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

+ W.P.(C) 4711/2000, CM APPL. 7281/2000&CM APPL. 4074/2004

PABHU DAYAL

.....Petitioner

Through: Ms. Pavitra Kaur, Ms. Shreya Mishra,
Mr. Mahboob Alam Inayati, Mr.
Furkan Ali Mirza, Advs. along with
petitioner in-person.

versus

UOI & ANR.

.....Respondents

Through: Mr. Syed Abdul Haseeb, CGSC with
Mr. Tabish Zia, Mr. Tanveer Zaki,
Advs. for UOI.
Mr. Tushar Sannu, Mr. Parvin Bansal,
Advs. for NDMC.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

01.11.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Article 226 of the Constitution of India seeks the following prayers: -

“i) issue a writ of mandamus or any other or similar writ, order or direction quashing notice dated 7.8.2000 (Annexure P-17) issued by respondents purporting to determining the lease and re-entering the premises No. 19, Barakhamba Road, New Delhi.

ii) such other or further orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the case.”

3. The predecessor of the petitioner took on lease a piece of land situated at 19, Barakhamba Road, New Delhi *vide* registered perpetual lease deed dated 29.08.1931. The petitioner is one of the co-owners of the said premise.



The co-owners of the premises entered into a collaboration agreement with M/s Kailash Nath & Associates as the co-owners were interested in developing a multi storeyed commercial complex. On an application being made by the owners of the premise, permission was granted to them *vide* letter dated 01.05.1986 by respondent No. 2 to construct multi-storeyed apartments.

4. *Vide* order dated 24.09.2001, the learned Single Judge of this Court on the oral request of the petitioner, had directed the petitioner to implead all those persons as respondents, who are allegedly misusing the premises. Subsequently, the petitioner filed an amended memo of parties dated 27.11.2001, impleading the said persons as respondent no. 3 to 21.

5. The present petition has been filed assailing the aforesaid order of re-entry dated 07.08.2000 which reads thus:-



Government of India
Ministry of Urban Development & Poverty Alleviation
Land & Development Office
Nirman Bhawan, New Delhi.

No. L&DO/LI-9/148(46)/219

Dated 7/8/2020

To,

S/Sh. Dwarka Dass, Mahavir Parsad,
Prabhu Dayal, Raj Gopal, Smt. Rukmani Devi
And Smt. Indu Lata,
(Ex-lessee & Un-authorised occupants of public premises)
C/O M/S. Kailash Nath & associates,
1006, Kanchan Junga,
18-Barakhamba Road,
New Delhi.

Sub:- Premises situated on Plot No.46 Block No.148 known as 19
Barakhamba Road, New Delhi.

Dear Sir,

The under mentioned breaches as notified in this office letter No. LI-9/148(46)/95/132 dated 3.4.95 existing on the lease hold premises cited as subject have neither been removed so far nor request has been made for temporarily regularization inspite of reminders dated 20.9.96, 30.12.96 and final notices dated 24.2.99 and 28.6.99.

MISUSE

I. In the 1st Basement (Upper Basement)

U B- 1	Measuring Area	36'-10 1/2" x 11'-6"
U B- 2	Measuring Area	36'-10 1/2" x 11'-6"
U B- 5	Measuring Area	20'-1 1/2" x 16'-6"
U B- 4	Measuring Area	30'-6" x 16'-6"
U B- 6	Measuring Area	34'-10 1/2" x 11'-6"
U B- 7	Measuring Area	30'-6" x 16'-0"
U B- 8	Measuring Area	31'-7 1/2" x 16'-0"



U B- 9	Measuring Area	30'-6" x 16'-0"
U B- 10	Measuring Area	31'-7 1/2" x 16'-0"
U B- 11A	Measuring Area	31'-3" x 19'-3" + (10'-0" x 6'-0")
U B- 12+13	Measuring Area	31'-3" x 18'-6"
U B- 14	Measuring Area	28'-6" x 16'-0"
U B- 14A	Measuring Area	31'-0" x 15'-0"
U B- 16	Measuring Area	27'-0" x 12'-0"

are being used as offices of the various companies.

II. In the IInd Basement (Lower basement)

L.B- 8-8/5-10/12	Measuring area	31'-7 1/2" x 16'-0"
L.B- 10	Measuring Area	31'-7 1/2" x 16'-0"
L.B- 16	Measuring Area	40'-3" x 11'-6"
L.B- 21	Measuring Area	27'-0" x 12'-0"

are being used as offices of the various companies.

B. Unauthorised Construction

1. Open Tarrace on 12th floor has been covered with Pucca. RCC and converted in the room measuring area

(9'-0" x 18'-10 1/4") + (9'-0" x 49'-6") + (9'-0" x 17'-10 1/2") + (8'-6" x 10'-0") + (8'-6" x 6'-6") (18'-0" x 7'-0") + (18'-0" x 7'-0") + (8'-0" x 10'-0") - (6'-6" x 11'-0") + (10'-0" x 7'-9") + (5'-0" x 10'-3") + (10'-0" x 7'-9") + (7'-9" x 10'-0") + (6'-6" x 11'-0").

2. Party has enclosed the portion under water tank at tarrace floor and being used as office by Kailash Nath and Associates measuring (19'-0" x 30'-0") and adjoining room has been constructed measuring (8'-3" x 30'-0").

3. Un-authorised pucca room has been constructed at terrace floor and being used as office by Kailash Nath and Associates measuring 27'-6" x 10'-0".

Please take notice, therefore, that in consequence of your failure to remedy the aforesaid breach and non payment of regularization charges the lessor has been pleased to determine the lease and re-enter upon the premises with effect from 22.7.2000 on and from which date, therefore, all your rights and title in the lease hold property in question have ceased.

The entire plot of land forming the subject matter of the relevant lease deed and all the building standing thereupon including all structure, erections and fittings vest now in the President of India. Sh. R.L. Singla Building Officer of the



Land & Development Office, has been directed to take possession of the premises from you and he will call upon you for this purpose on 28.8.2000 at 10.30 A.M. and I hereby call upon you to handover peacefully the possession of the premises including land buildings, fittings, fixtures, etc. to him.

Yours faithfully,

(D.K. Bazzaz)

Dy. Land & Development Officer
For & on behalf of the President of India.

Copy forwarded for information and necessary action to:-

1. Engineer Officer
2. Sh. R.L. Siagla, Building officer, Land & Development Office, New Delhi.
3. Accounts Section.
4. Guard File.

Dy. Land & Development Officer

6. On 20.09.1996 , show cause notice was issued to the original lessees by the respondent No. 2 which reads thus: -



GOVERNMENT OF INDIA
MINISTRY OF URBAN AFFAIRS & EMPLOYMENT
LAND & DEVELOPMENT OFFICE
NIRMAN BHAWAN NEW DELHI.

No. L&DO/LI-9/148(46)/96/223

dated... 20/9/96.

To,

S/Sh. Dwarkadass, Mahavir Prasad, Prabhu Dayal
Raj Gopal, Smt. Rukmani Devi, and Inder Lata
C/O Kailash Nath & Associates 1006,
Kanchan Junga, 18-Barakhamba Road,
New Delhi.

Sub:- Show-Cause notice in respect of premises on plot No.46
Block No.148 known as 19 Barakhamba Road New Delhi.

S/Sir(s)/Madam,

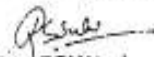
I am to refer to this office letter No.LI-9/148(46)/
95/132 dated 3.4.95 on the above subject and to inform you
that you were asked to remedy the breaches but nothing has
been heard from you so far.

You are, therefore, hereby required either to remove
the breaches or Show-Cause within 30 days from the date of
this notice as to why the lessor should not be pleased to
exercise his right of re-entry and to forfeit the lease
deed under clause (3) of the lease deed for the breaches
2(5) and 2(6) thereof.

It may clearly be noted that if no satisfactory
cause has been shown within the period stipulated above
action will be taken against you without making any further
reference to you.

In case you have any point to clarify in connection of
this notice you may see the undersigned after prior appoint-
ment on Tel. No. 3015612 between 2P.M. to 4 P.M. within a
week of the date of issue of this notice. It may, however,
be clearly understood that your inability to avail of this
opportunity of personal hearing/discussion will not be
accepted as a ground for not taking further action in the
matter under the terms of lease,

Yours faithfully,


(R. S. SINHA)

Vigilance-cum-Legal Officer
for & on behalf of the President of India



7. Reply dated on 17.10.1996 on behalf of the lessees was sent to the respondent No. 2 wherein the following averments were made: -

BY SPECIAL MESSENGER

October 17, 1996.

From:

S/Shri Dwarka Dass, Mahavir Prasad,
Prabhu Dayal, Raj Gopal,
Smt. Rukmani Devi & Smt. Indu Lata,
Care of: M/s. Kailash Nath & Associates,
1006, Kanchanjunga,
18 Barakhamba Road,
New Delhi - 110001.

To:

The Vigilance-cum-Legal Officer,
Land and Development Office,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi - 110011.

Subject: Show-cause notice in respect of premises on plot No.46,
Block No.148, known as 19 Barakhamba Road, New Delhi-1.

Dear Sir,

This has reference to your letter No.L&DO/LI-9/148(46)/96/333 dated the 20th September, 1996 on the above subject.

Our reply dated the 2nd May, 1995 to your letter dated the 3rd April, 1995, seems to have escaped your attention. Our reply was duly received in your office on 4.5.1995 as borne out from the receipt obtained by us on our office copy. For your convenience, a photocopy of the duly receipted letter dated the 2nd May, 1995 is enclosed herewith. The same is self-explanatory and we hope that the same would fully satisfy you. We, however, remain ready and willing to give and furnish any other information as may be required by you and to do all such other things which may be in our power and control to do in this regard.

We have also made enquiries and have learnt that you have not taken any action whatsoever against the erring flat-owners mentioned in your letter dated the 3rd April, 1995. As mentioned earlier, we are in no position to take any action, especially after coming into force of the Delhi Apartment Ownership Act. It was for this reason only that we had furnished the list of the owners of the flats mentioned in your letter dated the 3rd April, 1995.

Kindly acknowledge receipt. We remain available for any personal hearing/discussion.

Thanking you,

Yours faithfully,

(DWARKA DASS)

for self and other co-owners.

Encl.: as above.

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8. Subsequently, the communication was sent to the original lessees on behalf of respondent No. 2 on 30.12.1996, in which, it was stated that the respondent No. 2 does not recognise the flat buyers and as such, no action can be taken against them by the said respondents and thereafter, the demand to remove the breaches was reiterated.

9. In pursuance thereof as pointed out hereinbefore, the impugned order of re-entry dated 07.08.2000 was passed by the respondent No. 2.

10. Learned counsel for the petitioner has pointed out that the show cause notice issued was in violation of Section 8 of the Delhi Apartment Ownership Act, 1986 (for short “**Act**”). It is submitted that as per Section 8(3) of the said Act, a specific show cause notice ought to have been issued to each apartment owner for the alleged breaches as claimed by the respondent No.1. Attention of this Court has also been drawn towards Section 8 of the Delhi Apartment Ownership Act, 1986 which reads as under: -

“8. Right of re-entry.—

(1) Where any land is given on lease by a person (hereafter in this section referred to as the lessor) to another person (hereafter in this section referred to as the lessee, which term shall include a person in whose favour a sub-lease of such land has been granted), and any multi-storeyed building has been constructed on such lease-hold land by the lessee or by any other person authorised by him or claiming through him, such lessee shall grant in respect of the land as many sub-leases as there are apartments in such multi-storeyed building and shall execute separate deeds of sub-lease in respect of such land in favour of each apartment owner,—



(a) in the case of a multi-storeyed building constructed before the commencement of this Act, within three months from such commencement, or

(b) in the case of a multi-storeyed building constructed after the commencement of this Act, within three months from the date on which the possession of any apartment in such multi-storeyed building is delivered to him:

Provident that no sub-lease in respect of any land shall be granted except on the same terms and conditions on which the lease in respect of the land has been granted by the lessor and no additional terms and conditions shall be imposed by the lessee except with the previous approval of the lessor.

(2) Where the lessee has any reason to suspect that there had been any breach of the terms and conditions of the sub-lease referred to in sub-section (1), he may himself inspect the land on which the multi-storeyed building containing the concerned apartment has been constructed, or may authorise one or more persons to inspect such land and make a report as to whether there had been any breach of the terms and conditions of any sub-lease in respect of such land and, if so, the nature and extent of such breach, and for this purpose, it shall be lawful for the lessee or any person authorised by him to enter into, and to be in, the land in relation to which such breach has been or is suspected to have been committed.

(3) Where the lessee or any person authorised by him makes an inspection of the land referred to in sub-section (1), he shall record in writing his findings on such inspection [a true copy of which shall be furnished to the apartment owner by whom such breach of the terms and conditions of sub-lease in respect of the land appurtenant to the apartment owned by him has been committed (hereinafter referred to as the defaulting apartment owner)] and where such findings indicate that there has been any breach of the terms and conditions of the sub-lease in respect of such land, the lessee may, by a notice in writing, require the defaulting apartment owner to refrain from committing any breach of the terms and conditions of the sub-lease in respect of such land, or to pay in lieu thereof such composition fees as may be specified in the notice in accordance with such scales of composition fees as may be prescribed.”

(emphasis supplied)



11. Learned counsel for the petitioner further relies upon judgment dated 28.05.2010 of learned Division Bench of this Court in W.P.(C) 1959/2007 and on an order dated 13.07.2012 passed in said writ petition to submit that all issues relating to the multi-storeyed buildings will be governed by the said Act.

12. It is further submitted that even as per the preamble of the Act it can be seen that the provisions of said Act are applicable to the multi-storeyed building. Attention of this Court has further been drawn towards the preamble of the said Act which reads as under: -

“An Act to provide for the ownership of an individual apartment in a multi-storeyed building and of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto.

Whereas with a view to securing that the ownership and control of the material resources of the community are so distributed as to subserve the common good, it is expedient to provide for the ownership of an individual apartment in multi-storeyed building and of an undivided interest in the common areas and facilities appurtenant to such apartment and interest heritable and transferable and to provide for matters connected therewith or incidental thereto.”

(emphasis supplied)

13. Learned counsel appearing on behalf of the respondents submits that no show cause notice was issued to the apartment owners as respondent No. 2 recognised the lessees as personally responsible for any of alleged breaches in the apartments, and therefore, no notice was required to be issued to the separate apartments owners. It was submitted that respondent No. 2 would not have details of the individual apartment owners and therefore, the notice was



issued to the lessee.

14. In the considered opinion of this Court, Section 8(3) of the aforesaid Act clearly lays down that the show cause notice will have to be issued to the individual apartment owner. The apartment owner must have to be put to notice for the alleged breaches of the terms and conditions of the lease and in the present case, admittedly no such show cause notice in terms of Section 8(3) of the Act was issued to the apartment owners. The impugned order of re-entry dated 07.08.2000 is based upon a show cause notice which was issued in violation of the provision of Section 8(3) of the Act.

15. In these circumstances, the impugned order dated 07.08.2000 is set aside.

16. Respondent No. 2 will be at liberty to initiate fresh show cause notice in accordance with law.

17. The present petition has been disposed of with respect to the aforesaid issue and all other legal contentions of both the parties are left open.

18. Pending applications, if any, also stand disposed of accordingly.

19. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

NOVEMBER 1, 2025/kr/sg