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

+ **WRIT PETITION (CIVIL) No. 2428/2015 & CM APPLs. 4371/2015 & 12669/2016**

Judgment reserved on 30 November, 2018

Judgment pronounced on 27 August, 2019

TEK CHAND NARULA AND OTHERS Petitioners

Through : Mr. S.N. Chaudhri and Ms. Shruti Chaudhri,
Advocates.

versus

UNION OF INDIA AND OTHERS Respondents

Through : Mr. Kamal Kant Jha, Mr. Krishna Kumar,
and Mr. Siddharth Jha, Advs. for respondent
Nos. 1 and 2.

Mr. R.N. Vats, Standing Counsel &
Mr. Akshat Gupta, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

1. The petitioners, who are the progeny of one Daulat Ram Narula, have preferred this writ petition under Article 226 of the Constitution to assail, essentially, the misuse charges and damages for unauthorized construction sought to be levied by the respondents *qua* property described as 1/90, P Block, Connaught Circus, New Delhi (hereafter referred to as 'property').

1.1 Portions of the property were let out from time to time and since the property was used by the tenants contrary to the head-lease executed between late Daulat Ram Narula and respondent No. 1, misuse charges are sought to be

recovered by the respondent No. 2. i.e. Land and Development Officer (hereafter referred to as the 'L&DO'). Besides this, as indicated above, in view of the fact that unauthorized construction has also been carried out in the property, the respondents seek to recover damages as well.

2. The petitioners, on the other hand, claim that the misuse of the property was carried out by the tenants *qua* whom appropriate action was preferred in the concerned court whereby *inter alia* their eviction was sought, and therefore, the petitioners or their predecessor-in-interest was not liable for misuse charges.

2.1 The petitioners, in the alternative, take the stand that in the event they are called upon to pay misuse charges under the extant law, they cannot be called upon to pay misuse charges in excess of the amount collected both by way of rent over a period of time from the tenants to whom various portions of the property were let out. The other issue, which arises between the parties, is with regard to the quantum of levy of penalty. It is the stand of the petitioners that the penalty cannot exceed 1% of the misuse charges and that the misuse charges, as noticed above, in turn, cannot exceed the amount collected by way of rent from tenants from time to time.

2.2 In support of its plea, the petitioners placed reliance upon the Office Order bearing No. 23/1976 issued by respondent No.2/L&DO. This apart, the petitioners also seek to gather support from the judgment of the Division Bench of this Court rendered in ***Union of India & Anr. versus Satish Kumar Mehta*** dated 6 August 2012, passed in RFA(OS) No. 107/2009.

2.3 There are pleas taken by the petitioners, including the plea of delay and laches. These are other aspects I shall discuss in the course of my discussion on stands taken by the parties herein.

3. Therefore, in a nutshell, the core issue which I am required to rule upon is whether the respondents can recover misuse charges, penalty, and damages contrary to the provisions of Office Order No. 23/1976.

4. In order to adjudicate upon this writ petition, the following broad facts are required to be noticed:

4.1 In 1938, *qua* the property, respondents executed a perpetual lease deed in favour of late Daulat Ram Narula. Daulat Ram Narula i.e. original lessee expired on 7 January 1963 leaving behind his wife, the petitioners, and his daughters. It appears that on 8 December 1997 the daughters of late Daulat Ram Narula executed a relinquishment deed in favour of the petitioners and their mother, one Smt. Kaushalya Devi. Kaushalya Devi died on 31 March 2001. Apparently, Kaushalya Devi, prior to her death, had executed a registered Will dated 16 December 1990 whereby the property was bequeathed to the petitioners.

4.2 Insofar as the property is concerned, as adverted to hereinabove, portions of the same were let out to various tenants from time to time. The petitioners stand is that actions were filed in the concerned court with regard to the misuse of the portions of the property let out, based on which decrees of eviction were obtained.

4.3 The details with regard to this aspect are set forth hereafter in the form of a tabular chart to give a bird's eye view as regards this aspect of the matter:

Year of Induction of Tenant	Name of the Tenant	The portion of Property Let Out	The rent charged per month	Date and Case no. of Action Taken	Date of judgment and Decree
Premises were let out in or about 1936-37 but a rent note was executed in the year 1959.	Hardit Singh Obrai/ Obra	Ground Floor	Rs. 109/- per month	01.06.1977 E-70/77	1980
1956	M/s Asiatic Travel Services	Front Portion, First Floor	Rs. 110/- per month	20.07.1982 E-331/82	16.8.1985
1963	M/s Ranbaxy Laboratories Ltd.	Rear Side, First Floor	Rs. 100/- per month	28.05.2001 E-54/2000	17.07.2004
1978	M/s General Equipments Merchants Ltd.	Second Floor	Rs. 1250/- per month	02.01.1995 E-9/1995	31.03.2000

4.4 Importantly, according to the petitioners, the lease agreement executed between their predecessors and/or of themselves provided that the leased portions had to be used only for residential purposes. Though, according to them, as per the re-development plan of 1962, the building could be used for commercial purposes.

4.5 On 18 November 1959, Daulat Ram Narula was served with the communication by the L&DO, which called upon him to correct the breaches committed *qua* the property within a period of thirty days of the issuance of the letter. This communication was followed by another letter dated 15 May 1960 whereby Daulat Ram Narula was called upon to show cause to the Chief Commissioner, Delhi, as to why the property ought not to be re-entered.

4.6 Daulat Ram Narula responded to the show cause notice *vide* reply dated 4 June 1960. The Chief Commissioner did not find the reply satisfactory and, therefore, *vide* order dated 7 November 1960 indicated his intention to re-enter the property.

4.7 Furthermore, Daulat Ram Narula was served by the L&DO with letter dated 8 December 1960 whereby he was informed that the concerned Assistant Engineer had been directed to take possession of the property on 17 December 1960. *Via* this communication, Daulat Ram Narula was asked to hand over the property which included the building along with fittings and fixtures.

4.8 Notably, neither did Daulat Ram Narula or the petitioners handed over the possession of the property nor did the respondents insist upon the same. Status quo with regard to this aspect continues to obtain till today.

4.9 It is, however, pertinent to note that the order of re-entry passed by the L&DO was challenged by way of a civil suit by the petitioners. The civil suit was instituted in and about 1973. The civil suit was, however, dismissed with costs.

5. The petitioners assailed the dismissal of their suit by preferring an appeal, which was ultimately dismissed as withdrawn in and about February 1982. Importantly, during the pendency of the appeal, an interim order dated 18 November 1980 was passed whereby respondents were restrained from cancelling the lease and re-entering the property.

5.1 It would be of some relevance to note that immediately upon withdrawal of the appeal petitioners *vide* communication dated 15 February 1982 made the following request to the L&DO for his consideration:

“Sir,

Reference to our previous letter dated 26th April 1980 and further we have to state that we have withdrawn the Suit, the copy of the order regarding withdrawal is attached herewith.

We are prepared to pay the reasonable Govt. dues leviable against the property and we also request that the re-entry order may be vacated and the title of the property be restored in the name of Legal Heirs of the deceased Late Sh. Daulat Ram Narula and oblige.”

5.2 It appears that the petitioners chose to withdraw the appeal to buy peace and thus have the unauthorized construction in the property regularized.

5.3 Accordingly, in response to the demand raised by respondent No. 3 i.e. NDMC, the petitioners deposited a sum of Rs.97,612/- and in addition, thereto, a sum of Rs. 311/- as compounding charges *qua* unauthorized construction.

5.4 Apparently, thereafter the plan submitted by the petitioners was sanctioned and unauthorized construction in the property was regularized.

5.5 As would be evident, upon perusal of the tabular chart set out hereinabove, the petitioners commenced their action against one of the tenants i.e. Asiatic Travel Services in and about 1982 but the decree for eviction was obtained *qua* this tenant in and about 1985.

5.6 It is the petitioners claim that between 1987/1993 requests were made, followed by reminders to the respondents to mutate the property in their favour. Likewise, as would be apparent from the tabular chart set forth hereinabove, in 1995 and 2001 suits were filed against the other tenants i.e. Gem India Limited and Ranbaxy Laboratories Limited. In the suits, apart from injunctive relief sought *qua* the defendants requiring them to comply with the terms of the lease deed obtaining between them and the petitioners a relief by way of possession of the portion of the property let out to them was also sought.

5.7 As a result of these proactive steps, petitioners were able to have Gem India Limited vacate the portions let out to it in and about March 2000.

5.8 Insofar as Ranbaxy Laboratories Limited was concerned, the petitioners obtained eviction orders from the concerned court on 17 July 2004. In the interregnum, that is, in 2003 the petitioners again submitted representation to the respondents which, *inter alia*, sought fresh inspection of the property, withdrawal of previous letters and communications served upon them, and mutation of the property in their favour.

5.9 It appears that this led to some movement in the matter, *albeit*, at a glacial pace when *via* communication dated 24 February 2003, the L&DO deputed an officer to inspect the property. Upon inspection of the property being carried, the L&DO shot off a letter dated 18 March 2004. In this letter, details with regard to portions of the property *qua* which misuse and unauthorized construction were found were set out. The petitioners were informed that they were in breach of Clause 2(5) of the perpetual lease deed. Accordingly, petitioners were given thirty days to remedy the breaches pointed out in the letter dated 18 March 2004. Furthermore, the petitioners were put to notice that in the event they failed to remedy the breaches within the period stipulated in the letter, they would be liable to pay charges in respect of the breaches pointed out in “paragraph 1” of the letter for the period over which the breaches existed. The letter went on to state that the charges payable for temporary regularization of the breaches would be intimated on a request being made in that behalf. The petitioners were also informed that they could seek personal interaction with the concerned officer in the office of the L&DO after seeking prior appointment.

6. In response to the communication dated 18 March 2004, the petitioners submitted a reply dated 18 April 2004. *Via* this reply, the petitioners put forth their stand in the matter. It was, *inter alia*, pointed out that the unauthorized construction had been regularized by respondent No. 3/NDMC in consonance with its Resolution Scheme No. 51 dated 23 June 1981. In addition, thereto, the petitioners also set forth the fact to which reference is made hereinabove that a sum of Rs.97,612/- was paid for this purpose. The fact that legal action had been taken against Ranbaxy Laboratories Limited for misusing the portion of the property let out was also adverted to in the letter. Insofar as the other tenant was

concerned i.e. Gem India Limited, the petitioners asserted that the unauthorized construction was carried out by the said tenant and that it had been regularized by respondent No. 3/NDMC.

6.1 The record shows that the petitioners informed the L&DO on 29 January 2005 that misuse of the portion of the property, which was let out to Ranbaxy Laboratories Limited had stopped. This letter was written in the backdrop of the fact that after the judgment and decree dated 17 July 2004, had passed in favour of the petitioners, they could have taken possession of the portion of the property let out to Ranbaxy Laboratories Limited only on 27 January 2005 *albeit* with the assistance of the court bailiff. Evidently, the L&DO once again carried out an inspection of the property.

6.2 Significantly, on 27 November 2006 the petitioners once again sought mutation of the property in their favour and also the conversion of the same from leasehold to freehold. Representations made in this behalf were rejected by the L&DO on 18 October 2007. The rejection of the representation was followed with the return of the cheque in the sum of Rs.9,05,240/- which was deposited by the petitioners towards conversion charges. The petitioners being taken aback by the action of the L&DO wrote two separate letters bearing the same date i.e. 5 November 2007.

6.3 In these communications, following significant aspects, were brought to fore:

(i) That merely because the order of re-entry subsisted, the respondents could not have rejected their application for conversion if it was found in order. Thus,

in effect, the petitioners sought restoration of their conversion application. This request was accompanied by a cheque in the sum of Rs.9,05,240/-.

(ii) There was, in fact, no unauthorized construction as the same had been regularized by respondent No. 3/NDMC. In other words, the L&DO's right to recover damages was put in issue.

(iii) That blame for misuse of portions of the property, which was otherwise given solely for residential use by tenants could not be laid at the doorstep of the petitioners. The petitioners having found that tenants were misusing the portion of the property let out to them called upon them to adhere to the terms of the lease agreement obtaining between them and the concerned tenant. Since the tenant did not fall in line, petitioners took recourse to remedies available in law and had them evicted from the properties.

6.4 Thus, in effect, via these two communications the petitioners sought restoration of both the lease deed executed in their favour by the respondents as also the conversion application filed with them.

6.5 In response thereto, the L&DO wrote to the petitioners on 17 March 2008. *Via* this letter, petitioners were asked to submit building plans which were sanctioned in and about 1981 by respondent No. 3/NDMC.

6.6 Notably, according to the petitioners, respondent No. 3/NDMC is refusing to hand over a copy of the sanctioned building plans to them in view of the fact that there has been a huge time lag since the time the unauthorized construction was regularized. The petitioners claim that respondent No. 3/NDMC refused to hand over the copy of the sanctioned plan as the property was not mutated in its favour.

It is also the stand of the petitioners that the property is not being mutated in their favour by the L&DO as the sanctioned building plans are not submitted. In effect, the petitioners claim, so to speak, being caught between the deep-sea and hard rock.

6.7 The aforesaid stand of the L&DO is reflected in its communication dated 17 March 2008. *Via* this communication, the L&DO called upon the petitioners to submit sanctioned/approved plans pertaining to the property in order to process their case further. In response thereto, the petitioners *vide* letter dated 25 March 2008 informed the L&DO that they had not been issued a copy of the plans sanctioned by respondent No. 3/NDMC, despite all conditions being fulfilled by the petitioners only on account of the property not being mutated in their favour.

6.8 The fact that respondent No. 3/NDMC had dispatched a copy of the sanctioned plans to the L&DO was sought to be established by referring to letter bearing No.902/BP, dated 24 June 1981.

6.9 Apparently, the petitioners once again sent a reminder dated 9 April 2009 to the respondents to which no response was received by them.

7. Being exasperated, the petitioners filed a writ petition in this Court which was numbered as W.P. (C) No. 11388/2009. In this writ petition, a Single Judge of this Court passed an order dated 16 December 2010. *Via*, this order, the learned Single Judge after noting the contentions of the petitioners that the “non-grant of mutation” by the respondents was holding up the release of sanctioned plans by respondent No. 3/NDMC directed the L&DO to raise a demand for misuse and unauthorized construction on the basis of plans already sanctioned by respondent No. 3/NDMC. The learned Judge also made it clear that on payment

of demand by the petitioners, the L&DO would withdraw the re-entry order. For this purpose, four weeks were granted to the L&DO.

7.1 Consequent thereto, on 14 March 2011 the L&DO raised a demand, which according to the petitioners, was not only exorbitant but was also unsustainable in law. This led to the petitioners making a detailed representation on 11 April 2011 qua the demand raised by the L&DO. The L&DO, however, rejected the petitioners' representation *vide* order dated 1 August 2011.

7.2 As a result of this development, the petitioners filed an interlocutory application in the pending writ petition i.e. W.P. (C) No. 11388/2009 for amendment of the writ petition. The amendment application was allowed by the Court on 1 November 2011. Resultantly, respondents were called upon to file a reply to the amended writ petition *vide* order dated 12 January 2012. The L&DO did not file a reply to the amended writ petition.

7.3 However, when the matter was taken up on 26 February 2013, the matter was remanded to the L&DO in view of the stand taken by its counsel. The stand taken was that the issue relating to imposition of misuse charges for the period 14 April 1980 to 28 February 2011 would be governed by the decision rendered by a Division Bench of this Court on 28 February 2012, in LPA No. 415/2005 titled ***Union of India and Another versus Jor Bagh Association and Others***. The fact that the dispute *inter se* the parties revolved also around the other two issues, which were, the mutation of the property in favour of the petitioners and non-conversion of the property from leasehold to freehold was also adverted to in this order.

7.4 Consequently, petitioners were given two weeks to file a fresh representation. The L&DO was required to give a personal hearing in the matter and pass a reasoned order with a copy of the same being furnished to the petitioners within three days of such an order being passed. Furthermore, liberty was given to the petitioners to take recourse to an appropriate remedy in case they were aggrieved by the decision rendered by the L&DO *qua* their representation. It was also made clear that in case the L&DO were to resolve the issue concerning misuse charges and the petitioners were to pay the amounts within the timeline stipulated by the L&DO, the orders of re-entry were to be withdrawn.

7.5 In case such a position were to obtain, the L&DO was directed to examine with expedition the petitioners' request for grant of mutation and conversion of the property from leasehold to freehold upon fulfillment of requisite formalities by the petitioners. For this purpose, the L&DO was given a timeframe of eight weeks from the date of the order.

7.6 It appears that the petitioners in consonance with the order dated 26 February 2013 filed their representation with the L&DO on 12 March 2013. Since the L&DO did not consider the representation, the petitioners preferred a contempt petition; a copy of which was served on the counsel for the respondents. The contempt petition, which was numbered as Cont. Cas.(C)No.613/2014 came up for hearing before the Court on 12 September 2014. On that date the petitioners' counsel was handed over a copy of the order dated 26 August 2014 passed by the L&DO. Given the fact that the L&DO had passed an order, the learned Judge dismissed the contempt petition and discharged the notice of contempt.

7.7 While doing so, the learned Judge made two crucial observations: first, that the penal charges had been reduced by the respondents from 10% to 1%, and second, insofar as the misuser charges were concerned, the representation of the petitioners had been rejected. In this behalf, the learned Judge observed that in contempt jurisdiction he could not examine the plea raised on behalf of the petitioners that the L&DO's decision on misuser charges was not in consonance with the Office Order No. 23/1976, dated 31 March 1976.

8. It is this action of the respondents, which, ultimately, propelled the petitioners to institute the present writ petition. Notice in the writ petition was issued on 13 March 2015 whereupon Mr. Kamal Kant Jha, Advocate, who appeared in the matter based on the advance notice accepted service on behalf of the respondent no. 1 and 2.

8.1 The record shows that *vide* order dated 5 April 2016 petitioners' application for placing on record additional documents was allowed. Consequent thereto, respondents were also given liberty to file additional documents.

9. Finally, after pleadings were completed, submissions advanced by counsel were heard and the matter was reserved for judgment.

Submissions of the counsel

10. Submissions on behalf of the petitioners were advanced by Mr. S.N. Chaudhary, Advocate while arguments on behalf of the respondents were addressed by Mr. Kamal Kant Jha, Advocate.

10.1 On behalf of the petitioners, Mr. Chaudhary, broadly, made the following submissions:

(i) The orders of re-entry and cancellation of lease deed were passed as far back as on 7 November 1960. The order passed to that effect was challenged by way of a suit which was instituted in and about 1973. Though the suit was dismissed, an appeal was preferred by the petitioners, which was withdrawn based on the understanding arrived at with the respondents that upon a reasonable demand being made *qua* the misuse charges, the same would be paid and the matter would be settled.

(ii) The L&DO could not have levied misuse charges or damages *vis-à-vis* unauthorized construction as these were actions carried out by the tenants without the consent of the petitioners. The petitioners having found that the provisions of the lease agreement had been infringed by the tenants took recourse to appropriate legal remedy and had them evicted.

(iii) The claim made by respondents towards misuser charges and damages for unauthorized construction was fraught with delay and laches and, therefore, at this stage, these charges could not be levied and collected by the L&DO. In this behalf, reliance was placed on the judgment of the Supreme Court rendered in ***Delhi Development Authority versus Ram Prakash***, (2011) 4 SCC 180 and the judgment of this Court, dated 23 March 2018, passed in W.P. (C) No. 188/2018, ***Ved Marwah versus New Delhi Municipal Council (NDMC) and Others*** and other connected matters.

(iv) Even if the stand of the respondents that the petitioners are liable to pay misuse charges and damages for unauthorized construction is taken to be correct, the demand *qua* the same is required to be in line with Office Order No. 23/1976. In this behalf, in particular, the emphasis was laid on clauses 7 and 8 of the Office

Order. The contention was that in terms of Clause 7 of the Office Order the petitioners could not be called upon to pay misuse charges in excess of the amounts which they had collected over a period of time from delinquent tenants. Furthermore, based on Clause 8 of the very same Office Order, it was contended that penalty could not be levied at the rate of 1% of the misuse charges calculated in terms of Clause 7 of the Office Order.

(iv)(a) The Office Order bearing No. 8/1999 dated 6 April 1999 only clarified the provisions of Clause 8 of Office Order No. 23/1976. The submission was that contrary to the stand of the respondents, Office Order No. 8/1999 did not supersede the provisions of Clause 7 of Office Order No. 23/1976.

(v) The subject area in which the property was located had been declared a commercial area *via* the zonal plan passed in that behalf. Since the zonal plan was in consonance with the master plan, the provisions of the perpetual lease deed which required the property to be used only for residential purposes stood superseded.

(vi) Since the perpetual lease deed did not make any provision for levy of misuse charges, the L&DO had no power to claim the same.

(vii) The unauthorized construction in the property was regularized by respondent No. 3/NDMC in 1981 and, therefore, the L&DO could not levy/recover damages *qua* the same post-1981. In this behalf, reliance was placed on the order dated 16 December 2010, passed in W.P. (C) No. 11388/2009. Based on this order, it was contended that the L&DO was only required to calculate the misuse charges and upon payment of the same, mutate the property in favour of the petitioners after

taking into account the factum of the plan having been sanctioned by respondent No. 3/NDMC.

(viii) Since the demand submitted by the L&DO *vide* letter dated 14 March 2011 pursuant to order dated 16 December 2010 was *ex facie* illegal and unsustainable, the respondents agreed at the hearing held on 26 February 2013 in W.P. (C) No. 11388/2009 to have the matter remanded and have the petitioners submit a fresh representation.

(ix) The petitioners' fresh representation dated 12 March 2013 was disposed of by the respondents *vide* order dated 26 August 2014, whereby, while erroneously rejecting the petitioners' stand *vis-à-vis* imposition of misuse charges and damages *qua* unauthorized construction, the respondents reduced the rate of penalty from 10% to 1%. The respondents, however, while doing so, erroneously relied upon Office Order No. 8/1999 as if it had done away with Clause 7 of Office Order No. 23/1976.

(ix)(a) In support of this plea, reliance was placed, as noticed hereinabove, on the judgment of the Division Bench of this Court in **Satish Kumar Mehta**. In effect, it was submitted that the petitioners could be called upon to pay, if at all, towards misuse charges and damages *qua* unauthorized construction, the amounts that they had collected as rent from delinquent tenants, which was a sum of Rs.4,68,743/-.

11. On the other hand, Mr. Jha after referring to the fact that the re-entry of the property had been ordered, emphasized the fact that unless the re-entry order is set aside, the occupant of such property could only be categorized as

unauthorized occupant and, therefore, would be liable to pay damages for revocation of the re-entry order.

11.1 In this behalf, Mr. Jha relied upon the judgment of the Full Bench of this Court dated 10 July 2012, passed in LPA No. 1125/2007, titled ***Union of India and Others versus Engineering and Industrial Corporation Private Limited***.

11.2 The submission was that the earlier view taken by a Division Bench of this Court in ***Union of India versus Vinay Kumar Aggarwal***, 2005(1) AD (Delhi) had been reversed. It was also pointed out that the view taken in another matter once again by a Division Bench of this Court in ***Union of India versus Anu Mehra***, passed in LPA No. 2642/2005, which followed the decision in ***Vinay Kumar Aggarwal*** was pending consideration in the Supreme Court notwithstanding the dismissal of the Special Leave Petition (SLP) filed by the Union of India which was, converted to a Civil Appeal, in ***Vinay Kumar Aggarwal***. It was pointed out that the petition which was numbered as Civil Appeal No. 1364/2006 and titled ***Union of India versus Vinay Kumar Aggarwal*** was dismissed on 18 February 2010. Reference in this behalf was made to orders passed by the Supreme Court in SLP No. 31868/2010, titled ***Union of India versus Anu Mehra***. According to the learned counsel, this petition was pending consideration.

11.3 In other words, the argument was that the damages levied post the passing of the re-entry order was distinguishable and hence could be separated from the misuse charges and penalty demanded by the L&DO from the petitioners. According to the learned counsel, once a re-entry order was passed, the same could be revoked only on payment of damages as sought for by the respondents. In this connection, it was stated that on this aspect of the matter the judgment

dated 28 February 2012 rendered by a Division Bench of this Court in a batch of petitions, the lead case being LPA No. 415/2005 titled ***Union of India and Another versus Jor Bagh Association Registered and Others*** had referred the issue to a Larger Bench, which as indicated hereinabove, ruled in favour of the respondents *via* judgment dated 10 July 2012, in the matter of ***Union of India and Others versus Engineering and Ind. Corporation Pvt. Ltd.***

11.4 Insofar as the misuse charges are concerned, it was submitted that the petitioners had failed to produce the actual rental income received from various tenants. It was contended that since the property is located in a premier area i.e. Connaught Place, the amount mentioned as the amount received as the rental income was a figure which was not believable. The argument was that even though the re-entry orders were passed in 1960, the petitioners took measures to seek the eviction of delinquent tenants only in the early 70s and thereafter, by which time they had themselves had acquired the status of unauthorized occupants.

11.5 Furthermore, it was submitted that the petitioners had colluded with their tenants in the misuse of the property and hence they were liable for payment of penalty. In this behalf, reliance was placed on the judgment of a Division Bench of this Court dated 8 March 2010, passed in LPA No.336/2009, titled ***Union of India and Another versus Savitri Devi (Deceased) through East West Rescue (Private) Limited***. It was thus contended that despite the re-entry orders having been passed, the petitioners allowed the property to be misused by their tenants and, therefore, they were liable to pay penalty at the rate of 10%. Insofar as the judgment of the Division Bench in ***Satish Kumar Mehta*** was concerned, learned counsel submitted that the same was distinguishable on facts as were other

judgments, which were cited on behalf of the petitioners to advance the plea of delay and laches.

Analysis and Reasons

12. Having perused the material placed before me and after hearing the submissions advanced by counsel, to my mind, the following undisputed facts emerge in the case:

12.1 A perusal of letter dated 8 December 1960 issued by the L&DO shows that for the first-time breaches committed *qua* the covenants in the perpetual lease deed were intimated to late Daulat Ram Narula on 18 November 1959. Apparently, via this letter, late Daulat Ram Narula was directed to remove the breaches within thirty days from the date of issuance of the letter. On a further perusal of the letter it emerges that since breaches were not remedied, a notice dated 18 May 1960 was issued calling upon late Daulat Ram Narula to show cause as to why the Chief Commissioner of Delhi should not re-enter the property. This very letter records that late Daulat Ram Narula responded to the show cause notice with a letter dated 4 June 1960 which having not been found satisfactory, propelled the Chief Commissioner to re-enter the premises with effect from 7 November 1960.

12.2 In effect, it was conveyed to late Daulat Ram Narula that all his rights and title in the property had ceased and, therefore, the property which included the building, structures, erections and fittings stood vested in the President of India and, therefore, the concerned officer had been directed to take possession of the same.

12.3 The fact remains that even up until the present juncture this threat which was extended *via* the letter dated 8 December 1960 has not been carried through. The record shows both between the date of execution of the perpetual lease deed and the issuance of letter dated 8 December 1960, as also thereafter, tenants were inducted in various portions of the property. The lease agreement(s) entered into between the tenants and late Daulat Ram Narula and thereafter between his successors-in-interest i.e. the petitioners required the tenants to use the portions of the property sublet to them only for residential purposes. Despite such a clause obtaining in their respective lease agreements, the tenants not only put the portions of the property leased out to them to use for purposes other than residential but also carried out unauthorized construction.

12.4 This led to the petitioners filing from time to time eviction petitions against their tenants.

12.5 The record also shows that the petitioners had in fact in and about 1971 filed a suit for injunction against respondents to interdict their action concerning the cancellation of the perpetual lease deed and/or ordering re-entering the property. This suit was, however, dismissed. Aggrieved by the dismissal of the suit, the petitioners had preferred an appeal which was, ultimately, withdrawn.

12.6 The petitioners had addressed a letter dated 15 February 1982 to the L&DO wherein, *inter alia*, they had indicated that they had withdrawn their action as per the request of the officials of the L&DO and that they were prepared to pay reasonable dues that the Government of India (GOI) may choose to levy for the alleged breaches. In this letter, reference was made by the petitioners to an earlier letter dated 26 April 1980 which though not on record perhaps took the same line.

Via this communication, the petitioners, thus, sought vacation of the re-entry order and restoration of the lease in favour of the legal heirs of late Daulat Ram Narula.

12.7 There is nothing on record to show as to whether the respondents took any cognizance of the plea made by the petitioners with regard to fixation of reasonable dues to be recovered qua misuse and unauthorized construction.

12.8 It appears that both parties maintained status quo till petitioners *vide* communication dated 7 January 2003 called upon the L&DO to mutate the property in their favour and consider the matter afresh.

12.9 It is in this backdrop that on 8 March 2004 the property was inspected by officers of the L&DO. Post the inspection, the L&DO communicated to the petitioners *vide* letter dated 18.03.2004 that breaches continued to obtain in the property. In this behalf, reference was made to Clause 2(5) of the perpetual lease deed. The petitioners were called upon to remedy the breaches.

13. The petitioners, as noticed above, responded to the charge *vide* reply dated 18 April 2004 stating that no breaches had been committed by them. In this letter the petitioners, *inter alia*, sought to bring to the notice of the L&DO that the unauthorized construction had been regularized upon payment of compounding charges *qua* portions of the property let out to tenants and that appropriate action as per law had been taken against those tenants who had used the property contrary to the conditions contained in the lease agreement executed with them. It was highlighted that eviction orders were obtained *qua* such tenants from the concerned court(s).

13.1 Upon one such tenant i.e. Ranbaxy Laboratories Limited vacating that portion of the property which has been let out to it, petitioners informed the L&DO about the same and invited an inspection to demonstrate that the misuse of the property had stopped.

13.2 This communication was sent by the petitioners to the respondent on 29 January 2005.

13.3 Thereafter, the petitioners on 27 November 2006, preferred two applications one for mutation of the property in their name and the other for the conversion of the property from leasehold to freehold. These applications were accompanied with a requisite deposit. The sum deposited was Rs.9,05,240/-.

13.4 The L&DO *vide* communication dated 18 October 2007 rejected the application for mutation as well as for conversion and also followed it with return of the cheque in the sum of Rs.9,05,240/-.

13.5 Being aggrieved, the petitioners, on 5 November 2007 wrote to the L&DO articulating its stand about the misuse and/or unauthorized construction in the property.

13.6 The L&DO, at this stage, called upon the petitioners to furnish the building plans which had been sanctioned by respondent No. 3/NDMC.

13.7 The petitioners, however, were unable to do so as respondent No. 3/NDMC refused to furnish a copy of the sanctioned building plans as the property had not been mutated in their favour.

13.8 The petitioners, thus, placed in a peculiar situation, *vide* communication dated 25 March 2008 called upon the L&DO to restore the lease. A reminder in that behalf was sent to the L&DO on 9 April 2009.

13.9 It is, in these circumstances, that the petitioners approached this Court in the first instance *via* writ petition being W.P. (C) No. 11388/2009. In this writ petition, as noticed hereinabove, interlocutory order dated 16 December 2010 was passed whereby the L&DO was, *inter alia*, directed to raise a demand *qua* misuse charges.

14. Consequent thereto, for the first time, a demand was raised by the L&DO on 14 March 2011. Since the demand, according to the petitioners, was exorbitant and legally unsustainable, an application was moved to amend the pending writ petition to assail the demand. This application was allowed.

14.1 However, on 26 February 2013 W.P. (C) No. 11388/2009 was disposed of wherein as alluded to hereinabove, the matter was remanded to the L&DO at the behest its counsel. Accordingly, a timeline was fixed for the petitioners to file a fresh representation, which the L&DO was required to consider.

14.2 The L&DO considered the fresh representation made by the petitioners on 12 March 2013 *vide* order dated 26 August 2014 only after it was served with a copy of the contempt petition.

14.3 *Via* order dated 26 August 2014, though, the L&DO summarily rejected the plea of the petitioners with regard to the imposition of charges in respect of alleged misuse and unauthorized construction in the property even while reducing the rate of penalty from 10% to 1%.

15. The aforementioned facts and events which have been synopsized hereinabove would show that the petitioners had been seeking fixation of the reasonable charges for condonation of breaches of the covenants of the perpetual lease deed since 15 February 1982, if not earlier. Though, as indicated hereinabove, in the letter dated 15 February 1982 there is a reference by the petitioners to their earlier letter dated 26 April 1980. The record shows that the L&DO, up until order dated 16 December 2010 was passed in W.P. (C) No. 11388/2009, did not take steps to quantify the charges which according to it were payable by the petitioners qua the misuse and unauthorized construction carried out in the property.

15.1 The crystallization of charges by the L&DO took place only on 14 March 2011 i.e. after a period of nearly 28 years if not more. The demand for misuse charges in the subsequent order, as noticed above, i.e. order dated 26 August 2014 was scaled down only with regard to the rate of penalty.

15.2 Therefore, while the L&DO agreed that the rate of penalty to be imposed would be 1%, it did not agree with the stand taken by the petitioners that in consonance with Clause 7 of the Office Order No. 23/1976, dated 31 March 1976, the misuse charges which can be levied cannot exceed the rent which the petitioners have collected from their tenants.

15.3 The argument advanced on behalf of the L&DO by Mr. Jha in this regard are: that the petitioners continued to let out portions of the property even after the order of re-entry was passed; the proceedings initiated for eviction of tenants were collusive in nature and that the rent shown as having been collected by the

petitioners should have been far more than that figure which is disclosed since the property was located in the prime area of Delhi.

15.4 Besides this, Mr. Jha also raised an argument that once an order of re-entry was passed, as was the case in the present matter, the same could be revoked only upon requisite damages being paid as the person or entity, who is in possession of such a property is an unauthorized occupant. In support of this submission, Mr. Jha had relied upon the judgment of Full Bench of this Court in ***Engineering and Industrial Corporation Private Limited***.

15.5 Mr. Jha also argued that the Office Order No. 23/1976, dated 31 March 1976, stood modified by Office Order No. 8/1999, dated 6 April 1999. According to Mr. Jha the change brought out by Office Order No. 8/1999 was that irrespective of whether or not the lessee got the property vacated from the tenant by using the court route the lessee would have to pay misuse charges and that in such a case the only concession which could be extended was that penal charges would stand reduced from 10% to 1%.

15.6 In other words, according to Mr. Jha, Clause 7 of Office Order No. 23/1976 was no longer available to lessees such as the petitioners.

15.7 I must point out at this stage that Mr. Chaudhary on behalf of the petitioners had raised a larger issue which is that the L&DO did not have the power to levy misuse charges or damages for unauthorized construction. The argument of Mr. Chaudhary was pivoted on the fact that no such provision obtained in the perpetual lease deed. Besides this, Mr. Chaudhary had also argued that since the unauthorized construction had been regularized by respondent No. 3/NDMC, the L&DO should not have levied damages.

16. Based on the arguments and counter-arguments advanced by counsel for the parties, to my mind, the following issues need to be answered:

(i) As to whether the L&DO has any power to levy misuse charges, recover damages for unauthorized construction or damages for revocation of re-entry order?

(ii) Whether the imposition of misuse charges or damages for unauthorized construction are separate from damages imposed for revocation of the order of re-entry?

(iii) Whether with the passing of Office Order No. 8/1999, Clause 7 of Office Order No. 23/1976 stood effaced?

(iv) Whether the petitioners would be entitled to the benefit of provisions of Clause 7 of Office Order No. 23/1976? And if so, for what period?

(v) Whether the L&DO was guilty of delay and laches in not notifying the amounts which petitioners were required to pay towards misuse charges, damages for unauthorized construction and damages for revocation of re-entry order?

Issue No. (i)

17. Insofar as the first issue is concerned, according to me, it is no longer *res integra* in view of the judgment rendered by a Division Bench of this Court in ***Jor Bagh Association and Others*** wherein, *inter alia*, one of the issues raised was the source of power to levy misuse charges and damages for unauthorized construction. The Court traced the power of the State in respect of misuse charges and damages for unauthorized construction to the Government Grants Act, 1895 (in short “Government Grant Act”). The Division Bench came to the

conclusion that the perpetual lease deeds executed by the State or its instrumentalities being Government grants are governed by the Government Grants Act. The Court went on to state that damages on account of misuse and/or unauthorized construction by a lessee having a leasehold tenure in a property could be recovered by the lessor i.e. the State (if the lease incorporates a condition regulating the use and the extent of construction) under the pain of the lease being determined for breach of either or both conditions.

17.1 The Division Bench differed with the view of the Single Judge that Clause 2(2) of the perpetual lease deed, which obliged the lessee to pay from time to time, all 'rates', 'taxes', 'charges', and 'assessments' were confined to imposition by the State, in exercise of its sovereign power to raise revenues. The Division Bench came to the conclusion that if the expression "charge" in Clause 2(2) of the lease was to be construed in such a fashion then the option left with the head-lessee i.e. the State where breaches of the covenants of the perpetual lease deed are noticed would be to forfeit the lease and re-enter the property; a situation which according to the Division Bench, would be detrimental to the interest of the lessee/grantee.

17.2 According to the Division Bench, the power to condone the breach was an inherent power of the lessor and thus need not be expressly indicated in the grant. As per the Division Bench, the source of power to condone the breaches by levying a penalty was not rooted in the Office Order No. 23/1976 but in law which inheres in the lessor/grantor the power to condone the breach of the covenants of the lease. The Office Order No. 23/1976 laid down only the manner in which the damages for condoning the breach of the covenants of the lease/grant are to be determined. Therefore, the submission of Mr. Chaudhary

that there was no power vested in the L&DO to levy misuse charges or damages for unauthorized construction or penalty or even for revocation of the order of re-entry is without merit and is, therefore, rejected.

Issue No. (ii)

18. Insofar as issue No. (ii) is concerned, in my view, this aspect of the matter has been answered by the Full Bench of this Court in ***Engineering and Industrial Corporation Private Limited***. In this matter, the Full Bench of this Court was considering the impact of Clause 4(a) of the policy circular dated 25 June 1996. The Full Bench overruled the decision of the Division Bench of this Court in ***Vinay Kumar Aggarwal*** and in doing so adopted the rationale that the damages adverted to in Clause 4 of the policy circular dated 25 June 1996 which pegged the same at Rs.100/- per day subject to a maximum of Rs.3,000/- per annum was restricted only to the period post the re-entry being effected and had nothing to do with the damages which are required to be paid for regularizing breaches concerning misuse or unauthorized construction. The relevant observations, which are made in paragraph 20 of the judgment being apposite are extracted hereafter: -

“20. We accordingly overrule the view taken by the Division Bench of this Court in Vinay Kumar Aggarwal’s case (supra) and answer the reference as per para 19 above. We hold that Rs.100/- per day, subject to a maximum of Rs.3000/- per annum payable as per the policy circular dated June 25, 1996 is restricted only to the period post re-entry being effected and is the amount towards damages payable for unauthorized occupation and that the said sum is not towards regularizing a breach in the form of misuse or unauthorized construction.”

18.1 Therefore, there are two distinct periods which are involved in cases of this kind. These are pre re-entry and post re-entry periods. Insofar as the period prior to re-entry being effected is concerned, the L&DO is entitled in law to condone and/or regularize the breaches concerning misuse and unauthorized construction.

18.2 On the other hand, for the period post the re-entry the L&DO could, perhaps, recover damages for revocation of the order of re-entry in line with policy circular dated 25 June 1996. I may indicate that the reason I use the word perhaps is that in paragraph 21 of the very same judgment the Full Bench has adverted to submissions made on behalf of the lessee that there are subsequent policy guidelines which have been issued in 1999 and 2003 which would impact the aspect of recovery of damages. Pertinently, in the reply filed to the writ petition, the L&DO has not adverted to the policy circular dated 25 June 1996. Therefore, without laying a foundation *qua* this aspect of the matter, the L&DO cannot for the first time in the written submissions take recourse to the same. As noticed above, therefore, while recognizing the fact that the imposition for misuse charges and damages for unauthorized construction fall in a different category as against damages for revocation of re-entry, what cannot follow as a sequitur is the right of the L&DO to recover such damages.

18.3 The reasons for this are manifold. Firstly, as noticed above, no such case is set up in the pleadings. Secondly, even in the demand dated 14 March 2011 or 26 August 2014 no such aspect is adverted to. Thirdly, if the L&DO is found guilty of delay and laches, then, surely damages for revocation for re-entry order cannot be recovered.

Issue Nos. (iii), (iv) & (v):

19. The Office Order No. 8/1999, which is brief, would require to be noticed while dealing with these issues. Thus, for the sake of convenience, the relevant part of the Office Order is extracted hereafter: -

“OFFICE ORDER NO. 8/99

With reference to Clause 8 of the Office Order No. 23/76 dated 31.3.1976 certain clarification were sought from the Ministry of Urban Affairs & Employment.

2. Ministry of Urban Affairs & Employment in consultation with Finance Division & M/O Law has decided that if any lessee, after receipt of our misuse notice files a suit for eviction against the defaulting tenants and succeeds in evicting such tenants; the lessee shall be liable to pay the misuse charges, irrespective of the fact that he/she got the tenant evicted through the Court. However, in such cases the penal charges shall be reduced to 1% instead of [the] usual 10%.

This issues with the approval of L&DO.”

19.1 A perusal of the aforesaid extract of Office Order No. 8/1999 would show that it only seeks to clarify Office Order No. 23/1976. There is no repeal of Office Order No. 23/1976. Furthermore, Office Order No. 8/1999 only emphasizes the fact that if after the receipt of misuse notice, the lessee files a suit for eviction against the defaulting tenant and succeeds in having the tenant evicted, the lessee shall be liable to pay misuse charges irrespective of the fact that the tenant got evicted *via* the Court. The Office Order goes on to say that in such cases penal charges would be reduced from 10% to 1%. What is not stated in Office Order No. 8/1999 is as to how the misuse charges would be quantified.

19.2 The formula for calculation of misuse charges is provided in Clause 3 of Office Order No. 23/1976. Clause 7 of Office Order No. 23/1976 particularizes a situation where misuse charges are to be reduced the situation which is adverted to therein is the one which the petitioners have faced i.e. the misuse of the property was an act committed by the tenant. Clause 7 provides that in such situation where charges levied are more than the income that the lessee has received from the leased property, then, the same will be reduced suitably according to the circumstances obtaining in each case. The clause goes on to state that the inability on the part of the lessee to increase the income from the leased property will be one of the factors which would have to be considered.

19.3 In the same way, Clause 8 of Office Order No. 23/1976 provides where the lessee or ex lessee files the suit for eviction against defaulting tenant on receipt of notice of misuse and is successful in evicting the tenant, then, a token penalty of 1% of such charges shall be recovered.

19.4 On the other hand, Office Order No. 8/1999 extends the benefit of reduced rate of penalty even to those lessees who after receiving the notice of misuse file a suit for eviction against a defaulting tenant and succeed thereafter in evicting the tenant whether through court or otherwise. In other words, if *via* a settlement between the lessee and the tenant, the tenant decides to vacate a portion let out to him, even in such a situation penal charges would be levied at the reduced rate of 1%. There is no provision in the Office Order No. 8/1999 as to the formula for levy of misuse charges or whether or not misuse charges would be reduced in the circumstance as provided in Clause 7 of Office Order No. 23/1976.

19.5 Thus, to my mind, contrary to the contention of Mr. Jha, with the issuance of Office Order No. 8/1999 the provision made in Clause 7 of Office Order No. 23/1976 has not been repealed. The petitioners, to my mind, can claim the benefit of Office Order No. 23/1976.

19.6 The Division Bench of this Court in the judgment rendered in the matter of **Satish Kumar Mehta** has placed its imprimatur on clauses 7 and 8 of Office Order No. 23/1976. This was a case where the respondent before the Court had sub-leased the property to a journalist, who had used a portion of the property for his office work. The L&DO had taken umbrage *qua* the same by classifying the use as a commercial activity and thus levied misuse charges in the sum of Rs.48,57,924/- on account of violation of the provisions of the perpetual lease deed executed in favour of the lessee. The L&DO claimed that since the property could be used solely for residential purposes, dual-use of the property by the tenant or the lessee triggered the levy of misuse charges. The lessee had taken several defences, including that the area of the alleged misuse was within the permissible limits and that in any event misuse charges could not exceed the rent recovered from the tenant. The Division Bench accepted the stand advanced by the lessee in this behalf which was pivoted on the provisions of clauses 7 and 8 of the Office Order No. 23/1976. The relevant observations made by the Division Bench in this behalf are extracted hereafter: -

“30. With reference to clauses 7 and 8 of the Office Order No.23/1976 dated March 31, 1976, it is apparent that where the lessee sues to evict a defaulting tenant on receipt of a notice for misuse and successfully evicts the tenant, a token penalty of only 1% of the misuse charges otherwise recoverable can be levied. In any case, as per clause 7, the penalty cannot be more than the income derived from the premises by the lessee. Now, at the relevant time the property in question was

governed by the Delhi Rent Control Act, 1958 and the respondent could not increase the rent. Under no circumstances the penalty could be more than the rent received by the respondent. As noted above, the total rent realized by the respondent from the tenant was Rs.4,41,264/-, and thus under no circumstances could the misuse charges, by way of penalty, be the amount determined by the learned Single Judge.

31. The impugned judgment and decree is liable to be set aside on aforesaid reasoning.”

(emphasis is mine)

19.7 Therefore, in my opinion, as indicated above, the provisions of Clause 7 of the Office Order No. 23/1976 remain intact notwithstanding the issuance of Office Order No. 8/1999 and, therefore, as noticed above, the petitioners can take benefit of the same.

19.8 The next aspect, which will arise, is as to the period for which the petitioners can take benefit of Clause 7 of Office Order No. 23/1976. There are two facets to this aspect of the matter: (i) As indicated hereinabove, while discussing issue No.(ii), misuse charges and damages for unauthorized construction are different from damages for revocation of re-entry order. Therefore, logically once re-entry order is passed, the L&DO will have the right in law to recover damages for levying the same. But then the issue cannot be decided *dehors* the circumstances obtaining in each case which is the delay and laches, if any, committed by the L&DO in crystallizing the amounts payable by a lessee. As noticed hereinabove, despite the petitioners writing to the L&DO as far back as 15 February 1982 to crystallise the charges payable for the alleged breaches which were committed by their tenants, no steps were taken by the respondents.

19.9 The respondents, for the first time, brought on record a demand which is dated 14 March 2011. In the demand letter, there is a reference to an earlier demand made on 14 April 1980. While there is a reference to demand of this date (i.e. 14 April 1980) with the reply filed to the writ petition, no such demand letter has been appended to the reply. I must state that in the reply the respondents have averred that such demand was served on the petitioners in the suit court. The petitioners in their rejoinder have denied this fact. Therefore, in my opinion, it was incumbent on the respondents to place on record the demand letter dated 14 April 1980.

20. In the absence of this demand letter, one can only conclude that for the first time misuse charges and damages for unauthorized construction were conveyed to the petitioners on 14 March 2011. The petitioners, as noticed above, however, challenged the demand by amending its writ petition being W.P.(C)No.11388/2009. This writ petition was, however, disposed of on 26 February 2013 and the matter was remanded to the L&DO to re-consider the case of the petitioners. The remand was made based on the submissions advanced by the counsel for the L&DO in the wake of the judgment of the Division Bench of this Court in ***Jor Bagh Association and Others***.

20.1 As indicated above, that judgment of the Division Bench squarely discussed the Office Order No. 23/1976, in particular, as to whether or not that Office Order was the source of power for levying misuse charges and damages for unauthorized construction or, did it provide the mode and manner of levying misuse charges and/or damages. The Court in that case, as noticed above, concluded that the source of power lay in the Government Grants Act and the manner of levy of such charges and damages was provided in the Office Order

No. 23/1976. Therefore, given this background, it was incumbent on the L&DO to consider the impact of the Office Order No. 23/1976, in particular, Clause 7 of the said Office Order. A perusal of the order dated 26 August 2014 would show that there is no discussion whatsoever as to the impact of Clause 7 of the Office Order No. 23/1976.

20.2 The L&DO *via* the order dated 26 August 2014 has only conceded to reduction of penalty from 10% to 1%.

20.3 Mr. Jha's argument that the eviction proceedings carried out were collusive or that the rent shown to have been collected by the petitioners from its various delinquent tenants was not the actual amount received by the petitioners are submissions which are bereft of any material. The L&DO could have asked for relevant documents from the petitioners to justify its claim that it had recovered from its delinquent tenants a sum of only Rs.4,68,732/-. The L&DO failed to make any inquiry in that behalf and as a matter of fact, passed a perfunctory order on 26 August 2014.

20.4 The result is that the petitioners' application for mutation and conversion of the property from leasehold to freehold remains pending.

20.5 Thus, having regard to the aforesaid, it is, to my mind, clear that the L&DO has ended up piling the demand by delaying the crystallization of misuse charges and damages for unauthorized construction. It is well established that even in situations where a period of limitation is not prescribed requiring the State or its instrumentality to discharge its duty within a particular timeframe; it is obliged in law to discharge its obligations towards the citizens within a reasonable time.

20.6 In the context of crystallization of misuse charges and the delay in freezing the same, the Supreme Court has made the following crucial observations in the judgement rendered in ***Delhi Development Authority vs. Ram Prakash***, AIR 2011 SC 1399.

“21. Having considered the submissions made on behalf of the DDA and by the respondent appearing in-person, and also having considered the reasoning of the learned Single Judge and the Division Bench in repudiating the claim of misuser charges by the 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 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.

22. Even as to the contention raised on behalf of the petitioner that there was no limitation prescribed for making a demand of arrear charges, the Division Bench relying on the decision of this Court in State of Punjab & Ors. Vs. Bhatinda District Cooperative Milk Producers Union Ltd. [(2007) 11 SCC 363], observed that even where no period of limitation is indicated, the statutory Authority is required to act within a reasonable time. In our view, what would construe a reasonable time, depends on the facts and circumstances of each case, but it would not be fair to the respondent if such demand is allowed to be raised after 25 years, on account of the inaction of the petitioner.”

(Emphasis is mine)

20.7 Therefore, I have no hesitation in holding that respondent No. 2/L&DO was guilty of delay and laches in not crystallizing the amounts which the petitioners or

their predecessor-in-interest was required to pay to condone the violation of the covenants of the perpetual lease deed, in particular, Clause 2(5) and 2(6).

21. Thus, given the foregoing discussion, the two orders of even date dated 18 October 2007 issued by the L&DO rejecting the petitioners' application for mutation and conversion of property from leasehold to freehold are quashed. Likewise, the demand notices dated 14 March 2011 and order dated 26 August 2014 are also quashed. The L&DO is directed to recalculate the misuse charges and damages for unauthorized construction after giving the benefit of Clause 7 of Office Order No. 23/1976.

21.1 In the meanwhile, the L&DO will consider the petitioners' application for mutation and conversion of the property from leasehold to freehold upon the petitioners paying the admitted sum of Rs.4,68,732/- in addition to penalty at the rate of 1% equivalent to Rs.4,687/-. This amount will be deposited within a period of two weeks from the date of receipt of a copy of the judgment.

21.2 The consideration of the application for mutation and conversion will be subject to further amounts if any, determined by the L&DO in terms of the directions issued hereinabove. An undertaking by way of an affidavit will be filed by the petitioners stating that if further amounts are found due to be payable towards misuse charges and damages for unauthorized constructions by the L&DO, the same will be paid.

21.3 The petitioners, however, will have the right to assail the determination, *albeit*, in accordance with the law.

21.4 Furthermore, upon payment of the misuse charges and damages for unauthorized construction, the L&DO will revoke the re-entry order as imposition of damages for revocation of the same would be wholly unfair in the given facts and circumstances as no such case is set up in the pleadings nor was anything to that effect communicated to the petitioners in all these years.

21.5 In order to effectuate the issuance of the mutation of the property in favour of the petitioners, respondent No. 3/NDMC will hand over a certified copy of the sanctioned plan to the L&DO without waiting for a “scrutiny report” being issued in that behalf by the L&DO.

22. The captioned petition is disposed of in the aforesaid terms. Accordingly, the pending interlocutory applications shall also stand closed.

(RAJIV SHAKDHER)
JUDGE

AUGUST 27, 2019
VKR