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**HIGH COURT OF DELHI AT NEW DELHI**

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**W.P. (C) No.1493/2014**

**Decided on : 4<sup>th</sup> August, 2015**

**ANIL KUMAR CHAWLA (RETD.)**

..... Petitioner

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

Versus

**DELHI DEVELOPMENT AUTHORITY & ANR** ..... Respondents

Through: Mr. Sanjeev Sabharwal, SC for DDA  
with Mr. Vivin Ahuja, Director (RL).  
Mr. V. Ramakrishnan, UDC, L&DO.

**CORAM:**

**HON'BLE MR. JUSTICE V.K. SHALI**

**V.K. SHALI, J.**

1. By virtue of the present writ petition, the petitioner has sought quashing of the letter dated 24.09.2013 and the letter dated 29.07.2011 (Annexure P-31 and P-19) requiring the petitioner to deposit a sum of Rs.37, 09,484/- and Rs.1, 81,889/- respectively as unearned increase and composition fee for delayed completion of building. The petitioner has also sought a mandamus to the respondents to mutate the property bearing No.6/6, Shanti Niketan, New Delhi – 110021 in the name of the petitioner as one of the co-lessee as well as refund of Rs.2,795/- deposited by him on 19.12.2011 towards the alleged

composition fee along with interest with effect from 19.12.2011 till the date of actual payment.

2. The facts of the case are that one Nand Lal Chawla, grandfather of the present petitioner Colonel Anil Kumar Chawla (Retd.) was a sub lessee in respect of plot of land bearing No.6/6, Shanti Niketan, New Delhi – 110021 measuring 401 square yards. All the land in Delhi, after the creation of DDA Act 1957, has been allotted by the DDA under the DDA Act and the Nazul Land Rules. The colony of Shanti Niketan was a Government Servants Cooperative Group Housing Society and it was allotted a chunk of land, which was developed into various plots along with common facilities in accordance with lay out plans sanctioned by the competent authority. Thereafter, the individual plots were allotted by the Society i.e. the lessee in favour of the allottees, being the sub lessees one of who was Nand Lal Chawla. A perpetual sub lease (hereinafter referred the ‘sub-lease’) dated 22.11.1967 was executed in favour of Nand Lal Chawla who as is averred in the petition, got the plans sanctioned for two identical sets comprising of a front portion and a back portion but constructed only the front portion and obtained a completion certificate from the competent authority namely the MCD in 1968.

The construction of the back portion could get completed only by the end of 1976, after getting the revised plans approved from the MCD.

3. On 30.03.1986, Nand Lal Chawla died leaving behind a Will dated 15.12.1982 bequeathing the ground floor of the front portion of the said property to his grandson Ashwani Kumar Chawla, the first floor of the front portion to his youngest son Surinder Kumar Chawla and the back portion to his eldest son Col. Tilak Raj Chawla (father of the petitioner herein). On 21.04.1988, the property in question was mutated by the DDA as per the terms of the aforesaid Will.

4. Upon the death of Col. Tilak Raj Chawla on 19.03.1988 his share in the said property devolved upon his three legal heirs i.e. the petitioner, his brother Lt. Col. Sunil Kumar Chawla (Retd.) and his sister Neelam Sawani. As the aforesaid share of the legal heirs was quite minuscule, a family settlement was reached as per the terms of which Neelam Sawani and Lt. Col. Sunil Kumar Chawla (Retd.) released their shares in the property in favour of the petitioner herein vide registered relinquishment deed dated 15.04.2005 and 26.04.2005 respectively. The *casus belli* of the case in hand arises from the relinquishment deed dated 26.04.2005 which refers to a payment of

Rs.40 Lacs by the petitioner to his brother in lieu of the shares so released by him in favor of his brother.

5. The petitioner on the basis of the aforesaid relinquishment deeds as well as death certificate of his father Col. Tilak Raj Chawla applied to the DDA for mutation of his name as co-sub lessee in place of his father along with two other co-sub lessees namely Ashwani Kumar Chawla and Surinder Kumar Chawla. It is at this stage that the trouble for the petitioner herein started.

6. As a condition precedent for mutation the respondent/DDA vide letter dated 29.07.2011 demanded a sum of Rs.1,81,889/- as composition fee on account of delayed construction. Vide a second letter dated 24.09.2013 an amount to the tune of Rs.37,09,484/- was demanded in the nature of unearned increase (UEI). It is the contents of the aforesaid two letters which are under challenge in the present writ petition.

7. It is the case of the petitioner that the UEI levied by the respondent/DDA is arbitrary and blatantly contrary to the terms and condition of the Lease.

8. The learned counsel for the petitioner while interpreting the clause II (6) (b) of the lease, based on the basis of which the UEI has been charged has asserted that the said clause only permits DDA to levy UEI in a case where a sub lessee sells, transfers, assigns or parts with possession of the lease hold property to any other member of the lessee and in no other case. It is further asserted that the instant case involves a transfer or release of shares by one co-lessee in favour of another co-lessee who are both real brothers, as per the terms of a family settlement and therefore the same does not fall within the terms envisaged under clause II (6) (b).

9. Relying on the judgment of the Honorable Supreme Court in *Sahebzada Mohammad Kamgarh Shah vs. Jagdish Chandra Deo Dhabal & Ors.*; AIR 1960 SC 953, the learned counsel for the petitioner states that in case of any ambiguity the perpetual sub lease being a grantor's document has to be interpreted strictly in favour of the grantee, being the petitioner herein and against the grantor and the DDA cannot be allowed to read non-existent terms in the aforesaid clause II (6) (b), detriment to the interest of the petitioner.

10. In support of the aforesaid the learned counsel for the petitioner has sought reliance on the judgment rendered in *DDA &*

*Ors. vs. Joginder S. Monga & Ors.; (2004) 2 SCC 297*, wherein the Apex Court while interpreting the clause II (6) (b) of the Perpetual Sub- Lease, observed that the DDA can invoke the said clause only in a transaction by a member to a non-member. Para 39 of the aforesaid judgment is reproduced hereunder:

*“39. The appellant becomes entitled to invoke clause 6(b) of the sub- lease at the time of each and every transaction in relation to sale, transfer and assignment of the lands in question by a member of a cooperative society to a non-member. Such subsequent purchaser indisputably would have to become a member of the cooperative society. It was, therefore, not unusual on the part of the lessor to fix the market price for the entire area which had been developed by it keeping in view the fact that save and except some cases, the market value of the land would be same or similar.*

*(Emphasis Supplied)”*

11. The learned counsel for the petitioner states that the central government has time and again issued guidelines and directions clarifying that the principle in essence is that the covenant with respect to UEI is attracted only where the lessees let into possession anyone not previously approved of as a tenant by the lessor and since the release by one co-lessee or co-sub-lessee in favour of another co-lessee or sub-lessee does not attract the covenant, no share in the unearned increase can be demanded in such cases and no permission

of the lessor is required for such release. It is settled principle that the DDA being a statutory body is bound by the directives issued by the central government and therefore it cannot act contrary to the same. In line with the aforesaid, the attention of the court is drawn to the following office orders issued by the central government on which the petitioner has sought reliance in support of his case:

- a) Office Order dated 30<sup>th</sup> March 1964
- b) Office Order No. 21/76 dated 31<sup>st</sup> March 1976
- c) Office Order No. 5/84 dated 20<sup>th</sup> June 1984
- d) Letter No. J-13019/1/93-LD dated 11<sup>th</sup> March 1994 of the Ministry of Urban Development

12. In furtherance of the aforesaid the learned counsel for the petitioner has submitted that the 'Handbook on Mutation; of DDA' which is on record, itself states that the mutation in the name of family member is exempted from unearned increase. As it flows from the aforesaid the petitioner will be governed by the terms laid down in clause II (10) of the perpetual sub lease which applies to the cases of devolution on the death of the sub-lessee and not clause II (6) (b) as is being canvassed by the DDA as the same governs the transfer between sub-lessee and a non-member which is not the case of the petitioner.

13. On the aspect of composition fee the learned counsel for the petitioner states that it is quite surprising that the respondent/ DDA for

34 long years did not demand any such charges on account of delay in construction. The house tax receipt (AY-1970-71) placed on record acknowledges that the house was in existence prior to 31.03.1971. It is further stated that the 1976 completion certificate issued by the Municipal Corporation of Delhi makes a reference to the previous completion certificate. The letter by the Income Tax department to the petitioner dated 24.08.1971 which supports the aforesaid is also a matter of record.

14. Further what is to be noted is that when the property was mutated in 1988 in the name of Nand Lal Chawla no composition fee was sought for which there can be only one justifiable ground being that the DDA from the records and the relevant documents had satisfied itself that the construction was in accordance to the terms and the policies of the perpetual sub lease and the DDA cannot be allowed to now take a stand contrary to the same. It was urged that the present demand for the composition fee is nothing but an afterthought.

15. On the contrary it has been alleged by the respondent/DDA that the petitioner is trying to cloak a sale under the garb of the relinquishment deed of 26.04.2005. The aforesaid deed evinces an



exchange of consideration of Rs. 40 lacs by the petitioner herein to his brother in lieu of the shares in the said property which according to the respondent/DDA tantamounts to a sale and is in contravention of clause II (6) of the Perpetual Sub Lease inasmuch as no permission for such a transfer had been obtained and in case such a permission is sought by the petitioner, the principal lessor/DDA was entitled to levy 50% of the unearned increase (UEI) on the basis of the sale consideration as per the terms of the Perpetual Sub Lease. Therefore the petitioner is liable to pay a sum of Rs.37,09,484/- on account of unearned increase.

16. The learned counsel for the respondent/DDA states that the aforesaid stand of the DDA is in terms with the DDA guidelines and policies which provide that where a transfer is through a testamentary instrument and where either the possession of the property is transferred during the lifetime of the testator or where instead of love and affection there is monetary consideration involved then such transfer would tantamount to a sale and the lessor shall charge 50% UEI as per the terms of clause II (6) (b) of the perpetual sub lease.

17. The respondent/DDA has canvassed its aforesaid stand with respect to the levy of UEI. The learned counsel for the DDA has asserted that the same stands approved and confirmed by the Lt. Governor of the NCT Delhi, in the capacity of the Chairman of the DDA and therefore leaving no room for any ambiguity.

18. So far as the levy of composition fee on account of non completion of the construction within a period of two years beginning from the date of execution of the perpetual sub lease is concerned, it has been averred by the learned counsel for the respondent/DDA that the petitioner has simply relied upon a house tax document and no credible proof has been placed by him on record to show that the construction has been completed within the stipulated period. It has been further averred that No Form- D or occupancy certificate of 1968 issued by DDA or MCD has been placed on record. Accordingly, it is contended that the petitioner is liable to pay the aforesaid charges and the writ petition is not maintainable.

19. The respondent/DDA has filed its counter affidavit where most of the facts averred by the petitioner in the instant petition with regard to the allotment and mutation of the property in question in favor of

three beneficiaries being Ashwani Kumar Chawla, Surinder Kumar Chawla and Col Tilak Raj Chawla (father of the petitioner herein) on account of death of Nand Lal Chawla, the original sub lessee, is not disputed. It is also not disputed that the present petitioner had applied for mutation as co-sub lessee of the property in question in his favor in place of his father Col. Tilak Raj Chawla as a legal heir exclusively by relying upon two relinquishment deeds purported to have been executed by his sister Neelam Sawani and brother Lt. Col. Sunil Kumar Chawla. The bone of contention is the relinquishment deed dated 26.04.2005 involving a consideration of Rs.40 lacs which as per the respondent/DDA is to be treated not as a release but as a sale of the interest of Lt. Col Sunil Kumar Chawla in favour of the present petitioner and has to be subjected to unearned increase in terms of Clauses II 6 (a) and 6 (b) of the Perpetual Sub Lease.

20. Before proceeding further, it is pertinent here to reproduce Clauses 6 (a) and 6 (b) of the Perpetual Sub Lease and the same are as under:

*“Clause II (6) (a) The Sub- Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential plot in any form or manner, benami or otherwise, to a person who is not a member of the Lessee.*

*(b) the Sub-Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential plot to any other member of the Lessee except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion.*

*PROVIDED 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 different between the premium paid and the market value) of the residential plot at the time of sale, transfer, assignment, or parting with the possession, the amount to be recovered being fifty percent of the unearned increase and the decision of the Lessor in respect of the market value shall be final and binding... ”*

21. As it flows from the aforesaid, in terms of clause II (6) (a), a sub-lessee which would include a co-sub-lessee also, is prohibited from transferring, assigning or otherwise parting with the possession of the whole or any part of the residential plot in any form or manner to a person who is not a member of the lessee society. Whilst in a case where the transferee is a member of the lessee, that is the co-operative society, the transfer, sale, assignment, etc. is conditional and subject to the approval of the lessor, which if, is in affirmative requires payment of 50% of the unearned increase in the value by the sub-lessee to the lessor. It is pertinent to note here that the aforesaid clause II (6) (a)

restricts transfer to non member and clause II (6) (b) regulates transfer to member of lessee, but nowhere the above two clauses envisage a transfer or release by one co-lessee to another co-lessee.

22. The point that relinquishment from one co-lessee to another co-lessee even though for consideration will not be treated as a sale and would not be covered by clause 6 (II) (b) of the perpetual lease and sub-lessee would be further clear from the various clarifications/circulars issued by the Ministry of Works, Housing, (Ministry of Urban Development as it was then referred), Government of India to which the petitioner has referred to during the course of his submissions. These circulars are not easily available, therefore, it will be worthwhile to reproduce in verbatim the circulars for the benefit of the understanding of the legal position with regard to levy of unearned increase in the case of two co-lessees or co-sub-lessee dealing with the transaction :-

***1.***

***“No. Co-ord (13)  
GOVERNMENT OF INDIA  
MINISTRY OF WORKS, HOUSING AND  
REHABILITATION LAND AND DEVELOPMENT  
OFFICE EXHIBITION GROUNDS  
NEW DELHI***

***Dated the 30<sup>th</sup> March, 1964***

## **OFFICE ORDER**

*A case in which there were two co-lessees in a plot and one of them transferred his right and title in the property to the other through a Release Deed was referred to the Ministry of Law for advice whether 50% of the unearned increased was recoverable in such cases. The Ministry of Law have stated that the principle in such cases is that the Government is attracted only where the lessees let into possession any one not previously approved of as tenant by the Lessor and since the **release by one co-lessee in favour of the other does not attract the covenant, no share in the unearned increase can be demanded in such cases – no permission of the Lessor being required for such release.***

*The above advice of the Ministry of Law may be kept in view while dealing with such cases in future.*

*Sd/-*

*(P.D. Garg)*

*Land & Development Officer*

*Copy to:*

*All Officers/All Sections*

1. *Copy to the Ministry of Works, Housing & Rehabilitation (Land Section) with reference to their H.O. No.2069-L/64 dated 23.3.64*
2. *Copy to the Ministry of Finance (D.S. Dn) with reference to their U.O. No.1243/DSDS dated 5.3.64.”*

2.

**Government of India  
Ministry of Works, Housing & Urban  
Development Land & Development Office  
Nirman Bhavan  
New Delhi**

**OFFICE ORDER**

*Sub: Transfer between Co-lessees. No permission of the Lessor is required*

*Attention of all concerned is drawn to the Office Order No. Co-ord (13) dated 30.3.1964 which was issued on the basis of the advice then given by the Ministry of Law. As some doubt has arisen regarding the interpretation of the advice given by the Ministry of Law, the matter was again referred to that Ministry who now confirmed that when a lessee transfers his rights to a co-lessee through sale deed, gift deed or release deed etc., no permission of the lessor is required for doing so even in cases of the lease prior permission of the lessor is required for transfer of the whole or part of the property nor are any charge on account of unearned increase in the value of land recoverable in such case. All pending cases may now be processed accordingly.*

*This Office Order supersedes all the office orders issued on the subject previously.*

*(PRAKASH CHANDRA SURI)  
LAND & DEVELOPMENT OFFICER*

*Sd/-  
(BIR BAL MALIK)  
LEGAL OFFICER*

**All Officers/Sections**

- 1. Copy to the Ministry of Works, Housing & Urban Development with reference to their U.O. No.23/3/1966 dated 12.12.1966.*
- 2. Copy to the Ministry of Finance (DSDn) with reference to their U.O. No.5(4) DSDS/64-6667 dated 8.11.66."*

3.

**No.24 (6 )/76 – CDN  
GOVERNMENT OF INDIA  
MINISTRY OF WORKS AND HOUSING  
LAND & DEVELOPMENT OFFICE,  
NIRMAN BHAVAN**

*New Delhi, the 31<sup>st</sup> March, 1976*

**OFFICE ORDER No.21/76**

*Subject: Sale Permission – Instructions regarding*

*I.1. Whenever a request for sale/gift/transfer of a particular property is received the applicant will be asked to furnish the following documents :-*

- (a) An affidavit from the intending purchaser in the enclosed proforma (for residential premises only).*
- (b) A copy of the General Power of Attorney and also a consent affidavit of the lessee if applied by the attorney.*
- (c) Registration particulars of the lease deed.*
- (d) A plan of the existing structures/sanctioned plans with an attested copy.  
(Serial No. (C) & (d) will be required in case of Rehabilitation Properties).*

*2. After all the necessary documents are furnished and found in order by Legal Officer (J) the case will be referred to the Technical Section for inspection.*

*3. If, however, an element of unearned increase is involved and also the breaches if any, are to be temporarily regularized the terms will be drawn & sent to Internal Audit Cell.*

*4. After the permission of the Competent Authority has been obtained, as per requirement under the Urban Land (Ceiling &*



*Regulation) Act, 1976, the terms vetted by the Internal Audit Cell will be conveyed and the sale permission will be issued after the terms are complied with.*

*II. In case a lessee requests for terms and condition without furnishing affidavit of the intending purchaser he will be informed about the terms in the enclosed proforma and after he has complied with the terms & conditions a regular sale permission will be issued.*

*III. If the request is for the vacant plot and the lease deed does not specify the period of construction or where the clause stands struck off the sale permission will be issued only after execution of supplementary lease deed giving one year's period from the date of sale permission for completion of construction of the building.*

***IV. Transfer of a property within a family :- No demand will be made in case of transfer of property or exchange of property (Land & Building) of approximately equal value among the members of the same family at the time of succession, partition and similar transaction. Family is defined as comprising all successors to a lessee who have interest in the property by inheritance.***

***V. Sale between Co-Lessees:- No permission is required in case of sale between the Co-lessees.***

*VI. No permission for gift within the same family is required nor any penalty for belated information will be charged.*

*VII. A register for receipt & disposal of request for sale/gift/transfer will be maintained in the Section and monthly statement will be sent to the Coordination Section on the last working day of the month. Reasons for cases not disposed off for four will be intimated.*

*This supercedes all previous orders issued on the subject.*

Sd/-  
(U.N. Bhuyan)  
Dy. Land & Development Officer

*All Officers/ Sections*

*Copy with two spare copies to the Ministry of Works & Housing,  
for information.*

Sd/-  
Dy. Land & Development Officer”

4.

**Government of India  
Ministry of Works & Housing  
Land & Development Office  
Nirman Bhavan  
New Delhi**

**No.24(6)/76-CDN(Pt)-(82)**

**Dated: 20.6.1984**

**OFFICE ORDER No.5/84**

***Subject: Sale between the co-lessees instructions thereof.***

*Attention is invited to the office order No. Coord (13) dated 30.3.64 and policy Cell No.7(8)/66 dated 13.12.66 and also to the consolidated office order No.21/76 dated 31.3.76 on the above subject.*

*The matter has been reconsidered by the Land and Development Officer in consultation with Assistant Legal Adviser and it has been decided that **the existing practice that transfer of share of one co-lessee to another co-lessee will not be treated as ‘Sale’ should be continued to be followed.** However, if subsequently in future a permission for sale of a part of the property is issued it will have to be made clear in the sale permission letter that any future sale of the rest of the part to the same person will be treated as sale and will not be covered under the existing office orders.*

*The old cases may be finalized accordingly.*

*Sd/-  
(A.C. Sehrawat)  
Legal Officer (Jr.)*

*All Officers/ Sections”*

23. A plain reading of the above-mentioned circulars issued by the concerned Ministry of the Government of India would make it abundantly clear that where the transaction is between two co-sub-lessees then whether it is by relinquishment, assignment or in any other manner and further, whether it is by way of exchange of consideration or not, does not require any permission of the lessor nor would it be termed as a sale so as to attract clause II 6 (b) of the perpetual sub-lease.

24. It may also be pertinent here to reproduce clause II (10) of the sub-lease, which reads as under :-

*“Whether the title of the Sub-Lessee in the residential plot is transferred in any manner whatsoever the transferor and the transferee shall, within three months of the transfer, give notice of such transfer in writing to the Lessor and the Lessee.*

*In the event of the death of the Sub-Lessee the person on whom the title of the deceased devolves shall, within three months of the devolution, give notice of such devolution to the Lessor and the Lessee.*

*The transferee or the person on whom the title devolves, as the case may be, shall supply the Lessor and the Lessee certified copies of the document(s) evidencing the transfer or devolution.”*

25. A perusal show that Law of Succession whether testamentary or non-testamentary does not envisage vacuum. The devolution takes place the position of the sub-lessee is occupied once that is done then both the petitioner and his brother become co-sub-lessees and transaction between them is not covered by the grant.

26. While making any interpretations, it is imperative to examine the raison d'être leading to its conception. As the era of development dawned and the property prices soar, the nation saw a rise in illegal transactions in favour of persons not of blood relations, being practiced rampantly and the property being transferred under the garb of Will and power of attorney etc. To bridle such practices DDA formulated a policy that where a transfer is by a testamentary instrument but in essence carries all characteristics of a sale primarily being monetary consideration or where the possession is transferred during the life time of the testator then the same shall tantamount to a sale irrespective of its christening and the DDA would be entitled for 50% of the unearned increase in the value of property. Therefore the object

was not to interfere with bonafide transfers but to seal all such loopholes that may be used for illegal transactions.

27. Further, it is settled principle that the terms and conditions of the grant have to be strictly construed or in other words, anything which is not covered by the grant, cannot be read in the same. The grant document being a grantor's document, must be read liberally in favour of the lessee or the sub-lessee as the case may be being the grantee and against the grantor. This is the general principle which has been upheld by all the courts including the Supreme Court. Reference in this regard can be made to few judgments wherein such an observation has been made. In *Raja Rajinder Chand vs. Mst. Sukhi & Ors.*; AIR 1957 SC 286, it has been observed as under :-

*“.....It is, we think, well settled that the ordinary rule applicable to grants made by a subject does not apply to grants made by the sovereign authority; and grants made by the Sovereign are to be construed most favourably for the Sovereign. This general rule, however, is capable of important relaxations in favour of the subject. It is necessary to refer here to such only of those relaxations as have a bearing on the construction of the document before us; thus, if the intention is obvious, a fair and liberal interpretation must be given to the grant to enable it to take effect; and the operative part, if plainly expressed, may take effect notwithstanding qualifications in the recitals. In cases where the grant is for valuable consideration, it is construed in favour of the grantee, for the honour of the*

*Sovereign; and where two constructions are possible, one valid and the other void that which is valid ought to be preferred, for the honour of the Sovereign ought to be more regarded than the Sovereign's profit.”*

28. In *Sahebzada Mohammad’s case (supra)*, it has been observed as under :-

*“..... Where there is ambiguity it is the duty of the Court to look at all the parts of the document to ascertain what was really intended by the parties. But even here the rule has to be borne in mind that the document being the grantor's document it has to be interpreted strictly against him and in favour of the grantee.”*

29. In *Delhi Development Authority & Ors. vs. M/s. Nehru Place Hotels Ltd. & Ors.*; ILR (1983) II Delhi 189, the Division Bench of this court while dealing with the question of grant of completion certificate to Nehru Place Hotels in respect of its commercial building without raising the other structure which was to be used for the purpose of hotel had taken note of Sections 2 and 3 of the Government Grants Act, 1895 and observed as under :-

*“(50) It appears to us that a lease-deed, which is executed by the parties, is final and binding on both of them. As observed by the Supreme Court in the cases noted herein above, a grant has to be read as a whole in order to ascertain the real intention of the grant. Secondly, if there is any ambiguity then the benefit thereof must be given to the grantee. **The document, being a grantor's document, is required to be***

*interpreted strictly against him and in favor of the grantee.”*

30. In *Jor Bagh Association (Regd.) & Ors. vs. Union of India & Ors.*; 2004 V AD (Delhi) 354, the question which had arisen before the single judge of this court was with regard to levy of damages by the L&DO on the leasehold plot holders in respect of Jor Bagh properties for the alleged breaches committed by them by raising unauthorized construction which was not provided for under the lease in question. The argument which was put forward by the L&DO was that there was a long-standing practice of realization of these temporary regularization charges which was negated by the learned single judge of this court by observing that long standing practice by itself cannot justify a demand for such damages as it does not have any support from any clause in the lease in question. Therefore, in view of the Government Grants Act, the office order dated 31.3.1976, on the strength of which temporary regularization charges were levied, was held to be having no meaning at all and was considered to be inconsistent to the tenor of the lease and therefore, the writ was allowed.

31. In *Deepak Lamba & Anr. Vs. Delhi Development Authority; 108 (2003) DLT 440*, the question of levying 50 per cent unearned increase had arisen in respect of plot No.N-85, Panchsheel Park, New Delhi measuring 1200 square yards. The facts of the case were that one Smt. Lamba passed away on 30.9.1981. She had executed a Will dated 31.5.1980 and in terms of the said Will, the property in question devolved on two of her sons, namely, Raj Kumar Lamba and Deepak Lamba, though she was survived by four sons and two daughters. The two sons, who had succeeded the property in pursuance of the said Will, applied for mutation of the said property in their names on 17.4.1986 which was granted on 1.5.1986 and a letter was issued to the petitioners on that behalf. While applying for mutation apart from the copy of the Will, affidavits on behalf of other legal heirs, that is, two sisters and two remaining brothers; were also filed stating that they do not have any objection to the mutation of the property. However, one of the sons of Smt. Lamba, namely, Ashok Kumar Lamba, who was not beneficiary under the Will, subsequently tried to resile from the affidavit given by him in favour of the two beneficiaries of the Will by writing a letter to the DDA. In view of the letter issued by the DDA dated 18.9.1987, the earlier mutation granted on 1.5.1986 was



withdrawn and the beneficiaries were advised to obtain probate. Thus, disputes having arisen, the petitioners, who were beneficiaries under the Will, filed a Probate Case No.62/1987 in respect of Will dated 31.5.1980. Ashok Kumar Lamba also setup another Will and filed a separate probate case in the year 1986 bearing No.48/1996. A suit for partition was also filed by Ashok Kumar Lamba bearing No.2815/1988. All these disputes which were pending adjudication were ultimately settled before the High Court vide a compromise application dated 21.9.2002 in Suit No.2815/1988 and an order in this regard was passed on 24.9.2002. In terms of the aforesaid compromise order, various proceedings were withdrawn by the legal heirs of Ashok Kumar Lamba, who had died in between, and the earlier letter objecting to the mutation was withdrawn and the petitioners agreed, in terms of the family settlement, to pay a sum of Rs.1.25 crores to the other legal heirs. It is on the basis of these facts that the DDA came to know that a sum of Rs.1.25 crores was paid to the other legal heirs in terms of the settlement and therefore, they alleged a claim with the petitioners claiming 50 per cent of the unearned increase of the plot value minus the actual price of the plot. The petitioners were in possession and they had applied for conversion of the leasehold rights

into freehold and the DDA was demanding payment of unearned increase. It is in this context that the court observed as under :-

“22. *In the present case, the petitioners are admittedly blood relations being the direct legal heirs of deceased Smt. Lamba. The petitioners are her sons and there is no question of any sale or transfer of the property in question. There is, thus, no violation of the terms or the sub-lease restricting sale or transfer. In fact, the present case is covered by Clause 10 of the sub-lease deed, which requires the documents to be submitted in this behalf for mutation of the property in favor of the legal heirs. These documents were submitted with affidavits of the other legal heirs. The case of the petitioners for mutation was processed and the mutation was done in pursuance to the letter dated 1.5.1986. Really speaking, the issue of mutation, thus, stood concluded in favor of the petitioners in terms of the said letter dated 1.5.1986.*

.....

25. *The respondents have, however, gone into an inquiry on the issue of unearned increase in view of the amounts paid by the petitioners towards the family settlement. In my considered view, this is not an aspect which can be taken into account by the respondent, which is payment made to relations in overall family settlement. The consideration is not one for the property, but in overall settlement of dispute between the family members.”*

32. Though in this particular case, the court directed processing of the application of the beneficiaries for conversion of leasehold rights into freehold, which is not an issue in the present case but in essence, the facts of this case are almost in *pari materia* with the facts of our

case and the question to be considered in our case is whether a co-sub-lessee, who enters into a family settlement with the other co-sub-lessee and pays him the amount in pursuance to the settlement, can be said to have entered into a sale transaction merely because a consideration is envisaged in the relinquishment deed.

33. In this regard, as has been observed hereinabove, that clause 6 (II) (a) deals with a lessee or a sub-lessee, transferring, assigning or parting with the possession in favour of a person, who is not a member of the lessee society at all which has been referred to in *Joginder S. Monga's case (supra)* but I feel that this clause has been inadvertently mentioned and what would apply will be only 6 (II) (b) and not 6 (II) (a). In case of clause 6 (II) (a), there is a complete embargo and the sale cannot be recognized at all. In case of clause 6 (II) (b), transfer or parting with possession is permissible provided sub-lessee transfers it in favour of a person who is a member of the lessee society but this is subject to the permission from DDA which is a pre-requisite and in such an event, DDA can demand 50 per cent of the unearned increase. In the present case, the person in whose favour the relinquishment deed is made is not a lessee but a co-sub-lessee himself and therefore, the same will not warrant invocation of clause II (6) (b). Further, this

transaction, even if it is construed as a sale from a sub-lessee, is not to a member of the lessee society but it is a transaction from one sub-lessee to another sub-lessee which is not even covered by II (6) (b) of the sub-lessee. Even if it is covered, it cannot be treated as a sale meaning relinquishment by one sub-lessee in favour of other is not be treated as a sale. The aforesaid position has been affirmed time and again in unambiguous terms by various circulars issued by the Government of India which have been reproduced hereinabove. Therefore, the relinquishment deed which has been relied upon by the petitioner, in the instant case, which evinces payment of Rs.40 lacs by him to his brother, cannot be considered as a sale and if that be so, it would not attract payment of any unearned increase.

34. In the instant case, there is no dispute regarding the factum that the transfer for consideration is between the co-sub-lessees. As has already been discussed herein above, by no stretch of imagination the said case falls within the ambit of clause II (6) (b). Nowhere the terms of the perpetual sub lease impose any unearned increase where the transfer is between co-lessees or co-sub-lessees, whether a consideration is involved or not. As is evident from the terms of the perpetual sub lease and the intent behind the conceptualization of the

provision pertaining to unearned increase, there is no ambiguity that the case of the petitioner does not warrant the charge of any UEI.

35. The various office orders issued by the central government placed on record by the petitioner herein, which are hereinabove reproduced in verbatim, are unambiguous on the aspect that a transfer between co-lessees or co-sub-lessees shall not constitute a sale and no share in the unearned increase can be demanded in such cases as no permission of lessor is required for such release. The said issue was referred to the 'Ministry of Works, Housing & Urban Development – Land and Development Office' for clarifications. Vide Office order dated 13.12.66 the same was reaffirmed and in the concluding para it was observed that the said office order shall supersede all previous office orders issued on this subject, thereby leaving no ambiguity on this aspect. The handbook of mutation issued by the DDA itself provides that no UEI shall be charged where the transfer is between family members and the definition of family members given therein includes transfer between two real brothers. As already said, DDA is a creature of the Statute and any policy decision or guidelines formulated by the government will have a binding effect, in absence of rules to the contrary.

36. I have gone through the judgment of the Apex court in *Joginder S Monga (supra)* which in para 39 records, that the clause II (6) (b) can be invoked by DDA in a member to non-member transaction. The said observation corroborates and strengthens the case of the petitioner.

37. On the contrary DDA has miserably failed to establish its case. Mr. Vivin Ahuja (Director RL) was summoned to satisfy the court as to under which clause or policy does DDA derives the authority for charging the unearned increase in the present case. Mr. Ahuja clinging to the words, ‘monetary consideration’ and pressing on the approval given by the LG, was also unable to illustrate on file as to how the DDA is levying the unearned increase on the petitioner. In light of the office order dated 13.12.66 as discussed herein above, the case canvassed by the DDA and supported by Mr. Ahuja seems to be completely misplaced. The stand of the DDA seems to be in total disregard to the circulars issued by the concerned Ministry which they are obligated to follow.

38. On the issue of composition fee it’s surprising that the DDA finally after a slumber of 34 years woke up to compute the said charge on the grounds of alleged delay in construction. It is settled principle

that the law does not aide a person who sleeps upon his rights. The DDA ought to have charged the composition fee at the very first instance. What is pertinent to note is that the said property has already been once mutated in 1988 in the name of Nand Lal Chawla without the demand for any such composition fee. It cannot be appreciated as to how suddenly the DDA had the vision of the said default. The lethargy of government departments in carrying on their duties is proverbial. Every day there are stories of common man being harassed and saddled with various charges on account of lack of paperwork and fictitious defaults. It is impossible to hope that a person would have preserved all documents pertaining to 1970's which would have changed several hands by now. Therefore to say that the petitioner stands no ground merely because the house tax receipt presented by it in evidence is not the document desired by DDA especially in light of the fact that the property has already previously been mutated in the name of the predecessor in interest of the petitioner herein, without any composition fee, leaves the respondent/DDA's argument bereft of any merit.

39. In the light of the aforesaid discussion, I am of the considered opinion that both the letters dated 29.7.2011 and 24.9.2013, i.e.,

annexure P-19 and P-31 respectively, are totally illegal and invalid as the respondents had no authority to issue the same being in contravention of the terms and conditions of the perpetual sub-lease and accordingly, the same are quashed. More particularly, the letter demanding composition fee is issued belatedly and without their being any grant to do so and for extraneous considerations.

40. During the course of hearing, the petitioner voluntarily paid both the amounts of UEI and composition charges without prejudice to its rights. Since both these demands have been quashed, the petitioner is entitled to refund of the same. Both these amounts, therefore, deserve to be refunded by the respondent/DDA to the petitioner. The respondent/DDA is directed to refund the aforesaid amounts to the petitioner within a period of six weeks from today. In case, the amount is not refunded by the DDA to the petitioner within a period of six weeks, it shall carry an interest @ 8 per cent per annum from the date of deposit till the date of actual payment. The petitioner is also entitled to the cost of litigation which is quantified at Rs.50,000/- for compelling the petitioner to resort to the court processes notwithstanding the fact that there are clear instructions on the issue on the part of the Ministry of Urban Development, Government of India



to the DDA that transactions or settlements, which have been arrived at between the blood relations by way of relinquishment deeds etc., notwithstanding the payment of any consideration, is not to be treated as a sale.

41. Accordingly, the writ petition is allowed and the mutation shall also be carried out in the name of the petitioner within a period of six weeks from today, in case it has already not been done.

**V.K. SHALI, J.**

**AUGUST 04, 2015**  
**‘AA’/AD**