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

Reserved on: 03.11.2022

Pronounced on: 28.04.2023

+ **LPA 338/2010**

UOI

..... Appellant

Through: Mr. Rajesh Gogna, CGSC.

Versus

INDIAN INSTITUTE OF ARCHITECT

..... Respondent

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Dhruv Chawla, Ms. Riya Gulati and
Mr. Vipul Saini, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The appellant being dissatisfied with the impugned judgment and order dated 30.01.2009 passed by the learned Single Judge in W.P.(C) 1497/2000, has preferred the present intra court appeal. The facts relevant for deciding the present appeal as culled out from the record are that: the respondent, a Society of Architects had applied to the government for allotment of land and land ad-measuring 1051.33 sq. yards was allotted to it in December, 1971 for the purpose of construction of an office building for its *bonafide* use. A Memorandum of Agreement for Lease dated 22.03.1979 was executed between the parties.

2. As per Clause-II of the Memorandum of Agreement for Lease, the

respondent was obliged to construct a building on the allotted land within a period of 24 calendar months from the date of handing over the possession of the land. The possession of the land was admittedly, handed over on 19.12.1979.

3. Concededly, the building could not be constructed by the respondent within the stipulated period of 24 calendar months. It is not in dispute that in the meanwhile, a proposal was made by CPWD to construct a road which would bifurcate the plot into two parts.

4. Since no construction had been made by the respondent, they were also called to the meeting held on 30.03.1982 by the Chief Architect, CPWD, to discuss the proposal. Subsequently, the L&DO wrote to the respondent for acceptance of the plot, the size of which had been reduced by 26.75 sq.yds due to the widening of road. In effect the respondent was offered the left over land measuring 1024.58 sq.yds.

5. It appears that the L&DO first noticed encroachment by a tea stall and a nursery by the name of Taj Nursery over the allotted land, when it inspected the site on 13.03.1986 and 09.07.1986. These inspections were followed by an issuance of a notice of breaches dated 23.01.1987 by the L&DO to the respondent for removal of breaches including unauthorized construction in the nature of a temporary structure of the tea stall and Taj Nursery. Again inspection was carried out by the L&DO on 24.04.1990 and similar breaches were noticed.

6. Subsequently, on a request made by the respondent, the L&DO vide letter dated 26.11.1990 agreed to extend the time for construction up to 30.06.1991, subject to the respondent furnishing an undertaking that it will take

requisite steps for eviction/removal of the unauthorized occupants within a period of six months and will also pay damages, if any, as and when demanded. The respondent furnished the requisite undertaking on 12.12.1990. Thereafter, the L&DO *vide* its letter dated 07.02.1991 conveyed its decision to extend the time for execution of the construction up to 30.06.1991. The relevant extract of the letter dated 07.02.1991 reads as under:

“With reference to your letter dated 19.12.1990, I am to say that the extension of time for execution of the construction on the plot allotted to the Institution is allowed up to 30-6-1991. The terms and conditions as mention in this office letter No.LII-1(209)/86/502 dated 4-9-1990 and 26-11-1990 will be settled separately”.

7. In the meanwhile, the L&DO on 26.11.1990 had also issued an NOC for sanctioning of the building plan, whereafter the MCD sanctioned it for construction on 28.02.1992.

8. However, before the respondent could raise any construction in terms of the sanctioned plan, the encroacher who was running Taj Nursery from the encroached land, instituted a suit for perpetual injunction against the respondent in September 1993 praying, *inter-alia*, that the respondent be restrained from forcibly dispossessing them from the land in question.

9. It has been noted by the learned Single Judge in the impugned order that the alleged encroacher in the aforesaid suit secured an *ex-parte* injunction which was later on vacated in 1994; however, the suit continued to be pending on the file of the trial court till it was dismissed in the year 1998.

10. Thereafter, in the year 1999, the respondent filed a suit for possession against encroacher/Taj Nursery, being *Suit no. 1918/1999* titled as *The Indian*

Institute of Architects vs. Sh. Narender Singh & Ors. before this Court. The said suit was, however, transferred to the District Court after the pecuniary jurisdiction of this Court was raised. The said suit (later re-registered as CS no. 6494/2016) was finally decreed by the Court of Shri Pritam Singh, ADJ-04, South District, Saket Court, Delhi on 30.03.2017. One of the defenses of the defendants therein was that the office bearer of the respondent had inducted them on a perpetual license. From the pleadings of the parties, one of the issues i.e. issue no.6 which was framed in the said suit is as under:-

“Whether the defendants are perpetual licensees? If so, its effect?”

11. While dealing with the aforesaid issue, the learned Additional District Judge, *vide* judgment dated 30.03.2017, rejected the contention of the encroachers that they are licensees in respect of the suit land under the respondent, and recorded the following findings:-

“33.....The defendants in the absence of any permission from the plaintiff came into possession of the suit premises and raised construction over it. The defendants have failed to bring anything on record that Brij Mehta was allowed by the plaintiff society to use the suit premises and raise constructions over it. As the defendants are not licensees in respect of the suit premises, therefore, the provisions of Section 52, 54 and 60 of the Easement Act are not applicable. In the absence of evidence, the defendants have failed to discharge the burden to prove that they are licensees in respect of the suit premises under the plaintiff. None of the documents relied upon by the defendants establishes that the plaintiff had allowed the defendants to use the suit premises or given NOC to the defendants to obtain electricity connection etc. at the suit premises. The documents relied upon by the defendants merely prove their possession over the suit premises but the same is not in dispute”...

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“42. As per the findings on issues No. 6 & 7, the plaintiff is entitled for possession of the suit premises and also entitled for permanent and mandatory injunction. Hence, the suit of the plaintiff is decreed for possession of the suit premises bearing No. 4, Institutional Area, Lodhi Road, New Delhi as shown in the site plan Ex.PW1/10. The suit of the plaintiff is also decreed for mandatory and permanent injunctions and defendants are directed to remove the huts/constructions raised on the suit premises and to remove their articles/Malwa etc. from the suit premises within a month from today. The defendants are also restrained from making any construction, addition or alteration on the suit premises.

43. The defendants are in illegal possession of the suit premises and they should not be allowed to occupy the suit premises without making payment to the plaintiff. Therefore, if the defendants fail to vacate the suit premises within a month from today then they would be liable to pay damages @ Rs. 50,000/- per month to the plaintiff from today along with interest @ 9% per annum, in case of delay of payment of damages. However, the plaintiff shall be entitled to execute the decree of possession of the suit properly as per law.

44. As per findings on issue No.4, the plaintiff has to pay the court fee at Rs. 1 crore for the relief of possession of the suit premises. The plaintiff has already paid court fee at Rs. 10 lacs. The plaintiff has to pay court fee on the balance of Rs. 90 lacs. The plaintiff is directed to pay the balance/insufficient court fee within a month from the date of this order. The decree passed today in favour of the plaintiff shall be executable only after depositing the balance/insufficient court fee by the plaintiff.”

(emphasis supplied)

12. Against the aforesaid judgment and decree, the encroachers preferred an appeal before this Court being RFA 519/2017 entitled “*Mrs. Kusum Dengri & Ors. v. The Indian Institute of Architects*”.

13. During the pendency of the said appeal, the appellants therein (encroachers) agreed to vacate the suit premises provided that the respondent institute did not press for use and occupation charges. The respondent-institute agreed to the said condition of the encroacher. Accordingly, the suit after recording the undertakings of the parties, was decreed as settled vide order dated 15.02.2018, in the following terms:

“Accordingly, the following undertakings are given by the parties:

(1) The Appellants undertake to hand over peaceful and vacant possession of the suit property to the Respondent on or before 1st May, 2018. The possession shall be handed over to the Respondent through its Secretary who shall be present on the date notified by the Appellant, along with counsel for the Respondent.

(2) Subject to possession being handed over by the Appellants, the Respondent undertakes not to press for use and occupation charges of the suit property as directed by the Trial Court in the impugned judgment.

(3) Until possession is handed over, the Appellants undertaken not to part with possession, alienate or create any third party interest in the suit property.

(4) The Appellants also undertake not to cause any damage to the suit property.

The above undertakings have been given by Mr. Narender Singh, who is Appellant No. 2 and Mr. S. S. Dengri, husband of Appellant No. 1, who are present in Court, both of whom jointly run Taj Nursery at the suit property.

Affidavits of undertaking shall be filed in the above terms within a period of one week along with affidavit of Mrs. Kusum Dengri, Appellant No. 1.

The impugned judgment/decreed is modified in the above terms as

settled. The undertakings given by the parties are accepted by the Court. In acceptance of the terms above, the parties, who are present in Court shall initial the order sheet below."

(emphasis supplied)

14. Thereafter, the possession of the encroached land was handed over by the encroachers to the respondent on 08.05.2018 and this fact is recorded in order dated 09.05.2018 passed in RFA 519/2017, in the following terms:

"Mr Chawla, Advocate submits that the possession of the property has been handed over last evening, in the presence of counsel for the Appellants, responsible officers of the Institute. The copy of letter of handing over of possession, which is signed by the parties and their counsel, is taken on record. The same is also signed by the Police officials."

15. Meanwhile, the L&DO vide letter dated 29.01.1999 had cancelled and withdrawn the allotment of land made to the respondent. The cancellation order reads as under:

"Registered AD

*Government of India
Ministry of Urban Affairs & Employment
Land & Development Office
Nirman Bhavan, New Delhi.*

No. (201)/99/68

Dated 29.1.1999

*The Chairman,
Indian Institute of Architects,
8-B, Shankar Market,
Connaught Circus,
New Delhi.*

Sub: Cancellation of allotment of land to Indian Institute of Architects in the Institutional Area on Lodhi Road for the construction of their building.

Sir,

- 1. Allotment of land was made in December 1971. Extension of time for completion of construction of plot allowed to the institute, was allowed upto 30.6.91 an affidavit was also furnished by you on 12.12.90 that you would get the site cleared from the encroachments within a period of six months but the same has not been cleared and no tangible steps for taking up the construction has been taken by you despite giving sufficient opportunities.*
- 2. In view of the above the allotment made to the institute vide this office letter No. L&DO/L-II-1(209)/63 dated 27.12.71 is hereby cancelled and withdrawn.*
- 3. The amount paid by the institute shall be refunded without interest after adjusting the amount of dues/damages outstanding against you.*
- 4. You are also requested to hand over the vacant possession of the land to this office urgently.*

*Yours faithfully,
Sd/-
Lajpat Rai
Asstt. Settlement Commissioner"*

16. The cancellation was followed by a demand letter dated 24.09.1999, whereby the L&DO claimed misuse charges, damages/charges for unauthorised construction, as well as, for unauthorised use and occupation besides ground rent and interest thereon, totalling to the tune of Rs. 2,16,26,904/-, which demand got enhanced subsequently due to passage of time. The cancellation of allotment of land was challenged by the respondent by filing W.P.(C) 1497/2000.

17. The learned Single Judge in the impugned judgment took note of the fact that the respondent had on 12.12.1990 furnished an undertaking stating that it would pay such sums as were to be determined by the L&DO and get the site cleared of existing encroachments within a period of six months, however, in view of the subsequent events, viz., filing of suit and obtaining of the *ex parte* stay by the encroacher, the respondent was unable to do so. The learned Single Judge also observed that on account of the stay order, the petitioner could perhaps, legitimately claim helplessness on that score, yet it cannot completely disclaim its responsibility because it filed the suit seeking possession from the encroachers only in the year 1999.

18. However, considering the fact that for some periods when the encroacher had filed a suit and obtained an interim order and litigation was pending, which prevented the respondent from raising construction and to take steps towards recovery of possession and the clearance of the encroachment, the learned Single Judge quashed the order of cancellation dated 29.01.1999 and the demand dated 24.09.1999. Further, in the circumstances of the case it was observed by the learned Single Judge that the L&DO cannot claim misuse and damage charges for the period from 9.3.1990 till 1.1.1999. Furthermore, a direction was given to the L&DO to take an informed decision, having regard to the pendency of the suit filed by the respondent-institute and orders passed in the same and subject to the observations made in the impugned order. The material part of the impugned judgment reads as under:-

“...5. The petitioner had on 12.12.1990 furnished an undertaking stating that it would pay such sums as were to be determined by the L& DO and get the encroachment cleared within six months. However, in view of the subsequent events whereby the suit was filed, the petitioner was unable to do so. In

the circumstances, on 29.9.1999, the L&DO issued the impugned order demanding a sum of Rs.2,16,26,904/- on account of misuse of the land, non-construction and unauthorised occupation.

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8. The factual discussion shows that the petitioner entered into a lease deed with the L&DO on 22.2.1979, in terms of which, it had to construct upon the plot within 24 months of handing over of the possession. There is no dispute about certain facts, which occurred till 1987 such as possession being handed over in December, 1979 and the plot being subject to re-development, which led to decrease in its size-the process being completed in 1987. At that point of time, the L&DO inspected site and discovered some encroachment; the petitioner was put to notice and asked to take steps to have the encroachment removed and misuse rectified. The matter remained thus till 1990 when the petitioner sought for an NOC; the same too was granted on 26.11.1990. The petitioner's application for sanction of its plan was granted on 28.2.1992. In the meanwhile, the L&DO had granted extension to the petitioner; in respect of the condition to construct upon the plot, by its letter dated 7.2.1991. The material part of that letter reads as follows:-

“With reference to your letter dated 19.12.1990, I am to say that the extension of time for execution of the construction on the plot allotted to the Institution is allowed up to 30-6-1991. The terms and conditions as mentioned in this office letter No.LII-1(209)/86/502 dated 4-9-1990 and 26-11-1990 will be settled separately.”

9. The alleged encroacher filed a Suit in 1993 and secured an ex parte injunction. The injunction was later vacated in 1994; however, the Suit continued to be pending on the file of the Trial Court till it was dismissed in 1998. The respondents issued the impugned demand on 29.1.1999. The said demand is premised on misuse charges for the period 9.7.1986 to 30.9.1999. The L&DO has based its demand on 4 different block periods i.e. 7.9.1986 - 23.4.1990; 24.4.1990 - 9.2.1992; 10.2.92 - 7.12.1998

and 8.12.1998 - 28.1.1999. All these are based on misuse charges in respect of specific areas occupied by the encroachers described as tea stall and M/s Taj Nursery. The L&DO has also demanded damages towards unauthorized construction and collective interest. After the orders of this Court, the L&DO issued further demand on 23.11.2004 for a total amount of Rs.5,37,34,627/-.

10. The above narration of facts discloses that the petitioner showed indifference towards the condition of the plot and did not secure it at least from 1987. The first time when it approached the authority for NOC was in 1990. The discussion would show that the petitioner was casual to its commitment and disinterested as did not care to take steps towards putting up any construction; it approached the authorities in 1990 when the NOC was granted. The sanction for construction was granted by the MCD on 28.2.1992. At that stage, the alleged encroachers approached the Court and obtained a stay. The petitioner could perhaps legitimately claim helplessness on that score. Yet it cannot completely disclaim any responsibility because it filed the Suit to seek eviction from the land and obtain possession in 1999. The alleged encroacher's suit was dismissed only in 1998. The petitioner suit is still pending and has not been decided by the Trial Court. According to counsel, the Trial Court has not taken further steps in view of the pendency of the present writ proceedings.

11. Having regard to the above facts, the picture which emerges is that although the petitioner showed indifference, it would be harsh to saddle it with liability for the entire period. No doubt, the L & DO noticed the encroachment in 1987, yet the petitioner took steps to have the NOC and sanction between 1990-92. In between the respondent also granted extension of time, of course subject to the condition of payment of charges). In these circumstances, the L & DO should not have sought damages for misuse and unauthorised construction from the petitioner for the entire period. Doing so would be unreasonable, because for some periods the matter was in fact beyond the petitioner's control. No doubt, the allotment made was for purpose of

utilization of the plot; yet the period between 1992 and 1999 should not be included for the purpose of calculating misuse and damage charges.

12. In view of the above, at least in respect of two distinct periods i.e. 9.3.1990 to 28.2.1992 (till it obtained the sanction from the MCD), and thereafter as the petitioner was subject to an interim order, which prevented it from taking any steps towards recovery of possession and the clearance of the encroachment, the L & DO should not claim any damages and charges. In the circumstances, L & DO could not have claimed misuse and damage charges for the period 9.3.1990 till 1.1.1999.

13. Having regard to the above, the following directions are issued:-

(a) the petitioner's suit, which is now re-numbered as 348/2007 pending before the Additional District Judge, Tis Hazari titled as Institute of Architects v. Shri Narender Singh & Ors. shall be decided on its merits within six months from today.

(b) The impugned orders dated 29.1.1999 and 24.9.1999 are hereby quashed.

(c) The petitioner shall intimate the outcome of the Suit to the L & DO, which shall thereafter proceed to take an informed decision having regard to the pendency of the Suit and after considering the order sheet in the same, and subject to the above judgment.

The Writ Petition stands disposed of, in the above terms."

19. The aforesaid order of the learned Single Judge has been assailed by the appellant in the present intra-court appeal.

20. Mr. Rajesh Gogna, learned CGSC for the appellant submits that at the time of handing over of possession of the plot to the respondent, the same was

free from misuse, unauthorised construction and encroachment. He submits that the respondent deliberately allowed the tea stall and Taj Nursery to misuse the land and raise unauthorised construction. He, therefore, urged that the charges on account of misuse of land, as well as, damages for unauthorised construction of structure on the said land, for tea stall and Taj Nursery, were justified. He also submits that in case the tea stall and the Taj Nursery were encroachers, the respondent failed to safeguard its possession and further failed to take timely steps to recover the possession of the encroached land which led to the land being wasted. He also contends that the respondent failed to raise construction in terms of the Agreement for Lease. He also submits that since the allotment of land was cancelled and withdrawn, therefore, the occupation of the respondent over the allotted land was that of an unauthorised occupant, and accordingly, the L&DO was well within its right to levy charges for unauthorised occupation of the said land.

21. *Per contra*, Mr. Kirti Uppal, learned Senior Advocate for the respondent-institute defends the judgment of the learned Single Judge. He submits that the learned Single Judge has rightly excluded the period from 09.03.1990 till 01.01.1999 for the purpose of calculating misuse and damage charges for unauthorised construction. He submits that the claim of misuse charges and damages for unauthorised construction are premised on the ground that the respondent had given the land to the encroachers on sub-license contrary to the terms of the Memorandum of Agreement for Lease, but the said contention is rendered untenable by the finding to the contrary as returned by the trial court in the suit for possession filed by the respondent. He further submits that after a long drawn litigation, the respondent institute has been able to remove the encroachers from the encroached land and it is now in

possession of the same. He also contends that the respondent-institute is interested in raising construction on the plot of land allotted by the L&DO for which the building plan was submitted to the MCD. However, in the absence of an NOC, which is a pre-requisite for sanction of the building plan, the MCD has rejected the application of the respondent. He submits that an NOC is not being granted by the L&DO on the ground that the controversy is still sub-judice in the form of present LPA.

22. Having heard the learned counsel for the parties and perused the record, the questions which fall for consideration of this Court are:-

- i) Whether or not the respondent is liable to pay the damages for unauthorised use and occupation of the allotted land?
- ii) Whether or not the respondent is liable to pay the misuse charges, and damages/charges for unauthorised construction, in respect of the land allotted to the respondent?

Issue no. (i)

23. In the appeal before us, the order of the learned Single Judge has not been questioned to the extent it sets aside the order of cancellation of allotment dated 29.01.1999. In the LPA, as well as, in the additional affidavit, there is no ground impugning the order of the Ld. Single Judge to the above extent. Mr. Gogna has accordingly, confined his arguments to the justification of the demand made on account of misuse charges; damages/charges for unauthorised construction, as well as, for unauthorised use and occupation; and ground rent and interest thereon.

24. We are of the view that once the order of cancellation of allotment has been set aside and there is no further challenge to the same, the possession of

the respondent over plot in question will be legal and no charges for unauthorised occupation post the cancellation of allotment could be levied on the respondent. Accordingly, the charges for unauthorised occupation are not sustainable.

Issue no. (ii)

25. This brings us to the question as to the imposition of misuse charges and damages/charges for the unauthorised construction. Misuse charges are levied for using the allotted land for a purpose other than for which it was allotted. In the present case, the misuse charges have been levied for the reason that some part of the allotted land was being misused for running a tea stall by one Sh. Raj Kumar while another parcel of the allotted land was being misused for running Taj Nursery by Sh. Narinder Singh, as against the purpose of allotment of the land being construction of office building for the respondent's *bona fide* use. Likewise, damages/charges have been claimed for unauthorised structure raised by the said tea stall and Taj nursery.

26. As pleaded by the L&DO in its additional affidavit dated 02.01.2012, the claim for misuse charges and damages for unauthorised construction is premised on the grounds that – (i) the respondent was negligent in protecting the land from encroachments which led to the wastage of land; and (ii) the respondent permitted the encroachers to set up/create as sub-licensee. The relevant paras of the additional affidavit dated 02.01.2012 reads as under:-

“...4. It is stated that the said piece of land was free from any hutments/ encroachments at the time of physical handover of the possession of land to the respondent. Hence, the negligence on its part to protect the land from encroachments and resultant wastage of land on the said

account had rendered the respondent, liable to pay damages towards misuse of the land.”

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“...9. The respondent had permitted the encroachers to be set up/created as sub-licensee (p.62 of the paperbook). However, the memorandum of agreement for lease stipulates that the intended lessee (respondent) shall not sublet or give on rent any part of the said land or building constructed thereon without prior permission of the President. (clause XXI, p.52). It was further stipulated in the said memorandum of agreement for lease that in case of any breach of the conditions/covenants of the memorandum by the respondent, the appellant shall be entitled to determine the intended lease, re-enter the premises and forfeit the security amount. (clause XXX, p.57). Further, the said memorandum also stipulated that in case of such breach, the respondent shall also be liable to pay penalty to the appellant by way of compensation for such contravention. (clause XXVI, p.56).”....

(emphasis supplied)

27. From the reading of the above quoted paragraphs of the appellant’s affidavit it is clear that the claim for misuse charges and damages for unauthorised construction has its genesis in clause XXVI read with clause XXI of the Memorandum of Agreement for Lease. No other clause of the Memorandum of Agreement for Lease has been pointed out which confers authority upon the L&DO to levy any penalty, misuse charges or damages. Clauses XXI and XXVI of the Memorandum of Agreement of lease read as under:

“XXI. The intended lessee shall not sub let or give on rent any part of the said land or building constructed on the demised piece of land without prior permission of the President.

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XXVI. It is clearly understood and the intending lessee undertake that before executing the lease deed as required by Clause XV hereof the said intended lessee shall be bare licensee on the said land and shall not be entitled to rent out or sub let or in any manner part with the possession of the said land without prior written permission of the President. Provided that if at any time any breach of such undertaking is discovered by the President even after the execution of the lease the intended lessee shall be liable to pay penalty to the President by way of compensation for such contravention notwithstanding the execution of the lease deed. The amount or terms of such penalty by way of compensation shall be fixed by the President and the same shall be binding on the intending lessee.”....

(emphasis supplied)

28. A perusal of above-quoted covenants shows that liability to pay penalty by way of compensation can be imposed on the licensee/intending lessee in case it rent out, sub-let or in any manner part with possession of the allotted land or if it raises any construction, without prior written permission. The fixation of amount of penalty or other terms thereof are solely within the purview of the President acting through land owning agency (L&DO in the present case).

29. Clearly, the purpose of restrictions and penal provision in the above covenants is to deter the licensee/intending lessee from using land contrary to the terms of allotment and at the same time protect the interest of the L&DO against any action of the licensee which leads to the wastage of land. Apparently, Clauses XXVI and XXI do not contemplate imposition of penalty in a situation where the allotted land has been illegally encroached upon and a structure has been raised by an encroacher, without the consent of the

licensee/intending lessee. However, having regard to the purpose of the said covenants, the same cannot be read in a way to absolve the licensee altogether from the penalty where it fails to take timely action to recover possession from encroachers.

30. The findings recorded by the learned Additional District Judge *vide* his judgment and decree dated 30.03.2017 passed in the respondent's suit for possession, makes it clear that the possession of the encroachers over the encroached land was illegal and they were not licensees of the respondent. By way of aforesaid judgment and decree of mandatory and permanent injunction, the encroachers were indeed directed to remove the huts/constructions on the encroached land and to remove their articles, etc. from there within a period of one month. The encroachers were also restrained from making any construction, addition or alteration on the encroached land. This also clearly shows that the unauthorized construction raised by the encroachers was not with the express or tacit consent of the respondent. This being the position, no liability of misuse charges or damages/charges on account of unauthorized construction can be fastened on the respondent.

31. The next logical question that falls for consideration is whether the respondent's lackadaisical approach led to wastage of the allotted land attracting any penalty. The respondent apparently defaulted on two counts – (i) it did not raise construction within the period stipulated in Clause-II of the Memorandum of Agreement to Lease, and (ii) it failed to file a suit for possession to recover the possession from the encroachers with promptitude.

Default no. (i)

32. It is an admitted position that the respondent failed to raise construction

within the stipulated period of 24 calendar months in terms of Clause-II of the Memorandum of Agreement for Lease. Incidentally, the respondent had requested the L&DO vide letter dated 09.03.1990 for granting of extension of time for undertaking construction over the allotted land. The said request was favorably considered and accordingly, the L&DO vide letter dated 07.02.1991 conveyed its decision to extend the time for execution of the construction of the plot up to 30.06.1991. This was, of course, subject to the payment of damages, if any, as undertaken by the respondent. Almost simultaneously, the L&DO vide its letter 26.11.1990 had issued NOC for the sanctioning of plan by the Municipal body pursuant to which the MCD sanctioned the plan for construction on 28.02.1992. These subsequent events of time extension and issuance of an NOC clearly show that the L&DO had condoned the delay in construction till the sanctioning of the plan by the MCD. Even for the period subsequent thereto, no fault can be found with the respondent for delay in raising the construction, as part of the allotted land had already been encroached upon by a tea stall and Taj nursery, who had raised temporary structures thereon, which led to protracted litigation from the year 1993 till 2018, rendering the respondent helpless on that score.

Default no. (ii)

33. The only fault that can be attributed to the respondent is that it did not file the suit to recover possession from the encroachers with promptitude. It is not clear as to when the land was actually encroached upon by the tea stall and Taj Nursery, but through notice of breaches dated 23.07.1987, the L&DO with reference to the inspections carried out by it on 13.03.1986 and 09.07.1986, had for the first time put the respondent to notice *apropos* the encroachment. From the notice dated 23.07.1987 till 09.03.1990 (when respondent made the request for granting an extension of time), there was complete inaction on part

of the respondent. Therefore, for the period from 23.07.1987 till 09.03.1990, the respondent on account of its languid approach allowed the encroachers as well as the unauthorized construction raised by them to continue on part of the allotted land, which led the allotted land go waste for that period. In this view of the matter, imposition of misuse charges and damages for unauthorized construction may be justified for the period from 23.07.1987 till 09.03.1990.

34. As noticed, the respondent swung into action only on 09.03.1990, when it requested the L&DO to extend the time for execution of construction. The efforts of the respondent in due course resulted into sanctioning of plan by the MCD on 28.02.1992. However, before the respondent could start executing construction pursuant to the said sanctioned plan, a suit for perpetual injunction was filed by the encroacher in September 1993, in which he secured an *ex parte* injunction. The injunction was though later on vacated in the year 1994, but the suit remained pending before the trial court till it was dismissed in the year 1998. The suit for possession against the encroachers was eventually filed by the respondent in the year 1999 after the suit of the encroacher was dismissed in the year 1998, but it cannot be overlooked that the respondent was diligently defending the suit filed by the encroachers from 1993 till 1998. In the backdrop of the above factual matrix, the learned Single Judge directed, and in our opinion rightly so, that the L&DO could not have claimed misuse and damage charges for the period 09.03.1990 till the year 1999 and the said period should not be included for the purpose of ascertaining the misuse and damage charges.

35. Even for the period from 1999 till encroached land was repossessed on 08.05.2018, the respondent was diligently prosecuting the suit and defending the appeal filed by the encroachers, therefore, during that period also it was

beyond the respondent's control to remove the misuse and unauthorized construction. Accordingly, no misuse charges and damage charges for this period could be imposed.

36. The subsequent events and documents brought on record by the parties through Civil Miscellaneous applications [CM No. 3255/2020; CM No. 4550/2020 & CM No. 10075/2022] show that after obtaining possession, the respondent had applied to the MCD for the sanction of its plan. However, the MCD refused the sanction, possibly for want of a NOC from the L&DO. The said NOC is not being granted by the L&DO on the ground that the present controversy is still sub-judice in the form of the present LPA. Clearly, even after repossessing the encroached land, the respondent is not in a position to raise construction obviously for reasons beyond its control, therefore, the respondent cannot be penalized for the same.

37. In view of the above discussion, the appeal is disposed-off by maintaining the findings and directions contained in paragraph 13(b), of the impugned judgment of the learned Single Judge but with the modification, substitution and addition of other directions as summarized below:

- i) The demand for damages for unauthorized occupation is unjustified as the order of cancellation of allotment was set aside by the impugned order and that part of the impugned order was not questioned before us and has thus, attained finality.
- ii) No sub license/sub lease was created by the respondent in favor of the encroachers nor the respondent granted any consent to the encroachers for undertaking unauthorized construction, therefore, under Clause XXVI of the Memorandum of Agreement for lease, no liability of misuse charges or damages/charges on account of

unauthorized construction can be fastened on the respondent.

- iii) The only period for which the respondent could be said to be lax in safeguarding the land from encroachment was from 23.07.1987 to 09.03.1990. Steps were initiated subsequently, including initiation of litigation, for removal of the encroachments. Since extension of time had been granted by the L&DO even thereafter, for starting of construction, therefore, to some extent the so called laxity of the respondent gets eclipsed. However, damages or misuse charges, if any imposed, for the said period may be paid by the respondent within four weeks of receipt of such demand. Thereafter, the L&DO shall issue NOCs and other requisite permissions to facilitate the respondent to finally initiate construction on the land allotted over half a century ago.
- iv) The learned Single Judge rightly directed that the period from 09.03.1990 till the year 1999, be excluded for the purpose of ascertaining misuse and damage charges for unauthorized construction.
- v) For the period from the year 1999 till 08.05.2018, litigation continued between the respondent and the encroachers, therefore, it was beyond the respondent's control to remove the misuse and unauthorized construction. Accordingly, no misuse charges and damage charges could be imposed for this period.
- vi) Even after repossessing the encroached land on 08.05.2018, the respondent was not in a position to raise construction thereon because the matter was sub-judice in the present LPA. Therefore, the respondent cannot be penalized on that score either.

vii) The L&DO may consider to issue a fresh demand, including demand of ground rent and interest due thereon, keeping in view the aforesaid directions.

38. Pending applications, if any, be also disposed-off, in the above terms.

VIKAS MAHAJAN, J.

NAJMI WAZIRI, J.

APRIL 28, 2023/sv/dss



सत्यमेव जयते