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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 01.03.2024

+ **W.P.(C) 15655/2004**
 S.C. GUPTA

..... Petitioner

Through: Mr. Ankit Gupta, Mr. Mithil
 Malhotra, Adv.

versus

D.D.A. & ORS.

..... Respondents

Through: Mr. Arun Birbal and Mr. Varun
 Gupta, Mr. Sanjay Singh, Adv.

+ **W.P.(C) 143/2012**
 S.C. GUPTA & ANR.

..... Petitioners

Through: Mr. Ankit Gupta, Mr. Mithil
 Malhotra, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents

Through: Mr. Arun Birbal and Mr. Varun
 Gupta, Mr. Sanjay Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. These are writ petitions filed by the petitioners seeking relief against the respondent-Delhi Development Authority (hereinafter "DDA"). Since these petitions raise somewhat identical issues, they are being heard and disposed of by a common order.

2. W.P.(C) 15655/2004 has been filed seeking the following substantial prayers:

"i) to direct a writ of certiorari thereby quashing the letter dated



2/1/2002 whereby the lease of the premises bearing No. B-2/228, Safdurjung Enclave, New Delhi was illegally and arbitrarily cancelled by the respondents;

ii) to direct a writ of mandamus thereby directing the respondents to convert the premises bearing No.B-4/228, Safdurjung Enclave from lease hold to free hold;

iii) to direct the respondents to not to levy any misuse charges on the petitioners as there is no misuse of the premises bearing No.B- 4/228, Safdurjung Enclave, New Delhi by the petitioners;....”

3. W.P.(C) 143/2012 has been filed seeking to challenge the misuser charges levied by the respondent-DDA. The prayer clause reads as under:

“i) to issue, a Writ, Order, Direction more particularly a Writ in the nature of Certiorari quashing the alleged demand (Annexure P-1) given to petitioner No. 1 on 28.7.2011;

ii) to issue, a Writ, Order, Direction more particularly a Writ in the nature of Mandamus directing the respondents to convert the peremises bearing No. B-4/228, Safdurjung Enclave, New Delhi from lease hold to free hold for which application was submitted in the year 1996 (Annexure-6);”

Brief Facts

4. Admittedly, the facts of the case are that the petitioners participated in an auction and being the successful bidders, were allotted plot No. 228, Block No. B-4, Safdarjung Enclave, New Delhi (hereinafter “said premises/plot”) on lease-hold basis.

5. The possession of the plot was handed over to the petitioner on 28.09.1979 and thereafter the respondent-DDA executed a lease deed dated



18.08.1980.

6. The petitioners got the building plans sanctioned and completed the construction in the year 1981. The petitioners constructed basement, ground, first and second floor in the said premises in accordance with the sanction plan. The petitioners are using the entire premises for residential purposes.

7. It is stated that the petitioners are consultants by profession. Petitioner No. 1 also runs a registered Small Scale Industry Unit (hereinafter, “SSI Unit”) engaged in the business of supplying electronic equipment to Doordarshan and Prasar Bharti.

8. The petitioners are running their office from UG-5, Som Dutt Chamber 1, 5, Bhikaji Cama Place, New Delhi in the name of M/s Deep Electronics and Deepjot Electronics.

9. It is also stated that the petitioners were using the basement of the said premises for storing some equipment which, according to the petitioners, is permissible under the Building Bye-laws.

10. It is stated that the petitioners in the year 1996 applied for converting the said plot from leasehold to freehold.

11. Vide letter dated 02.01.2002, the petitioners were informed that the lease of the petitioners was cancelled on 26.12.2001 due to the fact that the said property was being used contrary to the terms and conditions of the lease, thereby making it void.

12. It is stated that despite repeated clarifications and requests through various letters, no action was taken by the respondent-DDA to restore the lease or convert the said plot from lease-hold to free-hold.

13. Hence, W.P.(C) 15655/2004 was filed.

14. In W.P.(C) 143/2012, it is stated that pursuant to the filing of W.P.(C)



15655/2004, the respondent vide demand statement dated 28.07.2011 levied Rs. 1,05,31,041/- as misuse charges calculated on the basis of the area of 109.48 sqm.

15. It is this misuse charge which is sought to be quashed by the petitioners in W.P.(C) 143/2012, who state that the area of 109.48 sq. m. as stated in the demand statement is contrary to the record of the respondents.

Submissions

16. It is stated by the learned counsel for the petitioner that the cancellation letter dated 02.01.2002 is liable to be set aside on the ground that it suffers from vice of infraction of principles of natural justice and non-application of mind. It is submitted that the said cancellation letter was not preceded by any show cause notice (“SCN”) qua any alleged misuse.

17. It is stated that in the only SCN dated 11/15.05.1987 filed by the respondent-DDA along with its counter-affidavit, the SCN pertained to the alleged misuser in the shape of permitting the use of subject premises for the purpose of “Office/Store” of an entity “Electric Enterprises”, which was never owned/operated by the petitioners. Further, the cancellation letter was issued on the premise of an entity “Deep Jyoti Electronics” using the basement of the premises, which was again never owned/operated by the petitioners. Neither has the respondent-DDA placed any proof in this regard, and thus, the action on the basis of the said SCN dated 15.05.1987 is *ex-facie* bad in law.

18. It is further stated that while the lease was cancelled on 26.12.2001 (informed to the petitioners vide letter dated 02.01.2002), the respondent-DDA vide letter dated 01.04.2002 called upon the petitioner to submit documents for conversion of the subject premises from lease-hold to free-



hold. Despite the fact that the issue of conversion was under consideration of the DDA, the respondent-DDA took precipitative actions without there being any reasonable justification.

19. Regarding the issue of misuser charges, it is submitted that the respondent-DDA has proceeded to levy a demand of misuser charges vide letter dated 31.07.2009, which have been calculated in two phases i.e. from 15.01.1986 to 07.02.2002 and from 08.02.2002 to 31.03.2003.

20. Learned counsel for the petitioner states that while the alleged misuser began in the year 1986, the demand only came out on 31.07.2009. Relying upon the judgment in **Prof. Ram Prakash v. DDA** dated 17.08.2008 in W.P.(C.) No. 84640/2006, it is stated that the Executive Authorities are expected to act reasonably and without inordinate delay, and thus the demand for misuser charges is barred by limitation and amounts to unreasonable exercise of power, and hence must be quashed.

21. It is further stated that there was no misuser, the petitioner was running his professional consultancy business from Bhikaji Cama Place and was only using the basement for storage purposes.

22. It is further argued that the non-application of mind in so far as the demand for misuser is concerned is evident from the office noting as available on the file of the respondent-DDA. The entire calculation of the misuser area is based on conjectures and surmises as the respondent-DDA was itself not clear as to the area under misuse.

23. It is stated that the total area of the plot is around 1800 sq. ft. As per the Building Bye-Laws, a professional is entitled to use a residential premise for professional work to an extent of 500 sq. ft. or 25% or 50 sq. mts. of the covered area. In the present case, the misuser as determined by the



respondent-DDA has been determined at 19.34 sq. mts. which is within the permissible limits and as such, it entails no misuser, and the petitioner being a professional/consultant in electronic goods and a vendor thereof is entitled to this protection.

24. Mr. Birbal, learned standing counsel appears for the respondent-DDA and states that since the premises were being misused, the lease was cancelled.

25. As regards the misuser charges are concerned, it is the stand of respondent-DDA that the same are in accordance with the law and policy and deserve to be upheld.

Analysis

26. I have heard learned counsels for the parties.

On Cancellation of Lease Deed

27. In the counter-affidavit filed by the respondent-DDA, it has been stated that there are multiple show cause notices issued and at least 9 inspections conducted by the respondent-DDA. Despite this, only one SCN has been annexed by the respondent i.e. the SCN dated 11/15.05.1987.

28. It was observed by the Hon'ble Supreme Court in ***UMC Technologies (P) Ltd. v. Food Corpn. of India***, (2021) 2 SCC 551

“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be



adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian General, Evacuee Property [Nasir Ahmad v. Custodian General, Evacuee Property, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.”

29. A perusal of the said SCN clearly shows that the same is vague and devoid of any details. It states that the basement is being misused contrary to the terms and conditions of the lease. It also does not specify the area that is being misused, and further mentions that the plot is being used as an office/store for the entity ‘Electric Enterprises’ (which, as per the petitioner, is not owned/operated by him). Truecopy of the SCN dated 11/15.05.1987 is reproduced herein under:-



/ TRUE COPY /
DELHI DEVELOPMENT AUTHORITY
(LEASE ADMINISTRATION)

NOTICE

C-2/3rd Floor, Vikas Sadan,
 I.N.A. Colony, New Delhi.

No.F.8 (19)/18-LAB

Dated : 11/15-5-87.

To,

Shri Suresh Chand Gupta,
 B-4/828, Safdarjung Enclave,
 New Delhi.

Sub : Plot No.228 Block No.B-4, in Safdarjung Enclave, New Delhi.
 Residential Scheme.

WHEREAS by virtue of lease deed executed on 18.8.80, between you / your predecessor in interest and the President of India, you are the lessee of the plot of land referred to above.

2. AND WHEREAS by virtue of Section 22 of the D.D.Act, 1957 the land underneath the lease hold plot has been placed under the management and control of the D.D.A.

3. AND WHEREAS by virtue of clause II (13) you are not entitled without the written consent of the Lessor to carry on or permit to be carried on, on the residential plot or in any building thereon any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of residential or do or suffer to be done thereon any act or thing whatsoever which in the opinion of the Lessor and persons living in the neighbourhood.

4. AND WHEREAS it has been reported that you are using the said land and the buildings standing thereon or have permitted the same to be used for the purpose of Office / Store for Electric Enterprises which is contrary to the terms and conditions of the lease.

5. AND WHEREAS you did not show any sufficient cause and did not get the breach removed inspite of an opportunity given to you vide notice of even No. dated 4.6.86 and 29.12.86.

6. NOW, THEREFORE, you are hereby finally required to show cause within 15 days of the receipt of this notice as to why for the breach of the said clause; the lease of the said land be not cancelled and the said land together with all such buildings, structures as may be found thereon may not be re-entered upon and taken possession of in pursuance of clause III of the said lease deed.

Sd/-xxxxx

LEASE ADMINISTRATION OFFICER
 LEASE ADMINISTRATION BRANCH,
 D.D.A.



30. A perusal of the office noting further shows that the respondent DDA itself is taking conflicting stance with regard to area being misused and its purpose, the details of which are as under:

Misuser Calculation Chart @Pg. 93, Document 13 (Convenience Compilation/ "CC")				
<i>From 15.01.1986 to 07.02.2002.</i>			<i>From 08.02.2002 to 31.03.2003.</i>	
<i>Area under Misuse</i>	<i>109.48 sq. mts. (1178.43 sq. ft.)</i>		<i>Area under Misuse</i>	<i>12.71 sq. mts. (136.80 sq. ft.)</i>
S.No.	Contentions			Reference
<i>a.</i>	<i>Office Note dated 20.05.1997 - Misuser area was only 216 sq. ft.</i>			<i>Pg.123</i>
<i>b.</i>	<i>Office Note of the year 2001. - Respondent affirmed that since the area under misuse was compoundable, the case of the Petitioner be sent for conversion, after the payment of the applicable charges.</i>			<i>Pg.124</i>
<i>c.</i>	<i>Office Note (106N) - Respondent has itself noted that the area under alleged misuse i.e., 109.48 sq. mts. does not tally with the area as proposed by the previous notings and the measurements as available on record.</i>			<i>Pg.129</i>
<i>d.</i>	<i>Office Note dated 27.04.2002 - Respondent categorically records that the Petitioner is permitted to use the basement of the subject premises for basement.</i>			<i>Pg.132</i>



e.	<i>Office Note (110/N)</i> - Respondent records that basement of the subject premises was used for storage purposes, however, only an office chamber admeasuring 12.71 sq. mts. - Respondent records that if the basement was being used for storage purposes, the same shall not be construed as misuse.	Pg.133-134
f.	<i>Office Note dated 01.07.2002</i> - Office Note depicts that the Petitioner has duly submitted that he is a professional and as such, the Respondent has directed the matter to be placed for restoration of the lease.	Pg.140
g.	<i>Office Note @Pg. 143</i> - Respondent requesting submission of the case of the Petitioner for restoration of lease.	Pg.143
h.	<i>Office Note (118/N) dated 29.08.2002</i> - Respondent records that the misused area as per the 1996 report was 216 sq. ft., and as per the 1998 report was 109.48 sq. mtrs., and as per the 2002 report is 12.71 sq. mtrs. - Respondent after going through the entire note sheets and assessment of area under misuse gives a finding that misuse area charges are leviable for an area of 19.34 sq. mts. w.e.f. 15.01.1986 to 28.06.1999.	Pg.144-145



31. At times, the respondent-DDA states that the petitioner is permitted to use the basement for the purposes it was being used and at times that an area of 12.71 sq. meters is being misused. At some places, the respondent states that the area misused is 216 sq. feet and at other places there are allegations that the area under misuse is 19.34 sq. meters, and at times that the area under misuse is 109.48 sq. meters.

32. For the said reasons, it is abundantly clear that the respondent-DDA itself is not clear as to the area which is under misuse of the petitioners.

33. Since the respondent-DDA itself is unclear about the area under misuse despite stating to have conducted numerous inspections, the SCN itself is vague and devoid of the specifications of the area that is under misuse.

34. The acts of the respondent-DDA is not preceded by a proper SCN informing the petitioner regarding the area that was being misused, no hearing was given to the petitioner and despite the same, his lease was cancelled.

35. For the said reasons, I am of the view that the cancellation of the lease deed with respect to plot bearing No. 228, Block No. B-4, Safdarjung Enclave, New Delhi is faulty and violates Principles of Natural Justice.

36. The writ petition is allowed and the cancellation letter dated 02.01.2002 is hereby set aside.

On Misuser Charges

37. The next question that arises for my consideration is if there was any misuser and the amount to be charged for that misuser.

38. A perusal of the writ petition of the petitioner itself shows that the petitioner admits that an area of 12.71 sq. meters was being misused as



storage.

39. The same, admittedly, is contrary to the master plan, the zonal development plan and the terms of the lease and more particularly clause II(13) of the lease deed which reads as under:

“(13) The Lessee shall not without the written consent of the Lessor carry on, or permit to be carried on the residential plot or in any building thereon any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of private dwelling or do or suffer to be done therein any act or thing whatsoever which in the opinion of the Lessor may be a nuisance, annoyance or disturbance to the Lessor and person living in the neighbourhood.

PROVIDED that, if the Lessee is desirous of using the said Residential plot or the building thereon for a purpose other than that of private dwelling, the Lessor may allow such change of user on such terms and conditions, including payment of additional premium and additional rent, as the Lessor may in his absolute discretion determine.

40. The noting of the respondent DDA shows that during inspection it has been found that an area of 19.34 sq. meters is being misused for storage/office purpose. Hence, for an area of 19.34 sq. meters, the misuser charges will have to be paid by the petitioner.

41. Mr. Gupta, learned counsel for the petitioner, on instructions of his client who is present in Court, is agreeable to payment of those charges from 15.01.1986 till the date of cancellation.

42. The respondent DDA is directed to undertake the calculation of



misuser charges of 19.34 sq. meters with effect from 15.01.1986 till the date of cancellation within a period of 4 weeks from today and the petitioner shall make the said payment along with restoration charges, if any, within 6 weeks thereafter.

43. On payment of restoration charges and misuser charges, the application of the petitioner for conversion from lease-hold to free-hold shall also be decided by the respondent-DDA in accordance with law.

44. Subject to the above, W.P.(C) 143/2012 is allowed.

45. Needless to add, in case the petitioner is aggrieved by any further action of the respondent pursuant to the orders passed today, the petitioner will be at liberty to challenge the same in accordance with law.

46. With these directions, the petitions are disposed of.

47. Pending applications, if any, are hereby disposed of.

JASMEET SINGH, J

MARCH 1, 2024

skm/dm

(Corrected and released on March 19, 2024)