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

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Reserved on: February 15, 2024

Decided on: May 31, 2024

+ **W.P.(C) 6937/2013**

VINAY KUMAR AGGARWAL

..... Petitioner

**Through: Mr. Ajay Kumar Tandon,
Advocate**

V

UNION OF INDIA & ANOTHER

..... Respondents

**Through: Ms. Manisha Agrawal
Narain, CGSC with Mr.
Sandeep Singh Somaria and
Ms. Khushi, Advocates**

+ **W.P.(C) 13812/2023**

SUBHASH KUMAR JAIN AND ANOTHER

..... Petitioners

**Through: Mr. S. S. Ahluwalia and
Mr. Mohit, Advocates**

V

UNION OF INDIA AND ANOTHER

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 06.06.2024
12:48:51



..... Respondents

Through: **Ms. Ritu Reniwal, Sr. P.C.
with Mr. Kamaldeep, GP for
respondents
M. No.7678369121**

**CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

J U D G M E N T

1. The present writ petitions bearing no W.P. No 6937/2013 titled as **Vinay Kumar Aggarwal V Union of India & another** and W.P. No. 13812/ 2023 titled as **Subhash Kumar Jain & another V Union of India & another** are filed under Article 226 of the Constitution for seeking issuance of directions against the respondents for conversion of the property bearing no. 1/14, Block 60-A 1, M.M. Road (now Rani Jhansi Road), New Delhi [subject matter of W.P.(C) 6937/2013 and hereinafter referred to as **“property no. 1/14”**] from lease hold to free hold; and property bearing no. 1/12 and 1/13, Block 60-A 1, M.M. Road (now Rani Jhansi Road), New Delhi [subject matter of W.P.(C) 13812/2023 and hereinafter referred to as **“property no. 1/12 and 1/13”**] from leasehold to freehold and to change the title of property no. 1/12 and 1/13 in their records in the name of the petitioners in W.P.(C)



13812/2023 namely Subhash Kumar Jain and Urmila Jain (hereinafter referred to as “**Subhash Kumar Jain**” and “**Urmila Jain**” respectively) and for quashing the order dated 01.01.2013 passed by the respondent no. 2 i.e. Land and Development Office, Ministry of Urban Development, Maulana Azad Road, Nirman Bhavan, New Delhi-110018 (hereinafter referred to as “**L&DO**”).

2. Briefly stated facts relevant to present case and as stated by the petitioners are that a perpetual lease deed dated 31.10.1931 was executed between the Secretary of State for India in Council as Lessor and Banwari Lal Panna Lal Contractors as Lessee in respect of the plot subject matter of the present petitions bearing no. 1, Block 60-A, M.M. Road (now Rani Jhansi Road), New Delhi measuring 1.47 acres with effect from 12.01.1928 at yearly rent of Rs.80/-. The plot was divided and one-third share was given to Lala Lakshmi Chand s/o Banwari Lal. Thereafter, Lala Lakshmi Chand gave his one-third share in the said plot to his son Vinay Kumar [petitioner in W.P.(C) 6937/2013 and hereinafter referred to as “**Vinay Kumar**”] through Will dated 06.09.1956. The entire plot was further divided into sub-plots which were numbered from 1/1 to 1/20. Vinay Kumar



sold the property bearing no. 1/12 and 1/13, 1, M.M. Road (now Rani Jhansi Road), New Delhi to Prem Kumar Jain {since deceased and represented by his LR namely Urmila Jain [petitioner no.2 in W.P.(C) 13812/2023]}, Raj Kumar Jain, Padam Kumar Jain, Subhash Kumar Jain [petitioner no.1 in W.P.(C) 13812/2023] vide registered Sale Deed dated 27.04.1963. Subhash Kumar Jain and Prem Kumar Jain along with others had intimated the respondent no.2 i.e. L&DO about the purchase of the property no. 1/12 and 1/13 from Vinay Kumar vide letter dated 10.05.1963. Subhash Kumar Jain and Prem Kumar Jain along with others again sent letters dated 21.12.1966 and 02.02.1967 to L&DO intimating about the purchase of the property no. 1/12 and 1/13 and requesting L&DO to transfer the said property in their name but did not receive any reply from L&DO with reference to the abovementioned letters. Raj Kumar Jain and Padam Kumar Jain sold their respective shares in the property no. 1/12 and 1/13 to Prem Kumar Jain and Subhash Kumar Jain by way of registered Sale Deed dated 10.12.1970. Subhash Kumar Jain and Prem Kumar Jain again sent a letter to the respondents for changing the title of property no. 1/12 and 1/13 in their name in the records.



The property no. 1/12 and 1/13 was mutated in the names of Prem Kumar Jain and Subhash Kumar Jain in the records of Municipal Corporation of Delhi (MCD) and the same was intimated to Subhash Kumar Jain and Prem Kumar Jain vide mutation letter dated 24.07.1985 issued by MCD. Subhash Kumar Jain and Prem Kumar Jain again sent a letter dated 25.08.1995 to the L&DO for changing the title of the property no. 1/12 and 1/13 in their name in the records. Subhash Kumar Jain and Prem Kumar Jain have been depositing the house tax for the property no. 1/12 and 1/13 and are in legal and exclusive possession of the said property for last more than 50 years.

2.1 Subhash Kumar Jain and Prem Kumar Jain filed an application dated 27.01.2010 before the L&DO for mutation of property no. 1/12 and 1/13 along with copies of Sale Deeds dated 27.04.1963 and 10.12.1970. The L&DO acknowledged the receipt of the said application vide acknowledgement dated 27.01.2011. Subhash Kumar Jain and Prem Kumar Jain filed another application dated 11.01.2011 for mutation of title of property no. 1/12 and 1/13 in their names before the L&DO and also deposited a true copy of the Sale Deed dated 10.12.1970 vide a letter dated 01.03.2011 addressed to



the L&DO. Vinay Kumar also filed an application bearing no. 105455 for conversion of the property no. 1/14 from leasehold to freehold along with a challan dated 03.02.2011 containing details of payment of Rs.6,36,400/- with regard to the aforesaid conversion. L&DO issued an inspection notice dated 11.04.2011 to the petitioners for the properties bearing nos.1/12, 1/13 and 1/14, 1, M.M. Road (now Rani Jhansi Road), New Delhi. The inspection officer appointed by L&DO had inspected the above said property on 18.04.2011 and based on the breaches noticed by him, L&DO issued a notice dated 12.07.2011 to the petitioners to remedy the breaches on the said property but without mentioning property no. 1/14 in the said notice. Vinay Kumar replied to the breach notice dated 12.07.2011 vide letter dated 20.07.2011 and stated that there was no unauthorized construction or encroachment or re-entry in property no. 1/14 and requested L&DO to process his conversion application dated 03.02.2011. Vinay Kumar vide letters dated 22.11.2011 and 19.03.2012 again requested L&DO to process his application for conversion in view of the fact that no breaches were noticed upon inspection. Subhash Kumar Jain and Prem Kumar Jain on 09.08.2011



informed L&DO that the title of the property be changed in its records as it may be required by MCD to regularize that part of the property which is not proper according to L&DO. Subhash Kumar Jain and Prem Kumar Jain on 22.12.2011 reminded L&DO for mutation of the property no. 1/12 and 1/13 in their favour since it has already been mutated in the record of MCD.

2.2 Subhash Kumar Jain and Prem Kumar Jain in the year 2012 had filed an indemnity bond dated 06.09.2012 and undertaking before L&DO for the conversion of the property no. 1/12 and 1/13 from leasehold to freehold as per law. Subhash Kumar Jain and Prem Kumar Jain also filed an application bearing no. 103335 before the L&DO on 12.09.2012 and deposited a fee of Rs.60,000/- vide cheques bearing nos. 822557 dated 01.09.2012 and 687329 dated 04.09.2012 drawn on HDFC Bank as fees for conversion of the property no. 1/12 and 1/13 from leasehold into freehold. L&DO issued another inspection notice dated 19.09.2012 to Vinay Kumar for inspection of property no. 1/12 to 1/14 and deputed Mr. Jai Bhagwan, Surveyor to inspect the said premises on 19.10.2012. Vinay Kumar in response to the inspection notice dated 19.09.2012



vide letter dated 06.10.2012 addressed to the Assistant Engineer, L&DO stated that he did not own property no. 1/12 and 1/13 as they had been sold 50 years back in 1963. Vinay Kumar also stated that the proposed inspection was in violation of L&DO's prevailing inspection policy. However, without prejudice to his rights, Vinay Kumar welcomed the inspector to again visit his property no. 1/14. The inspection took place on 19.10.2012 but its outcome was never communicated to Vinay Kumar. The L&DO on 01.01.2013 had intimated to the petitioners that properties no. 1/12 and 1/13 are considered as a single unit along with property no. 1/14 in their records. Vinay Kumar replied to the letter dated 01.01.2013 vide letter dated 09.01.2013. Subhash Kumar Jain and Prem Kumar Jain vide letter dated 18.01.2013 gave clarification to L&DO that the property no. 1/12 and 1/13 is owned by them for the last 50 years and L&DO should correct the title of the said property in their name for all purposes. Vinay Kumar vide letter dated 01.04.2013 again reminded L&DO to convert the property no. 1/14 from leasehold to freehold. The respondents also issued a notification bearing no. 24(372)/2000-CDN dated 12.06.2020 vide which conversion into



freehold of properties sold through regular sale deeds was made permissible.

3. The petitioner Vinay Kumar has filed the petition bearing no. W.P.(C) 6937/2013 on the grounds that it is absolutely wrong/illegal/*malafide* on part of L&DO and also in violation of the terms of the perpetual lease deed dated 31.10.1931 to mention in their records vide letter dated 01.01.2013 that property no. 1/12 and 1/13 and property no. 1/14 have been taken as a single unit. L&DO in accordance with clause 2(11) of the Perpetual Lease dated 31.10.1931 was informed by Prem Kumar Jain vide letter delivered on 10.05.1963 about the transfer of the property no. 1/12 and 1/13 vide Sale Deed dated 27.04.1963. L&DO despite repeated reminders has failed to carry out the requisite mutations/substitutions since 10.05.1963. Vinay Kumar after Sale Deed dated 27.04.1963 was left only with the ownership of property no. 1/14 which then became a separate unit. L&DO failed to appreciate that property no. 1/12 and 1/13 is not owned by Vinay Kumar and he cannot force/compel the owners of the said property to join him for converting their properties from leasehold to freehold. L&DO cannot take advantage of its own



wrong/laxity. L&DO had the knowledge that Vinay Kumar had already sold property no. 1/12 and 1/13 to Subhash Kumar Jain and Prem Kumar Jain and others on 27.04.1963 and L&DO after more than 50 years cannot issue notice dated 01.01.2013 in violation of the terms of the perpetual lease deed dated 31.10.1931 calling upon Vinay Kumar to apply jointly with the owners of separate properties bearing no. 1/12 and 1/13 for withdrawal of re-entry and other purposes. L&DO cannot deny converting the property no. 1/14 from leasehold into freehold. L&DO to harass Vinay Kumar intentionally issued another inspection notice dated 19.09.2012 for inspecting the property even when the same was earlier inspected on 18.04.2011 in accordance with the inspection notice dated 11.04.2011 wherein no breach was noticed with respect to the property no. 1/14. L&DO as per its Citizen Charter ought to have processed the application for conversion dated 03.02.2011 within 03 months from the date of its receipt specifically when no breach was noticed with respect to property no. 1/14. The respondents have acted arbitrarily as apparent from the letter dated 01.01.2013 whereby the respondents have called upon Vinay Kumar to apply jointly with property no. 1/12 and 1/13



which is in violation of the terms of the perpetual lease deed dated 31.10.1931 which permitted sale of a part of the property without the permission of L&DO. L&DO despite being an instrumentality of the State has failed to act in compliance with the terms of the perpetual lease deed dated 31.10.1931. The petitioner Vinay Kumar besides raising other grounds prayed that the impugned actions/orders including the letter dated 01.01.2013 issued by L&DO be quashed and the respondents be directed to convert the property no. 1/14 from leasehold to freehold.

4. The petitioners Subhash Kumar Jain and Urmila Jain (LR of Prem Kumar Jain) have filed the present petition bearing no. W.P.(C) 13812/2023 on the grounds that L&DO had acted illegally and violated the rights of the petitioners by not mutating the property no. 1/12 and 1/13 in the records even after 60 years from the date of execution of the registered sale deeds dated 27.04.1963 and 10.12.1970. L&DO has failed to consider the various communications sent by the petitioners since 1963 intimating the purchase of the property no. 1/12 and 1/13 in terms of clause 11 of the perpetual lease dated 31.10.1931. L&DO has already done



inspection of the property and has considered the petitioners as the owner of the property no. 1/12 and 1/13 vide inspection notice dated 12.07.2011. L&DO has already accepted the fees of Rs.60,000/- for conversion of property from leasehold to freehold vide application bearing no. 103335. The respondents have acted in an arbitrary manner in issuing the letter dated 01.01.2013 whereby the respondents called upon the petitioners to apply jointly with property no. 1/14 knowing fully well that the petitioners had purchased the property from Vinay Kumar in 1963. L&DO ought to have processed the application for conversion from leasehold to freehold within 03 months after deposit of adequate fee by the petitioners. The impugned actions and orders of the respondents have resulted in violation of the fundamental rights of the petitioners. The respondents have wrongly held that property no. 1/12 and 1/13 and property no. 1/14 are one single unit. The petitioners have nothing to do with property no. 1/14 which is owned by Vinay Kumar. The respondents as per the notification bearing no. 24(372)/2000-CDN dated 12.06.2020 transferred properties through regular sale deeds to be converted into freehold. The respondents are violating the



fundamental rights of the petitioners and are discriminating against them by not converting their property into freehold despite the notification dated 12.06.2020. L&DO has already permitted the conversion from leasehold to freehold of properties bearing nos. 1/4 to 1/9 belonging to Rakesh Gupta and properties bearing nos. 1/10 and 1/11 belonging to Vijay Goel. The petitioners besides raising other grounds prayed that the respondents be directed to convert the property bearing no. 1/12 and 1/13 into freehold from leasehold and to change the title of the said property in the records of the respondents in the petitioners' name and to quash the order dated 01.01.2013 passed by L&DO and consider the property no. 1/12 and 1/13 as separate from property no. 1/14.

5. The respondents filed a counter affidavit in W.P.(C) 6937/2013 wherein stated the plot admeasuring 1.47 acres situated in Block 60-A at MM Road was leased out to Shri Banwari Lai Panna Lai on 31.10.1931 for the purpose of garages for Motor Cars and a shop for selling accessories of motor car accessories and subsequently land use of the said plot was changed into residential. Krishan Swaroop after death of Shri Banwari Lai Panna Lai on 06.05.1936 was



substituted. Krishan Swaroop in pursuance of partition decree passed by this Court in suit bearing no 741/1956 requested for sub-division and mutation of the above said plot/property. The eastern half of the property was mutated in the name of Krishan Swaroop and the western half of the property was mutated jointly in the name of Vinay Kumar and others on the terms and conditions of the original perpetual lease deed. The western half of the property was shown as sub-divided into 05 separate parts in the site plan 2280 dated 05.06.1962 prior to zonal plan coming into force. The property no. 1/12 to 1/14 came to share of Vinay Kumar.

5.1 The different/individual stake holders of the property began to get plans sanctioned from the local body and issue regarding sub division of the property was examined in detail in the year 2005-2006 and a letter dated 10.10.2005 was written to the MCD whereby the respondents sought confirmation in the said matter. MCD vide letter dated 30.11.2005 stated that building plan of 1/1 M.M. Road was sanctioned in 1976 accepting it as separate entity on the basis of earlier sanction by NDMC in the year 1938. L&DO has accepted the sub-division of the western part of the property no. 1, M.M. Road



(now Rani Jhansi Road), New Delhi after acceptance of sub-division by MCD which has sanctioned plan without any NOC and in consultation with Ministry of Law and subsequent approval of Ministry of Urban Development. The sub-division of properties can only be done after obtaining clearance from Ministry of Law and clearance from local bodies regarding density of units, approach roads, service by lanes etc. and is then show as a distinct unit. Hence the property can be sub-divided only after approval of a lay out plan by the local body based on the above criteria.

5.2 The respondents recognize property nos. 1/12 to 1/14 as one single unit although local body has numerated the property as 1/12, 1/13 and 1/14 but has sanctioned the plan as one single unit only. The transfer of property no. 1/12 and 1/13 will amount to sub-division of the property which is not permissible under the Master Plan. The conversion application was filed by the petitioner Vinay Kumar in respect of property no. 1/14 but the property no 1/12 to 1/14 has been recognized by L&DO as a single unit. The property subject matter of the present petitions is a re-entered property and as per Clause 20.1 of the Conversion Policy of 2003 of L&DO, conversion application



cannot be considered if the property stands re-entered. Vinay Kumar was required to pay the government dues in order to withdraw the re-entry before applying for conversion and since the property no. 1/12 to 1/14 are considered as a single unit the application needs to be signed by all the co-lessees of the property as required under Clause 4 of L&DO's Conversion Policy. The inspection notice and breach notice were issued to all the co-lessees of the property. Accordingly all the co-lessees were required to file a single application signed by them for conversion. The whole of the property i.e. property nos. 1/12 to 1/14 as per procedural requirements can be considered for withdrawal of re-entry and for any other purposes.

5.3 The inspection which was conducted on 19.10.2012 was not in contravention of any Office Policy or Memorandum. The respondents at time of calculating the government dues in respect of the property no. 1/12 to 1/14 after the inspection dated 18.04.2011 found that inspection was carried out on 28.10.1987 for the property nos. 1/14 to 1/17 which did not clarify the extent of the unauthorized construction in the property nos. 1/12 to 1/14. Accordingly to confirm the details of unauthorized construction and misuse for the said portion, it was



decided by L&DO to carry out fresh inspection. L&DO on 19.10.2012 could only inspect the property no. 1/14 and the property no. 1/12 and 1/13 could not be inspected and thus the result of the inspection was not communicated to Vinay Kumar.

5.4 The application for mutation/substitution can only be considered by the office of L&DO in case of leasehold property. The property no. 1/12 to 1/14 is a re-entered property and all the co-lessees are required to apply jointly for withdrawal of re-entry before considering the application for mutation/conversion. The property bearing no. 1/3 to 1/9 has been recognized by L&DO as a single unit and considering the request in respect of property no. 1/3 to 1/9 as a single unit cannot be treated as sub-division. It was prayed that present petitions be dismissed.

6. The petitioner Vinay Kumar filed rejoinder to the counter affidavit filed on behalf of the respondents wherein besides reiterating the facts as mentioned in the petition stated that V.K. Goyal who was the owner of property no 1/10 and 1/11 had filed Civil Writ Petition No. 4419/2007 titled as **V.K. Goyal V Union of India and another** and during pendency of said writ petition, L&DO vide letter dated



22.04.2010 had communicated its decision to Rakesh Gupta, who was the owner of property no. 1/3 to 1/9 treating the perpetual lease dated 31.10.1931 as commercial and not residential and of allowing sub-division and withdrawal of re-entry in parts. The properties no 1/3 to 1/9 were mutated and converted from leasehold to freehold by L&DO in the name of Rakesh Gupta vide registered conveyance deed dated 18.01.2011. The respondents in Civil Writ Petition No. 4419/2007 on 01.09.2010 again confirmed that sub-division has been allowed in the entire property and undertook that after a further inspection of the property, the re-entry notice would be withdrawn since the basis on which the sub-division was already allowed, will be applied qua V.K. Goyal as well. Accordingly said petition was disposed of vide order dated 01.09.2010 with the direction to the respondents to take necessary action within 04 weeks and the liberty to revive the petition in case the respondents did not take any action within 08 weeks from the date of the order. The respondents in view of undertaking converted the property nos. 1/10 and 1/11 into freehold in the name of V.K. Goyal vide registered conveyance deed dated 25.03.2011. Subhash Kumar Jain and Prem Kumar Jain had



requested and reminded the respondents to mutate/transfer the property no. 1/12 and 1/13 multiple times including vide letters dated 21.12.1966 and 02.02.1967 but the respondents neither acted as per the terms of the perpetual lease dated 31.10.1931 nor replied to the said letters for the last more than 50 years. The respondents wrongly rejected Vinay Kumar's application for conversion of property no. 1/14 from leasehold to freehold. The local bodies and authorities have recognized property no. 1/14 as a separate entity from property no. 1/12 and 1/13 which were sold by Vinay Kumar in 1963. The property no. 1/14 has been provided with a separate electricity meter and the property tax was also determined and collected separately. It is apparent that sub-divisions were allowed in respect of the property bearing plot no. 1 and the properties no 1/3 to 1/9 (seven units) and properties no 1/10-11 (two units) have already been converted into freehold property.

6.1 The respondents have also recognized and carried out mutation in case of Plot no.1, Block no. 90 known as 5, Jain Mandir Road, New Delhi on 27.02.1992 on basis of similar terms of lease deed. The respondents have wrongly stated that the land use of the premises



was changed into residential on a later date. The land use of the property subject matter of the present petitions has been commercial since the execution of the perpetual lease deed dated 31.10.1931 till date. The Zonal Plan or Master Plan cannot supersede the terms and conditions of the unrestricted perpetual lease deed dated 31.10.1931. MCD has also allotted separate municipal numbers to the existing building and these buildings are separately mutated in the names of the respective owners in the records of MCD. The respondents have failed to produce any material to support their case that sub-division of properties can be done only after obtaining clearance from Ministry of Law as well as from the local bodies. The respondents did not serve any notice of re-entry upon Vinay Kumar in respect of property no. 1/14 as prior notice is a prerequisite before re-entry is exercised by the principal lessor. L&DO in the breach notice dated 12.07.2011 had categorically stated that it had been issued “to remedy the breaches before exercising re-entry powers” thereby clearly indicating that there was no re-entry till 2011. It is an admitted fact that no re-entry order/notice has been passed/issued after the breach notice dated 12.07.2011 and therefore, the property



cannot be said to be re-entered. It is illegal and arbitrary to expect the owners of property nos. 1/12 to 1/14 to apply together for conversion of the properties from leasehold to freehold. The respondents by marking the name of Vinay Kumar against the property no. 1/14 in the notices dated 11.04.2011, 12.07.2011 and 19.09.2012 have accepted him to be the owner of property no. 1/14 and that he has no concern with property no. 1/12 and 1/13. The respondents even after inspections of the property on 28.10.1987 and 18.04.2011 have failed to find/calculate the government dues in respect of misuses/breaches, if any in respect of property no. 1/14 and they cannot take advantage of their own wrongs and laxity.

7. The respondents also filed additional affidavit besides reiterating facts mentioned in counter affidavit stated that the petitioner Vinay Kumar vide letter dated 27.04.1963 had informed L&DO that he had sold an area about 234 sq. yards bearing property no. 1/12 and 1/13 to Prem Kumar Jain, Subhash Kumar Jain and others vide sale deed executed on 27.04.1963 and requested L&DO to enter the names of the purchasers as joint lessees of the western half portion of the property bearing no. 1, M.M. Road (now Rani Jhansi Road), New



Delhi. The request of Vinay Kumar for mutation of property no. 1/12 and 1/13 was examined and vide letter dated 27.07.1963 was asked to furnish documentary proof regarding his sole ownership of the part of property sold by him. Vinay Kumar vide letter dated 09.08.1963 informed L&DO that the said plot measuring 0.72 acre was partitioned amongst the family members by way of oral partition and he furnished a copy of the plan by which the oral partition became effective. The matter was re-examined and Vinay Kumar vide letter dated 13.12.1963 was informed that the plan furnished by him was not a sufficient proof of the partition. Vinay Kumar was requested to furnish documentary proof to that effect. The matter was again re-examined and Vinay Kumar vide letter dated 24.02.1967 was informed that there was no sufficient evidence to establish that any family settlement had taken place, therefore, it was not possible for L&DO to mutate the specific portion of the entire property in the name of the purchasers i.e. Prem Kumar Jain, Subhash Kumar Jain and others.

7.1 The individual stakeholders in the property bearing no. 1, M.M. Road (now Rani Jhansi Road), New Delhi began to get plans



sanctioned from the local body. The matter regarding sub-division of the plot was examined in detail in the year 2005-2006 and a letter dated 10.10.2005 was sent to MCD whereby L&DO sought confirmation in the said matter. MCD vide letter dated 30.11.2005 stated that as per its records, building plan of property no. 1/1 was sanctioned in 1976 accepting it as a separate entity on the basis of earlier sanction by NDMC in the year 1938 i.e. prior to the introduction of the MPD-1962. L&DO accepted the sub-division of the western half of the plot into 5 parts viz. 1/1-1/2, 1/3-1/9, 1/10-1/11, 1/12-1/14 and 1/15-1/17 as per site plan 2280 dated 05.06.1962 after acceptance of the same by MCD in consultation with Ministry of Law and subsequent approval of Ministry of Urban Development. As per the site plan 2280 dated 05.06.1962, property no. 1/3-1/9 and 1/10-1/11 were considered as two separate units hence, the said properties were converted from leasehold to freehold. However, in the present case, property no. 1/12 to 1/14 is a unified property which is treated as a single unit under the site plan 2280 dated 05.06.1962 which is prior to the Zonal Plan/MPD-1962 coming into force.



8. The counsel for the petitioner Vinay Kumar advanced oral arguments and also submitted written submissions. He argued that the perpetual lease deed dated 31.10.31 in respect of the plot no. 1 M.M. Road (Rani Jhansi Road), New Delhi was unrestricted and permits unconditional transfer and sub-lease of any part of the plot originally leased, without requiring any permission from the Lessor/L&DO. The perpetual lease deed dated 31.10.1931 does not impose any restriction on the lessee's right to assign, transfer or sub-lease any part of the property and only requires that a copy of the deed of assignment, transfer or sub-lease be delivered to the lessor as per Clause 2(11). Vinay Kumar is the owner of the property no. 1/14 only and sold the property no. 1/12 and 1/13 was sold to Subhash Kumar Jain, Prem Kumar Jain and others vide registered sale deed dated 27.04.1963. The said transfer has not been challenged by anyone including the L&DO since 1963. L&DO vide its letter dated 10.10.05 to MCD recognized that the lease deed is an unrestricted lease deed and rights under the said lease deed can be freely transferred.



8.1 The counsel for the petitioner further argued that failure and refusal of L&DO to recognise the part sale of property no. 1/12 and 1/13 is in violation of the terms of the lease deed dated 31.10.1931 and the refusal to convert property no. 1/14 from leasehold to freehold is illegal, discriminatory and violative of Article 14, principle of legitimate expectation and estoppel. L&DO has allowed sub-division and transfer of other plots in Delhi which were granted under unrestricted lease deeds containing similar terms as the present lease deed dated 31.10.1931. There is no ground for refusing mutation and conversion in the present case quoting the provisions of the Master Plan. L&DO is bound not only to mutate the property no. 1/12 and 1/13 in favour of its owners i.e. Subhash Kumar Jain and Prem Kumar Jain (now represented by his LR namely Urmila Jain) but also to convert the property no. 1/14 from leasehold to freehold in favour of Vinay Kumar. L&DO cannot refuse to record the sale of property no. 1/12 and 1/13 on the ground that permission is required from Municipal authority when MCD itself has recognised the separate units for calculating and collecting property tax, sanction of plans and granting electricity and water connections. There is no



valid re-entry effective with respect to any of the properties in the plot bearing no. 1, M.M. Road (now Rani Jhansi Road), New Delhi including the property no. 1/14 and the property no. 1/12 and 1/13. He further argued that even if it is assumed that L&DO's re-entry has been in effect since the re-entry notice dated 19.04.1975, Vinay Kumar has become the owner of property no. 1/14 and Subhash Kumar Jain and Prem Kumar Jain have become the owners of property no. 1/12 and 1/13 by adverse possession as they have been in open and adverse possession of the respective properties for last more than 40 years since the date of the assumed re-entry and L&DO chose not to assert its right of ownership/possession of the property at any point in time throughout this period. The breach notice dated 12.07.2011 does not show any unauthorised construction on the property no. 1/14, thus L&DO cannot re-enter the said property and the subsequent inspection notice issued by the L&DO is also patently illegal and in violation of L&DO's office order bearing no. 14/2009 dated 30.10.2009. The Zonal Plan or Master Plan cannot supersede the terms and conditions of the unrestricted perpetual lease deed. It was argued that the petition be allowed.



9. The counsel for the petitioners Subhash Kumar Jain and Urmila Jain advanced oral arguments and filed written submissions. The counsel besides reiterating the facts of the present case argued that it would be inequitable to allow the respondents to sit over the matter for an unreasonably long period and to take advantage of its own wrong/inaction. The application for conversion of the property cannot be rejected on the ground of re-entry in view of the payments already made by the applicant . It is further argued that if the breaches are rectified, the re-entry cannot be sustained. In the present case, once the property is mutated in the names of Subhash Kumar Jain and Urmila Jain, MCD will immediately sanction the construction done by the petitioners on property no. 1/12 and 1/13 which have been pointed out as breaches by the L&DO vide breach notice dated 12.07.2011. The counsel in support of arguments relied upon in **Vikramaaditya Bhartiya V DDA**, 2013 (5) AD Delhi 693; **Vinay Kumar Aggarwal V UOI**, 2004 (111) DLT 597; **Harbans Lal Pahwa V Lieutenant Governor and Others**, 2012 (1) AD Delhi 136; **Amrit Lal Bussi V UOI and Others**, 1978 AIR (Delhi) 340; **Sahib Singh V DDA**, 1987 (12) DRJ 170. The counsel for the



petitioners argued that the respondents be directed to convert the property bearing no. 1/12 and 1/13 into freehold from leasehold and to change the title of the said property in the records of the respondents in the petitioners' name and to quash the order dated 01.01.2013 passed by L&DO and consider the property no. 1/12 and 1/13 as separate from property no. 1/14.

10. The plot bearing no. 1, M.M. Road (now Rani Jhansi Road), New Delhi admeasuring 1.47 acres situated in Block 60-A at M. M. Road was leased out to Banwari Lal Panna Lal, Contractors vide lease deed dated 31.10.1931. Clause 2 (11) of lease deed permitted the lessee to assign, transfer or sublease the premises or any part thereof and thereafter to deliver copy of deed of assignment, transfer or sublease to the lessor. It reads as under:-

The Lessee will upon every assignment, transfer or sublease of the said premises hereby demised or any part thereof and within one calendar month thereafter deliver a copy of the deed of assignment, transfer or sublease to the Lessor or the Chief Commissioner of Delhi, and all such assignees, transferees and sub lessees shall be bound by all the covenants and conditions herein contained and be answerable in all respects therefor.

10.1 Krishan Swaroop was substituted on 06.05.1936 after death of Banwari Lal Panna Lal as title holder. Krishan Swaroop in pursuance



of partition decree passed in Suit No. 741/1956 by this court requested for sub-division of the plot and accordingly on basis of said decree, division and mutation of the said plot was carried out. The eastern half portion measuring .75 acre (32646 sq. ft.) came in share of Krishan Swaroop and western half portion measuring .72 acre (31348 sq. ft.) which was came jointly in share of Vinay Kumar, Vidya Dhar, Prem Lata, Sudhir Kumar, Rajesh Kumar and Banwari Lai Charitable Trust being legal heirs of Banwari Lal and was mutated in their joint names on terms and conditions of original lease deed. The western part was sub-divided in 5 separate portions in the Site Plan 2280 dated 05.06.1962 prior to Zonal Plan coming into force. The respondents have accepted the sub-division of western part of the property No. 1, M.M. Road, New Delhi after acceptance of by MCD but claimed that MCD has sanctioned Plan without any NOC and consultation with Ministry of Law and subsequent approval of Ministry of Urban Development. The property bearing no 1/12-1/14 measuring 742.30 sq. yards came into share of Vinay Kumar. Vinay Kumar sold the plots bearing nos. 1/12 and 1/13 to Prem Kumar Jain, Raj Kumar Jain, Padam Kumar Jain and Subhash Kumar Jain vide



registered Sale Deed dated 27.04.1963. Raj Kumar Jain and Padam Kumar Jain sold their respective shares to Prem Kumar Jain and Subhash Kumar Jain by registered Sale Deed dated 10.12.1970. Accordingly Prem Kumar Jain and Subhash Kumar Jain became lessees of the property no. 1/12 and 1/13 and their names were mutated in the records of MCD. MCD in pursuance of letter dated 10.10.2005 issued by the respondents intimated that building plan of 1/1 M. M. Road was sanctioned in 1976 accepting it as separate entity on the basis of earlier sanction by NDMC.

10.2 Vinay Kumar vide letter dated 27.04.1963 has informed the respondents that he has sold area about 234 sq. yd. bearing municipal no.1/12 &1/13 to Prem Kumar Jain, Raj Kumar Jain, Padam Kumar Jain and Subhash Kumar Jain vide sale deed executed on 27.04.1963 and also requested the respondents to enter these purchasers as joint lessees of the site of the western half portion of the entire property known as 1, M.M. Road, New Delhi. Vinay Kumar vide letter dated 9.8.1963 informed the respondents that western part measuring 0.72 acre was partitioned amongst the family member by way of oral partition but vide letter dated 13.12.1963 was requested to furnish



documentary proof of oral settlement. The petitioners have written various letters to L&DO for conversion of their properties from lease hold to free hold.

10.3 The respondents have denied conversion of the property bearing no 1/12 to 1/14 by treating the property as single unit and the petitioners were required to file joint application for conversion of the property no 1/12 to 1/14 from lease hold to free hold. The CGSC and Panel Counsel for the respondents in both petitions also advanced similar arguments and justified stand of the respondents in denying conversion. The respondent no 2 i.e. L&DO vide letter dated 01.01.2013 had intimated to the petitioners that property no. 1/12, 1/13 and 1/14 are considered as a single unit and sub-division of properties can only be done after obtaining clearance from Ministry of Law as well as clearance from local bodies with approval of layout plan by the local body and transfer of property no. 1/12 and 1/13 will amount to sub-division of the property which is not permissible under the Master Plan. The respondents also claimed that the application for conversion from lease hold to free hold was required to be signed by all co-lessees of the property as per Clause 4 of L&DO's Conversion



Policy. The CGSC and Panel Counsel for respondents in support of this argument referred Clause 4 of the Conversion Policy.

10.4 Clause 2.1 of Brochure pertaining to Conversion from Lease Hold to Free Hold provides that conversion from lease hold to free hold is optional. Clause 3 deals with persons who can apply. Clause 3.1 provides that the person/persons whose names appear on the records of the Land and Development Office as lessee can apply for conversion and if there are number of lessees, all of them will have to sign the application. Clause 4 deals with proposition that whether co-lessees can apply separately and provides that there should be only one application for each property and all co-lessees will have to sign on same application. It further provides that application will not be accepted if it is not signed by all the co-lessees. According to Clause 4 application for conversion of the property from lease hold to free hold must be signed by all co-lessees and this is mandatory requirement.

10.5 The Counsel for the petitioner Vinay Kumar argued that the perpetual lease deed dated 31.10.31 permitted unconditional transfer and sub-lease of any part of the originally leased plot without any



permission from the Lessor/L&DO and the perpetual lease deed dated 31.10.1931 does not impose any restriction on the lessee's right to assign, transfer or sub-lease any part of the property. He also argued that Vinay Kumar is the owner of the property no 1/14 only as sold the property no. 1/12 and 1/13 to Subhash Kumar Jain, Prem Kumar Jain and others vide registered sale deed dated 27.04.1963 and transfer was not challenged by L&DO since 1963. It was strongly argued that property no 1/12-1/14 be allowed to be converted from lease hold to free hold. It is correct that Clause 2 (11) of perpetual lease dated dated 31.10.1931 permitted the lessee to assign, transfer or sublease the premises or any part thereof but it does not give right to the lessee for conversion of the property from lease hold to free hold which is a function to be discharged by the L&DO i.e. the respondent no 2. Vinay Kumar after sub-division of western part of the property bearing no 1 M.M. Road in 5 separate portions in the Site Plan 2280 dated 05.06.1962 became lessee in respect of the property no 1/12-1/14 and further sub-division of property no 1/12-1/14 was never recognised by the respondents and in particular by L&DO i.e. the respondent no 2. The property no



1/12-1/14 was treated as one single unit. Vinay Kumar in respect of the property no 1/14 and Prem Kumar Jain and Subhash Kumar Jain in respect of the property no 1/12 and 1/13 have separately applied for conversion of the properties from lease hold to free hold which is not permissible under Clause 4 as referred herein above. The sale deed dated 27.04.1963 executed by Vinay Kumar in favour of Prem Kumar Jain, Raj Kumar Jain, Padam Kumar Jain and Subhash Kumar Jain and sale deed 10.12.1970 executed by Raj Kumar Jain and Padam Kumar Jain in favour of Prem Kumar Jain and Subhash Kumar Jain do not give any independent and separate right in favour of Prem Kumar Jain and Subhash Kumar Jain for conversion of the property bearing no 1/12 and 1/13 and conversion of property bearing no 1/14 from lease hold to free hold in favour of Vinay Kumar. The arguments advanced by the counsels for the petitioners are without any legal force. The respondents are justified in treating the property no 1/12-1/14 as one unit for purpose of conversion from lease hold to free hold those these properties are treated as separate property in records of MCD. The property no 1/12 to 1/14 was never subdivided as independent units as per law. The respondents were



justified in not entertaining separate applications filed by Vinay Kumar and Prem Kumar and Subhash Kumar Jain as per Clause 4. There is no force in arguments advanced on behalf of the petitioners that failure and refusal of L&DO to convert property no. 1/12-1/14 from leasehold to freehold is illegal, discriminatory and violative of Article 14, principle of legitimate expectation and estoppel and L&DO is bound to convert property no. 1/12-1/14 from leasehold to freehold.

11. The petitioners also alleged that L&DO has permitted the conversion property bearing no 1/4 to 1/9 belonging to Rakesh Gupta and property bearing no 1/10 and 1/11 belonging to Vijay Goel from leasehold to freehold. This factual position was factually controverted by the respondents by stating that as per the site plan 2280 dated 05.06.1962, property no. 1/3-1/9 and 1/10-1/11 were considered as two separate units, hence, the said properties were converted from leasehold to freehold. It is further stated that in the present case, property no. 1/12 to 1/14 was treated as unified property/ single unit under the site plan 2280 dated 05.06.1962. Accordingly said plea of



the petitioners and arguments advanced by the counsels for the petitioners are without any legal and factual force.

12. The respondents also alleged that the property no. 1/12 to 1/14 is a re-entered property and all the co-lessees are required to apply jointly for withdrawal of re-entry before considering the application for mutation/conversion. However the respondents never reentered these property and the petitioners of both petitioner are in continuous possession of these property.

13. The property no 1/12, 1/13 and 1/14 is a single unit in the records of the L&DO and the petitioners of the present petitions were required to apply jointly for their conversion from leasehold to freehold as per Master Plan and others Rule and Regulations. The arguments advanced by the respective counsels for the petitioners of both petitions are considered in right perspective but not good enough to support case of the petitioners. The judgments/case law cited by the counsel for the petitioners of writ petition bearing no W.P.(C) 13812/2023 as detailed herein above are also perused but they are not applicable to facts of the present petitions. The petitioners are not entitled for grant of relief as prayed for.



Accordingly, the both petitions bearing no W.P.(C) 6937/2013 and W.P.(C) 13812/2023 are dismissed along with pending application if any.

DR. SUDHIR KUMAR JAIN
(JUDGE)

MAY 31, 2024
SK/AM