



2024:DHC:1924



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

+ **RFA 166/2007**

ARCHANA AGGARWAL & ANR Appellants

Through: Mr. Gautam Narayan and Mr.
Ashok Kumar Jain, Advs.

versus

D.D.A. Respondent

Through: Mr. Kanwajot Singh Mainee,
Adv., Mr. Sahil Chopra and Mr. Shishir
Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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04.03.2024

1. The issue of conversion of the property forming subject matter of these proceedings, situated at AG-32, Shalimar Bagh, New Delhi from leasehold to freehold has been hanging fire since 25 March 2019.

2. The judgment dated 7 February 2007 passed by the learned Additional District Judge ("the learned ADJ"), under challenge in this first appeal instituted under Section 96 of the Code of Civil Procedure, 1908 (CPC), dismisses Suit 1/06 (*Archana Aggarwal & Anr v. DDA*), whereby the appellant had sought conversion of the lease hold property at 32, Block AG, Shalimar Bagh, Delhi (hereinafter referred to as "the suit property") to freehold.



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3. In the present appeal, the appellants filed affidavits on 26 April 2007, undertaking that they would use the entire suit property only for residential purposes. The undertakings were accepted *vide* order dated 30 April 2007. Subject to strict compliance with the undertakings, the operation of the impugned judgment dated 7 February 2007 was stayed.

4. On the ground that there was misuse of the suit property by the appellants, the DDA cancelled the lease deed issued in favour of Appellant 1. The appellants denied the allegation of misuse.

5. On 14 August 2018, the DDA made a statement, before this Court that the dispute could be brought to a close if the appellants paid misuser charges and conversion charges. Accordingly, this Court directed the appellants to appear before the Director (Residential Lands) of the DDA, who was requested to take a holistic view of the matter.

6. Despite repeated visits by the appellant to the office of the Director (Residential Lands), DDA, they were not heard.

7. On 25 March 2019, a statement was made by learned counsel for the DDA that, before any question of converting the property from leasehold to freehold could arise, the appellants would first have to get their lease restored and the appellants were, therefore, directed to present themselves at one of the camps being held by the DDA for the said purpose.



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8. On 22 October 2019, this Court noted the contention of the appellant that they had made numerous visits to the DDA, but nothing happened. The DDA, then, made a submission that the appellants could produce the documents in the camp of which the reference number was provided.

9. On 27 November 2019, the DDA submitted that certain documents had been filed by the appellant and were under consideration, and that the entire aspect would be cleared up prior to the next date of hearing. The matter was adjourned to 24 January 2020.

10. On 24 January 2020, the DDA once again submitted that, prior to conversion of the property in question from leasehold to freehold, the lease of the property had to be restored and submitted that a decision on restoration of lease would be taken up within eight weeks. The matter was therefore adjourned to 14 April 2020.

11. Thereafter, COVID-19 intervened.

12. On 20 July 2023, when the matter came up again for substantive hearing before this Court, the Director (Residential Lands), DDA, was directed to take a decision on the aforesaid orders, on the aspect of restoration of the lease of the property and its conversion from leasehold to freehold within six weeks, failing which the concerned officer was directed to remain present in court to offer an explanation.



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13. On 9 October 2023, it was noted that there was still no compliance with the orders passed by this Court and no explanation in that regard was forthcoming either. Para 5 of the order records the contention of learned Counsel for the DDA that conversion of the property from leasehold to freehold could be permitted only after the lease was restored. This Court was severally critical of the manner in which affairs were proceeding, as is reflected from paras 6 to 9 of the said order:

“6. Mr. Sharma further submits that an affidavit dated 07.10.2023 stating their position has been filed by the respondent/DDA; though the same is not on record. Let affidavit dated 07.10.2023 be brought on record. Let a copy be also supplied to learned counsel for the petitioner.

7. Regardless of the plea that the Director (Residential Lands) is indisposed today, there is no explanation why the issue at hand has not been resolved despite an order of this court passed as far back as on 14.08.2018, followed by 07 subsequent orders to the same effect, including the last order dated 20.07.2023.

8. The submission made by learned counsel for respondent/DDA only appears to set the clock back to the very beginning, without offering any cogent reason why the matter has not been resolved, thereby completely ignoring the repeated orders passed for that purpose.

9. In view of the above, the Director (Residential Lands) of DDA is directed to remain present in-person on the next date alongwith the file relating to the matter, with a complete explanation of the steps taken to resolve the matter, and a cogent explanation as to why the directions contained in order dated 14.08.2018, and subsequent orders as referred to above, have not been complied with; failing which the court would be constrained to take other appropriate actions in the matter.”

14. On 11 December 2023, the DDA submitted to the court that the file for restoration of lease had been forwarded to the Hon'ble



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Lieutenant Governor *with a positive recommendation*, as the breaches of the terms of the lease stood remedied by the appellants. Nonetheless, further time was sought as the competent authority to take a decision on restoration of the lease of the subject property was the Hon'ble Lieutenant Governor. The matter was, therefore, re-notified to 30 January 2024.

15. On 30 January 2024, the learned Counsel for the DDA handed over a communication dated 29 January 2024, from the Assistant Director, LAB (Residential)/DDA, intimating the first appellant that her lease deed in respect of the subject property stood restored.

16. As this removed the sole impediment towards conversion of the appellants' property from leasehold to freehold, as per the stand adopted by the DDA before this Court on earlier occasions, this Court directed that a decision be taken on the appellants' application for conversion of the land positively within two weeks and no more. It was clarified that, as this litigation relates back to 2007, no extension of time would be granted for that purpose.

17. Today, Mr. Kanwajot Singh Mainee, learned Counsel appearing for the DDA, seeks further time for taking decision on the appellant's application for conversion of the subject property from leasehold to freehold.

18. He submits that the DDA is in the process of working out misuse charges in respect of the property in question.



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19. Mr. Gautam Narayan, learned Counsel for the appellants, seriously opposes this request. He submits, with justification, that the application for conversion of the said property from leasehold to freehold has been hanging fire since 2019 and, now, an entirely new plea, which was never raised earlier, regarding misuse charges, is being touted as a ground to further delay the exercise of conversion from leasehold to freehold.

20. Mr. Mainee has, despite a query from the Court, not been able to draw attention to any provision which would require the decision on conversion of the subject property from leasehold to freehold to await computation of misuse charges, if any, which the appellants may be required to pay.

21. As Mr. Mainee has been so vocal on the aspect of misuse charges, I may also note that, as far back as on 7 March 2019, this Court had noted that, by orders dated 14 August 2018 and 30 November 2018, the DDA had been permitted to take decision not only on the appellants' request for conversion from leasehold to freehold but also misuser charges which according to the DDA were recoverable from the appellants. It is now five years since that date and the DDA is yet to calculate the alleged misuse charges. That cannot, therefore, constitute a legitimate basis to hold up the conversion of the property in question any further.

22. In that view of the matter, and keeping in view the repeated



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orders passed by this Court, I am not willing to defer any further the exercise of conversion of the property from leasehold to freehold.

23. The only impediment in that regard, as per the submissions made by the DDA before this Court from time to time was the regularisation of the lease in respect of the property. The lease stands regularized.

24. In that view of the matter, the DDA is directed to, within two weeks from today, pass orders converting the property situated at AG-32, Shalimar Bagh, New Delhi from leasehold to freehold.

25. This shall, however, not operate as an impediment on the DDA in recovering any misuser charges or any other amounts which, according to them, are recoverable from the appellant. Their rights to do so in accordance with law shall stand reserved.

26. Needless to say, should any such decision of recovery be taken by the respondent DDA, the appellants' right to challenge the said decision in accordance with law would also stand reserved.

27. In view of the aforesaid, no further controversy survives for adjudication in the appeal. In view of the aforesaid order, the impugned order dated 7 February 2007 of the learned ADJ is quashed and set aside.

28. The appeal is accordingly disposed of, with no orders as to



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costs.

MARCH 4, 2024
dsn

C. HARI SHANKAR, J.

Click here to check corrigendum, if any