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

% Judgment pronounced on : 19th July, 2017.

+ W.P.(C) 2310/2016

REKHA CHUGH Petitioner

Through Mr. Naveen Pushkarna, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through Mr. M.K. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

19.07.2017

A.K. CHAWLA, (ORAL)

By the petition filed under Sections 226 of the Constitution of India, the petitioner seeks quashing of communications Ref. No. F25(117)76/CL/2070 dated 12.8.2015 and F.25(117)76/CL/2779 dated 18.11.2015 raising demand of Rs.2,33,376/- (Rupees Two Lakh Thirty Three Thousand Three Hundred Seventy Six only) towards damage charges. Such demand is sought to be deposited, on an application made by the petitioner for the purposes of conversion of built-up shop no.3 Block No.7, Chhoti Subzi Mandi, Janakpuri, New Delhi, in short 'the subject property', from leasehold to freehold.

2. Precisely, the factual conspectus is that the petitioner is holding 'the subject property' as a lessee. Under a scheme of the respondent for transfer of leasehold rights to freehold, the petitioner

made an application dated 29.7.2013 and deposited a sum of Rs.96,166/-. Request so made was followed up by various letters from 3.9.2013 onwards, which are detailed in para 4 of the petition. Initially, the respondent demanded certain additional documents for processing the application, but, after the issuance of the legal notice dated 26.8.2014, the impugned letter ref. No. F25(117)76/CL/2070 dated 12.8.2015 came to be issued by the respondent, demanding damage charges for the conversion asked for. Similar communication is said to have been issued again on 18.11.2015, which is the other impugned letter. In the petition filed, the petitioner states that while he did not receive any response to the letter dated 10.10.2015 sent under RTI Act asking for the reason to levy damage charges and the calculation thereof, the respondent never explained the alleged charges by any means. In the counter affidavit, the respondent adverts to a show cause notice dated 30.11.1990 issued by the respondent for unauthorized encroachment and construction of 95% wooded loft and a tin shed provided in front of the shop and it was there-against, the respondent had demanded the damage charges for Rs.2,33,376/- on 12.8.2015.

3. During the course of hearing, ld. counsel for the respondent was queried as to whether such notice dated 30.11.1990 was ever served upon the petitioner or not, and, under what provisions of law and the procedure, such show cause notice had culminated into the demand of Rs.2,33,376/-. Counter affidavit is silent on this vital

aspect and the ld. counsel for the respondent has been at pains to explain. Suffice to say, petitioner cannot be coerced to make payment without the respondent following the due process of law and the procedure. Be that as it may, in **AIR 2011 SC 1399 Delhi Development Authority vs. Ram Prakash**, Hon'ble Supreme Court upholding the judgment of this Court, held that where the respondent had not initiated action within a reasonable time, it would be inequitable to allow the respondent to take advantage of its inaction in claiming mis-user charges, observing as under :

“19. Appearing in person, the respondent, on the other hand, submitted that after the Show-Cause Notices were issued no action whatsoever was taken on the basis thereof and all of a sudden the exorbitant misuser charges, amounting to Rs.1,78,85,001/- was demanded from him. Professor Ram Prakash submitted that from 1983, nothing had been done by the DDA on the basis of the Show-Cause Notices which had been issued, to which the respondent had promptly replied stating that the construction on the terrace had been effected by the tenants and not by him and in respect whereof proper proceedings had been initiated for their eviction from the premises. The respondent submitted that it is only under severe compulsion, that he had to move the Writ Court for relief in relation to the demand of misuser charges of Rs.1,78,85,001/-. The respondent submitted that for the last 25 years he had been made to face various problems and uncertainties, but that it was entirely unjustified on the part of the DDA to raise the claim of alleged misuser charges of Rs.1,78,85,001/-. The respondent submitted that after a long period of 25 years, a quietus was required to be given to the matter.

20. The respondent submitted that after issuance of Show-Cause Notices, the DDA should have taken further steps in the matter within a reasonable time and that too relating to misuser chargers where he was not at fault. The respondent submitted that he had taken prompt steps not only to reply to the Show-Cause Notices issued to him, but to initiate action against the tenants who had used the property

in a manner which was different from the purpose for which the property had been let out. The respondent submitted that this was a case where both the learned Single Judge and the Division Bench decided the matter in the crucible of events peculiar to the facts of this case, having particular regard to the length of the period for which the misuser charges had been demanded.

21. Having considered the submissions made on behalf of the DDA and by the respondent appearing in-person, and also having considered the reasoning of the learned Single Judge and the Division Bench in repudiating the claim of misuser charges by the DDA, we are unable to convince ourselves that the decisions rendered by the High Court, both by the learned Single Judge as also the Division Bench, require any interference in these proceedings. The materials on record will show that the respondent took prompt steps against the tenants for their transgression. During arguments it was indicated that, in fact, one of the tenants had already vacated the portion of the premises occupied by him. It is also very clear that after issuing the Show-Cause Notices, the petitioner did not take any follow-up action thereupon. Instead, after a lapse of 25 years, the petitioner set up a claim on account of charges for the entire period. It would be inequitable to allow the petitioner which had sat over the matter to take advantage of its inaction in claiming misuser charges.

22. Even as to the contention raised on behalf of the petitioner that there was no limitation prescribed for making a demand of arrear charges, the Division Bench relying on the decision of this Court in *State of Punjab & Ors. Vs. Bhatinda District Cooperative Milk Producers Union Ltd.* [(2007) 11 SCC 363], observed that even where no period of limitation is indicated, the statutory Authority is required to act within a reasonable time. In our view, what would construe a reasonable time, depends on the facts and circumstances of each case, but it would not be fair to the respondent if such demand is allowed to be raised after 25 years, on account of the inaction of the petitioner.

23. We do not, therefore, find any reason to interfere with the judgment either of the learned Single Judge or of the Division Bench of the High Court and the Special Leave Petition is, accordingly, dismissed.”

The situation in the hand is quite akin to the case (supra). As said earlier, nothing appears in the counter affidavit for any action having been taken by the respondent after the issuance of the show cause notice on 30.11.1990, till the time, the impugned notice came to be issued demanding damage charges of Rs.2,33,376/- for the alleged unauthorized encroachment and/or construction in the year 2015. Interestingly, during the course of hearing, ld. counsel for the respondent conceded that at the time of physical inspection of 'the subject property' on the application made for conversion from leasehold to freehold, no encroachment or unauthorized construction was found. Thus, keeping in view the ratio of the judgment supra and the given factual position for their being no encroachment or unauthorized construction at the time of physical inspection made while considering the application for conversion from leasehold to freehold, the impugned notices are not sustainable.

4. In view of the foregoing, the petition is granted and the impugned notices are quashed. The respondent is directed to convert the property of the petitioner from leasehold to freehold, subject to fulfillment of any other term(s) and condition(s) required to be fulfilled by the petitioner, within six weeks from today.

Petition stands disposed of accordingly.

A. K. CHAWLA, J

JULY 19, 2017

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