

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

% Judgment delivered on: 03.11.2023

+ **LPA 272/2018 and CM APPL. 20245/2018**

**M/S RAJENDER JAINA TOWER
(P) LTD.**

..... Appellant

versus

**DELHI DEVELOPMENT AUTHORITY
& ANR.**

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Rajesh Aggarwal, Adv.

For the Respondent : Mr Vaibhav Mishra and Mr Ekansh Mishra,
Advocates for R-1/DDA.
Mr Ajay Arora, Standing Counsel for MCD
with Mr Kapil Dutta and Mr Vansh Luthra,
Advocates

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT**AMIT MAHAJAN, J**

1. The present appeal under clause 10 of the Letters Patent has been filed, challenging the order dated 06.03.2018, passed by the learned Single Judge in W.P.(C) 2063/2018 titled *M/s Rajender Jaina Tower*



Pvt. Ltd. v. Delhi Development Authority and Anr. (hereafter ‘**the impugned order**’).

2. The learned Single Judge, by the impugned order, has dismissed the writ petition filed by the appellant, seeking inter alia restoration of the lease deed and seeking conversion of the property bearing Plot No. 20, Block 15A, WEA, Ajmal Khan Road, Karol Bagh, New Delhi (hereafter ‘**subject property**’) from residential to commercial.

Brief facts

3. The present case has a chequered history. The leasehold rights in the property were acquired by the appellant in an auction held on 07.07.1982. The perpetual leasehold rights in the subject property were sold by the DDA (Respondent No.1) for residential purposes.

4. The lease deed specifically provided that the lessee shall not, without the written consent of the lessor, carry on, or permit to be carried on any trade or business whatsoever the residential plot or in any building thereon, or use the same or permit the same to be used for any purpose other than that of a private dwelling.

5. The appellant, admittedly, constructed a building on the property and started using the same for commercial purposes. On finding out about the misuse of the property, a Show Cause Notices dated 20.06.1986, 25.06.1986 and 28.07.1986 were issued by DDA, asking the appellant to respond as to why the lease deed, be not cancelled.



6. This led the appellant to file a suit, being Suit No. 284/1986 before the learned Sub-Judge, Delhi District Court, seeking various reliefs.

7. The appellant also sought interim relief from being dispossessed from the subject property.

8. The interim relief was denied by the learned Sub-Judge by its order dated 25.07.1986.

9. In an appeal, being Civil Appeal No.138/1986, the learned Senior Civil Judge vide order dated 01.08.1986 granted interim protection from dispossession, with a condition that the appellant would use the subject property for residential purposes only.

10. In the meantime, the DDA cancelled the lease deed on the ground of misuser. The appellant, thereafter, withdrew the Suit No. 284/1986, and filed a writ petition before this Court, being Civil Writ Petition No. 2022/1986, seeking the following reliefs:

“a) issued appropriate writ, order or direction quashing the cancellation of lease of the Petitioner in respect of property No, 20/15-A, Ajmal Khan Road, Karol Bagh, New Delhi on 19th August, 1986 by the Delhi Development Authority and also quash the notice dated 24th September, 1986 i.e. Annexure H to the present petition; and

b) this Hon'ble Court may further by appropriate writ, direction or order declare that the terms of the lease deed dated 20th February, 1985 contained in Clauses II and III are contrary to law and strike down the same; and

c) any other order which this Hon'ble Court deems fit and proper in the facts and circumstances of the case may also be passed in favour of the Petitioner and against the Respondent.”



11. It was claimed that the appellant had bought the subject property, being located in the commercial area, under the impression that the same could be used for commercial activities.

12. It was pleaded that the appellant was surprised when, subsequently, the lease deed was signed and it was stated that the subject property could be used only for residential purposes. The said writ petition was dismissed by a detailed judgment dated 01.04.1987 passed by this Court. By a separate order dated 13.08.1987, this Court noted that the appellant had deliberately mis-stated the facts and had tried to over-reach the Court. This Court also directed the Registrar of this Court to file a complaint against Mr. Rajinder Jain for having committed offences under Sections 191, 192 and 193 of the Indian Penal Code, 1860.

13. This Court held that the appellant was always aware that the property could be used only for residential purposes and had deliberately misused the same for commercial purposes.

14. In an appeal, the matter was remanded by the Hon'ble Apex Court and was heard again by this Court. The writ petition was finally dismissed for non-prosecution on 19.09.2002.

15. It is significant to note that the appellant did not take any step to challenge the dismissal of the writ petition, and all this while, the petitioner continued to remain in possession and continued with the commercial use of the property.

16. Another suit, being Suit No.14647/2016, was thereafter filed in the month of May, 2008, before the learned ADJ, Tis Hazari Courts,



Delhi, seeking a decree for restoration of the lease and also a perpetual injunction against the respondent from dispossessing the appellant from the property.

17. After recording the evidence, the learned ADJ-II (Central), Tis Hazari Courts, Delhi, dismissed the suit by a detailed judgment dated 25.04.2017. The appellant challenged the judgment dated 25.04.2017 by filing an appeal, being RFA No. 778/2017. It appears that the appeal was disposed of vide order dated 11.09.2017, on the very first date of hearing, as not pressed. However, liberty was granted to the appellant to seek setting aside of the cancellation of its lease deed dated 20.02.1985, in accordance with the extant and applicable circulars issued by the DDA.

18. Pursuant thereto, the appellant gave a representation dated 15.09.2017, seeking restoration of the lease and also seeking the change in the 'user' of the subject property from residential to commercial.

19. The representation given by the appellant was rejected by the respondent vide letter dated 10.11.2017. It was noted by the DDA that the lease deed could have been restored only on removal of violation of breaches and furnishing of an undertaking to the effect that all dues in relation to misuse charges would be paid.

20. It was pointed out that the appellant had not removed any of the breaches and, therefore, the request for restoration of the lease deed could not be accepted.

21. The appellant filed yet another petition, being W.P.(C) 2063/2018, the dismissal of which by the impugned order dated



06.03.2018, led to the filing of the present appeal. The learned Single Judge noted the brief history in regard to the subject property and held that the petitioner is precluded from re-agitating the same issue under the garb of challenging the communications through which the representation of the appellant was rejected.

22. The learned Counsel for the appellant submitted that when specific liberty was given by this Court to seek restoration of the lease deed and the change of user of the subject land from residential to commercial in terms of the extant policy, the learned Single Judge erred in dismissing the writ petition on the ground of *res judicata*.

23. He submitted that the DDA has not challenged the liberty granted to the Petitioner by this Court vide order dated 11.09.2017 while disposing of RFA No. 778/2017.

24. He further submitted that it was incumbent upon the DDA to consider the application of the appellant in terms of the policy in vogue at the relevant time. In terms of the policy in existence, the lease of the subject property was eligible for being restored. It is claimed that as on that date, the policy issued in the year 2014, was applicable in relation to the subject property.

25. The learned counsel for the DDA contended that the writ petition, which is the subject matter of the present appeal, is an abuse of the process of the Court. He submitted that the appellant has filed multiple suits and also multiple writ petitions, which were dismissed with the observations against the appellant. He submitted that the present matter is a fit case where the principal of *res-judicata* is to be applied, which



has rightly been done by the learned Single Judge. He further submitted that the arguments which are sought to be raised, have been adjudicated on multiple occasions by the Courts. The action of the DDA to cancel the lease deed has been upheld by the Courts on multiple occasions and cannot be reagitated in this manner as is sought to be done by the appellant.

26. He further submitted that the appellant is admittedly misusing the subject property, contrary to the terms of the lease. He lastly submitted that the possession of the subject property had been taken in accordance with law, after the proceedings initiated by the appellant challenging the cancellation of lease deed and proposed threat of dispossession came to an end.

Analysis

27. The controversy in the present appeal centres around the right, if any, of the appellant to apply for the restoration of the lease of the subject property.

28. As noted above, insofar as the cancellation of the lease deed is concerned, the said issue has already been adjudicated by this Court in a writ petition, filed on an earlier occasion, being W.P.(C) 2022/1986, and the suit being C.S. No.14647/2016. Therefore, the action of the DDA in cancelling the lease deed has attained finality and it cannot be argued that the cancellation was not in accordance with law.

29. It is significant to note that the lease was cancelled on account of violation of the lease conditions inasmuch as the appellant was admittedly using the subject property for commercial purposes, whereas



the same was meant for residential use. The appellant has constructed a multiple storey building on the subject property, which houses multiple shops being run by different people. The same is clearly contrary to the terms of the lease.

30. Even though, the appellant claims that the area where the subject property is located is commercial, where commercial activities are permitted, however, nothing has been pointed out from the MPD 2021 to show that the user of the property, even though was contrary to the terms of the lease, was in accordance with the Master Plan.

31. The issue which is sought to be agitated and requires adjudication, is the claim of the appellant that despite the subject property being misused, the lease deed is liable to be restored in terms of the extant policy.

32. It is relevant to note that the DDA has, from time to time, come up with policies wherein the lease deeds which were determined, and the allotments cancelled on account of unauthorized constructions / misuse, could be restored subject to the conditions being fulfilled as referred in those policies. The circulars have also been issued by the DDA in regard to the conversion of the lease hold properties into free hold.

33. It is not in dispute that in the Suit being C.S No. 14647/2016, one of the issues framed was whether the lease of the property is liable to be restored in terms of the policies issued in the year 1988. The suit was dismissed and the learned Trial Court held that the property is not eligible for the benefit. The learned Trial Court had noted that the



appellant has not been able to prove that the street where the property is located has been notified as a commercial street. It was also held that the Notification dated 21.07.1988 is not applicable in the facts of the present case and the restoration of the lease deed referred to in the said policy is in regard to belated construction, where the lease deeds were cancelled for the reasons of delay in construction and not for the reasons that user of the property was in violation of the terms of the lease. The said issue has already attained finality and, therefore, cannot be looked into the present proceedings.

34. The appellant has also relied upon the policy that was in vogue in the year 2017 when a representation was made by the appellant. It is submitted that pursuant to the liberty given by this Court in RFA No. 778/2017, the appellant had applied for restoration of the lease in terms of the policy which was issued in the year 2014, and was applicable at that point of time. Strong reliance has been placed on the policy issued in the year 2014. The contents of the said policies are set out below:

“Open ended policy of the year 2014

*Delhi Development Authority
[Land Disposal Department]*

*Vikas Sadan, INA
New Delhi-110023*

No. F.1 (1)/2014-Coord. (LDYDDA/32

New Delhi dated 22.04.2014

Sub.: Levy of Misuse charges- policy regarding

In pursuance of the directions of the Hon'ble Supreme Court as well as High Court to limit the time period for which the misuse charges should be levied, the Issue of recovery of misuse charges etc. was deliberated at length in the meeting of the Authority held on 24.02.2014 and in continuation of the existing policy finalized by the Authority vide Resolution No. 352010 passed by the Authority in its meeting held on 17.2.2010 and issued vide Circular No Misc/Sr. AO



(RL)/ Misuse Policy/2008/F.1 (07(2003/DD/Coordination/LD/101 dated 26.03.2010, the Authority decided vide item No. 41/2014, that the maximum period for levying the misuse charges may be restricted to 5 years from the date of detection of the misuse, subject to the following conditions:

- i. All decided cases of misuse, including the cases where misuse charges have been demanded in accordance with the existing policy and paid, shall not be reopened.*
- ii. Where misuse has been detected, the misuse charges may be restricted to the period of maximum of five years from the date of detection of the misuse or the date of filing of application whichever is earlier.*
- iii. Where certain permissible activities in flats/plots/premises are detected and even such use of the premises is reported as misuse by the field staff, such cases should be exempted from levy of misuse charges.*
- iv. The cases in which demand has been raised and as per existing policy, interest from the demand to the date of payment on the amount of revised misuse charges is payable, with the fresh policy coming into being, no such interest may be recovered.*
- v. There are cases in which demand has been sent but the allottee/applicant has not made the payment due to his disagreement with the demand. Such cases may be unsettled and may be treated under the fresh policy.*
- vi. The procedure for misuse charges calculation will be as was being followed earlier.*
- vii. The misuse charges will be levied only upto the date of receipt conversion application irrespective of the fact whether the misuse is continuing or not. In no case updation of misuse charges will be made”*

35. As is apparent from the perusal of the policy issued in the year 2014, the same relates to the payment of misuse charges. The appellant has not been able to point out in what manner the said policy is applicable to the facts of the present case. The uncontroverted facts in relation to the subject property are that the same has been used contrary to the terms of the lease; the user is contrary to the Master Plan; and the



misuse had continued from the year 1986 till the action of the dispossession was taken by the DDA in the year 2017.

36. We are unable to accept that how the policies which were issued by the DDA from time to time for restoration of the determined lease deeds are applicable in the facts of the present case. The circulars have been issued from time to time giving opportunities to the various land owners to get their lease deed restored on certain conditions such as payment of charges, discontinuing the misuser, etc. The appellant made a representation in the year 2017 and sought conversion of the property from residential to commercial. The representation was rightly rejected by the DDA noting that the lease deed was cancelled on ground of breaches of terms and conditions of the lease deed, and that any application for conversion can only be processed on restoration of the lease deed on removal of the breaches and on furnishing an undertaking.

37. It is an admitted case that the admitted breaches had not been removed. As noted above, the appellant has not been able to show that the user of the property in terms of the Master Plan was commercial. Therefore, the appellant, while being admittedly misusing the property which is contrary to the Master Plan, cannot seek the restoration of the lease contrary to the terms of a lease. The same would amount to giving premium to the illegality. It is not the case of the appellant that he was, at any stage, willing to remove the breaches or while giving an application in the year 2017, undertook to use the subject property strictly in terms of the lease deed.



38. It is a separate case that if the conversion of the subject property was allowed, the appellant would have been permitted to use the same for the commercial purposes. However, in the absence of any conversion of the subject property, the appellant could not have, as a matter of right, sought restoration of the lease deed *dehors* the specific and admitted terms of the lease deed. As noted in the judgement passed by learned trial court in C.S No. 14647/2016 the conversion of the property in any case could not have been permitted contrary to the user permitted as per the master plan.

39. Learned counsel for the appellant argued that the possession of the property could not have been taken by the DDA in the manner as has been done in the present case. He submits that in terms of the law laid down by the Hon'ble Apex Court in ***Express Newspapers Pvt. Ltd. and Others v. Union of India and Others : (1986) 1 SCC 133***, the DDA was required to institute appropriate proceedings to take the possession of the property, even in cases where the lease has been determined. The contention raised by the appellant is meritless.

40. As noted above, the appellant prior to the possession being taken by the DDA, had instituted two suits and a writ petition. The specific prayer sought in those proceedings was to restrain the DDA from taking the possession of the property. The learned Courts, after examining the facts, had dismissed the suits as well as the writ petition. The appellant, therefore, cannot be allowed to now contend that the possession has been taken without following the due process of law.



41. In view of the above, we find no reason to interfere with the judgment passed by the learned Single Judge.
42. The appeal is accordingly dismissed.
43. All pending application(s) also stand disposed of.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

NOVEMBER 3, 2023

"SS"/"SK"