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

Reserved on : 25.04.2012
Decided on : 30.04.2012

\+ **LPA No.1112/2004 & C.M. No.3513/2012**

D.D.A. ..... Appellant

Through : Mr. M.K. Singh with Mr.S.K.Sethi, Advocates.

versus

M/S PURNIMA DUTTA CHAUDHARY
& ANR. ..... Respondents

Through : Mr.K.Venkataraman, Advocate

CORAM:

MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

%

1. The appellant (hereinafter referred to as the `DDA') questions the judgment and order of a learned Single Judge dated 08.04.2004, allowing WP(C) No.4897/1998. The respondent had preferred the petition seeking a direction for quashing of demand dated 13.10.1997 for a sum of Rs.26,21,913/- (hereinafter called as the `impugned demand') .

2. The facts in brief are that the respondent was DDA's lessee, pursuant to a perpetual lease deed dated 21.02.1986 in respect of the Plot No. AG-17, Shalimar Bagh, Residential Scheme, Delhi, measuring 300.85 square meters. The respondent had successfully bid for the plot in auction held on 22.6.1982. The

respondent had let out the premises to one M/s Body Temple, through a lease deed dated 24.07.1991, for a monthly rental of Rs.10,000/-. The purpose of letting (according to Clause 4 of the lease deed) was "residential/cultural use (fitness and health centre as per DDA/MCD Building Bye Laws)". The lease was to start on 01.08.1991 and was for a period of two years thus ending on 31.07.1993. The respondent wrote to the lessee on 26.08.1992 through a notice that since the lease was ending, they had no intention to extend it after the said date i.e. 31.07.1993. The respondent, in the meantime applied for conversion of the lease hold rights in respect of the premises, into free hold, pursuant to DDA's scheme which had been made effective in the meanwhile (the scheme was called as "the Scheme of Conversion From Lease Hold System into Free Hold, April 1992", referred to hereafter as "the Conversion Scheme" or "Conversion Policy"). The lease ended and the tenant despite the expiry of the lease did not hand over the possession and continued in the premises, constraining the landlord/respondent to file a suit seeking a decree for possession in 1994.

3. Complaining that the respondent had misused the leased premises by allowing its use for a purpose other than what was permitted, and that it constituted an offence, the DDA filed a complaint under Section 29 (2) of the Delhi Development Act. During the pendency of the complaint, a show cause notice was issued on 12.05.1994 by the DDA on account of violation of Clause II (13) of the lease deed. The respondent replied to this notice on 17.05.1994, bringing to the attention of DDA that the tenant had failed to vacate the property and further that the property was not being misused since 04.04.1994. The reply further stated that a suit for possession had been filed. Ultimately the possession of the suit property was given to the respondent/petitioner on 20.08.1995. After consideration of all the materials on record, the criminal court by its order dated 18.09.1996 acquitted the

respondent of the charge for having committed the offence punishable under Section 29 (2) of the Delhi Development Act and dismissed the complaint. Much later on 30.10.1997 the DDA issued the impugned demand for Rs.26,21,493/- claiming it to be on account of misuse charges for the period 24.07.1991 to 17.05.1994. The respondent challenged the demand as arbitrary and illegal.

The learned Single Judge, after considering the pleadings in the writ petition and the contentions of the parties noticed that it could not be contended that there was no misuse of the premises by the tenants at the relevant period. In this regard it was observed as follows :

> *"18. In so far as the aforesaid contention is concerned, I am of the considered view that the acquittal in the criminal case would not have any effect. The misuser charges have been levied for the period of misuser. Admittedly, the misuser did take place. The reason for the acquittal is stated to be the fact that on the date of the inspection, which occurred after the original period of the lease was over, the petitioners had already intimated their intention to their tenants to vacate the property since there was an issue of the misuer. The acquittal was not on account of the fact there was no misuer. This is apart from the fact that the level of proof required for conviction in a criminal trial is different from civil proceedings. Thus, the learned Metropolitan Magistrate came to the conclusion that as on the date of the inspection which gave rise to the criminal proceedings, the petitioners had already taken necessary steps against the tenants and it could not be said that the misuser was continuing with their consent.*
>
> *XXX XXX XXX XXX*
>
> *20. The redeeming feature in so far as the conduct of the petitioners is concerned is, however, the fact that once it came to their notice that there was a problem in this user, the petitioners had put their tenants to notice vide the letter dated 26.8.1992 that they should vacate the property on expiry of the lease on 31.7.1993. Interestingly, this letter really cannot be construed for stoppage of misuser since the*

petitioners knew that they had permitted the use of a fitness and health centre but were aggrieved by some heavy machinery being brought in and a law and order incident which had occurred in the premises. The occupation of the tenants beyond the period of 31.7.1993 was without the concurrence of the petitioners and the petitioners even took steps by filing the suit for possession. The premises were, however, vacated by the tenants only on 20.8.1995.

22. In the present case, the misuser ought to have stopped by 31.7.1993 since the petitioners asked their tenants to vacate the premises by that date. The vacation, however, took place on 20.8.1995. The petitioners thus took all steps to stop the misuse and cannot be held responsible for period after 31.7.1993. To that extent, the observations made in Guru Sarup Vohra & Ors. case (supra) referred to above would apply. Not only this, the petitioners were never informed of the liability to pay any charges for four and a half years. If the petitioners had known about the same, they could have taken steps in the suit filed by them against their tenants to recover such damages. The petitioners cannot be made to pay for the prolonged silence and inaction of the respondents."

4. After concluding that the respondent/petitioner could not be held responsible after 31.07.1993 since he had taken all reasonable steps to secure the premises and stop the misuse, the Court then considered the question as to what ought to have been the quantum of damages which the lessee/petitioner had to pay. The Court for this purpose relied upon a previous decision reported as *Guru Sarup Vohra Vs. DDA (CWP No.361/1973)* decided on 07.10.1985.

5. The Court also relied upon another decision in *Ravinder Syal Vs. Union of India,* (WP(C) No.678/2001 decided on 15.03.2002) by a Single Judge of the Court. The learned Single Judge in the impugned judgment thereafter went on to determine what ought to be reasonable and fair damages which the DDA could be allowed to recover under the circumstances towards the misuse charges and held that :

"25. In order to appreciate the method of quantification of damages, the respondents were asked to file details of the manner of the calculation. The calculation is stated to have been made on the basis of certain notifications issued by the Ministry of Urban Development. The first policy/notification is dated 25.10.1993 to the effect that were a property has been re-entered due to breaches of lease terms including sale without prior permission, the conversion should be allowed after the withdrawal of re-entry by realizing the amount of misuser charges. This circular, in my considered view, has no application to the facts of the present case where there is in fact no re-entry which has occurred which has to be withdrawn prior to the conversion to freehold.

26. The second policy/notification is dated 16.3.1998 to the effect that where breaches of unauthorized construction and/or misuser exist in the property, charges in respect of breaches may be recovered before allowing conversion of the property. Here again there is no question of the application of this notification since there is no continued misuse in existence. The last circular referred to in this behalf is the policy/notification dated 4.2.2000 issued by the DDA to the effect that where properties are under misuse, the application for conversion may be processed on realization of the past misuser charges. The computation of the misuse charges is stated to be on the basis of the procedure prescribed under the Information for Guidance of Leaseholders. The basis is stated to be the relevant current land rates.

27. The learned counsel for the petitioners, on the other hand, has referred to the scheme of conversion from leasehold into free hold where in Annexure B is contained the statement showing additional conversion charges for covered area put to other than residential use. The formula given is "0.45 x R x M" where R stands for the land rate. The land rates are also specified in the brochure itself. Learned counsel for the petitioners thus contended that even if misuser charges are to be paid, they should be calculated by this formula specified in the brochure and not by some other formula.

28. There is no dispute in the present case about the period of the misuse. There has, however, been an inordinate delay on the part of the respondents of almost four and a half years in communicating the

amount of the misuser charges. The office circulars referred to by the respondents do not apply as stated above. Further, they have to bear relevance to the date when the application was made by the petitioner for conversion in March, 1993. I see no reason why the scheme for conversion should not apply as a whole including the misuse charges. Annexure B gives the formula for the built up plots including the size of the plot in question. The land rates to be applied in such as case should thus be the same as the market rates of the land in question specified in the brochure. I am unable to accept the contention of the learned counsel for the respondents that the said market rates are applicable only for conversion and would not apply for misuser. There is no doubt that the schedule of market rates given in Annexure C states that the same are applicable for conversion up to 31.3.1993. The application was made before that date. The misuser stopped in 1995 and the circular which had come into place between 1993 to 1995 referred to by the respondents is the one dated 25.10.1993 which only talked about the property which had been re-entered due to breaches. No different land rates were specified in the brochure for conversion charges to be paid for covered area put to other than residential use. The heading of Annexure B itself is very clear that the same refers to the "statement showing additional conversion charges for covered area put to other than residential use". Thus, wherever misuse has occurred, the formula has been given for payment of additional conversion charges. Whether these are called misuse charges or additional conversion charges is one and the same thing. There cannot be two separate charges for the same default. The land rates specified are for conversion. Thus, these very land rates would apply to Annexure B.

30. I am thus of the considered view that the respondents are liable to calculate the amount due from the petitioners on the basis of the formula given in Annexure B on the land rates specified in Annexure C. The rates specified for Shalimar Bagh in Annexure C are Rs.2370/- at Sl.No.39 of the Zone IV/North Delhi. The period of the misuse is 24.7.1991 to 17.5.1994 when the misuse is stated to have stopped and over which period there is no dispute but the liability of the petitioners would be only till 31.07.2003 as mentioned aforesaid. Thus the period would be 24.07.1991 to 31.07.2003."

6. It was argued on behalf of the DDA that the impugned judgment should not have disregarded the existing policies pertaining to recovery of misuse charges and proceeded to unilaterally fix the charges at Sl.No.39 of the Zone IV/North Delhi. In this context it was urged that office Order No.14 dated 25.08.1989 by the L&DO, Central Government, together with the notification/guidelines pertaining to conversion of lease hold into free hold properties dated 14.02.1982 and all the subsequent clarifications had to be and in fact were taken into consideration, by DDA. It was submitted that the rationale adopted by the learned Single Judge in fixing the misuse charges by applying the norms outlined in Annexure B to the Conversion Policy, were not attracted because the use indicated in the conversion notification, extended to only professional activity. In this context, learned counsel relied upon the Ministry of Urban Affairs (Central Government) direction of 15.05.1995 embodied in circular dated 06.06.1996 of the DDA which had spelt out that only professional activity could be permitted in residential plots on any floors subject to the restriction of 25% of the premises or 100 square **meters which ever were less could be the extent of** such non-residential/professional use. Counsel urged that in this case the purpose for which the premises were used by the tenant, concededly was not professional but a gym and therefore Annexure B to the conversion policy notification is inapplicable.

7. We have considered the pleadings as well as the submissions on behalf of the parties. The learned Single Judge as noticed in the previous part of this judgment, had correctly concluded that misuse could not have been disputed at least upto 31.07.1993. The impugned judgment further took into consideration the fact that the lessee/landlord (who was the writ petitioner) had taken all reasonable steps to stop the misuse and sought the

tenant's eviction which culminated in the handing over of the possession on 20.8.1995. Thus the period of misuse itself was approximately 2 years (though learned Single Judge mentioned in para 30 that the period was from 24.07.1991 to 31.07.2003, that was subsequently corrected by a later order dated 31.03.2004, to read as 24.07.1991 to 31.07.1993). Such being the case, the restrictive interpretation sought to be given to Annexure B to the Conversion Policy *"statement showing additional conversion charges for covered area put to other than residential use,* (This would be in addition to the normal conversion charges payable as per Annexure A)", in this Court's opinion does not stand the test of reason. If in fact residential premises are used for other purposes which are deemed misuse, for DDA to contend that such non-residential user has to necessarily comply or be restricted to "professional use" in terms of a letter/guideline or notification of 1996, something more ought to have been shown or at any rate published. Thus when an applicant or allottee or lessee applies under a conversion policy, his request is entitled to consideration in express terms thereof and the terms of other binding notifications to the extent they are referred to or made applicable generally. The conversion policy in fact even covers cases where leases are re-entered (Clause 11). The relevant part of the condition i.e. Clause 5 no doubt specifies that purposes other than residential to the extent given as per the relevant provision of the Master Plan would be eligible under the scheme. Nevertheless if the whole of the conversion policy is to be taken into consideration and as the learned Single Judge did in the present case, by applying the norms set out in Annexure B, the result would not be any different. Any other interpretation would lead to absurdity because DDA's conversion policy would cover even instances where leases have been cancelled or re-entered but can be yet converted into leasehold after

withdrawal of re-entry on one hand whereas in the case of misuse even for a limited period, applicant would be compelled to pay charges which are exorbitant. In the present case tenancy arrangement led to payment of Rs.10,000/- per month for the premises for a period of two years since the tenant continued for another period of two years, the same arrangement existed. The total amount received by the writ petitioner/landlord was in the range of over Rs.5 lakhs. For the purposes of this use – at least part of it would have been legitimately being given for residential purposes – the DDA demanded almost Rs.27 lakhs i.e. almost 5-6 times more the amount received. There is no warrant either in statute or under any regulation to recover these charges which are almost penal in nature. Having regard to these circumstances the learned Single Judge in our opinion justly and appropriately calculated the amount payable by the lessee/writ petitioner towards misuse charges.

In view of the above discussion, this appeal has to fail; it is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

April 30, 2012

S.P. GARG
(JUDGE)