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

Date of Decision: 18th December, 2024

+ **W.P.(C) 17407/2024 & CM APPLs. 74083-74084/2024**

THE KHETRI TRUST

.....Petitioner

Through: Mr. Ravi Gupta, Senior Advocate
with Mr. Ishaan Verma, Ms. Diviani
K. Verma, Ms. Muskaan Mehra and
Mr. Shrey Sharma, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Rajesh Gogna, CGSC with Mr.
Nipun Jain, Mr. Aakash Meena and
Ms. Priya Singh, Advocates for R-1
& 2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner impugns demand letter dated 12th June, 2024,¹ issued by the Land and Development Office,² Respondent No. 2, demanding an amount of INR 4,34,92,8121/- towards Unearned Increase. This demand arises from Petitioner's request to substitute the original lessee *qua* the leasehold property bearing No. 5, Sardar Patel Marg, New Delhi,³ in the records of L&DO.

2. A brief background leading to the filing of the present petition is as

¹ "the impugned order"

² "L&DO"

³ "the subject property"



follows:

2.1. A perpetual lease deed was executed on 24th April, 1962 in respect of the subject property in favour of Raja Bahadur Sardar Singh of Khetri. Later, by a registered a Will dated 30th October, 1985 he created “The Khetri Trust”, bequeathing his assets including the subject property, for charitable purposes. Upon the demise of Raja Bahadur Sardar Singh of Khetri on 28th January, 1987, the Will came into effect.

2.2. Legal complexities ensued when, on 3rd July, 2012, this Court initially dismissed a probate petition [Testamentary Case No. 26/1987] which was filed to prove the Will. However, the Division Bench on 11th July, 2023 reversed the Single Judge’s ruling and granted probate in favour of Lord Northbrook, the surviving executor of the estate. While the State of Rajasthan has appealed this decision before the Supreme Court [SLP(C) Diary No. 45720/2023], no stay has been granted, leaving the probate order fully operative.

2.3. In the above background, on 23rd October, 2023, Petitioner filed an application with L&DO for substitution of its name in place of the Raja Bahadur Sardar Singh of Khetri, relying upon the judgment dated 11th July, 2023. The said request was allowed and conveyed to the Petitioner through communication dated 9th April, 2024.

2.4. Subsequently, L&DO issued the impugned order raising a demand towards Unearned Increase for an amount of INR 4,34,92,812/- in respect of the Petitioner’s application for substitution.

2.5. Aggrieved by the said order, Petitioner made multiple representations to L&DO and was provided with an opportunity of personal hearing, however, Respondent No. 2 refused to withdraw the impugned order.



3. Mr. Ravi Gupta, Senior Counsel for Petitioner, urges that the impugned demand is arbitrary and untenable in law and makes the following submissions:

3.1. The Will in question is genuine which expressed the desire of the testator to bequeath the property in favour of the Petitioner-Trust. It is not a case where the leasehold property has sought to be transacted under the disguise of a testamentary succession i.e. the Will. The transfer of a property by way of a Will, even to a third party, cannot be subject to Unearned Increase when a Will is genuine. To support his contentions, he places reliance on the decision of this Court in *Lala Diwan Chand Trust v. NDMC*.⁴

3.2. Reliance is also placed on the decision in *DDA v. Shanti Swaroop Goyal*⁵ to contend that once the mutation has been effected, L&DO could not have raised the demand of Unearned Increase.

3.3. The impugned demand has been calculated on the market value of 2023/2024 instead of 1987 which is when the bequest became effective and the Petitioner-Trust was created as per the Will.

4. *Per contra*, Mr. Rajesh Gogna, CGSC for Respondents No. 1 and 2, places reliance on the Office Memorandum dated 20th October, 2000 to impress the following:

4.1. The L&DO was not involved in the probate proceedings and thus, never had the chance to challenge the genuineness of the underlying transaction under the Will. While the grant of probate is a judgment *in rem* and can be considered in law as a conclusive proof of existence and

⁴ 2015:DHC:490

⁵ 2012:DHC:4603-DB



genuineness of the Will, however, it does not preclude L&DO from scrutinizing the alleged transaction between the testator and the Petitioner-Trust.

4.2. In the Office Memorandum dated 20th October, 2000, it has been clearly provided that if the deceased lessee leaves a Will in favour of person/ persons other than the family members, Unearned Increase will be chargeable as per the provisions of the lease deed before carrying out mutation in favour of such person/ persons, after obtaining requisite documents prescribed. In this regard, Clause 13 of the perpetual lease deed dated 24th April, 1962, specifically provided as follows:

“(13) The Lessee shall before any assignment or transfer of the said premises hereby demised or any part thereof obtain from the Lessor or such officer or body as the Lessor may authorise in this behalf approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the Lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects therefor.

Provided also that the Lessor shall be entitled to claim and recover a portion of the unearned increase (i.e., the difference between the premium already paid and current market value) in the value of land the decision of the Lessor in this behalf shall be final at the time of transfer (whether such transfer is an entire site or only a part thereof), the amount to be recovered being 50 per cent of the unearned increase.

The Lessor shall have pre-emptive right to purchase the property after deducting 50 per cent. of the unearned increase as aforesaid.”

4.3. The issue concerning the rationale of the policy to charge Unearned Increase in respect of properties transferred under a Will was examined by the Supreme Court in **DDA v. Vijaya C. Gurshaney & Ors.**⁶ wherein the following observations were made:

“2. Shorn of unnecessary details, the facts leading to the filing of the present appeal arise under the following circumstances:

⁶ (2003) 7 SCC 301



One Ram Dhan (since deceased) had purchased Plot No. D-3, Community Centre, Narayana, in the public auction held by the Delhi Development Authority (hereinafter "DDA") on 25-5-1969. The perpetual lease deed of the plot was executed between Ram Dhan and the President of India on 17-2-1972. On 18-9-1978, Ram Dhan died without any construction on the plot. The respondent herein, Mrs Vijaya C. Gurshaney, seems to have applied for grant of letters of administration to the District Judge, Delhi, on the strength of a will, said to have been executed by Ram Dhan on 26-10-1977 in her favour. It appears that the District Judge granted letters of administration on 7-5-1980. Thereafter, the respondent had applied to DDA for substitution of her name in place of deceased Ram Dhan. DDA issued a show-cause notice for non-construction on the plot within the specified time, which was replied by the respondent by her letter dated 11-12-1982 requesting DDA for mutation of her name in place of Ram Dhan on the strength of the alleged will, whereupon DDA asked the respondent to produce the relevant documents for further consideration. DDA by its letter dated 12-8-1985 asked the respondent to pay 50% of unearned increase as per the terms and conditions stipulated in the perpetual lease deed as the transfer was not in favour of the blood relation of Ram Dhan, whereupon the respondent seems to have agreed to pay 50% of unearned increase to DDA. DDA, thereafter, by its letter dated 19-6-1992 asked the respondent to pay Rs 6,51,020 towards 50% of unearned increase in the value of property. By another letter dated 17.9.1992, DDA demanded payment of the aforesaid amount failing which would result in cancellation of the lease. Aggrieved by the aforesaid two letters, the respondent filed a Writ Petition, inter alia, for quashing of the aforesaid letters. The respondent further sought a direction that the plot be transferred in her name without payment of any unearned increase and that the mutation be made in the records of DDA. Alternatively, the respondent prayed that in case the respondent is liable to pay 50% of unearned increase it should be calculated on the basis of the value or the rate of land prevalent as on 13.5.1980 when the respondent applied for transfer of the leasehold rights of the plot in her favour. The High Court, on hearing the parties, came to the conclusion that since the petitioner (respondent herein) had obtained the Letters of Administration in accordance with the procedure prescribed under the Indian Succession Act, 1925, the question as to what considerations prevailed upon the deceased Ram Dhan to bequeath his plot to the respondent herein is irrelevant. The High Court was of the view that the moment the Administrator grants Letters of Administration on the basis of a Will the respondent is entitled to all the rights the deceased had vested in him at the time of his death. The High Court further held that the grant of Letters of Administration is a judgment in rem and a conclusive proof of the existence and genuineness of the Will and its effect cannot be nullified except by proceedings for revocation of the letters of administration.



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4. *The High Court has not at all adverted to the terms and conditions stipulated in the perpetual lease deed executed between DDA and the deceased Ram Dhan, on the basis of which two impugned letters in the writ petition have been issued. This is where the High Court had sidetracked the main issue and decided an issue, which was not at all relevant in the facts and circumstances of the case. It was the specific case of the appellant (respondent before the High Court) that the will was actuated by monetary consideration and was in fact a sale. It was also the specific case of the appellant that it was actually a transfer of land to non-blood relation of the deceased Ram Dhan and was in violation of the terms and conditions stipulated in the lease deed and therefore, the respondent was liable to pay 50% of unearned increase in the value of the property.*

5. The High Court although extracted the relevant clauses of the terms and conditions of the lease and referred to the policy decision of DDA but the same were not at all adverted to while reaching the conclusion. In our view, the High Court, in its impugned order has not at all adverted to the relevant issues and decided the case totally based on unfounded grounds.

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9. DDA is a creature of the statute. The aims and objects of the Delhi Development Act, 1957 are contained in Section 6 of the Act. It reads:

“6. The objects of the Authority shall be to promote and secure the development of Delhi according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

Provided that save as provided in this Act, nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force.”

10. The rationale behind the formulation of its policies and



guidelines issued by DDA is to curb illegal transactions in favour of persons not of blood relation of the allottee, being practised rampantly and the property being transferred by an underhand sale in the garb of will and power of attorney etc. DDA has formulated a policy that in such cases the Department would ask for 50% of unearned increase in the value of property. It is always open to the appellants to inquire whether an alleged will is in actuality a sale in the garb of will in total disregard of the policy decision of the authority. Merely because probate/letters of administration are granted, would not preclude DDA from so inquiring. It must be grasped that DDA has been given no notice of the testamentary proceedings. Therefore, it would have no right to appear or oppose such proceedings. As already said, DDA is a creature of the statute and any policy decision or guidelines formulated by such Authority will have a binding effect on the parties, in absence of rules to the contrary.

11. *Furthermore, clauses 4, 5 and 8 of the lease deed, as extracted, envisage that the lessee cannot sell, transfer or part with the possession of the whole or any part of the commercial plot except with the previous consent of the lessor in writing, with a rider that the lessor can refuse the transfer. It is also provided in the proviso to clause 4(b) that in the event of sale or foreclosure of the mortgaged or charged property, the lessor shall be entitled to claim and recover the 50% of unearned increase in the value of the plot. It is further provided in clause 8 that in the event title of the lessee in the plot is transferred in any manner whatsoever the transferor and the transferee shall within three months of the transfer give notice of such transfer in writing to the lessor. The respondent herein has not complied with any of the conditions stipulated in the lease agreement and, therefore, it was within the competence of DDA to invoke the terms and conditions stipulated in the lease agreement by charging 50% of unearned increase in the value of the plot. The letters dated 19-6-1992 and 17-9-1992, impugned in the writ petition before the High Court, were in the terms of invoking of clauses 4, 5 and 8 of the lease agreement and policy decision and guidelines of DDA as noticed above. The impugned judgment and order of the High Court runs contrary to the terms and conditions stipulated in the lease agreement and the same is unsustainable. It is accordingly set aside.”*

[Emphasis Supplied]

Analysis and Findings:

5. The Court has considered the facts of the case and the afore-noted



contentions. The impugned order itself does not articulate any clear or specific basis for imposing Unearned Increase. However, as Mr. Gogna emphasizes, the underlying rationale of the impugned order emanates from the referenced circular and the L&DO's interpretation of the legal issue. In essence, because the Will does not pass the subject property to members within the testator's immediate family, the L&DO believes that the levy of Unearned Increase is warranted.

6. On this issue, the broad legal proposition as canvassed by Mr. Gogna cannot be disputed. Indeed, L&DO can verify whether a Will-based transfer is a genuine testamentary bequest or a disguised commercial transaction, accentuated by monetary consideration. However, in the present case, the Will in question has been proved as a genuine document by virtue of the probate granted by the Division Bench on 11th July, 2023. Moreover, in the instant case, the testator has bequeathed the property in favour of the Petitioner-Trust which was in fact, created under the Will itself. The testator is not survived by any Class-I legal heirs. Thus, it clearly indicates that the wish of the testator was to establish a Trust for the purpose of administration of his estate. In such circumstances, in the opinion of the Court, the argument put forth by Mr. Gogna, is not applicable to the facts of the present case.

7. Moreover, the judgment of the Supreme Court in ***Vijaya C. Gurshaney***, which has been cited by Mr. Gogna, was considered in detail in ***Lala Diwan Chand Trust***. The said judgment also deals with the argument put forth by Mr. Gogna regarding the terms of Clause 13 of the perpetual lease deed which has been extracted above. On both these issues, the decision in ***Lala Diwan Chand Trust*** holds as follows:



“2. The controversy to be addressed is whether a person who receives a bequest of an immovable property, by virtue of a Will, is liable to pay unearned increase in respect of the said property, for the same to be mutated in his favour or for his name to be substituted as a lessee in place of the original lessee.

4. The learned counsel for the petitioner submitted that Smt. Prakashwati Awal did not have any class I heirs and, therefore, had willed the said property in favour of the petitioner and SBAGSS School. It was submitted that the bequest in favour of the petitioner was not for any consideration but was in the natural course of events as the petitioner trust was formed by the late husband of Smt. Prakashwati Awal and his two wives, namely, Smt. Sat Bharawan and Smt. Prakashwati Awal. In the given circumstances, it was only natural that Smt. Prakashwati Awal bequeathed the said property in favour of the petitioner trust. The learned counsel for the petitioner also referred to a judgment of this Court delivered in CS(OS) 598/1978 whereby this Court had observed that in view of the fact that Smt. Prakashwati Awal had died issueless, her desire to bequeath the said property to a charitable trust appeared to be quite natural. He submitted that the transmission of the said property in favour of the petitioner was not a camouflage or subterfuge for any transaction entered into for a consideration.

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8. At the outset, it is necessary to observe that there is no dispute that the petitioner is entitled to the said property by virtue of being a legatee of Smt. Prakashwati Awal (to the extent of 50%) and by virtue of acquiring the balance share from SBAGSS School. The only question that remains is whether the petitioner is liable to pay unearned increase for substitution of its name in place of Smt. Prakashwati Awal.

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10. The rationale for demanding unearned increase in cases where the property is transmitted by way of a Will is to ensure that the parties are unable to escape payment of unearned increase by disguising a transaction of sale and purchase of the leasehold property as a bequest. It has been a well established practice in Delhi for persons to enter into transactions for sale and purchase of immovable property by execution of various documents such as General Power of Attorney, Affidavits, Will etc. Undisputedly, in these circumstances, the demand for unearned increase would be warranted. The guidelines exempt payment of unearned increase where a lessor bequeaths the leasehold property in favour of his natural heirs. This only indicates that the respondent did not intend to recover unearned increase in cases of genuine transmission of property by



a testator. In DDA v. Vijaya C. Gurshaney: MANU/SC/0632/2003: (2003) 7 SCC 301 the rationale of the policy to charge unearned increase in respect of properties sought to be transferred by way of a Will was explained as under:-

“10. The rationale behind the formulation of its policies and guidelines issued by DDA is to curb illegal transactions in favour of persons not of blood relation of the allottee, being practised rampantly and the property being transferred by an underhand sale in the garb of will and power of attorney etc. DDA has formulated a policy that in such cases the Department would ask for 50% of unearned increase in the value of property. It is always open to the appellants to inquire whether an alleged will is in actuality a sale in the garb of will in total disregard of the policy decision of the authority. Merely because probate/letters of administration are granted, would not preclude DDA from so inquiring. It must be grasped that DDA has been given no notice of the testamentary proceedings. Therefore, it would have no right to appear or oppose such proceedings. As already said, DDA is a creature of the statute and any policy decision or guidelines formulated by such Authority will have a binding effect on the parties, in absence of rules to the contrary.”

11. The Supreme Court upheld the policy of DDA to demand unearned increase in the value of land in cases where the leasehold property was sought to be transacted under the garb of a Will. However, in cases where Will represented a genuine desire of a testator to bequeath its property to a particular legatee, a demand for unearned increase would not be sustainable.

12. There is no reason to sustain a distinction between the bequest to the family members or other persons if there is no doubt as to the genuineness of the transaction. In case of a bonafide transmission of property by a Will, no distinction could be drawn on the basis of the relationship between the testator and the legatee.

13. A Coordinate Bench of this Court in the case of Aroti Das v. Union of India: W.P.(C) 8081-82/2005 had considered the challenge relating to the demand of unearned increase by L&DO in respect of the immovable property bequeathed by a lessor to one of his relatives who did not fall within the definition of a family member under the guidelines. It is noteworthy that the language of the guidelines applicable in that case was similar to the language of clause (5) of the guidelines as referred to by the learned counsel for the respondent. This Court set aside the demand of



unearned increase and held as under:-

“10. In the face of these facts, the demand for unearned increase, in my opinion, on a blind application of a policy which dictates that only specified heirs would be recognized and others have to pay unearned increase as a pre- condition for transfer of leasehold rights appears to be utterly unreasonable.”

[Emphasis Supplied]

8. As observed in ***Lala Diwan Chand Trust***, when a bequest is *bonafide*, insisting on Unearned Increase disregards the essential distinction between honest testamentary disposition and disguised commercial transactions. The ratio in ***Lala Diwan Chand Trust*** also clarifies that no bright line can be drawn between bequests to family members and others if the Will is authentic and not a pretext for a sale.

9. Further, the Court notes that the judgment relied upon by Mr. Gogna ***Vijaya C. Gurshaney***, involved a fundamentally different factual matrix. In that matter, the key concern was that a seemingly testamentary transfer might have been a concealed sale carried out in violation of the original lease conditions. The Supreme Court highlighted that the DDA’s policy of charging Unearned Increase aimed to curb precisely such disguised commercial transactions masquerading as bequests. Unlike in the ***Vijaya C. Gurshaney*** case, where DDA had strong reasons to believe the testamentary instrument cloaked a monetary transaction, in the present case, the Petitioner’s position as beneficiary of a *bonafide* philanthropic trust finds no parallel in that precedent. The Will in question has been duly probated, affirming its authenticity and the testator’s genuine intent. It bequeaths the property to a Trust created by the testator himself, rather than to an unrelated individual under suspicious circumstances.



10. Accordingly, the present petition is disposed of with a direction that the impugned demand dated 12th June, 2024 is quashed.

11. However, since the judgment dated 11th July, 2023 of the Division Bench in FAO (OS) 348/2012 granting probate in favour of the Petitioner has been assailed before the Supreme Court, it is clarified that the substitution in favour of the Petitioner shall remain subject to the outcome of the decision of the Supreme Court in SLP(C) Diary No. 45720/2023.

12. With the above directions, the present petition, along with pending applications, is disposed of.

SANJEEV NARULA, J

DECEMBER 18, 2024

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