

IN THE HIGH COURT OF DELHI AT NEW DELHI

• WP(C) No.3412/2001

Yashpal Soli Petitioner
! through: Mr.S.K.Taneja, Sr.Advocate
with Mr.Amit Kumar, Advocate.

VERSUS

\$ Vice Chairman, D.D.A. & Anr. Respondent
^ through: Mr.K.K.Buchar, Advocate.

RESERVED ON: 16-09-2004

% DATE OF DECISION: 22-11-2004

• CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

For orders see WP(C) No.7372/2002.

November 22, 2004
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(PRADEEP NANDRAJOG)

R.A 246/05
Com 11163/05
(Sec 5 Am)

IN THE HIGH COURT OF DELHI AT NEW DELHI

1. WP(C) No.7372/2002

Hamdard (Wakf) Laboratories Petitioner
(India)
! through: Mr.Ravinder Sethi, Sr.Advocate
with Mr.V.K.Rao and Mr.Ravi Sikri
Advocates.

VERSUS

\$ Delhi Development Authority Respondent
^ through: Mr.K.K.Buchar, Advocate.

RESERVED ON: 03-09-2004

2. WP(C) No.1211/2002

Sudarshan Singh Dhariwal Petitioner
! through: Mr.Jagdish Vats, Mr.V.K.Sharma
with Mr.Subhash Sharma,
Advocates.

VERSUS

\$ Lt.Governor & Anr. Respondent
^ through: Mr.K.K.Buchar, Advocate.

RESERVED ON: 03-09-2004

3. WP(C) No.8239/2002

Mrs.Gurminder Kaur & Anr. Petitioner
! through: Mr.I.S.Alag, Advocate.

VERSUS

\$ Delhi Development Authority Respondent
^ through: Ms.Sangeeta Chandra, Advocate.

RESERVED ON: 13-09-2004

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4. WP(C) No.4043/98

Shri Girdhari Lal Jagnani Petitioner
! through: Mr.Ravi Sikri, Advocate.

VERSUS

\$ Lt.Governor & Ors. Respondent
^ through: Ms.Neelima Tripathi, Advocate.

RESERVED ON: 14-09-2004

5. WP(C) No.2872/2001

Sh.Kulwant Bir Singh Anand Petitioner
! through: Mr.B.T.Singh, Advocate.

VERSUS

\$ Govt.of NCT of Delhi & Anr. Respondent
^ through: Mr.J.M.Sabharwal, Sr.Advocate
with Mr.B.S.Sharma, Advocate.

RESERVED ON: 09-09-2004

6. WP(C) No.3412/2001

Yashpal Soli Petitioner
! through: Mr.S.K.Taneja, Sr.Advocate
with Mr.Amit Kumar, Advocate.

VERSUS

\$ Vice Chairman, D.D.A. & Anr. Respondent
^ through: Mr.K.K.Buchar, Advocate.

RESERVED ON: 16-09-2004

7. WP(C) No.1963/2003

Jallo Subsidiary Industries
Company (I) Pvt.Ltd. Petitioner
! through: Mr.Sandeep Sethi, Sr.Advocate
with Mr.Rajesh Gupta, Advocate.

VERSUS

\$ Delhi Development Authority Respondent
^ through: Mr.J.M.Sabharwal, Sr.Advocate
with Mr.S.K.Sabharwal and
Mr.B.B.Sharma, Advocate.

RESERVED ON: 09-09-2004

% DATE OF DECISION: 22 -11-2004

CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? yes
3. Whether judgment should be reported in Digest? yes

: **PRADEEP NANDRAJOG, J.**

1. Petitioners are perpetual lessees of land which falls under the control of DDA. Lessor's power and right under the leases is exercised by DDA. All leases are under the Government Grants Act,1895.

2. Covenants of all leases are near identical. Date of the perpetual lease and relevant clauses which are attracted

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for the determination of the issues raised be noted before embarking on the factual journey in each case.

3(i) WP(C) 7372/02: Plots No.317-18 in Block-B, Okhla Industrial Area, Phase-I, admeasuring 50096.4 sq.yds. stands demised w.e.f. 26.3.1977 under a perpetual lease dated 7.8.1984. Clause II(4) of the perpetual lease stipulates :

"(4) The lessee shall, within a period of two years from the 26th day of March one thousand nine hundred and seventy seven (and the time so specified shall be of the essence of the contract) after obtaining sanction to the building plan, with necessary designs, plans and specifications from the proper municipal or other authority, at his own expense, erect upon the Industrial Plot and complete in a substantial and workman like manner an industrial building for carrying on the approved manufacturing process or Industrial with the requisite and proper walls, sewers and drains and other conveniences in accordance with the sanctioned building plan to the satisfaction of such municipal or other authority."

3(i)(a) Clause III of the perpetual lease stipulates :

"If the sum or sums payable towards the premium of the yearly rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for one calender month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is observed that this lease has been obtained by suppression of any fact or any mis-statement, mis-representation or fraud or if there shall have been, in the opinion of the lessor, whose decision shall be

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final any breach by the lessee or by any person claiming through or under him of any of the covenants or conditions contained herein and on his part to be observed, or performed, then and in any such case, it shall be lawful for the lessor, notwithstanding the waiver of any previous cause or right of re-entry upon the industrial plot hereby demised and the buildings thereon, to re-entry upon and take possession of the industrial plot and the buildings and fixtures and thereupon this lease and everything herein contained shall cease and determine and the lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him.

Provided that, notwithstanding anything contained herein to the contrary, the lessor may without prejudice to his right of re-entry as aforesaid, and in his absolute discretion, waive or condone breaches, temporarily or otherwise, on receipt of such amount on such terms and conditions as may be determined by him and may also accept the payment of the said sum or sums or the rent which shall be in arrear as aforesaid together with interest at the rate of ten per cent per annum."

3(ii) WP(C) 1211/02 : Plot No.200 in Block A-I, Pankha Road Residential Scheme, admeasuring 189 sq.mts. stands demised w.e.f. 9.5.1969 under a perpetual lease deed dated 30.5.1970. Clause II(3) of the perpetual lease stipulates :

"(3) The lessee shall, within a period of two years from the 9th day of May one thousand nine hundred and sixty nine (and the time so specified shall be of the essence of the contract) after obtaining sanction to the building plan, with necessary designs, plans and specifications from the proper municipal or

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other authority, at his own expense, erect upon the residential plot and complete in a substantial and workmanlike manner a residential building for private dwelling with the requisite and proper walls, sewers and drains and other conveniences in accordance with the sanctioned building plan to the satisfaction of such municipal or other authority."

3(ii)(a) Clause III of the perpetual lease stipulates :

"If the balance of the premium has hereinto before mentioned or the yearly rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for one calender month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is discovered that this lease has been obtained by suppression of any fact or any mis-statement, mis-representation or fraud or if there shall have been, in the opinion of the lessor, whose decision shall be final, any breach by the lessee or by any person claiming through or under him of any of the covenants or conditions contained herein and on his part to be observed or performed, then and in any such case, it shall be lawful for the lessor, notwithstanding the waiver of any previous cause or right of re-entry upon the residential plot hereby demised and the buildings thereon, to re-entre upon and take possession of the residential plot and the buildings and fixtures thereon and thereupon this lease and everything herein contained shall cease and determine and the lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him.

Provided that, notwithstanding anything contained herein to the contrary, the lessor may without prejudice to his right of re-entry as aforesaid, and in his absolute discretion, waive or condone breaches, temporarily or otherwise,

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on receipt of such amount and on such terms and conditions as may be determined by him and may also accept the payment of the rent which shall be in arrear as aforesaid together with interest at the rate of six per cent per annum."

4(i) WP(C) 8239/02 : Plot No.19 in Narang Co-op. House Building Society Ltd. (popularly known as Narang Colony, Janakpuri) admeasuring 383.3 sq.yds. stands demised w.e.f. 20.12.1976 under perpetual lease deed dated 20.12.1976. However, it was stipulated that building would be constructed within 2 years of 1.8.1973. Clause II(5) of perpetual lease stipulates :

"(5) The Sub-Lessee shall, within a period of two years from the 1st day of August one thousand nine hundred and seventy three (and the time so specified shall be of the essence of the contract) after obtaining sanction to the building plan, with necessary designs, plans and specifications from the proper municipal or other authority, at his own expense, erect upon the residential plot and complete in a substantial and workmanlike manner a residential building for private dwelling with the requisite and proper walls, sewers and drains and other conveniences in accordance with the sanctioned building plan to the satisfaction of such municipal or other authority."

4(i)(a) Clause III of the perpetual lease stipulates :

"If the sum or sums payable towards the premium or the yearly rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for one calender month next after

any of the days whereon the same shall have

"Or any unforeseen expenditure to be made hereinafter by the lessee on any item of development to be carried out in terms of clause III of the agreement or the instructions issued by the Lt. Governor, or the directions given by the local body in this behalf."

upon and take possession of the residential plot and the buildings and fixtures thereon and thereupon this sub-lease and everything herein contained shall cease and determine in respect of the residential plot so re-entered upon, and the sub-lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him:

Provided that, notwithstanding anything contained herein to the contrary, the lessor, in his absolute discretion, or the lessee with the prior consent in writing of the lessor, may, without prejudice to his right of re-entry as aforesaid, and in his absolute discretion, waive or condone breaches, temporarily or otherwise, on receipt of such amount by the lessor or by the lessee on behalf of the lessor and on such terms and conditions as may be determined by the lessor and the lessor or the lessee whoever may be entitled may also accept the payment of the said sum or sums or the rent which shall be in arrear as aforesaid together with interest at the rate of six per cent per annum. The amounts for waiver or condonation received by the lessee from the sub-lessee shall be paid forthwith by the lessee to the lessor subject to such deductions as the lessor may, in his absolute discretion, allow to be retained by the lessee."

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5(i) WP(C) 4043/98: Plot No.111 in Block-B, Govt. Employees Sarvodya Co-op. House Building Society Ltd. admeasuring 500 sq.yds stands demised w.e.f. 8.2.1968 vide perpetual lease deed dated 8.2.1968. Clause II(5) of the perpetual lease stipulates :

"(5) The lessee shall, within a period of two years from the 20th day of June one thousand nine hundred and sixty eight (and the time so specified shall be of the essence of the contract) after obtaining sanction to the building plan, with necessary designs, plans and specifications from the proper municipal or other authority, at his own expense, erect upon the residential plot and complete in a substantial and workmanlike manner a residential building for private dwelling with the requisite and proper walls, sewers and drains and other conveniences in accordance with the sanctioned building plan to the satisfaction of such municipal or other authority."

5(i)(a) Clause III of the perpetual lease stipulates :

"If the sum or sums payable towards the premium of the yearly rent hereby reserved or any part thereof shall at any time be in arrear and unpaid for one calender month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is observed that this sub-lease has been obtained by suppression of any fact or by any mis-statement, misrepresentation or fraud or if there shall have been, in the opinion of the lessee or the lessor, and the decision of the lessor shall be final, any breach by the sub-lessee or by any person claiming through or under him of any of the covenants or conditions contained herein and in

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the lease and on his part to be observed or performed, then and in any such case, it shall be lawful for the lessor or the lessee, with the prior consent in writing of the lessor, notwithstanding the waiver of any previous cause or right of re-entry upon the residential plot hereby sub-leased and the buildings thereon, to re-enter upon and take possession of the residential plot and the buildings and fixtures thereon and thereupon this sub-lease and everything herein contained shall cease and determine in respect of the residential plot so re-entered upon, and the sub-lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him.

Provided that, notwithstanding anything contained herein to the contrary, the lessor, in his absolute discretion, or the lessee with the prior consent in writing of the lessor, without prejudice to the right of re-entry as aforesaid, waive or condone breaches, temporarily or otherwise, on receipt of such amount by the lessor or by the lessee on behalf of the lessor and on such terms and conditions as may be determined by the lessor and the lessor or the lessee whoever may be entitled may also accept the payment of the said sum or sums or the rent which shall be in arrear as aforesaid together with interest at the rate of six per cent per annum. The amounts for waiver or condonation received by the lessee from the sub-lessee shall be paid forthwith by the lessee to the lessor subject to such deductions as the lessor may, in his absolute discretion, allow to be retained by the lessee."

6(i) WP(C) 2872/01 : Plot No.2 in Block C-5, Safdarjung Development Residential Scheme admeasuring 800 sq.yds. stands demised w.e.f. 12.12.1967 vide perpetual lease deed

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dated 12.12.1967. Clause II(3) of the perpetual lease deed stipulates :

"(3) The lessee shall, within a period of two years from the 12th day of December, one thousand nine hundred and sixty seven (and the time so specified shall be of the essence of the contract) after obtaining sanction to the building plan, with necessary designs, plans and specifications from the proper municipal or other authority, at his own expense, erect upon the residential plot and complete in a substantial and workmanlike manner a residential building for private dwelling with the requisite and proper walls, sewers and drains and other conveniences in accordance with the sanctioned building plan to the satisfaction of such municipal or other authority."

6(l)(a) Clause III of the perpetual lease stipulates :

"If the yearly rent hereby reserved or any part thereof shall at any time be in arrear and unpaid for one calender month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is discovered that this lease has been obtained by suppression of any fact or by any mis-statement, mis-representation or fraud or if there shall have been, in the opinion of the lessor, whose decision shall be final, any breach by the lessee or by any person claiming through or under him of any of the covenants or conditions contained herein or on his part to be observed or performed, then and in any such case, it shall be lawful for the lessor, notwithstanding the waiver of any previous cause or right of re-entry upon the residential plot hereby demised and the buildings thereon, to re-enter upon and take possession of the residential plot and the buildings and fixtures thereon and thereupon

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this lease and everything herein contained shall cease and determine and the lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him.

Provided that, notwithstanding anything contained herein to the contrary, the lessor may without prejudice to his right of re-entry as aforesaid, and in his absolute discretion, waive or condone breaches, temporarily or otherwise, on receipt of such amount and on such terms and conditions as may be determined by him and may also accept the payment of the rent which shall be in arrear as aforesaid together with interest at the rate of six per cent per annum."

7(i) WP(C) 3412/01 : Plot No.14, Sreshtha Co-op. House Building Society Ltd. admeasuring 189.48 sq.yds. stands demised w.e.f. 4.10.1978 vide perpetual lease deed dated 4.10.1978. Clause II(5) of the perpetual lease stipulates :

"(5) The Sub-Lessee shall, within a period of two years from the 4th day of October, one thousand nine hundred and seventy eight (and the time so specified shall be of the essence of the contract) after obtaining sanction to the building plan, with necessary designs, plans and specifications from the proper municipal or other authority, at his own expense, erect upon the residential plot and complete in a substantial and workmanlike manner a residential building for private dwelling with the requisite and proper walls, sewers and drains and other conveniences in accordance with the sanctioned building plan to the satisfaction of such municipal or other authority."

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7(i)(a) Clause III of the perpetual lease stipulates :

'If the sum or sums payable towards the premium or the yearly rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for one calender month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is discovered that this sub-lease has been obtained by suppression of any fact or by any mis-statement, misrepresentation or fraud or if there shall have been, in the opinion of the lessee or the lessor, and the decision of the lessor shall be final, any breach by the sub-lessee or by any person claiming through or under him of any of the covenants or conditions herein and in the lease on his part to be observed or performed, then and in any such case, it shall be lawful for the lessor or the lessee with the prior consent in writing of the lessor, not-

"Or any unforeseen expenditure to be made by the lessee on any item of development to be carried out in terms of clause III of the agreement or the instructions issued by the Lt.Governor, or the directions given by the local bodies in this behalf."

Provided that, notwithstanding anything contained herein to the contrary, the lessor, in his absolute discretion, or the lessee with the prior consent in writing of the lessor, may, without prejudice to the right of re-entry as aforesaid, waive or condone, breaches, temporarily or otherwise, on receipt of such amount by the lessor or by the lessee on behalf of the lessor and on such terms and conditions as may be determined by the lessor and the lessor or the lessee whoever may be entitled may also accept the payment of the said sum or sums or the rent which shall be in arrear as

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aforesaid together with interest at the rate of six per cent per annum. The amounts for waiver or condonation received by the lessee from the sub-lessee shall be paid forthwith by the lessee to the lessor subject to such deductions as the lessor may, in his absolute discretion, allow to be retained by the lessee."

8. WP(C) 1963/03 : Plot No.91, Block-A, Okhla Industrial Area, Phase-II, New Delhi admeasuring 2420 sq.yards stands demised w.e.f. 3.1.1970 vide perpetual lease deed dated 18.11.1970. Lease deed is not on record, however, during arguments, counsel for the petitioners conceded that the lease deed contains the two covenants in near same language as the two clauses noted in each of the perpetual lease deeds in the other 6 petitions.

9. Demand raised by DDA as composition fee for belated construction has been challenged by the writ petitioners.

10. Vide office order F.No.AO(Prof)Misc./Composition/Pt.1/36 dated 31.10.1995, revised guidelines were issued by the Lt.Governor for recovery of composition fee for extension of period of construction. Office order reads as under:-

"In supersession to all previous orders/ instructions on the subject, Lt.Governor, Delhi is pleased to revise the guide-lines for recovery of composition fee on plots as following:

1.1 Composition fee rates per sq.mtr. For Residential, Industrial and Commercial plots.

Years	Residential	Industrial	Commercial	
			Low Turn over LSC/CSC	High Turn over CC/DC/FC2
1.	Nil	Nil	Nil	Nil
2.	Nil	Nil	Nil	Nil
3.	Nil	Nil	Nil	Nil
4.	5.00	5.00	5.00	5.00
5.	10.00	10.00	10.00	10.00
6.	50.00	60.00	90.00	180.00
7.	55.00	65.00	95.00	190.00
8.	60.00	70.00	100.00	200.00
9.	65.00	75.00	110.00	220.00
10.	70.00	80.00	120.00	240.00
11.	80.00	90.00	135.00	270.00
12.	85.00	95.00	140.00	280.00
13.	90.00	100.00	150.00	300.00
14.	95.00	105.00	155.00	310.00
15.	100.00	110.00	165.00	330.00
16.	125.00	145.00	220.00	440.00
17.	130.00	150.00	225.00	450.00
18.	135.00	155.00	230.00	460.00
19.	140.00	160.00	240.00	480.00
20.	145.00	165.00	250.00	500.00
21.	190.00	220.00	330.00	660.00
22.	195.00	225.00	340.00	680.00
23.	200.00	230.00	345.00	690.00
24.	205.00	235.00	350.00	700.00
25.	210.00	240.00	360.00	720.00

1. Local Shopping Center.
FC-Facility Centre.

2. CC-Community Centre: DC-District Centre:

Para 1.2A: Composition fee rate per sq.mtr. For Institutional plots of different sizes & CGHS.

Para 1.2B

Para 1.3

Year	Institutional	Co-operative Group Housing Societies year Rs.per sq.mtr.
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Upto 500 sq.mtr. above 500 sq.mtr.
subject to minimum as per
Column (2)

(1)	(2)	(3)	(1)	(2)
1.	Nil	Nil	1	Nil
2.	Nil	Nil	2	Nil
3.	Nil	Nil	3	Nil
4.	5.00	Nil	4.	Nil
5.	10.00	Nil	5.	Nil
6.	15.00	10.00	6.	10.00
7.	20.00	10.00	7.	10.00
8.	35.00	10.00	8.	10.00
9.	40.00	20.00	9.	20.00
10.	45.00	20.00	10.	20.00
11.	50.00	30.00	11.	45.00
12.	55.00	35.00	12.	50.00
13.	60.00	40.00	13.	55.00
14.	65.00	45.00	14.	60.00
15.	70.00	50.00	15.	65.00
16. No.extension		55.00	16.	70.00
17. No.extension		60.00	17.	75.00
18. No.extension		65.00	18.	80.00
19. No.extension		70.00	19.	85.00
20. No.extension		75.00	20.	90.00

For Institutions : As far as these rates are concerned, these would be applicable only in respect to built up area of the institution. Play ground, green area etc. are not to be counted towards Calculation of Composition charges.

FOR CGHS : All the pre-1979 societies may be deemed to have been allowed to complete construction upto 31.3.85 or within a period of 4 years from the date of taking over possession of site whichever is later.

The societies who got possession prior to 1.4.80 are liable to pay composition fee from 1.4.85 onwards. The societies that got possession after 1.4.80 shall also avail 4 year exemption and 1 year grace period and shall pay composition

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fee from the date of commencement of the 6th year.

For Govt. Department and Autonomous Bodies :

In case of Institutional plots allotted to Government Departments and also to Autonomous bodies which are to be constructed with Govt. funds, the period of construction without composition fee will be seven years. If 50% or more FAR is constructed during this period, no further composition fee for belated period of construction be charged. Moreover, the composition fee if due beyond seven years, shall be leviable only till date of completion of construction of 50% FAR on entire buildable area.

1.4 EXEMPTION : The exemption from the levy of annual composition fee in the policy will be available as follows :-

(i) Where construction is not possible because the plot has been cancelled by DDA-actual period of cancellation of plot.

(ii) Where construction is not possible because of the specific orders of non-construction of a statutory authority e.g. Registrar, Courts etc.-actual period of operation of such orders.

(iii) Where size of the plot attracts the provisions of ULCR Act, 1976 and exemption has been applied to the competent authority but is pending-maximum exemption of 3 years.

(iv) Death of the allottee and subsequent delays in mutation, sickness of the allottee from chronic and incurable disease which results in physical disablement to construct house-3 years maximum.

(v) Where due to exigencies of service condition, lessee is out of country after allotment of plot-maximum period of 5 years.

(vi) Where the lessee/sub-lessee has been transferred outside Delhi. This facility would be available to all Central/Delhi Admn./All India Service/the Public Sector Undertakings officials posted in Delhi including Defence Personnel-maximum period of 5 years.

(vii) The exemption given in (vi) above is also extended to lessee/sub-lessee who are house wives and whose husband could claim benefit as per (vi) above had they themselves been lessee or sub-lessee.

The benefit of the above clauses will not be cumulative i.e. the maximum benefit that can be availed in a case, where all the above factors are present would be 3 years in the case of allottees following under categories (iii) and (iv) above and 5 years in the case of category (v), (vi) and (vii). First 3 or 5 years as the case may be shall be considered for exemption.

An allottee would be entitled to exemption as provided above subject to his furnishing documentary evidence.

1.5 OLD LEASES : In some old leases specific terms of composition fee have been prescribed. The new rates would not be applicable in such cases. It shall be governed by specific clause, if any, contained in the relevant lease deed.

1.6 CRITICAL DATE : For post-facto extension :

(i) **CURRENT POLICY :** The date of issue of 'D' Form would be treated as the date of cessation of composition fee/penalty for non-

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construction w.e.f. 1.4.1995.

(ii) **PREVIOUS POLICIES** : In respect of the units that had obtained 'D' Form up to 21.7.1988, the policy in vogue before to 21.7.1988 would be applicable. However, this policy has to be applied in terms of clarifications issued vide F.No.BII/I(1)93 Comp.Fee/revised rate dated 3.5.1995.

For the units who had obtained 'D' Form from 22.7.1988 to 31.3.1991, the policy circulated by Circular No.F.100(16)/86 implementation/CL/Part-I dated 16.1.1989 read with its clarification dated 27.1.1989 would be applicable. However, this policy has to be applied in terms of clarifications issued vide F.No.B II/I(1)93 Comp.Fee/revised rates dated 3.5.1995.

1.7 NON-VACATION PENALTY ON INDUSTRIAL PLOTS : In case of extension of time, as far as industrial plots are concerned, no non-vacation penalty would be charged. The non-vacation cases shall be dealt with as per the provisions of the Master Plan and zoning regulations for the non-conforming use of the old site.

1.8 INTEREST : Interest on belated payment of composition fee in terms of the Demand letter.

Where ever a demand is a raised under this policy, allottee/lessee/sub-lessee would be allowed sixty days for payment of composition fee to be reckoned with from the date of issue of demand letter. Interest at the prescribed rate for belated payments would be charged.

1.9 DEMANDS ALREADY RAISED : Where ever demand letters for composition fee were issued on provisional basis by taking Dwarka project rates of 1992-93, 1993-94 and 1994-95

@ Rs.1650.65, 1980.80 and 2100.00 respectively may be treated as final if demanded amount is paid by unit as per the terms of demand letter.

In cases where demand has been raised but the payment has not been received up to 31.3.1995 or as per the terms of demand letter, the composition fee shall be reworked as per the latest policy.

Where ever demand has been raised on the applications received on or after 1.4.1995 on provisional basis supplementary demand for differential amount on the basis of this policy has to be raised immediately giving usual time for payment and providing for penal interest for default in payment.

1.10 ISSUANCE OF "D" FORM BY THE ARCHITECT :

While obtaining the 'D' form with effect from 1.11.1995 the Architect will also submit the plan as constructed at site along with the statement of compoundable items. He will also calculate compounding fee on his own, which will be treated as provisional and he will deposit such fee along with the application of 'D' form. If the statement of the Architect so certified to DDA is found to be wrong, the case may be referred to the Guild of Architects and Council of Architecture for initiating action against the Architect. Besides, DDA will also take action to set right the building within the norms of the building regulations as applicable.

2. LATE EXECUTION OF LEASE DEED/ RESTORATION : The penalty for late execution and restoration, are also levied as per the policy applicable from time to time.

sd/-
(P.R.DEVIPRASAD)
(DIRECTOR)"

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11. I may note that it was stated at the bar that ULCR Act exemption is now made applicable for 8 years period.

12. On 3.7.1997, the Lt.Governor of Delhi approved the following note dated 23.5.1997 :

"Reference observations dated 10.5.1997 of P.C., DDA. In this context a copy (photostat) of the note containing the proposed rates of composition fee for regularisation of period of default in construction beyond 25 years is placed opposite.

2. The said proposal suggests that the composition fee for each year next to the terminal year, may be increased by adding 50% of the rate of terminal year. For example, if the rate of composition fee for 25th year is Rs.210/- per sq.mtr., the composition fee for 26th year and onwards shall be chargeable as follows :

26th year Rs.315/- (Rs.210 + 50%)
27th year Rs.473/- (Rs.315 + 50%)
28th year Rs.710/- (Rs.473 + 50%) and so on
for subsequent years.

3. In the instant case, Hon'ble L.G./Lessor has already been pleased to regularise the period of default in construction upto 29th year, on payment of composition fee. In this context, it is stated that there are few more cases which are pending for want of policy decision for grant of extension beyond 25 years. The present policy prescribes the rates of composition fee for default in construction upto 25 years. The above formula is quite deterrent. In the real situation it is difficult to take back any plot and it may involve protracted litigation. If the above proposal to regularise the period of default beyond 25 years is accepted as a matter of policy, DDA will be getting handsome revenue

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as composition fee immediately and development work will also take place very soon which is the main purpose of composition fee policy.

In view of the above, it is submitted that the above proposal may be placed before Hon'ble L.G./Lessor for his kind approval, so that further necessary action in the pending cases may be taken accordingly.

sd/-
(Jagdish Chander)
Director (BL)
23.5.1997"

13. It may be noted that the composition fee stands increased by 50% of the fee for the previous year for delay in construction beyond 25th year.

14. Clauses noted above in paras 3(i) to 7(i)(a), having minor variation in language, require the lessee to complete the construction of a building on the land after obtaining sanction, construction to be completed within 2 years from the date of demise of the plot. Further, *"any breach by the lessee of any of the covenants or conditions of the lessee"* empowers the lessor to re-enter upon the plot. The lessor has the alternative right to waive or condone the breach *"on receipt of such amount and on such terms and conditions as may be determined by the lessor."*

15. Save and except writ petitioner of WP(C) No.1211/02, no petitioner questioned the right of DDA to demand

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composition fee while condoning 2 years delay in completion of a building on the demised plot. Challenge to the demand by these petitioners was on facts which according to them did not justify the demand. Petitioner of WP(C) No.1211/02 challenged the very competence and power of DDA to raise a demand for composition fee.

16. Mr.Jagdish Vats and Mr.V.K.Sharma, learned counsel for petitioner in WP(C) 1211/02 contended that admittedly the lease in question was under the Government Grants Act,1895. They urged that Sections 2 and 3 of the said Act make it clear that the terms of the grant (lease) have to take effect according to its tenor. They urged that the entire relationship between the lessee and the lessor is governed by the terms of the lease. No policy or even a statute can vary the terms of the lease. Counsel relied upon 2004 (V) A.D. Delhi 354, Jor Bagh Association Regd. & Ors. Vs. U.O.I. & Ors.

17. In making the submission afore-noted, learned counsel overlooked the term of the lease which empowers the lessor to waive or condone a breach of any term of the lease in lieu of receipt of such amount as may be determined by the lessor. Thus right to demand composition fee for belated construction flows to DDA under the terms of the lease while

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waving/condoning the breach of the covenant which enjoins upon the lessee to construct a building within 2 years of the demise of the plot. Decision relied upon shows that the grant under consideration did not empower L&D.O. to charge for temporary regularisation of unauthorised constructions and hence said demand was quashed. In view of the specific terms of the instant grant, the submission is rejected.

18. For guidance and uniformity in application, DDA has notified the composition policy, stipulating rates for composition in case lessee is in breach of the condition enjoining upon it to construct a building within 2 years of the demise of the plot. Policy of 1995, qua residential, industrial and commercial plots notifies rates for belated construction upto 25 years. On 3.7.1997, the Lt.Governor approved a note dated 23.5.1997 which stipulated charges for future years. Policy of 1995, qua institutional allotment stipulates rates for belated construction upto 15 years. I was informed at the bar that on case to case basis, DDA charges composition fee for institutional allotment for delay even beyond 15 years. However, rates were not brought on record as they were not required.

19. Policy of DDA grants exemptions vide clause 1.4. Rates notified are for each year. They increase each year. How DDA was applying the policy could be better appreciated in reference to a hypothetical case :

i)	Date of demise	1.1.1970
ii)	Expiry of 2 years within which construction had to be completed	1.1.1972
iii)	Construction completed	1.1.1985
iv)	Plot attracts ULCR Act	1976
v)	Year of ULCR clearance	1979
vi)	Court injuncts construction	1.1.1981
vii)	Injunction vacated	1.1.1983

DDA was charging composition fee from 1.1.1972 to 1976 at rates notified for the 3rd, 4th and 5th year. Due to plot attracting ULCR Act in 1976 and considering ULCR clearance was obtained 1979. DDA was not charging composition fee for said period. It was charging composition fee thereafter for 1980-81 but at the rate applicable for 10th year. Thereafter, due to court injunction, DDA would not charge for next 2 years. Thereafter, it would charge composition fee from 1.1.1983 to 1.1.1985 (2 years) but at the rate for 14th to 15th year.

20. In WP(C) No.1327/2000, S.K.Kapoor V. DDA, 107(2003) DLT 205 vide judgment and order dated 18.2.2003, S.K.Kaul, J. held that this method was impermissible. It was held that exempted years had to be excluded altogether or the previous year extended upto end of the exempted period (effect would be the same) and rate applied for the next year. As per said decision, rate applicable for the years 1973 to 1976 had to be the rates for 1st three years, for 1980-81 it was for 4th year and from 1.1.1983 to 1.1.1985, rate for the 6th and 7th year had to be applied. Afore-noted position is clear from the following observations in the judgment and order dated 18.2.2003 :

"In the present case the effect would be that the time period would start running from 21st September, 1971 and would continue till 31st December, 1971 when the general period exemption became applicable from 1.1.1972 to 31.12.1975. It was again started running from 1.1.1976 till 14.9.1976 since the Act was notified for Delhi on 15.9.1976. The petitioner would thereafter have the benefit of a period of eight years of exemption and the time period would again start running from 15.9.1984 and would continue to run thereafter. The time period for which exemptions have been granted shall not be taken into consideration for determination of the year of slab. In fact broadly speaking the first year period which would start running from 21.9.1971, would come to an end in and around 14.9.1976 and the second year of slab would start running from 15.9.1984 and would continue to run thereafter.

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There is also force in the contention of learned counsel for the petitioner that the petitioner cannot be burdened with the charges as a consequences of the delay in processing the application of the petitioner which was filed on 9.3.1999 and 31.3.2000. The application should have been processed within a reasonable period of time and at maximum within a period of about two months. Thus the time period will again not run from 6.5.1999 to 5.3.2000 when the permission was so granted and this period should also be excluded from the calculation in terms aforesaid.

The net result of the aforesaid is that the petitioner has undoubtedly paid amount in excess of what would be liable to be charged from the petitioner and this amount after due calculation is liable to be refunded to the petitioner. The needful be done by respondent No.1 within a period of six weeks from today. Since the issue of interest on the said amount was left open in terms of the order dated 7.4.2000 it is directed that the said amount shall be refunded with interest @ 9% per annum from the date of deposit till the date of the judgment which will be refunded along with the refund of the principal amount within six weeks. In case of delay in making payment to petitioner, respondent would be liable to pay interest @ 18% per annum from the date of judgment till the date of payment."

21. Decision dated 18.2.2003 afore-noted was upheld by a Division Bench of this Court in LPA.No.546/03, DDA V. S.K.Kapoor vide order dated 8.8.2003.

22. Counsel for some of the writ petitioners relied upon a decision dated 19.11.2003 delivered by S.K.Mahajan, J. in WP(C)

No.4972/01, Saroj Gupta & Ors. Vs. DDA, reported as 2004 (II) A.D. Delhi 205 to urge that rates of only last year of delay can be charged inasmuch as said rates are inclusive of delay for previous years. Following observations in the order dated 19.11.2003 were relied upon :

"Even if the petitioners are liable to pay composition fee it may be only in accordance with the rates mentioned in the guidelines for the year in question and not the cumulative rates as has been done by the impugned order."

23. Counsel contended that as per said observations, cumulative rates could not be charged.

24. I'm afraid, that is not the intent and purport of the afore-noted observations. The entire para of the order dated 19.11.2003 reads as under :

"From a perusal of the impugned demand, it appears that the DDA is claiming composition fee not at the rates which are specified by them in the guidelines for calculation of composition fee but what they are doing is that they are adding the rates of all the earlier period and are calculating the composition fee at a cumulative rate. The demand raised by the respondents on the face of it is not only wholly arbitrary but in my opinion, no reasonable officer in the department can arrive at such a demand. Even if the petitioners are liable to pay composition fee at may be only in accordance with rates mentioned in the guidelines for the year in question and not the cumulative rates as has been done by the impugned order. In another judgment passed in CWP No.1327/2000, this

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Court has already held that the respondents are not entitled to claim composition fee in the manner they are claiming. In my opinion, therefore, it would be appropriate that the case is remanded to the respondent to take afresh decision in the manner after calculating the composition fee in accordance with this judgment and the judgment of the Court in CWP.No.1327/2000."

25. The words "*cumulative rates*" have to be understood in the context of the decision of S.K.Kaul, J. They mean that while cumulating the years, exempted period has to be treated as not existing and rates applied accordingly, treating the year next after the exempted period as the first succeeding year after the year for which rates were applied preceding the exempted period. This is clear when S.K.Mahajan, J. directed that demand be calculated as per decision of S.K.Kaul, J. in WP(C) No.1327/2000 which decision, vide paras 7 and 8 hold as under :

"7. I have considered the submissions in this behalf and I am in agreement with the submission of learned counsel for the petitioner. Once a general period of exemption is granted or the period of eight years is exempted that is no question of time period running in the exemption period. Thus, it is the relevant slab which would be applicable to the case of the petitioner for that period and not for a subsequent year by merely not levying the composition fee for the earlier period counting the same towards the time period.

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8. In the present case the effect would be that the time period would start running from 21st September, 1971 and would continue till 31st December, 1971 when the general period exemption became applicable from 1.1.1972 to 31.12.1975. It was again started running from 1.1.1976 till 14.9.1976 since the Act was notified for Delhi on 15.9.1976. The petitioner would thereafter have the benefit of a period of eight years of exemption and the time period would again start running from 15.9.1984 and would continue to run thereafter. The time period for which exemptions have been granted shall not be taken into consideration for determination of the year of slab. In fact broadly speaking, the first year period which would start running from 21.9.1971, would come to an end in and around 14.9.1976 and the second year of slab would start running from 15.9.1984 and would continue to run thereafter."

26. Land is scarce in Delhi. It has to be utilized to its maximum potential. Developed land has to be put to use as quickly as possible. Speculators who buy land not out of need but out of greed have to be kept at bay. Policy of DDA that lease hold plots should be constructed upon with reasonable dispatch under pains of re-entry or payment of charges to have the delay condoned, in principle, is in public interest. But, executive cannot fetter its discretion for it may amount to exclusion of relevant facts of an individual case. It is settled law that a policy deviation of the executive to fetter its discretion, if found unreasonable may be quashed as being arbitrary and violative

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of Article 14 of the Constitution. In the decision reported as AIR 1979 SC 1803, Organo Chemical Industries & Anr. Vs. U.O.I., the Supreme Court in the context of Section 14B of the Employees Provident Fund & Misc. Provisions Act, 1952 and a tabular statement stipulating penalty to be charged under the Act Regulating levy of damages for late payment of P.F. dues, cited with approval its dicta in (1976) 3 SCR 365, Com. Of Coal Mines P.F. Dhanbad Vs. J.P.Lall that determination of damages is not an inflexible formula and that the authority is required to apply its mind to the facts and circumstances of the case.

27. No one can take advantage of his own wrong and that no one should be penalised for no fault of his are two salutary guiding principles of law while interpreting a policy decision or its applicability. If a party is prevented from doing of an act due to external reasons and for no fault of his, it would be discharged from the obligations imposed upon the party. Policy of the DDA vide clause 1.4 recognises these principles, but places unreasonable restriction of period in case of plot attracting ULCR Act to 3 years exemption, since made 8 years, and delay occasioned due to mutation. In case of cancellation of allotment and restoration and in cases of orders prohibiting construction, policy rightly excludes entire period.

28. There may be other factors as well. One is to be found in order dated 18.2.2003 of S.K.Kaul, J. There was shortage of cement and steel from 1.1.1971 to 31.12.1975. These being 2 essential products for any construction, DDA rightly gave a general amnesty. It shows that DDA itself recognises that where lessee is not at fault and factors beyond his control have impeded construction, the lessee must get the benefit of the entire period without levy of composition fee.

29. Time to get into the factual matrix. I would proceed to analyse the facts in context of: whether the lessee was prevented from constructing upon the plot due to external factors, be they attributable to DDA or a statutory enactment or due to any other statutory authority or was it due to the inaction of the lessee. Before, I do so, one point to be noted is that in the earlier policy there existed a salutary residual power, which for unexplainable reasons is missing in the new guidelines. Previous policy, vested in the Vice Chairman, DDA, a power to condone the entire delay without penalty depending on the merits of the case. Situations are wide and varied. It is difficult to foresee all situations where the lessee may not be at fault. It is advisable for DDA to amend its policy and have a 'catch all' residual clause.

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30. Time to embark on the factual journey.

WP(C) No.7372/02

31(i) Demand which is challenged reads as under :

"M/s Hamdard Wakf Laboratories,
Hamdard Building,
2A/3, Asaf Ali Road,
New Delhi

Sub: Grant of extension of time for completing
the construction on plot No.B-317-318, in
Okhla Industrial Area, Phase-I.

Sir,

With reference to your letter dated 3.4.2002 on the subject cited above, I am directed to inform you that the Hon'ble L.G. has been pleased to grant extension of time for 3 years upto 30.6.2004 for completing the construction on above mentioned premises, subject to payment of composition fee of Rs.7,36,24,955/-.

You are, therefore, requested to deposit Rs.7,36,24,955/- on a/c composition fee for the period 1.7.2001 to 30.6.2004, within 60 days from the date of issue of this letter, failing which the allotment will be cancelled without giving any notice.

Yours faithfully,

sd/-

Dy. Director (Indl.)
DDA, New Delhi."

31(ii) Additional prayer is to direct DDA to grant reasonable extension of time, without levy of penalty, for completion of building on plot No.B-317 & 318, Okhla Industrial Area, Phase-I, New Delhi.

31(iii) Petitioner is a charitable institute (Wakf) founded in the year 1906. On applying, vide allotment letter dated 11.1.1966, DDA allotted two plots bearing No.68 and 69, Okhla Industrial Area, Phase-I, each measuring 5 acres to the petitioner at a provisional rate of Rs.30/- per sq.yard. 75% premium in the sum of Rs.10,89,00/- was demanded, to be paid by 15.3.1966. 25% balance premium was to be paid when land was developed. It was intimated that land being undeveloped it would take sometime before possession would be handed over. Petitioner paid the sum of Rs.10,89,000/- within time.

31(iv) Vide letter dated 17.2.1977 possession of plot No.317 & 318, Block-B, Okhla Industrial Area, Phase-I, was offered. The 2 plots measured 10 acres. Petitioner took possession on 26.3.1977. Lease deed being not executed, on 19.10.1977, petitioner asked DDA to issue a no objection certificate for submission of building plan for sanction. Urban (Land Ceiling & Regulation) Act,1976 had come into force in Delhi on 17.2.1976. Petitioner applied for exemption under Section 19(1)(iv) of the said Act. On 26.11.1977, DDA was intimated of said fact. On 13.10.1978 the Competent Authority under the ULCR Act,1976 informed the petitioner that land held by a public charitable or religious trust falls outside the purview of

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the Act. Intimating DDA of letter dated 13.10.1978 sent by the Competent Authority under the ULCR Act, 1976, vide letter dated 22.12.1978, petitioner wrote to DDA to grant it no objection certificate and simultaneously initiate action for execution of the lease deed. Petitioner sent reminders on 22.3.1980, 9.4.1980 and 22.12.1980. In the meanwhile, DDA raised balance demand which was paid by the petitioner.

31(v) On 8.4.1981, DDA wrote to the petitioner that DDA had resolved that all persons to whom more than 2000 sq.mtrs. land was allotted, should surrender possession of land beyond 2000 sq.mtrs. Petitioner protested vide letter dated 12.5.9.1982. On 23.4.1982, petitioner once again sought permission to construct upon the land. DDA responded vide letter dated 24.1.1984 reiterating that excess land beyond 2000 sq.mtrs. be surrendered. Once again, petitioner protested vide letter dated 4.2.1984.

31(vi) DDA relented. On 7.8.1984, it executed the lease deed, but surprisingly inserted a clause that petitioner would construct a building within 2 years of 26.3.1977 (the date when petitioner was handed over possession). DDA obviously acted mechanically, forgetting that it was DDA which had prevented construction by not granting the N.O.C. which petitioner had

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sought, alternatively by not executing the lease deed. One of the two being a condition precedent for the petitioner to obtain a sanction for construction.

3(vii) On 28.2.1995, petitioner sought time of 2 years w.e.f. date of execution of the lease deed, informing DDA that on taking possession it could not construct because DDA neither issued N.O.C. nor executed the lease deed. Getting no response, petitioner sent a reminder on 5.9.1985.

3(viii) On 18.11.1985, DDA directed the petitioner to obtain exemption under Section 20 of the ULCR Act, 1976. In response, vide letter dated 12.12.1985, petitioner informed DDA that vide letter dated 22.12.1978, it had already sent letter dated 13.10.1978 issued by the Competent Authority ULCR Act, 1976 informing that the land of the petitioner was outside the purview of the said Act. DDA persisted that petitioner should obtain a clearance under the ULCR Act, 1976. Probably, DDA was used to only certificate of exemption granted under Section 20 of the ULCR Act, 1976. It did not comprehend letter of the Competent Authority stating that petitioner's land was outside the purview of the Act. Finally, on 25.1.1989, DDA called upon petitioner to submit building plan for sanction. On 17.2.1989, petitioner informed that it had already submitted the requisite plans for

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sanction. However, another set was submitted under cover of said letter.

31(ix) DDA brought the matter back to square one. Vide letter dated 1.2.1990 it required the petitioner to :

"Furnish copy of the exemption of excess land issued by the Competent Authority ULCR Act,1976."

31(x) In response, vide letter dated 22.2.1990, petitioner once again clarified that the Competent Authority had already opined that exemption was not required as the land of the petitioner fell outside the purview of the Act, being land held by a public charitable body, as per provisions of Section 19 of the Act. Getting no response, on 18.4.1990, petitioner wrote a reminder to DDA praying for release of plans with time extended without payment of penalty.

31(xi) DDA appropriated to itself the role of the Competent Authority under ULCR Act,1976. Vide letter dated 28.5.1990, it required petitioner to obtain exemption. DDA wrote as under :

"The General Manager,
Hamdard (Wakf) Laboratories,
Post Box No.1507,
Hamdard Marg,
Delhi: 110006.

Sub: Plot No.317-318, Block 'B' in Okhla
Industrial Area, Phase-I.

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Dear Sirs,

With reference to your letter dated 1q8.4.90 and the copy of the letter No.36(11)24/88/L&B/ULCR/960 dt. 21.9.89 issued by the Under Secy. ULCR presented by you in this office on 12.3.90 on the above cited subject, I am directed to inform you that the case has been examined by the Law Department, DDA and have observed that the land in question was neither owned nor possessed by you as on the date of commencement of UL (C&R) Act, 1976. The date of handing over possession of above plots to you is 26.3.1977, whereas the Act came into force in the Union Territory on 17.2.1976. As a result, exemption under Section 19(1) of the Act does not apply and consequently you have to file the statement required under Section 15 of the Act and thereafter the provisions of Section 6 to 14 shall apply to the land held in excess of ceiling limits.

You are, therefore, advised to comply with the requirement of Section 15 of UL (C&R) Act, 1976, at the earliest to process your case further.

Yours faithfully,
sd/-
Deputy Director (Indl.)
DDA"

31(xii) Vide letter dated 26.6.1990, petitioner clarified the matter to DDA. On 24.9.1990, DDA wrote to the petitioner as under :

"No.F.6(65)64-LSB(I)/4449
From
Dy.Dlr. (Indl.)
D.D.A.

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To,
M/s Hamdard (Wakf) Laboratories,
P.O. Box No.1507,
Hamdard Marg,
Delhi-6.

Sub: Plot No9.B-317-318, Okhla Indl.Area,Ph-I

Sir,

With reference to your letter dated 26.6.1990 on the subject cited above, I am directed to request you to obtain the necessary information to the effect that the land U/r falls under the provisions laid down u/s 19(1)(iv) of the ULCR Act and it is applicable to this land. The Competent Authority may also be requested to intimate if the land was not held by the trust on the date of commencement of the Act in 1976, and whether the provisions of Sec.19(1)(iv) of ULCR are applicable or not.

Yours faithfully,
sd/-
Deputy Director (Indl.)
DDA"

31(xiii) Petitioner was sent on a goose chase. It wrote a letter dated 12.12.1990 to Delhi Administration for its opinion. Correspondence ensued. Nothing happened. Year 2000 was reached. ULCR Act,1976 was abolished. On 8.5.2000, petitioner brought said fact to notice of DDA but plans were not released.

31(xiv) On 4.11.2000, DDA issued a public notice. Following was notified :

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ATTENTION DDA PLOT HOLDERS

The allottees/lessees/sub-lessees of residential, commercial and institutional plots who have been allotted plots by the Delhi Development Authority are reminded that the last date for completion of construction on their plots is 30th June, 2001. Those who have not constructed the building on their plots even after lapse of the prescribed period, are advised in their own interest to get the period of default in construction regularised by making an application to the Authority and complete the construction by or before the stipulated date. It may be noted that no further extension beyond 30th June, 2001 will be granted under any circumstances and failure to complete the construction will lead to determination of lease and resumption of plot without any further notice.

DIRECTOR (COORDN)/LD"

31(xv) On 3.1.2001, petitioner responding to the public notice and requested for extension of time to construct without levy of penalty. On 12.1.2001, DDA informed petitioner as under :

"M/s Hamdard (Wakf) Laboratories,
Hamdard Building,
2A/3, Asaf Ali Road, New Delhi.

Sub : Waive of the penalty in respect of plot
No.B-317-318, Okhla Indl.Area, Ph.-I

Sir,

With reference to your letter dated 3.1.2001 on the subject cited above, I am directed to inform you that your request for waiver of penalty for composition fee up to 30.6.2001 has been

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acceded to by Hon'ble V.C., DDA.

Yours faithfully,
sd/-
Deputy Director (Indl.)
DDA, New Delhi"

31(xvi) Building activity stood transferred to M.C.D. in the intervening period. On 18.1.2001, armed with DDA's permission to allow construction, petitioner submitted requisite application for sanction to MCD. The Municipal Corporation of Delhi sought clarification. On 24.5.2001, DDA clarified that building had to be completed by 30.6.2001.

31(xvii) To my mind, DDA acted mindlessly once again. Oblivious of the fact that an institutional building on a 10 acre plot had to be constructed, in January, 2001 DDA granted time up to 30.6.2001 for completion of construction. God alone knows how in such a short time one could complete construction of such a large building. Correspondence continued. Petitioner filed a writ petition being WP(C) No.2549/02 seeking a direction to DDA to extend time without levy of penalty. On 18.9.2002, counsel for DDA made a statement that matter was referred to the Lt.Governor. Taking on record said statement, vide order dated 18.9.2002, WP(C) No.2549/02 was disposed of with a direction that decision

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would be taken within 4 weeks.

31(xviii) Vide letter dated 21.10.2002 (noted in para 31(i) above) DDA raised a demand of Rs.7,36,24,955/- as composition fee for the period 1.7.2001 to 30.6.2004. In other words, DDA granted time upto 30.6.2004 to complete construction on payment of the sum demanded. Said demand is under challenge.

31(xix). Vide order dated 18.11.2002, this Court directed DDA to grant no objection on petitioner depositing Rs.25,00,000/-. Petitioner deposited said sum on 28.11.2002. DDA granted No Objection on 24.12.2002. MCD released the sanctioned plans on 7.1.2003, granting time upto 6.1.2005 to complete construction. It be noted that building activity stood transferred to MCD.

31(xx). Petitioner has since completed the construction evidenced by the fact that on 26.8.2004, it has applied for a completion certificate which was refused by MCD, inter alia, on the ground that DDA had granted time for completion upto 30.6.2004.

31(xxi). It was admitted at the bar that demand of composition fee is at the rates applicable for 24th to 26th year delay.

31(xxii). Facts on record clearly bring out a recalcitrant, obstructive and in any case a non-cooperative and non-

understanding attitude of DDA. Entire fault lies on the shoulders of DDA. Having handed over possession of the plot on 26.3.1977, DDA neither executed a lease deed nor granted NOC to the petitioner to construct. It executed a lease deed on 7.8.1984 but inserted a clause that petitioner would complete construction in 2 years from 26.3.1977, an act of impossible performance unless time could be rewinded. DDA thereafter again raked up ULCR clearance issue, not realising that Competent Authority under the Act had held in favour of the petitioner. DDA had no authority to sit over judgment on the certificate dated 13.10.1978 issued by the Competent Authority. Thus, when DDA granted extension of time it had to be without levy of composition fee. DDA cannot take advantage of its own wrong. Petitioner is not at fault.

31(xxiii). Demand raised, in any case, is contrary to law laid down in S.K.Kapoor's case, reiterated in Saroj Gupta's case.

31(xxiv). WP(C) No.7372/02 is accordingly allowed. Demand raised vide letter dated 21.10.2002 in the sum of Rs.7,36,24,955/- is quashed. Petitioner was granted time upto 30.6.2004. It has completed construction of the building by 26.8.2004. MCD is not granting completion since time granted by DDA expired on 30.6.2004. Petitioner has suffered enough.

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DDA is directed to grant extension of time upto 31.12.2004 without levy of any composition fee to enable the petitioner to obtain the completion certificate. DDA is directed to refund the sum of Rs.25,00,000/- deposited by the petitioner together with interest @ 10% per annum from the date of deposit till date of refund. MCD would act in conformity with instant direction.

31(xxv). WP(C) No.7372/02 is allowed as per para 31(xxiv) above. Petitioner would be entitled to cost against DDA in the sum of Rs.25,000/-.

WP(C) No.1211/02 :

32(i) Vide lease deed dated 30.5.1970 plot in question was demised to petitioner w.e.f. 9.5.1969. Petitioner was to construct upon the plot within 2 years of 9.5.1969. Petitioner keep quite and only on 16.3.2001 sought extension of time to complete construction. Reason stated for not constructing is

"Para 6 of writ petition : Due to reasons beyond the control of the petitioner, he has been unable to construct upon the plot in time."

32(ii). Since DDA issued a public notice on 4.11.2000 (noted in para 31(xiv) above), petitioner applied for extension of time to complete construction vide letter dated 16.3.2001. On 17.5.2001, DDA called upon the petitioner to attend its office with documents pertaining to the property. Petitioner did not

meet the concerned officer and instead, on 22.5.2001, sent photocopy of challans evidencing payment of ground rent. Vide letter dated 12.6.2001, DDA again called upon petitioner to attend its office along with original documents pertaining to the property. Petitioner did not do so and instead sent letter dated 14.6.2001 enclosing original ground rent receipts.

32(iii). Petitioner states that he met an official from DDA who told him that extension had been granted upto 30.6.2001. However, on 10.9.2001, petitioner received a letter granting extension of time to complete construction upto 31.12.2001 on payment of Rs.30,00,000/- as composition fee.

32(iv). On 18.9.2001, petitioner protested. On 7.11.2001 DDA reiterated the demand. It was indicated to the petitioner that as against 2 years period already granted under the lease, further grace was allowed upto 10 years i.e. 9.5.1979. Demand raised was for 11th year onwards upto 33rd year. Rate applied is the rate applicable for 11th to 33rd year.

32(v). Defence of DDA is that petitioner could avail of general amnesty as per public notice dated 4.11.2000 if petitioner applied for and completed construction upto 30.6.2001. Petitioner applied for extension only on 16.3.2001 and when asked to appear with original documents of title, did

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not do so and kept on sending challans evidencing payment of ground rent. When documents of title were shown, time under general amnesty had expired.

32(vi). In rejoinder, petitioner relies upon a circular of DDA as per which, if plot was cancelled it could be restored on payment of cancellation charges @ Rs.300/- per sq. meter. Petitioner also relies upon sale instances of properties to bring home the point that composition fee demanded was more than the value of the property

32(vii). One fact, I may note. Petition has been filed through a general attorney. Correspondence with DDA has been done by the said attorney.

32(viii). Petitioner gives no reason for not constructing within time. Justification that reasons were beyond the control of the petitioner are no reasons. Facts had to be stated. It was then for the authority and thereafter for the Court to determine whether they could be reasons beyond the control of the petitioner.

32(ix). General amnesty was announced on 4.11.2000. It applied only if requisite permission was taken and construction completed by 30.6.2001. Petitioner ought to have known that it would take some time before his application was considered

and sanctioned. Petitioner ought to have known that sanctioning of a plan takes time. Petitioner ought to have known that construction takes time. Yet, only on 16.3.2001 requisite application was made. Thereafter, when required by DDA to produce original documents of title, petitioner chose to send what he felt was relevant.

32(x). General amnesty was not open ended. Petitioner remained sleeping and allowed time to go by. He must suffer for his conduct. It cannot be helped. That composition fee is more than the value of the property is neither here nor there. If petitioner relies on the circular stipulating rates of restoration on cancellation, it is for the petitioner to have the plot cancelled. But he must remember that restoration is not a matter of right, but composition fee is. It is also to be noted that public notice dated 4.11.2000 did not waive penalty. It notified that beyond 30.6.2001 no extension would be granted.

32(xi). One relief must flow to the petitioner. Having condoned 10 years delay, rate applicable for the next 11th to 33rd year would be for 1st to 23rd year as per judgment in S.K.Kapoor's case.

32(xii). WP(C) No.1211/02 is disposed of with a direction that on the petitioner filing an undertaking within 3 weeks from date

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of this judgment that he would pay the composition fee as determined in terms of para 32(xi) above, DDA would redetermine the composition fee as per para 32(xi) above within 4 weeks of receipt of undertaking and on the petitioner paying the same within time granted by DDA he would be granted reasonable time to complete construction.

32(xiii) No costs for this petitioner.

WP(C) No.8239/02 :

33(i) Plot No.19, Narang Co-op. House Building Society Ltd. popularly known as Narang Colony, Janakpuri was demised in perpetuity to petitioner No.2 along with her father S.Trilochan Singh, vide perpetual lease deed dated 26.12.1976 w.e.f. said date. They had to construct a residential building thereon within 2 years. It was stipulated that said 2 years period would commence from 1.8.1973. However, vide letter dated 23.8.1983 time was granted up to 31.12.1984 for construction of building. S.Trilochan Singh died on 16.3.1982.

33(ii) On 1.4.1985, mutation was applied as per will executed by S.Trilochan Singh. On 17.4.1985, DDA sought certified copy of the will and relinquishment deeds executed by 2 legal heirs of the deceased. On 30.3.1986, wife of the deceased submitted photocopies of the documents sought for.

On 25.6.1986, DDA demanded further documents. On 3.11.1986, wife of the deceased submitted some documents. Not all documents being submitted, on 1.7.1987 DDA once again wrote on the issue. It was only on 3.9.1992 that all documents were submitted. Mutation was effected on 21.9.1992. On 26.3.2001, petitioner applied for extension of time to complete construction.

33(iii). Vide letter dated 1.5.2001, DDA allowed extension of time upto 30.6.2001 on payment of Rs.11,32,290/- as composition fee. Said fee was demanded w.e.f. 1.1.1985 i.e. 12 year from 1973. Rates charged were from 12th year onwards.

33(iv). On 19.11.2003, DDA filed documents showing composition fee to be Rs.15,79,132/- for delay upto 30.6.2004. Calculations show it being charged w.e.f. 1.1.1985; rates applicable are from 12th year onwards.

33(v). Time for construction having been granted upto 31.12.1984, DDA is not demanding any composition fee upto said date. Dispute is for latter period. Mutation, on death of S.Trilochan Singh was applied for 1.4.1985. It was allowed on 21.9.1992. Record shows that petitioners remained negligent in submitting requisite documents. Clause 1.4 (iv) of the policy permits 3 years period to be exempted on death of the

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lessee. It is a reasonable period for successor-in-interest to obtain mutation. Petitioners should have applied with all documents as per policy when they sought mutation. They chose to apply callously. Delay in mutation is wholly attributable to them.

33(vi). Having obtained mutation on 21.9.1992, petitioners kept mum till 1.5.2001. No explanation is forthcoming for this. They even did not act with promptness when DDA issued public notice on 4.11.2000. Had they applied well in time, DDA would have given time upto 30.6.2001 as per scheme. Petitioners applied on 1.5.2001. Reasons in para 32(ix) and 32(x) above apply to these petitioners. Besides, as noted in para 32(x) notice did not waive penalty.

33(vii). Petitioners are thus entitled to partial relief. DDA has granted extension upto 31.12.1984. They would be entitled to 3 years further benefit under clause 1.4(iv) of the policy. Further, while charging composition fee w.e.f. 1.1.1988, DDA would treat said year as 1st year and raise a demand accordingly till 30.6.2004.

33(viii). DDA is directed to, within one month, rework demand on the petitioners w.e.f. 1.1.1988 till 30.6.2004, treating the year 1988-89 as 1st year of default. Under order dated

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20.12.2002 this court permitted petitioners time to construct on the petitioners depositing Rs.11,32,290/-. It was further directed that in case petitioners succeed, amount would be refunded with interest @ 12% p.a. DDA is accordingly directed to refund the excess amount received by it from date when sum of Rs.11,32,290/- was received by DDA till date of refund with 12% interest per annum.

33(ix) No costs to these petitioners.

WP(C) No.4043/98 :

34(i) Vide perpetual sub-lease deed dated 12.6.1970, plot in question was demised to the petitioner w.e.f. 8.6.1968. It may be noted that as per the perpetual sub-lease deed, lease of all residential plots in favour of Government Employees Sarvodya Co-op. House Building Society Ltd. was executed in favour of the society on 8.2.1968. Clause II(v) required the petitioner to construct a building within two years w.e.f. 20.6.1968.

34(ii). As per the petitioner, due to reasons beyond his control, he could not construct a building on the plot. Reasons indicated are that in 1981, his services were illegally terminated. His second daughter became widow within three years of her marriage. His daughter became financially dependent upon him.

34(iii). According to the petitioner, it was only in the year 1993 that his financial position improved. On 30.7.1993, he submitted an application to the DDA for grant of extension of time for construction on the plot. Instead of considering the application, petitioner states that he received a show cause notice on 9.5.1994 calling upon the petitioner to show cause as to why lease be not determined as he was alleged to have sold the plot. Petitioner refuted the said allegation made in the show cause notice, vide letter dated 4.6.1994.

34(iv). On 15.12.1994, petitioner again wrote to DDA praying that time be extended up to March, 1995 so that he could complete construction on the plot. Reminders were sent on 2.2.1995, October, 1996 and 1.2.1998.

34(v). On 13.2.1998 petitioner received a letter from DDA informing him that on payment of composition fee in sum of Rs.32,27,831/-, time was extended for completion of construction upto 31.12.1998. Petitioner submitted various representations to various authorities. He received no response and finally, as per the petitioner, he had no option but to file present petition praying that demand be quashed. Mandamus was prayed against DDA that it should permit extension of time upto 31.12.1999 for completion of construction.

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34(vi). In the counter affidavit filed, it is stated that petitioner was responsible for the entire delay and, therefore, was liable to pay the composition charges. On the issue of belatedly conveying to the petitioner the composition charges, it is stated that application was received from the petitioner in July, 1993 but by then 25 years had lapsed. Policy envisaged grant of time upto 25 years. Further extension policy was under consideration. It was cleared by the Lt. Governor only in the year 1997. When approved by the Lt. Governor, demand of composition fee was raised.

34(vii). Details of yearwise computation of composition fee have not been indicated by the petitioner or by DDA.

34(viii) From the pleadings of DDA, it is apparent that DDA is treating 8.2.1968 as the commencement of period of two years within which the petitioner had to construct building on the plot.

34(ix). It has to be noted that on 8.2.1968, lease was executed in favour of the society. Perpetual sub-lease was executed in favour of the petitioner on 12.6.1970. In the absence of the perpetual sub-lease, petitioner could not commence construction of the building. Two years time within which the petitioner had to construct would, therefore, commence from 12.6.1970 and not 8.2.1968.

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34(x). Admittedly, petitioner applied for extension of time in July, 1993. Admittedly, extension policy of DDA did not permit compounding beyond 25 years. DDA was reckoning 25 years period effective from 8.2.1968. Policy was under consideration as to what should be done if delay exceeds 25 years. Only in 1997, Lt. Governor approved the rates at which compounding for further belated construction could be granted. It is, therefore, not a case where DDA has acted unreasonably.

34(xi). Petitioner has made bald averments that his financial position was not sound. He claims to have lost his job in the year 1981. Petitioner claims to have got his daughter married prior to 1981. He claims to have got her re-married in 1979. Petitioner claims to have got his elder son married in 1981. His younger daughter was married in 1986 and the younger son was married in 1987.

34(xii). Aforesaid would reveal the resources with the petitioner. It is not a case of such financial hardship that one could hold in favour of the petitioner.

34(xiii). Decision of DDA to charge composition fee cannot be faulted. However, rates to be applied have to be in conformity with the decision of S.K.Kaul, J. in S.K.Kapoor's case.

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34(xiv). Calculation of composition fee in other cases, wherever filed, shows that DDA charges rates applicable for 3rd year and onwards in a cumulative fashion i.e. the rate applicable for the relevant years in succession. Exempted years are not charged for but thereafter, for the period for which liability is attracted, DDA charges applicable rate for the year in question. That has been held to be impermissible. In the instant case, there is no gap year which attracts no liability. To my mind, since composition fee is to be charged for delay beyond the sanctioned 2 years, 3rd year would be the 1st year of default and rate to be attracted would be the 1st year default rate. To apply the policy otherwise would mean that for two years originally granted, applicable rates would be nullified since for two years, no composition fee has to be paid.

34(xv). Limited relief is granted to this petitioner. Impugned demand is quashed. Mandamus is issued to DDA to treat the liability of the petitioner to construct upon the plot within two years effective from 12.6.1970. Demand would be raised w.e.f. 12.6.1972. Composition fee would be charged by applying the rates of 1st year from 12.6.1972 to 11.6.1973 and so on till the period ending 31.12.1998. Since the present petition has remained pending in this Court from 1998 till date, petitioner

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should not be burdened. DDA would not charge composition fee w.e.f. 1.1.1999. Petitioner would be granted extension of time till 31.12.2005 if he pays revised demand with four weeks.

34(xvi) Petition disposed of as per directions in para 34(xv) above. No costs.

WP(C) 2872/01 :

35(i). Vide perpetual lease deed dated 12.12.1967, w.e.f. the same date, plot in question was demised in perpetuity to the petitioner. Vide Clause II(iii), petitioner was to complete construction of a building with two years. Petitioner got time for construction extended upto 12.12.1975 on payment of composition fee in sum of Rs.3344.52.

35(ii). Petitioner applied for sanction of building plan to DDA. Sanction was granted on 4.1.1975 by the Building Section. It was valid for two years. Prior thereto, Lease Administration Branch vide its letter dated 12.8.1975 granted extension of time to complete the construction only upto December, 1975.

35(iii). Little did the Lease Administration Branch realise that building plan required to be sanctioned before construction could commence. It could not be expected that construction would be completed by the end of December, 1975.

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35(iv). In February, 1976, ULCR Act came into force. Plot in question admeasured 800 sq.yards. It attracted ULCR Act, 1976. Petitioner had to seek exemption of the excess land under Section 20 of the Said Act. On 15.9.1976, petitioner submitted the requisite application to the Competent Authority ULCR Act, 1976.

35(v). Competent Authority did not take a decision on the application with promptness. On 29.10.1980, DDA issued show cause notice as to why lease be not cancelled alleging violation of the conditions of the lease which mandated that petitioner would complete construction of a building within two years.

35(vi). Petitioner responded on 13.12.1980 pointing out that till he obtained clearance under ULCR Act, 1976, he could do nothing in the matter.

35(vii). On 22.12.1980, DDA required the petitioner to submit proof of having filed requisite application under the ULCR Act, 1976.

35(viii). Vide order dated 17.2.1981, Competent Authority declared 208.13 sq.meter of land as excess vacant land. Petitioner challenged the order dated 17.2.1981 by filing an appeal. On 7.4.1981, the Appellate Authority required the

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petitioner to submit certain documents. Petitioner submitted the same.

35(ix). On 12.4.1985, DDA required the petitioner to submit all correspondence with the Competent Authority pertaining to petitioners application for exemption of excess land under Section 20 of ULCR Act, 1976. Petitioner responded on 24.4.1985.

35(x). Rather than consider the documents submitted by the petitioner, on 27.5.1987, DDA issued another notice to the petitioner calling upon him to show cause as to why lease be not determined for violation of the condition requiring the petitioner to complete construction of the building within two years. Petitioner sent a reply on 11.7.1987.

35(xi). Since he was facing problems with the DDA, on 29.2.1988, petitioner requested the Appellate Authority under the ULCR Act, 1976 to expedite the hearing of the appeal.

35(xii). ULCR Act, 1976 came to be repealed and in case possession of excess land was not taken over, proceedings lapsed. On 21.3.2001, petitioner wrote to DDA that from 1976 till repeal of ULCR Act, 1976, he was prevented from constructing due to applicability of the Act. He prayed that time be extended for completion of construction.

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35(xiii). On 16.4.2001, DDA granted extension of time upto 30.6.2001 on payment of composition fee amounting to Rs.1,50,64,748/-.

35(xiv). Present petition was filed praying that the composition fee demanded be quashed. Petitioner prayed that period effective from 17.2.1976 to 12.1.1999 be excluded while calculating the composition fee. Petitioner has also prayed that circular dated 5.3.1977 which restricts maximum period of 8 years due to applicability of ULCR Act, 1976 be quashed.

35(xv). Response of DDA is the usual response.

35(xvi). I may note that extension of time was granted to the petitioner upto 12.12.1975 on payment of composition fee in the sum of Rs.3344.52 which was paid by the petitioner on 22.1.1974.

35(xvii). I do not find any justification for DDA to grant only 8 years exemption where construction gets delayed due to applicability of ULCR Act, 1976. Petitioner would have no control over the Competent Authority and the Appellate Authority. If the authorities under the Act delayed taking a decision or took a wrong decision which was challenged in the appeal and the Appellate Authority took no decision, petitioner could not be saddled with any liability.

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35(xviii). ULCR Act, 1976 came into force on 17.2.1976 in Delhi. Petitioner, diligently prosecuted the matter with the Competent Authority. Decision, adverse to the petitioner, was taken by the Authority in 1981. Petitioner filed an appeal in the year 1981. Appellate Authority did not decide the appeal. Act stood repealed in 1999. Entire delay from 17.2.1976 to the year 1999 has to be condoned. Further delay has also to be condoned inasmuch as on repeal of ULCR Act, 1976, petitioner sought extension of time to complete construction. DDA took two years to take a decision.

35(xix). It is unfortunate for the petitioner that the ULCR Act intervened. Petitioner was in the process of completion of a building pursuant to sanction obtained when the act came into force. Authorities under the Act delayed the decision. Petitioner remained under legal embargo which prevented him from construction. It is relevant to note that Clause 1.4(ii) of the 1995 policy excludes entire period when construction was not possible due to specific orders prohibiting construction, passed by a Statutory Authority. I find it highly illogical to stipulate in the policy that exemption due to ULCR Act, 1976 would be restricted to three years (later on made applicable 8 years by circular dated 5.3.1997).

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35(xx). Whether, the embargo is due to specific order of a Statutory Authority or whether the embargo is due to a Statute till the Statutory Authority grants necessary permission or passes an order effect whereof would be to remove the statutory embargo, position would be the same.

35(xxi). Impugned circular dated 5.3.1997 restricting 8 years as the maximum period due to plot attracting ULCR Act, 1976 is held to be arbitrary and violative of Article 14 to the extent it prescribes the period of 3 years. It is declared that the entire period consumed due to proceedings under ULCR Act, 1976 has to be excluded while computing delay.

35(xxii). Impugned demand is quashed. It is declared that petitioner would be entitled to extension of time without composition fee. Since, the present petition has remained pending and the petitioner is not to be blamed for time consumed in Court, mandamus is issued to DDA to grant extension of time to the petitioner for completion of building upto 31.12.2005 without levy of any composition fee.

35(xxiii). Petition stands disposed of in terms of directions in para 35(xxii) above. No costs.

WP(C) 3412/01 :

36(i). Vide perpetual lease deed dated 4.10.1978, effective

from the same date, plot in question was demised in perpetuity to the petitioner. As per Clause II(v) petitioner was to construct a building with a period of two years effective from 4.10.1978.

36(ii). Petitioner took possession of the plot from the Cooperative Society in question after nearly 10 years on 30.4.1988. He sought extension of time to complete construction. Vide letter dated 18.7.1988, time was granted to the petitioner to complete construction up to 3.10.1988. Extension was without levy of composition fee.

36(iii). According to the petitioner, as per the averments made in para 4, at his asking, DDA extended time for completion of construction upto 3.10.1990.

36(iv) Petitioner claims to have completed construction. 'D' Form was issued on 5.7.1990.

36(v). Thinking that all was over, petitioner remained blissfully ignorant that something was brewing in the office of DDA. DDA came out with a scheme for conversion of lease hold property to free hold. Petitioner intended to avail benefit thereof. He paid the requisite amount in April, 1992. After 8 years period, on 1.5.2000, DDA wrote a letter to the petitioner pertaining to his conversion calling upon him to deposit

Rs.1,01,630/- as composition fee.

36(vi). Vide letter dated 18.5.2000, petitioner demanded to know the basis on which demand was raised. On 1.6.2000, petitioner wrote a letter informing DDA that time was granted upto 3.10.1990 to complete the construction. He informed that he had completed the construction by 5.7.1990 and had obtained the 'D' Form.

36(vii). On 14.11.2000, DDA informed the petitioner that he was to pay the composition fee in the sum of Rs.1,00,322/- on account of late construction upto the date of issue of 'D' Form i.e. 5.7.1990.

36(viii). Present petition was filed praying that demand be quashed and DDA be directed to proceed ahead with the petitioner's conversion application as per law.

36(ix). As per the counter affidavit filed, vide para 11, DDA states that all allottees who did not complete construction within 10 to 15 years were liable to pay composition fee.

36(x). Though petitioner has averred that DDA granted extension of time to complete construction upto 3.10.1990, no document in support thereof has been filed. In the counter affidavit filed, DDA admits that it granted extension of time only upto 3.10.1988.

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36(xi). Having condoned the period upto 3.10.1988 without levy of composition fee, petitioner cannot be held to be a defaulter upto 3.10.1988. If at all petitioner would be liable to pay composition fee for delayed construction, it will be effective from 4.10.1988 upto 5.7.1990. Further, as per the judgment of S.K.Kaul, J. in S.K.Kapoor's case, rate of composition fee applicable for the period 4.10.1988 to 3.10.1989 would be the 1st year default rate. For the period 4.10.1989 to 5.7.1990, it would be the 2nd year rate which would apply.

36(xii). Writ petition is allowed, in that, demand of composition fee in the sum of Rs.1,00,322/- is quashed. DDA is directed to raise a demand as indicated above in para 36(xi). On the petitioner paying the same, DDA would proceed to consider petitioner's application for conversion of the plot from lease hold to free hold. No costs.

WP(C) No.,1963/03 :

37(i). Plot No.91, Block-B, Okhla Industrial Area, Phase-II, New Delhi, measuring 2420 sq.yards was demised in perpetuity to the petitioner w.e.f. 3.3.1970 vide perpetual lease deed dated 18.11.1970. As per the lease deed, petitioner was to complete the construction of a building in two years commencing from 3.3.1970. For reasons I need not go into, petitioner could not

complete construction, in fact not even commences construction. Vide letter dated 18.9.1981, petitioner sought extension of time which was granted by DDA upto 31.12.1981, vide letter dated 21.9.1981, Extension was subject to payment of composition fee in the sum of Rs.10,115/- which was paid by the petitioner.

37(ii). Petitioner did not construct the building upto 31.12.1981. It applied for further extension of time vide letter dated 3.4.1982. On 15.11.1982, DDA cancelled the lease for non-completion of the building. On 19.11.1984, petitioner made a representation for restoration of the lease and offered to pay the amount payable in terms of a public notice dated 26.3.1982 issued by DDA.

37(iii). Vide letter dated 19.4.1985, DDA wrote to the petitioner that it was ready to restore the lease provided petitioner pays Rs.94,533/-. Break-up of the said demand was as under :

a)	Composition fee for belated construction upto 31.12.1985	Rs.65,579.00
b)	Restoration charges	Rs.20,240.00
c)	Interest charges on belated payment of premium	Rs. 8,714.00

		Rs.94,533.00

37(iv). According to the petitioner only Rs.47,266.50 was payable as per public notice dated 26.3.1982. Petitioner paid the same.

37(v). Petitioner filed a writ petition being WP(C) No.2819/87 challenging the cancellation of the lease, predicated a stand that it was liable to pay composition fee as per public notice dated 26.3.1982.

37(vi). During the pendency of the writ petition aforesaid, petitioner paid balance amount on 9.4.1987 to make up the total to Rs.94,553/-. Petitioner agreed to pay interest on belated payment @ 12% per annum.

37(vii). WP(C) No.2819/87 was disposed of vide judgment and order dated 12.1.1993. It was directed as under :

"In the light of what has been discussed above, the impugned order of cancellation of the lease of the petitioner (Annexure-P.VI) is quashed and the Delhi Development Authority is directed to restore the lease forthwith on payment of interest at the rate of 12% pa. on the delayed payment, as discussed above and is further directed to revalidate the sanctioning of the plan and extend the period thereof as contemplated vide letter dated 10th November, 1981 under clause 4 thereof in view of notification dated 26th March, 1982. There will be no order as to costs."

37(viii). As per the petitioner, interest @ 12% p.a. on belated payment came to Rs.29,480/-. Petitioner paid the same on

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18.5.1993. DDA demanded further sum of Rs.1244/- towards interest vide letter dated 7.9.1993. Petitioner paid the same on 13.9.1993.

37(ix). Since as per direction to DDA under judgment and order dated 12.1.1993, on petitioner paying interest the lease had to be restored and time had to be granted by DDA for completion of construction, on 13.9.1993 petitioner wrote to DDA that since it had paid the interest, DDA should restore the lease and revalidate the plan for 2 years. DDA did not do the needful. On 21.3.1994, petitioner sent a reminder.

37(x). On 24.3.1994, DDA restored the lease but did not revalidate the plan. On 24.5.1994, DDA wrote to the petitioner as under :

"M/s Jallo Subsidiary Indl.Co.(India) Pvt.Ltd.
U.I.L. Building, F-20, Connaught Place,
New Delhi -110001

Sub: Plot No.A-91, Okhla Indl.Area, Phase-II.

Dear Sir,

With reference to your letter No.553(A)/93-94/986 dated 21.3.94 on the subject cited above, I am directed to inform you that restoration letter has already been issued vide this office letter dated 24.3.94. Further extension of time is granted upto 31.12.85. As the building is not completed till date, you are advised to apply extension of time after 31.12.1985, and thereafter contact the office of MCD for

revalidation of the sanctioned plan since the work of sanctions/revalidation of plans has been transferred to the said department.

Yours faithfully,
sd/-
(V.K.Jain)
Dy. Director(Indl.)"

37(xi). It may be noted that DDA granted extension of time to complete the building upto 31.12.1985. Obviously this extension was meaningless. Date of 31.12.1985 was in the past. Parties were in 1994. MCD would not have revalidated the plans unless DDA as lessor, granted time extension beyond 1994.

37(xii). On 1.9.1994, petitioner wrote a letter pointing out that 2 years extension be granted and MCD be informed of the same. Petitioner sent reminder after reminder. A detailed letter was sent to DDA on 8.7.1999. Attention of DDA was drawn to letters written in 1994, 1995, 1996, 1997 and 1998.

37(xiii). On 13.3.2000, DDA wrote to the petitioner as under :

"M/s Jallo Subsidiary Indl.Co.(India) Pvt.Ltd.
U.I.L. Building, F-20, Connaught Place,
New Delhi -110001

Sub: Regarding waiver of composition fee in
respect of plot No.A-91, Okhla Indl.
Area, Phase-II.

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Sir,

With reference to your letter dated 8.7.99 on the subject cited above, I am directed to inform you that your request for Extn. of time without composition fee has been considered and acceded to from 1993 to the date of issue of this letter.

You are, therefore requested to submit your exact plan of action relating to Industry and the time taken to execute your project.

Yours faithfully,
sd/-
(Jai Pal Singh)
Jt. Director (Indl.)"

37(xiv). Extension of time from 1993 upto date of letter dated 13.3.2000 was obviously meaningless for the reason that on 14.3.2000 time would have expired and MCD would not have revalidated the plan. DDA was expected to act rationally and reasonably. Petitioner brought this to the notice of DDA. Rather remedying the error, DDA compounded the same as vide letter dated 28.6.2000, it cancelled the lease for violation of Clause II(4)(a) of the lease deed.

37(xv). Petitioner represented to DDA against cancellation of the lease. On 11.6.2001, DDA wrote back stating that lease was restored and 2 years time was granted for construction of a building subject to payment of composition fee. It was stated

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that the composition fee payable would be indicated soon. Petitioner wrote on 23.7.2001 asking for a clear extension of time without levy of composition fee and non-conditional extension without levy of composition fee.

37(xvi). On 21.1.2003, DDA demanded composition fee in the sum of Rs.3,52,39,729.00. It was indicated that this fee was upto 30.6.2003 meaning thereby that time was extended to construct the building upto 30.6.2003 provided petitioner paid the sum demanded. Petitioner protested. DDA did not relent. Present petition was filed praying that demand raised vide letter dated 21.1.2003 be quashed and DDA be directed to grant extension of time by 2 years without levy of composition fee.

37(xvii). As per counter affidavit filed and documents annexed therewith, DDA has treated the period upto 2.3.1985 as compounded for belated construction as petitioner had paid composition fee in the sum of Rs.10,115/- for delay in construction upto 2.3.1977 and Rs.65,579/- for delay upto 2.3.1985. No demand has been raised from 3.3.1985 upto 13.3.2000 due to following reasons :

"Under litigation and non-availability of rates beyond 25 years. Time extension already granted vide letter dated 13.3.2000."

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37(xviii). Basis of demanding Rs.3,52,39,729.00 is as under :

31 st year.	14.3.2000 to 2.3.2001	2024x2735	=	55,35,640.00
32 nd year	3.3.2001 to 2.3.2002	2024x4513	=	91,34,312.00
33 rd year	3.3.2002 to 2.3.2003	2024x6777.50	=	1,37,17,660.00
34 th year	3.3.2003 to 20.6.2003	2024x10,156	=	68,52,117.00

37(xix). Documents filed by DDA show that for first 3 years i.e. 3.3.70 to 2.3.73 it has treated it as free period. Thereafter rates of 4th to 7th year have been applied from 3.3.73 to 2.3.77 and demand in the sum of Rs.10,115/- worked out. Period of 3.3.77 to 2.3.78 has been treated as 8th year but no demand raised. Period 3.3.78 to 2.3.85 has been taken as 9th to 15th year for which petitioner had paid Rs.65,579/- as composition fee. Period from 3.3.85 to 13.3.2000 has been taken as 16th to 36th year but no demand raised due to reason noted in para 37(xvii) above.

37(xx). Demand is patently contrary to law laid down in S.K.Kapoor's case. It has to be quashed on this short ground.

37(xxi). On facts, no case is made out for any further demand. DDA did not comply with the mandate of order dated 12.1.1993 passed in WP(C) 2819/87. Mandate was to revalidate the building plan.

37(xxii). When writ petition aforesaid was filed, building activity was with DDA. Therefore, petitioner rightly sought a

direction against DDA to revalidate the building plans. Without revalidation, petitioner could not construct upon the land. DDA never informed that building activity stood transferred to MCD. Had it been so informed, petitioner could have sought direction against MCD after impleading MCD as a party.

37(xxiii). Under the circumstances, DDA ought to have granted extension of time by 2 years for then alone would MCD have revalidated the plans. Mindlessly, on 24.5.1994, DDA granted extension of time upto 31.12.1985 which was useless. On being pointed out that this extension was meaningless, DDA extended time vide letter dated 13.3.2000 but upto said date. Another useless extension. DDA has obviously prevented petitioner from construction on the plot post 1985.

37(xxiv) Impugned demand in the sum of Rs.3,52,39,729/- is quashed.

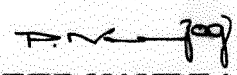
37(xxv). Vide interim order dated 17.3.2003 impugned demand was stayed on the petitioner depositing Rs.10 lacs. This amount has been deposited by the petitioner with DDA. Since demand is quashed, direction is issued to DDA to refund the said sum with interest @ 10% p.a. from the date of deposit till date of refund.

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37(xxvi). Mandamus is issued to to DDA to forthwith grant extension of time to the petitioner to construct a building upto 31.12.2006. Extension to be without levy of any composition fee. Mandamus is issued to MCD to sanction the building plans as per the current norms within 4 weeks of the petitioner applying for sanction. It is being so directed since Building Bye Laws have undergone a change and as of now building can be constructed as per current norms.

37(xxvii). WP(C) 1963/03 is allowed as per para 37(xxiv) to 37(xxvi) above. Petitioner would be entitled to costs in the sum of Rs.10,000/- against DDA.

November 22nd, 2004
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(PRADEEP NANDRAJOG)
JUDGE