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

+ **W.P.(C) 2063/2018**

M/S RAJENDER JAINA TOWER PVT. LTD. Petitioner
Through: **Mr. Rajesh Aggarwal, Adv.**

versus

DELHI DEVELOPMENT AUTHORITY AND
ANR. Respondents
Through: **Mr. Arjun Pant, Adv. for DDA.**
Mr. Ajjay Aroraa and Mr. Kapil
Dutta, Advs. for NDMC.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **06.03.2018**

CM. No. 8521/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 2063/2018

This petition has been filed by the petitioner with the following prayers:

“Under the circumstances, it is, therefore, most respectfully prayed that:

- i. An appropriate writ of certiorari be issued thereby quashing the illegal action of respondent no.1 and 2 of sealing / dispossession, including quashing of letters dated 23.08.2017 (Annexure 3) and dated 10.11.2017 (Annexure 4) and dated 18.10.2017 (Annexure 5) and consequent*

proceedings emanating therefrom; and

- ii. A writ of mandamus be issued directing the respondent no.1 and 2 to allow conversion of building to commercial from residential; and to consider and restore the lease deed (Annexure-2); and in the alternative to allow the petitioner to use the building for residential purposes.*
- iii. Such other and further order with this Hon'ble Court deems fit may also be passed in favour of the petitioner."*

Vide the impugned communications dated August 23, 2017, October 18, 2017 and November 10, 2017, respondent / DDA has called upon the petitioner to hand over the physical possession of the plot No. 20, Block 15A, WEA, Karol Bagh, New Delhi; and rejected the requests of the petitioner for restoration of the lease and conversion of the property.

Some of the relevant facts are that the petitioner company had purchased the land in question in an auction for residential use. It raised construction as per the building bye-laws. It had applied for permission for change of use of the property to commercial use. However, the DDA vide its letter dated September 24, 1986 had informed the petitioner that the lease of the petitioner company has already been cancelled on August 10, 1986. It is noted that petitioner had earlier filed a Suit being 284/1986 before the District Court, which vide order dated July 25, 1986 declined to pass any interim order. Pursuant thereto a Civil Appeal No. 138/1986 was filed before the Sr. Civil Judge, who vide order dated August 1, 1986 stayed the dispossession of the petitioner company. Subsequently, the Suit and the Appeal were withdrawn by the petitioner company on September 29, 1986.

Thereafter, a writ petition being W.P.(C) 2022/1986 was filed challenging the cancellation of the lease deed. It appears the writ petition was initially dismissed by this Court on April 01, 1987. On appeal, the matter was remanded back by the Supreme Court. The writ petition was finally dismissed for non-prosecution in the year 2002. Be that as it may, a fresh suit was filed by the petitioner company in the year 2008. In the said suit, the petitioner had sought the following reliefs:

“Under the circumstances it is, therefore, most respectfully prayed that:

- 1. A decree of declaration be issued in favour of the plaintiff and against the defendants thereby directing the defendant DDA to restore the lease deed of plot no. 20, Block 15A, Ajmal Khan Road, WEA, Karol Bagh, New Delhi – 110005 on the payment of such restoration / composition charges as are permissible and to regularise the commercial activity in the building No. Plot No. 20, Block 15A, Ajmal Khan road, WEA, Karol Bagh, New Delhi – 110005 constructed / allotted to the plaintiff.*
- 2. A decree of perpetual injunction be issued in favour of the plaintiff and against the defendant thereby restraining the defendant from dispossessing the plaintiff from the suit property.*
- 3. Such other and further orders which this Hon’ble Court deems fit may also be passed in favour of the plaintiff, and in the interest of justice.”*

In the said suit, the following issues were framed:

- “1. Whether the plaintiff is entitled for the restoration of the Lease Deed and change in user in view of its*

- policy under notification dated 21.07.1988 and MPD2021? (OPP)*
2. *Whether the suit is bad for non-joinder of MCD as a party? (OPD)*
 3. *Whether the suit is barred by res-judicata (as per preliminary objection taken in written statement)? (OPD)*
 4. *Whether the suit is not properly valued for the purposes of Court Fees? (OPD)*
 5. *Relief.”*

In so far as the issue no.1 is concerned, the Court below on April 25, 2017 has in Para 19 onwards decided the issue against the petitioner herein. In other words, Court below has not granted the relief for restoration of the lease deed in favour of the petitioner. Order dated April 25, 2017 of the Court below was a subject matter of RFA being 778/2017 which was decided on September 11, 2017 vide the following order:

- “1. After arguments, this appeal is disposed of as not pressed, but the appellant/plaintiff is given liberty, of course in accordance with law, to seek for setting aside of the cancellation of its lease deed dated 20.2.1985 in accordance with the extant and applicable circulars issued by the respondent/defendant/DDA, and which according to the appellant contained an open ended policy even applicable today for seeking restoration of the cancelled lease.*
- 2. The appeal is accordingly disposed of but with the aforesaid liberty.”*

It is a matter of record that after the order was passed in the RFA, petitioner had made representation dated September 15, 2017 to the respondents i.e. DDA and MCD and sought the restoration of the lease deed dated February 20, 1985 and also permission to use the property for

commercial activity on the ground of parity and also by referring to certain policy decisions dated April 9, 2008 and April 22, 2014.

It is the submission of Mr. Rajesh Aggarwal, learned counsel for the petitioner that petitioner is within its right to file the present petition in view of the liberty granted by the Appellate Court and also the rejection of the request of the petitioner for restoration of the lease deed and also seeking permission to use the property for commercial purposes. He would draw my attention to the policies dated April 9, 2008 and April 22, 2014 to contend that in terms of these policies, petitioner is entitled to restoration of the lease deed on payment of penalty. He also states, in fact, DDA has acted upon on the policy decisions in favour of certain parties and has restored the lease deeds as well. I am unable to accept this submission of Mr. Aggarwal for the simple reason, identical relief was sought by the petitioner in the Suit being 133/2008 which was decided on April 25, 2017. In fact, the petitioner had relied upon the policies dated April 9, 2008 and April 22, 2014 on which reliance has been placed now in this writ petition. Despite the reliance placed on the said policies, the suit was dismissed. The plea of Mr. Aggarwal is that it was precisely the grievance of the petitioner that the said policy decisions were not considered by the Court below while passing the judgment dated April 25, 2017. This submission does not appeal to this Court as any grievance against the order/judgment dated April 25, 2017 can be a subject matter of an appeal but surely not this writ petition. The petitioner having filed an appeal which was decided by an order dated September 11, 2017 granting liberty in accordance with law to the petitioner to seek setting aside of the cancellation of the lease deed dated February 22, 1985 on the basis of the circulars issued by the DDA cannot be read to mean

that the said order/judgment dated April 25, 2017 has been set aside. Even otherwise, the liberty granted by the Appellate Court was in accordance with law, which means, the issue having been decided in substantive proceedings, the petitioner cannot file this writ petition on the same cause of action, as the same shall be barred by principles of *res judicata*. Further, it is not the case of the petitioner that after the decision of the Court below dated April 25, 2017, fresh circulars have been issued by the DDA which contemplate restoration of the lease deed on payment of penal charges.

In view of the aforesaid position, in the peculiar facts of this case, this Court is of the view that the petitioner is precluded from re-agitating the same issue under the garb of challenging the impugned communications, which even though issued subsequent to the decision dated April 25, 2017.

I do not see any merit in the writ petition. The petition is dismissed.

CM. No. 8521/2018 (for direction)

In view of the order passed in the writ petition, the application has become infructuous and dismissed as such.

V. KAMESWAR RAO, J

MARCH 06, 2018/jg