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

+ **W.P.(C) 7570/2017 & CM No. 31262/2017**

M/S ANANTRAJ AGENCIES PVT LTD

..... Petitioner

Through: Mr Harish Malhotra, Sr. Advocate
with Mr Arun Monga, Mr Saket Sikri
and Mr Suryajyoti Singh Paul,
Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Ajay Verma & Mr. Vaibhav
Agnihotri, Advocates for DDA.
Mr. A.P. Sahay (CGSC) with Ms. J.
Priyadarshi, Advocates for
UOI/respondent.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.02.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the communications dated 08.06.2017, 17.03.2017 and 07.11.2016 issued by respondent no.2 (Delhi Development Authority – hereafter ‘DDA’) rejecting the representations made by the petitioner for restoration of lease in respect of the property bearing No. E-2, Jhandewalan, E-Scheme, New Delhi-110055 (hereafter ‘the said property’) and for conversion of the said property from leasehold to free hold, in favour of the petitioner.

2. The controversy involved in the present petition relates to the

petitioner's claim for extension of lease in respect of the said property, which was terminated by the DDA. The petitioner further claims that notwithstanding the termination of the lease, it is entitled to restoration of the same and further conversion of the said property from leasehold to freehold.

3. The DDA has denied the petitioner's request, as according to them the matter in controversy stood finally settled by an order dated 12.04.2016 passed by the Supreme Court in Civil Appeal No. 3783/2016 (connected with SLP (C) No. 6978/2012).

4. On 11.08.1948, the said property (then a vacant plot admeasuring 4,840 sq. yards) was allotted by erstwhile Delhi Improvement Trust to late Sh Balraj Virmani (since deceased) on lease hold basis for a period of 20 years. The lease deed for the said period was executed in favour of late Sh Balraj Virmani (hereafter 'the original lessee') on 06.01.1951. It is claimed that on 23.02.1967 – that is, before the expiry of lease deed – the original lessee sent a letter addressed to DDA exercising his option to renew the lease. Admittedly, the said lease was not renewed and by an order dated 01.09.1972, the DDA issued a notice unequivocally stating that it had decided not to renew the lease. Further, the DDA directed the original lessee to hand over possession of the said property.

5. Aggrieved by the said order dated 01.09.1972, the original lessee filed a suit (suit bearing no. 47/1975 captioned "*Balraj Virmani v. DDA*") for perpetual injunction before the Senior Sub Judge, Delhi, *inter alia*, impugning the DDA's order/notice dated 01.09.1972.

6. It is claimed that while the aforesaid suit was pending, the petitioner

entered into an agreement dated 15.09.1980 with the original lessee for redevelopment of the said property.

7. The aforementioned Civil Suit (Suit No. 47/1975) was decreed in favour of the original lessee and the order/notice dated 01.09.1972 issued by the DDA was held to be arbitrary, illegal and without jurisdiction.

8. The DDA appealed against the aforesaid decision before the District Judge (in RCA No. 75/1982 captioned “*Delhi Development Authority v. Balraj Virmani*”). The said appeal was dismissed by the District Judge by an order dated 29.09.1982.

9. Aggrieved by the same, the DDA preferred a second appeal before this Court (*DDA v. Balraj Virmani : RSA No. 6/1983*).

10. It is also relevant to state that there were certain, *inter se*, disputes between the original lessee and the petitioner, which led to filing of a civil suit before this Court being Civil Suit No. 601/1984 Captioned “*Sh Balraj Virmani v. M/s Anantraj Agencies Pvt. Ltd.*”. The said suit was decreed by an order dated 22.07.1988 in terms of a compromise arrived at between the petitioner and the original lessee. In terms of that compromise, it was *inter alia* agreed that the said property would be sold by the original lessee to the petitioner (the defendant therein) for a consideration of ₹45 lakhs together with the leasehold rights. The original lessee expired on 16.10.2006, while the second appeal (RSA No. 6/1983) was still pending consideration before this Court.

11. The second appeal preferred by the DDA (RSA No. 6/1983) was dismissed by this Court on 31.05.2011.

12. The DDA preferred an SLP (SLP (C) No. 6978/2012 captioned “*DDA v. M/s Anant Raj Agencies Pvt. Ltd.*”, which was later converted to C.A No. 3783/2016) against the judgment dated 31.05.2011 rendered by this Court in RSA No. 6/1983. The Supreme Court allowed the DDA’s appeal by a judgment dated 12.04.2016.

13. On 26.03.2004 – that is, while DDA’s second appeal (RSA No. 6/1983) was pending – the petitioner applied for conversion of the said property from leasehold to freehold and deposited a sum of ₹96,41,982/-. The petitioner also claims that the DDA recognized the petitioner as successor in interest of the original lessee and the petitioner’s application for being substituted in place of the original lessee in the proceedings pending before this Court (RSA No. 6/1983) was also allowed on 03.11.2009.

14. The aforesaid application for conversion made by the petitioner (being no. 001862 dated 26.03.2004) was not considered, and consequently the petitioner filed a writ petition being W.P. (C) 10015/2005 captioned “*M/s Anant Raj Agencies Pvt. Ltd. v. DDA*” which was disposed of by this Court by an order dated 19.07.2007.

15. It is important to note that in the aforementioned order dated 19.07.2007, this Court observed that “*as long as RSA No. 6 of 2013 is pending, the question of the validity of the lease itself will continue to remain undecided. There is no question of granting conversion if the cancellation of the lease is upheld*”. Accordingly, the Court disposed of the writ petition by directing that the petitioner’s request for conversion would be decided by the DDA within a period of eight weeks after disposal of RSA No. 6/1983.

16. It is relevant to mention that the abovementioned order dated 19.07.2007 (in W.P.(C) No. 10015/2005) was not carried in appeal. And, admittedly, the question whether the lease stood cancelled has been decided by the Supreme Court in C.A. No. 3783/2016 against the petitioner.

17. It is the petitioner's claim in this petition that it is entitled to restoration of lease and conversion of the property from leasehold to freehold on the basis of various policy circulars/office order dated 09.04.2008, 21.04.2011 and 01.01.2015 issued/notified by the DDA.

18. The petitioner claims that notwithstanding that the lease has been terminated, the petitioner would nonetheless be entitled for restoration of the lease and conversion of the said property from leasehold to freehold in its name on the basis of the aforesaid circulars.

19. It is relevant to note that the petitioner had also canvassed before the Supreme Court that it was entitled for conversion of the property in its name which was not accepted. The relevant extract of the judgment of the Supreme Court in CA 3783 of 2016, is set out below:-

“20. The learned senior counsel further submitted that the DDA has deliberately and intentionally suppressed and concealed material fact from this Court i.e., the policy of the DDA for conversion of the property from leasehold to freehold is under consideration and the same is clear from the communication dated 22.01.2008 sent by the DDA to the respondent. He further submitted that admittedly, the DDA has not refused the amount of Rs.96,41,982/- deposited by the respondent as conversion charges.

21 to 27

28. From the above discussion, it is clear that in the absence of renewal of lease, the status of the original lessee, in relation to

the property in question, is that of an unauthorised occupant as he had continued in occupation of the property in question as an 'unauthorized person' in terms of Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which reads as under:

“2(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of gratn or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

29. In the absence of renewal of lease after 10.8.1968, the pleadings of the original lessee that the DDA is estopped from taking the plea that there is no renewal of lease after having accepted the rent after 10.8.1968, in respect of property in question and after accepting certain sums in respect of the same, subsequently, for change of the property in question from leasehold to freehold are all irrelevant aspects for the reason that the same are contrary to the aforesaid provisions of the DD Act, the Nazul land Rules applicable to the fact situation and the terms and conditions of the lease deed. Further, it is clear from the contents of the termination notice dated 01.09.1972 served upon the original lessee by the DDA that it has not only refused to renew the lease of the property but also asked the original lessee to hand over the possession of the property in question within 30 days, which is absolutely in consonance with Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

30. Without examining the case in the proper perspective that the property in question being a Public Premises in terms of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and that after expiry of lease period the original lessee has become unauthorized occupant in terms of

Section 2(g) of the said Act in the light of relevant statutory provisions and rules referred to supra and law laid down by the Constitution Bench of this Court in the Case of *Ashoka Marketing Ltd. & Anr.* (supra), the concurrent findings of the courts below on the contentious issue is not only erroneous but also suffers from error in law and therefore, liable to be set aside.

31. The grant of perpetual injunction by the Trial Court in favour of original lessee, restraining the DDA from taking any action under the said termination notice dated 01.09.1972, on the ground that the termination notice dated 01.09.1972 being illegal, arbitrary and without jurisdiction and the affirmation of the same by both the first appellate court, i.e., by the learned ADJ and further by the High Court by its impugned judgment and order are not only erroneous but also suffers from error in law. Thus, Point no.1 is answered in favour of the appellant.

32. The High Court's order dated 03.11.2009 whereby the respondent was substituted in place of the original lessee on its application under Order 22 Rule 10 of CPC for the reason of execution of sale deed dated 14.10.1998 by the original lessee in favour of the respondent by entering into compromise between them in Suit No. 601 of 1984 is also bad in law. The sale of the property in question to give effect to the compromise decree in aforesaid suit is *void ab initio* in law for the reason that the original lessee, in the absence of renewal of lease in his favour himself had no right, title or interest, at the time of execution of sale deed, in respect of the property in question. It is well settled position of law that the person having no right, title or interest in the property cannot transfer the same by way of sale deed. Thus, in the instant case, the sale of the property in question by the original lessee in favour of the respondent is not a valid assignment of his right in respect of the same. For the aforesaid reasons, the sale deed is not binding on the DDA. The High Court has failed to appreciate this important factual and legal aspect of the case.

33. The contention urged by the learned senior counsel for the respondent that it has deposited a sum of Rs.96,41,982/- as

conversion charges of the property in question from leasehold to freehold right of the same is also of no relevance and lends no support to the respondent for the reason that in the absence of renewal of lease of the property by the DDA, the original lessee himself becomes an unauthorised occupant of the property in question. The deposition of conversion charges in respect of the same to be office of the DDA cannot help the respondent in claiming any right with respect to the property in question. The question whether such a procedure in respect of the public property is permissible in law or not is not required to be decided in this case. The instant case having peculiar facts and circumstances, namely, after 10.08.1968 the lease stands terminated by efflux of time, which is further evidently clear from the termination notice dated 01.09.1972 and thereafter, the original lessee becomes an unauthorised occupant in terms of Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) act, 1971 and consequently, not entitled to deal with the property in question in any manner. The very concept of conversion of leasehold rights to freehold rights is not applicable to the fact situation.

Answer to Point No.3

34. The original lessee has been in unauthorised occupation of the property in question for around 30 years (till he executed a sale deed in favour of the respondent) and the respondent has been illegally included in possession of the same, by the original lessee, who himself was in unauthorised possession of the property. For around 17 years the respondent has been enjoying the property in question without any right, title or interest. Thus, both are liable to pay the damages for unauthorised occupation and the DDA is empowered under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to claim damages from them. We record this finding in exercise of our appellate power in view of our finding and reasons assigned in this judgment holding that the concurrent finding is not only erroneous but also suffers from error in law in granting decree of permanent injunction in favour of the respondent who is not entitled in law for the same. There is a miscarriage of justice in granting the relief by

the courts below in favour of the respondent. Further, keeping in view the public interest involved in this case and particularly having regard to the peculiar facts and circumstances of the case we have to allow this appeal of the DDA. Since we have answered the points framed in this appeal in favour of the appellant-DDA, we further, direct the DDA to take possession of the property immediately without resorting to eviction proceedings, as the respondent has been in unauthorised possession of the property in question, by virtue of erroneous judgments passed by the courts below. The respondent has been unlawfully enjoying the public property which would amount to unlawful enrichment which is against the public interest.

35. For the aforesaid reasons this appeal is allowed, the impugned judgment and decree of the High Court affirming the judgments and decrees of the First Appellate Court and the Trial Court in RCA No. 75 of 1982 and OS No. 47 of 1975 respectively, is hereby set aside. Accordingly, we pass the following order:-

- A. The DDA is allowed to take possession of the property in question immediately and dispose of the same in accordance with the provisions of the DD Act read with the relevant Rules in favour of an eligible applicant by conducting public auction, if it intends to dispose of the property.
- B. The DDA is entitled for the recovery damages from both, the original lessee or his legal heirs and the respondent, for the period of their unauthorised occupation of the property at the market rate prevalent in the area.
- C. The amount which has been deposited, with the DDA, by the respondent as conversion charges is to be adjusted towards the damages that may be determined by the DDA in accordance with law.
- D. The costs of Rs.1 lakh is awarded to the DDA, payable by the respondent for these proceedings.”

20. It is apparent from the above that the Supreme Court had authoritatively held that (i) the decision that the termination notice dated

01.09.1972 was illegal or arbitrary, was erroneous; (ii) the original lessee had become an unauthorised occupant of the said property; (iii) the substitution of the petitioner in place of the original lessee was bad in law; (iv) the sale of the said property to give effect to the compromise deed decree between the original lessee and the petitioner was *void ab initio* and the assignment by the original lessee in favour of the petitioner was not a valid assignment; and (v) the sum deposited by the petitioner as conversion charges was of no relevance. The said conversion charges were directed to be appropriated towards damages for unauthorized occupation of the said property at the market rate prevalent in the area.

21. Despite the unambiguous decision of the Supreme Court, the petitioner did not let the matter rest. It made a representation dated 02.05.2016 to the DDA once again claiming that it was entitled for conversion of the said property in its name in terms of the conversion policy of the DDA.

22. The petitioner, thereafter, filed a writ petition (W.P. (C) 5613/2016 (captioned “*Anant Raj Agencies Pvt. Ltd. v. Delhi Development Authority*”) before this Court, *inter alia*, contending that in terms of the policy circular dated 09.04.2008, 21.04.2011 and 01.01.2015, the petitioner was entitled for conversion of the said property from leasehold to fee hold in its favour. In its petition, the petitioner also claimed that the DDA had been acting in a discriminatory manner and in a similar case relating to M/s DLF Universal Ltd., the DDA had renewed the lease despite the same having been determined due to breaches committed by the lessee. The petitioner contended that the Supreme Court had merely upheld the determination of

the lease deed dated 06.01.1951; however, the DDA was not prevented in any manner from acting in accordance with its own policies. Thus, it claimed that the inaction on the part of the DDA in not acceding to the petitioner's request was not justified. It is relevant to refer to the prayers made by the petitioner in the said petition which are set out below:-

“a) Issue a writ of mandamus or any other appropriate Writ or Order or Direction thereby directing the Respondent to restore/renew the Lease Deed dated 06.01.1951 in favour of the Petitioner under the policies of the Respondent dated 09.04.2008, 21.04.2011 and 01.01.2015; AND/OR

b) Issue a writ of mandamus or any other appropriate Writ or Order or Direction in favour of the Petitioner and against the Respondent thereby restraining the Respondent from dispossessing the Petitioner from the Property bearing no. E-2, Jhandewalan Extn, New Delhi in any manner and from interfering into the right of the Petitioner to enjoy the peaceful possession of the said property in any manner till such time the Lease Deed dated 06.01.1951 is restored and a perpetual Lease Deed is executed between the Petitioner and the Respondent upon payment of the charges as per the policies dated 09.04.2008, 21.04.2011 and 01.01.2015 qua the property in question.

c) Issue a writ of mandamus or any other appropriate Writ or order or direction in favour of the Petitioner and against the Respondent and to execute a Perpetual Lease deed in respect of the subject property of lease deed dated 06.01.1951 i.e. E-2, Jhandewalan Extn, New Delhi; AND

d) Issue a writ of mandamus or any other appropriate Writ or Order or Direction thereby directing the Respondent to accept payment of penal charges/enhanced ground rent/other necessary charges as per the policy of the Respondent and convert the said lease hold property to freehold, in consonance of prayer (c) above.”

23. The aforesaid writ petition was taken up for hearing on 06.06.2016

and this Court passed the following order:-

“Learned senior counsel for the petitioner seeks to withdraw this petition and submits that an appropriate application shall be moved before the Hon’ble Supreme Court to seek relief in terms of the circulars dated 09.04.2008, 21.04.2011 and 01.11.2015.

Writ petition is dismissed as withdrawn.”

24. It is seen from the above that the said petition was withdrawn unconditionally.

25. The petitioner thereafter filed an application before the Supreme Court in the disposed of Civil Appeal (IA No. 2/2016 in Civil Appeal No. 3783/2016), *inter alia*, praying as under:-

“a) Clarify that the DDA is free to examine on its own merits, the applicability of the policy circulars of the DDA as referred to in para 5 of this application and to decide the representation dated 02.05.2016 of the respondent applicant in accordance with law.”

26. The aforesaid application was also dismissed by the Supreme Court by an order dated 02.09.2016. The said order reads as under:-

“Interlocutory Application No. 2 is misconceived and the same is dismissed.”

27. It is also relevant to mention that the petitioner had also filed a review petition being R.P. (C) 003155/2016 before the Supreme Court seeking review of the judgment dated 12.04.2016 rendered in Civil Appeal No. 3783/2016. The said Revision Petition was also dismissed by an order dated 05.10.2016.

28. This should have put a quietus to the matter. However, the petitioner

did not rest there; it filed an application (CM No. 32723/2016) for restoration of the writ petition (W.P. (C) 5613/2016) which was unconditionally withdrawn on 06.06.2016. This application was contested by the DDA. In the meanwhile, the DDA also rejected the petitioner's representation.

29. Thereafter, the petitioner filed another application being CM No. 4483/2017 in W.P. (C) 5613/2016 seeking to withdraw its earlier application (CM No. 32723/2016) seeking revival/restoration of the W.P. (C) 5613/2016. By an order dated 28.02.2017, the petitioner's application for restoration/revival of the writ petition W.P. (C) 5613/2016 (CM No. 3273/2016) was dismissed as not pressed. The petitioner's application (CM No. 4483/2017) in W.P. (C) 5613/2016 was also dismissed by the aforesaid order, as it did not survive in view of the dismissal of C.M. No. 32723/2016. The Court also clarified that it had not examined or commented on the petitioner's stand that disposal of its representation gave rise to a fresh cause of action, which was disputed by the respondents.

30. Mr Harish Malhotra, learned Senior Advocate appearing for the petitioner earnestly contended that rejection of the petitioner's representation gave rise to a fresh cause of action entitling the petitioner to maintain the present petition. This Court finds the said contention to be unmerited. The principal grievance of the petitioner is non-acceptance of its request for restoration of the lease in relation to the said property and conversion of the same from freehold to leasehold in the petitioner's favour. This was squarely the subject matter of the writ petition being W.P. (C) 5613/2016 which was unconditionally withdrawn. The petitioner also

understood that the findings rendered by the Supreme Court in its judgment dated 12.04.2016 rendered in Civil Appeal No. 3783/2016 would come in its way in seeking restoration of lease and conversion of the said property from leasehold to freehold in its favour. Thus, the petitioner also endeavoured to persuade the Supreme Court to clarify that the DDA was free to examine the applicability of the policy circulars, which were relied upon by the petitioner. This endeavour also did not meet with any success.

31. The prayers made by the petitioner in W.P. (C) 5613/2016 also clearly indicates that the petitioner had prayed that directions be issued to the respondents to restore the lease and convert the said property from leasehold to freehold.

32. In *Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior & Ors : (1987) 1 SCC 5*, the Supreme Court had considered the issue of “the effect of withdrawal of a petition under Art. 226/227 without permission to file fresh petition involving same subject matter”. The Court held that in a case where such a withdrawal is made, the remedy under Art. 226/227 should be deemed to be abandoned by the petitioner with respect to the cause of action relied on in the writ petition. The relevant extract of the aforesaid judgement is set out below:

“9. The point for consideration is whether a petitioner after with-drawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition

also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.”

33. It is also well settled that mere declining of a representation does not revive the controversy. A close examination of the judgement of Supreme Court in CA No. 3783 of 2016 indicates that there was no scope for the petitioner to raise any further claim as to its entitlement. Once it was held that the petitioner acquired no right in the said property, and its substitution in the place of original lessee and the decree on the basis of which the petitioner was claiming an interest in the property was, *void ab initio*; there was no scope for the petitioner to raise any claim asserting any right or interest in the said property. Further, the unconditional withdrawal of the writ petition and thereafter also abandoning the application to revive the same plainly put the dispute to rest. The decision on the petitioner’s representation does not enable the petitioner to resurrect the controversy once again. In ***Union of India vs M.K. Sarkar: 2010 (2) SCC 59***, the Supreme Court held that when a belated representation in regard to a stale or dead issue/dispute is considered and decided, the “*date of such decision*

cannot be considered as furnishing a fresh cause of action for reviving the dead issue or time barred dispute”.

34. In view of the above, this Court is of the view that the present petition is liable to be dismissed with costs quantified at ₹50,000/-. Accordingly, the petition and the application are dismissed with the costs of ₹50,000/-. The costs will be deposited with Delhi High Court Legal Services Committee within a period of two weeks from today.

VIBHU BAKHRU, J

FEBRUARY 06, 2018/pkv



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