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

CNR No. DLHC013802132018

+ **W.P.(C) 11685/2018 and CM APPL. 41898/2024**

MRS. SAROJ MINZ

.....Petitioner

Through: **Mr. Saurabh Bhargavan, Mr. Nikhil S Nair and Ms. Chinju Saurabh, Advocates.**

versus

UNION OF INDIA AND ORS.

.....Respondent

Through: **Mr. Chiranjiv Kumar, Mr. Mukesh Sachdeva, Mr. Dipanshu and Mr. Durgesh Bharti, Advocates for R-1.
Mr. Amit Gaurav Singh and Mr. Lakshay Meena Advocates for R-3.
Mr. Purushottam Kumar and Mr. Mukesh Goel, Advocates for R-4 & 5.
Mr. Janender Kr. Chumbak, Advocate for R-2/ MCD.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **05.08.2026**

1. The petition arises out of alleged breaches in a property held under a Government lease. The property has been partitioned *inter se* between the branches of the original co-lessees pursuant to a decree of this Court, while the Government lease continued to subsist in respect of the property as a whole. The Petitioner maintains that the unauthorised construction and commercial use complained of are predominantly confined to the portion of the property falling to the share and possession of the branch claiming



through Late Mr. Kunda Mal Sadhwani. The breach notice dated 31st January, 2018 was addressed to the legal heirs of both original co-lessees, although the breaches recorded therein principally concerned the portion occupied by the Kunda Mal branch. The subsequent breach notice dated 28th January, 2020 was issued only to the legal heirs of Late Mr. Kunda Mal. The distinction between the respective possession and enjoyment of the two branches, on the one hand, and their obligations towards the lessor under the common lease, on the other, lies at the heart of the present proceedings.

Factual Background

2. Plot No. D-II/1 AB, Lajpat Nagar-II, New Delhi, admeasuring 300 sq. yards, was purchased in a public auction by Late Mr. Deep Chand Sadhwani and Late Mr. Kunda Mal. A lease deed dated 25th September, 1974 was executed in their favour by the President of India. The Petitioner, who has since died and is represented by her legal representatives, claimed through Late Mr. Deep Chand, while Respondents No. 3 to 5 claim through Late Mr. Kunda Mal.

3. Two covenants of the lease are material. Clause 1(vi) prohibits, without the written consent of the Chief Commissioner of Delhi, the carrying on of any trade or business or the use of the premises for a purpose other than the residential use contemplated by the lease. Clause 1(vii) prohibits sub-division of the land or the building, or any part thereof, without the prior written permission of the lessor. The lease also contemplates action for breach, including re-entry, upon issuance of notice requiring the breach to be remedied.

4. Disputes between the original co-lessees led to the filing of Suit No. 58/1985, titled ***Sh. Deep Chand v. Sh. Kunda Mal***, before this Court. By



judgment dated 24th August, 2001, the share of the Plaintiff, Late Mr. Deep Chand, was declared as 19,787.73/26,300 and that of the Defendant, Late Mr. Kunda Mal Sadhwani, as 6,512.27/26,300, corresponding broadly to 75.24% and 24.76%, respectively. This Court also passed a decree of mandatory injunction directing removal of the shop and store shown in red in the site plan and a prohibitory injunction restraining further construction or alteration in the suit property and interference with the Plaintiff's enjoyment of the portion in his possession.

5. The matter thereafter reached this Court in RFA (OS) No. 10/2004. During the appeal, the parties settled the mode of partition by adopting Alternative 4 of the site plan prepared by the Local Commissioner. Under the arrangement, the heirs of Late Mr. Kunda Mal were to have 24.76% of the property, measuring 74.08 sq. yards, on the main road, while the remaining portion was to fall to the share of Late Mr. Deep Chand. A final decree pursuant to the settlement was drawn on 29th July, 2006.

6. The present proceedings originated in complaints made by the Petitioner to the Land & Development Office [“L&DO”] concerning shops being operated in the portion attributed to the Kunda Mal branch. An inspection was conducted on 19th June, 2017, following which a breach notice dated 3rd August, 2017 was issued. The notice recorded, *inter alia*, commercial use, unauthorised construction and encroachment in the portion occupied by persons claiming through Late Mr. Kunda Mal. It also recorded an unauthorised WC and bathroom in the occupation of Bhagwandas Sadhwani, son of Late Mr. Deep Chand. The Petitioner's case is that the latter structure was removed on 12th August, 2017 and that L&DO was thereafter informed of the rectification.



7. L&DO inspected the property again on 12th January, 2018. The notice dated 31st January, 2018, addressed to the legal heirs of both Late Mr. Kunda Mal and Late Mr. Deep Chand, recorded commercial use by Vishnu Garments and Vandna Garments, as well as unauthorised construction and encroachment. The WC and bathroom earlier recorded in the occupation of Bhagwandas Sadhwani did not figure in this subsequent notice.

8. The Petitioner sought, *inter alia*, directions to the authorities to remove the unauthorised construction and stop the commercial use, to delete the names of the legal heirs of Late Mr. Deep Chand from the breach notice dated 31st January, 2018, and to recover misuse charges or damages, if any, only from Respondents No. 3 to 5. The grievance was that, although the breaches recorded in the notice principally related to the portion occupied by the Kunda Mal branch, the notice also named the legal heirs of Late Mr. Deep Chand.

9. The writ petition was initially disposed of on 29th October, 2018 with a direction to L&DO to pass appropriate orders on the breach notice dated 31st January, 2018. In LPA No. 718/2018, the Division Bench, by order dated 31st July, 2019, found that merely directing L&DO to decide the breach notice was insufficient, having regard to the serious ramifications of any action contemplated thereunder and its potential adverse effect on the Appellant's interest in the property. The Division Bench also noted that the private Respondents had not been heard before the writ petition was disposed of and that L&DO's counter affidavit did not disclose whether the misuse had ceased or whether any fresh inspection had been conducted. It accordingly directed that the private Respondents be given an opportunity to respond and that, if necessary, the parties be heard by L&DO and the



position on the ground be determined before a decision was taken on the breach notice. The order dated 29th October, 2018 was accordingly quashed and the writ petition was restored.

10. A further inspection was conducted on 17th January, 2020. The breach notice dated 28th January, 2020 was addressed to the heirs of Late Mr. Kunda Mal, namely, Rohit Sadhwani, Rajesh Kumar Sadhwani and Deepak Sadhwani. It recorded commercial use by Vishnu Garments and Vandana Food Corner, unauthorised construction in the occupation of Vishnu Garments and encroachments on government land.

11. L&DO states in its Counter Affidavit that the notice dated 28th January, 2020 was issued pursuant to the fresh inspection and that no response was received. The record presently before the Court does not disclose any final order determining the status of the breaches, the effect of the notice dated 31st January, 2018, or the further action, if any, proposed by L&DO under the lease.

Contentions

12. Mr. Saurabh Bhargavan, counsel for the Petitioner, submits that the notice dated 28th January, 2020 is significant because it was addressed only to the heirs of Late Mr. Kunda Mal and recorded continuing commercial use and unauthorised construction in the portion occupied by that branch. It is urged that the heirs of Late Mr. Deep Chand ought not to remain exposed to re-entry, misuse charges or other adverse consequences on account of breaches not attributable to them. Mr. Bhargavan contends that the internal partition and the respective possession of the two branches require the breaches and their consequences to be separately attributed.

13. L&DO, on the other hand, maintains that the property continues to be



governed by a single lease and that the internal arrangement between the successors of the original co-lessees does not create separate leasehold estates. According to L&DO, the respective portions may have been demarcated pursuant to the compromise and final decree, but the lease continues to govern the property as a whole and its successors. L&DO accordingly disputes the Petitioner's contention that the breaches or the liability arising therefrom can be separately attributed on the basis of the internal partition.

14. MCD contends that it is not a party to the lease and that the enforcement of the lease is essentially a matter between the co-lessees and L&DO. The Petitioner, in response, relies upon the inter-agency framework governing coordination between L&DO and the local body and alleges that MCD failed to act on the breach notices.

15. Respondents No. 3 to 5 deny the alleged breaches and rely, *inter alia*, upon the mixed-use character of the area, municipal trade licences, payment of conversion/misuse and parking charges, property-tax records and the protection claimed under the Delhi Laws (Special Provisions) enactments. The record includes a trade licence issued under Section 417 of the Delhi Municipal Corporation Act, 1957 in respect of Vishnu Garments, as well as municipal records relating to the commercial activity. The Petitioner, in response, contends that such municipal permissions or payments do not constitute the written consent of L&DO required under the lease.

Questions for Determination

16. The following questions arise for determination:

- (i) What is the effect of the partition decree upon the Government lease?
- (ii) Can this Court direct the removal of one branch of the co-lessees from



the breach notice or confine misuse charges or damages to the other branch?

(iii) Do municipal licences or protection under the Delhi Laws (Special Provisions) legislation constitute a defence to the alleged breach of the lease?

(iv) What directions are now required from L&DO and MCD?

Analysis

17. A recent Division Bench decision of this Court provides the governing principles for the first two questions. In ***Gautam Tahilramani v. Union of India***¹, this Court considered, *inter alia*, whether a decree for partition of a leasehold property, passed in proceedings inter se between co-lessees, could result in a legal severance of the tenancy so as to create independent and separately enforceable leasehold estates *vis-à-vis* the lessor. The Court held that a lease granted by the Government is in the nature of a Government grant, the terms of which are governed primarily by the grant itself, and that the rights and obligations of the lessee, as also the incidents of the leasehold estate, must be gathered from the terms of the lease deed.

18. The Division Bench further held that a partition decree operates only *inter se* the parties and cannot enlarge, alter or bind the rights of the lessor, who was not a party to the proceedings. While such a decree may regulate possession and enjoyment between co-lessees, it cannot compel the lessor to recognise separate leasehold estates or independent tenancies in respect of different portions of the leased property. The lease, as originally granted, remains a single and indivisible grant, and the co-lessees cannot, by an arrangement *inter se*, impose altered obligations upon the lessor.

19. That principle applies with full force here. The decree dated 29th July,



2006 regulates the respective possession and enjoyment of the two branches. It does not substitute two leases for the lease dated 25th September, 1974. The arrangement between the parties may regulate possession; it does not divide the grant.

20. The Petitioner's grievance is understandable. The record after 2017 repeatedly attributes the commercial activity and unauthorised construction to persons claiming through Late Mr. Kunda Mal. The notice dated 28th January, 2020 is addressed only to that branch. These circumstances are relevant to the factual enquiry and to the manner in which L&DO exercises its powers. They do not, however, alter the legal position that, *vis-à-vis* the lessor, the property continues to be governed by the common lease.

21. ***Gautam Tahilramani*** also considered the question of liability for misuse charges between co-lessees. The Division Bench observed that such liability arises from alleged breaches of the lease and would ordinarily require consideration of the nature of the breach, the identity of the party responsible for the breach, the period during which the misuse occurred and the contractual stipulations governing the consequences of such breach. The Court held that a dispute concerning allocation of such liability between co-lessees essentially concerns the allocation of liability arising out of alleged contractual breaches and falls within the realm of private law. Such a dispute ordinarily requires examination of evidence, determination of factual responsibility and interpretation of contractual obligations, and is not ordinarily amenable to adjudication under Article 226.

22. The prayer to direct L&DO to remove the names of the heirs of Late Mr. Deep Chand from the notice dated 31st January, 2018 cannot, therefore,

¹ LPA 522/2022 and connected matters, decided on 22nd May, 2026.



be granted as framed. Nor can this Court declare that misuse charges must be imposed only upon Respondents No. 3 to 5. The latter relief, in particular, would require this Court to determine the allocation of contractual liability between the co-lessees on the basis of their respective possession and responsibility for the alleged breaches. Such an exercise falls outside the permissible scope of writ jurisdiction.

23. This does not render the petition without purpose. Article 226 remains available to require L&DO and MCD to perform their public duties fairly, within a reasonable time and in accordance with law. **Gautam Tahilramani** itself recognises that writ jurisdiction is primarily designed to ensure that statutory and constitutional authorities act within the bounds of law, while cautioning that it is not a forum for adjudication of purely private disputes or enforcement of contractual obligations *inter se* private parties.

24. The order dated 31st July, 2019 had already identified what fairness required in the present case. The authority had to determine the existing position at the site, hear both branches and then decide the breach notice. The inspection and notice of January, 2020 completed only part of that exercise. No reasoned determination followed.

25. Six years have elapsed since that inspection. A decision today cannot safely rest upon the physical position recorded in January 2020. Structures may have changed, commercial activities may have ceased, altered or expanded, and possession may have passed to other persons. A fresh inspection is therefore necessary before any final action under the lease.

26. The partition judgment and decree dated 24th August, 2001 does not alter this conclusion. The decree directing removal of the shop and store binds the parties and persons claiming through them according to law. If the



decree remains unexecuted, the remedy lies in execution or other proceedings before the civil court. Article 226 cannot be employed as a substitute for execution. The decree may nevertheless be taken into consideration by L&DO and MCD, to the extent relevant to the respective statutory functions of the two authorities, while determining the legality and history of the structures.

27. The municipal record relied upon by the private Respondents answer a different question. A trade licence permits the licensee to carry on the specified trade subject to municipal law. Payment of conversion charges, parking charges or property tax may bear upon municipal regulation or fiscal liability. None of these documents constitutes the written consent of L&DO required under the lease for the commercial use complained of or for any subdivision of the leasehold property.

28. The private Respondents also rely upon *Sushil Kumar Chauhan v. MCD*². That case concerned a property situated in an unauthorised colony, where the construction had been booked in September, 2014. On a consideration of Section 3(2) of the National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2014, this Court noted that, in respect of unauthorised colonies, where construction had taken place up to 1st June, 2014, action against such unauthorised construction had been kept in abeyance. Taking note of the submission that the construction in that case had taken place before the cut-off date, the Court found a *prima facie* case for protection under the Delhi Laws (Special Provisions) legislation and directed that no coercive action be taken against the property until the appeal pending before the Appellate Tribunal, MCD, was heard.



29. The decision does not hold that construction covered by the statutory protection thereby becomes authorised or regularised. The Court was concerned with the availability of protection against coercive municipal action in the facts of that case, and proceeded on a *prima facie* assessment that the construction fell within the statutory cut-off. The judgment does not consider the effect of such statutory protection upon covenants contained in a Government lease. Whether the present property and the structures in question fall within the protection contemplated by the Delhi Special Laws Act is, therefore, a matter to be considered by MCD on the relevant facts and in accordance with law. Even if municipal action against the construction is required to remain in abeyance, that circumstance does not, by itself, amount to the written consent contemplated by the lease or preclude L&DO from examining whether the terms of the lease have been breached.

30. MCD's submission that it is not a party to the lease does not conclude the matter. Its powers and obligations arise under the Delhi Municipal Corporation Act, the applicable building regulations and the planning regime. As held by the Supreme Court in ***K. Ramadas Shenoy v. Chief Officers, Town Municipal Council, Udipi***³, a municipal authority cannot act in disregard of the applicable planning scheme and owes a statutory duty to ensure that the scheme is not violated by unauthorised construction. The Municipality acts in aid of the planning scheme and, where the exercise of building rights is regulated in the interest of the community, it must act within the powers conferred upon it by law. MCD must, therefore, examine

² W.P.(C) 12173/2025, decided on 13th August, 2025.

³ (1974) 2 SCC 506.



the construction and its conformity with the statutory and planning regime governing it. The fact that L&DO is the lessor does not, by itself, absolve MCD of its statutory responsibilities or preclude such examination.

31. Equally, the Court should not direct removal of the construction or stoppage of the commercial use without allowing the statutory authority to determine whether the construction is unauthorised, whether any protection or regularisation provision applies, and what process must precede coercive action. The prayer seeking removal of the unauthorised construction and stoppage of commercial use must therefore be answered by directing a lawful determination, rather than by issuing a demolition order from the writ court.

32. The subsequent civil suit, CS(OS) No. 923/2024, concerns disputes among the heirs of Late Mr. Deep Chand and allegations relating to possession, transfer and creation of third-party rights. None of those questions requires decision here. The present order will not affect the rights or contentions of the parties in that suit.

33. The petition is accordingly disposed of in the following terms:

a. L&DO and MCD shall conduct a joint inspection of Plot No. D-II/1 AB, Lajpat Nagar-II, New Delhi within four weeks from today. At least seven days' written notice of the inspection shall be furnished to the legal representatives of the Petitioner, Respondents No. 3 to 5 and any person found to be in occupation of the relevant portions.

b. The inspection report shall separately identify each existing construction, its measurements, the current user, the person found in occupation, any encroachment beyond the leased land and the municipal or lease permission, if any, produced at the site. The report shall be



accompanied by dated photographs and a site sketch.

c. Copies of the inspection report shall be supplied to the parties within seven days. The parties may file their responses and documents within two weeks thereafter.

d. L&DO shall afford a hearing to the affected parties and pass a reasoned order within eight weeks of receiving their responses. The order shall state whether any breach presently subsists, the status and effect of the notices dated 31st January, 2018 and 28th January, 2020, and the action, if any, warranted under the common lease.

e. While doing so, L&DO shall keep in view that the final decree dated 29th July, 2006 regulates possession and enjoyment between the parties but does not create separate leasehold estates. Nothing in this order requires L&DO to apportion liability in a manner contrary to the lease or to recognise a subdivision of the grant.

f. MCD shall, on the same material and after hearing the affected occupants, pass a separate reasoned order under the Delhi Municipal Corporation Act, the applicable planning and building regulations and the Delhi Laws (Special Provisions) legislation. If it concludes that coercive action is required to remain in abeyance, it shall identify the statutory provision, the construction to which it applies and the period of such protection.

g. L&DO shall not effect re-entry solely on the basis of the notice dated 31st January, 2018 until the reasoned order directed above is passed and eight weeks have elapsed from its communication to the affected parties. This protection does not restrain MCD from taking action authorised by municipal law, nor does it prevent either authority from issuing directions



necessary to stop fresh construction or a new encroachment.

h. The prayer to remove the names of the heirs of Late Mr. Deep Chand from the breach notice and the prayer to confine misuse charges or damages exclusively to Respondents No. 3 to 5 are declined. The rights of the parties to seek contribution, indemnity or other *inter se* relief before the competent civil forum remain open.

i. Nothing stated in this order amounts to a finding on the validity of any transfer, agreement, possession or third-party right forming the subject matter of CS(OS) No. 923/2024. The civil court shall decide those issues uninfluenced by the present order.

34. The present writ petition, along with any pending application(s), stands disposed of in the above terms.

SANJEEV NARULA, J

AUGUST 5, 2026/ar