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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6562/2000, CM APPL. 10047/2000&CM APPL. 12094/2025
JAGMOHAN KAPOORPetitioner

Through: Mr. M. Dutta, Sr. Adv. with Ms.
Arushi Mittal, Mr. Kumar Balram, Mr.
Jalaj Agarwal, Mr. Ajay Kumar, Advs.
versus

UNION OF INDIA & ORS.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 R-3.

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 Articles 226 of the Constitution of India, 1950 seeks the following prayers:-

“i) issue a writ of mandamus or any other or similar writ, order or direction Quashing notice dated 24.10.2000 (Annexure P-11) issued by respondentNo.1 and 2 purporting to determining the lease and re-entering the premises No.21, 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 present petition had been filed on behalf of the recorded owner of the premise no. 21, Barakhamba Road. *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 01.02.2002, impleading the said persons as respondent no. 4 to 29.

4. The present petition has been filed assailing the aforesaid order of re-entry dated 24.10.2000 which reads thus:-

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

P-11
ANNEX-P-11

No. L&DO/LI-9/148(47)/2000- L178 Dated 24.10.2000

To,

1. Mrs. Krishna Kapoor, 16-L, Connaught Place, New Delhi.	2. ✓ Sh. Jagmohan Kapoor, 16-L, Connaught Place, New Delhi.
3. Sh. Brij Mohan Kapoor, 16-L, Connaught Place, New Delhi.	4. Sh. Surinder Kapoor, 16-L, Connaught Place, New Delhi.
5. Sh. Ashok Kapoor, 16-L, Connaught Place, new Delhi.	6. Sh. Shiv Mohan Kapoor, 16-L, Connaught Place, New Delhi.
7. Sh. Joginder Kapoor, 16-L, Connaught Place, New Delhi.	

Sub:- Premises situated on Plot No.47, Block No.148, known as
21 Barakhamba Road, New Delhi.

D/Sir/Madam,

The under mentioned breaches as notified in this office letter No.; L&DO/LI-9/148(47)/96/298 dated 26/27.8.96 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 5.12.96, 11.4.97, 24.11.97, 27.11.98 and final notice dated 12.4.99:-



MISUSED AREA:-

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1. 1st Basement (Upper Basement) Misused In Basement area measuring:-

- (i) U.B. 31-U.B.-33-U.B.25 U.B.23A area measuring =72'-3"x32'-3"
- (ii) U.B.30 area measuring = 18'-9"x32'-3".
- (iii) U.B.-19 area measuring =11'-6"x32'-3".
- (iv) U.B. 13A-area measuring 41'-0"x22'-6".
- (v) U.B. -9-U.B.10-U.B.12A-U.B.14, U.B.-15 area measuring == 56'-9"x26'-6"+(14'x24')+(20'-9"x31'-0")
- (vi) U.B. 36A area measuring -16'x13'
- (vii) U.B. 38 area measuring -12'x16'-9".
- (viii) U.B.1A area measuring -9'x11'-3".
- (ix) U.B. 2A area measuring -11'x13'-6".
- (x) U.B.6 area measuring -26'x25'-0".
- (xi) U.B.3 area measuring -26'x25'-0".
- (xii) U.B.4 area measuring 19'x16' area is being used as office by, the various comprises.

2. IInd Basement = Middle Basement Misused In IInd Basement area measuring.

- (i) M.B. -9-M.B.-11 area = 36'x30'-0".
- (ii) M.B.-31 - M.B.-27 -M.B. 28
area measuring + (29'x30')+(16'x20)
- (iii) M.B.-24 -M.B.-23E
area measuring =(40'-6"x32')+(32'-6"x32'-6")+(18'-3"x32'-6").
- (iv) Brown Export area measuring=(34'x32') used as office by various companies.

3. Misused area In IInd Basement (Lower Basement)

- (i) Kailash Property area measuring =16'x10'-0"
- (ii) L.B.-6-L.B-8
Area measuring = (23'x16')+(23'x12')
- (iii) L.B.10-area measuring = 16'x28'-0".
- (iv) L.B.-2 -LB-4 area measuring =24'-0"x29'-0".
- (v) L.B.-17 area measuring=22'x12'.



(vi) L.B.-14 area measuring = 13'-0"x18'-0" used as office by the various companies.

Please take notice, therefore, that in consequence of your failure to remedy the aforesaid breaches, the Lessor has been pleased to determine the lease and re-enter upon the premises with effect from 10.10.2000, 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 buildings standing thereupon including all structure, erections and fittings vest now in the President of India. Shri R.L.Singla, Building Officer of the Land and Development Office, has been directed to take possession of the premises from you and he will call upon you for this purpose on 3.11.2000 at 11A.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.

5. On 26.08.1996, show cause notice was issued to the original lessees by the respondent No. 2 which reads thus: -



ANNEX-14

241 31
Registered A.D.

Government of India
Ministry of Urban Affairs and Employment
Land and Development Office
Nirman Bhawan, New Delhi.

No.L&DO/LI-9/148(4)/96/198

Dated :- 26-8-96

To

Mrs. Krishna Kapoor & Others,
16-L, Connaught Place,
New Delhi

Subject :- Premises situated on Plot No. 47, Block No 148
known as 21-Barakhamba Road, New Delhi.

D/Sir/Madam,

I am to refer to this office letter No.LI-9/148(47)/95/487 dated 18-12-95 on the above subject and to inform you that you were asked to re-validate the Bank Guarantee for a sum of Rs. 32,83,398/- upto 31-7-96 and also to furnish a complete set of sanctioned plan duly mounted with cloth. The same has not been furnished by you so far.

It is further pointed out that on inspection of the premises on 13-9-94 by the inspecting official of this office. The following breaches have been reported existing at site :-

1. 1st Basement (Upper Basement)

The following area is being misused as office by various companies.

- 1)- U.B. No.31, U.B.No. 33, U.B.No. 25, U.B.No. 23A area measuring 72'-3"X32'-3".
- 2)- U.B. No. 30 area measuring 18'-9"X32'-3"
- 3)- U.B.No. 19 area measuring 11'-6"X32'-3"
- 4)- U.B.No. 13A area measuring 41'-0"X22'-6"
- 5)- U.B.No. 9,10,12A, 14 and 15 area measuring 56'-9"X26'-6"+(14'X24')+(20'-9"X31'-0")
- 6)- U.B.No. 36A area measuring 16'X13'
- 7)- U.B.No. 38 area measuring 12'X16'-9"
- 8)- U.B.No. 1A area measuring 9'X11'-3"
- 9)- U.B.No. 2A area measuring 11'X13'-6"
- 10)- U.B.No. 6 area measuring 26'X25'-0"
- 11)- U.B.No. 3 area measuring 26'X25'
- 12)- U.B.No. 4 area measuring 19'X16'

Contd ...2/-



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2. IInd Basement (Middle Basement)

The following area is being misused by various companies :-

- 1)- M.B.-9 and M.B.-11 area 36'X30'
- 2)- M.B.-31, M.B.-27 and M.B.-28 area measuring (29'X30') + (16'X20')
- 3)- M.B.-24 and M.B. 27E area measuring (40'-6"X32') + (32'-6"X32'-6") + (18'-3"X32'-6")
- 4)- Brown Export area measuring (34'X32')

3. IIInd Basement (Lower Basement)

- 1)- Kailash Property area measuring 16'X10'
- 2)- L.B.-6 and L.B.-8 area measuring 23'X16'+23'X12'
- 3)- L.B. 10 area measuring 16'X28'
- 4)- L.B. 2,4 area measuring 24'X29'
- 5)- L.B.-17 area measuring 22'X12'
- 6)- L.B. 1A area measuring 13'X18'

4. 13th floor has been constructed at site but the detail of Unauthorised Construction can not be given as the sanctioned plan for this floor has not been received in this office.

These breaches are in contravention of clause No. 2(5) and 2(6) of the Lease deed.

You are, therefore, hereby required to remedy the breaches within 30 days from the date of this letter failing which action to re-enter upon the premises under clause 3 of the Lease deed will be taken against you. You are also liable to pay the charges of the breaches for the period of their existence these charges can be intimated to you on your making request for temporary regularisation of the breaches. You are again requested to get revalidated the Bank Guarantee for a sum of Rs. 32,83,398/- upto 31-7-97 and also furnish a set of sanctioned plan duly mounted with cloth failing which the construction carried out on 13th floor will be treated as Unauthorised construction and action for the same is being taken under the terms of lease.

If you have any point to clarify in this connection you may see the undersigned within a week from the date of this notice after prior appointment on tel. No. 3015612 between 2 to 4 P.M. in the afternoon. It may, however, be clearly understood that your inability to avail of this opportunity of personal hearing/discussion will not be accepted as 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

Copy to :- Accounts Section L-No. 217

Vigilance-cum-Legal Officer



6. Reply dated 03.01.1998 on behalf of the lessee was sent to the respondent No. 2 wherein the following averments were made: -

FROM : GOPAL ANSAL 37
U.F.F. Prakash Deep
7, Tolstoy Marg,
New Delhi-110001.

3rd January, 1998

ANNEX-P-6

The Vigilance cum Legal Officer,
Ministry of Urban Affairs & Employment,
Land & Development Office,
Nirman Bhawan,
New Delhi.

Sub : Reply to Show Cause dated 24.11.97 in respect of premises situated
at Plot No.47, Block No.148 known as 21, Barakhamba Road, New
Delhi.

Dear Sir,

Please refer to your letter mentioned above and other letters from you
on dates 26/27.8.96, 5.12.96, 11.4.97 regarding the breaches reported
after inspection of site on 13.9.94.

We most humbly submit that the said premises is developed into a
multi-storeyed commercial building, after duly paying the conversion
charges and other charges as demanded in your letter No.
LI-9/148(47)/81/455 dated 15.6.87.

The flats/stores in the said M.S. building were sold to flat buyers as
either offices or stores, as is permitted by the sanctioning authorities.
The flat buyers sale agreement between the buyers and the builders clearly
state that use to which a space being sold is permitted to be used. The
relevant clauses of the sale agreement, pertaining to the adherence of
BBL & permitted uses to be followed by flat/store buyers, is being
enclosed herewith for your ready reference.

After the possession was given to flat buyers, we understand, L&DO has
noticed certain breaches of misuse etc. in few of the stores in the
basement. Notice was served to us to remove the breaches. We are making
sincere efforts to remove the breaches, by requesting the particular
flat/store buyers, to stop misusing their premises, and threatening at
times to stop the services. But we cannot enforce it strictly, as we
do not have any legal powers. This can only be done by us through the
processes of legal action, which is highly time consuming and cumbersome,
incurring cost and time.

You are aware that NDMC, who is the local authority, has an Enforcement
Department. NDMC can take care of such matters and enforce the few
individual flat/store buyer to stop misusing their premises and get all
the breaches removed. Therefore, it is suggested that the NDMC's
Enforcement Department, or any other Govt. Department may also be requested
to help us in getting the breaches removed.

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It is also requested that the misuse/breaches done by a few of the flat/store buyers should be directly served notices, to remove the breaches, as the Government authorities are in a position to enforce the removal of the such misuses. It would be highly improper and unjustified to penalise the remaining flat/store buyers, who are law abiding and comply with stipulated and permissible uses and not committed any breaches. We would also like to put on record that copy of supplementary lease deed and tripartite agreement mentioned in your letter No. LI-9/148(47)/81/455 dated 15.6.81 have not been given to us till date. In light of these facts, it is difficult for owners to exercise such control over hundreds of flat/store buyers to prevent misuse and breaches.

Regarding submission of the sanctioned plans duly cloth mounted, it is informed that as per the standard procedure, the plans submitted by us to NDMC, will be forwarded to you by NDMC, duly stamped. You are, therefore, requested to ask the NDMC and they will forward the same.

It is, therefore, requested to give a due consideration to our request/suggestion to solve this long pending problem, amicably in a more practical and effective way.

Thanking you and assuring you of our full cooperation at all times.

Yours faithfully,

(GOPAL ANSAL)
ATTORNEY

7. Subsequently, the communication was sent to the original lessee on behalf of respondent No. 2 on 27.11.1998, in which the demand to remove the breaches was reiterated. The petitioner replied to the same *vide* letter dated 08.02.1999, requesting the respondent no. 2 to review the matter on the ground that the alleged misuse had not been done by the petitioner. However, the respondent no. 2 remained adamant with their stand and continued to ask the petitioner to remove the misuser in their letter dated 12.04.1999 issued to the petitioner. The petitioner again wrote a letter dated 18.05.1999 to the respondent no. 2, reiterating its stand that areas alleged to be under misuse were neither under their ownership nor under their possession and hence, there is no question of any misuse by the petitioner,



8. In pursuance thereof as pointed out hereinbefore, the impugned order of re-entry dated 24.10.2000 was passed by the respondent No. 2.

9. Respondent no. 4 to 29 are individual apartment owners in the multi-storeyed building constructed on plot No. 21, Barakhamba Road, New Delhi, which was given by way of perpetual lease to ex-lessees, and thereafter, permission was granted to them *vide* letter dated 12.12.1986 by respondent No. 2 to construct multi-storeyed apartments.

10. Learned counsel for the petitioner has pointed out that the show cause notice dated 26.08.1996 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. 2. 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 24.10.2000 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 24.10.2000 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