



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

Date of decision: 04th JULY, 2023

IN THE MATTER OF:

+ **LPA 446/2023 & CM APPLs. 26526/2023, 26527/2023, 26528/2023**

MAHESH KAPOOR

..... Appellant

Through: Mr. Sandeep Sethi, Sr. Advocate, Mr. Pawanjit S. Bindra, Sr. Advocate with Mr. Kunal Sharma and Mr. Shubendu Bhattacharyya, Advocates.

versus

LT. GOVERNOR OF DELHI & ORS

..... Respondents

Through: Ms. Anusuya Salwan, Mr. Bankim Garg, Mr. Rachit Wadhwa and Ms. Nikita Salwan, Advocates for Respondent/DSIIDC.

+ **LPA 147/2023 & CM APPLs. 9688/2023, 9689/2023, 9690/2023, 9691/2023, 9692/2023**

JEPS PHARMA PVT LTD. AND ANR

..... Appellants

Through: Mr. Sandeep Sethi, Sr. Advocate, Mr. Pawanjit S. Bindra, Sr. Advocate with Mr. Kunal Sharma and Mr. Shubendu Bhattacharyya, Advocates.

versus

OFFICE OF THE COMMISSIONER OF INDUSTRIES AND ORS.

..... Respondents

Through: Mr. Avishkar Singhvi, Mr. Naved Ahmed and Mr. Vivek Kumar, Advocates for R-1 and R-2.
Ms. Anusuya Salwan, Mr. Bankim Garg, Mr. Rachit Wadhwa and Ms. Nikita Salwan, Advocates for Respondent/DSIIDC.

CORAM:



**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

JUDGMENT

1. LPA 147/2023 is directed against the Order dated 23.09.2022, passed by the learned Single Judge in W.P.(C) 213/2010 and LPA 446/2023 is directed against the Order dated 23.09.2022, passed by the learned Single Judge in W.P.(C) 4250/2007.
2. The Appellants herein were Writ Petitioners in the abovementioned Writ Petitions.
3. W.P.(C) 213/2010 was filed by the Appellant in LPA 147/2023 seeking for quashing of the Order dated 06.06.2003, passed under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (*hereinafter referred to as " the PP Act"*) passed by the Estate Officer, and Order dated 30.10.2009, passed by the learned District Judge, Karkardooma Courts, (*hereinafter referred to as "the Appellate Court"*) in PPA No. 3/08/03.
4. W.P.(C) 4250/2007 was filed by the Appellant in LPA 446/2023 seeking for quashing and setting aside letter dated 20.03.2007, issued by the Respondents herein rejecting the representation filed by the Appellant for conversion of his premises, being Plot No. 133, Functional Industrial Estate, Patparganj, Delhi (*hereinafter referred to as 'the premises in question'*) from leasehold to freehold.
5. Since both the appeals arise from the same facts, with the consent of all the parties they are being heard analogously and are being disposed of by a common judgment.
6. The premises in question was leased to M/s Jeps Pharma (P) Ltd. through its Directors Mr. Jatinder Singh Kohli and Mr. Rakesh Bajaj



(hereinafter referred to as "*the Lessee*") by the Delhi Administration *vide* Perpetual Lease Deed dated 28.01.1993. It is pertinent to mention here that Clause 13 of the Lease Deed barred the Lessee from using the premises in question for purposes other than running the industry of "*Human and Veterinary Pharmaceuticals viz tablets, capsules and liquids*". Further, Clause 5(a) of the Lease Deed specifically restrains the Lessee from selling, transferring, assigning, sub-letting or otherwise parting with the possession of the whole or any part of the premises in question without obtaining previous consent of the Lessor.

7. A report dated 17.02.1997 of the Estate Officer revealed that the premises in question had been converted into Jhankar Banquet Hall. Show Cause Notices dated 26.09.1997 and 23.02.1998 issued to the original allottee and the same was also marked to Jhankar Banquet Hall to show cause as to why the lease should not be cancelled. The original allottee was to reply within 7 days of the Show Cause Notice dated 26.09.1997 and within 15 days of the Show Cause Notice dated 23.02.1998 but no reply was issued.

8. Material on record discloses that on 15.03.1995, an Agreement to Sell was executed by the Lessee in favour of Mahesh Kapoor (Appellant in LPA 446/2023 and Appellant No.2 in LPA 147/2023) and a General Power of Attorney (*hereinafter referred to as 'GPA'*) was executed by the Lessee in his name. It is pertinent to mention here that no consent was obtained by the Lessee before selling the premises in question.

9. It is stated that *vide* letter dated 27.05.1998, the lease of the premises in question was cancelled by the Office of Commissioner of Industries, Government of NCT of Delhi, on the ground that the Lessee has violated Clause 5(a) of the Lease Deed which stipulated that the Lessee shall not sub-



let, sell transfer or otherwise part with the possession of the whole or any part of the said premises except with the previous consent in writing of the Lessor. It is further mentioned in the said letter that by using the premises in question for running a restaurant/banquet hall, the Lessee has also violated Clause 13 of the Lease Deed wherein it is mentioned that the premises in question will not be used for purposes other than that of running the industry for manufacture of Human and Veterinary Pharmaceuticals viz tablets, capsules and liquids. The Lessee was directed to handover the peaceful possession of the premises in question to the Estate Office of the Commissioner of Industries, Delhi within seven days of the receipt of the said letter. Proceedings under the P.P. Act were also initiated by the Respondents against the Lessee.

10. It is stated that on 28.01.1999, Mr. Mahesh Kapoor, who was appointed as GPA of the Lessee, made a representation before the Lt. Governor for revocation of the letter dated 27.05.1998 and for restoration of the Lease Deed on the ground that the order of cancelling the allotment was taken ex-parte as she has not received any notice for the same.

11. In the proceedings under the P.P. Act, objections were filed by the Lessee. *Vide* Order dated 06.06.2003, the Office of the Commissioner of Industries, GNCTD, passed an Order under Section 5 of the P.P. Act directing the Appellants herein to vacate the premises in question within 30 days of the publication of the said Order.

12. An Appeal under Section 9 of the P.P. Act, being PPA No.3/08/03, was preferred by the Lessee against the Order dated 06.06.2003.

13. During the pendency of the appeal, a Scheme for conversion of leasehold land into free-hold land was launched by the Respondents herein in November, 2005. An application for conversion of the premises in question



from leasehold to freehold was filed by Mr. Mahesh Kapoor. *Vide* Order dated 20.03.2007, the application for conversion of the premises in question from leasehold to freehold was rejected by the Deputy Commissioner of Industries on the ground that the lease of the premises in question stands cancelled and the premises has been re-entered by the Office of Commissioner of Industries. It is this Order which has been challenged by Mr. Mahesh Kapoor in W.P.(C) 4250/2007.

14. Appeal under Section 9 of the P.P. Act came up for hearing before the Appellate Court and the same was dismissed by Order dated 30.10.2009. While dismissing the appeal, the Appellate Court held that the Lessee has violated the terms and conditions of Clause 13 of the Lease Deed. Lessee was not permitted to use the premises in question for any other purpose or for carrying any other trade or business, except for running a business of manufacture of Human and Veterinary Pharmaceuticals viz tablets, capsules and liquids and the Lessee had been running a banquet hall in the premises in question in the name and style of *Jhankar Banquet Hall*. The Appellate Court further held that before cancelling the Lease Deed, two show cause notices were served on the Lessee and the said show cause notices were sent to the premises in question as well as the address of the Lessee. It is held that since the Lessee failed to reply to the show cause notices, the lease deed has been cancelled and there was no procedural irregularity in cancelling the lease deed. It is this Order which has been challenged by the Lessee in W.P.(C) 213/2010.

15. Learned Single Judge heard W.P.(C) 4250/2007 & W.P.(C) 213/2010 on the same day and disposed of the Writ Petitions by passing separate orders dated 23.09.2022. The learned Single Judge held that the Lessee had transferred the premises in question to Mr. Mahesh Kapoor without the



permission of the Lessor thereby violating Clause 5(a) of the Lease Deed. The learned Single Judge also held that Clause 13 of the Lease Deed specifically bars the Lessee from using the premises in question for purposes other than for running a business of Human and Veterinary Pharmaceuticals viz tablets, capsules and liquids. The learned Single Judge, therefore, held that the Order under the PP Act has been passed after following the due procedure and after hearing all the parties. In so far as letter dated 20.03.2007, issued by the Respondents herein rejecting the representation filed by Mr. Mahesh Kapoor for conversion of premises in question from leasehold to freehold, is concerned, the learned Single Judge, after examining the various clauses of the Conversion Scheme, held that conversion cannot be allowed with respect to a property where there is any legal dispute relating to the title of the property. He further held that by the time the representation for conversion of the premises in question from leasehold to freehold was filed by the Appellant herein, the premises in question had already been re-entered by the Lessor and as per Clause 10(ii) of the Scheme, in case of properties which have been re-entered, conversion would only be considered when the re-entry notice has been withdrawn. The learned Single Judge, therefore, dismissed the said Writ Petition also by holding that since the Lessee has not been able to get an Order of revocation of the re-entry in its favour and since eviction orders have already been passed against the Lessee, no fault can be found in the decision of the authorities in rejecting the representation of the Appellant herein for converting the premises in question from leasehold to freehold.

16. It is these orders which have been challenged in the present appeals.

17. Mr. Sandeep Sethi, learned Senior Counsel appearing for the Appellants, has taken this Court through a clarificatory document of the



Government of India dated 24.08.1994 for conversion of leasehold rights into freehold rights to contend that a decision to allow conversion in respect of properties, which have changed hands on the basis of General Power of Attorneys, after recovery of surcharge at 1/3rd of the conversion fee, had been taken. He, therefore, submits that a conscious decision has been taken to allow conversion of such properties. He has also taken this Court through Chapter VII of the Master Plan Delhi, 2021 (*hereinafter referred to as 'the Master Plan'*) which contains the policy of conversion of industrial plots from leasehold to freehold. Mr. Sethi also submitted that the business of banquet hall and restaurant comes within the permissible industrial activity and, therefore, the premises in question was being used for industrial activity only and the Respondents ought to have considered the application of the Appellant herein for conversion of the premises in question from leasehold to freehold.

18. *Per contra*, Ms. Anusuya Salwan, learned Counsel appearing for DSIIDC, has taken this Court through the various clauses of the Lease Deed and submits that the Lessee has violated the terms of the Lease Deed pursuant to which the Lease Deed stood cancelled in the year 1998 and proceedings were initiated under the PP Act and orders for eviction have been passed after following the due process of law. She further states that the circulars relied on by learned Counsel for the Appellants and the Master Plan will not be applicable to the facts of the present case. She states that the Order of cancellation of Lease Deed has attained finality and the application of the Appellant herein for conversion of the premises in question from leasehold to freehold cannot be allowed since the premises in question has been re-entered by the Lessor.

19. Heard the Counsel for the parties and perused the material on record.



20. The material on record indicates that the premises in question was leased out to the Lessee by the Industries Department, Delhi Administration and a Lease Deed was entered into. Relevant portions of the said Lease Deed reads as under:

" (5)(a) The Lessee shall not sell, transfer, Assign, sub-let or otherwise part with the possession of the whole or any part of the industrial plot except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion.

PROVIDED that such consent shall not be given for a period of ten years from the commencement of this lease unless, in the opinion of the Lessor, exceptional circumstances exist for the grant of such consent.

PROVIDED FURTHER that in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the industrial plot at the time of sale, transfer, assignment, sub-letting or parting with the possession, the amount to be recovered being fifty per cent of the unearned increase and the decision of the Lessor in respect of the market value shall be final and binding:

PROVIDED ALSO that the Lessor shall have the pre-emptive right to purchase the property after deducting fifty per cent of the unearned increase as aforesaid.

(5)(c) This lease/sub-lease shall stand automatically terminated if there is any change in the constitution of the proprietorship/partnership firm as on the date of execution of the deed without the prior approval of the



Lessor, except changes due to death of the Proprietor or any of the partners.

(8) Whenever the title of the Lessee in the industrial plot is transferred in any manner whatsoever the transferor and the transferee shall, within three months of the transfer, give notice of such transfer in writing to the lessor.

In the event of the death of the Lessee the person on whom the title of the deceased devolves shall within three months of the devolution give notice of such devolution to the Lessor.

The transferee or the person on whom the title devolves, as the case may be, will supply to the Lessor certified copies of the documents evidencing the transfer or devolution.

(13) The Lessee shall not without the written consent of the Lessor use or permit to be used, the industrial plot or any building therein for residence or for carrying on any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that is running a small scale industry for carrying on the manufacturing process or running the industry of Human and Veterinary Pharmaceuticals viz Tablets, Capsules and Liquids or such other manufacturing process or industry as may be approved from time to time by the Lt. Governor 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 persons living in the neighbourhood. The Lessee further agree not to use the plot or the building erected thereon for any industrial activity that, in the opinion of the Lessor, is pollutant:



PROVIDED that, if the Lessee is desirous of using the said industrial plot or the building thereon for a purpose other than that if the manufacturing process or industry as may be approved from time to time, 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.

15(VI) All disputes and differences, arising out of or in any way touching or concerning this deed (except those the decisions where of are otherwise provided by these presents), shall be referred to the arbitration of any person nominated by the Lt. Governor Delhi, for the time being in office or in case his designation is changed or his office is abolished, to the sole arbitration of any person nominated by the officer who for the time being is entrusted, whether or not in addition to other functions with the functions of the Lt. Governor of Delhi by whatever designation such officer may be called. " (emphasis supplied)

21. A perusal of the abovementioned clauses of the Lease Deed indicates that the Lessee was not permitted to sell, transfer, Assign, sub-let or otherwise part with the possession of the whole or any part of the industrial plot except with the previous consent in writing of the Lessor and such permission would ordinarily not be given for a period of ten years unless exceptional circumstances exist for the grant of such consent. Clause 13 of the Lease Deed provides that the industrial plot was not to be used for any purpose other than that of running a small scale industry for carrying on the manufacturing process or running the industry of food processing, drugs and pharmaceuticals and if the Lessee intends to use the plot for purposes other than that of running a small scale industry for carrying on the manufacturing process or running the industry of food processing, drugs and



pharmaceuticals then the change of use could be permitted by the Lessor on such terms and conditions as the Lessor may, in absolute discretion, determine.

22. Material on record indicates that the premises in question was sold to Mr. Mahesh Kapoor on 18.09.1992 without the consent of the Lessor and a General Power of Attorney was executed by the Lessee on the same day in his favour.

23. Admittedly, the premises in question is being used as a banquet hall/restaurant. The terms of the Lease Deed have been violated by the Lessee. An order of termination of the Lease Deed was passed by the Respondents on 27.05.1998 on the ground that Clause 5(a) and 13 of the Lease Deed have been violated by the Lessee. Even though a representation has been filed by the Lessee, the Lessee has not sought to challenge the termination of the Lease Deed by invoking arbitration clause, as provided in the Lease Deed. Consequent to termination of the Lease Deed, proceedings under the PP Act were initiated by the Estates Officer and the Estate Officer, after considering all the material on record and in exercise of powers under Section 5 of the PP Act, ordered for eviction of the premises in question. In the eviction Order it is noted by the Estate Officer that the premises in question was in unauthorized occupancy.

24. The eviction order was challenged by filing an appeal under Section 9 of the PP Act. The Appellate Court while dismissing the said appeal held that the Lessee has violated the terms and conditions of the Lease Deed. It was held that as per the Lease Deed the premises in question was leased out to the Lessee for running the industry of food processing, drugs and pharmaceuticals and as per Clause 13 of the lease deed the Lessee was not permitted to use the premises in question for any other purpose or for



carrying any other trade or business, except for running a business of Human and Veterinary Pharmaceuticals and when a survey was conducted it was found that a banquet hall is running in the premises in question in the name and style of *Jhankar Banquet Hall*. The Appellate Court further held that before cancelling the Lease Deed, two show cause notices were served on the Lessee and the said show cause notices were sent to the premises in question as well as the address of the Lessee and it is only when the Lessee has failed to reply to the show cause notices, the lease deed has been cancelled and there was no procedural irregularity in cancelling the lease deed.

25. Both the Orders were challenged before the learned Single Judge and the Learned Single Judge has upheld the Orders passed by the Estate Officer as well as the Appellate Authority.

26. The Appellants herein have not been able to provide any material to demonstrate that the Orders passed by the Estate Officer, the Appellate Authority or the learned Single Judge are perverse or are contrary to the material on record.

27. Before this Court, the issue as to whether the Estate Officer was not appointed in terms of the PP Act or that the procedure of appointment of Estate Officer was not in accordance with law has not been canvassed. The argument of the learned Counsel for the Appellant was primarily on the Order dated 20.03.2007, passed by the Deputy Commissioner of Industries, rejecting the application for conversion of the premises in question from leasehold to freehold even if the premises in question was being used for purposes other than the purpose for which it was leased out to the Lessee.

28. The policy of conversion of industrial plots from leasehold to freehold was introduced in November, 2005. Prior to the introduction of the said



Scheme, the Lease Deed of the premises in question stood cancelled *vide* Order dated 27.05.1998 and there was no challenge to the said cancellation by the Lessee. The Appellants herein, therefore, were no longer lessees of the premises in question in order to avail the benefit of the Conversion Scheme.

29. The Delhi Government decided to convert all industrial built up plot, irrespective of size, from leasehold to freehold on payment of conversion charges. Clause 9 of the brochure stipulates that in case of any legal dispute relating to the title of the property, conversion shall not be allowed until the legal dispute is settled. Clause 10 (2) provides that in case of re-entered properties, conversion would be allowed only when re-entry notice has been withdrawn and the lease/allotment has been restored. Though, clause 13 provides that conversion shall also be allowed in case where lessee/allottee has parted with the possession of the property after the application for conversion is made by a person holding power of attorney from lessee/allottee to alienate, sell or transfer the property and proof is given of possession of the property in favour of the person in whose name conversion is sought but this clause is applicable only in cases where the lease deed has not been cancelled.

30. The reliance placed by Mr. Sethi on the clarificatory directives of the Government of India dated 28.04.1994, to contend that the application for conversion from leasehold to freehold could have been considered even though orders of re-entry have been passed, cannot be accepted. The said directive is reproduced below and the same reads as under:

" Sub Conversion of leasehold rights into freehold

Sir,

I am directed to refer to the correspondence resting with your letter No. 27(7)73-Lab.Res, dated 28.2.94 on



the above cited subject and to say that the matter has been examined further but keeping in view the fact that decision to allow conversion in respect of properties, as have changed hands on the basis of General Power of Attorneys, after recovery of surcharge at 1/3rd of the conversion fee, having been taken with the approval of Cabinet to bring such transactions' to surface and avoid uncertainty about such transactions as had taken place, It would not be justified to insist on payment of unearned increase in such cases.

2. Further, it is a conscious decision taken with the approval of the Cabinet as clarified earlier also that conversion to freehold should be allowed in such cases after recovery of restoration charges and the surcharge as per the scheme. To deny this benefit would result in giving benefit to the law avoiding citizens who had not reported transactions. Such a situation cannot be justified. Moreover, the course of action suggested by you would not stand to legal scrutiny as advised by the legal experts. Therefore, in allowing conversion no financial loss or undermining the position of the lessor is involved rather this would result in transparent transactions and help the lease administering authorities and others in realising dues.

3. In this regard it may not be out of place to mention that these issues were discussed threadbare in the meeting held in the Ministry and attended by the representatives of the D.D.A. Decisions taken were after due consideration of all facts including decision of the Cabinet in this regard. Hence DDA should not have raised the same issues time and again and go ahead as per guidelines/clarifications. issued by the Ministry.

4. You are, therefore, requested to allow conversion In such cases without further delay and avoid harassment to the applicants who had made applications in this regard. "



31. A perusal of the said directives shows that it was for those cases where DDA was the lessor and not for industrial plots which have been leased out by the Industries Department, Delhi Administration.

32. Similarly, reliance placed by Mr. Sethi on Master Plan is also not applicable to present case for the reason that it was brought out in 2007, i.e. much after the year 1998 when the Lease Deed was cancelled.

33. The order of termination of lease deed shows that there was no permission for using the premises in question for running a banquet hall/restaurant. Though a representation was given by Mr. Mahesh Kapoor to the Lt. Governor in which it was prayed that he be permitted to use the premises in question for running a banquet hall which was necessary for the people due to change in their needs. There is nothing on record to show that the said permission was granted. On the contrary, the eviction order shows that the such a permission was not granted.

34. 33. The present case is a classic case where eviction orders have been passed in 2003 and unauthorized occupants have successfully prevented their eviction from the premises. The Lease Deed was entered into on 28.01.1993 and the terms of the Lease Deed were violated within two years and even after 30 years the authorities have not been able to evict the occupants.

35. A perusal of the Scheme shows that the Scheme applied to those persons in whose favour lease deeds have been entered and which were subsisting on the date of the Scheme. There is nothing in the Scheme which would indicate that it was applicable even to those persons whose lease deeds stood terminated and against whom eviction orders have been passed. In fact Clause 11 of the Scheme provides that in case of any dispute between



the original lessee/allottee and Power of Attorney holder, application for grant of freehold rights would be entertained only after the dispute is settled. Clause 9 of the Scheme states that in case of any legal dispute relating to title of the property, conversion shall not be allowed until the legal dispute is settled. On the day when the Scheme came into force not only the Lease Deed had been cancelled but eviction orders had also been passed, thereby the Scheme was not applicable to the Appellants herein. The Respondents were, therefore, justified in rejecting the application of the Appellant herein for conversion of the premises in question from leasehold to freehold by holding that conversion can be allowed only after the allotment is restored. Therefore, the order of the learned Single Judge in upholding the decision of the Respondents in cancelling the representation for conversion of the premises in question from leasehold to freehold cannot be found fault with.

36. In view of the above, this Court does not find any reason to interfere with the orders passed by the learned Single Judge upholding the Orders dated 06.06.2003 and 30.10.2009, passed by the Estate Officer and the Appellate Authority respectively, and also the letter dated 20.03.2007, issued by the Respondents herein rejecting the representation filed by the Appellant for conversion of the premises in question from leasehold to freehold.

37. Accordingly, the appeals are dismissed along with the pending applications, if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JULY 04, 2023/Rahul