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

Reserved on : 19th April, 2018

Date of Decision: 11th July, 2018

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RFA 611/2015 & CM APPL.39475/2017

LAND & DEVELOPMENT OFFICE

..... Appellant

Through: Mr. Kirtiman Singh, CGSC, Mr. Waize Ali Noor, Mr. Prateek Dhandra & Mr. Saeed Qadri, Advocates (M-98117008727).

versus

LACHAMI NARAIN HUF & ORS

..... Respondents

Through: Ms. Amrit Kaur Oberoi, Advocate with Mr. Ajay Kumar Aggarwal, Mr. Manish Malik, Ms. Anjali Sharma & Mr. Siddharth Bhardwaj, Advocates. (M-9899347698).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The question that has arisen in the present appeal is as to whether the Land & Development Office (*hereinafter*, 'L&DO') can impose damages, at the time of conversion from leasehold to freehold, in respect of a property constructed prior to 1952, on the ground that the said property is completely unauthorized due to non-furnishing of sanctioned plan. The construction in this case was done during a period prior to the DDA and the MCD coming into existence.

2. Most of the facts in this case are not in dispute. The suit property is Cottage Plot No.8, South Patel Nagar, New Delhi admeasuring 1000 Sq. Yards (*hereinafter* 'suit property'). The original lease deed dated 18th May,

1952 was executed between and on behalf of the President of India and Shri Diwan Chand Behl and Dr. Mrs. Leela Bai Behl. The salient terms and conditions of the said lease deed are under:

- The lease was for a period of 99 years subject to revision of rent after a period of 20 years;
- The lessee covenanted to erect upon the land during the said term and maintain a good and substantial building, according to the local byelaws and regulations framed by the local authorities, having jurisdiction in the area, which included the DIT.
- The lessee was required to obtain plans sanctioned from the local authority and not make any alternation or additions without obtaining permission in writing. This lease deed was registered on 4th August, 1952.

3. The current holders of the property i.e. the Respondents/Plaintiffs (*hereinafter, 'Plaintiffs'*) purchased the suit property on 19th June, 1989. There is no dispute as to the fact that they are the current owners. Between 1952 to 1989 L&DO conducted various inspections of the suit property. One such inspection report dated 13th July, 1971 records that the inspection was conducted without the sanction plans and hence the plans were requested from the then owners. In 1976, another inspection by L&DO had revealed that a garage in the rear portion was used by one Amba Tent House. According to the L&DO, several office orders were issued on 3rd August, 1977, 13th February, 1978, 4th August, 1978, which were public notices asking the public at large to re-submit the building plans of the construction standing at site as on 31st December, 1975 within a period of 1 month. Thereafter, it is pleaded that circular no.4/78 was also issued seeking the

submission of the building plans of the existing construction.

4. It is L&DO's case that the owners never chose to submit the sanctioned building plans. On 22nd February, 1980 another inspection was carried out by the L&DO and Amba Tent House had continued to exist. Since there was no sanction plan, which was produced, after inspecting the entire 2½ storey building on site, the L&DO treated the entire building as unauthorised.

5. On 3rd April, 1989 it was again reported that there was a 2-1/2 storey building on site, and sanction plans may be called for. On 18th July, 1989, the L&DO had filed records – *“in this case, the party was asked to furnish the certified copy of the sanction plan, but the party has not furnished the same till now. If approved, we may close the case under intimation to the party.....”*

6. On 12th September, 2006, in response to the letter dated 14th January, 2005, one of the owners, who purchased 50% of the property submitted the original death certificate of a previous owner but also stated that *“the copy of the plan is not traceable”*. Another inspection report conducted on 14th July, 2010, showed that the mis-user had been removed.

7. On 24th February, 2011, the current owners of the property i.e., Lachami Narain (HUF) and its members as also the sons of Shri Ladha Ram applied for conversion of the leasehold property to freehold. The conversion charges of Rs.13,03,050/- were duly deposited by them. Another inspection was carried out on 13th January, 2012 and the sanction plan was again demanded. Since there was no sanction plan, the entire property was treated as unauthorised. Notice issued on 23rd January, 2012, wherein it was claimed by L&DO that the entire construction was unauthorised and 30

days' time was given to remedy the breach before exercising re-entry powers. On 4th April, 2012, a letter was received on behalf of the owners that they are willing to pay the charges as per law for mutation, substitution/conversion. On 10th January, 2013, a demand letter was raised for a sum of Rs.99,26,280/- as damages charged for unauthorised construction for the period from 4th December, 1976 till 14th July, 2012 as also mis-user charges from the period from 4th December, 1976 to 13th July, 2010, along with the revised ground rent. The amount, which was paid by the owners, was credited to their account, and the outstanding payable was claimed as Rs.99,26,280/-. The owners then submitted on 5th July, 2013 a plan along with the valuer's report. This plan, according to the owners, was the only plan that existed with them as the property was constructed prior to 1952. On 7th February, 2013, a representation was given by the Plaintiffs that there is no unauthorised construction on the plot. According to the Plaintiffs, there was no unauthorised construction on the site as the building has been in existence strictly as per the guidelines and within the framework of the building bye-laws. The Plaintiffs, thus, disputed the demands raised by L&DO (Ex.PW-5/2).

8. Upon not receiving a favourable reply, the subject suit was filed. The prayer in the suit was as under: -

“In view of above, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to pass a decree of mandatory injunction in favour of the plaintiffs and against the defendant, thereby, directing the defendants to make the suit property bearing No.CP-8, South Patel Nagar, New Delhi free-hold from lease-hold being the owners thereof.

*Pass a decree of permanent injunction in favour of the plaintiffs and against the defendant, thereby, restraining the defendant from demanding the amount by virtue of Demand letter No.L&DO/PS-III/44 dt. 10.1.2013 vide Demand ID No.4355/PS-3/45 Property ID no.33996, Computer Code 100023361 or any other demand in respect of the suit property bearing No.CP-8, South Patel Nagar, New Delhi;
Directions be also given to the defendant to accept the conversion charges for making the suit property free-hold from lease-hold, if any.
Costs of the suit/proceedings be also awarded in favour of the plaintiffs and against the defendant.”*

9. The L&DO filed its written statement and the main plank of its defence was that since no sanction plan was provided by the Plaintiffs, it had no choice but to treat the entire building as unauthorised construction. The L&DO also relied upon on the letter dated. 4th November, 2012 by which the Chartered Accountant of the Plaintiffs had agreed to pay all the dues. Insofar as the title of the property is concerned, the L&DO admitted the title and ownership of the Plaintiffs. On 1st July, 2013, the Trial Court recorded as under:

*“Present:- Cl. for parties
Sh. N.K. Joshi, Dy. L&DO in person
Application for exemption of Secretary of Ministry of Urban Development moved. At request same is allowed. Written statement filed by the defendant. It has been submitted by the defendant that the sanctioned site plan has not been produced before the office of L&DO. Let concerned officer of MCD be called alongwith the file. Copy of site plan available on the record as submitted to MCD*

has been given to Dy. L&DO who can verify the same from MCD. It is made clear that if site plan has not been sanctioned by MCD within stipulated period after submission of the same then as per the Act the consequences will follow and on these basis the charges payable by the plaintiff be recalculated. Be put up on 17.7.13.”

10. Thus, the Trial Court handed over a copy of the plan as was available on the MCD's file to the L&DO. On 31st July, 2013, the Trial Court passed the following order:

“Present:- Cl. for plaintiff

*Cl. Ms. Sunita Kataria for L&DO alongwith
Sh. Prakash Singh Rawat,
UDC*

On 1.7.13 certain directions were given by the Court but as usual this is another example of red tapism. The defence has been taken by the department that the site plan supplied by the plaintiff does not bear the number of the property hence they could not verify. The site plan supplied to the defendant is the copy of the site plan available on the record. Naturally this pertains to the property in dispute. Letter dated 22.7.13 and 29.7.13 issued by Dy. L&DO has been produced on record. The letter itself is against the directions given by the court on 1.7.13. The Counsel has tried to justify the stand of L&DO but this court is not satisfied. Let L&DO to appear in person on 6.8.13. Copy of this order be given to official of L&DO for compliance.”

11. Since the Trial Court was not satisfied, it directed the L&DO to appear in person. On 6th August, 2013, the Trial Court called for a status report in respect of the suit property from the MCD, Karol Bagh Zone and

from the NDMC. On 31st August, 2013, the counsel for NDMC appeared and submitted that the jurisdiction of the suit property lies with Nr.DMC. The order dated 24th October, 2013 is relevant and set out below:

“Present: Counsel for plaintiff.

Counsel for defendant.

The matter is fixed for 08.11.2013. In between application has been filed on the ground that NDMC has filed report and proper direction be given to L & DO. The counsel for L & DO has stated that he has not received copy of valuation report as well as site plan and letter of MCD. The letter dated 11.10.13 of MCD alongwith valuation report and site plan is hereby handed over to counsel for L & DO. As per letter, it is crystal clear that plan is duly attested by Dy. Assessor and Collector, NDMC and report is also filed by MCD pertaining to the suit property as on 14.8.72 showing the area /super structure existing on record. The report is itself covering all the points raised by L & DO, so in these circumstances, the objections raised by L & DO regarding calculation of misuser as well as sanction of site plan stands answered and now no plea of non-sanctioning of site plan is available to the L & DO and calculation of misuser has to take place again keeping in view site plan and existing structure as on relevant date for which valuation report has also to be considered.

Thus in these circumstances, let the calculation be filed by L & DO by next date of hearing as on filing of same, the case itself can be disposed off and there will be no hitch in carrying out the free hold of property after payment of misuser charges, if so comes or after adjusting the amount already paid.

Copy of this order be given dasti to both the parties

Be put up on date already fixed.”

12. As per this order, the Trial Court recorded that the letter dated 11th October, 2013 of the MCD along with the valuation report is quite clear. The Court then directed the L&DO to file the revised calculation as the plea of non-sanctioning of site plan stood answered in view of the letter of the MCD. Thereafter, on 25th November, 2013, the following issues were framed in the suit, which read as under: -

- “1. Whether the plaintiff is entitled to the decree of mandatory injunction as prayed for? OPP*
- 2. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for? OPP*
- 3. Whether the present suit is without any cause of action? OPD*
- 4. Whether the suit is bad for non-joinder of necessary parties? OPD*
- 5. Whether the suit is not properly valued for purposes of court fees and jurisdiction? OPD*
- 6. Whether the plaintiff has not come to the court with clean hands and has suppressed material facts? OPD*
- 7. Relief.”*

13. The Plaintiffs examined PW-1 Shri R. K. Gupta – superintendent at the MCD. He stated that he had issued the letter dated 11th October, 2013. The said letter is important and set out below:

**“NORTH DELHI MUNICIPAL
CORPORATION
OFFICE OF THE SUPERINTENDING
ENGINEERING (BUILDING) HQ
10TH FLOOR, DR. SHYAMA PARSHAD
MUKHERJEE CIVIC CENTER
JAWAHAR LAL NEHRU MARG**

No.D/186/SE(BLDG.)HQ/North.DMC/2013

Dated 11.10.2013

The Deputy Land and Development Office,
Land & Development officer,
Nirman Bhawan, New Delhi.

Subject: Submission of site plan in respect of Property no.CP-8, South Patel Nagar, New Delhi-110008.

Sir,

Kindly refer to your letter no.L&DO/P-III/681 Dated 05.08.2013 addressed to Commissioner, North Delhi Municipal Corporation on the above cited subject. In this connection it is to inform you that there is no sanction Building file available in the record of MCD, and the corporation came into existence in the year 1958. A copy of existing plan, duly attested from Dy. Assessor & Collector, North Delhi Municipal Corporation, Karol Bagh Zone, New Delhi, and copy of valuation report of Sh. U. R. Chadda is enclosed for your reference please.

Thanking you
Yours faithfully

(R. K. Gupta)
SE(B) HQ"

14. He further stated in his evidence as under:

"Statement of Sh. R.K. Gupta R/o 611/15, Ramjas Road, Karol Bagh, N.Delhi: -

On S.A.

I am working as Supervisor at MCD at premises.....Minto Road, Delhi. I have issued the letter dt 11.10.2013, copy is marked 'A'. We have checked the entire record at the MCD pertained to the sanctioning of Building Plan in respected of Building No.CP-8, South Patel Nagar, N. Delhi. There was no

sanctioned building plan available on the record. The construction which is constructed prior to 1958 we take it in order said sanctioned the fresh building as per today's norms.

The site plan along with valuation report is available on the record is marked 'B' & marked 'C'. I cannot say if the building in question constructed prayer to 1958.

XXXXXX by Jasmeet Kaur, Counsel for L&DO.

It is correct that prayer to coming of MCD property is situated in Delhi is proved fact. The site plan marked B was filed with our office as per record brought by me on 10.10.2013. I have not brought today in court issued by MCD stated as to when the property in question was constructed.

It is correct that while filing the site plan for the sanctioned proper application as per building bye laws. It is also filed by the Applicant the in case if within two months from the date of filing of the application no communication from the MCD is made to the applicant then the site plan is deem to have been sanction after seen the record brought by no such application was submitted along with the proposed constructed was submitted in the MCD. Under the facts and circumstances of the case and my statement hereinabove, the MCD will not accept this site plan as sanction plan.

I have come from the Building Department MCD. I have no knowledge regarding the home department and no present property. I have joined this office about one year ago that is Jan 2012.

I have no personal knowledge recording property in question.

ROC AC

Sd/-

Sd/-

ADJ

6/3/14"

15. He also stated that the site plan along with the valuation report as available on his records has been produced. In his cross-examination, he testified that the building plan was filed by the applicant and in case within 2 months from the date of filing of the plan, no communication is given by the MCD, the site plan is deemed to have been sanctioned. However, he also stated that the MCD would not accept this plan as the sanctioned plan.

16. PW-2, Shri Mahender Kumar from Tata Power Delhi Distribution Ltd., stated that the electricity connection was transferred in the name of Lachami Narain in 2001. PW-3, Shri Lal Bahadur from the Delhi Jal Board stated that the water connection of this property is there since 1995 and his department has never checked about any unauthorized construction.

17. PW-4, Shri S. Kumar, LDC from the House Tax Department stated that the first rateable value in respect of the suit property was assessed in the year 1961 as Rs.11,450/- and the same was enhanced. Notice dated 1st April, 1996 was given by the MCD for enhancement of rateable value based only on additions in the suit property. He further states that the first notice dates back to 1976 for increasing the rateable value, and it was in response to this notice of 1976 that the owners at the relevant time had filed a site plan along with the valuation report in the MCD office. The objections raised by the owners were disposed of in 1990, vide order dated 21st May, 1990. He exhibited the valuation report and the site plan as Exhibits PW4/1 and PW4/2 respectively. He confirmed clearly that no demolition notice or order has ever been passed by the MCD with respect to this property.

18. PW-5, Shri Lachami Narain, who is the owner of 50% undivided share stated that the construction was raised in the year 1954 and the valuation report and the site plan were submitted with the MCD. He also

stated that no authority had raised any objection with respect to the construction in the suit property. The property was duly assessed to house tax. He stated that there was no requirement for the owners to respond to the public notices of the L&DO as there was no unauthorised construction in the suit property. He submitted that the MCD had carried out an assessment of the property again in 1976 as per the plans and valuation reports on their record. He further claimed that the raising of a demand so belatedly is barred by limitation. He also relied upon the policy dated 'MARK X and Y' as per which the L&DO cannot withhold the conversion of leasehold to freehold on the ground of unauthorised construction or misuse. He submitted that the letter of the chartered accountant cannot be misinterpreted as meaning that any unlawful demand would also be paid. In his cross-examination PW-5 stated that he was not aware of any aspect relating to the property prior to 1990.

19. Shri P. S. Oberoi, Deputy Land & Development Officer appeared as DW-1. He exhibited the various inspection reports and the policies/circulars issued by the L&DO. He confirmed that the various press releases, which were issued, were published in the newspapers and no individual notices to the property owners were issued.

20. The Trial Court decreed the suit of the Plaintiffs and held that as per the deposition of PW-4, the determination of rateable value was made for the first time in 1961. Notice was again issued in 1976 and this itself proved that the construction was existing. Since the site plan is existing on the MCD's record and the rateable value has been determined on that basis, the L&DO cannot go beyond that. The Trial Court further held that since the plans, which were in the MCD's record, were given to the L&DO for

verification and the MCD did not raise any issues about the same, it should be considered as a deemed sanction. The Trial Court noticed that since the beginning, the building has been a 2½ storey building. The Trial Court then decreed the suit as under:

*“12. **Relief:** In view of the above, present suit is decreed with cost in favour of the plaintiffs and against the defendant and defendant is hereby directed to make the suit property bearing no.CP-8, South Patel Nagar, New Delhi free hold from lease hold on receipt of conversion charges. Defendant is also restrained from demanding the amount by virtue of demand letter no.L&DO/PS-III/44 dated 10.1.13 vide demand ID No.4355/PS-3/45 property ID no.33996, computer code 100023361 or any other demand with respect to to unauthorized construction in suit property. However misuse charges as conceded by the plaintiff be deposited with the defendant by the plaintiff and rest of the demand made by the defendant vide above letter dated 10.1.13 is hereby declared null and void. Decree shall be prepared. File be consigned to record room.”*

21. As per the decree of the Trial Court, the L&DO was restrained from enforcing the demand letter in respect of demand for damages qua the unauthorised construction, however, misuser charges were directed to be deposited by the Plaintiffs and the remaining demands were declared to be null and void. Subject to the deposit of the misuser charges of the property, the L&DO was directed to convert the property from leasehold to freehold.

22. In the present appeal, Mr. Kirtiman Singh, learned Standing Counsel for Central Government has submitted that despite the entire trial having taken place, the Plaintiffs were unable to produce the sanction plan. The act

of the L&DO of deeming the entire building as unauthorised cannot be faulted with. He further submitted that despite repeated requests, the owners of the property, from time to time, refused to allow inspection of the property. Moreover, unless there is a sanction plan, the L&DO is entitled to raise a demand on account of unauthorised construction, at the time of converting the property from lease-hold to free-hold. He further submitted that the concept of deemed sanction under the MCD Act would not apply, as the property was constructed prior to the MCD Act coming into force. He relied upon the following authorities:

- ***Delhi Improvement Trust v. Chandra Bhan & Ors. (1966) ILR 1 P&H 489;***
- ***Dal Chand & Ors v. Delhi Improvement Trust AIR 1967 SC 87;***
- ***Faqir Chand v. Shri Ram Ratan Bhanot (1973) 1 SCC 572;***
- ***New Delhi Municipal Council v. State of Punjab (1997) 7 SCC 339;***
- ***Jor Bagh Association (Regd.) & Ors. v. Union of India 2004 (75) DRJ 611;***
- ***Union of India v. Jor Bagh Association Regd. 2012 (188) DLT 25;***
- ***Union of India v. P.R. Nair – LPA No.733/2011 dated 27th July, 2017;***
- ***Union of India v. Ravi Kanta Madhok – LPA 787/2011 dated 13th March, 2012;***
- ***Union of India v. Savitri Devi – LPA No. 336/2009 dated 8th March, 2010;***
- ***Dev Raj Gupta & Ors v. New Delhi Municipal Committee & Ors. 1997 (68) DLT 62 (DB);***

- ***Commissioner of Municipal Corporation, Shimla v. Prem Lata Sood & Ors. (2007) 11 SCC 40;***
- ***State of W.B. v. Terra Firma Investment & Trading Pvt. Ltd. (1995) 1 SCC 125;***
- ***Union of India v. Engineering & Industrial Corporation Pvt. Ltd. 2012 (130) DRJ 585;***
- ***South Delhi Maternity & Nursing Home (P) Ltd. v. Municipal Corporation of Delhi 2011 (176) DLT 192;***
- ***Raghubir Singh v. Municipal Corporation of Delhi AIR 1982 Del 550***

23. On the other hand, Ms. Amrit Kaur Oberoi, learned counsel for the Plaintiffs has submitted that so long as the MCD treated the plan and the valuation report as correct and fixed the rateable value on that basis, the L&DO could not question the same. She further submitted that the lease, in the present case, would not be governed by the Government Grants Act, 1955 and hence, the lease cannot be treated as lease by the L&DO under the said Act. She relied upon ***Delhi Development Authority v. Ram Prakash, AIR 2011 SC 1399*** (hereinafter, '*Ram Prakash*') to argue that the charges for unauthorised construction and misuser could not be raised after a lapse of 25 years. She also relied upon the provisions of the Punjab Municipal Act, 1911 (hereinafter, '*Punjab Act*') to submit that if no demolition notice was issued, then it would be deemed to have been sanctioned. Finally, she relied on the office order no.10/2009 dated 13th August, 2009, as per which the L&DO ought to be directed to accept the documents as are on the record rather than to treat the entire construction as unauthorised. Thus, any documents issued by the local bodies, etc, ought to be taken into consideration and examined before treating the entire construction/building

as unauthorised. Thus, she submits that the judgment of the Trial Court is as per law and deserves to be upheld.

Analysis and Findings

24. The first and the foremost question that arises is as to which statute governed the property in question at the time when the construction was admittedly made on the suit property. There is no doubt that insofar as property tax and house tax is concerned, the same is being imposed and paid by the owners to the MCD. The property tax is being paid as per the value determined by the corporation, based on the plans submitted by the owners. (*sic* MCD, now Nr.DMC). For all municipal functions, the property falls under the jurisdiction of the MCD but due to the lease, the land itself vests with the L&DO.

25. The Delhi Municipal Corporation Act, 1957 (*'DMC Act'*) came into force on 3 different dates i.e. 2nd January, 1958, 15th February, 1958 and 7th April, 1958. Admittedly, the construction on the property was carried out in the early 1950s. The DMC Act, had not yet taken effect. The Punjab Act, prevalent in Delhi at the relevant time, in fact, governed the area where the suit property is located. All the municipalities operated under the Punjab Act. The DMC is a successor to the municipality constituted under the Punjab Act, as is clear from Sections 510-516 of the DMC Act read with Second Schedule of the DMC Act. Thus, any construction prior to 1957 was governed by the Punjab Act. The suit property was, therefore, governed by the Punjab Act. This is also clear from a judgement of the Division Bench of this Court in *Municipal Corporation of Delhi v. Smt. Surjit Kaur AIR 1973 Delhi 198* (hereinafter, '*Surjit Kaur*'), wherein it was held:

“4. The appellant Corporation was established by the Delhi Municipal Corporation Act, 1957, which came into force on April 9, 1958. Prior to this the Punjab Municipal Act, 1911 hereinafter referred to as “the Punjab Act” was applicable. Section 195 of the Punjab Act, in so far as it is relevant provided –

“195. Should a building be begun, erected or re-erected –

(a) without sanction as required by Section 189(1);.....

*.....
the committee may by notice delivered to the owner within six months from the completion of the building, require the building to be altered or demolished as it may deem necessary within the period specified in such notice;.....”*

Admittedly, the building in question was erected without the requisite sanction and therefore if the Punjab Act has continued to apply, the Municipality would have been entitled to require the respondent to demolish the said building. The first appellate Court has not given any finding as to the exact date or time when the building was constructed by the respondent other than saying that it was constructed in 1957. Taking the last day of the year 1957 to be the day when the building was constructed, the Municipality, if it has continued, could have served the notice of demolition under the aforesaid section by or before June 30, 1958.”

26. Thus, prior to the DMC Act, the municipal authority constituted under the Punjab Act was the local authority. The lease deed used the words “*local authority*” in clause 1(ii). The lease deed also provides that the lessee shall “*submit plans, sections, elevations and specifications for the construction of the building to be erected upon the said land for the approval of an officer appointed by the Lessor in this behalf, in duplicate, and shall not start the*

work of construction unless and until the approval of the said officer has been obtained in writing.”

27. It is unclear as to whether any officer was appointed by the Government under the Punjab Act for sanctioning of the plans. As per the said Act, Section 189 prohibited the erection of any building without a sanction. Section 189 of the Punjab Act reads as under:

“189. Prohibition of building without sanction – (1) *No person shall erect or re-erect or commence to erect or re-erect any building without the sanction of the committee.*

2. Notice of building – *Every person who intends to erect or re-erect any building shall give notice in writing to the committee of such intention.*

3. Building Bye-laws – *A committee shall by bye-law-*

(a) prescribe the manner in which notice of the intention to erect or re-erect a building shall be given to the committee;

(b) require that with every such notice shall be furnished a site plan of the land on which it is intended to erect or re-erect such building and a plan and specification of the building, of such character and with such details as the bye-law may require;

(c) where the building appears likely to be used as a factory, require the provision of adequate housing accommodation in connection therewith.

(4) where bye-laws have been framed under this section no notice under-subsection (2) shall be considered to be valid until the information, if any, required by such bye-laws has been furnished to the satisfaction of the committee.”

28. The Municipal Committee constituted under Punjab Act had the power to make bye-laws to regulate the erection or re-erection of any building. Under the Punjab Act, Section 195 provided for penalty in case of any disobedience. Notice could be served upon the Owner to demolish or rectify the building. However, under Section 193(4), if the Committee did not sanction the erection of a building within a period of 12 months when the notice was issued by the person, the same would be deemed to be sanctioned. The said provision reads as under:

“193. Powers of committee to sanction or refuse erection or re-erection of building:- (1) The committee (or the Executive Officer) as the case may be, shall refuse to sanction the erection or re-erection of any building in contravention of any bye-law made under sub-section (1) of section 190 or in contravention of any scheme sanctioned under sub- section (3) or sub section (4) of Section 192, unless it be necessary to sanction the erection of a building in contravention of such a scheme owing to the committee’s inability to pay compensation as required by section 174 for the setting back of a building.

(1-a) When the erection or re-erection of a building is likely, in the opinion of the Committee or the Executive Officer, as the case may be to interfere with the enforcement of a scheme proposed under section 192, the Committee (or the Executive Officer, as the case may be) may refuse its sanction and in such case shall communicate its refusal in writing together with the grounds therefor, to the applicant within sixty days of the receipt of his application, and the applicant may thereafter by written notice require the committee to proceed with the preparation of the proposed scheme with all possible speed. The application shall be deemed to have been sanctioned if an order of refusal is not passed by the committee (or the Executive

Officer as the case may be) within the time specified above, or if the proposed scheme has not received the sanction of the State Government within twelve months of the date of delivery of the applicant's written notice hereinbefore referred to:

Provided that should a resolution refusing such sanction be suspended under section 232, the period prescribed above shall commence to run afresh from the date of communication of final orders by the State Government under section 235.

Explanation:- A scheme shall be deemed to have been proposed under section 192 if a requisition for its preparation has been received by the committee from the (Deputy Commissioner) or if the preparation of the scheme is under the consideration of the committee.

(2) The committee (or Executive Officer, as the case may be) may refuse to sanction the erection or re-erection of any building for any other reason, to be communicated in writing to the applicant, which it (or he as the case may be) deems to be just and sufficient as affecting such building, be if the land, on which it is proposed to erect or re-erect such building is vested in the government or in the committee, and the consent of the Government concerned or, as the case may be, of the committee has not been obtained, or if the title to the land is in dispute between such person and the committee or any Government.

(3) Subject to the provisions of sub-section (1) the committee (or the Executive Officer, as the case may be) may sanction the erection or re-erection of any building either absolutely or subject to such modifications in accordance with the bye-laws and rules as it (or he as the case may be) may deem fit.

(4) Notwithstanding any thing contained in sub-section (1) or sub-section (2) but subject to the provisions of sub-section (2) of section 190 and sub-section (1-a) of this section if the committee (or the Executive Officer

as the case may be) neglects or omits, within sixty days of the receipt from any person of a valid notice of such person's intention to erect or re- erect a building, or within one hundred and twenty days, if the notice relates to a building on the same or part of the same site, on which sanction for the erection of a building has been refused within the previous twelve months, to pass orders sanctioning or refusing to sanction such erection or re-erection, such erection or re- erection shall, unless the land on which it is proposed to erect or re-erect such buildings belongs to or vests in the committee, be deemed to have been sanctioned, except in so far as it may contravene any bye-law, or any building or town planning scheme sanctioned under section 192:

Provided that should a resolution conveying or refusing such sanction be suspended under section 232, the period prescribed by clause (4) shall commence to run afresh from date of communication of final orders by the State Government under section 235.

Provided further that if not less than one-fifth of the members present vote against a resolution conveying sanction, the sanction shall be deemed not to have been conveyed until after the lapse of fourteen days from the passing of the resolution."

29. Thus, under Section 193(4), there is 'deemed sanction' if, after notice, the Executive Officer neglects or omits to pass orders sanctioning or refusing to sanction the building. The building having been constructed around 1952, no notice of demolition having been given, the same continued to exist till the Delhi Municipal Corporation (*hereinafter*, 'DMC') came into existence. Even after the DMC came into existence, the construction as it stood is itself adequate notice which was accepted by the DMC, as no notice of demolition, claiming the construction to be unauthorised was ever issued.

Thus the building ought to be deemed to be sanctioned both under the Punjab Act as also the DMC Act. In fact this Court in *Surjit Kaur (supra)* held that the provisions of the DMC Act are prospective in nature, and any constructions prior to coming into force of the DMC Act are to be governed by the Punjab Act. The Court categorically held as under:

“It is no doubt true that a liability was incurred by the respondent under section 195 of the Punjab Act to demolish the building upon a notice being delivered to her but this liability would have been incurred only if a notice had been delivered to her within six months from the completion of the building and that is the extent of the liability incurred by her. The liability was conditional upon a notice being delivered to her within six months from the completion of the building and it cannot be said to be a liability incurred without any limit of time. The Corporation cannot take advantage of the fact that in section 343 of the Corporation Act, there is no limit of time for the service of a notice of demolition because the Corporation can enforce only such liabilities which have been incurred under the Punjab Act and to determine the extent and nature of the liability, the provisions of the Punjab Act will have to be looked into notwithstanding its repeal. The provisions contained in sections 336, 343 and 344 of the Corporation Act are, by their language, of prospective operation and the appellant Corporation cannot rely upon these provisions to issue a notice of demolition after the expiry of six months from the completion of the building as was done in the present case in the year 1960.”

30. A similar view has been taken in *Delhi Improvement Trust v. Chander Bhan, 1966 ILR 1 Punjab & Haryana 489*, wherein the Punjab and Haryana High Court held as under:

“9.....No doubt, Section 32 prescribes no time-limit, but Section 49 of the same Act, makes Section 193 of the Punjab Municipal Act, in terms applicable. Both these sections must be read together and when so read it clearly follows that the time-limit has been made applicable. That being the position, in cases of those Plaintiff-Respondents on whose notices no order had been passed within 60 days, their building plans must be deemed to have been sanctioned.....”

31. Ld. CGSC has referred to and relied upon the judgment of the Division Bench in ***Union of India v. Jor Bagh Association Regd. 2012 (188) DLT 25***(hereinafter, ‘*Jor Bagh DB*’) to argue that there if is no unauthorized construction, the fact that the municipal corporation may be prevented from demolishing or that limitation has expired, would not bar the lessor i.e. L&DO from imposing damages at the time of conversion of the property from leasehold to freehold. Relevant portion of the Division Bench judgment in ***Jor Bagh DB (supra)*** of this Court reads as under:

“We summarize our opinion and then proceed to frame the question of law to be referred to a larger Bench:

A) If the term of a grant granting a lease-hold tenure prohibits transfer of the interest without the prior permission of the lessor and does not expressly state that the lessor would be entitled to demand a percentage of the increase in the value of the land, the lessor would be entitled to put a condition granting approval that a percentage of the increase of the value of the land would be paid to the lessor.

B) Since the conversion policy promulgated on February 14, 1992 acknowledges eligibility to be converted from a free-hold tenure to lease-hold tenure of such leases where possession has been transferred without the consent of the lessor and without paying unearned increase, but upon the condition that the

transferee pays 33 1/3% consideration over and above the normal consideration to be paid for conversion, cases of breach above the normal consideration to be paid for conversion, cases of breach of the condition of the perpetual lease that the said interest would not be transferred without the prior consent of the lessor would not require any unearned increase to be paid and the transferee would be entitled to have the leasehold tenure converted to free-hold tenure upon payment of 33 1/3% consideration over and above the normal.

C) The perpetual lease-deeds executed by the State or its instrumentalities are government grants and are governed by the Government Grants Act 1895. Damages on account of misuse and/or unauthorized construction by a lessee having a leasehold tenure in a property can be recovered by the lessor if the lease has a condition regulating the use and extent of construction under the lessor, under pain of the lease being determined for the breach of either or both conditions. The same would be recoverable if the lessee prays that the breach be condoned and the lessor is prepared to do so but upon being recompensed for the breach. This power is inherent in the lessor and need not flow from the lease.

D) Office Order No.23/1976 dated March 31, 1976 is not the source of the power of the lessor to assess and recover damages on account of misuse or unauthorized construction. The same brings transparency by guiding the manner in which the damages have to be assessed.

E) The policy guidelines dated June 28, 1999, June 26, 2001 and June 24, 2003 do not entitle the perpetual lessees to have leasehold tenure converted into freehold tenure by ignoring the past misuse and/or unauthorized construction. Damages on said account would be recoverable on the strength of the said circulars, but this would be subject to the view which may finally emerge, upon reference being made by us

to a larger Bench on the scope of the policy guideline dated August 02, 1996.

F) Procedural fairness in the levy and demand of damages on account of misuse and/or unauthorized construction as explained in Hari Prakash's case (supra), Saheb Singh's case (supra), Sant Ram Sodhi's case (supra) and Ram Prakash (Professor)'s case (supra) would have to be observed by the lessor on the subject of levy and demand of damages on account of misuse and/or unauthorized construction.

G) If limitation has expired for a municipality, to enforce the municipal law, pertaining to an unauthorized construction, thereby preventing the municipality from demolishing the unauthorized construction would not be a bar for the lessor to take action as per the lease for violation of a term of the lease.

H) A demand towards damages on account of misuse and/or unauthorized construction, if barred by limitation for the purposes of recovery thereof, would not denude the lessor the power to demand the same as a condition to convert a lease-hold into free-hold tenure.”

32. The question of levy of misuse charges and damages due to unauthorized construction imposed by the lessor (L&DO) arose in two Division Bench judgments of this Court namely ***Jor Bagh DB (supra)*** and ***Union of India v. Satish Kumar Mehta [RFA(OS) 107/2009 decision dated 6th August, 2012]*** (hereinafter, '*Satish Kumar Mehta HC*'). In ***Jor Bagh DB (supra)***, the learned Division Bench, setting aside a judgment of the learned Single Judge of this Court, referred the question of law framed therein to a larger bench, while giving its opinion on the various issues. However, in ***Satish Kumar Mehta HC (supra)***, the Division Bench, following ***Jor Bagh DB (supra)***, held that it would be procedurally and

substantially unreasonable to raise back dated demands with retrospective effect.

33. Admittedly, the ***Jor Bagh DB (supra)*** case, related to misuse as also unauthorized construction, however, the Division Bench judgment of this Court was not dealing with a case where the municipal corporation had taken the plans and the valuation report on record and had considered the same to be the correct plans insofar as imposition of house tax is concerned. The witness PW-4, appearing from the MCD was categorical in his statement that no demolition notice or order was ever given in respect of the suit property and that the site plan is deemed to have been sanctioned. Though he stated that the site plans, which were submitted by the owners, would not be taken as sanctioned plans, he admitted that the plan is deemed to have been sanctioned. His evidence is very relevant and has been extracted in paragraph 14 hereinabove. Once the municipal authorities treat the plan as deemed to have been sanctioned, the L&DO which is not the plan sanctioning authority cannot go behind the same and still treat the building as unauthorised. Thus, the ***Jor Bagh DB (supra)*** case is clearly distinguishable from the facts of the present case.

34. The judgment in ***Satish Kumar Mehta HC (supra)*** was appealed against, wherein the Supreme Court recently in ***Union of India v. Satish Kumar Mehta AIR 2017 SC 2483*** (hereinafter, '***Satish Kumar Mehta SC***') directed that the admitted mis-user charges would be payable and held as under:

“4. Be that as it may, on going through the plaint, we find that in unequivocal terms, the respondent/plaintiff had averred in the plaint that the charges cannot exceed Rs.10,31,630/-

5. Having heard learned counsel appearing for the

appellants extensively and Mr. Jayant Bhushan, learned senior counsel appearing for the respondents and going through the pleadings we find that in any case the respondent cannot go back on what he had agreed towards the payment of misuse charges, in the suit filed by him.

6. Mr. Bhushan, learned senior counsel, made a vehement submission that the offer to pay an amount of Rs.10,31,630/- was an alternative submission recorded by the Division Bench in the impugned judgment. We have gone through the plaint. We find it difficult to appreciate that it was an alternative submission. The clear case of the respondent/plaintiff was that the amount in any case, cannot exceed Rs.10,31,630/-.

7. Though, normally the matter should have been remanded for fresh consideration, having regard to the fact that the litigation has been pending for long and since it is in the interest of parties on both the sides to give a quietus to the dispute, without relegating the parties for another round of litigation this appeal is partly allowed by restoring the decree passed by the learned Single Judge on the original side.”

35. Admittedly, in the present case, the MCD has accepted, for the purpose of determination, rateable value and property tax, the valuation report and the site plan submitted by the erstwhile Owners (Ex.PW-4/1 and Ex.PW-4/2). The witness PW-4 from the MCD also admitted that till date no notice of unauthorised construction has been issued in respect of the suit property.

36. The question as to whether there is any unauthorised construction is to be determined by the municipal authority and not by the L&DO. The L&DO, in the present case, appears to be taking a stand contrary to what the municipal authority itself is taking. The L&DO has, because of the non-

submission of the sanctioned building plan, presumed that the entire building is unauthorised. Considering that the building has been constructed almost 70 years ago, when none of the current laws were even applicable, the same cannot be considered as unauthorised construction when even the MCD considers it to be authorised construction.

37. While the L&DO would be entitled to impose damages, if there is any unauthorised construction or misuse, the said finding that there is unauthorised construction, has to be based on some material on record. Considering that the building is so old and the only municipal records, which are available are Ex.PW-4/1 and Ex.PW-4/2, both of which clearly take into consideration the covered areas and the construction costs and the rateable value having been fixed on that basis, it would not be proper for the L&DO to presume that the construction is unauthorised. In fact, as per the applicable statute, the citizen is given benefit of a construction which stands for a long time, if no notice of demolition has been issued. Admittedly, even the L&DO's report reveals that the building is actually in a dilapidated condition on a plot of 1000 Sq. Yards and a 2 ½ storey building, having the following coverage, exists:

Covered area:		
Ground Floor	-	2934 ft.
First Floor	-	2934 ft
Barsati	-	589 ft.
Garage Block	-	547 ft.

38. The L&DO does not dispute that even as per the existing bye-laws this coverage is not unauthorised. Under such circumstances, the property having changed so many hands over the years, the mere non-submission of

plan bearing the seal of the municipal authority cannot lead to a presumption by the L&DO that the construction is unauthorised. There being no action taken by any of the municipal authorities, the said presumption arrived at by the L&DO lacks any legal basis. The Trial Court is not wrong in having proceeded by presuming that this is a case of deemed sanction.

39. Even if it is presumed that the building was not sanctioned under the Punjab Act, after the DMC Act came into force, no notice of demolition has been given. Though no express notice was given by the Owners to the MCD after it was constituted, the question then arises is as to whether a building, which is already standing when the MCD came into existence, would by itself not constitute sufficient notice. The MCD, having been continuously collecting the property tax/house tax for the suit property, notice of existence of the property is in-built. The property had electricity connection since 23rd March, 1954. Under these circumstances, the plan lying with the MCD records, on the basis of which the rateable value was assessed, and the house tax was collected, ought to be deemed as the 'sanctioned plan'.

40. The L&DO cannot proceed as per its own whims and fancies and impose damages presuming the construction to be unauthorised. Such an approach would be completely contrary to all legal tenets, inasmuch as such an imposition would be unreasonable and without due cause.

41. In 2013, mis-user charges were demanded and the same were paid by the Plaintiffs. The present demand dated 10th January, 2013 is absolutely belated, inasmuch as the construction on the property was within the knowledge of the L&DO in 1976 itself. The L&DO cannot adopt a policy of complete silence for 35 years and then raise a demand for damages under the presumption of unauthorised construction. Such an approach would be

unfair to the current Owners of the property i.e., the Plaintiffs, who purchased the property in 1989 and 2010, completely unknowingly. The purchasers were not even aware that there was a possibility of such a demand being raised in respect of the suit property. The Supreme Court in **Ram Prakash (supra)** held as under:

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

The L&DO having not acted with promptness and alacrity, the demand of L&DO is also time barred, and it cannot be allowed to take advantage of its own inaction.

42. There is another aspect to the entire case i.e., the office order no.10/2009 dated 13th October, 2009. The said order reads as under:

*“F No. F-24019/01/2009-CDN
Government of India*

*Ministry of Urban Development
Land and Development Office*

Nirman Bhawan, New Delhi.

Dated the 13th August, 2009

Despatch No. 284/09

Officer Order No. 10/2009

As per the brochure of policy on conversion of lease hold rights into free hold rights the lessees have to submit the sanctioned building plan/occupancy certificate/form 'D' for the purpose of technical inspection of the property. In majority of the cases it is found that the lessees are not having any of these documents nor are these documents available in the Authorities authorized to issue these documents. It has lead to treat the entire construction as unauthorized. The issue has been examined and it has been decided that those documents may be considered for technical inspection which have direct bearing on the issues required to be verified pertaining to the property under consideration. These documents may be those issued by Authorities of Union Government, State Govt., Local bodies, Autonomous bodies or Public Sector Undertakings/Corporations and have direct bearing on the issues. The liability/acceptability of documents is to be examined carefully.

Therefore, it has been decided that in such cases where the lessees do not have sanctioned building plan, completion/occupancy certificate or form 'D', the documents issued by the authorities as mentioned above may be examined for acceptance by the concerned branch. After examination the file will be submitted to Land and Development Officer for a final decision on acceptability of these documents. Land and Development Officer will take final decision in such matters.

Sd/-

(Surendra Singh)

Dy. Land and Development Officer"

43. Thus, even as in 2009, L&DO was conscious of the fact that the treating of entire construction as unauthorised in respect of old buildings, may not be altogether proper. Thus, there was an obligation as per this circular, for the L&DO to consider the valuation report, the site plan etc. submitted by the Plaintiffs, as per the records of the MCD. Firstly, the benefit of this circular has not been given to the Plaintiffs, nor was the case examined as per the records of the MCD. A completely blinkered approach has been adopted by the L&DO in imposing the huge sum of Rs.99,26,280/- as damages.

44. Thus, insofar as the unauthorised construction is concerned, it is directed that the damages would not be payable. Insofar as misuse charges are concerned, as in the case of *Satish Kumar Mehta SC (supra)*, the Plaintiffs have already paid the admitted misuser charges of Rs.6,50,000/- till 2003. No further misuser charges would be leviable. On the basis of the above two directions, the L&DO is directed to convert the property from lease-hold to free hold.

45. Appeal is dismissed. Pending application also stands disposed of.

**PRATHIBA M. SINGH
JUDGE**

JULY 11, 2018/dk