

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

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Reserved on: 27th May, 2015
Decided on: 2nd July , 2015

+ **CM(M) 167/2014**

DCM LIMITED

..... Petitioner

Through: Mr. Sanjeev Anand and Mr. Arush
Khanna, Advocates.

versus

SHRI JASSA RAM

..... Respondent

Through: Mr. S.P. Aggarwal and Mr. Himanshu
Bohara, Advocates.

+ **CM(M) 169/2014**

DCM LIMITED

..... Petitioner

Through: Mr. Sanjeev Anand and Mr. Arush
Khanna, Advocates.

versus

KRISHNA DEVI SHARMA (NOW DECEASED)

THR LRS

..... Respondent

Through: Mr. Rajat Malhotra, Advocate for LR
No.3.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Since identical orders involving identical question of law have been impugned in the present petitions, the two petitions are being decided by a common judgment.

2. A brief exposition of facts is that the petitioner DCM Limited owns 52 acres of land at Bara Hindu Rao and Kishan Ganj, Delhi (in short the suit

property). In the suit property the respondent Jassa Ram is a tenant in shop No. 10, Ganesh Line No.6, MPI No.9022, Ward No.16, Gaushala Marg, Kishan Ganj Delhi (in short the tenanted premises No.1) and Krishna Devi Sharma, since deceased, now her legal heirs are the tenants in respect of shop No.1, 'D' Lines, MCD No. 7303, Ward No.13, Rani Jhansi Road (in short the tenanted premises No.2). DCM Limited filed two eviction petitions against Jassa Ram and Krishna Devi under Section 14(1)(g) & (l) of the Delhi Rent Control Act, 1958 (in short the DRC Act) on the ground that the land on which the tenanted premises was constructed was required for the widening of the right of way of roads abutting the complex, and has to be handed over to MCD free of cost, as a condition of the layout plan approved by the MCD vide Resolution No. 1136 and 1137 respectively dated 24th November, 1989. It is further stated that on the suit property complex has to be constructed being a Group Housing Residential Complex and flatted factories as per the mandate of the Master Plan of Delhi, 1962 and the Zonal Development Plan of the area. During the course of proceedings DCM Ltd. did not press the petitions on the ground under Section 14(1)(g) DRC Act. The eviction petitions were dismissed by the learned ARC vide the orders dated 14th December, 2011 and the petitioner's appeals challenging the said orders were also dismissed by the learned Rent Controller vide orders dated 16th November, 2013. Hence, the present petitions.

3. In the eviction petitions it was stated that DCM Limited was a public limited company and owner of the suit property. The suit property was declared a slum area under the provisions of Slum Areas (Improvement and Clearance) Act, 1956 and DCM Limited obtained the necessary permission to file the eviction petitions from the competent authority (slum) on 28th

August, 1995. The textile mill on the suit property has since been closed with effect from 1st April, 1989 in terms of the permission granted by the Delhi Administration, the judgment dated 1st March, 1989 of the Full Bench of Delhi High Court and the judgment dated 27th March, 1989 of the Hon'ble Supreme Court. After coming into force of Delhi Development Act, 1957 and in compliance with the provisions thereof, a Master Plan of Delhi was prepared which was approved by the Central Government under Section 9(ii) of the DDA Act and published in September, 1962. Under the Master Plan of Delhi, the user of the suit property has been provided for residential complex and flatted factories as under:

“DCM SITE

The Delhi Cloth Mills have to move out of this congested area to the extensive industrial districts according to the time schedule given for non-conforming uses. The present site should be developed for flatted factories in gradual stages to relocate the industries now located in Ahata Kidara and other areas.”

4. Thus, in view of the provisions of the Master Plan of Delhi requiring DCM Limited to shift its textile mills, the company has decided to close the same and put its property to use as provided under the Master Plan. The DDA has approved the re-development plan and granted no objection which has also been approved by the Lieutenant Governor Delhi on 30th March, 1989. On 24th November, 1989 the MCD vide its Resolutions 1136 and 1137 respectively approved the layout plans as well. Thus, for the purpose of the re-development the suit property, the tenanted premises as noted above are required to be vacated by the respondents.

5. After the respondents Jassa Ram and Krishna Devi filed their written statements evidence was led, and it was held that DCM Limited on its own wants re-development of the area and there is no duty cast upon nor the re-development work is to be carried out at the instance of the Government or at the instance of any other competent authority and thus the ingredients of Section 14(1)(l) have not been proved and the eviction petitions were dismissed. Vide the impugned appellate orders dated 16th November, 2013 the learned Rent Controller reiterated the findings of the learned ARC and dismissed the appeals.

6. Learned counsel for the petitioner contends that ingredients of Section 14(1)(l) DRC Act stand satisfied in the present case. The Master Plan of Delhi prepared by DDA has statutory force and if the re-development of the area is provided in the Master Plan, DCM Limited is bound to carry out the same. This position of law has been held by the Full Bench of this Court in DCM Limited & Anr. Vs. DDA and Ors. W.P.(C) 2687/1986 decided on May 22, 1987. The Master Plan of Delhi came into force in 1962 and a period of 20 years was given to the parties to complete necessary actions at their end and thus actions were taken in the year 1982. Sections 20(3) and 13 DDA Act casts an obligation on the parties to follow the Master Plan and it is not the choice of the party. As per the Resolutions of the MCD as noted above, residential complex and flatted factories are being constructed and some of the area from the suit property on which the tenanted premises lies has to be given to the MCD to construct roads. With such a heavy obligation cast on the petitioner merely because the petitioner had to file proposals to seek sanctions it cannot be held that the re-development was not at the instance of the Government. Supreme Court in State of Karnataka Vs. Adimurthy alias

B. Moorthy (1983) 3 SCC 268 interpreted the expression “*at the instance of*” to mean “*at the solicitation of or at the request of*”. Both the Courts below held that it was obligatory on the part of DCM Limited to shut down but held that the re-development was not obligatory. The eviction petition could be filed only after taking the permission from the competent authority under the Slum Areas (Improvement and Clearance) Act, 1956 and were thus filed in the year 1995. In view of the decision of the Full Bench of this Court, there is no scope of interpretation that the re-development was not at the instance of DDA and this was merely a proposal of the DCM Limited which was approved by the DDA and MCD.

7. Learned counsel for the respondent on the other hand contends that the tenancy was created in the year 1969 after the Master Plan was carried out and the eviction petitions were filed in the year 1995. The eviction petitions were stayed in the year 1996 and revived in the year 2005. There is concurrent finding of the facts by two Courts that the ingredients of Section 14(1)(l) DRC Act are not made out. The Master Plan only provided for shifting of industry from Ahata Kidara and an alternate plot at Najafgarh Road was given in lieu of this land. Though the Master Plan came into force in 1962 DCM Limited sought approval of the DDA only in the year 1982. The proposal of the DCM itself states that it wants to commercially exploit the property. The petitioner DCM Limited is just picking up few words from the Full Bench judgment which have no application to the eviction petitions and misreading the same. A perusal of the entire proceedings would reveal that the proposal was not at the instance of the Government but at the instance of DCM Limited, at best approved by the Government. The interest of the general public is not a parameter for deciding an eviction petition

under Section 14 of the DRC Act. In Union of India & Ors. Vs. Dev Raj Gupta & Ors. (1991) 1 SCC 63 the Supreme Court held that the Master Plan declaring the region in which leased land was situated as commercial zone would not result in automatic and statutory conversion and will not override the terms of the lease agreement. This decision has been further followed by this Court in Mrs. Veera Rai Vs. S.P. Rao & Ors. AIR 2000 DELHI 310. No evidence has been led by DCM Limited that it was doing any work at the site in furtherance of the Master Plan. One of the requirements of Section 14(1)(l) is that the building work cannot be carried out without vacation of the premises which fact has not been proved by DCM Limited. Since there is no perversity in the impugned orders and there being concurrent findings of facts by the two Courts below, this Court will not interfere in its jurisdiction under Article 227 of the Constitution of India.

8. Heard learned counsel for the parties. Before proceeding further, it would be appropriate to note certain findings of the Full Bench of this Court in DCM Limited (supra) which have a material bearing on the issues involved in the present petition:

“In our view it is after consideration of the relevant and germane factors including economic and social planning that the Master Plan area and the site should be developed for flatted factories in gradual stages to relocate the industries there now located in Ahata Kidara and other areas. An area of 27 acres of the DCM site is clearly earmarked for the location of the flatted factories. The Master Plan also pronounces that Heavy and Large Scale Industries including Cotton Textiles (large scale) are undesirable industries in Urban Delhi and should not be allowed to be located in Delhi.

In the impugned resolution a fact is noticed that DCM had initiated the proposal of redevelopment of the area in

December 1981 on the plea that the Administration had advised it to consider shifting of the unit from its present location. There is a slight error in this observation. The Delhi Administration in the letter dated June 1, 1981 (Ext. 5, P64 of Court Record) dealt with the subject of shifting of industries from non-conforming area to the conforming area and the proposal of the Administration for setting up an industrial complex at Narela in an area of about 612 acres to be developed through the Delhi State Industries Development Corporation Limited. In this letter it was reported that the petitioner's Industrial Unit is located in the non-conforming area and the petitioner was advised to discuss the shifting of the industrial undertaking. In the meeting the Secretary, Industries enquired whether the petitioner would be willing to shift the industrial undertaking from Bara Hindu Rao to the Narela Industrial Complex if the Government arranged for proper land and financial assistance and the petitioner answered in the affirmative. It is there that a suggestion was made by the petitioner that its property at Bara Hindu Rao covering an area of about 63 acres be declared commercial in the Master Plan (then under revision) so that the petitioner could develop the property and from the funds raised it may be in a position to plan the shifting of the Mill to a new location conforming to the Master Plan. As the power to modify the Master Plan as to land use is vested in the Central Government, the petitioner wrote the letter dated December 1, 1981 (Ext.7) to the Secretary, Ministry of Works & Housing, Government of India. This letter was forwarded by the Central Government for study to the Authority who opined in their letter dated January 6, 1982 (Ext.8) that as per Master Plan for Delhi, it appeared that the shifting of the petitioner's unit is inevitable. The said representation dated December 1, 1981 was considered by the Authority at the time of the passing of the Resolution No. 26 dated February 1, 1983.

The said letter dated September 11, 1982 of the petitioner to the Authority containing the scheme for redevelopment of the DCM site in accordance with the Master Plan was for the Authority's approval and 'no objection certificate' so that the

petitioner could proceed further with the preparation and submission of the necessary layout drawings for consideration of the Municipal Corporation of Delhi. The petitioner had also sent a proposal in the letter dated December 22, 1982 to Municipal Corporation of Delhi in connection with the redevelopment of the existing site of Delhi Cloth Mills. This issue was considered by MCD who observed that before any further action could be taken, the petitioner was called up to obtain the following no objection/approval of the project from the concerned authorities:-

- 1. A specific 'No Objection' from the DDA is to be furnished for permitting the owners for the redevelopment of the area.*
- 2. Applicants would be required to furnish 'No Objection' from the competent authority under the Urban Land Ceiling & Regulations Act for the redevelopment of the area.*
- 3. Clearance of the Delhi Urban Art Commission would be required."*

Sub-section (1) of Section 12 of the Act empowers the Central Government to declare any area in Delhi to be a development area for the purposes of the Act. Sub-section (2) lays down that the Authority shall not undertake or carry out any development of land in any area which is not a development area. There are certain exceptions as provided in the Act. Sub-sections (3) and (4) read as under:-

(3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) unless:-

- (i) Where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act;*
- (ii) Where that area is an area other than a development area, approval of, or sanction for, such*

development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorized in this behalf, in accordance with the provisions made by or under the law governing such authority or until such provisions have been made, in accordance with the provisions of regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955 (53 of 1955), and in force immediately before the commencement of this Act;

Provided that the local authority concerned may (subject to the provisions of Section 53A) amend those regulations in their application to such area.

(4) After the coming into operation of any of the plans in any area no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans.”

These provisions thus improve restrictions upon any person or body including a Government Department to undertake or carry out any development of land in development area as well as other areas. There is a precondition for development that in case of any area other than a development area, approval of or sanction for, such development has been obtained in writing from the local authority. The approval of the local authority is pre-requisite. The petitioner submitted a proposal to the local authority i.e. the Municipal Corporation of Delhi in connection with development of the existing site of the Mill. The Delhi Municipal Corporation Act, 1957 enjoins on the local authority to see that the proposed layout, work or erection of the building does not contravene the provisions of the said Act. Section 12(4) of the Act lays down that after coming into operation of any of the plans in any area no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans. Development in contravention of the plans cannot be carried out and is penal under Section 29(2) of the Act. The local authority can accord sanction for development of the area under the provisions of the

respective enactment which governs it, but has first to ascertain whether the proposed development is in accordance with the plans which have come into operation. A requirement is laid down by the local authority that a specific 'no objection certificate' is to be obtained from the Authority. This condition precedent was desired to be met.

The proposal contained in the said letter dated September 1, 1982 was submitted to the Authority for their no objection. The provisions of the Act contained in Section 3 make it clear that the Authority constituted is a high power body under the chairmanship of the Lieutenant Governor of Delhi. Under the scheme of the Act, it has the responsibility of the preparation of the Master Plan, Zonal Development Plans, to promote and secure the development of Delhi according to plan and with the enforcement of the same. Apart from the penal provisions contained in Section 29(2) that the user of any land in contravention of the Master Plan is punishable, powers have been conferred on the Authority under Section 30 for an order of demolition of building, under Section 31 empowering the stoppage of the development and Section 31A to seal unauthorized development, where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 12 or in contravention of any condition subject to which such permission, approval or sanction has been granted (i) in relation to a development area, any officer of the Authority empowered by it in this behalf, (ii) in relation to any other area within the local limits of local authority; the competent authority thereof. Section 53A enacts restrictions on the power of local authority to make rules, regulations or byelaws, unless the Authority certifies that the same does not contravene any of the provisions of the Master Plan or Zonal Development Plans, in respect of the matters specified therein. These provisions in Section 12(4), 30, 31 and 31A is a deadly weapon in the armoury of the Authority to prevent the activities of unlawful development and to coerce persons to discontinue illegal development. The impact of Section 53A is to exercise control

over the local authority in the implementation of the Master Plan or Zonal Development Plan. No person will commence development unless he makes certain that the proposed development is in accordance with the Master Plan or Zonal Development Plan in operation. The objective of the petitioner in making the application dated September 1, 1982 was to make sure about the land use for redevelopment of the area.

The Authority is a statutory body discharging statutory functions. It did not return the application of the petitioner for no objection certificate saying that it had no obligation or jurisdiction under the Act. The application was forwarded to the high powered Technical Committee of the Authority for examination of the scheme as prepared by the petitioner for redevelopment of the Mill area earmarked for flattened factories and residential houses in the Master Plan and who observed in the meeting held on December 10, 1982 that the scheme was feasible for implementation. The matter was placed before the Authority on February 1, 1983. The agenda item covering the petitioner's proposal for redevelopment and grant of no objection certificate was approved in the Resolution No. 26 dated February 1, 1983. In effect this resolution is that the redevelopment of the Mill area is in accordance with the plans which are in operation. This is in exercise of the duties and functions under Section 12(4) of the Act. We wanted to pin down Mr. P.P. Rao but he is not prepared to make a statement that land use certificate or clearance or no objection certificate in an area other than the developed area is not required of the Authority. The land use certificate by the Authority is a requirement of the Municipal Corporation of Delhi before granting permission for redevelopment of the land. It may even be a working arrangement of the Authority with the local authority. The duty certainly flows from the provisions of Section 12(4) to issue the 'no objection certificate; to the redevelopment of the area.

The Resolution dated February 1, 1983 cannot be termed as conditional or not final. The object of the constitution of the Authority is to promote and secure the development of Delhi according to plan (Section 6). The promotion of the

development of Delhi is achieved in the formulation of the Master Plan and the Zonal Development Plans. The rest of the scheme of the Act shows that the Authority is empowered with all necessary powers to deal with the matters relating to development of the areas according to plan or to control or regulate the use of the land or building or to prohibit the illegal user. This is securing the development of Delhi according to plan. Mr. P.P. Rao has not been able to point out any provision in the Act that the Authority is also the guardian of any matters outside the Act. There is in fact no reservation or conditions imposed by the Authority in the grant of no objection certificate in the Resolution No. 26 dated February 1, 1983. An observation is made that the shifting of the Delhi Cloth Mills could involve a lot of working population and consequently the income and products manufactured by Delhi Cloth Mills. The Authority has only pointed it out and left the need to lock into in terms of consequences to Delhi Economy by the Delhi Administration and the Ministry of Industry. It is only for the purpose of focusing the attention of other authorities. The question of conditions can come in only if the Authority is vested with power. Section 53 of the Act gives the overriding effect to the provisions of the Act, the rules and regulations made thereunder (subject to exceptions contained therein). The Act, however, is paramount law on the subject of formulation of the Master Plan and Zonal Development Plan, implementation of the plans, declaration of development areas and layout and building regulations in those areas. The Act does not confer any governmental powers on the Authority (except the implementation of the Master Plan) or the exercise of powers conferred on or discharge of functions or duties by, other statutory authorities. The other statutes operate in the fields they cover. The exercise of power under other statutes is vested in the authorities constituted or designated under those provisions. At the time of expression by the Authority that the proposed redevelopment of the area by the petitioner is in accordance with the Master Plan in operation, it had no further statutory obligation, duty or responsibility to consider its effect to Delhi's economy. Thus no condition could or was attached

to the 'no objection certificate' in the Resolution No. 26 dated February 1, 1983.

The reason of the refusal of permission for the closure of the Mill by the Delhi Administration for revoking the earlier Resolution No. 26 dated February 1, 1983 is wholly extraneous. The provisions of the Master Plan continue to be in operation as we will show in detail while dealing with the second reason and have the force of law. The petitioner has the right to property and thus redevelopment of the DCM site into flatted factories and residential use. Indeed the petitioner has the obligation to redevelop the land and to put the same to such use as is permitted by the provisions of the Master Plan. The petitioner is obliged to stop the heavy and large industry of cotton textile furnishing, bleaching and dying, which unit is declared as hazardous/noxious industrial unit within a maximum period of three years now prescribed under the said Regulation of January 16, 1986. The jurisdiction is vested in the Authority but circumscribed by the statutory provision to secure the development of Delhi according to plan. It is not concerned with the exercise of power by an other authority under the Industrial Disputes Act, 1947. The consequences of the orders passed under the said Act are not germane to the exercise of the power or discharge of functions under the Act. So long as the proposed redevelopment by the petitioner is in accordance with the plan in operation, the Authority has to issue the no objection certificate. If there are any other impediments or prerequisite permissions or sanctions of the local authority or any other Authority before the redevelopment can be commence, then it is the responsibility of the petitioner to cross those hurdles. The Authority cannot act or be the conscience keeper of all and be influenced by the question of closure. The decision of the authority to revoke the 'no objection' for the reason that closure has been refused is thus illegal."

9. Thus, the Full bench of this Court in DCM Limited (supra) held that DDA was a statutory body discharging statutory functions such as development of Delhi which is achieved by the formation of the Master Plan

and the Zonal Development Plans. The petitioner was obliged to stop the heavy and large industry of common textile furnishing, bleaching and dying which unit had been declared as hazardous, noxious, industrial unit within a period of three years from January 16, 1986 and was required to abide by the provisions of Master Plan to secure the development of Delhi according to the said plan. It was held that the DDA Act was a paramount law on the subject of formation of Master Plan and Zonal Development Plan, implementation of plans, declaration of development areas and layout and building regulation in those areas.

10. The two Courts below held that the shifting of the Delhi Cloth Mills from Bara Hindu Rao and Kishan Ganj areas as it did not conform to the land use stipulated in the Zonal and Master Plan and after its shifting the re-development of the land in conformity with the Zonal and the Master Plan are two different subjects, though offshoot of the enforcement of the stipulations of Zonal and Master Plans. It was further held that though the petitioner had a right to its property or the use thereof as permitted by the provisions of Master Plan, however the scheme of re-development of the site merely being approved by the DDA or the Government cannot be said to be formulated or prepared either in consultation with or at the instance of the DDA or any other Government authority. This subsequent finding is contrary to the law laid down by this Court as noted above as the DCM Ltd. not only had a right to redevelop the suit property but an obligation to do so in terms of the Master Plan and Zonal Development Plan.

11. Section 14(1)(l) DRC Act provides as under:

“(l)that the landlord requires the premises in order to carry out any building work at the instance of the Government or the

Delhi Development Authority or the Municipal Corporation of Delhi is pursuance of any improvement scheme or development scheme and that such building work cannot be carried out without the premises being vacated.”

12. Thus the three essential requirements to be proved by the landlord for succeeding in an eviction petition under Section 14(1)(l) DRC Act are; (i) the landlord requires to carry out any building work; (ii) at the instance of DDA, MCD or any other Government authority in pursuance to an improvement or development scheme and (iii) that such building work cannot be carried out without the premises being vacated.

13. As noted above in the present case pursuant to the Master Plan of 1962 which provided for a period of 20 years for change of user request, applications in the prescribed formats were filed by DCM Limited where after necessary permissions were accorded. The contention of learned counsel for the respondents that since the permission for change in the land use was accorded on the asking of DCM Limited, the same cannot be held to be a statutory mandate and at the instance of the Government as required under Section 14(1)(l) DRC Act deserves to be rejected. The Supreme Court in Adimurthy alias B. Moorthy (supra) interpreted the word “at the instance of” and held that ‘instance’ does not imply the same degree of obligation to obey as does ‘command’. The Supreme Court noted with approval the interpretation of the phrase “at the instance” in Section 50 of the Electricity Act 1910 to mean merely “at the solicitation of or at the request of” as rendered by Allahabad High Court in Vishwanath Vs. Emperor, AIR 1936 All 742.

14. As held by this Court, DCM Limited was obliged to act in accordance with the Master Plan and Zonal Development Plan therefore by simply filling applications for seeking necessary no objection certificate and permissions pursuant to the Master Plan would not mean that the change of land use was not at the instance of DDA and MCD as required under Section 14(1)(l) DRC Act.

15. The decision relied upon by learned counsel for the respondents in Dev Raj Gupta (supra) has no application to the facts of the present case. In the said case, the Supreme Court held that if a lease land is declared as commercial zone by the Master Plan that would not result in automatic and statutory conversion. The plan is enabling in nature and lifts the restriction which was otherwise there for using the land for commercial purpose. The land has to be used as per the agreement between the contracting parties and no change of user can be made contrary to the agreement even if the plan permit such user. The contracting parties obviously being the lessor and lessee of the land i.e. the Government and the lessee and not a tenant of the lessee. The main challenge in the said petition was to the base year for the calculation of charges for conversion of land from residential to the commercial and in the light of this challenge the Court noted that even if assuming the application was not filed in the prescribed form, however the least that was required was that the lessee should request for permit to change the user of the land showing readiness and willingness to abide by the terms and conditions of such conversion of the user. Since the letter in question in the said petition was merely in the form of an enquiry, the Court held that such letter was not an application made for the change of the user of the land. In the light of these facts, the Supreme Court noted that no

change of user can be made contrary to the agreement even if the plan permits such user and it was not correct to say that no permission of landlord was needed to change the user of the land. In Mrs. Veera Rai (supra) this Court referred to the decision in Dev Raj Gupta (supra) and held:

“17. It follows, therefore, that the Zonal Development Plan is not the last word on the subject. Premises can be used, contrary to the Zonal Development Plan subject to certain terms and conditions and if the contrary user had been there before the Zonal Development Plan came into force. Consequently, it cannot be suggested, as has been done by learned counsel for the tenant, that after the coming into force of the Zonal Development Plan, the perpetual lease deed becomes irrelevant with regard to the user of the premises.”

16. One of the contentions of learned counsel for the respondents specifically in case of Jassa Ram is that no evidence was led by DCM Limited to prove the ingredients to seek eviction under Section 14(1)(l) DRC Act and thus there is no illegality in the impugned orders. Though the evidence of the parties has not been adverted to by the learned counsel for the respondent, however this Court has gone through the evidence on record. In case of Jassa Ram, DCM examined Ajay Khanna as PW-2 and Harish Chander Singh as PW-3. Though Ajay Khanna in cross-examination could not state that the shop in dispute was on freehold or leasehold land, in cross-examination Harish Chander clarified that the tenanted premises with Jassa Ram falls in the layout plan for road widening and is on the freehold land. It is stated that this land has to be handed over to the MCD free of cost as per the plan. Harish Chander in his affidavit in case of Jassa Ram stated that after coming into force of Delhi Development Authority Act, 1957 (in short the DDA Act) and in compliance of the Master Plan of Delhi, DCM Limited

was forced to close erstwhile Delhi Cloth Mill and decided to re-develop its land for flatted factories as well as for residential housing complex in accordance with land use provided under the Master Plan, which scheme was duly approved by the DDA vide Resolution No. 26 dated 1st February, 1983. DCM Limited was under statutory obligation to use the land at Kishan Ganj and Bara Hindu Rao, Delhi for the specific purpose provided under the Master Plan and to achieve the said purpose it sought necessary permission from the MCD and DDA. Reference was also made to the Full Bench decision in DCM Limited (supra). It is further stated that the Supreme Court upheld the judgment of the Full Bench of the Delhi High Court in DCM Limited (supra) on 1st March, 1989 pursuant where to the mill was closed on 1st April, 1989. The MCD approved the scheme vide Resolution No. 1136 and 1137 dated 24th November, 1989. It was reiterated that under the Delhi Development scheme, DCM Limited was obliged to re-develop the property as per the Master Plan of Delhi. It was further stated that re-development could not be carried out by DCM Limited without the premises in question being vacated by the respondent as the said premises is a part of property on which the re-development is to be carried out. In cross-examination it was denied that the suit shop falls on the leasehold land and it was reiterated that the same falls on the freehold land and as per the layout plan the same was to be handed over to MCD free of cost for road widening. Similar evidence was led by the witnesses of DCM Limited in the case of Krishna Devi Sharma. Thus, the contention of learned counsel for the respondent that merely a bald assertion has been made and no evidence has been led to prove the ingredients to seek eviction under Section 14(1)(l) DRC Act deserves to be rejected.

17. It is well settled that ordinarily this Court sitting in revisional jurisdiction would not interfere in concurrent finding of facts by the Courts below, however if the said findings are perverse and arbitrary this Court is bound to act in exercise of its civil revisional jurisdiction. The Supreme Court in S.F. Engineer Vs. Metal Box India Limited & Anr. (2014) 6 SCC 780 held:

“37. At this juncture, we are obliged to deal with the submission of Mr Sundaram, learned Senior Counsel for the appellant, that the High Court in exercise of its civil revisional jurisdiction could not have dislodged the concurrent findings of the courts below. We have been commended to an authority in *Renuka Das v. Maya Ganguly* [(2009) 9 SCC 413 : (2009) 3 SCC (Civ) 780] wherein it has been opined that it is well settled that the High Court, in revision, is not entitled to interfere with the findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary. There cannot be any cavil over the said proposition of law. But in the present case, as we notice, the trial court as well as the appellate court have reached their conclusions on the basis of inferences. As has been held by this Court, the issue of sub-letting can be established on the basis of legitimate inference drawn by a court. In *P. John Chandy and Co. (P) Ltd. v. John P. Thomas* [(2002) 5 SCC 90], while dealing with a controversy under the rent legislation arising under the Kerala Buildings (Lease and Rent Control) Act, 1965, it has been ruled that drawing inference from the facts established is not purely a question of fact. In fact, it is always considered to be a point of law insofar as it relates to inferences to be drawn from finding of fact. We entirely agree with the aforesaid view. When inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at on that basis becomes absolutely legally fallible. Therefore, it cannot be said that the High Court has erred in exercise of its revisional jurisdiction by substituting the finding of fact which has been arrived at by the courts below. Therefore, we have no hesitation

in holding that the High Court has not committed any illegality in its exercise of revisional jurisdiction under the obtaining facts and circumstances.”

18. In view of the discussion aforesaid, the Court below grossly failed to notice the legal position as laid down by the Full Bench of this Court in DCM Limited (*supra*) duly upheld by the Supreme Court. Consequently the impugned judgments are set aside. The eviction petitions filed by DCM Ltd. under Section 14(1)(l) DRC Act are allowed. The respondents are directed to vacate the tenanted premises within six months from the date of this order.

(MUKTA GUPTA)
JUDGE

JULY 02, 2015
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