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

+ **W.P.(C) 8482/2015**

HIRA LAL SINGH & ORS. Petitioners

Through: Mr P.S. Bindra, Advocate.

Versus

THE LAND DEVELOPMENT OFFICER, LAND &
DEVELOPMENT OFFICE

..... Respondent

Through: Mr Harish Kumar Garg, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **08.08.2017**

VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*, praying as under:-

"MANDAMUS Directing, Commanding and Requiring the Respondent to forthwith substitute the name of Petitioners' in place of Late Sardar Bhag Singh Sial being his legal heirs and to allow Petitioners' Application dated 12.12.2007 seeking conversion of leasehold rights to freehold in respect of Private Cottage No. 29, West Patel Nagar, New Delhi – 110 008."

2. The controversy in the present petition relates to the mutation and conversion of the leasehold property bearing no. 29 West Patel Nagar, New Delhi - 110008 (hereafter 'the property'). The said property was leased to Sardar Bhag Singh Sial for a period of 99 years with effect from 14.01.1953 by virtue of a lease deed dated 07.05.1953. Sardar Bhag Singh Sial expired on 19.02.1985. The petitioners state that by virtue of his last will and testament dated 17.06.1983, registered with the Sub-Registrar of

Assurances, the said property devolved upon petitioner no.1 and his brother Sardar Manmohan Singh. Sardar Manmohan Singh also expired and is survived by his legal heirs (his wife, son and two daughters) who are arrayed as petitioner nos. 2 to 5 in this petition.

3. The petitioners filed an application with the respondent for mutation and conversion of the said property from leasehold to freehold. The said application was submitted in the office of the respondent on 14.12.2007 along with all relevant documents including affidavits of other legal heirs of Late Sardar Bhag Singh Sial affirming their no objection for mutation/conversion of the said property in favour of the petitioners.

4. The petitioners received a letter dated 22/16.01.2008 from the respondent, *inter alia*, stating that there were certain government dues payable which had not been paid. The said letter also pointed out the following irregularities :-

- "1. Misuse - one room measuring 14' – 4 ½ ' x 10' – 10 ½' is being used as clinic by Dr. J.M. Gulati. As per Inspection Report dated 18.1.1978.
2. Encroachment on public land measuring 2 (15'x 16').
3. You have not furnished sanctioned Building Plan as already demanded vide this office letter No. L&DO/PSI/4005 dated 28.12.79.
4. Completion Certificate (From C & D) issued by Local Body."

5. The respondent also called upon the petitioners to furnish the clarification/documents within a period of 30 days from the said letter.

6. The petitioners responded to the said letter on 19.02.2008 forwarding

the photocopy of the sanctioned plan; original sanctioned plan; copy of the completion certificate along with attested copies of Form C & D. Insofar as the allegation of misuse and encroachment on public land was concerned, the petitioners disputed the same. They explained that a room measuring less than 20 sq. metres on the ground floor of the property was being used as a clinic by Dr J. M. Gulati and such use was permissible in terms of the notification dated 07.02.2007 issued by the Ministry of Urban Development. The allegation of encroachment on public land was outrightly denied.

7. The petitioners thereafter received a letter dated 01.05.2008 whereby the respondent informed the petitioners that inspection of the property had been carried out, which had revealed that there was misuse of the leased land inasmuch as one room was being used as a clinic by Dr J. M. Gulati and another room was being used as an auto workshop. In addition, there was certain unauthorised construction on the leased land. There were also certain projections on the front side of the ground floor which the respondent termed as encroachment on Government land. The respondent stated that the said breaches were in contravention of the lease deed and called upon the petitioners to remedy the breaches within a period of 30 days from the date of the receipt of the said notice failing which action to re-enter the said property would be taken.

8. On 19.06.2008, the petitioners submitted an application for conversion of the property from leasehold to freehold and also deposited the conversion charges and arrears of ground rent.

9. Thereafter, the respondent sent a letter dated 30.09.2009 demanding a sum of ₹21,84,699/- for regularization of the breaches up to 14.01.2010. The

same included misuse charges from 18.01.1978 and damage charges for unauthorized construction from 03.07.1978.

10. Admittedly, this was the first time that demand for such charges was raised by the respondent.

11. According to the petitioners, there was no misuse of the property in question. A part of the property (measuring 14'x 11') was let out to one Dr Jitendra Mohan Gulati by an agreement dated 13.01.1972. The petitioners had thereafter instituted an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958. Dr Gulati had sought to contest the same by filing the leave to defend which was dismissed. He had thereafter carried the matter in appeal (RC. REV. 272/2013) which was also dismissed on 08.04.2015. Dr Gulati had preferred a Special Leave Petition (SLP (Civil) 12753/2015) against the order dated 08.04.2015, which was disposed of by an order dated 24.04.2015; although, the Supreme Court did not interfere with the order passed by this Court, nonetheless, granted further time till 31.03.2016 to vacate the premises. Dr Gulati vacated the premises on 31.03.2016 and this was duly informed to the respondent by a letter dated 07.04.2016.

12. Insofar as the allegation that part of the property was being used as an auto workshop is concerned, the petitioners have explained that a tyre/ tube shop selling new tyres was being operated from a part of the said property and this was in compliance with all municipal laws and the petitioners have paid the requisite charges to the Municipal Authorities.

13. Mr Bindra, learned counsel appearing for the petitioners contended

that the respondent could not claim misuse charges from 1978 as the same was hopelessly delayed and, therefore, unsustainable. He stated that it was only on 30.09.2009 that for the first time any demand for such charges had been raised by the respondent. He, however, conceded that notwithstanding their challenge to the levy of such charges, the petitioners would pay all misuse charges w.e.f. 30.09.2008.

14. Mr Garg, learned counsel appearing for the respondent submitted that insofar as mutation is concerned, there would be no difficulty in substituting the name of the petitioners in place of Late Sardar Bhag Singh Sial subject to verification of the necessary documents. He, however, countered the submission that the respondent was not entitled to misuse charges as a condition for conversion of the property from leasehold to freehold. He stated that in terms of the conversion scheme, conversion could be granted even where a portion of the residential property had been put to non-residential use, subject to payment of misuse charges. He submitted that as far as the clinic run by Dr Gulati was concerned, there was ample material on record to show that the said misuse continued from 18.01.1978. On that date, it was found that a clinic was being run by Dr Gulati who was not residing there. He submitted that this misuse admittedly continued till Dr Gulati vacated the premises on 31.03.2016.

15. He also relied on the decision of the Division Bench of this Court in ***Union of India v. Ravi Kanta Madhok: 2012 SCC OnLine Del 1514*** in support of his contention that the respondent would be justified to insist on payment of misuse charges for conversion of the said property from leasehold to freehold.

16. I have heard the learned counsel for the parties.

17. Admittedly, the first inspection was carried out on 05.04.1971 and no misuse of any kind in respect of the said property was found. The respondent conducted another inspection on 18.01.1978 and found that one room on the ground floor was being used as a clinic by Dr J. M. Gulati. However, the respondent neither issued any show cause notice nor proposed any action with regard to the alleged misuse found during the inspection.

18. The respondent issued another letter dated 28.12.1978 (much after the inspection carried out on 18.01.1978) calling upon the lessee (Sardar Bhag Singh Sial) to submit plan of construction as existing on 31.12.1975 for regularizing such construction. It is relevant to note that even in this letter, no demand for misuse charges or indication of any action proposed in respect of any misuse was made.

19. Admittedly, till 30.09.2009, no demand was raised by the respondent. The respondent claims that the charges for unauthorized construction/misuse would be payable with effect from 03.07.1978 as an inspecting team had visited the site on that date and found the said property to be locked. It is stated that in terms of the lease, the lessor was at liberty to enter upon the said property for any purposes connected with the lease, however, the respondent's attempt to inspect the premises on 03.07.1978 had been frustrated and, therefore, the petitioners are liable to pay charges in respect of unauthorized construction from the said date.

20. It is thus apparent that the petitioners (and/or their predecessor) were never informed of the consequences of misuse. According to the petitioners,

use of one room as a clinic was permissible. This issue also could not be considered and determined as the respondent took no steps to initiate any proceedings following the inspection; no notice of any misuse charges or warning of re-entry was issued.

21. In the aforesaid circumstances, the only conclusion that can be drawn is that the respondent had decided not to proceed in the matter of the alleged misuse. Plainly, the demand for misuse charges from 18.01.1978 raised for the first time after more than 30 years would be wholly unreasonable and arbitrary. Having taken no action on account of alleged misuse found in January 1978, the respondent cannot be permitted to raise a demand for the period starting from the date of inspection, more than 30 years thereafter.

22. The decision of the Supreme Court in the case of ***Delhi Development Authority v. Ram Prakash: AIR 2011 SC 1399*** would be squarely applicable in the facts of this case. In that case, during a routine inspection conducted by DDA on 08.08.1983, it was found that the basement of the building was being used for office purposes, which was in contravention of the prescribed usage. Accordingly, DDA issued a show cause notice calling upon the lessee to show cause as to why the lease for the building be not cancelled. The said allegation was denied by the lessee. DDA had taken no action immediately thereafter but seven years later, on 28.06.1990, issued another show cause notice. This was also followed by other subsequent notices. The respondent in the said case applied for mutation of the property on 20.05.2004 as other co-lessees had expired in the meanwhile. At that stage, DDA raised demand for misuse charges. In the aforesaid facts, the Supreme Court held as under:-

“21. Having considered the submissions made on behalf of 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 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. v. Bhatinda District Coop. 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.”

23. The aforesaid decision was also followed by a Coordinate Bench of this court in *Vikramaditya Bhartia v. DDA: 2013 SCC OnLine Del 2340*. In that case, this Court observed that it would be inequitable to allow DDA, which has sat over the matter from the year 1985 to take advantage of its

inaction in claiming misuse charges. In that case, DDA had raised a demand of misuse charges on 01.10.2010, which was raised after 25 years from the date of the first survey conducted on 27.06.1985.

24. The present case stands on a higher footing; in the present case, no show cause notice was issued to the petitioners or their predecessor pursuant to the inspection carried out on 18.01.1978. Unlike in the case of **DDA v. Ram Prakash** (*supra*) where DDA had repeatedly issued show cause notices, in this case, there was complete inaction on behalf of the respondent for 30 years. The respondent took no steps to even indicate that misuse of the said property would be visited with any consequences and rested content by merely inspecting the said property. In view of the aforesaid, the demand of misuse charges raised after a lapse of 30 years would be plainly inequitable and cannot be sustained.

25. The decision of the Division Bench in **Union of India v. Ravi Kanta Madhok** (*supra*) would be inapplicable to the facts of the present case since in that case, the petitioner had initiated proceedings for re-entry way back in 1973. The lessee in that case had at the material time given an undertaking that he would remove all breaches by 14.01.1975 and it is on the basis of such undertaking that the order of re-entry was recalled. The Court also noted that in the undertaking furnished by the lessee, he had also agreed to pay misuse charges for the period during which such misuse persisted. It is in the aforesaid facts that the Division Bench of this Court distinguished the decision of the Supreme Court in **DDA v. Ram Prakash** (*supra*) and held that it was inapplicable in the facts of that case.

26. There is no denying the right of the respondent to compel payment of

misuse charges as a condition for conversion of the said property from leasehold to freehold. However, the question in the present case is whether the demand of misuse charges, in the given facts can be sustained as reasonable. Given that the respondent had not even put the lessee (the petitioners' predecessor) to notice that any charges would be payable or any action would be taken against misuse of the property, thus, the demand for misuse charges raised for the first time on 30.09.2009 after a lapse of 30 years from the date of inspection, is wholly unreasonable and cannot be sustained.

27. Having stated the above, the respondent would be well within its right to claim all charges with effect from 04.04.2008 when the said property was re-inspected. Demand for any charges for the period based on such inspection would not suffer from the vice of being unreasonable. The petitioners have also readily conceded to pay such charges.

28. In view of the above, the present petition is disposed of with the direction that the respondent would process the petitioners' application for mutation and conversion of the said property and would be at liberty to charge misuse charges and such other charges as are applicable for the period post 04.04.2008. The petitioners' application shall not be withheld on account of non-payment of arrears of misuse charges and/or charges on account of unauthorized construction for the period prior to 04.04.2008.

29. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AUGUST 08, 2017

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