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

Date of decision: 10th FEBRUARY, 2023

IN THE MATTER OF:

+ **LPA 106/2023 & CM APPLs.6620-21/2023**

DELHI DEVELOPMENT AUTHORITY & ANR Appellants

Through: Mr. Sanjay Katyal, Ms. Kritika Gupta,
Advocates along with Mr. Vineet
Kumar & Mr. Rohit Kumar, SSA

versus

JAGMINDER PAL SINGH & ORS Respondents

Through: Mr. Sanjeev Manchanda, Ms. Ravita
Manchanda, Advocates along with
Mr. Jagminder Pal Singh & Mr. Jai
Pal – Respondents in person

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. Aggrieved by the interim Order dated 12.01.2023 passed by the learned Single Judge in W.P.(C) 15059/2022 directing desealing of the property bearing C-196/1, Rewari Line, Industrial Area, Phase-II, Mayapuri, New Delhi-64 (*hereinafter referred to as 'the property in question'*) pending writ petition, the DDA seeks to file the instant appeal.

2. The Respondents herein filed W.P.(C) 15059/2022 challenging an order dated 24.09.2022 passed by the learned District & Sessions Judge (West), Tis Hazari Courts in PPA No.3/2017 upholding an order of eviction

dated 27.10.2016 passed by the Estate Officer in eviction proceedings instituted by the DDA.

3. It is stated that the DDA had allotted the property in question to one M/s Bhatia Chemical Works by way of a lease deed executed by the DDA on 14.10.1976. Subsequently, one Ram Ral Bhatia of Bhatia Chemical Works, the allottee, executed a GPA/Will/Agreement to Sell in favour of M/s Tirlok Builder through one SK Chaudhary, who was the Director of M/s Tirlok Builder on 13.02.1991. It is stated that on 11.07.1994, SK Chaudhary, Director of Tirlok Builder subsequently transferred all his rights of the property in question to the Respondents herein, i.e. Jagminder Singh, Jaipal Khairwal, S.Sarabjeet Singh, Inderdeep Singh, Vikram Singh through his mother Ms. Jasbir Kaur & Ms. Sukhwinder Kaur.

4. Since the property in question was transferred by the original allottee in violation of the terms and conditions of the lease, DDA cancelled the lease of the property in question on 20.09.2002 and directed the original allottee to handover vacant physical possession of the premises. However, when the original allottee failed to do so, the DDA initiated eviction proceedings under the Public Premises Eviction of Unauthorised Occupants Act, 1971 to recover the possession of the property in question.

5. On 27.10.2016, an order of eviction was passed by the Estate Officer on the ground that the Respondents herein were in unauthorized occupation of the property. The order of the Estate Officer was challenged before the learned District & Sessions Judge. The learned District & Sessions Judge by an Order dated 24.09.2022 rejected the appeal filed by the Respondents herein. Thereafter, the Respondents herein approached this Court by filing

W.P.(C) 15059/2022, challenging the Order dated 24.09.2022 passed by the learned District & Session Judge in PPA No.3/2017.

6. The learned Single Judge by the impugned order, which is a detailed and exhaustive order, has directed desealing of the property in question pending writ petition and has directed the writ petition to be listed for further hearing on 13.04.2023. The DDA has challenged the said Order by way of the instant LPA.

7. The issue before the learned Single Judge is whether the order of the learned District & Sessions Judge affirming the order of the Estate Officer in proceedings initiated under the Public Premises Eviction of Unauthorised Occupants Act, 1971 is correct or not. The issue is yet to be decided by the learned Single Judge.

8. The question which arises before this Court is whether pending the writ petition, the order passed by the learned Single Judge directing desealing of the property requires interference or not.

9. A perusal of the impugned Order shows that the learned Single Judge has placed reliance on an Order dated 22.12.2022 passed in W.P.(C) 15054/2022 wherein in somewhat similar circumstances an interim order has been passed in favour of the writ petitioners therein.

10. The learned Single Judge in W.P.(C) 15054/2022, after relying on various orders and the circular of the DDA and in view of the fact that the DDA has itself allowed restoration of lease in various cases even in instances where there have been misuse and violation of the Master Plan has restored the leases, and in view of that matter the learned Single Judge had stayed the operation of the order passed by the learned District & Single Judge upholding the cancellation of lease and consequential eviction.

11. The learned Single Judge has also placed reliance on a Circular dated 31.03.2008 issued by the DDA with respect to Conversion Policy and the Restoration Policy of the DDA. The circular which has been quoted by the learned Single Judge is once again being quoted hereinbelow for ready reference:-

"[a] Conversion will be allowed without any site inspection. Site inspection should be carried out only if there are previous notings in the file or specific complaints regarding unauthorized construction or misuse in the file.

[b] Conversion of leased properties irrespective of any building violations or use violations will be allowed and a letter will be sent to MCD or building Department of DDA for taking appropriate action as per rules.

[c] However, in case of commercial property, unauthorized construction within plot area may be taken as misuse since it tantamount to increase in usable area/ FAR.

[d] Conversion will be allowed after recovery of past misuse charges as per policy whether earlier demanded or not.

[e] In the cases where allotment has been cancelled or lease has been determined on account of unauthorized sale, conversion will be allowed after obtaining approval of Competent Authority for restoration of allotment/lease deed and on recovery of Restoration Charges.

[f] If lease has been determined and allotment has been cancelled on account of unauthorized construction and misuse, the lease will be restored without insisting on removal of breaches and conversion and subject to payment all penal charges.

However, in cases where GPA and Agreement to sell has been made after determination of lease deed or cancellation of allotment, in such cases, the request of conversion will not be entertained.

[g] In case of unauthorized encroachment on public land, conversion shall be allowed after removal of encroachment and recovery of damage till the date of removal of encroachment.

[h] In case where lease has been determined or allotment have been cancelled after the date of GPA or Agreement to sell, Conversion may be allowed subject to recovery of restoration charges and other dues payable by the lessee.

... ..

[l] In case of unauthorized construction and misuse, irrespective of any building violations or use of violations of Master Plan, the conversion of all leased properties would be permitted subject to recovery of misuse charges whether earlier demanded or not. The violations of building bye-laws or master plan is a subject matter of Enforcement Branch, MCD/DDA.

No site inspection be should be carried out before allowing conversion except if in the file or in the survey report or any document establishes that premises is being misused. In such cases, site inspection should be carried out to ascertain the area and period of misuse for calculating misuse charges. "

(emphasis supplied)

12. The learned Counsel for the DDA points out that there are factual errors in the order impugned herein. If there are factual errors, it is always open for the DDA to file an appropriate application pointing out the correct facts and corrections in the order.

13. The learned Single Judge has relied on other judgments in which under similar circumstances the order of the learned District & Sessions Judge upholding eviction orders have been stayed and has also relied on Conversion and Restoration Policy which is also applicable to the facts of the present case.

14. In view of the said policy of the DDA and keeping note of the fact that the Respondents herein/writ petitioners had deposited a sum of Rs.1,00,500/- in the year 2008 and thereafter a sum of Rs.25,82,789/- in the year 2018, which are still lying deposited with the DDA, and the learned Single Judge has issued notice in the writ petition and has directed the desealing of the property in question pending writ petition, this Court does not find any reason to interfere with the order passed by the learned Single Judge more particularly when the writ petition is pending adjudication.

15. It is made clear that the observations made by this Court is limited to the issue as to whether the order passed by the learned Single Judge directing desealing requires interference or not and are not to be taken as observations on the merits of the case. It is always open for the DDA to point out factual errors, if any, before the learned Single Judge by filing an appropriate application.

16. In view of the above, the LPA is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 10, 2023

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