

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: July 31, 2018
Judgment delivered on: November 14, 2018

+ W.P.(C) 5022/2016, CM No. 20973/2016

DARSHAN KAUR

..... Petitioner

Through: Mr. Rajesh Yadav, Ms. Ruchira Arora,
Mr. Dhananjay Mehlawat

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms. Monika Arora, CGSC with Mr.
Harsh Ahuja & Mr. Santosh Kumar
Pandey, Advs. & Mr. Abhishek
Biswas, Dy. L&DO

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:

“It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to issue:

(a) a writ of certiorari or any other appropriate, writ, order or direction in the nature thereof thereby quashing the demand letter dated 23.02.2015, bearing demand ID:6748, raising a demand of Rs.2,72,28,392/- (Rupees Two Crores Seventy Two Lac Twenty Eight Thousand and Three Hundred Ninety Two Only), towards alleged

misuse charges in respect of property No. 39 (10), Diplomatic Enclave, known as 10, Sardar Patel Marg, New Delhi and for quashing the further communication dated 04.05.2016, bearing No.L&DO/L-IV/9/39(10)DE/96, rejecting the representations of the petitioner dated 24.03.2016 and 30.03.2016 and sustaining the demand raised vide office letter / demand notice dated 23.02.2015 and directing the petitioner to make the payment of the determined amount, vide office letter dated 23.02.2015, with interest @ 10% per annum, upto the date of the payment within 15 days from the date of issue of the said letter dated 04.05.2016 and that failing which the conversion application of the petitioner will be rejected and the action under the terms of the lease will be initiated without further reference to the petitioner; and

- (b) a writ of mandamus or any other appropriate, writ, order or direction in the nature thereof thereby directing the Respondents to convert the property No.39 (10), Diplomatic Enclave, known as 10, Sardar Patel Marg, New Delhi from leasehold to freehold and execute and get registered the conveyance deed in favour of the petitioner, as the petitioner has already deposited the required sum of Rs.45,18,000/- vide Challan dated 30.03.2011;*
- (c) a writ of mandamus or any other appropriate writ, order or direction in the nature thereof thereby directing the Respondents to apply Clause (i) of the Office Order No. 29/83 dated 08.09.1983 and declare that no misuse charges are payable by the Petitioner or in the alternative to apply the Office Order No. 23/1976 dated 31.03.1976 and levy token penalty @ 1% of the misuse charges, only;*
- (d) Any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be passed in favour of the petitioner.*
- (e) Award cost of the proceedings to the petitioner.*

2. The grievance of the petitioner is mainly that the respondents, while dealing with the petitioner's application for conversion of her property from leasehold to freehold, have raised a demand of ₹2,72,28,392/- towards misuse charges, penalty on misuse charges, revised ground rent and interest on previous damage charges in respect of her property being No. 39 (10), Diplomatic Enclave, also numbered as 10, Sardar Patel Marg, New Delhi. The petitioner ultimately seeks conversion of her property from leasehold to freehold, and the consequent execution of a conveyance deed to that effect.

3. It is the case of the petitioner that the said demand has been raised in total disregard of certain office order(s) passed by the respondents themselves, according to which the petitioner would not have been liable to pay any such demand, and in any case, even if any misuse was admitted by the petitioner, she would be liable to pay only a negligent sum in terms of the said office order.

4. The petitioner states that she became the perpetual lessee of the property in question vide perpetual lease deed executed in her favour on July 23, 1962, and registered with the Sub-Registrar, New Delhi on December 27, 1962. The property consists of ground, first and barsati floors. It is stated that the ground floor of the property was let out by the petitioner, to the Government of Lebanon, through its Ambassador, with effect from March 01, 1968. It is the case of the petitioner that clause 9 of the said lease deed

clearly stipulated that the lessee, i.e. Government of Lebanon, would not use the leased premises for any purpose in contravention of the terms of the perpetual lease granted to the petitioner, and that if on account of any contravention on the part of the lessee, the petitioner suffered any damage or penalty, the lessee (Govt. Of Lebanon) would be liable to reimburse the same.

5. It was on February 20, 1968 that the Ambassador of Lebanon informed the respondents that the Embassy was planning to use the premises in question (being leased by the Embassy) for cultural purposes, and that the area which would be consecrated to consular section would occupy less than 25% of the total area.

6. It was on October 14, 1968 that the petitioner received a letter from the respondents informing her that upon inspection of the subject premises, it was found that the entire ground floor was being used as office by the Embassy of Lebanon, and that the said usage was in contravention of terms of the perpetual lease granted in favour of the petitioner. The petitioner was therefore asked to pay additional charges for having committed the said breach, and also to remedy it within 30 days.

7. The Protocol Division, Ministry of External Affairs, being of the opinion that the premises in question would be exempted from levy of additional ground rent on account of alleged misuse, requested the office of

the Deputy Land and Development Officer to confirm the said opinion in terms of their own office order being D.O. letter No. 464 (12-DIII)/62, dated April 15, 1969. It was also stated in the said communication that only upon receiving such confirmation from the respondents herein, would the Ministry of External Affairs confirm to the Embassy that the claim for payment of additional charges stood withdrawn.

8. It is the case of the petitioner that subsequently, vide letter dated July 16, 1969, the Ambassador of Lebanon informed the petitioner that the Chief of Protocol Division, Ministry of External Affairs had conveyed to her, confirmation from the respondents herein, to the effect that the subject premises did not attract levy of additional ground rent for change of purpose since only 22% of the total area of the tenanted premises had been used for Chancery. It is her case that it was only on this premise that the petitioner's tenant continued with the alleged usage on the subject premises, and the lease between the petitioner and the Embassy of Lebanon was renewed for further period of 3 years with effect from January 01, 1985.

9. It is further stated that the petitioner again received a letter from the respondent on April 16, 1987, alleging that the subject premises is / was being used by the Embassy of Lebanon as offices for its Chancery and cultural affairs, for the last 16 years. The petitioner was therefore, once again, called upon to pay the consequent misuse charges, and to remedy the

breaches within a period of 30 days. In terms thereof, the petitioner called upon the tenant to stop the alleged misuse. It was finally through a legal notice dated November 02, 1989 that the petitioner terminated the tenancy, and called upon the tenant to handover possession of the subject premises. Having obtained permission from the Govt. Of India, under Section 86 of the CPC, the petitioner also filed a suit for possession, arrears of rent and mesne profits against the Embassy of Lebanon.

10. It was stated by the petitioner that from the inception of tenancy itself, the defendant therein had been using the subject premises as an office of the Embassy, in violation of express terms of the perpetual lease deed. It was further stated therein, that the defendant / tenant was repeatedly informed of the violation and asked to stop the misuse, but to no avail. It was also mentioned that the continued misuse on part of the defendant / tenant had left the petitioner exposed to threat of penalty, prosecution and re-entry.

11. In the written statement, the defendant / tenant stated that the subject premises were used as Chancery Office of the Embassy for the purpose of cultural and technical missions and programmes for the members of the staff of the Mission, and that the terms of the lease had not been contravened.

12. The said suit was decreed in favour of the petitioner vide judgement and decree dated October 07, 1999. The defendant's / tenant's appeal before this court, and then SLP before the Supreme Court were dismissed. It was

subsequently on March 20, 2002, the Ambassador of Lebanon informed NDMC about the shifting of the mission to a new address with effect from March 25, 2002, and a request was also made to take readings from electricity meters, and to transfer the same in name of the petitioner herein, and further to convert the connections from commercial to domestic category. Possession of the subject premises was handed over to the petitioner on April 08, 2002, and the same was also informed to the Secretary, NDMC vide letter dated April 12, 2002, further also adding that they undertook to pay all outstanding dues of bills of electricity, water etc.

13. It is stated that the petitioner, vide her letter dated October 12, 2002, addressed to the Assistant Secretary (Taxes), NDMC, informed about the taking over of possession of the property, and also filed the returns under Section 77, NDMC Act, wherein it was mentioned that the house was entirely self-occupied from 2002, and that previously only the ground floor was let out on rent. Subsequently, the petitioner also deposited a sum of Rs.45,18,000/- vide challan dated March 30, 2011, seeking conversion of the property from leasehold to freehold.

14. It is the petitioner's case that a demand letter dated July 26, 2012 was issued to the petitioner, by the Deputy L&DO, Land and Development Office, in the sum of Rs. 3,99,71,655/- on account of misuse charges from February 29, 1968 to June 16, 2011; damage charges for unauthorised

construction from June 17, 2011 to January 14, 2013; and revised ground rent (balance) from December 10, 1982 to December 09, 2012, subject to payment of which, the application for conversion would be considered.

15. Vide her response, dated August 23, 2012, the petitioner stated that no misuse charges were payable on account of the property being occupied by the Ambassador of Lebanon, and that from April 08, 2002, it was self acquired (sic) (self occupied). The petitioner additionally requested for two months' time to file an adequate reply to the aforesaid demand notice, as she had sought certain documents under the RTI Act. The application under the RTI Act was, however, made only on September 24, 2012. And vide response dated October 08, 2012, by the CPIO/Dy. L&DO, copies of the following letters/documents were provided to the petitioner:

- (i) *letter dated 20.02.1968 of Mr. Mahmoud Hafez, Ambassador of Lebanon to Land and Development Officer stating that the Embassy is planning to use it for its cultural needs and that the area which will be consecrated to the Consular Section and will occupy less than 25% of the total area and that as per his understanding it will not occasion any special taxation due to the use of the premises, as mentioned.*
- (ii) *letter dated 01.05.1968 of Shri Jamiatrai Gobindram, Assistant Settlement Commissioner, Land and Development Office to the Embassy of Lebanon requesting the Embassy to furnish information regarding*

particulars of the accommodation to be used for cultural activities; date from when it has been proposed to be used and copy of rent deed, if any executed.

(iii) letter dated 14.10.1968 of Shri Shital Prasad, Deputy Land and Development Officer to the Petitioner regarding contravention of Clause III(7) of the perpetual Lease Deed on account of the entire ground floor being used as office by Embassy of Lebanon.

(iv) letter of June 1969, issued by Shri B.S. Puri, Attaché (Protocol), Ministry of External Affairs to Shri Shital Prasad, Deputy Land and Development Officer, after referring to the letters of Shri Rajagopalan dated 15.04.1969 and subsequent letter of Shri B.S. Puri dated 22.04.1969, regarding 10, Sardar Patel Road, under occupation of Embassy of Lebanon, asking him to confirm that the said premises does not attract levy of 'additional ground rent' for 'change of purpose'.

16. Following an appeal before the Central Information Commission, the petitioner was also provided a copy of the letter dated 11.06.1969 (should be 11/06/1965) written by the Dy. L&DO, to the Attache (Protocol), Min. Of External Affairs.

17. It is stated in the petition that the petitioner thereafter filed a detailed reply to the said demand notice, therein taking the following stand:

(a) There is no unauthorized construction, therefore, the demand on account of damage charges for unauthorized construction, in a

sum of Rs.8,906/-, is not payable. However, be that as it may, so far as the damage charges are concerned, the petitioner, without prejudice to her contentions that it is not payable by her, paid the said amount of Rs.8,906/-.

(b) So far as the demand raised for revised ground rent amounting to Rs.1,09,680/- was concerned, it was stated that the said amount has already been paid by the petitioner. The details of the said payments were given as under:-

<i>CHEQUE NO.</i>	<i>ENCASHED ON</i>	<i>AMOUNT</i>	<i>PERIOD</i>
245879	03.10.2005	77,690	Jan 1982 To Dec 2005
803247	06.01.2006	4,570	Jan 2006 To Dec 2006
557211	06.01.2007	4,570	Jan 2007 To Dec 2007
917845	04.01.2008	4,570	Jan 2008 To Dec 2008
933327	09.01.2009	4,570	Jan 2009 To Dec 2009
688272	07.01.2010	4,570	Jan 2010 To Dec 2010
688305	06.01.2011	4,570	Jan 2011 To Dec 2011
688347	30.04.2012	4,570	Jan 2012 To Dec 2012

(c) The demand of misuse charges is wholly illegal and is not liable to be paid by the petitioner as there was no misuse of the said premises / property by the petitioner in any manner.

(d) *In view of specific clause in the Lease Deed between the petitioner and the Govt. of Lebanon, it was mentioned that the Lessee will not use the premises in contravention of the clauses of Agreement for Lease and Perpetual Lease and if any taxes, penalty or losses are suffered, the same shall be liable to be paid by the Lessee.*

(e) *It is though the contention of the petitioner that from perusal of various letters inter se exchanged between the Ministry of Foreign Affairs, Land and Development Office and Ambassador of Lebanon, it was evident that the user of the premises does not and would not attract the levy of additional ground rent for change of purpose, since only 22% of the area was being used for cultural activities. There was, thus, no misuser of the property and even if there was some misuser it was condoned by the continued acts of inaction, omission and commission by the Land and Development Office. It was stated that till the demand dated 26.07.2012, no demand was previously raised.*

(f) *Be that as it may, it was stated that even if there was any misuser, it is solely attributable to the Govt. of Lebanon and Embassy of Lebanon and such liability cannot be fastened against the petitioner and her said property. One of the grounds of eviction*

of the tenant taken by the petitioner in her suit was the continued misuse of the said property by the tenant. The possession of the said property was restored to the petitioner after long litigation, which continued till the order of the Hon'ble Supreme Court dated 22.11.2001. The possession of the tenanted premises was handed over to the petitioner on 08.04.2002.

(g) Without prejudice to the above submissions, it was stated that assuming there was any misuse of the said property, the same came to an end on 08.04.2002. the impugned demand had been raised on 26.07.2012, which is more than 10 years after the alleged misuse had ceased. The demand is patently barred by limitation and cannot be enforced.

(h) Without prejudice to the aforesaid, it was stated that the misuse charges are being claimed form 29.12.1968 till 16.06.2011. The misuse charges from 08.04.2002 to 16.06.2011, in any case, are not liable to be claimed or paid, being totally baseless as the tenant had vacated the said property on 08.04.2002.

(i) The misuse charges are totally baseless and invalid.

(j) The alleged misuse by the tenant was without the consent of the petitioner.

(k) *It was stated that, assuming for the sake of arguments but not admitting, that any misuse charges are liable to be paid by the petitioner, since the petitioner had taken adequate steps to evict the defaulting tenant and had ultimately succeeded in the same, it was a case where the petitioner, being the landlord, was not personally misusing the premises and took all legal steps for stopping the misuser by the tenant. The Land and Development Office had also issued notices of misuse and asking the tenant to stop it, but the tenant despite such notices of L&DO and the petitioner, did not stop the misuser. The petitioner, being the landlord, cannot be legally held to be the defaulter. She cannot be asked to pay the alleged misuse charges. As per Clause 8 of the Office Order No.26/81 dated 23.10.1981, only 1% of misuse charges can be levied. The said clause reads as under:*

“8. In case where the lessee / ex lessee files suit for eviction against defaulting tenants on receipt of our notice for misuse and are successful in evicting such tenants one per cent of the charges will be recovered as token penalty in consultation with the Ministry of Works and Housing and Finance.”

(l) *Without prejudice to the foresaid, it was stated that the petitioner can only be asked to pay 1% of the misuse charges. The*

petitioner referred the following judgments in support of her contention:

i. 53 (1994) Delhi Law Times 342

“Birla Institute of Scientific Research vs. Union of India & Ors.

ii. 64 (1996) Delhi Law Times 585

“Sisir Kumar Sen & Ors. vs. Union of India & Anr.”

(m) In this event of the matter, the petitioner claimed that misuse charges are not payable by her and such liability cannot be extended against her as well as her property and that the misuse charges are liable to be withdrawn. The petitioner stated that the revised ground rent (balance) demand of Rs.1,09,680/-, has already been paid. The petitioner enclosed a cheque of Rs.8,906/-, towards the damage charges for unauthorized construction. True copy of reply / representation of the petitioner dated 21.05.2013 is annexed as Annexure P-38.”

18. The petitioner thereafter submitted a further representation/objection dated July 29, 2013, to the demand notice dated July 26, 2012, taking the following stand:

(i) That in terms of Office Order No. 23/1976, dated March 31, 1976, a premises occupied by a Foreign Mission would neither be inspected, nor

damage charges for any misuse would be issued. The premises in question had been let out / in occupation during the period 01.03.1986 to 08.04.2002 to a foreign mission (Government of Lebanon through Embassy of Lebanon) and thus the alleged misuse continued only during the said period and by the said tenant. There was never any misuser by the Petitioner. The Petitioner had to initiate proceedings for eviction of the tenant and one of the ground of eviction was misuse of the said property by the tenant. The possession of the said premises (ground floor) was restored to the Petitioner through the Court. In these circumstances since the alleged misuse was by a Foreign Mission, the Petitioner shall not be held liable to pay any misuse charges.

(ii) The levy of misuse charges, as claimed vide Demand Notice dated 26.07.2012 in respect of property bearing Plot 39/2010, Diplomatic Enclave issued to the petitioner is, thus, bad in law and liable to be withdrawn.

*(iii) That in terms of judgement of this Court in **LPA No. 415/2005 Union of India & Anr. Vs Jor Bagh Association (Regd.) & Ors.**, wherein the aforesaid Office Order No. 23/1976 was also considered, the premises which had been let out for certain duration to a Foreign Mission, should not be assessed for misuse charges for the said period.*

19. The petitioner has further stated in the writ petition that vide letter dated November 21, 2013, written by the Dy. L&DO, she was informed that

the Office Order No. 23/76 had been superseded by Office Order No. 29/83, dated September 08, 1983. It is the case of the petitioner that the said Office Order, 1983, nowhere records that the Office Order, 1976 had been superseded, and that in any case, it itself records that no misuse charges would be levied in cases where L&DO leased premises is being used both for residential and office purpose by an Embassy/Mission. The petitioner thereafter made several representations for withdrawal of the Demand Notice vide letters dated August 19, 2013, October 17, 2013, November 28, 2013, December 10, 2013, January 20, 2014, March 20, 2014, October 16, 2014, and November 11, 2014, reiterating the aforementioned stand. It was stated by the Petitioner in these letters that only part of the ground floor, which was in the tenancy of the Embassy was being used for office / cultural / chancery purposes. The remaining part of the ground floor premises was used for residential purposes. Reliance was placed on the office order No. 29/83 that since the premises was being used by the Embassy of Lebanon for both residential and cultural / chancery purposes, no notice could be taken of the said misuse and accordingly no misuse charges are liable to be levied on the said premises. Relying upon para 8 of the office order No. 23/76, it was stated without prejudice to the fact that no misuse charges are leviable or payable by the Petitioner, in case of misuse by the tenant, the landlord is only liable to pay 1% of the misuse charges. Reliance was placed by the Petitioner

on the judgment passed by a Division Bench of this Hon'ble Court in the case of *Union of India Vs. P.R. Nair, 2012 IndLaw DEL 4210*. It was also stated that after the premises had been vacated by the tenant on 08.04.2002, the same have been used by the Petitioner for residential purposes. The said property is self-occupied. It was also stated that all the payments of conversion of the property from leasehold to freehold have been made.

20. It is further stated in the writ petition that it was only through subsequent communications dated May 22, 2015, June 18, 2015, September 17, 2015 and January 11, 2016 from the Dy. L&DO, that the petitioner was provided with a copy of the letter dated February 29, 2012, by the Embassy of Lebanon, wherein it was stated that the subject premises had been used exclusively for Embassy offices and Chancery purposes. Thereafter, the petitioner received a demand letter/notice dated February 23, 2015, from the Dy. L&DO, raising a demand of Rs.2,72,28,392/-, on account of revised ground rent, interest charges on previously raised damage charges, alleged misuse charges, and penalty charges thereon.

21. It is averred that the petitioner made several representations before the respondents, vide letters dated March 19, 2015, August 15, 2015, December 04, 2015, January 13, 2016, February 17, 2016, March 10, 2016, March 24,

2016, and March 30, 2016, wherein, by relying on relevant documents, she reiterated her earlier stand that;

- a. Only a part of the subject premises was being used by the tenant for office purposes;
- b. The premises was used for both residential as well as for office purposes;
- c. The perpetual lease deed in favour of the petitioner was with respect to the whole property being No. 10, Sardar Patel Marg; and,
- d. Apart from the ground floor, all other portions of the property were used for purely residential purposes, also being self-occupied.

22. It is further stated that vide legal notice dated January 30, 2016, issued by the petitioner to the Govt. Of Lebanon/Embassy of Lebanon, the petitioner requested the Embassy to issue a letter of confirmation in terms of Clause (i) of the Office Order No. 29/83, that the subject premises was used for residential, as well as office/cultural purposes for the duration of February 29, 1968 to April 08, 2002, during their tenancy. In the alternative, the Embassy was asked to deposit the entire amount, as demanded, along with penalty charges, directly with the L&DO.

23. It is stated that subsequent to receipt of the impugned communication dated May 04, 2016, by the Dy. L&DO, wherein the petitioner's representations had been rejected and the petitioner was called upon to

deposit the demanded amount, failing which her application for conversion was to be rejected, the petitioner wrote back, vide her letter dated May 09, 2016, requesting for reconsideration of the impugned demand of Rs. 2,72,28,392/-, drawing reference to the peculiar facts and circumstances of the case. It is stated that the said letter dated May 09, 2016 has not been responded to, till date.

24. The respondent nos. 1 and 2 have jointly filed their counter-affidavit, wherein it is their stand that the subject property was leased out to the petitioner vide lease deed executed on July 23, 1962. The premises was inspected on October 07, 1977 and it was reported that the ground floor was occupied by the Embassy of Lebanon. The petitioner was therefore requested by the respondents vide letter dated January 06, 1982 to intimate whether the premises was used as residence or office by the Embassy. It is stated that the Ambassador of Lebanon vide letter dated June 16, 1969 informed that the L&DO had confirmed that the premises did not attract levy of additional ground rent for change of purpose since only 22% of ground floor was used for chancery purposes. It is their case that this was nothing but a ploy to avoid the liability in terms of Para 2 (9) of sub-lease agreement. It is stated that the Ambassador vide letter dated May 06, 1968 informed the respondents that his chancery located in the subject premises had five rooms, all of which were used for cultural activities. Consequently, five rooms at the ground

floor were found to be misused and the area worked out to 82.7% of the total covered area of the ground floor.

25. It is stated that the premises was again inspected by the technical wing on August 10, 1983 and July 09, 1986 and it was reported that “*ground floor is occupied by Embassy of Lebanon being used as residence and office, first floor and barsati floor with the lessee for residence*”. The premises was further inspected on December 23, 1997 and it was again reported that the ground floor was occupied by the Embassy and was being used as office for its chancery and cultural affairs, which was objectionable.

26. As regards the petitioner’s suit for possession, arrears of rent and mesne profits against the Embassy of Lebanon being Suit No. 376/1996, it is stated that both, the plaintiff, being the petitioner herein and the defendant being the Govt. of Lebanon admitted in the pleadings that the ground floor of the subject premises was being used as an office of the Embassy / Chancery.

27. It is stated that a conversion application was received from the petitioner on April 18, 2011 and as per policy of conversion inspection was carried out on June 17, 2011. During the said inspection certain unauthorized construction was found and breach notice was issued on September 18, 2012. The file was further referred to Technical Section to work out the charges for misuse and damages. It is in these circumstances, the demand letter dated

July 26-30, 2012 for a sum of Rs. 3,99,71,655/- for temporary regularization of misuse and damage was issued to the petitioner.

28. The respondents further stated that in response to the aforesaid demand letter the petitioner made a representation which was replied to vide letter dated November 21, 2013 in which it was stated that as per office order no. 29/83 *“where L&DO leased premises is used clearly for office purposes as such by an Embassy / Mission the normal misuse charges according to the formula adopted by the Government / L&DO will be levied on the lessee”*.

The matter was again examined in light of information supplied by Ministry of External Affairs vide letter dated March 30, 2012 wherein it was stated that only the ground floor of the subject property was leased out to the Embassy from February 29, 1968 to April 08, 2002 for office purpose only. Consequently, the respondents issued a revised demand vide letter dated February 23, 2015 in terms of Clause (ii) of office order no. 29 /83.

29. It is their case that following receipt of the demand letter dated February 23, 2015 the petitioner through her representations had sought time. She was given an appointment during which she through her son-in-law was heard and also reminded / requested to make payment of demanded amount along with 10% interest per annum failing which her application for conversion would be rejected. Consequently, the petitioner sought few months time to get clarity from the Ministry of External Affairs, which

request was acceded to by the respondents. It was vide letter dated September 17, 2015, that the L&DO granted the petitioner a final opportunity to pay all government dues within a period of three months and to sort out the matter with MEA failing which her conversion application was to be rejected and action under the terms of the lease deed was to be initiated.

30. It is their case that vide letter dated January 11, 2016, the petitioner was requested to meet the Dy. L&DO along with documentary proof showing her effort to resolve the matter with MEA and the Lebanese Embassy / Government. The petitioner made a representation only on March 30, 2016 to the Secretary (UD) wherein she raised a new issue regarding interpretation of letter no. J-13024/1/83-LD(DI) dated September 02, 1983 from the then Ministry of Works and Housing to the Land and Development Office. The said representation was examined in light of two different situations contemplated by the said policy letter namely:-

(i) *where L&DO leased premises are being used both for residential and office purpose by an Embassy / Mission no notice will be taken of the misuse and no misuse charges etc. would be levied.*

(ii) *where L&DO leased premises is used clearly for office purposes as such by an Embassy / Mission the normal misuse charges according to the formula adopted by the Government / L&DO will be levied on the Lessee.*

31. It is stated that the petitioner made interpretation of the above policy to the effect that in both the cases "*L&DO leased premises*" would mean the whole plot of land and not just a part of the built up area of the property and that in her case there was no scope for the entire property to be used for office purpose by a foreign mission. The petitioner had further pointed out that only a part of the built up area had been hired by the Mission, hence the respondent should not apply Clause (ii) as noted above since the petitioner herself was using the first floor of the building as her own residence and it was only the ground floor that was being used by the Mission. The petitioner therefore sought application of Para-(i) to her case.

32. The respondent stated that vide letter dated My 4, 2016, the petitioner was informed that the interpretation sought to be given by her was not found correct and that it had been decided that the demand of Rs. 2,72,38,392/- raised vide letter dated February 23, 2015 with respect to her property would sustain. She was therefore requested to make the payment of the said demand along with interest @ 10% per annum within 15 days. It is their case that the impugned demand letter cannot be challenged by way of a writ petition and that the petitioner should have filed a suit for the same.

33. It is the respondent's case that the ground floor of the subject property, having been used as office for its Chancery and its cultural affairs by the Embassy of Lebanon, would attract Clause (ii) of the Office Order No. 29/83

and that the petitioner is liable to pay normal misused charges according to the formula adopted by the Government / L&DO.

SUBMISSIONS

34. Mr. Rajesh Yadav, learned counsel for the petitioner stated that in terms of various letters issued by officials of the respondents and the Ministry of External Affairs, it is clear that the subject premises was being used for residential as well as office purposes by the Embassy of Lebanon. He stated that only a part of the ground floor and not the entire ground floor was used by the Embassy for office / chancery purposes / cultural activities and the remaining part was used for residential purposes, however, the first and second floor along with three servant quarters and one garage have always been in possession of the petitioner and were used for residential purposes only. He would also draw my attention to the counter affidavit filed by the respondents wherein reference is made to inspection reports of the subject premises dated August 10, 1983 and July 09, 1986 reporting that the ground floor was being used as residence and office and that the first floor and the barsati floor were with the lessee / petitioner and were used for residential purposes. He, by referring to office order No. 29/83, stated that under Clause (i) no misuse charges are liable to be paid since the premises were used by the Lebanese Embassy for both office / cultural and residential use. Clause (i) of the said office order is based on the provisions of Master Plan Delhi

(MPD) according to which the residential use of a premises by a foreign mission includes cultural and recreational activities. It is his submission that clause (ii) of the said office order does not apply to the present case and would apply only when the subject premises are used exclusively for office purposes.

35. It is his case that even in the alternative if for any reason Clause (i) of office order No.29/83 does not apply to the case of the petitioner, the respondents should have applied clause (8) of the office order No.23/76 dated March 31, 1976 and levied a token penalty at 1% of the misuse charges since the petitioner was successful in evicting the tenant. In this regard, he relied on the judgment of a Division Bench of this Court in ***UOI vs. Jor Bagh Association, 188 (2012) DLT 25***, wherein this Court by referring to office order No.23/76 held that the said office order brings transparency to the manner in which the damages for condoning the breach of a condition of lease / grant shall be determined. It is further held that where the lessee is not at fault and it is the tenant, who commits the offending act and the lessee resort to all means to either evict the tenant or to compel the tenant to remedy the breach, it would be unjust on the part of the State as the lessor to penalize the lessee for the same. It is his submission that such action by the State against the lessee would violate the jurisprudential norm that no person can be penalized for no fault of his own and that constructive liability cannot be

fastened except when law expressly so fastens. He also relied upon the judgment of this Court in ***UOI vs. P.R. Nair (supra)*** decided on July 27, 2012, to submit that where the lessee files a suit for eviction against tenant misusing the premises and is successful in such eviction the liability would only be 1% of the misuse charges otherwise payable in accordance with the formula laid down in office order No.23/76. It is further submitted that clause 7 of the said office order also saves the petitioner from levy of any misuse charges since her rental income was less than the misuse charges, claimed by the respondents. He stated that the tenant was inducted in the ground floor of the subject premises w.e.f. March 01, 1968 at the monthly rent of Rs. 2,200/- and the last paid rent was Rs. 6500/-. The total rent received by the petitioner from February 29, 1968 till April 08, 2002 was approximately Rs.17,04,400/-. In this regard, he relied on the judgment of this Court in ***Union of India vs. Satish Kumar Mehta 2017 (11) SCC 714*** and ***2012 SCC OnLine DEL 4052*** wherein it has been held that in terms of clause 7, of the office order No.23/76, the penalty cannot be more than the income derived from the premises by the lessee, this on the analogy that Order No. 23/76 is a general office order.

36. Mr. Yadav further stated that under MPD 1962, Union Territory of Delhi was divided into 24 use zones. Zones 1 to 9 were designated as residential zones wherein the uses permitted among others were social and

cultural institutions and neighbourhood uses including clubs and other semi public recreational uses etc. It is his submission that MPD 1962 therefore permitted usage of the subject premises being cultural, semi-public recreational uses and accessory uses clearly incidental to residential use in residential zones. The usage of the ground floor by the Government of Lebanon for residential and cultural use as alleged was therefore permitted under MPD 1962. He would further submit that even under MPD 1990 “foreign mission”, under clause 006 of the Development Code Schedule, is defined as a premises for the office and other uses of a Foreign mission. He states that as regards “residential” use clause 4.02 provided for usage as a foreign mission. The permission of use of premises for foreign mission included housing, recreational club, cultural and informational centre.

37. It is further stated that clause 4 of the development code and clause 8(b) of MPD-2021 refers to residential use zones wherein one of the permitted usage is “foreign mission”. It is therefore, his submission that it has been consistent policy of the Government as reflected in successive Master Plans that the use of a premises by a foreign mission for cultural and recreational activities is a “residential use”. He would rely *on (2012) 2 SCC 232 R.K. Mittal & Others vs. State of Uttar Pradesh and Others* and *213 (2014) DLT 14 (DB) M.G. Ramachandran & Anr. Vs. Municipal Corporation of Delhi & Ors.* to state that Master Plan has legal sanctity and

binding effect in law and that the statutory authorities are bound to adhere to it strictly.

38. Rebutting the respondents argument that the office order No.23/76 had been superseded by the office order No. 29/83 Mr. Yadav would submit that Division Benches of this Court in ***Jor Bag Association (supra)*** and ***P.R. Nair (supra)*** considered the office order 23/76 and it was nowhere mentioned that the same had been withdrawn or superseded. He would also refer to the office order No.8/1999 dated April 06, 1999 relied upon by the respondents to state that the said office order only issued clarification in respect of the office order No.23/76 and nowhere does it mention that the same had been withdrawn or superseded. It is his submission that the said office order No.8/1999 is in fact an amendment and not a clarification wherein the original clause 8 had been substantially altered.

39. It was his submission that since the said office order No.8/1999 introduced a new clause with effective changes which is totally different and in conflict with the original clause 8 the same cannot have retrospective effect but must be enforced prospectively i.e. for the period after April 06, 1999. It is therefore his case that even if the petitioner is not entitled to the benefit of clause (i) of the office order No.29/83 then in the alternative the petitioner would be entitled to benefit of the unamended clause 8 of the office order No.23/76 from September 08, 1983 till April 06, 1999 and for that

period she would be liable to pay only 1% of the misuse charges and thereafter from April 06, 1999 till vacation of the premises by the tenant on April 08, 2002 the petitioner would be liable to in terms of office order No.8/1999. Mr. Yadav relied upon the judgment of the Supreme Court in the case of *Union of India and Ors. vs. N.R. Parmar and Ors., 2012 (13) SCC 340* to contend that one of the essential ingredients of a clarification is that it clarifies an unclear, doubtful, inexplicit or ambiguous aspect of an instrument. A clarification cannot be in conflict with the instrument sought to be clarified. A clarification does not introduce anything new to the already existing position. So, office order No.8/99 is not a clarification but an amendment and cannot have retrospective effect.

40. It is the case of the petitioner that after the notice dated April 16, 1987, the petitioner obtained permission under Section 86 CPC from the Ministry of Foreign Affairs. She terminated the tenancy of the tenant and filed suit for possession. First suit was withdrawn due to some technical defect with liberty to file a fresh one and ultimately after the Special Leave Petition of the tenant was dismissed by the Hon'ble Supreme Court the tenant handed over possession of the premises on April 08, 2002. It is, thus, clear that the petitioner was successful in eviction of the tenant after the notice of misuse dated April 16, 1987 was issued by the respondents.

41. It was his submission that the petitioner received the last correspondence from the Ambassador of Lebanon annexing the letter of Chief of Protocol dated June 16, 1969 and there was no further notice by the respondents till April 16, 1987. It was his submission that the respondents raised the impugned demand only on July 26, 2012 after the petitioner had deposited a sum of Rs. 45,18,000/- for conversion of the property from leasehold to free hold. He stated that the impugned demand by the respondents was raised on February 23, 2015, for misuse charges from September 08, 1983 to April 07, 2002. Therefore, there was complete inaction by the respondents in all these years. The impugned demand by the respondents after 25 years of notice of misuse dated April 16, 1987 is barred by limitation. He also submitted that the letter dated February 29, 2012 issued by the Embassy of Lebanon cannot be held against the petitioner in view of three inspection reports of the respondents and the correspondence / letter exchanged between the ambassador L&DO and Ministry of External Affairs where it was confirmed that the premises do not attract levy of any additional charges. In conclusion he seeks the reliefs as prayed for in the writ petition.

42. Ms. Monika Arora, learned Counsel for the respondents justified the impugned action, as according to her, the same was taken as there was

violation of the condition of the perpetual lease executed with regard to the property, 10 Sardar Patel Marg between the parties. It was her submission that in the year 1968 itself on being noticed that there are breaches of the provisions of the perpetual lease, as the property was being used for other than residential purposes, show cause notice was issued to the petitioner. She stated that as the Embassy of Lebanon had represented to the respondents that it was using less than 25% of the said premises for Consular purposes, no extra charges should entail and that the Ministry of External Affairs also having informed the respondents that the Embassy was using 22% of the said premises for the purpose other than residence, the said representations were accepted on face value, without any attempt to verify their correctness by physical inspection of the premises. She admitted issuance of office order No. 23/76 by erstwhile Ministry of Works and Housing, Govt. of India wherein computation of charges in case of breaches of the perpetual lease has been specified, wherein it is stated that in case lessee / ex-lessee files suit for eviction against defaulting tenants on receipt of notice for misuse and are successful in evicting the tenants, 1% of the charges will be recovered as token penalty in consultation with Ministry of Works and Housing and Finance. According to her the office order is not applicable to the petitioner as the petitioner had not initiated the eviction of its tenant on account of the breach notice, moreover in the eviction proceedings, the respondents were

never made parties to the proceedings and the petitioner has not pleaded that due to the breach in clauses of perpetual lease the petitioner is assailing the eviction petition. She also referred to inspection notice dated September 7, 1977 issued to the petitioner, wherein it was stated that the ground floor was occupied by the Embassy of Lebanon, however, the property could not be inspected in view of office order No. 23/76 dated March 31, 1976, wherein it was stated that no inspection of the premises occupied by the foreign mission shall be carried out. Similarly, another notice dated January 24, 1979 was issued for inspection. It appears the same was also not carried out. She referred to office order No. 17/82 which stipulated that the office will not inspect any of the properties internally, it may however ascertain from name boards and sign plates outside the properties as to whether they are being used as residence or office. She had also referred office order No. 29/83 issued regarding the levy of misuse charges on leased residential properties owned / hired by foreign missions in Delhi and also about the inspections carried out on August 10, 1983 and July 9, 1986, to contend that it has come on record that the ground floor was occupied by the Embassy of Lebanon and was being used as offices of its Chancery and Cultural Affairs mostly dealing with the Lebanese Students in India. According to her, on similar inspection on March 20, 1997, it was found that the Ground Floor was occupied by the Embassy of Lebanon and was being used as offices of its Chancery and

Cultural Affairs. During her submissions, Ms. Arora has laid much stress on the letter of the Embassy of Lebanon dated February 29, 2012 to state that the Embassy has clarified that between the period February 29, 1968 to April 8, 2002, the property was leased for the Embassy Offices and Chancery purposes exclusively as the Ambassador residence was always in a different location as it is till now. In fact, pursuant there to, even the Ministry of External Affairs vide its letter dated March 30, 2012, addressed to the respondents stated that the Embassy vide their note dated February 29, 2012, clarified that during February 29, 1968 to April 8, 2002, the ground floor of the property was leased by itself for office purposes only. According to her, this letter of the Embassy has put to rest the issue that the Embassy had never used the property for residential purposes, which means the Embassy having used the same for offices purposes had changed the usage of the property resulting in misuse charges. She also stated that the office order dated September 08, 1983 stipulates conditions for exemption / levy of misuse charges as under:-

(i) where L&DO leased premises are being used both for residential and office purpose by an Embassy / Mission no notice will be taken of the misuse and no misuse charges, etc. would be levied;

(ii) where L&DO leased premises is used clearly for office purposes as such by an Embassy / Mission the normal misuse charges according to the formula adopted by the Govt./L&DO will be levied on the lessee. The procedure to be followed for inspection will be as laid down in the L&DO office order No.17/1982 dated July 26, 1982.

43. She would submit that the petitioner had through her son-in-law made a representation before the respondents as regards the demanded amount and sought a personal hearing to explain the matter. She would draw my attention to the respondents letter dated June 18, 2015 addressed to the petitioner wherein pursuant to petitioner's representation three months time was granted within which she was to make the demanded payment and sort out the matter with the Ministry of External Affairs. She stated that several reminders were also issued to the petitioner requesting her to make the payment of the demanded amount along with interest of 10% per annum failing which, her application for conversion was to be rejected.

44. It was her submission that it was only on February 17, 2016 that the petitioner for the very first time raised the issue of implementation of office order No.29/83 in terms of clause (i). She submitted, even though the petitioner was served with a notice of misuse charges in the year 1968 itself she did not urge the implementation of the aforesaid order till 2016.

CONCLUSION:-

45. Having considered the submissions made by the learned counsel for the parties and perused the record of the case, at the outset I shall deal with the submission made by Mr. Rajesh Yadav that the impugned demand of the respondents is barred by limitation as the claim was raised more than 25 years after the notice of alleged misuse.

46. The plea of Mr. Yadav was that the last correspondence was received by the petitioner from the Ambassador of Lebanon annexing therewith the letter of the Chief of Protocol dated June 16, 1969. There was no further notice by the respondents till April, 1987. Even between 1987 till 2002 there was no action by the respondents. The respondents raised the demand only after the petitioner had deposited an amount of Rs.45,18,000/- for conversion of property from leasehold to freehold. The impugned demand was raised on February 23, 2015 for the misuse charges from September 8, 1983 till April 7, 2002. The impugned demand after 25 years of notice of misuse dated April 16, 1987, is barred by limitation.

47. At the outset, it may be stated that the present petition has been filed by the petitioner and not by the respondents claiming the amount. In other words, the plea of limitation is applicable if a claim is made by respondents that too in a court of law. The plea of Mr. Yadav appears to be more of delay of 25 years on part of the respondents to raise the impugned demand after the

issuance of notice in the year 1987. No doubt, a demand of this nature must be raised at the earliest. The respondents have not brought to the notice of this Court the reasons for delay but at the same time Mr. Yadav has not brought to my notice any rule or instruction, stipulating a time period within which such a demand can be made. It appears, the demand got triggered, after the respondents received the communication from the Embassy of Lebanon dated February 29, 2012. In any case, the respondents being Central Government, the limitation for making a demand / claim is 30 years in terms of Article 112 of the Limitation Act. Further, the bar of limitation prevents a person from suing to recover the amount due. It does not mean that the amount ceases to be due. The right remains unaffected. Only the remedy is barred. If the respondents compel the lessee to pay the dues before the application for conversion is affected, the same is justified. It has been held so in *Union of India & Anr. vs Jor Bagh Association (supra)* on a similar plea advanced in that case:-

“76. The argument that where the demands were created but not enforced, and the period of limitation to recover the same has expired, to permit the lessor to recover the same as a condition for conversion would breach the well recognized jurisprudential principle that what cannot be done directly cannot be done indirectly, as observed and applied in the decision reported as 166 (2010) DLT 659

(SC)=I (2010) SLT 372=JT 2009 (10) SC 645, Subhash Chandra & Anr. v. Delhi Subordinate Services Selection Board & Ors., has no application on the subject at hand, for the reason it is settled law that where the bar of limitation prevents a person from suing to recover the amount due, it does not mean that the amount ceases to be due. The right remains unaffected. Only the remedy is barred. If the lessor has a demand with respect to a property, before the lessor is compelled to relinquish its title and convey free-hold tenure, the lessor would be permitted to insist that dues payable to it must be cleared.”

48. As far as the reliance placed by Mr. Rajesh Yadav on the judgment of the Supreme Court in the case of ***Delhi Development Authority vs. Ram Prakash (2011) 4 SCC 180***, is concerned, in the said case, the facts were the respondent along with his mother purchased a property No.7, Community Center, East of Kailash, New Delhi in the year 1969. Possession of the plot was taken in the year 1972 and pursuant to which lease deed was executed. In the year 1983 pursuant to a routine inspection by the DDA, it was noticed that the respondent was using the basement of the building for office purposes which is in contravention of the prescribed usage. A Show-Cause Notice was issued on the same day calling upon the respondent to show cause as to why action for cancellation of lease be not taken. No action was taken for a period of seven years, when on June 28, 1990, another Show-Cause

Notice was issued stating as to why the lease should not be determined for violation of clause II(13) of the lease deed on the ground that both the basement and mezzanine floor of the building were being misused as an office instead of storage. In response to the second Show-Cause Notice, a reply was filed by the respondent. As the reply was not found to be satisfactory, further Show-Cause Notices were issued to the respondent on September 03, 1990 and December 11, 1990 denying the allegation made against him. A further inspection was carried out on April 24, 1991 and a show cause notice was issued on May 08, 1991. Ultimately, the respondent vide his letter dated July 09, 1991 stated that the mezzanine floor was being used as office. In reply to the said letter written on behalf of the respondent, the DDA informed the respondent that as per architectural design, the mezzanine floor could be used only for storage and unless the misuse is stopped the lease would have to be determined. In response, on November 13, 1991, the respondent once again asserted that the mezzanine floor in the Community Centre was not being misused.

49. In the meanwhile, the wife of the respondent, died on April 23, 1994, as did Smt. Saraswati Devi, mother of the respondent on August 06, 1994. On May 20, 2004 the respondent applied to the DDA for mutation of the property in favour of the legal heirs of the deceased co-auction purchasers. In response thereto, the respondent was asked by a letter dated May 20, 2004 to

pay misuser charges and was called upon to clear the dues in respect thereof. Against the said demand, the respondent filed a writ petition in the year 2006 before this Court for quashing of demand of misuser charges amounting to Rs.1,78,85,001/-. The same was allowed by this Court on August 17, 2007. The DDA filed LPA No. 22/2008, which was dismissed on May 02, 2008. It may be stated here that the learned Single Judge in his conclusion held that the notice issued to the respondent was with regard to alleged misuse of the basement from July 30, 1983, the mezzanine floor from June 20, 1990, and the terrace from September 07, 1992 till January 13, 2003. Regarding basement, a show cause notice was issued to the respondent on August 08, 1983 and a reply was received from the respondent on August 10, 1983. No decision was taken by the DDA on the said Show-Cause notice. On the other hand, in June 1990, upon an alleged inspection by the DDA, another Show-Cause Notice was issued to the respondent on June 28, 1990, only in respect of the alleged misuse of the basement and the mezzanine floor. Despite a reply being sent, again no action was taken by the DDA except for issuing final notices to the respondent on September 03, 1990 and December 11, 1990, requiring him to stop violation of the conditions of the lease deed, failing which it would be terminated. The respondent sent a reply to the first final notice on November 05, 1990, but again no decision was taken on any of the two final notices which had been sent to the respondent. The Division

Bench on a question of limitation being raised in respect of the demand of misuser charges observed that there was no period of limitation, action has to be taken by the authorities within a reasonable period of time, but by no stretch of imagination, could it be said that action shall be taken after a lapse of almost 25 years. It held, the DDA had acted arbitrarily or at least unfairly in so far as the respondent is concerned.

50. The material on record in that case showed 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 was held that after issuing the Show-Cause Notices, the petitioner did not take any follow-up action. Instead, after a lapse of 25 years, the petitioner set up a claim on account of charges for the entire period. The Supreme Court held, it would be inequitable to allow the petitioner which had sat over the matter to take advantage of its inaction in claiming misuser charges. The said judgment has no applicability, inasmuch as unlike the case in hand, the petitioner / appellant before the Supreme Court was DDA and the DDA not being Central Government, even if it had initiated the claim from the date when misuser was found, i.e., 1983, the limitation would have expired in 1986. Thereafter, even if, the DDA could have made a claim in any Court of law, the same would have been dismissed, whereas in the case in hand, the notice was effectively issued in 1987 and

demand made in the year 2012 and later in 2015 and the respondents being Central Government could have made a claim within 30 years by approaching a Civil Court in terms of Article 112 of the Limitation Act. In any case, the Division Bench in *Union of India & Anr. Vs Jor Bagh Association (Regd.) & Ors. (supra)*, has in similar facts made the position of law clear.

51. The judgment as cited by Mr. Yadav is distinguishable. In fact, Mr. Yadav had not pressed this issue seriously during arguments.

WHETHER THE PREMISES WAS BEING USED FOR RESIDENTIAL AND OFFICE PURPOSES OR FOR OFFICE PURPOSES ONLY

52. It is Mr. Yadav's case that the premises was being used for residential / Chancery and cultural activities. There is no dispute that the perpetual lease executed between the L&DO and the petitioner stipulates the premises has to be used for residential purpose. Mr. Yadav had relied upon the letter of the Ministry of External Affairs dated June 16, 1969 to contend that a reference is made in the said letter about the Land & Development Officer having confirmed that the premises do not attract levy of additional ground rent for change of purpose since only 22% of the ground floor was being used for Chancery. Mr. Yadav referred to counter affidavit to state, the inspections carried out on August 10, 1983, and July 09, 1986 stated that ground floor is occupied by the Embassy of Lebanon and being used as residence and office,

first floor and barsati floor with lessee and being used for residence. He also referred to inspection report of 1997 to state that none of the three inspections reports mentioned that the said premises was being used exclusively for office purpose. In substance, the plea of Mr. Yadav was that only a little portion of the property was being used for Chancery / cultural activities i.e. office purposes, but largely for residential purpose and as such the usage of the property has not changed. I am unable to agree with this submission for the simple reason that one of the earliest notices dated October 14, 1968 issued to the petitioner clearly stated that the ground floor was being used as office by Embassy of Lebanon. Even from the reports of inspection carried out on August 10, 1983 and July 09, 1986 (Annexure R-15), it is clear that the ground floor was occupied by the Embassy of Lebanon and was being used as office for its chancery and cultural affairs mostly dealing with Lebanese students in India. The report does not refer to usage for residence. Even a perusal of the Civil Suit handed over to the Court during the course of submissions, shows that the same was filed for possession, recovery of mesne profit and perpetual and permanent injunction by the petitioner herein, wherein one of the ground in unequivocal terms was that since inception of the tenancy, the Government of Lebanon used the tenanted premises as office of the Embassy of Lebanon in violation of expressed terms of perpetual lease deed. Even the inspection report of 1997 (Addl. documents of the

respondents) stated that the ground floor is occupied by Embassy and is being used as office for Chancery and cultural affairs. It is also seen that in one of the latest communications dated February 29, 2012, the Embassy itself in unequivocal terms had stated that for the period between February 29, 1968 to April 08, 2002, the property was leased to the Embassy for office and Chancery purpose exclusively, as the residence of the Ambassador was always in a different location, as it is till now. In fact, the letter is clinching upon the revelation that the place of residence of the Ambassador was at a different place. So, it necessarily follows that the property, which was at Sardar Patel Marg was not used for residence. I must say that the reliance placed by Mr. Yadav on the communications of Ministry of External Affairs from 1969 (pages 121 & 130), that the area utilized is only 22% is misplaced. In fact the letter of L&DO dated March 25, 1969 is relevant and the same reads as under:

“The Ambassador informed this office vide letter No.3211/3 dated 6-5-68 that his Chancery located in the premises had five rooms all of which were used for cultural activities. There are five rooms on the ground floor which were found to be misused and the area work out to 82.7% of the total covered area of the ground floor. It is not understood how the Embassy has changed their earlier stand and have now stated in note No.20/1/3/2 dated 17-1-69 that the area was only 22% of the ground floor. The Ministry of External

Affairs may like to reconsider the matter in the light of the facts stated above.”

53. It appears the position that was represented by the Embassy was not correct nor was there any means to ascertain the position through physical verification in view of order of 1982. Ms. Arora is right in stating that the representation of the Embassy that it was using 22% of the property for the purpose other than residence was accepted on the face value for want of any attempt to verify the correctness by physical inspections of the premises would be taken as amiss. It must be held that, the premises in question was being used for office purposes only. Insofar as the plea taken by Mr. Yadav, that the phrase “*L&DO leased premises*” would mean the whole plot of land and not just a part of the built up area of the property in question, is concerned, the same is without merit.

APPLICABILITY OF CIRCULAR DATED MARCH 31, 1976 OR SEPTEMBER 08, 1983

54. It is the case of the petitioner that clause (i) of circular dated September 08, 1983 stipulates if the premises is being used both for residential and office purpose by any Embassy / Mission, no notice will be taken of the misuse and no misuse charges etc would be levied. The aforesaid argument of Mr. Yadav proceeds on a premise that the premises is being used for residential and office purpose by an Embassy / Mission. In view of my aforesaid finding in paras 52-53 above, clause (i) has no applicability. The

misuser charges in this case have to be regulated by clause (ii) of circular No. 29/83 dated September 08, 1983, which reads as under:-

“Whereas L&DO leased premises is used clearly for office purposes as such by an Embassy / Mission, the normal misuse charges according to the formula adopted by the Government / L&DO will be levied on the lessee. The procedure to be followed for inspection will be as laid down in the L&DO Office Order No. 17-82 dated 26.07.1982.”

55. In so far as plea of Mr. Yadav, without admitting that Clause (i) of the Office Order No. 29/83 does not apply to the case of the petitioner, that the petitioner is entitled to the benefit of clause 8 of the Office Order No. 23/76 dated March 31, 1976 being a general order is concerned, firstly the 1976 Office Order is a general order, which held the field till the issuance of the Office Order No. 29/83, which specifically relates to premises which are leased out to Foreign Missions. After the issuance of Office Order No. 29/83, the misuse charges are regulated (and ought to be) thereunder, being a specific order and not under order 23/1976 as stated by Mr. Yadav, on the principle of law that when general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origin in the latin maxim of *generalia specialibus non derogant*, i.e., general law yields to special law should they operate in the same field, on

same subject (*Ref. Commercial Tax Officer, Rajasthan v. Binani Cements Ltd. and Ors., Civil Appeal No. 336 of 2003*). So it follows, neither clause (7) nor clause (8), which I reproduce below, of the Office Order No. 23/76 is applicable to the case in hand.

“7. *In cases where the charges on account of change in use are found, beyond any doubt, to be more than the income of the lessee from the leased premises the charges will be reduced suitably according to the circumstances of each case in consultation with Ministry of Works and Housing and Finance. While doing so, the reasons for the inability on the part of the lessee to increase the income from the leased premises will, no doubt, have to be fully considered.*

8. *In case where the lessee / ex-lessee files suit for eviction against defaulting tenants on receipt of our notice for misuse and are successful in evicting such tenants one percent of the charges will be recovered as token penalty in consultation with the Ministry of Works & Housing and Finance.”*

56. Even otherwise, clause (7) of the order No. 23/76 shall not be automatically applicable as the same presupposes reduction in charges in accordance with the circumstances of each case in consultation with Ministry of Works and Housing and Finance and while doing so, the reasons for the inability on the part of the lessee to increase the income shall be gone into. In so far as clause (8) is concerned, the Supreme Court in *UOI v. Satish Kumar Mehta (supra)* has not appreciated the argument advanced by the counsel for

Mr. Mehta that in terms of the said order, i.e., 23/76 the misuser charges cannot exceed the rent the respondent had already received.

57. The plea of Mr. Yadav, by relying on the provisions of MPD, 1962, 1990 and 2021, that social and cultural Institutions; Foreign Missions were / are permitted in residential zones, is also without merit. The said argument overlooks the permitted use of the property in terms of perpetual lease executed between the parties herein. In fact, this submission of Mr. Yadav is covered against the petitioner, by the Judgment of the Supreme Court in the case of **UOI v. Dev Raj Gupta (supra)** wherein in Para 11, the Supreme Court held as under: -

“11. The High Court is further not right in holding that there was an automatic or a statutory conversion of the user of the land because in the Master Plan the land in question fell in the area reserved for commercial use. The High Court failed to appreciate that the change of user of the land permitted by the Plan was only enabling in nature. It lifted 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 the user can be made contrary to the agreement even if the Plan permits such user. The Plan helps the parties to change the user, if the parties mutually agree to do so. It does not permit the occupant to change the user unilaterally. It is not, therefore, correct to say that no permission of the landlord was needed to change the user of the land.”

58. As far as the reliance placed by Mr. Yadav on the judgment of the Supreme Court in **R.K. Mittal (supra)** and this Court in **M.G. Ramachandran**

& Anr. (supra) to contend that the Master Plan has legal sanctity is concerned, there is no dispute on the said proposition but the same has no applicability to the facts of this case, more so, in view of the judgment of the Supreme Court in **UOI v. Dev Raj Gupta (supra)**.

59. Insofar as the judgment in the case of **Union of India & Ors. vs. Jor Bag Association (supra)** as relied upon by Mr. Yadav to contend that, the petitioner being not at fault but the tenant who committed the offending act, she should not be punished, is concerned, the said plea is without any merit as the High Court in para 74 of the judgment has clearly stated whether the lessee or his tenant are at fault is a factual dispute to be decided on the basis of pleadings in each case. That apart, from the following observation of the Division Bench in paras 77 and 78, it is clear that the power vested in the lessor (i.e the respondents in this case) to control misuse and unauthorized construction is in public interest and has to be upheld in its widest amplitude, and the lessor is within its power to insist on misuser charges.

“xxx

xxx

xxx

77. *The power vested in the lessor to control misuse and unauthorized construction is in public interest and has to be upheld in its widest amplitude. Besides, if a person takes on lease a parcel of land to construct a residential building thereon and use the same for residence, he pays to the lessor a premium and a rent commensurate with the use.*

If this person is permitted to use the property for a commercial or an industrial purpose, it would amount to cheating the revenue and the fellow citizens who could have well done so.

78. *We hold that it would be perfectly reasonable for the State, acting as the lessor, to insist that misuse charges and / or damages on account of unauthorized constructions are paid before the lessor is compelled to convert the lease-hold tenure to a free-hold tenure.”*

60. If the petitioner is aggrieved by the acts of the Embassy it is for the petitioner to seek such remedy against the Embassy as is available to her in accordance with law.

61. Insofar as the amount demanded by the respondents is concerned, Mr. Yadav has drawn my attention to page 70 of the paper book to contend that the dispute is primarily with regard to the amounts at serial No.3 and 6 to 12 which are under the head, *misuse charges and 1/10 penalty on misuse charges*. No submission has been made by Mr. Yadav disputing the said heads or the quantum of the misuse charges / penalty. If that be so, in view of my above conclusion that there was a misuse of the premises and the power exists with the respondents to claim misuse charges, the demand made by the respondents in terms of the impugned communication(s) is justified. There is no merit in the petition, the same is dismissed.

CM No. 20973/2016 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

NOVEMBER 14, 2018/akyljg

