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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8054/2017**
RITU MALIK Petitioner

Through: Mr Bharat Gupta and Mr Varun
Tyagi, Advocates.

versus

LAND & DEVELOPMENT OFFICE Respondent

Through: Mr Anil Dabas, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
23.04.2019

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VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning a demand letter dated 02.03.2015 issued by the respondent, whereby the respondent has levied misuse charges and damages amounting to ₹25,43,395/- in respect of the property bearing Plot No. 5/12-A & 12-B, Kirti Nagar Industrial Area, New Delhi - 110015 (hereafter 'the Property'). The said charges have been calculated for misuse from the year 1982 onwards.

2. The petitioner claims that no notice was issued for misuse at the material time and therefore the charges for breaches, if any, ought to be computed for the period commencing 03.03.2014 and not from the year 1982.

3. The petitioner states that Mr Arjun Dev Arora (the petitioner's father) had purchased the right, title and interest in the Property vide a sale deed dated 12.12.1969, which was registered on 17.12.1969. The Property was then mutated in the name of the petitioner's father vide a memorandum dated 17.09.2016.

4. A letter dated 17.05.1982 was issued to Mr Arjun Dev Arora by the respondent regarding inspection of the Property, which was scheduled to be held on 26.05.1982. Pursuant to inspection, an inspection report dated 11.06.1982 was generated, which indicated certain misuse and unauthorized construction at the Property. It is stated that another inspection was carried out on 28.06.1983 and the inspection report dated 02.07.1983 also indicated misuse and unauthorized construction at the Property.

5. Admittedly, no notice was issued to be petitioner's father regarding any misuse or unauthorized construction. It is stated that the same was for the reason that at the material time, inspection was banned. This is also reflected in the office noting dated 19.07.1983, which records: "*Inspection has been banned and we cannot issue notice*".

6. The Respondent issued a general office order (bearing No. 3/85) on 06.02.1985 (hereafter 'the office order'), wherein it was noticed that since inspections had been banned, no notices were issued and since notices could not be issued, no charges can be levied. In terms of

the said order the concerned officers were advised to issue notices forthwith on the basis of previous inspections. However, no notice was issued at the material time

7. Although no notice regarding misuse or breaches was issued at the material time, the respondent returned the amount of ₹20 sent as ground rent under the cover of a letter dated 03.01.1986. However, the petitioner claims that neither her father nor any of his legal heirs were aware of the aforementioned letter dated 03.01.1986.

8. Thereafter, the respondent issued another letter on 22.10.2013, intimating the petitioner that inspection would be conducted on 08.11.2013. However, vide a letter dated 19/22.11.2013, the respondent informed the petitioner that inspection was refused by the lessee on the said date. In view of the same, inspection was rescheduled to 10.12.2013. The petitioner submits that Mr Arjun Dev Arora had expired on 31.12.2009 and none of his legal heirs were aware of any of the aforementioned communications.

9. Another inspection was scheduled for 17.01.2014 and information regarding the same was communicated by the respondent vide a letter dated 08.01.2014. It is alleged that the lessee (petitioner) did not permit the same and the inspection was rescheduled to 10.02.2014.

10. The petitioner submits that she responded to the letter dated 08.01.2014 on 06.02.2014, *inter alia*, stating that no one visited the Property on 10.12.2013 and further requesting the respondent to reschedule the inspection. The Property was again inspected on 17.01.2014, and the inspection report dated 26.02.2014 indicates certain misuse and unauthorized construction. However, the petitioner contends that a copy of the inspection report was not sent to the petitioner, nor to any other legal heir of Mr Arjun Dev Arora.

11. Based on the foregoing inspection report dated 26.02.2014, a breach notice addressed to Mr Arjun Dev Arora was sent on 03.03.2014 and the legal heirs of Mr Arjun Dev Arora were informed about the misuse and unauthorized construction at the Property. The legal heirs of Mr Arjun Dev Arora responded to the said notice on 27.03.2014. Thereafter, the petitioner's brother, Mr Ashwani Arora, addressed a letter to the respondent on 30.06.2014, requesting the respondent to inform him about the charges for regularizing the breaches.

12. On 08.07.2014, the petitioner filed an application with the respondent for substitution of title of the Property in her favour, in view of her father's demise and the fact that all other legal heirs had relinquished their rights in the Property. A substitution letter to the aforesaid effect was issued by the respondent on 21/22.08.2014, recording the petitioner's name in place of her father's, in respect of the Property.

13. The petitioner filed a conversion application dated 01.10.2014 on 09.10.2014 with the respondent along with a sum of ₹1,50,000/- towards conversion of the Property from leasehold to freehold. Vide a letter dated 27.11.2014, the respondent informed the petitioner that an inspection has been scheduled for 15.12.2014. Subsequently, an inspection report dated 19.12.2014 was issued by the respondent, recording certain misuse and unauthorized construction at the Property. A breach notice was issued to the petitioner dated 29/30.12.2014, informing her about the breaches at the Property and putting her notice that she would be liable to pay damage and misuse charges.

14. The petitioner claims that on receipt of the breach notice, she demolished certain encroachment upon the Property.

15. Thereafter, the respondent issued a demand notice to the petitioner for a sum of ₹ 25,43,395/- for regularizing the breaches at the Property. This amount was calculated by the respondent from the year 1982. It was further stated in the said demand notice that conversion of the Property would be subject to payment of such charges. The petitioner replied to the said demand notice vide a letter dated 30.04.2015, contending that since the breaches were only made known to her in the year 2014, pursuant to which they were removed, the amount should not be calculated from the year 1982.

16. The petitioner contends that her representation was considered at various levels by the respondent and various office notings indicate that there is much confusion amongst the officials of the respondent regarding the issues raised by the petitioner.

17. Vide a letter dated 09.08.2016, the respondent informed the petitioner that the property had been examined for the first time on 26.05.1982 and thereafter on 28.06.1983. Breaches were reported on both occasions. Further, the aforesaid letter recorded that the ground rent paid by Mr Arjun Dev Arora on 02.12.1985, was returned to him vide the letter dated 03.01.1986.

18. Aggrieved by the same, the petitioner has filed the present petition.

19. The learned counsel appearing for the respondent does not dispute that the controversy involved in the present case is squarely covered by the decision of the Supreme Court in ***Delhi Development Authority v. Ram Prakash: AIR 2011 SC 1399*** and the decision of this Court in ***Hira Lal Singh and Ors. v. The Land Development Officer, Land & Development Office: W.P. (C) 8482/2015 decided on 08.08.2017.***

20. In ***Delhi Development Authority v. Ram Prakash*** (*supra*) the Supreme Court had observed that it would be inequitable to allow DDA to take advantage of its inaction in claiming misuse charges. The

observations to the aforesaid effect were made in the context where show cause notices were issued on 08.08.1983 and 28.06.1990, but, the DDA did not take any precipitate action thereafter, till the respondent therein applied for mutation of the concerned property on 20.05.2004.

21. In the present case, admittedly, no show cause notice was issued to the petitioner or her predecessor at the relevant time. Although, the respondent states that ground rent was returned under the cover of a letter dated 03.01.1986, it is admitted that no further steps were taken by the respondent at the material time.

22. The respondent claims that it informed the petitioner regarding an inspection to be conducted on 08.11.2013 by a letter dated 22.10.2013. It is claimed that the petitioner (lessee) did not permit inspection to be conducted on that day. This is disputed by the petitioner. However, without going into the controversy, it is clear that till 08.11.2013, the respondent had not taken any steps for any action for determining the misuse of the property. The first notice regarding misuse of the property was issued on 03.03.2014. However, even if it is accepted that save for the alleged obstruction created by the lessee, the inspection would have been conducted on 08.11.2013 and the respondent would have ascertained the extent of misuse and the charges to be levied thereon, it would be inequitable to sustain the demand of charges pertaining to the period prior to the said date. As observed by the Supreme Court in *Delhi Development Authority v.*

Ram Prakash (*supra*), the respondent cannot be permitted to take advantage of its inaction.

23. In view of the above, the respondent is directed to ascertain the misuse charges and other charges as payable by the petitioner for the period commencing from 08.11.2013. Subject to the petitioner paying the said charges, the petitioner's application for mutation and conversion of the property in question would be processed in accordance with law. The said application would not be withheld on account of non-payment of any arrears or misuse charges for the period prior to 08.11.2013.

24. The petition is disposed of in the above terms.

25. The parties are left to bear their own costs.

नित्यमेव जयते **VIBHU BAKHRU, J**

APRIL 23, 2019

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