

+ W.P.(C) 4867-70/2004

versus

% Date of Decision : July 08, 2013

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

JUDGMENT

: REVA KHETRAPAL, J.

1. The present petition seeks to assail letter dated 24.3.2004 issued by the Respondent No.1/DDA whereby the lease of the plot at A-1/166, Pankha Road, Janak Puri, New Delhi has been cancelled and determined by the Respondent No.1 and letter dated 30.7.2003 rejecting the application filed by the Petitioners for conversion of leasehold rights in the aforesaid property into freehold on the ground of non-payment of the misuse charges of ₹ 75,10,178/-.

2. The background facts necessary for the decision of the present writ petition are that on 27.3.1974 vide a perpetual lease executed by the President of India the plot at A-1/166, Pankha Road, Janak Puri, New Delhi was allotted to Smt. Nirmala Sharma and others, who eventually constructed a building comprising of basement, ground floor, first floor and second floor on the said plot. After the original allotment of the plot in the name of Smt. Nirmala Sharma and others, the property changed hands a number of times. The said premises were eventually purchased by the Petitioners on 20.12.1993 by way of a General Power of Attorney and an Agreement to Sell. The Respondent No.1 was throughout aware of these proceedings but never bothered to question the same prior to the issuance of the impugned letter dated 24.3.2004.

3. The original allottee of the leasehold plot Smt. Nirmala Sharma received a show cause notice dated 23.10.1997 from Respondent No.1 alleging that the premises in question were being used for running a Banquet Hall in breach of the terms of the lease. In response to this, the Petitioners replied vide letter dated 15.11.1997 that it was not possible to run a Banquet Hall in the said premises and stating:

“This full building is constructed as a house and how it is possible that the small rooms can be used as a Banquet Hall and I do not have any hall in this building.”

Apparently, this reply furnished by the Petitioners satisfied the Respondent No.1, for no further notice or communication was received by the Petitioners from the Respondent No.1 in this regard.

4. In the meanwhile, vide notification No.H-11017/7/91-DDIB, S.No.1392 dated 22.5.1999, the Central Government by way of an amendment to the Master Plan for Delhi allowed Banks, Nursing Homes and Guest Houses on residential plots under “*Mixed Land Use Regulations*”, subject to certain conditions and guidelines including payment of permission fee. Salient features of these were stated as follows:-

“6. Restriction on Canteen and Restaurant in Guest House: *No commercial activity in the form of canteen or restaurant will be permitted. Catering will be allowed only for the residents of the Guest House/Nursing Homes.*

7. Permission Fee: *A permission fee will be charged at the rate of 10% per annum of the difference between the current commercial rate and current residential rate as approved by Ministry of Urban Affairs and Employment. The fees will be based on the actual floor area utilized for such non-residential purpose.*

Where residential premises are already being put to such non-residential use, the same will be regularized on their payment of permission fees from the current financial year.

8. Payment of Fee: *The amount of permission fee is to be paid by the applicant on each financial year within first 6 months. Non-payment of permission fee may amount to closure/sealing (sic.) of the premises with recovery of 100% misuse fee.”*

5. On an application filed by the Petitioners vide letter dated 23.8.1999, the Respondent No.1 granted its permission and no objection to the Petitioners to use the said premises for running a Guest House vide their letter/No Objection Certificate dated 30th August, 1999 *“subject to meeting the requirements of the guidelines issued by the Ministry of Urban Affairs and Employment vide no.H-11017/7/91-DDIB dated 7.5.99 as part of the amendment in the Mixed Land Use Policy of MPD-2001 from the planning point of view DDA has no objection in running the guest house in the above premises.”*

6. It is the case of the Petitioners that the permission for use of the premises as Guest House was sought by the Petitioners because the Petitioners had wanted to use a part of the building constructed on the plot in question as a Guest House for one of its firms i.e. for personal use of the employees and guests of M/s. Guru Exports and other business interests of the Petitioners. According to the Petitioners, between the year 1993 when the plot in question along with the building thereon was purchased by the Petitioners and the year 1999 the entire building was exclusively used by the Petitioners for their own residential purposes. The Guest House activities were carried out only in the ground, first and second floors of the said property w.e.f. 30.08.1999 when No Objection Certificate was issued by the D.D.A and even thereafter the barsati floor was in the residential occupation of the Petitioner No.3, Sh.Narinder Pal Singh, son of Sh.B.S.Ahluwalia as one of the co-owners of the property.

7. It is further the case of the Petitioners that in terms of the **Master Plan 2001, Clause 8(2) of The Development Code**, Guest Houses, Boarding Houses and Lodging Houses could be run in a residential area and such user of the premises was permissible. Thus, even if no permission was applied for and taken by the Petitioners for running a Guest House, the same could not have converted the user from residential to commercial. Reliance in this context is placed on the relevant extract of the Master Plan annexed with the petition and the judgment of a learned Single Judge of this Court (Hon'ble Mr. Justice Sanjay Kishan Kaul) rendered in the case of *Ashwni Kumar Khanna vs. Delhi Development Authority, (2003) 69 DRJ 628*, to which I shall presently advert.

8. To continue the narration of facts, the Petitioners vide their application dated 16.8.2001 approached the DDA again regarding the requirements to be fulfilled and the amount of permission fee to be deposited with DDA for running the Guest House whereupon the Petitioners, vide letter dated 8.2.2002 issued by the Respondent No.1/DDA, were informed that the area in question now fell within the jurisdiction of the Respondent No.2/MCD and that the regulations for implementation of the guidelines of 7.5.1999 were in the process of finalisation. The Petitioners accordingly approached the Respondent No.2 for payment of the necessary permission fee for running a Guest House. The Respondent No.2 demanded a sum of ₹ 1,14,000/- from the Petitioners with effect from 1997-98 till 2003-04. Although it is the contention of the Petitioners that they had not been using the said premises as a Guest House before 1999, still to resolve

any controversy between the parties and for the expeditious receipt of the license, the Petitioners paid the regularization charges with effect from 1997-98 instead of 1999-2000 vide challan dated 27.9.2002. Pursuant to the same, the Respondent No.2 vide letter dated 8.10.2002 granted license to the Petitioners to run a Guest House from the said premises.

9. In the interregnum, the Petitioners vide their application No.17873 dated 4.1.2000 applied for conversion of the said plot from leasehold to freehold. The Petitioners along with their application for conversion duly paid a sum of ₹ 2,05,627/- along with the ground rent of ₹ 6,895/- as levied and demanded by the Respondent No.1 for conversion charges. The said amount was duly received and encashed by the Respondent No.1 as evidenced from the documents placed on record.

10. Almost three years later, the Petitioners were shocked to receive a letter dated 7.11.2002 from the Respondent No.1 informing them that “*due to misuse in the premises in the shape of Guest House*” they were required to deposit ₹ 75,10,178/- as provisional misuse charges upto 28.6.1999 along with ground rent amounting to ₹ 6,895/- within 30 days of the issuance of the letter as a pre-condition for conversion of the said premises from leasehold to freehold. Thus, the Respondent No.1 without bothering to seek any explanation from the Petitioners and on its own fixed the Petitioners with a liability for misuse without any proof thereof. In response to the letter dated 7.11.2002, the Petitioners replied vide letter dated 26.11.2002 that the premises in question had never been used as a Guest House prior to

the grant of NOC from the Respondent No.1, i.e., from 30th August, 1999, and as such the misuse charges sought to be levied were liable to be waived. Thereupon, the Respondent No.1 issued another letter dated 6.5.2003 to the Petitioners to meet its demand, failing which it was stated, the conversion application would be rejected and appropriate action under the terms and conditions of the lease deed initiated against them. It would be apposite to note at this juncture that non-payment of misuse charges and the ground rent were the only grounds taken by the Respondent No.1 for initiation of action under the terms and conditions of the Lease Deed. It would also be pertinent to note that the said letter was addressed to the Petitioner Nos.1 and 2 and not to the original allottees of the plot in question. The Petitioners vide challan dated 24.5.2003 deposited the ground rent as demanded by the Respondent No.1 amounting to Rs.6,895/- which was duly accepted and encashed by Respondent No.1. However, as the demand for Rs.75,10,178 was illegal, the Petitioners in reply to the letter dated 6.5.2003 made a detailed representation dated Nil reiterating that they had started running a Guest House from the said premises after receiving the No Objection Certificate from the Respondent No.1 on 30th August, 1999 and no activity of any commercial nature including running of a Guest House had ever been carried out from the said premises prior to the said date. The Petitioners allege that despite this the Respondent No.1 without carrying out any enquiry, arbitrarily and malafidely, rejected the conversion application of the Petitioners on the basis of non-payment of misuse charges vide its communication dated 30th July, 2003. The

Petitioners assailed the said rejection vide their letter dated Nil, but in vain.

11. Subsequently, by a communication dated 24.3.2004 addressed to the original allottees of the plot Smt. Nirmala Sharma, Ms.Sandhya and others, the Respondent No.1 cancelled the lease of the plot in question *without giving any notice or intimation to the Petitioners. This communication significantly was the first communication addressed by the Respondent No.1 to the original allottees after October 23, 1997 and the ground for termination of the Lease Deed, which was never raised by it earlier at any point of time, was that no written consent of the lessor was taken to sell, transfer or assign the residential plot in question, and as such the plot had been cancelled by the lessor on 13.2.2004* under **Clause III** of the Lease Deed for breach of **Clause II (5 and 10)** thereof. The notice also mentioned that the possession of the plot together with the building and structures standing thereon shall be taken by the J.E.(LAB) Residential on 7.4.2004.

12. Left with no option, the Petitioners sent a legal notice dated 1.4.2004 to the Deputy Director (LA) Residential to withdraw the letter dated 24.3.2004, *inter alia*, for the reason that the Respondent No.1 had allotted only a plot of land to Smt. Nirmala Sharma vide Lease Deed dated 27.3.1974 and the building thereon was constructed by Smt. Nirmala Sharma from her own funds, and as such the lessor could not seek dispossession of the occupants from the building without following due process of law, which would mean by filing a suit for possession as laid down by the Hon'ble Supreme Court of

India in *Express Newspapers Pvt. Ltd. and Others vs. Union of India and Others* reported in (1986) 1 SCC 133. The Respondent No.1 having failed to respond to the aforesaid legal notice, the Petitioners preferred the present writ petition assailing the letters dated 24.3.2004 and 30.7.2003 issued by the Respondent No.1.

CONTENTIONS OF THE PETITIONERS

13. Mr. Sanjay Jain, the learned senior counsel for the Petitioners sought to challenge the cancellation of the Lease Deed and the levy of misuse charges, labelling them as arbitrary and illegal, *inter alia*, on the following grounds:-

(I) VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE

Learned counsel contended that the Respondent had issued no show cause notice either to the original lessees of the property or to the Petitioners herein who are the transferees of the said property, alleging violation of **Clause II(5)** of the Lease Deed, and as such no opportunity to meet the allegations of the Respondent and to be heard was given to the Petitioners, who are sought to be deprived of their right to property without even the issuance of a show cause notice. He further contended that the Respondent No.1 has not even placed on record the letter, order or other document whereby the lease of the property is stated to have been cancelled on 13.2.2004. It is not even averred that any such letter or order was either written, sent or communicated to the Petitioners or the original allottees.

(II) CANCELLATION OF LEASE ON A DIFFERENT GROUND THAN THE ONE GIVEN IN THE SHOW CAUSE NOTICE

The next contention of Mr. Sanjay Jain, learned senior counsel for the Petitioners is that while the cancellation letter/order dated 13.2.2004 was based on breach of **Clause II(5 and 10)** of the Lease Deed, the show cause notices issued prior to the said date alleged breach of **Clause II(13)** only. It is deemed necessary at this juncture to reproduce the aforesaid clauses of the Lease Deed for the facility of ready reference:-

CLAUSE II (5 and 10)

“5(a) The Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the Residential plot except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion.

PROVIDED that such consent shall not be given for a period of ten years from the commencement of this Lease unless, in the opinion of the Lessor, exceptional circumstances exists for the grant of such consent.

PROVIDED FURTHER that, in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the Residential plot at the time

10. All arrears of rent and other payments due in respect of the Residential plot hereby demised shall be recoverable in the same manner as arrears of land revenue.

CLAUSE II (13)

13. The Lessee shall not without the written consent of the Lessor carry on, or permit to be carried on, on the residential plot or in any building thereon any trade or business whatsoever or use the same or permit the same be used for any purpose other than that of private dwelling to do or suffer to be done therein any act or thing whatsoever which in the opinion of the Lessor may be a nuisance, annoyance or disturbance to the Lessor and persons living in the neighbourhood.

Provided that, if the Lessee is desirous of using the said Residential plot or the building thereon for a purpose other than that of private dwelling, the Lessor may allow such change of user on such terms and conditions, including payment of additional premium and additional rent, as the Lessor may in his absolute discretion determine.”

Mr. Jain contended that it was only on 24.3.2004 that for the first time the Respondent No.1 raised the ground of alleged breach of **Clause II(5 and 10)** of the Lease Deed , i.e., sale/transfer of the residential plot without the consent in writing of the lessor and relied upon the said clause for cancelling the Lease Deed vide the alleged order/letter dated 13.2.2004. It is the case of the Petitioners that prior to the impugned letter dated 24.3.2004, no show cause notice was ever issued either to the original allottees or the Petitioners herein

alleging violation of the abovementioned sub-clauses. Mr. Jain pointed out that as is borne out from the record all show cause notices relied upon by the Respondent No.1 prior to the said letter, i.e., letter dated 24.3.2004, referred to the alleged violation of **Clause II(13)** of the Lease Deed only, whereas the cancellation of the lease is on account of a difference clause, i.e., **Clause II(5 and 10)** of the Lease Deed, for which admittedly no show cause notice was issued by the Respondent No.1. Consequently, the letter dated 24.3.2004 is liable to be set aside on this ground alone.

It was also contended by Mr. Jain that even otherwise the impugned letter dated 24.3.2004 issued by the Respondent No.1 directing the lessees to hand over the possession of the plot along with the building and structure standing thereon was liable to be set aside, being illegal and void in view of the fact that what was given to the original lessees was a plot of land and not a building or a superstructure. It is settled law that a lessor with the best of title has no right to resume possession by use of force even after the expiry or termination of lease by forfeiture or otherwise.

(III) ACCEPTANCE AND RECOGNITION OF THE PETITIONERS BY THE RESPONDENTS AS GPA HOLDERS/TRANSFEREES/LESSEES.

In the aforesaid context Mr. Sanjay Jain contended that the Respondent was at all times aware of the fact that the property in question had been sold to the Petitioners and that the Petitioners were the transferees/GPA holders of the original lessees, which is borne out from the fact that the Respondent had been communicating with the

Petitioners since February, 2002 and had addressed to the Petitioners various communications, including letters dated 8.2.2002, 7.11.2002, 6.5.2003 and 30.7.2003. In none of the aforesaid letters/communications addressed to the Petitioners, any violation of **Clause II(5 and 10)** of the Lease Deed was mentioned or even remotely referred to. Significantly, in the letter dated 6th May, 2003, the Respondent, while addressing the said letter to the *Petitioners and not to the original lessees*, had requested the Petitioners to deposit the misuse charges of ₹ 75,10,175/-, and had in fact threatened action under the terms and conditions of the Lease Deed against both of them i.e the Petitioners Nos.1 and 2. Respondent No.1, therefore, had admittedly with open eyes accepted the Petitioners as the transferees of the property. The relevant portion of the above-mentioned letter reads as under:-

“You are again requested to deposit the same amount and submit the 3rd copy of challan as proof of above stated demand within 7 days from the date of receipt of this letter failing which the conversion application will be rejected, and appropriate action under the terms and conditions of lease deed will be initiated against both of you.”

(IV) ESTOPPEL AND ACQUIESCENCE

Mr. Jain contended that once having accepted and admitted the Petitioners as transferees/GPAs and even lessees, the Respondent No.1 as an instrumentality of the State is estopped from going back on its stand and cancelling the Lease Deed on the basis of alleged violation of **Clause II(5)** of the said Deed. The fact that Respondent

No.1 was very well aware of the fact that the Petitioners were the transferees/GPAs of the said property from the original lessees and had acquiesced in the Petitioner's continuing in the uninterrupted, peaceful and physical possession of the said property is apparent from a perusal of the letters written to the Petitioners by Respondent No.1 dated 30/08/1999, 4/1/2000, 8/2/2002, 7/11/2002, 6/5/2003 and 30/07/2003 the fact that the Respondents never raised objection on the said ground in any of the aforesaid letters.

(V) ACTION OF THE RESPONDENT CONTRARY TO THE POLICY OF THE RESPONDENT

The contention of Mr. Jain in this regard is that it is noteworthy that the Respondent had by its own Circular dated 11th August, 2003 re-affirmed its policy that applications for conversion of properties from leasehold to freehold can be made by lessees/**GPA** holders. In the present case also, the Petitioners in the capacity of GPA holders of the original lessees had applied for conversion of the said property from leasehold to freehold. As such, there was no warrant or justification for the Respondents to have acted contrary to their own policy.

Mr. Sanjay Jain further contended that the letter dated 30.7.2003 issued by the Respondent No.1 rejecting the conversion application of the Petitioners was for alleged violation of **Clause II(10)** of the Lease Deed alleging non-payment of misuse charges, which was wholly unwarranted and unjustified for the following reasons:-

- (i) Respondent No.1 had on 30th August, 1999 already granted permission to the Petitioners to run a Guest House in the said property.
- (ii) The demand towards misuse charges/permission fee as raised by the Respondent vide letter dated 7.11.2002 was admittedly on account of the Petitioners running a Guest House in a residential area without any authority or sanction of law. The said letter though had required the Petitioners to deposit ₹ 75,10,178/- as provisional misuse charges upto 28.6.1999 along with ground rent amounting to ₹ 6,895/- within 30 days, nowhere mentioned the period from which the alleged misuse charges were levied or the basis of levying the charges claimed and the rate at which such demand of ₹ 75,10,178/- was made.
- (iii) The impugned demand of misuse charges was raised on the basis of notification dated 7.5.1999 as is evident from the letter dated 30th August, 1999 referred to hereinabove and the “*GUIDELINES FOR ALLOWING MIXED LAND USE, NAMELY, NURSING HOMES, GUEST HOUSES AND BANKS IN RESIDENTIAL AREAS*”, copy whereof is placed on record. However, before the said date, i.e., 7.11.2002, the notification dated 7th May, 1999 whereunder permission fee/misuser charges were sought to be levied in relation to running of Guest Houses/Nursing Homes/Banks in residential areas had already been struck down by a Division Bench of this

Court by its judgment rendered in ***DMA Nursing Home and Medical Establishment Forum vs. Union of India*** reported in (2001) 93 DLT 279 dated 1.6.2001, holding the same to be illegal and *ultra vires*. The relevant portion of the said judgment reads as under:-

“21. In view of our discussion above, we have arrived at the conclusion that the imposition of permission fee/misuser fee and the proposed action for non-payment for such permission fee stipulated in the impugned guideline Nos. IX and XI is in the nature of the compulsory exaction of the money without any authority of law. There is no element of “quid pro quo” between the levy of fee and services, if any, rendered or proposed to be rendered to nursing home owners who are supposed to pay the fee nor there is any correlation between the two. Besides, the impugned levy has no reasonable nexus with the avowed object of providing medical services to the local residents.

22. In the result, the writ petition is allowed and the impugned guideline Nos. IX and XI issued in pursuance of Notification No. H11017/7/91/DDIB dated 7th May 1999 are struck down as being illegal and ultra vires the Constitution and Delhi Development Act, 1957. There will, however, be no order as to costs.”

- (iv) Even otherwise, the Respondent No.1 had no legal right or authority to charge permission fee/misuse charges even under the Master Plan for user of a Guest House in a residential premises in view of the law laid down by this Court in the case of ***Ashwni Kumar Khanna vs. Delhi***

Development Authority, (2003) 69 DRJ 628. The said judgment was delivered on **6.2.2003** and The Delhi Development Act (Permission of Residential Land and Building For Use as Guest Houses) Regulations, 2003 came into being on **11.3.2003**, whereby the Respondent No.1 got the legal right to levy the permission fee for the first time. Consequently, the question of demanding misuse charges/permission fee from the Petitioners could not have arisen prior to the coming into force of the said Regulations.

- (v) The letter dated 30th July, 2003 rejecting the conversion application of the Petitioners is based upon the letter dated 7.11.2002, which letter is itself without legal sanctity and, therefore, the letter dated 30th July, 2003 is *ex facie* illegal and without authority of law.
- (vi) Since the Respondent had no authority in law to demand misuse charges from the Petitioners on 7.11.2002, there was consequently no breach of **Clause II(10)** of the Lease Deed and cancellation of the Lease Deed by the Respondent by relying upon the said clause was arbitrary, unjustified and illegal.

CONTENTIONS OF THE RESPONDENT/DDA

14. *Per contra*, Ms. Anita Pandey, learned counsel for the Respondent No.1/DDA reiterated the submissions made by the DDA in the Counter-Affidavit filed by it. She submitted that after the execution of the Lease Deed in favour of Smt. Nirmala Sharma and

others on 27.3.1974, the plot in question was sold and changed various hands by way of General Power of Attorney and Agreement to Sell. The last purchasers (the Petitioners) had applied for conversion from leasehold to freehold vide application dated 4.1.2000. After the Petitioners applied for conversion (i.e., after 4.1.2000), the site was inspected and it was found that the premises in question were being misused. The conversion application was rejected on the ground that the premises were being misused as a Banquet Hall since 22.4.1997 and the same was conveyed to the applicants vide letter dated 30.7.2003.

15. Learned counsel further submitted that the misuse of the premises in question had been changing from time to time. Sometimes, it had been used as a Banquet Hall and sometimes as a Guest House. However, as per the latest inspection carried out in April, 2004, it had been found that the premises in question were being used as an 'Export House'. The Respondent No.1 vide letter dated 26.2.1998 asked Smt. Nirmala Sharma and others to furnish an attested copy of the Rent Deed executed with Guru Export Company and the copy of the permission/license for running the Guest House. The Respondent No.1 had also issued a final show cause notice dated 23.10.1997 to Smt. Nirmala Sharma as she had been misusing the premises in question by running a Banquet Hall on a residential plot and had failed to give any satisfactory reply to the earlier show cause notices dated 23.4.1997 and 24.6.1997.

16. Learned counsel submitted that as per the conversion policy applicable at that time and in view of the Circular dated 8.8.2001,

misuse charges were calculated from 22.4.1997 to 28.6.1999 amounting to ₹ 75,10,178/- and thereafter the demand raised vide letter dated 7.11.2002. The applicant took a plea that he had already got a No Objection for running a Guest House vide letter dated 30th August, 1999 but the said letter having been issued from the planning point of view, permission fee was still required to be deposited in this regard. Since the applicant made payment of the ground rent only and failed to make the payment of misuse charges, the case was further processed for the termination of the lease. The Hon'ble Lieutenant Governor, being the Competent Authority, accordingly determined/cancelled the Lease Deed vide letter dated 13.2.2004 and the same was conveyed vide letter dated 24.3.2004 with the request to handover possession of the plot in question on 7.4.2004 to the concerned Junior Engineer (LA/DDA).

FINDINGS

17. Having heard the learned counsel for the parties at length and considered the documents on record, it appears to me that the demand of the Respondent dated 7.11.2002 for misuse charges upto 28.6.1999 in the sum of ₹ 75,10,178/- for running a Guest House was clearly misconceived. Reference in this regard may usefully be made to the judgment of this Court rendered in the case of ***Ashwni Kumar Khanna vs. Delhi Development Authority (supra)***. In the said case, the contention raised on behalf of the Petitioners was that the Master Plan – 2001 itself permitted the running of Lodging and Guest Houses as residential user and that the character of the residential lease does not change merely by reason of the fact that instead of the

owner running the Guest House himself it is the tenant running the same and it is only when non-residents are permitted use of restaurant and eating places that the user becomes a commercial user. The said contention was accepted by this Court and it was held as under:-

“15. Once the Master Plan itself prescribes the residential user as residences, hotels and boarding houses, this provision cannot be watered down. I am also unable to appreciate the contention of the learned counsel for the respondent that the guest house should be a part of the approved lay-out plan or some special permission should be obtained when it is a permissible residential user. Even if there is a requirement of seeking permission for running the guest house, running of the same without such permission cannot convert the user from 'residential' to 'commercial'.

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18. The petitioner has also been asked to pay restoration charges @ Rs. 3,000/- per month amounting to Rs. 60,000/-. Since there was no misuse, there could be no termination and, thus, there could be no question of restoration charges. Thus, this amount is also not liable to be paid by the petitioner.”

18. In view of the aforesaid law laid down by this Court, which has since attained finality and no judgment or law to the contrary having been pointed out by the Respondent No.1, I have no hesitation in holding that even assuming a Guest House was being run by the Petitioners, no misuse charges could have been levied by the Respondent, for, running of a Guest House does not convert the user

from residential into commercial. Thus, the letter dated 30.7.2003 is bad in law and liable to be set aside by this Court. Even otherwise, the aforesaid letter runs counter to the DDA's own case that prior to 1999, the Petitioner was using the premises as a Banquet Hall. This stand of the DDA is apparent from the notice dated 23.10.1997 issued by the DDA to Smt. Nirmala Sharma, the original allottee, alleging that the premises were being used for running of a Banquet Hall. In response to this, the Petitioners replied vide letter dated 15.11.1997 that it was not possible to run a Banquet Hall in the said rooms as the entire building was constructed as a house having rooms and it was not possible to use such small rooms as a Banquet Hall and moreover, there was no such hall in the said premises. No response to the aforesaid reply of the Petitioners was sent by the Respondent, thereby leading to the inference that the Respondent was satisfied with the reply furnished by the Petitioners.

19. It also deserves to be noted at this juncture that the Petitioners having purchased the property in December, 1993 carried out alterations and renovations in the said property and the same was occupied only after April, 1996, i.e. after the completion of construction/renovation. The compounding fee of ₹ 1,15,058/- was subsequently paid by the Petitioners to the Municipal Corporation of Delhi on 9th August, 1997. As a matter of fact, the Petitioners in their representation dated Nil (made subsequent to their representation dated 6.5.2003) represented to the Respondent that the fact that at the relevant time the premises were being used for residential purposes only could be verified by the Respondents from the assessment order

dated 31st March, 1999, which clearly shows that the property was being used solely for residential purpose. Copy of the electricity bill showing very little consumption was also furnished to the Respondent in this regard to show residential use. It is also not in dispute that it was on 23rd August, 1999 that the Petitioners had applied for permission for running a Guest House in the aforesaid property and that a No Objection Certificate in writing was granted to the Petitioners in this regard vide the letter of the Respondent No.1 dated 30th August, 1999 and it was only thereafter that the Petitioners started running a Guest House in a portion of the property and that too for their own employees.

20. From the above, it is clear that the Respondent No.1 has from time to time shifted its stand alleging in the first instance that a Banquet Hall was running in the premises in question and thereafter alleging that for the same period i.e upto 28th June, 1999 a Guest House was being run in the very same premises.

21. Then again, there is no denying the fact that the cancellation of the lease by the Respondent was on a different ground than the one given in the show cause notice to the Petitioners. As is borne out from the record, it was only on 24.3.2004 that the Respondent No.1 *for the first time* raised the ground of alleged breach of **Clause II(5 and 10)** of the Lease Deed. The said letter was however addressed not to the Petitioners but to the original allottees, which relied upon the Clause II (5 and 10) for cancelling the Lease Deed vide alleged order/letter dated 13.2.2004. Prior to the issuance of the letter of 24.3.2004, no show cause notice or any other letter was ever issued

either to the original allottees or to the Petitioners alleging violation of the above-mentioned clauses of the Lease Deed nor any unearned increase was ever demanded by the Respondent at any point of time. It is also borne out from the record that all correspondence/show cause notices relied upon by the Respondent No.1 prior to the said letter, i.e., letter dated 24.3.2004, referred to the alleged violation of **Clause II(13)** of the Lease Deed only, pertaining to misuse charges, whereas the cancellation of the Lease Deed was effected on the ground of breach of **Clause II(5 and 10)** of the Lease Deed. The cancellation of the Lease Deed, therefore, clearly was on a different ground than that for which the show cause notices were issued. Admittedly also, no show cause notice was ever issued by the Respondent No.1 either to the original allottees or to the Petitioners for cancellation of the Lease Deed alleging breach of **Clause II(5)** of the Lease Deed and the cancellation, therefore, was in clear violation of the principles of natural justice. It is trite that the law pertaining to show cause notices is that a person must know the case which he has to meet and he must have an opportunity of meeting that case. Reference in this regard may be made to the case of *Nasir Ahmed vs. Assistant Custodian General Evacuee Property, U.P., (1980) 3 SCC 1* wherein it was held as under:-

“3. The facts stated above clearly show that the notice and the declaration that followed are both invalid. The notice called upon the appellant and his brother to show cause why they should not be declared evacuees under Clause (iii) of Section 2(d) of the Act and the ground mentioned in the notice was also based on that clause, yet the Assistant Custodian found that they

were evacuees under Clauses (i) and (ii) as well. The Authorised Deputy Custodian held that the ground given in the notice in support of the case based on Clause (iii) was vague and the notice was defective so far as that ground was concerned, but that was the only case the appellant was called upon to answer. The foundation of a proceeding under Section 7 is a valid notice and an inquiry which travels beyond the bounds of the notice is impermissible and without jurisdiction to that extent. Therefore the declaration that the appellant was an evacuee under clauses (i) and (ii) of Section 2(d) of the Act must be held invalid.”
(emphasis supplied)

22. The fact that the Respondent No.1 cancelled the Lease Deed after having directly and tacitly recognized the Petitioners as the transferees/lessees of the plot in question is also clear from the record and is evidenced by the letters addressed by the Respondent No.1 to the Petitioners from time to time, including the letters dated 30.08.1999, 4.1.2000, 8.2.2002, 7.11.2002, 6.5.2003 and 30.7.2003. It would also be apposite at this juncture to mention that as per the Respondent's own Circular dated 11th August, 2003 the Respondent had re-affirmed its policy that applications for conversion of properties from leasehold to freehold can be made by the lessees/GPA. Once having accepted and admitted the Petitioners as transferees/GPA and even lessees, the cancellation of the Lease Deed on the basis of **Clause II(5)** of the Deed and that too without issuance of notice to the Petitioners was clearly bad in law. The said clause, it is stated at the risk of repetition, was for the first time pressed into service by the Respondent in its letter terminating the lease dated

24.3.2004 addressed to the original allottees. By the said communication, the original allottees were informed that the Lease Deed had been cancelled on 13.2.2004. Admittedly also, the said cancellation was made without issuance of show cause notice and not even a copy of the order of cancellation order dated 13.2.2004 was furnished either to the original allottees or to the Petitioners at any point of time nor it has surfaced on the record till date.

23. For all the aforesaid reasons, I find merit in the contention of the Petitioners' counsel that the lease is liable to be restored. I am also inclined to uphold the contention of the learned senior counsel for the Petitioners that the impugned letter dated 24.3.2004 issued by the Respondent No.1 directing the lessees to handover the possession of the plot along with the building and structure standing thereon is liable to be set aside. It is well established in law that a lessor has no right to resume possession of a lease by forfeiture or otherwise by forceful dispossession of the lessee. Re-entry by the lessor in terms of the lease can only be in a manner recognized by law and by due process of law, which is by filing a suit for possession. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in *Express Newspapers Pvt. Ltd. and Others vs. Union of India and Others* in (1986) 1 SCC 133. The relevant dicta laid down in the said judgment is as under:-

“Due process of law which in a case like the present necessarily implies the filing of suit by the lessor i.e. the Union of India, Ministry of Works & Housing 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.”

24. *Express Newspapers* case (*supra*) also took into consideration another judgment of a five-Judge Bench of the Apex Court titled as ***Bishan Das vs. State of Punjab, AIR 1961 SC 1570***, which held as under:-

“14. Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property.”

25. Further it is not disputed by the Respondent No.1 that vide DDA Circular dated 8.8.2001 misuse charges were payable *“for the period of misuse from the date of detection of misuse till the date of vacation of misuse or upto 28.6.1999, whichever is earlier”* and that in the instant case the Petitioners were called upon to pay misuse

charges upto 28.6.1999 vide communication of the DDA dated 7.11.2002. Even as per the Circular dated 11th August, 2003 relied upon by the Respondent:-

“a) Misuse charges shall henceforth be levied up to date or the actual date of closure, whichever is earlier. In such cases in which the lessee/GPA has applied for conversion of the property, the misuse charges shall be levied up to the date of receipt of complete application for conversion along with all annexure and documents. It is further clarified that misuse charges will be levied up to the date of receipt of last installment or up to the date of closure whichever is earlier in those cases where it has been preferred by the lessee/GPA to deposit conversion charges in installments.

b) Generally the misuse charges are levied from the date of detection as per the survey report/site report etc. However, in such cases where any proof indicating the misuse of property from an earlier date is available misuse charges will be charged from such earlier date, irrespective of actual date of detection.”

26. As noted above, it is the Respondent’s own case that the misuse in the present case was detected on an inspection carried out **after the Petitioners applied for the conversion**, i.e., after 4.1.2000. It is so stated in para 2 of the Counter-Affidavit as follows:-

“....After the Petitioner applied for the conversion, the site was inspected and it was found that the premises in question are being misused. It is submitted that the conversion application was rejected on the ground that the premises are being misused as a Banquet Hall since 22.4.1997 and the same was conveyed to the applicant vide letter dated 30.7.2003.”

The Respondent No.1 in its Counter Affidavit has further stated that the latest inspection was carried out in April, 2004 “when it was found that the premises in question are being used as an ‘Export House’.” As stated above, even as per the Circular dated 11th August, 2003, misuse charges were to be levied from the date of detection as per the survey report/site report, etc. but for cases where proof existed indicating the misuse of property from an earlier date. In the present case, nowhere it is stated as to what was the proof available with the Respondent regarding misuse from an earlier date nor there is any such assertion on record. Misuse charges, therefore, could only be levied subsequent to the date of detection, i.e., post 4.1.2000 when the site was got inspected.

27. Resultantly, the petition succeeds. The letters dated 30.7.2003 and 24.3.2004 are quashed and the Respondents are directed to execute and register the Conveyance Deed with regard to the premises in question in favour of the Petitioners after conversion of the same from leasehold to freehold.

**REVA KHETRAPAL
JUDGE**

July 08, 2013
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