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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA. 538/2017

Date of Decision: 05.09.2024

IN THE MATTERS OF:

SH. NILENDER PRAKASH

S/O LATE PT. KANHAIYA LAI PUNJ
R/O 10, PRITHVIRAJ ROAD,
NEW DELHI

THROUGH HIS CONSTITUTED ATTORNEY
SH. ARUN KRISHNA SRIVASTAVA
S/O SH. V.N. DEENGAR

..... APPELLANT

*(Through: Mr. Naresh Thanai, Ms. Khushboo Singh, Mr. Raj
Kumar Verma, Advs.)*

Versus

1. UNION OF INDIA

THROUGH ITS SECRETARY,
MINISTRY OF URBAN DEVELOPMENT
AND POVERTY ALLEVIATION,
LAND DEVELOPMENT OFFICE,
NIRMAN BHAWAN,
NEW DELHI-110001

.... RESPONDENT NO.1

2. DY. LAND AND DEVELOPMENT OFFICER

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:18.09.2024
19:25:51

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR RAURAV



MINISTRY OF URBAN DEVELOPMENT AND
POVERTY ALLEVIATION,
LAND DEVELOPMENT OFFICE,
NIRMAN BHAWAN,
NEW DELHI-110001

.... RESPONDENT NO.2

3. PUNJ SONS (P) LTD.

PLOT NO.2, KALKAJI INDUSTRIAL AREA,
KALKAJI,
NEW DELHI

.... RESPONDENT NO.3

(Through: Mr. Sandeep Tyagi, Mr. B. Swaroop Bhola, Advts.)

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RFA. 542/2017

SH.NILENDER PRAKASH

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R/O 10, PRITHVIRAJ ROAD,
NEW DELHI

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HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Both the appeals revolve around a similar controversy i.e, “*whether, under the facts and circumstances of the present case, the appellants/plaintiffs are liable to pay 50% of the ‘unearned increase’*”



amount to the respondents/defendants?” and hence, they are being decided by this common judgement.

2. The RFA 538/2017 has arisen out of the judgment and decree dated 28.02.2017 passed in Civil Suit No. 56870/2016, whereby, the Additional District Judge, New Delhi District, Delhi, dismissed the civil suit for recovery of Rs. 51,15,257/- alongwith the *pendente lite* and future interest. Whereas, the RFA 542/2017 has also arisen out of the impugned judgment and decree of even date passed in Civil Suit No. 56871/2016, whereby, the same court dismissed the said civil suit for recovery of Rs 51,25,052/- alongwith the *pendente lite* and future interest. The factual matrix of both appeals is almost similar except the location of the property in question, the amount paid and the name of the initial allottee.

3. For the sake of brevity, the facts pertaining to RFA 538/2017 are being referred here. The factual matrix of the case would indicate that the property bearing no. CC-31, Kalkaji, New Delhi, was initially allotted by defendants no.1 and 2/respondents no.1 and 2, herein, to Mr. Madan Lal, son of Mr. Vishambar Das by way of a perpetual lease deed dated 19.06.1962.

4. Thereafter, Mr. Madan Lal, on account of his *bonafide* requirements transferred all his rights in the said property by way of a deed of conveyance dated 25.07.1962 in favour of M/s Punj Sons Pvt. Ltd. The aforesaid transfer took place with the approval of defendants no.1 and 2/respondents no.1 and 2 and consequently, the conveyance deed was duly executed and registered in favour of M/s. Punj Sons Pvt. Ltd and the possession of the property was delivered to M/s Punj Sons Pvt. Ltd.

5. M/s Punj Sons Pvt. Ltd. was a part of the Punj group conglomerate



which was constituted by Pt. Kanhaiya Lal Punj and his seven sons, including the plaintiff/appellant herein. Punj Group was carrying business in the nature of partnership under various names. It appears that certain disputes had arisen *inter se* members of the Punj Group conglomerate and the same was referred to the arbitration. Thereafter, in terms of the settlement which eventually culminated in the award dated 5/6 August, 1987, and later was made a rule of the Court *vide* order dated 17.03.1988 by this Court, the said property fell into a share of group of four brothers namely the plaintiff/appellant, S.N.P. Punj, V.P. Punj and R.P. Punj. It appears that in the year 1989 further dispute arose *inter se* four brothers and the said dispute was also referred to the arbitration. Again the matter was negotiated and the settlement arrived between the parties, which culminated in an award dated 15.11.1989 and the said award also become a rule of court *vide* order dated 30.05.1997.

6. It is thus seen that the aforesaid controversy was put to rest in view of the family settlement arrived at amongst the parties and the parties amicably agreed to separate their businesses. The property in question, which was held in the name of M/s Punj Sons Pvt. Ltd., ultimately fell into the share of the plaintiff/appellant under the award dated 15.11.1989. Throughout the family settlement, no consideration was paid *qua* the property in question.

7. Once the plaintiff/appellant came into possession of the property in question, he appears to have applied for a no-objection certificate from defendants no.1 and 2/respondents no.1 and 2, to enable him to resubmit the drawings for development and pursuant to that, he deposited a sum of Rs.22,01,845/- on 29.09.2000. Thereafter, there had been various



correspondences exchanged between the plaintiff/appellant and the defendants/respondents including for an extension of time for raising construction. All those aspects at this stage may not be of much significance in view of the controversy involved in the instant appeal. The Court, however, notes that the completion certificate came to be issued by the MCD dated 19.07.2004 with respect to the construction over the property in question.

8. The moot controversy in the instant appeal revolves around the payment of an ‘unearned increase’. The facts relevant for adjudication of the aforesaid aspect would indicate that the plaintiff/appellant in pursuance to the policy of the defendants/respondents which was floated on 14.02.1992 (hereinafter referred to as “1992 policy”) applied for conversion of the property from leasehold to free-hold *vide* application bearing no.5104. The plaintiff/appellant appears to have deposited a sum of Rs. 8,23,000/- in accordance with the guidelines and applicable rules and regulations. Thereafter, in pursuance to the plaintiff/appellant’s application, the defendants/respondents *vide* letter dated 07.12.2004 objected to the said conversion on the ground that the property was not mutated in the name of the plaintiff/appellant, therefore, it could not be converted from leasehold to free-hold.

9. Thereafter, *vide* letter dated 17.02.2005 the defendants/respondents demanded a sum of Rs.41,24,684/- which included a sum of Rs.33,21,596/- towards 50% ‘unearned increase’ amount and the defendants/respondents *vide* aforesaid letter also threatened the plaintiff/appellant that in case, the said amount was not deposited within a period of 30 days, the application for mutation filed by the



plaintiff/appellant shall stand closed and the conversion application shall also stand rejected without any further reason. The case of the plaintiff/appellant before the defendants/respondents was that he was not liable to make the payment of an ‘unearned increase’ as according to him, as per the conversion policy the defendants/respondents were only entitled for the applicable charges as has been stipulated in the applicable policy.

10. He, however, *vide* letter dated 14.03.2005 deposited Rs. 41,24,684/-, which included a sum of Rs.33,21,596/- towards 50% ‘unearned increase’ amount, under protest and without prejudice to his rights and contentions. The defendants/respondents, thereafter, *vide* memorandum dated 28.03.2005 mutated the property in favour of the plaintiff/appellant and a conveyance deed dated 01.04.2005 was executed in favour of the plaintiff/appellant.

11. The plaintiff/appellant, thereafter, issued notice to the defendants/respondents and instituted the civil suit for recovery of the amount of Rs.51,15,257/- alongwith the *pendente lite* and future interest.

12. The learned Trial Court after taking on record the pleadings and written submissions filed on behalf of the parties, framed the following issues for its consideration:-

“i. Whether the plaintiff is entitled to recovery of a sum of Rs. 51,15,257/- paid towards unearned increase? OPP

ii. Whether the plaintiff is entitled to interest? If so, the rate and period for which, it is payable? OPP

iii. Whether the suit is barred by limitation? OPD

iv. Whether the suit is not maintainable in view of the alleged lack of course of action? OPD



v. Reliefs.”

13. After framing of the issues, the plaintiff/appellant examined Mr. Arun Kumar Srivastava as Plaintiff Evidence ('PW-1') and has exhibited the following documents:-

SI No.	1. No. of Exhibits	Details of Documents.
1	Ex.PW1/1	Photocopy of Power of Attorney dated 07 th March 2008
2	Ex.PW1/2	Receipt issued by the defendants agaistn the deposited dated 2nd May, 2002
3	Ex.PW1/3	Letter dated 17th February, 2006 received from defendant
4	Ex.PW1/4	Office copy of the receipt letter dated 19th May 2007
5	Ex.PW1/5	Office copy of the notice dated 10th March, 2008
6	Ex.PW1/6	Speed Post and Registry Receipts
7	Ex.PW1/7	Reply dated 27th March, 2008 received from the defendants
8	Mark-A	Photocopy of perpetual Lease Deed dated 19 th June. 1962
9	Mark-B	Photocopy of letter dated 9th April, 2002
10	Mark-C	photocopy of letter dated 3rd May, 2002 extended time for construction upto 30th September,2002
11	Mark-D	Photocopy of application bearing No, 5104 seeking conversion
12	Mark-E	Photocopy of challan whereby aforesaid amount was deposited
13	Mark-F	Photocopy of letter dated 7th December. 2004 issued by respondents



14	Mark-G	Office copy of the letter dated 14th March,2005
15	Mark-H	Office copy of Memorandum dated 28th March, 2005
16	Mark-I	Photocopy of letter dated 28.03.2005
17	Mark-J	Photocopy of conveyance Deed dated 01.04.2005

14. On the other hand, the defendants/respondents examined Mr. P.S. Oberoi as defendant evidence ('DW-1'). The Trial Court *vide* impugned judgment and decree decided issues nos.3 and 4 in favour of the plaintiff/appellant however, issues nos.1 and 2 came to be decided against the plaintiff/appellant and held that the defendants/respondents are entitled to 50 % of the amount of 'unearned increase'. Aggrieved by the same, the plaintiff/appellant instituted the instant appeal.

15. Mr. Naresh Thanai, learned counsel appearing on behalf of the plaintiff/appellant herein strongly criticises the impugned judgment and decree and submits that the findings are improper and contrary to the record. He submits that in the instant case admittedly the plaintiff/appellant did not apply for conversion of the leasehold property to free-hold on the basis of the stipulation in the conveyance deed rather the application was subsequent to the 1992 policy of the defendants/respondents.

16. According to him, the applicable policy would only require the plaintiff/appellant to make the payment of the following charges for getting the conversion from leasehold to free-hold namely, (i) Conversion fee, (ii) Arrear of ground rent, if any (iii) arrears of any other dues earlier levied by the lesser and not paid by the lessee (iv) a sur-charge of 33.1/3%



of the conversion fee, if the applicant is a GPF holder and the conversion is to be granted in favour of a third person then next processing fee of Rs.200/-. He then submits that the defendants/respondents are wholly unjustified in demanding the 'unearned increase' at the rate of 50% as stipulated in the conveyance deed between L&DO to Mr. Madan Lal.

17. According to him, after the conveyance deed was executed on 19.06.1962 there were various developments and the property got transferred in the name of M/s Punj Sons Pvt. Ltd and admittedly at that time when the property was transferred to M/s Punj Sons Pvt. Ltd., the 'unearned increase' clause was not attracted and the property thereafter, came to the share of the plaintiff/appellant under the family settlement. According to him, if at all, the 'unearned increase' clause was attracted, the same would only attract in the case of a second transfer. He submits that firstly the instant transfer is not a second transfer case and secondly, the property came into the share of the plaintiff/appellant by virtue of a family settlement and no consideration was paid, therefore, the question of 'unearned increase' is not applicable.

18. He further submits that even otherwise, the demand of an 'unearned increase' under the facts of the present case was wholly unjustified as the plaintiff/appellant has applied in terms of the 1992 policy of the defendants/respondents which nowhere stipulates for payment of the 'unearned increase'. He further submits that had that been the condition in the applicable policy, he perhaps would not have resorted to such recourse.

19. To bring force to his arguments, he placed reliance on the decisions



of this Court in the cases of *H.R. Vaish v. Union of India*¹, *H.R. Vaish v. Union of India*², *DDA v. Aditya Kumar Jajodia*³, *Usha Kumar v. UOI*⁴, *UOI v. Jor Bagh Asscn*⁵.

20. *Per contra*, Mr. Sandeep Tyagi, learned counsel who appears for the defendants/respondents strongly opposes the submissions made by learned counsel appearing for the plaintiff/appellant and submits that the learned Trial Court has rightly dismissed the civil suit. According to him, the findings and the conclusion arrived at by the learned Trial Court are unassailable. He further submits that if the facts are examined in the right perspective the same would clearly indicate that the lease deed in question does stipulate attraction of ‘unearned increase’. He specifically takes this Court to clause no.5 of the conveyance deed placed on record.

21. He further submits that M/s Punj Sons Pvt. Ltd is a company and if the land in question came into the share of Mr. Nilender Prakash who admittedly is an individual therefore, from one entity to another entity the transfer had taken place and thus, the instant is a case of second transfer. He also tried to distinguish the decision relied upon by learned counsel for the plaintiff/appellant. While explaining the decision in the case of *Deepak Lamba* he submitted that in that case, the parties were blood relatives. With respect to the case of *H.R. Vaish* learned counsel submits that it is the case of gift deed and the facts of that case are not similar to the instant case.

22. I have given thoughtful consideration to submissions advanced at

¹ 2002 SCC OnLine Del 831.

² 2002 SCC OnLine Del 831.

³ 2005 SCC OnLine Del 348.

⁴ 2012 SCC OnLine Del 868.



the Bar and also perused the record.

23. Before advertng to the merits of the case, it is pertinent to refer to the seminal concept of ‘unearned increase’ which is the focal point of the entire controversy canvassed before this Court. The notion of ‘unearned increase’ is a jural concept that enables the lessor to claim for the part of increase in the value of the land which was concomitant due to the market forces prevailing at that time. The mathematical formula to calculate the amount of ‘unearned increase’ is the difference between the market value of the land in question and the premium paid by the lessor. For illustration, if the land was allotted by the lessor at an ‘X’ amount to the lessee and after some years, when the lessee intends to sell that land at a particular price and if at that relevant time, the market rate of that land stands at ‘Y’ amount. Then as per the mathematical formula, the ‘unearned increase’ shall be computed as the difference in both the amounts and the amount liable to be paid as per the lease deed shall be 50 % of the ‘unearned increase’, for example:-

$$Y - X = \text{Unearned increase}$$

$$\text{Amount liable to be paid} = 50\% \text{ of the unearned increase } (Y-X)$$

24. The aim and purpose behind such stipulation in the lease deeds was that when a lessee is permitted to transfer the leasehold rights, the lessor should not be deprived of the difference between the premium paid and the market value. The clause was inserted in the perpetual lease to compensate the lessor. The Division Bench of this Court in the case of **DDA v. Mahabir Prasad**⁶ considered the importance of such clauses in

⁵ 2012 SCC OnLine Del 1230.

⁶ 2009 SCC OnLine Del 4010.



the lease deed, especially when the transaction or the land in question exchanged hands *inter se* family members, particularly when no sale or consideration was paid *qua* such transactions.

25. The Court in ***Mahabir Prasad*** held that for a concept of ‘unearned increase’ to be effective, it requires a sale for a reason as it is the difference between the market price and the premium paid. The Court in the said case also held that without sale, the question of the ‘unearned increase’ rendered otiose as it is the measure to determine the increase in the price of the land. The pertinent observations of the Court in the said decision read as under:-

"24. With respect to the property of a partnership firm, through the medium of the firm, all partners thereof have a unity of title and unity of possession, akin to joint ownership in a property. Where this relationship is brought to an end; in the case of a partnership by means of dissolution thereof, the division of assets results in unity of title and possession being severed. Henceforth each one of them holds to the exclusion of the other whatever share is allotted to each partner. No transfer of interest takes place. The severing of interest takes place and no more. The resultant thereof is conferment of exclusive title and possession in favour of the respective partner vis-à-vis the total assets of the partnership firm.

25. We concur with the view taken by the learned Single Judge that unearned increase as a jural concept requires a sale, for the reason, without a sale what would be the measure to determine the increase in the price of the land? Obviously none.

26. What is the concept of an unearned increase? Where land is allotted at a concessional rate and later on is sold at the market rate, the differential premium paid vis-à-vis the sale price would be the unearned increase. Thus, “No sale - No unearned increase”

27. That apart, even the other reasoning of the learned Single Judge is sound. The definition of family members includes husband/wife, father, mother, sister, brother, son, daughter, grand-son, grand-daughter, daughter-in-law and the wife of the grand-son as also the



son-in-law and the husband of the grand-daughter as a family member."

26. The aforementioned decision of this Court in ***Mahabir Prasad*** was challenged in the Supreme Court *vide* SLP no. 020769/2010 which was dismissed *vide* order dated 15.07.2014.

27. The decision of ***Mahabir Prasad*** has been followed by this Court in the case of ***Delhi State Industrial & Infrastructure Development Ltd. v. M/s. K.G. Electronics Pvt. Ltd. & Anr.***⁷, which was also challenged in the Supreme Court in SLP no. 014678/2015 and *vide* order dated 07.05.2015, the said SLP was also dismissed.

28. In the case of the ***Delhi State Industrial & Infrastructure development Ltd. v. C & S Electric Ltd.***⁸ also, the Court followed its earlier decision of ***Mahabir Prasad*** and held that when there is no sale in question, the question of 'unearned increase' will not be applicable. The relevant paragraphs of the said decision are reproduced as under:-

"8. In the present case, there was no sale of the land nor transfer of any interest in it. There was only a change/transfer of 9.52% shareholding in the lessee company to a private investor, which too, during the pendency of the legal proceedings has been bought back.

9. The issue arising in the present case stands covered by the order of a Coordinate Bench of this Court in Delhi State Industrial & Infrastructure Development Corpn. Ltd. case [Delhi State Industrial & Infrastructure Development Corpn. Ltd. v. K.G. Electronics (P) Ltd., 2014 SCC OnLine Del 2309] .

10. Insofar as it is not disputed that there is no transfer of the leasehold land, there can possibly be no demand of unearned increase.

11. In view of the aforesaid, this Court finds no reason to interfere

⁷ 2014 SCC OnLine Del 2309.

⁸ (2022) 6 HCC (Del) 723.



with the impugned order. The appeal is accordingly, dismissed.”

29. The case of ***C & S Electric Ltd.*** was also challenged before the Supreme Court and SLP no. 005808/2023 against the said order was dismissed *vide* order dated 28.04.2023.

30. Thus, the conspectus of the judicial pronouncements as expounded above frescoed a picture that in order to attract the provisions of the ‘unearned increase’ the concomitant requirement of sale or consideration is a quintessential factor as the mathematical formula for ‘unearned increase’ is the difference between the market price and the premium paid and without consideration, the concept of ‘unearned increase’ will be rendered otiose.

31. As a matter of prudence, this Court also perused the decision of the Division Bench of this Court in the case of ***Union of India v. M/s. Mahalaxmi Saw Mills Pvt. Ltd.***⁹, which presents a contrasting opinion to the decisions mentioned above. As per the said decision, the measure of ‘unearned increase’ does not require an exchange of any consideration as theoretically, it is just the difference between the market price and the premium paid. The observations of this Court in the penultimate paragraph of the said decision, which is of prime relevance, reads as under:-

"28. We are however of the view that the Clauses (b) & (c) supra of the Lease Deed do not require the transfer or assignment to be for consideration. The measure for unearned increase provided therein, of the difference between the premium paid and the market value of the land prevailing, also does not require exchange of any consideration for computation of unearned increase. We are unable to find any requirement of monetary consideration as a necessary concomitant of transfer, neither in Transfer of Property Act nor in any other law. If it were to be so, a gift, for consideration of natural

⁹ 2015 SCC OnLine Del 14383.



love and affection, would also cease to be a transfer and would not attract any stamp duty or unearned increase. It is also not as if there was no consideration in the subject transaction. The consideration for the partners of M/s. Mahalaxmi Saw Mills (partnership firm) to transfer their property to the respondent Company was the issuance of shares of the respondent Company to the partners in lieu thereof. However, that consideration has got nothing to do with the computation of unearned increase as above.

29. We thus allow the appeal and set aside the judgment of the learned Single Judge and dismiss the writ petition filed by the respondent Company."

32. The decision of ***Mahalaxmi Saw Mills*** was also assailed before the Supreme Court in SLP no. 010825/2016, which is pending for its consideration as on date.

33. Thus, on the touchstone of the judicial precedents as cited above, and moreover, since the challenge in the present appeals is not essentially and primarily based on the applicability of the consideration for the payment of 'unearned increase', rather the same is based on application of the 1992 policy, this Court restrains itself from expressing any authoritative opinion on whether the stipulation of 'consideration' would be a necessary and concomitant factor for calculation of the 'unearned increase'.

34. Having said that, coming to the facts of the present case, if the impugned judgment and decree passed by the learned Trial Court are perused in the right perspective with a lens of applicable policy and regulations, the same would indicate that the plaintiff/appellant had specifically set up the case of non-attraction of the relevant clauses of the conveyance deed and instead, the case of the plaintiff/appellant rested upon the edifice of the 1992 policy of the defendants/respondents.



35. The 1992 policy of defendants/respondents as promulgated on 14.02.1992 was considered by various decisions of this Court as enumerated below, wherein, the aim of said policy was to enable the citizens to convert the property from leasehold to free-hold. The object and purpose of the 1992 policy as reckoned in introductory paragraphs of the said policy gives the imprimatur that considering the various exigencies faced by the citizens in converting the land from leasehold to free-hold, the defendants/respondents came up with this policy to ease this process. The relevant extracts of the said policy as extracted from the case of **Usha Kumar** read as under:-

"Considering the long pending demand from the public for converting the lease hold system of land tenure into freehold, the Govt. have decided to sanction the conversion to freehold in respect of purely residential leases of all flats/tenements and built up plots upto 500 sq. meters of area and the orders conveying the sanction of the President of India for such conversion were issued on 14.2.1992 by the Ministry of Urban Development.

To enable maximum number of lessees to take advantage of this offer of conversion to free hold, the Govt. have also decided to charge conversion fee on the basis of notified land rates effective from 1.4.1987, though the present notified land rates are much higher. However, these concessional rates will be available upto 31.3.1993. All applications received along with the necessary payments upto 31.3.1993 will be eligible for these concessional rates. The applications received from 1.4.1993 will be considered with reference to the new land rates to be notified for the relevant period. Further the Govt. have also decided to offer the convenience of the payment of these amounts in a maximum of five equal annual instalments to ease the burden on the public. Therefore, it is hoped that maximum number of lessees will take advantage of this offer at the earliest opportunity"

36. Thereafter, the Ministry of Urban Affairs and Employment promulgated a circular dated 25.06.1996 which clarifies certain aspects



thereto with respect to the applicable 1992 policy. It is stipulated therein in terms of paragraph no.3 that the policy shall be applicable prospectively and the already decided cases will not be reopened. Furthermore, the clause (c) of paragraph no.3 of the said clarification clearly stipulates that in cases where the applications for sale permission were made by the parties and in the process, an 'unearned increase' was deposited, but sale deed has not been executed, pursuant to the sale permission, refund/adjustment of the amount paid by the parties will be available in case the party approaches the Government for conversion of the property on payment of prescribed conversion fee/surcharge/additional conversion fee as applicable. The relevant extracts of the said circular are reproduced herein for reference:-

"3. It is further clarified that these orders will have prospective effect and the cases already decided will not be re-opened.

NOTE: in respect of pending applications, where conveyance deeds are yet to be executed/registered, refund on account of these concessions should be allowed.

In this connection it is further clarified that:-

(a) In respect of misuse of properties or unauthorised construction thereon, if misuse is condonable as per mast plain provisions/zoning regulations or its is within the condonable items as prescribed by the Government from time to time, no additional conversion fee will be charged in such cases as prescribed vide this Ministry's letter of even number dated 8.4.1992.

(b) In respect of other misuses, conversion to freehold will be available provided the area misused does not exceed 25% of the built up area or 500 Sq. Ft. Whichever is less. In such cases additional conversion fee, as prescribed, will be charged.

(c) In cases where applications for sale permission were made by the parties and in the process unearned increase was deposited, but sale deeds have not been executed, pursuant to the sale permission, refund/adjustment of the amount paid by the party will be available in case party approach the Government for conversion of property



on payment of the prescribed conversion fee/sur-charge/Addl. Conversion fee, as applicable.

In such cases it is further clarified where property has been re-entered, the re-entry order will be revoked by the lease administering authorities on payment of prescribed charges of Rs.100/- per day or Rs.3,000/- per annum and in such cases no damages on account of account of deemed unauthorised occupation of Government land/property will be levied by the lease administering authority while allowing conversion.”

37. Admittedly, in the instant case, the plaintiff/appellant made an application pursuant to the 1992 policy for conversion of the property from leasehold to freehold. The said policy of the Government has been extensively considered by this Court in the case of ***Usha Kumar*** and in paragraph no. 19 of the said decision, the Court has held that the conversion policy in question not only caters to the demands made by the original leaseholders or to those whose names stood mutated in the records of the defendants/respondents as per the perpetual leases but also to the needs of thousands of residents of Delhi who had with a view to evade stamp duty entered into transactions for requiring lease-hold properties by resorting to the mechanism of entering into agreement to sell/execution of GPA/SPA, Will etc. While considering the object of the conversion policy, the Court has held that the same was with an object to regularise such transactions and bring them to closure.

38. Paragraphs nos.19 and 20 of the said decision reads as under:-

“19. The conversion policy in question not only catered to the demands made by the original leaseholders or those whose names stood mutated in the records of the respondent as the perpetual lessees, but also to the needs of thousands of residents of Delhi who had, with a view to evade stamp duty entered into transactions for acquiring leasehold properties by resorting to the mechanism of entering into agreements to sell, execution of GPAs, SPA, Will etc.



In all such transaction, generally, the GPAs were registered instruments, which, at the relevant time did not attract any significant stamp duty. It was to regularize such transactions, and bring them to closure, that the aforesaid policy was formulated by the Government so that in a single stroke, such transactions could be regularized and holders of rights under such agreements/GPAs could be vested with freehold rights in respect of the properties they had acquired in the aforesaid manner. The policy clearly appears to be in the nature of an amnesty scheme, to encourage such like property holders to come forward, pay the conversion fee and charges payable under the scheme, and get their title regularized as freehold owners of the plots. In this manner, the respondent also sought to collect amounts which, but for the scheme, they were not able to collect, even though de facto transfer of thousands and thousands of leasehold properties had taken place all over Delhi.

20. At the time when the said policy was introduced, the Government was well aware of its rights under the perpetual leases granted by it, which entitled it to charge 50% of the unearned increase. However, the Government took a conscious and calculated decision for conversion in its said policy, by providing that where the applications for conversion are made by GPA holders, they would have to pay 33.33% of the conversion fee toward surcharge, while those in whose name the leasehold rights stood mutated in the records of the respondent, while applying for conversion, had to pay only the conversion fee.”

39. If paragraph no. 20 of the said decision is perused carefully the same would clearly indicate that the argument similar to the one being raised by learned counsel for the defendants/respondents in the instant case has already been considered therein. The Court has held that at the time when the 1992 policy was introduced, the Government was well aware of its rights and the perpetual leases granted by it which entitled it to charge 50% of the ‘unearned increase’. The Court further goes on to state that despite knowing the aforesaid aspect, the Government took a conscious and calculated decision for conversion in its policy by providing that where the applications for conversions are made by the GPA holders



they would have to pay 33.33% of the conversion fee towards surcharge, while those in whose name the leasehold right stood mutated in the records of the defendants/respondents while applying for conversion had to pay only conversion fee.

40. In the instant case, the plaintiff/appellant has not disputed any other charges including (i) Conversion fee, (ii) Arrears of ground rent, if any (iii) Arrears of any other dues earlier levied by the lesser and not paid by the lessee etc. The plaintiff/appellant's case is only with respect to the non-application of the clause of 'unearned increase'.

41. Furthermore, this Court in the case of **H.R. Vaish** was also considering almost similar controversy and has set aside the demand of 'unearned increase'. In paragraph no.19 the Court has held as under:

"19. The consequence is that the impugned demand made by respondent No. 2 cannot be sustained and the said demand dated 3.8.1999 is hereby quashed. During the pendency of the writ petition in terms of the order dated 23.11.2001 the interim application CM 8915/2001 it was directed as an interim measure the petitioner may pay an amount of Rs. 11,08,000/- and give bank guarantee for the interest @ 18% per annum from November, 1988 till 3.8.1999 This order was passed subject to the outcome of the writ petition. Respondent No. 2 was directed to execute necessary documents in favour of the petitioner for conversion into free hold on the same being done. Learned Counsel for the parties state that the conveyance deed already stands executed in favour of the petitioner."

42. A similar view has been taken in the case of **Deepak Lamba**, wherein, the Court considered its earlier decision of **H.R. Vaish** and held that if the party applies for conversion into freehold, the non-payment of 'unearned increase' would not be an issue for consideration of the application for conversion. The Court further takes note of the fact that the concept of 'unearned increase' had been given a go-bye by DDA in view



of certain circulars. The relevant extracts of the said decision reads as under:-

“17. This circular dealt with the issue of conversion of lease-hold tenure of land into freehold in cases of land connected with sale permission. In terms of this circular where a lessee/sub-lessee has applied for sale permission, but DDA has not conveyed unearned increase or has conveyed unearned increase, but the same has not been paid, the conversion applications are to be allowed by treating the earlier application for sale permission as infructuous/withdrawn. Not only this, where the DDA has conveyed unearned increase and the same has been paid partly or fully by the lessee/sub-lessee, but sale deed has not been registered, the amount of unearned increase would be refunded if the original lessee/sub-lessee has applied for conversion and he/she is in physical possession of the property in question.

18. This circular dated 23.6.1995 was further clarified by a letter dated 16.5.1994 clearly stating that in cases where demand has already been raised and the parties have already applied for conversion, the demand raised earlier would stand withdrawn and conversion allowed to the applicants on payment of conversion fee plus surcharge, if applicable without insisting on payment of unearned increase. The said letter dated 16.5.1994 is as under:

“5. It has already been clarified that in cases where demand had already been raised/is under issue and party applied for conversion, the demand raised earlier would stand withdrawn and conversion allowed to the applicants on payment of conversion fee plus surcharge, if applicable, without insisting on payment of unearned increase.”

19. The aforesaid circulars have been considered in a judgment of this Court in H.R. Vaish v. UOI, 2002 VI AD (DELHI) 781.

20. The result of the aforesaid is that if a party applies for conversion into freehold, the non-payment of unearned increase would be a non-issue for consideration of the application for conversion. In fact, really speaking, the concept of unearned increase has been given a go-bye by DDA in view of these circulars issued.”

43. Similar view has been taken by this Court in the case of **Aditya Kumar Jodiya**, wherein, the Court considered the DDA circular and



applicable rules and held that where the DDA has conveyed ‘unearned increase’ and the same has been paid partly or fully by the lessee/sub-lessee, but sale deed has not been registered, the amount of ‘unearned increase’ would be refunded if the original lessee/sub-lessee has applied for conversion and he/she is in physical possession of the property in question.

44. In the case of ***Jor Bagh Association***, a Division Bench of this Court has considered the aforesaid aspect in greater detail. Paragraph no. 65 of the aforenoted decision holds that in view of the policy guidelines pertaining to the conversion policy promulgated on February 14, 1992, no ‘unearned increase’ has to be paid where lease-hold interest has been transferred without the prior permission of the lessor and the transferee can seek conversion by paying an additional surcharge of 33.1/3 % of the conversion charges otherwise payable. The observations made by this Court in paragraph no. 65, 68 and 80(B) of the aforenoted decision are reproduced as under:-

“65. But, we would hasten to add that in view of the policy guideline pertaining to the conversion policy promulgated on February 14, 1992, no unearned increase has to be paid where lease-hold interest has been transferred without the prior permission of the lessor and the transferee can seek conversion by paying an additional surcharge of 33.1/3% of the conversion charges otherwise payable.

68. However, we reiterate once again that M/s Aditya Estates, while seeking free-hold conversion, can always rely upon the clause in the conversion policy which enables a transferee to seek and obtain a conversion upon paying 33.1/3% surcharge over and above the normal conversion fees/charges.

80. We summarize our opinion and then proceed to frame the question of law to be referred to a larger Bench:-



(B) Since the conversion policy promulgated on February 14, 1992 acknowledges eligibility to be converted from a free-hold tenure to lease-hold tenure of such leases where possession has been transferred without the consent of the lessor and without paying unearned increase, but upon the condition that the transferee pays 33.1/3% consideration over and above the normal consideration to be paid for conversion, cases of breach of the condition of the perpetual lease that the said interest would not be transferred without the prior consent of the lessor would not require any unearned increase to be paid and the transferee would be entitled to have the lease-hold tenure converted to free-hold tenure upon payment of 33.1/3% consideration over and above the normal.”

45. It is thus seen that in the instant case, the defendants/respondents without realising the applicability of the 1992 policy have forced the plaintiff/appellant to make the payment of an ‘unearned increase’. Moreover, the learned Trial Court in impugned judgement and decree, despite of recording the submissions of the plaintiff/appellant regarding the applicability of the 1992 policy and relevant decisions, has also not considered the aforesaid policy.

46. A bare perusal of the impugned judgment and decree would reflect that the learned Trial Court has completely missed out on the aforesaid aspect and has not examined the applicability of the ‘unearned increase’ clause in light of the applicable policy. The finding and conclusion of the learned Trial Court in the impugned decree is completely perverse and contrary to the record.

47. The Court, therefore, finds that under the facts of the present case wherein, the application for conversion from leasehold to free hold was made pursuant to the 1992 policy, the defendants/respondents are not entitled for 50% of the ‘unearned increase’ amount deposited by the plaintiff/appellant. Admittedly, the plaintiff/appellant has deposited all



other charges as per the applicable policy and is even ready to pay any other charge as per the applicable policy. The plaintiff/appellant's appeal, therefore, stands partly allowed and judgment and decree dated 28.02.2017 is set aside. The defendants/respondents are liable to refund the amount of Rs.33,21,596/- alongwith 6% interest per annum from the date of deposition of this amount i.e., 14.03.2005 till the date of payment. The suit is partly decreed in aforesaid terms. The decree sheet shall be drawn accordingly. Parties to bear their own costs.

RFA 542/2017

48. In view of the judgment delivered in RFA 538/2017, wherein, a similar issue was decided where an analogous factual scenario was canvassed, the instant appeal is also allowed and judgment and decree dated 28.02.2017 is set aside. The defendants/respondents are liable to refund the amount of Rs 33,27,956/- alongwith 6% interest per annum from the date of deposition of this amount i.e., 14.03.2005 till the date of payment. The suit is partly decreed in aforesaid terms. The decree sheet shall be drawn accordingly. Parties to bear their own costs.

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

SEPTEMBER 05, 2024/KG

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:18.09.2024
19:25:51

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR KAURAV