permission to develop a multi-storeyed commercial building.

9. The builder has allegedly failed to fulfill its obligations, therefore, he has been impleaded as respondent No.5. The petitioner after receipt of sanctioned plan from NDMC, submitted an application to respondent L&DO for grant of permission for construction of a multi-storeyed commercial building. Several reminders were also sent to this effect as no permission was received. The petitioner thereafter started construction after due intimation to respondent L&DO. The respondent had issued a notice dated 11.07.1973 asking the petitioner to show cause as to why an order of re-entry may not be passed.

10. Thereafter, the petitioner along with the builder M/s Dewan Chand Builders Pvt. Ltd. Respondent No.5 filed a writ petition being C.W.P. No. 909/1973 titled Rajeshwar Nath and Ors. vs. L&DO & Ors., challenging the notice dated 11.07.1973. After filing of the writ petition, the building was completed and a number of flats were sold by the petitioners/builders.

11. Subsequently respondent Nos. 1 and 2 effected some change in their policy. A communication intimating the new policy dated 11.01.1995 was received by the petitioner. Petitioner vide letter dated 28.03.1995 wrote to Respondent L&DO accepting the said policy and also forwarded a pay order of Rs.1 lakh as a token amount. Pursuant to the said communication,

the respondent L&DO on 20.10.1995 sent revised terms for grant of permission to construct a multi storeyed building.

12. In a similar controversy earlier, a writ petition was filed in 1973 being W.P.(C) No. 219/1973 titled as *Chiranjilal Vs. L&DO* on account of construction of multi-storeyed buildings located at Barakhamba Road, New Delhi. Along with that writ petition fifteen other writ petitions were filed challenging re-entry before this court during the period 1972-1991 and were tagged together. The petition filed by the petitioner and the builder were tagged along with other similar petitions that were pending before this Court.

13. When the writ-petitions came up for hearing in 1994, a statement was made by L&DO to regularize the same by a scheme. The scheme was published on 11.01.1995. Pursuant to this on 17.10.1995 demands were raised by L&DO from each of the writ petitioners.

14. The petitioner on 29.11.1995 sent a communication to respondent L&DO pointing out the defects in the terms communicated by the respondent L&DO.

15. Thereafter on 18.01.1996, an additional circular was issued by the Ministry of Urban Affairs, Government of India stating that the land rate would be on the basis that the permissible FAR on the date of construction would be taken as 100 and then multiplied on the basis of the actual FAR

permitted. Thus, if the land rate is Rs.600/- and the actual FAR permitted in 1972-74 was 400 that FAR will be treated as 100. If, for example, on the date of application, the applicable FAR is 250, then the land rate would be multiplied by 2.5 to arrive at figure of Rs.1500/- instead of Rs.600/-.

16. The batch matters along with which C.W.P. No.909/83 had been tagged, were heard by this Court and disposed off by a common judgment passed by this Court on 19.05.1998. Some of the demands raised by respondent L&DO were quashed. Respondent L&DO was given 6 weeks time to raise fresh demands on the basis of the directions given by this Court. The operative portion of the said judgment directed as follows:-

“That the respondents, consistently with the observations made hereinabove, shall within six weeks from the date of this order, give fresh terms and conditions for the condonation of the breaches of the terms and conditions of the lease to the concerned Lessee (petitioner) irrespective of the fact whether any notice of determining the lease and/or for exercising the right of re-entry has been already given or not.”

17. That the said judgment was challenged in the Supreme Court by some of the private parties. The Supreme Court vide its order dated 26.04.1999 while upholding the judgment of the Division Bench of this Court gave liberty to the parties in the SLP's to move the High Court for clarification and/or further directions on matters of calculations.

The Supreme Court also clarified that in respect of the fresh demand raised on 10.04.1999, if any parties intend to raise any issues in respect of the same, they may do so before the L&DO within a week from the order of the Supreme Court.

18. The respondent L&DO on 10.04.1999 communicated fresh terms for grant of permission for change of user to the petitioner in purported compliance with the judgment of this Court dated 19.05.1998. The respondent No.2 L&DO vide communication dated 31.07.2000 also sent a communication determining the lease and making an order of re-entry.

19. The respondent No.4 on 04.10.2000 sent two notices under Section 4 and 7 respectively of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The notice under Section 4 seeks to commence proceedings to take physical possession of the property from the petitioner. Similarly the notice under Section 7 seeks to commence proceedings to recover the alleged dues claimed vide communication dated 10.04.1999 as damages.

20. It is also appropriate to mention some of the relevant dates and events for better understanding of the facts. The same are:

16.5.1938	The petitioner's family became owner of plot No.24 Barakhamba Road, New Delhi
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23.10.1970	Building plans for construction of a Multi-storeyed commercial building submitted to Respondent No.3 were approved.
01.03.1972	Petitioners entered into Collaboration Agreement with respondent no.5 for construction of the multi storeyed commercial building. As per the agreement, Respondent no.5 was liable to pay commercialization charges to Respondents 1 and 2.
11.7.1973	Respondents 1 and 2 issued show cause notice for passing order of re-entry for construction of Multi Storeyed Building allegedly without their permission.
1973	Petitioner filed C.W.No.909/1973 challenging the said notice dated 11.07.1973.
11.01.1995	Fresh policy guidelines issued by of respondents 1 and 2 received by petitioners on (17.02.1995).
28.03.1995	Petitioners agreed to abide by the said policy and requested for fresh terms as per policy issued.
28.10.1995	Fresh terms communicated by respondents 1 and 2 for permission for change of user of land, in purported compliance of the new policy.
29.11.1995	The fresh demand of Respondents 1 and 2 was allegedly not in accordance with the new policy. Hence petitioner wrote to respondents 1 and 2 accordingly.
19.05.1998	This Court passed a common judgment in about 22 writ petitions on similar matters

	as that of the petitioner, where detailed directions were given for calculation of Additional Premium and Revised Ground Rent.
10.04.1999	Respondents 1 and 2 issued fresh terms to the petitioners in purported compliance of judgment of this Court dated 19.05.1998. The terms communicated were erroneous in the view of the petitioner.
26.04.1999	SLP filed by other parties against the judgment of High Court dated 19.5.1998 disposed off. The said parties were permitted to move the High Court for clarification and/or for further directions.
24.04.2000	Reminder sent by respondent No.2.
31.07.2000	Order passed by respondents No.1 and 2 purportedly re-entering the premises and determining the lease.
04.10.2000	Two notices sent by Respondent No.4 under Section 4 and 7 respectively of The Public Premises (Eviction of Unauthorized Occupants) Act 1971.

21. Mr Parag P. Tripathi, learned Additional Solicitor General of India appearing on behalf of the respondent No.1/Union of India submitted that although the petitioners have not directly impugned or challenged the notification/circular dated 10.01.1996 in these writ petitions, however in effect they are challenging the said notification by stating impliedly that the notification / circular is contrary to the 1995 policy. According to him the

case of the respondent No.2 is covered by the 1996 notification which has not been directly impugned by the petitioners and in any event cannot be done now, because, the said challenge would be barred by laches and the principles of constructive res judicata and also by Order 2 Rule 2 CPC. He argues that in fact the Notification/Circular of 18.01.1996 has always been consistently followed by respondent No.2 and as far as the question of permitting misuse or user contrary to the lease deed is concerned, it is a matter which depends on the discretion of the lessor subject to terms of the lease deed and any policy in this regard. Therefore, the writ petitions filed by the parties are not maintainable and are liable to be dismissed.

22. We have heard the learned counsel appearing on behalf of all the petitioners. It is an admitted position that after the passing of the order dated 26.04.1999 by the Supreme Court, fresh demands were raised by the respondents on all the petitioners. As the legal point involved in all the petitions is common, except the relevant dates and events, therefore only the facts of W.P.(C) No. 6742/2000 are given in this judgment. The result thereof would be the same.

23. The first contention of the learned counsel for the petitioner is that the calculations of additional premium in the letter dated 10.04.1999 is

erroneous in view of the judgment passed by the Division Bench on 19.05.1988.

24. The respondent Nos. 1 and 2 have also demanded revised ground rent by the impugned letter dated 10.04.1999. It is obvious that the calculation of additional ground rent also depends on the correct calculation based on the crucial date and the land rates applicable on the crucial date, therefore, on the basis of policy dated 11.01.1995 of respondent Nos. 1 and 2, revised ground rent was to be calculated as follows:

“Revised ground rent will be charged @ 2.5 of the notional premium i.e. premium arrived upon by multiplying the land area with land rates applicable at the time of crucial date”.

25. The respondent Nos. 1 and 2 have also demanded the amount for permission to change the user of the premises under the headings of (a) Additional Premium (b) Revised Ground Rent (c) misuse (d) penalty for unauthorized construction and (e) interest.

26. The respondents by the impugned letter dated 10.04.1999 also demanded interest on additional premium the details of the same are given as under:

“1(ii) Interest @ 14% p.a. from 20.01.1996 (90 days after the issue of the terms Letter dated 20.10.95) to 19.02.99 and	Rs.20,89,233.00
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thereafter @ Rs. 56,437/- p.m.

Similarly respondents have demanded interest on Revised Ground

Rent as follows:

- | | |
|---|-------------------|
| 2(ii) Interest @ 10% p.a. from 10.01.96 | Rs.16,59,989.00/- |
| to 19.02.99 and thereafter | |
| @ Rs. 44.841/- p.m. (90 days | |
| after issue of terms letter dated | |
| 20.10.95) | |
| 2(iv) Interest @ 10% on the | Rs.1,34,275.00/- |
| above RGR From 15.1.96 | |
| to 14.2.99 and Thereafter | |
| @ Rs. 7060/-. | |

27. Under this heading the demand of the respondents No.1 and 2 is Rs.37,49,222/-. The contention of the petitioner is that the said demands were without any basis and reason as the same were raised in 1995 and were quashed by the judgment of the Division Bench, therefore, the question of interest does not arise.

28. The Division Bench vide its judgment dated 19.05.1998 clearly quashed the notice/demand/bills raised by the lessor and no further action was taken by the respondents in pursuance thereof. Therefore, we feel that the claim of charging interest is also not sustainable as the said demand for interest is erroneous on the face of the judgment passed by the Division Bench. It is a matter of fact that while passing the judgment dated

19.05.1998 directions were issued to the respondent Nos.1 and 2 to issue fresh directions within six weeks from the date of order for condonation of the breaches of the alleged terms and conditions of the lease deed. The respondent Nos. 1 and 2 sent the fresh terms and conditions to the petitioner by the impugned letter dated 10.04.1999 demanding the interest from January 1996 to April 1999.

29. As regards the misuser charges, according to the petitioner the built-up area in the building is 1,67,231 sq. ft. or thereabout. The alleged misuse of about 9,000 sq. ft. as claimed by the respondent is without any basis whatsoever. The learned counsel for the petitioner submits that even no notice of appearance in order to clarify the fact has been issued by the respondent. It is argued by the petitioners that most of the floor space was sold to the third parties and petitioners have no control over the persons who had purchased the floor area in the multi storey building therefore, he could not have stopped the purchaser of the area or petitioner in action against them if any as the possession of the said area is lying with the third parties. The petitioner in support of his submissions has referred Clause 14 of the Flat Buyer Agreement which reads as under:

“BUYERS TO ABIDE BY THE BUILDING BYE-
LAWS OF STATUTORY AUTHORITIES

The buyer shall maintain at his/her/their cost the premises agreed to be acquired by him/her/them in the same condition, state and order in which it would be delivered to him/her/them and shall abide by all laws, bye-laws, rules and regulations of the Government/local bodies and/or of Ashoka Estate Maintenance Society or any other Authorities and local bodies and shall attend, answer and be responsible and liable for all losses, damages, fines and penalties for all deviations, violations or breach of any of the conditions or laws, bye-laws, or rules and regulations and shall always observe and perform all the terms and condition contained in this Agreement.”

30. According to the petitioners, they have not committed any breach and no action can be taken against them. The petitioner has also argued that the said demand is also contrary to the provision of the Delhi Apartment Ownership Act, 1986. Section 5 of the said Act provides each apartment to be heritable and transferable. The same reads as under:

“Subject to the provisions of Section 6, each apartment, together with the undivided interest in the common areas and facilities appurtenant to such apartment, shall, for all purpose constitute as a heritable and transferable immovable property within the meaning of any law for the time being in force, and accordingly, an apartment owner may transfer his apartment and the percentage of undivided interest in he common areas and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other whatsoever in the same manner, to the same extend and subject to the same rights, privileges, obligations, liabilities, investigations, legal

proceedings, remedy and to penalty, forfeiture or punishment as any other immovable property or make a bequest of the same under the law applicable to the transfer and succession of immovable property.”

31. In view of the above said provision, the petitioners allege that there is a procedure provided under Section 8 of Delhi Apartment Ownership Act, 1986 which provides, as to how a lessor is to deal with the flat owner who is in default. It is argued that in the present case, the respondent Nos. 1 and 2 have chosen to by-pass the said mandatory provisions of Section 8 of the Act and the petitioner is not aware of the area being misused. No show cause notice of any sort was given to the petitioner nor any personal hearing was given to the petitioner in order to explain whether any mis-use exists or not and the petitioner has no idea about it and the respondents have, therefore, no power to levy misuse charges. No term has been pointed out by the respondent No. 2 as to under which provision they are empowered to levy the misuse charges.

32. The respondent Nos. 1 and 2 have also levied damages for alleged unauthorized construction of the area of 424 sq. fts. The detail of the same are given as under:

Damages charges Un-authorised construction Area 424 sq. fts.

- i) @ Rs.2,968/- p.a. from 17.1.79 to 31.3.79 Rs. 602.00
- ii) @ Rs.5,665/- p.a. from 1.4.79 to 31.3.81 Rs.11,330.00
- iii) @ Rs.16,677/- p.a. from 1.4.81 to 31.3.87 Rs.1,00,062.00
- iv) @ Rs.36,238/- p.a. from 1.4.87 to 7.7.88 Rs.45,968.00

Increased area -954 sq. ft.

- v) @Rs.81,537/- p.a. from 8.7.88 to 31.3.89 Rs.60,376.00
- vi) @ Rs.1,48,892/- p.a. from 1.4.89 to 31.7.90 Rs.1,98,659.00
- vii) @ Rs.2,48,153/- p.a. from 1.8.90 to 31.3.91 Rs.1,65,209.00
- viii) @ Rs.2,97,784/- p.a. from 1.4.91 to 31.3.99 Rs.2,46,7936.00

33. It is submitted by the petitioner that the total area constructed in the premises is about 1,67,231 sq. ft., the respondent Nos. 1 and 2 are claiming the damages charges for alleged unauthorised construction of 424 sq. fts. The further contention of the petitioner is that the petitioners has no idea and is not aware of the same. The levy of damages for unauthorized construction, if any, is not permissible unless the principles of natural justice is followed. No positive reply has been given by the respondents, nor any show cause notice of personal hearing was given before the levy of damages.

The petitioner was unaware about the same. On the other hand the respondent Nos. 1 and 2 in the impugned letter have alleged that they have chosen to re-enter the property vide the impugned communication dated 31.07.2000 and have claimed that right and title in the properties have ceased.

34. It is argued that the action of the respondent Nos. 1 and 2 in seeking to take possession is clearly contrary to the settled law. The Supreme Court in the case of **Express Newspapers Pvt. Ltd. vs. UOI**; AIR (1986) SC 872 clearly held that respondents 1 and 2 in similar circumstances are obliged to take possession only by due process of law which necessarily implies filing of a suit by the lessor for the enforcement of the alleged right of re-entry, if any, upon forfeiture of lease due to breach of the terms of the lease. Hence, notices sent by respondent No.4 are also misconceived. Respondent Nos. 1 and 2 cannot take the possession in the manner they are trying to do.

35. It is the admitted position that the Division Bench upheld the levy of additional premium/conversion charges to be calculated on the basis of land rates prevalent on the crucial date, i.e. the date on which the application was made for change of user to the L&DO by the land owner.

36. The Division Bench in their judgment dated 19.05.1998 clearly held that where no application for change of user had been made, the date of sanction of the building plans by the local body was to be treated as crucial

date. It is also held that for the purpose of calculating the additional premium/conversion charges, the crucial date would be as under:

“(a) The date of receipt of application (complete in all respects) for conversion accompanied by the requisite documents and the earnest money, where applicable, will be the crucial date for determining the land rates applicable for calculation of conversion charges;

(b) In cases where no application for conversion has been made or where such application is made after sanction of the building plan, date of sanction of such plan by the local body will be the crucial date;

(c) In cases where application has neither been made nor construction executed in accordance with the originally sanctioned plan but is executed as per the revalidated plan, the date of revalidation of such plan will be the crucial date.”

37. In the present case, the complete plans of the petitioner were sanctioned on 23rd October, 1970. The crucial date therefore, is to be taken as 23rd October, 1970 and therefore, the calculation of additional premium / conversion charges has to be on that basis.

38. The Division Bench in their decision also held that the land rates as notified on the crucial date shall be applied as follows:-

“The Additional Premium/conversion charges, for the conversion of the user of the land will be determined with reference to the land rates (as notified by the Government (Ministry of Urban Development) from time to time applicable

on the crucial date as per the FAR assigned to the plot prevailing on the crucial date. In case where the land rates are linked to the prescribed FAR, the same will be increased or reduced, as the case may be proportionately with reference to the actual FAR applicable on the plot as on the crucial date but in cases where the land rates have been prescribed as per existing FAR, while calculating Additional Premium/conversion charges, the land rate need not be proportionately increased or reduced.”

The additional premium is to be determined with reference to the land rate on the crucial date as per the FAR assigned to the plot, prevailing on the crucial date.

39. The land rates as notified in 1970 applied to the FAR assigned to the plot as rates were not prescribed for any specific FAR. Annexure P-17, i.e. Information for the Guidelines issued by the Government of India for the lease holders, specifies the land rates, but there is no mention of FAR. The respondents No.1 and 2 have multiplied the land rates as applicable for 1970 by 4, though there is nothing to show that the land rates stipulated in 1970 were prescribed with any particular FAR and, more so, an FAR of 100. The respondents No.1 and 2, as per the policy, dated 11.01.1995 gave the formula for calculating the additional premium / conversion charges as follows:

“50% of the difference between commercial/ residential land value as the case may be as per the rate prevailing on the crucial date and those prevalent at the time of last transaction”.

40. The case of the petitioner is that in view thereof additional premium had to be calculated on the basis of above said formula taking into account the land rate in October 1970 on the basis of FAR assigned to the plot and that the respondent No.2's letter dated 10.04.1999 claiming additional premium of Rs.48,37,415/- is contrary to the judgment passed by the Division Bench on 19.05.1998. The details of the same have already been referred to above.

41. Learned counsel for the petitioner submits that the petitioner's case is squarely covered by the reported judgment of **Mrs. Daya Wanti Punj & Ors. v. NDMC & Ors.**; AIR 1982 Delhi 534 (DB) as the facts in the two cases are almost similar. This judgment of a Division Bench has not been challenged before the Hon'ble Supreme Court and has become final. The petitioner has also referred to another judgment in CWP No. 1159/1982 **Ajit Singh Sabharwal**, which has been decided on the basis of **Mrs. Daya Wanti Punj (supra)** judgment.

The petitioner has placed on record the documents which show that the case of the petitioner is similar to the cases of **Daya Wanti Punj (supra)** and **Ajit Singh Sabharwal (supra)** wherein conversion was allowed

@ Rs. 600/- per Sq. Yds. Paras 17 to 20 of the judgment passed by the Division Bench in the case of *Daya Wanti Punj (supra)* reads as under:

“(17) The Government considers the application dated 30th December, 1970 as the first application for permission for permanent change of purpose. But they are asking for charges on the basis of the rates prevailing in 1972 i.e. Rs.1500 per sq. yard. The short question for decision is whether the actual rates of 1970 should form the basis of the permission or the rates of 1972 be the basis which the Government has adopted. In this connection, we will refer to the letter of the Ministry of Works and Housing and Urban Development dated 22nd April, 1966 in which the policy regarding the "crucial date" with reference to which the charges should be calculated is laid down. The relevant portion of the letter is:

"CRUCIAL DATE OF CALCULATING THE UNEARNED INCREASE:

For the purpose of calculating Government dues, land values prescribed by Government as prevailing at the time of according sale permission would normally be the basic....

PERMANENT CHANGE OF PURPOSE:

Principles enunciated in the foregoing paragraphs for determining the charges, and the crucial date for calculating such charges will also apply in respect of permanent change of purpose of leased premises."

(18) This letter shows that on the, 'crucial date' for calculating charges in respect of

permanent change of purpose "the land values prescribed by the Government as prevailing at the time of according permission" would normally be the basis. What is the "crucial date" is the first question? What are the "land values" prevalent on the "crucial date" is the second question? On the correspondence, we have come to the conclusion that the "crucial date" for according permission ought to be 30th December, 1970. This was the first application for permission for all practical purposes. This the Government does not dispute. It is their own stand. Now, the "land values" prevailing in 1970 were Rs.600 per sq. yard, according to the Government's own prescribed rates. We do not see how in view of this admitted stand the Government can ask for payment on the basis of Rs.1500 per sq. yard. They rely for this purpose on a letter dated 30th July 1979 which is said to be a clarification of the Government policy formulated on 21st June 1979. This letter reads: "To
33-7-79

The Land & Development Officer,
New Delhi.

Sub: Rates to be applied for pending applications received prior to 1972 for conversion to multi-storeyed commercial and Group Housing, in Delhi.

Sir,

This question of the rate to be applied for pending applications received prior to 1972 for conversion to multi-storeyed commercial and Group Housing in Delhi has been considered in consultation with Finance Division. Keeping in view the fact that the land rates during the years immediately prior to 1972 were not appreciably

lower than the rates fixed for 1972 it has been decided that the rates determined for the year 1972 vide this Ministry's letter No. I-22011/1/75-III (11) dated 21st June, 1979 may be applied for the pre- 1979 cases. This has the approval of the Finance Division (Lands Unit) vide their U.O. No. 5 (13) Fd (L)/79/379 dated 26-7-1979.

Yours faithfully,
sd/-

(V.S. Rathan)

Under Secretary to the
Govt. of India."

(19) On the strength of this letter, the L.&D.O. says that he is bound by the instructions of the Government to charge Rs.1500 per sq. yard because even though it is a "pre-1972 case" it has been decided by the Government that the rates determined for the year 1972 have to be applied. We cannot see eye to eye with the Government. Nor do we see the logic of this letter. The stand of the Government is legally indefensible. A man who applies for permission in 1970 cannot be asked to pay on the basis of the land values prescribed by the Government for 1972. This is not in dispute that for 1970 the rate would be Rs.600 per sq. yard. That rate was prevalent from 1962 to 14th January, 1972. It is a fallacious reasoning to say that the land rates prior to 1972 were not "appreciably lower" than the rates fixed for 1972. There is a world of difference between land values of Rs.600 per sq. yard for 1970 and Rs.1500 per sq. yard for 1972. This is an area of interplay of market forces.

(20) From the counter-affidavit of the Government it appears that permission was given on the basis of the land rates of Rs.600 per sq. yard to three lessees, namely, (1) Life Insurance

Corporation regarding 25, Curzon Road, (2) Himalaya House regarding 23, Curzon Road and (3) Hindustan Times regarding 18/20, Curzon Road. All the three lessees had applied to the Government during the period 1966 to 1968. The terms were given to them between 1968 and 1971 and they were informed that the lesser was willing to give his consent for change of purpose from residential to commercial on the basis of the land value of Rs.600 per sq. yard. There cannot be a different yard stick for the petitioners. Their case is also covered by that block of years which covered the period from 1966 to 14-1-72. They are entitled to be treated on the same footing as those three lessees, namely, L.I.C., Himalaya House, and Hindustan Times, were treated. We see no justification for adopting the basis of the land value of Rs.1500 per sq. yard which is the basis of the Government's demand. Our conclusion is that 1970 is "that point of time", to use an expression of the Government policy dated 21st June, 1979, on the basis of which market value of the land should be ascertained for the purposes of giving permission for permanent change of purpose."

42. We agree with the learned counsel for the petitioner as most of the facts of the petitioner are similar with the facts of the case of *Daya Wanti Punj (supra)* which attained finality.

43. The plans for the multi-storeyed building were sanctioned on 23.10.1970 on the basis of FAR 400. The construction was started and completed plans were sanctioned by the NDMC vide its resolution No. 17 dated 21.03.1984, after Rs.6.5 lacs was paid as compounding charges. The

land rate in 1970 was Rs.600 per sq. Yds. as per brochure of the L&DO and judgment in **Dayawanti's case (supra)** and also in the case of 11, Tolstoy Marg, New Delhi. The crucial date in the case of petitioner is 23.10.1970. Thus, there is no justification for the L&DO to demand anything more from the petitioner than what was charged in case of **Daya Wanti Punj (supra)** and **Ajit Singh Sabharwal (supra)**.

44. The petitioner has also referred to the judgment in **Ashoka Estates Pvt. Ltd. Vs. Dewan Chand Builders : 159 (2000) DLT 233** in support of their submissions where it has been held that the responsibility of paying the commercialization charges is of the builders in view of the Clause of the agreement between the owners and the builders.

45. It is also submitted that the demand of the L&DO is many times more than the actual amount received by the owners from the builders/purchasers and by this time, all the owners / petitioners are old and are not in a position to meet the unreasonable demand of respondent No.2.

46. The case of the petitioner is also fortified by the reply dated 16.04.2010 to a query under the Right to Information Act, the relevant extract of which reads as under:

“The information asked for is as under:
As stated in the application.
The information sought is given below:

Your application was referred to A.A. B.P. (N-2), to provide the information. Now reply has received as under:-

1. Plans were sanction on 400 FAR.
2. The required copy of reso. No. 17 dated 21.03.84 of Completion Plan in r/o 24, Ashoka Road are available in record.

Copy of the same can be collected after paying the requisite fees i.e. Rs. 2/- per page.

(A.M. ATHALE)

PIO/D.C.A.-I

Tel No. 23748419”

47. After having considered the facts and the earlier decisions on the same very point, we feel that in fact it is a second round of litigation because the issue involved has already been determined by two Division Benches of this Court who had quashed the revised demand of rates at four times of the actual notified rates.

48. The Division Bench in its judgment dated 19.05.1998 clearly held that the additional premium/conversion charges for the conversion of user of land will be determined with reference to the land rates (as notified by the Government (Ministry of Urban Development) from time to time applicable on the “crucial date” as per FAR assigned to the plot prevailing on the crucial date.

49. We are of the view that the policy dated 11.01.1995 is the policy which gave the formula for calculation of additional premium/conversion

charges which has already been accepted by the Division Bench in its judgment dated 19.05.1998.

50. We feel that the calculation issued by the respondent No.2 vide letter dated 10.04.1999 claiming additional premium/conversion charges of Rs.48,37,415/- is erroneous and without application of mind. The land rates have been wrongly presumed to be based on FAR 100 and the same were wrongly multiplied with 4. This is so, because the FAR assigned to the plot was already 400 and there was no scope for further multiplying by 4. Annexure P-17 shows the land rate @ 600 Sq. Yds. in 1969 but did not specify the FAR. There was no change in 1970. No contrary evidence in this regard has been produced by the respondent No.2 in order to show that the land rates in 1970 were prescribed for FAR 100. Therefore, the letter dated 10.04.1999 raising additional premium in view thereof is quashed. We also quash the notification/circular dated 18.01.1996 issued by the respondent No.2 in view of the reasons given by us. The said notification/circular was in the possession of the respondents, it was not brought to the notice of the Division Bench which delivered the judgment dated 19.05.1998. Since we have considered the entire matter afresh and quashed the letter dated 10.04.1999, our decision with regard to the notification/circular dated

18.01.1996 would remain the same. Therefore, the question of the writ-petitions being barred by laches or resjudicata does not arise.

51. For the aforesaid reasons by following the judgment of ***Daya Wanti Punj (supra)*** we direct the respondents to raise demand for change of user on the basis of the rates of Rs.600/- per sq. yds.

52. The present writ petition is allowed and we quash the communication dated 10.04.1999 and the communication dated 31.07.2000 and the two communications dated 04.10.2000 as filed in the present writ petition as annexure P-12, 14, 15 and 16 respectively. The respondent Nos. 1 and 2 are at liberty to raise their fresh demand for change of the user of the property No.24, Barakhamba Road, New Delhi in accordance with principles laid down by the Division Bench judgment dated 19.05.1998 and the finding arrived by us.

53. The petitioner in Writ Petition No.6742/2010, in view of the order dated 20.11.2000 had deposited Rs. 40 lacs by order dated 10.11.2000. The said amount would be adjusted against the proposed fresh demand to be raised by the respondent Nos. 1 and 2.

54. The connected Writ Petitions being W.P.(C) Nos. 6671/2000, 7636/2000, 7649/2000, 7717/2000, 7718/2000, 7747/2000 and 1082/2001 which are having the same prayers are also disposed of with these directions.

55. All the writ petitions stand disposed of. No costs.

MANMOHAN SINGH, J

BADAR DURREZ AHMED, J

JANUARY 23, 2012

jk/dp/mm