

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

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Judgment delivered on: 06.03.2024

+ **LPA 689/2018 & CM APPL. 9872/2021****Darshan Kaur**

..... Appellant

versus

Union of India & Anr.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Rajesh Yadav, Senior Advocate with
Ms. Ruchira V. Arora & Mr. Dhananjay
Mehlawat, Advs.

For the Respondent : Ms Monica Arora, CGSC with Mr
Subhrodeep Soha, Adv. for R-UIO

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT****AMIT MAHAJAN, J****INTRODUCTION**

1. The present intra court appeal, under Clause 10 of the Letters Patent, is filed impugning a judgment dated 14.11.2018 (hereafter '**impugned order**') passed by the learned Single Judge of this Court in W.P.(C) 5022 of 2016 captioned as *Darshan Kaur v. Union of India and Another*.

2. The appellant had filed the aforementioned writ petition, *inter alia*, impugning the Demand Letter dated 23.02.2015, and further



communication dated 04.05.2016, whereby the respondents, while dealing with the appellant's application for conversion of her property from leasehold to freehold, being property no. 39(10), Diplomatic Enclave, also numbered as 10, Sardar Patel Marg, New Delhi (hereafter '**subject property**'), had raised a demand of ₹2,72,28,392/- along with 10% interest per annum. The appellant contested the demand. She relied upon Clause (i) of the Office Order No.29/83 dated 08.09.1983 and sought declaration that no misuse charges were payable by the appellant. In the alternative, the appellant sought the benefit of the Office Order No.23/1976 dated 31.03.1976 and levy of a token penalty at 1% of the misuse charges.

3. During the pendency of the present appeal, the appellant executed a Gift Deed in favour of her daughter Mrs. Tripat Kaur in respect of the subject property, whereafter this Court, by order dated 05.12.2022, allowed the substitution of the appellant by her daughter Mrs. Tripat Kaur.

FACTUAL CONTEXT

4. A Perpetual Lease Deed (hereafter '**PLD**') dated 23.07.1962 was executed in favour of the appellant in respect of the subject property. The PLD dated 23.07.1962 provided that the subject property was not to be used for any trade or business or for any purpose other than that of a double-storey residential building for a private dwelling house for one or two families. The relevant portion of the concerned Clause is set out below:



“III. The Lessee for himself, his heirs, executors, administrators and assigns covenants with the Lessor in manner following (that is to say)-

x-x-x

(7) The Lessee will not without such consent as aforesaid carry on or permit to be carried on the said premises any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a double storey residential building for a private dwelling house for one or two families in all or do or suffer to be done thereon any act or thing whatsoever which in the opinion of the Lessor or such officer as he may authorise in this behalf may be an annoyance or disturbance to the President of India or his tenants in the New Capital of Delhi.”

5. The ground floor of the subject property was let out by the appellant to the Government of Lebanon, through its Ambassador, by the registered Lease Deed dated 29.02.1968 (hereafter ‘**Lease**’). Clause 2 (9) of the Lease stipulated that the subject property would not be used in any manner whereby the terms of the PLD dated 23.07.1962 would be contravened, and if on account of any contravention the appellant suffered any enhanced rents, taxes, damages, penalty or re-entry, the Government of Lebanon (lessee therein) would be liable to reimburse the same.

6. The Ambassador of Lebanon *vide* letter dated 20.02.1968 informed the respondents that it was renting the ground floor of the subject property and planning to use the same for its cultural purposes, wherein less than 25% of the total area would be dedicated to the consular section.



7. The respondents by letter dated 14.10.1968 informed the appellant that it was found upon inspection of the subject property that the entire ground floor was being used as an office by the Embassy of Lebanon, and that the said usage was in contravention of terms of Clause III (7) of the PLD dated 23.07.1962. The appellant was therefore asked to pay additional charges for the said breach, and to remedy the same within thirty days.

8. On 20.01.1969, the learned Deputy Chief of Protocol, Ministry of External Affairs addressed a letter to the officer of Respondent No.2 stating that area utilized by the Embassy of Lebanon for Chancery was only 22% of the ground floor of the subject property, and thus did not attract levy of additional ground rent for change of purpose. Respondent no. 2 replied by a letter dated 25.03.1969, and clarified that the five rooms on the ground floor of the subject property were being misused and the premises under tenancy worked out to be 82.7% of the total area of the ground floor.

9. After a little back and forth between the departments, Shri Shital Prasad, Deputy Land and Development Officer by letter dated 11.06.1969 confirmed to the Ministry of External affairs that the premises did not attract levy of additional ground rent. The Ambassador of Lebanon by letter dated 16.07.1969 informed the appellant that the Chief of Protocol Division, Ministry of External Affairs had confirmed that the subject property does not attract the levy of additional ground



rent for change of purpose since only 22% of the ground floor of the subject property is used for chancery.

10. A fresh Lease Agreement dated 15.03.1985, though unregistered, was entered between the appellant and the Government of Lebanon for a further period of three years with effect from 01.01.1985.

11. A notice was sent by the respondents to the appellant on 16.04.1987 alleging that the subject property were being used by the Embassy of Lebanon as offices for its Chancery and cultural affairs, mostly dealing with the very few Lebanese students in India, for the last 16 years. Consequently, the appellant was asked to pay the misuse charges for the breaches in terms of the PLD dated 23.07.1962, and to remedy the breach within thirty days from receipt of the said notice.

12. The appellant terminated the tenancy by issuing notice dated 02.11.1989 to the Lebanese Embassy, under Section 106 of the Transfer of Property Act, 1882. After receiving permission from the Ministry of External Affairs under Section 86 of the Code of Civil Procedure, 1908 ('CPC'), the appellant filed Suit No.3332/1989 for possession of the ground floor of the subject property, arrears of rent and *mesne profits*, on the ground that the Lebanese Embassy was misusing the premises as an office, despite the appellant having informed them to stop the misuse. On 26.02.1996, the same was withdrawn by the appellant, with liberty to file afresh, on account of a technical defect as the suit was wrongly filed against the Lebanese Embassy instead of the Government of Lebanon.



13. Following the same, the appellant issued a fresh notice for termination of tenancy on 08.04.1996, and after receiving the requisite permission from the Ministry of External Affairs, filed a fresh suit for possession and recovery of *mesne profits*, being Suit no. 376/1996, before the learned District and Sessions Judge, Tis Hazari. The said Suit was decreed in favour of the appellant by judgment dated 07.10.1999. The appeal preferred by the Government of Lebanon before this Court, and the subsequent Special Leave Petition before the Hon'ble Supreme Court were both dismissed.

14. The possession of the ground floor of the subject property was handed over to the appellant on 08.04.2002, and the same was informed to the Secretary, New Delhi Municipal Council ('NDMC') by the Ambassador of Lebanon *vide* letter dated 12.04.2002. The appellant *vide* letter dated 12.10.2002 informed the Assistant Secretary (Taxes), NDMC about the taking over of possession and also filed returns mentioning that the subject property were entirely self-occupied from 2002.

15. On 30.03.2011, the appellant made a payment of ₹45,18,000/- *vide* challan seeking conversion of the leasehold rights into freehold rights in respect of the subject property.

16. The learned Deputy Land and Development Officer by letter dated 26.07.2012 raised a demand of ₹3,99,71,655/- from the appellant on account of misuse charges from 29.02.1968 till 16.06.2011, charges for unauthorized construction from 17.06.2011 till 14.01.2013, and the



balance of the revised ground rent from 10.12.1982 till 09.12.2012. The appellant submitted multiple representations to the respondents seeking withdrawal of the said demand to no avail. The appellant contended therein that the demand of revised ground rent of ₹1,09,680/- had already been paid, and the demand for charges for unauthorized construction, though not payable, were being paid.

17. The appellant in its detailed reply dated 21.05.2013 also contested the misuse charges mainly on the following grounds – there was no misuser as was evident from the exchanges between the Ministry of Foreign Affairs, Land and Development Office and Ambassador of Lebanon. It was contended that even if there was misuse the same had been condoned by inaction of the respondents; the demand was barred by limitation; the misuse could be attributable solely to the Government of Lebanon and its Embassy as the same was without the consent of the appellant and the Lease between the appellant and the Government of Lebanon stipulated that any losses suffered due to contravention of the PLD dated 23.07.1962 were payable by the Lebanese Government; the misuse charges from 08.04.2002 till 16.06.2011 were baseless as the Lebanese Government had vacated the subject property on 08.04.2002; and even if misuser charges were to be paid, since the appellant took adequate steps to evict the defaulting tenant, only 1% of misuse charges could be levied as per Clause 8 of the Office Order No.26/81 dated 23.10.1981. The appellant in another representation dated 29.07.2013 also placed reliance on Office Order No.23/1976 dated 31.03.1976 which provided that a premises occupied by a foreign mission would



neither be inspected nor damage charges for any misuse would be issued. In this regard, the appellant further relied on the decision of a coordinate bench of this Court in ***Union of India & Another v. Jor Bagh Association (Regd.) and Others: 188 (2012) DLT 25.***

18. The Deputy Land & Development Officer by letter dated 23.02.2015 raised a revised demand of ₹2,72,28,392/- on the appellant, claiming misuse charges from 08.09.1983 till 31.03.1998. Pursuant to the same, the appellant again preferred multiple representations dated 19.03.2015, 15.08.2015, 04.12.2015, 13.01.2016, 17.02.2016, 10.03.2016, 24.03.2016 and 30.03.2016 reiterating its stand and seeking withdrawal of the said demand along with execution of a conveyance deed in her favour. The appellant maintained that only a portion of the ground floor of the subject property was being used for office purposes with the rest being occupied for residential and cultural purposes.

19. The appellant issued a notice dated 30.01.2016 to the Lebanese Government/ Embassy requesting for a letter of confirmation in terms of Clause(i) of the Office Order No. 29/83, that the subject property was used for residential, as well as office/cultural purposes during their tenancy, or to alternatively deposit the entire amount as demanded with penalty charges.

20. The respondents *vide* letter dated 04.05.2016 conveyed their rejection of representations of the appellant and directed her to make payment of the principal demand amount with interest @ 10% annum till the date of payment.



21. Aggrieved by the demand dated 23.02.2015 of ₹2,72,28,392/-, that was confirmed by the communication dated 04.05.2016, the appellant preferred the Writ Petition in W.P(C) 5022/2016. The appellant's application for conversion was rejected by letter dated 03.07.2017 on account of the demand being unpaid and also since the writ petition was *sub judice* before the learned Single Judge.

22. The writ petition was dismissed by the Learned Single Judge *vide* the impugned order, which led the appellant to prefer the present appeal.

IMPUGNED ORDER

23. The learned Single Judge considered the contention of the appellant that the demand of the respondents is barred by limitation as the claim was raised after more than 25 years of the alleged misuse. The appellant claimed that there was no action by the respondents until the appellant had raised the demand for conversion of property from leasehold to freehold. The demand was raised on 23.02.2015 for the misuse charges from 08.09.1983 till 07.04.2002. The learned Single Judge regarding this issue observed that the respondents being Central Government, the limitation for making demand/ claim is 30 years in terms of Article 112 of the Limitation Act, 1963. Furthermore, the bar of limitation merely prevents a person from suing to recover the amount due and does not bar the remedy.

24. The learned Single Judge next considered the issue of whether the premises were being used for residential and office purposes or for



office purposes only. There is no dispute between the parties that the premises had to be used for residential purpose only. The learned Single Judge referred to inspection reports carried out by the respondents to observe that the tenanted premises were being used as an office of the Embassy of Lebanon since the inception of the tenancy, which is in violation of the PLD dated 23.07.1962. The learned Single Judge held that the premises were being used for office purposes only during the term of tenancy.

25. The learned Single Judge considered the issue of whether the Circular dated 31.03.1976 i.e., Office Order No. 23/ 76 would apply or the Circular dated 08.09.1983 i.e., Office Order No. 29/83 had superseded it. It was the case of the appellant that Clause (i) of the Office Order of 1983 stipulates that, if the premises are being used both for residential and office purpose by any Embassy / Mission, no notice will be taken of the misuse and no misuse charges would be levied. The learned Single Judge held that the tenanted premises were being used for office purpose only and therefore, Clause (i) of the Office Order No. 29/83 would have no effect and Clause (ii) of the said order which dealt with the use of the respondents' leased premises for office purpose would apply.

26. The learned Single Judge observed that the Office Order No. 23/ 1976 is a general order, which held the field till the issuance of the Office Order No. 29/83, which is a special order relating to the premises leased out to foreign missions. The learned Single Judge applied the



principle of *generalia specialibus non derogant* that is, general law yields to special law should they operate in the same field and on the same subject, to observe that neither Clause (7) nor (8) of Office Order No. 23/ 76 will be applicable to the present case.

27. The learned Single Judge observed that even otherwise Clause 7 of Office Order No. 23/1976 shall not be automatically applied as the same presupposes a reduction in charges in accordance with the circumstances of each case in consultation with Ministry of Works and Housing and Finance and while doing so, the reasons for the inability on the part of the lessee to increase the income from the leased premises shall be gone into.

SUBMISSIONS

APPELLANT'S CONTENTIONS

28. The learned senior counsel for the appellant contended that the categorical classification of the premises that ground floor occupied by the Embassy of Lebanon was being used as residence and office, and the first floor and barsati floor, with the appellant, were used for residence, was not required. The subject property was being used both for residential and office purposes. He submitted that the letter dated 16.06.1969 of Ministry of External Affairs established that only 22% of the ground floor was used for chancery by Government of Lebanon, and the said letter had confirmed that the premises do not attract levy of additional ground rent for change of purpose.



29. The learned senior counsel submitted that the appellant was entitled to the benefit of Clause (i) of the Office Order No.29/83 dated 08.09.1983 and Clause (ii) would not apply, since it was being used both for residential and office purpose by the tenant, that is the Embassy/Mission of Lebanon, and therefore, would not attract levy of any misuse charges. The relevant clauses of Office Order No. 29/83 dated 08.09.1983, read as under-

“(i) Where L&DO leased premises, are being used both, for residential and office purpose by' an Embassy/Mission no notice will be taken of the misuse and no misuse charges, etc. would be levied.

(ii) Whereas L&DO leased premises is used clearly for office purposes as such by an Embassy / Mission, the normal misuse charges according to the formula adopted by the Government / L&DO will be levied on the lessee. The procedure to be followed for inspection will be as laid down in the L&DO Office Order No. 17-82 dated 26.07.1982.”

30. He submitted that as per Clause (8) of the Office Order No. 23/1976, only 1% of the misuse charges could be levied on the appellant. Clause (7) and (8) of the Office Order No. 23/1976, which are sought to be relied upon by the appellant, are reproduced herein-

"7. In cases where the charges on account of change in use are found, beyond any doubt, to be more than the income of the lessee from the leased premises the charges will be reduced suitably according to the circumstances of each case in consultation with Ministry of Works and Housing and Finance. While doing so, the reasons for the inability on the part of the lessee to increase the income from the leased premises Will, no doubt, have to be fully considered;



8. In case where the lessee / ex-lessee files suit for eviction against defaulting tenants on receipt of our notice for misuse and are successful in evicting such tenants one percent of the charges will be recovered as token penalty in consultation with the Ministry- of Works & Housing and Finance."

31. The learned counsel contended that in terms of Office Order No. 23/1976 dated 31.03.1976, if a premises is occupied by a Foreign Mission, the premises would neither be inspected, nor damage charges for any misuse would be raised. He submitted that the ground floor of the subject property had been in the occupation of a Foreign Mission (Government of Lebanon through the Embassy of Lebanon) during the period 01.03.1986 to 08.04.2002, and the misuse alleged by the respondents continued only during the said period. He relied on the judgement of this Court ***Union of India & Anr. v. Jor Bagh Association (Regd.) & Ors. (supra)***, wherein the aforesaid Office Order No. 23/1976 was considered and it was observed that premises which had been leased to a Foreign Mission, should not be assessed for misuse charges for the period of such lease.

32. The learned counsel for the appellant pressed on the contention that the appellant is entitled to the benefit of Clauses (7) and (8) of the Office Order No.23/1976 as the applicability of Clauses (7) and (8) was not repealed by Office Order No.29/1983. In this regard, the appellant claimed that the Office Order No.29/1983 was issued, as mentioned therein, only because previously the Embassies were granted exemption from levy of misuse charges, which was subsequently withdrawn in 1979, by the Ministry of External Affairs Order No.464(56)- D.111/78



dated 08.01.1979 and the Clauses of Office Order No.23/76, including the relevant Clauses (7) and (8) were not touched or superseded by the Office Order No. 29/1983.

33. The learned counsel contended that both office orders have to be given harmonious construction and the conflict can be reconciled. He submitted since the appellant was able to successfully evict the tenant for misuse of the premises contrary to the perpetual lease, the appellant is entitled to the benefit of Clause (8) of the Office Order No. 29/83.

RESPONDENTS' CONTENTIONS

34. The learned counsel for the respondents submitted that the respondents in letter dated 14.10.1968 had clearly stated that during inspection of the premises, the entire ground floor was found to be used as an office by the Embassy of Lebanon.

35. The learned counsel submitted that the Office Order No. 23/1976 dated 31.03.1976 is a general order. She contended that the Office Order No.23/76 dated 31.03.1976 has not been superseded by the Office Order No.29/83 dated 08.09.1983 as both the orders are for general and specific purpose respectively.

36. She contended that so far as calculation of misuse charges in respect of foreign missions with effect from 08.09.1983 is concerned, all misuse cases related to the foreign mission/embassy were to be governed/covered by the Office Order No. 29/1983 dated 08.09.1983, which is related to "Leased residential properties owned/hired by foreign missions in Delhi- recovery of misuse charges".



37. The learned counsel further contended that in accordance with the instructions contained in the Office Order No. 312 of 1971-72 dated 22.02.1972, the respondents were neither required to inspect nor to take any notice of the breaches of the properties owned/hired by Foreign Mission and U.N. Allied Agencies in New Delhi. However, the exemption granted to the foreign missions for payment of misuse charges has since been withdrawn by the Ministry of External Affairs *vide* their Circular dated 08.01.1979.

CONCLUSION

38. It is relevant to note that during the pendency of the appeal, this Court *vide* order dated 06.08.2021 permitted the appellant to deposit the demanded amount of ₹2,72,28,392/- along with 10% interest per annum with the respondents, without prejudice to the rights and contentions of the parties to the *lis*. This Court had further clarified that the final liability, if any, would be determined by it after hearing both sides. The relevant portion of the said order is set out below:

“Looking to the facts and circumstances of the case as set out in the present application, we permit the Appellant to deposit the aforesaid amount within a period of two weeks from today. The deposit by the Appellant and acceptance of the same by the Respondents shall be without prejudice to the rights and contentions of the parties to the lis.

We also make it explicitly clear that the deposit of the aforesaid amount by the Appellant shall not be treated as acceptance of the liability to pay the entire amount and likewise acceptance of the amount by the Respondents shall not be treated as their acceptance that the aforesaid payment is the full and final payment due to the Respondents.”



39. Pursuant to the order dated 06.08.2021, the appellant deposited the principal demanded amount of ₹2,72,28,392/-, and further sums of ₹56,46,172/- and ₹1,77,18,236/- by 08.03.2022 with the respondents, whereafter the respondents issued a letter of conversion of the subject property from leasehold to freehold.

40. As noted by this court in its order dated 06.03.2023, one of the principal questions that falls for consideration of this Court is whether the Office Order No. 23/1976 dated 31.03.1976, which restricts the levy of misuse charges in certain cases, has been superseded by the Office Order No.29/83 dated 08.09.1983. This Court had noted therein that *prima facie* it appeared that the Office Order No.29/83 only sought to clarify certain uses in respect of foreign embassies which would be considered as misuse, while Office Order No. 23/1976 provided for limiting the extent of misuse charges contingent upon the income received by the lessor and/or his actions for evicting the tenant.

41. The learned Single Judge, in relation to the principle of limitation, in our opinion, rightly decided against the appellant. We concur with the decision that this is not a case where Respondent No.2's claim for recovery was barred by limitation. It is also well settled that the bar of limitation prevents a person from filing a claim for recovery; it does not extinguish the liability.

42. The writ petition was filed seeking conversion of the property from leasehold to freehold. The respondent department, prior to



conveying the title in favour of the appellant, sought recovery of the amount due on account of misuser of the subject property.

43. It is not in dispute that the demand was raised referring to the application filed by the appellant for regularisation of the breaches for the purpose of conversion of the subject property from leasehold to freehold. The appellant had sought regularisation of the breaches in order to enable her to become eligible to apply for conversion of the subject property from leasehold to freehold. Regularisation of the breaches also includes payment of charges, if any. The demand was, thus, raised for the purpose of conversion of the property from leasehold to freehold.

44. The reliance in that regard in the judgment passed by this Court in the case *Union of India and Ors. v. Jor Bagh Association (Regd.) & Ors. (supra)*, in our opinion, has been rightly placed. The payment towards charges on account of misuse, even if barred by limitation for the purpose of recovery, will not take away the power of the lessor to demand the same as a condition to convert the property from leasehold into freehold.

45. As noted above, the demand was raised when the appellant applied for conversion of the subject property from leasehold to freehold. In relation to the Office Order No.23/1976 and Office Order No. 29/83, the learned Single Judge held that the Office Order No. 23/1976 issued in the year 1976 was general in nature and the Office Order No.29/83 specifically relates to the premises leased out to foreign



missions. It was, thus, held that the Office Order No.23/1976 would not be applicable in relation to the present case.

46. The learned Single Judge further noted that by virtue of the pleadings made by the plaintiff in the suit filed for eviction of the Lebanon Embassy and the letter written by the Embassy dated 29.02.2012, categorically stating that the Lebanese Embassy had always used the property for chancery purposes and had never used it for residential purposes, read with the inspection reports, the appellant is not eligible for any benefit of Clause (i) of the Office Order No. 29/83 and therefore, Clause (ii) of the Office Order No. 29/83 would be applicable in the present case.

47. We do not agree with the view taken by the learned Single Judge that the Office Order No.23/1976, being general in nature, is not applicable.

48. The Office Order No. 23/1976 deals with the breaches and charges for unauthorised user /construction of the leasehold properties. It specifies the procedure for determination of date for recovery of charges; formula for calculation of charges for change of use; date of determination for commencement and vacation of breaches, etc. It further provides that in case the premises are occupied by a foreign mission, no inspection of the premises is to be carried out nor any misuse / damage charges will be levied.



49. Clauses 7 and 8 of the Office Order No. 23/1976 provide certain procedures in case the leasehold property is given on lease. Clause 7 provides that in case the charges to be levied by the respondent department for change in use is more than the income from a leased premises, then the charges would be suitably reduced in terms provided thereof. Clause 8 provides that in case the lessee files a suit for eviction against the tenant on receipt of notice of misuse and is successful in evicting such tenant, then 1% of the charges to be levied for misuse would be recovered.

50. The exemption granted to the foreign missions from payment of misuse charges was specifically withdrawn *vide* Circular dated 08.01.1979. The issue in relation to the exemption granted to foreign missions was reconsidered in Office Order No. 29/83 dated 08.09.1983. It provided that in case the leased premises is used clearly for office purposes by an Embassy / mission, normal misuse charges according to the formula adopted by the Government will be levied on the lessee. It is, thus, apparent that no exemption has been provided in case the leased premises is used by an Embassy / mission for office purposes.

51. The misuse charges, in such circumstances, are levied according to the formula adopted by the Government of India. It is not the contention of the respondent department that there is any other formula laying down the procedure for determination and recovery of charges for the breaches, except for the Office Order No. 23/1976.



52. The Office Order No. 29/83 is in the nature of an exemption provided to the Embassy / mission in case the conditions, as specified, are satisfied. However, in case the conditions are not met, the exemption is taken away and the charges are to be determined as per the Office Order No. 23/1976.

53. The principle, as discussed by the learned Single Judge, that the special law would prevail over the general law, and the latin maxim *generalia specialibus non derogant*, has no applicability as far as the Office Order No. 23/1976 and Office Order No. 29/83 are concerned.

54. The learned Single Judge erred in holding that the Office Order No. 23/1976 is a general order which held the field till the issuance of Office Order No. 29/83.

55. Office Order No. 29/83 is in the nature of exemption and in the absence of a premises being exempted, the procedure, as laid down in regard to the leasehold premises otherwise, would be applicable.

56. Clause 7 of Office Order No. 23/1976 provides that where charges on account of change in use are found beyond any doubt to be more than the income derived by the lessee from the leased premises, the charges will have to be reduced suitably according to the circumstances of each case in consultation with the Ministry of Works and Housing and Finance. It also provides that while doing so, the reasons for the inability on the part of the lessee to increase the income from the leased premises have to be considered.



57. The respondent department, in the present case, has not doubted the income (rent) from the subject property. There is no allegation that the appellant was deriving more income than what was disclosed as rent received from the Lebanon Embassy.

58. The appellant, in such circumstances, in our opinion, is entitled for the benefit of Clause 7 of Office Order No. 23/1976. However, that is subject to the conditions as specified in Clause 7, that is, subject to the respondent department considering the reasons for the inability on the part of the lessee to increase income from the leased premises and after the case is consulted with the Ministry of Works and Housing and Finance.

59. The appellant, in our opinion, is also entitled for the benefit under Clause 8 of Office Order No. 23/1976. It is not in dispute that the appellant, in the present case, pursuant to the notice issued by the respondent department in the year 1987, had terminated the tenancy of the Lebanon Embassy and had filed a suit for recovery of possession.

60. The respondent department had contended that since they were not made party in the said suit, no benefit of Clause 8 of Office Order No. 23/1976, can be claimed. The argument is insubstantial. Clause 8 of Office Order No. 23/1976 does not specify a pre-condition that any suit for eviction, as referred, would necessarily have to be filed after making the respondent department, a defendant.



61. This Court, in the case of *Union of India v. P.R. Nair (deceased through legal representative)* : 2012:DHC:4597-DB, had observed that Clauses 7 and 8 of the Office Order No. 23/1976, providing concession to lessee, are essentially a manifestation of the principle that no person should be penalised for no fault of his.

62. The appellant, in the suit, specifically pleaded that the eviction is sought and the property was being misused. The first notice for any such alleged misuse was issued in the year 1987. The suit was, thereafter, filed in the year 1989 after taking the permission from the Ministry of External Affairs under Section 86 of the CPC.

63. Therefore, it cannot be contended that there has been much delay in initiating the proceedings for recovery of the possession. It is relevant to note that the misuser charges have been levied for the period from 1983 to 2002.

64. Concededly, suit for eviction has been filed in the year 1989 seeking eviction from the tenant on the ground of misuser of the property. The property finally got vacated after the dismissal of the SLP by the Hon'ble Supreme Court in the year 2002. It is settled law that no party can be penalised for the delay in Court proceedings. Only because the proceedings for eviction of the tenant had taken thirteen years, the appellant ought not to be penalised for the same.



65. The coordinate Bench of this Court, in the case of ***Union of India v. P.R. Nair (deceased through legal representative)*** (*supra*), while interpreting the Office Order No. 23/1976, held as under:

9. We will first take the aspect, whether para 8 of the Office Order dated 31st March, 1976 providing for recovery of only 1%, is applicable to misuse charges or only to penalty. The appellant in this regard has alongwith its counter affidavit filed before the learned Single Judge, also filed extract of Chapter 18 of the L&DO Manual titled “Breaches (the Change of purposes or Unauthorized Construction)”. The same is nearly identical to the Office Order dated 31st March, 1976 save that therein the provision for recovery of only 1% is mentioned after both ‘misuse charges’ as well as ‘penalty’.

10. We are unable to accept the contention of the learned ASG that the ‘rule’ of 1% is applicable only to the levy of penalty and not to misuse charges, though we may notice that a learned Single Judge of this Court in Satish Kumar Mehta v. U.O.I. 168(2010) DLT 316 has held so. Though in the L&DO Manual as aforesaid, the said ‘rule’ is mentioned after the formula for levying misuse charges as well as penalty but in the Office Order, the said ‘rule’ precedes the provision regarding penalty. Ordinarily when the said ‘rule’ is placed even before providing for levying of penalty, it cannot relate to penalty. Even otherwise, the language of the 1% ‘rule’ does not restrict the applicability thereof to penalty charges only or exclude the applicability thereof to misuse charges. The expression used is “1% of the charges”. Merely because the ‘rule’ further proceeds to use the expression “token penalty”, would not imply that the same is applicable qua penalty only. Further, at best, the language used is faulty and ambiguous. The same having been framed by the L&DO, it is the L&DO and not the lessee which ought to suffer for such ambiguity. We accordingly hold that where the lessee/ex lessee files suit for eviction against the tenant misusing the premises and is successful in evicting such tenant, the liability for misuse charges would be only 1% of the misuse charges otherwise



payable in accordance with the formula laid down in the Office Order aforesaid.

11. Paras 7 and 8 of the Office Order supra providing concession to lessees, who though guilty of misuse are not at fault, are a manifestation of the principle “that no person can be penalized for no fault of his and that constructive liability cannot be fastened except when the law expressly so fastens” noticed by the Division Bench of this Court in Jor Bagh Association (Regd) (supra). Seen in the said light, it becomes clear as daylight that the ‘rule’ of 1% would apply to misuse charges; restricting the same to penalty would be a violation of the said principle.

12. That brings us to the next question as to whether the respondent is entitled to the benefit of either para 7 or para 8 of the Office Order aforesaid. The learned Single Judge in this regard has held that since the respondent did file the proceedings for eviction against the tenant misusing the premises and further since that tenant ultimately vacated the premises, the respondent is entitled to the benefit of the 1% ‘rule’ contained in para 8. It was further held that since the respondent owing to the applicability of the Rent Act could not have got the rent increased, she is also entitled to the benefit of para 7 of the Office Order.

66. In such circumstances, applying Clause 8 of the Office Order No. 23/1976, the appellant would be liable to pay a token penalty of one per cent of the misuse charges since the appellant was successful in evicting the tenant.

67. The respondent department had drawn the attention of this Court to Office Order No. 8/1999 dated 06.04.1999, wherein it is clarified that the penal charges only would be reduced to one per cent instead of ten



per cent and the misuse charges are not to be reduced. However, the lessee would still be liable to pay misuse charges.

68. It is contended on behalf of the appellant that the said circular is in the nature of an amendment and would not apply retrospectively. It would apply only in relation to the properties given on rent pursuant to the Office Order No. 8/1999.

69. It is seen that this Court, in the case of *Union of India v. P.R. Nair (deceased through legal representative)* (*supra*), had taken note of Office Order No. 23/1976. The judgment was passed on 27.07.2012. It is not clear whether Office Order No. 8/1999 was brought to the knowledge of the coordinate Bench. However, since the said appeal was filed by the Union of India, it could be presumed that this Court has rightly interpreted the Office Order No. 23/1976 after keeping in mind the subsequent Office Order No. 8/1999.

70. We find merit in the appellant's contention that the Office Order No. 8/1999 is in the nature of amendment and would be applicable prospectively since it seeks to levy additional charges, which were not leviable in terms of the Office Order No. 23/1976, as interpreted by the Coordinate Bench of this Court.

71. In view of the above, the present appeal is allowed and the impugned order is set aside. The respondents shall recompute the misuse charges by extending the benefit of Clauses 7 and 8 of the Office



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Order No. 23/1976 and refund the excess amount paid by the appellant,
within a period of three months from date.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

MARCH 6, 2024

ssh / KDK

Signature Not Verified

Digitally Signed
By: SHIKHA REHGAL
Signing Date: 09.03.2024
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