



IN THE HIGH COURT OF DELHI

C.W.P. NO. 3736 / 2001

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Date of decision : 22.08.2003

MS. MONOFLEX INDIA PVT. LTD.

... PETITIONER

through : Mr. Sumit Bansal,
Advocate

- VERSUS -

COMMISSIONER OF INCOME-TAX & ANR.

... RESPONDENT'S

through : Mr. R.D. Jolly,
Advocate for respondent No. 1.
Mr. J.M. Sabharwal,
Senior Advocate with
Mr. Bankey Bihari Sharma,
Advocate for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL (Oral)

- 1) The President of India through respondent No. 2 DDA executed a perpetual sub-lease deed dated 10.01.1973 in favour of S. Gurcharan Singh Sethi in respect of property bearing No. A-35, Mohan Co-operative Industrial Estate situated at Mathura Road, New Delhi. In terms of clause II(6), there is a restriction for sale, transfer, assignment or parting with the possession of whole or any part of the industrial plot except with the previous consent in writing of the lessor and the



lessor has the right to impose such terms and conditions as thinks fit including the right to recover unearned increase of 50%. Clause II(7) further provides that the right to recover 50% of the unearned increase and pre-emptive right to purchase the property as mentioned in the sub-lease deed shall apply equally to an involuntary sale or transfer whether it be by or through an executing or insolvency court.

- 2) A firm M/s. Gurcharan Singh Sethi & Sons owed its dues to respondent No. 1 Commissioner of Income-tax and the property was attached by the said respondent for recovery of income-tax arrears and an open auction was announced for the said plot No. A-35 measuring 5300 sq. yds. by the Tax Recovery Officer with the auction scheduled for 18.09.1981. The said advertisement is as under :-

**“ Golden Opportunity
Public Auction**

Industrial plot No. A-35 at Mohan Cooperative Industrial
Estate New Delhi measuring about 5300 sq. yards.

Under instructions from Tax Recovery Officer XX Vikas
Bhawan, New Delhi, the above mentioned property Owned
by Sh. Gurcharan Singh Sethi R/o 47 Hanuman Road, New
Delhi P/o M/s. Gulab Singh Sethi & Sons, New Delhi
attached for the realisation of Income Tax Dues from M/s.
Gulab Singh Sethi & Sons 53, Najafgarh Road, New Delhi-
15 will be offered for Sale by Public auction at Site at 11-30
A.M.

On Friday 18th Sept., 1981
at 11-30 A.M. at Site

Brief Conditions of Sale

1. The sale is subject to conditions prescribed in second Schedule to the Income Tax Act 1961 and Income Tax Certificate Proceeding Rules 1962.
2. Proffer for any bid will be deemed an acceptance of all the conditions of sale in toto. The purchasers are advised to satisfy themselves before bidding in every respect.



3. The highest bidder shall pay 25% of the Bid in cash or by Bank Draft in favour of T.R.O. XX, New Delhi at the spot and Balance within 15 days from the date of sale.
4. Right of acceptance or rejection of any bid is reserved with the Tax Recovery Officer XX, Vikas Bhawan, New Delhi.
5. The Transfer will be made by a Sale Certificate to the auction purchaser whose bid is accepted.
6. Other terms and conditions of auction will be announced on the spot.
7. For any further information please contact Tax Recovery Officer XX on any working day during office hours and from the auctioneers.
8. The purchaser has to deposit Rs.2,000/- advance towards the Security deposit with the Cashier of the Department on the spot before bidding."

3) Shri R.K. Dhingra participated in the said auction and was the highest bidder for the plot for a sum of Rs.13,22,000/-, which sale was confirmed. An order of confirmation of sale of immovable property was issued by the Tax Recovery Officer on 19.10.1981 certifying that Shri R.K. Dhingra for and on behalf of M/s. R.K. Enterprises was the highest bidder and the full amount of purchase money had been paid. It may be noticed that the said order of confirmation also stated that no application under rules 60, 61 and 62 of Schedule II to the Income Tax Act, 1961 (hereinafter to be referred to as, 'the said Act') had been received for setting aside the same. This was followed up by a certificate of sale of immovable property dated 30.01.1982 to the following effect :-

" Certificate of Sale of Immovable Property

Office of the
Tax Recovery Officer, XX,
Vikas Bhawan, New Delhi

Dated : 30.1.82

This is to certify that Shri R.K. Dhingra (HUF), Smt. Kaushalya Devi Dhingra W/o Late Shri Bhim Sein Dhingra, Shri Vijay Krishan S/o Shri Ram Dass Shastri, Shri Inder



Kumar S/o Shri Nand Lal and Shri Ravinder Kumar S/o Shri Nand Lal of C-66, Kirti Nagar, New Delhi have been declared the joint purchasers having 1/5th share each at the sale by public auction on the 18th day of September, 1981, of the under mentioned immovable property in execution of certificate No. 101698/2 dated 24.1.1977 forwarded by the Income-tax Officer, Special Circle-VIII, New Delhi, for recovery of arrears from M/s. Gulab Singh Sethi & Sons, 53, Najafgarh Road, New Delhi, and that the said sale has been duly confirmed by the T.R.C., XX, and became absolute on the 19th day of October, 1981.

Specification of property :

A-35. Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi.

Given under my hand and seal at 30th day of January,
1982.

sd/-
(S. N. BALCONI)
TAX RECOVERY OFFICER-XX,
NEW DELHI."

- 4) A reading of the aforesaid certificate, thus, shows that though while the original order of confirmation showed Shri R.K. Dhingra as the successful bidder on behalf of M/s. R.K. Enterprises, the certificate of sale was finally issued in favour of Shri R.K. Dhingra (HUF) and other members of the HUF as stated in the certificate (hereinafter referred to as, 'the purchasers').
- 5) Shri R.K. Dhingra addressed a letter dated 27.01.1983 to the Tax Recovery Officer requesting for necessary documents since the sale certificate had still not been registered in absence of the same. It appears that, for one reason or the other, the sale certificate was not registered for quite some time and apparently reason for the same was the demand for 50% unearned increase by respondent No. 2 DDA in view of the clauses contained in the perpetual sub-lease deed referred to above. The petitioner addressed a letter dated 29.04.1989 to respondent No. 1 Department



in respect of the transfer of plot and pointed out that the Department had not paid the requisite unearned increase relating to the plot as DDA was demanding the same. It may be noticed that in terms of the sub-lease deed, it is the perpetual sub-lessee, who is liable to pay the unearned increase.

- 6) It may be noticed that this letter was sent by Shri R.K. Dhingra but on the letterhead of the petitioner company, which is a private limited company. This letter was followed up by another letter dated 10.10.1988. The petitioner has also filed a letter dated 17.12.1987 addressed by DDA to the petitioner company stating that a sum of Rs.6,12,852.04 on account of unearned increase was liable to be deposited before the transfer/mutation could be effected. This letter was replied to by the petitioner on 05.01.1988 stating that the petitioner had purchased the plot in an open auction from the Income Tax Department and there was, thus, no question of paying any additional amount to DDA as unearned increase.
- 7) A further letter was addressed by the petitioner on 02.12.1993 in respect of the mutation to respondent No. 2 DDA stating that the petitioner's title was not being perfected due to inter se dispute between the two Central Government Departments being the respondents in question.
- 8) Another material document filed by the petitioner is a letter dated 07.04.1995 addressed by DDA to the Tax Recovery Officer stating that the Department had agreed to pay the unearned increase. The said letter is as under :-

“Sub : Plot No. A-35, Mohan Co-operative Industrial Estate.

Sir,

Please refer to the correspondence resting on our office letter No.F.15.(25-MCIE)73/LSB/SL/10916 dated 19.3.82, 23.3.82, 8.4.82, 4.5.82, 21.12.82, 11.6.84, 26.2.85, 16.11.88., 22.6.89; in response to your letter No.TRO/XX-81-82 dated 3.2.1982. In this connection I am to state that it was agreed



by your department to pay the amount of unearned increase to DDA after settling with the sub-lessee Shri Puran Singh.

The matter has been got examined in detail and it is concluded that since the burden of covenant runs with the land, therefore, the present sub-lessee is liable to pay the amount of unearned increase. The present sub-lessee has come forward for transfer of the sub-lease hold rights in his name, which can be allowed only on payment of the unearned increase. You are, therefore, requested to arrange the payment of the unearned increase along with interest @ 18% p.a. either through the department or the present sub-lessee, so that the case can be settled once for all."

- 9) There was, however, no solution to the problem at hand and the purchasers served a legal notice dated 25.07.1995 on respondent No. 1. Thereafter, the petitioner approached the Permanent Lok Adalat of respondent No. 2 DDA and the matter was taken up by the Lok Adalat. The order-sheet of the Lok Adalat has also been annexed to the writ petition. The DDA, however, took the stand that it has to recover the unearned increase and was not concerned with the matter between the Tax Department and the purchasers. The only concession made was that the interest rate was reduced from 18% to 12.5%. The Lok Adalat also noticed the problem arising from the deadline set by DDA for construction to be carried out on the plot.
- 10) The petitioner finally filed the present writ petition for a writ of declaration and mandamus that by virtue of the auction, the petitioner was the sole and complete owner of the property, which was free from all encumbrances and for execution of the sale deed by respondent No. 2 in favour of the petitioner as also for quashing the demand raised on account of the unearned increase. A further writ has also been sought against respondent No. 2 DDA to issue no objection certificate (NOC) for getting the building plans sanctioned from the municipal authorities.



- 11) At the stage of entertaining the writ petition and issuance of notice on 01.06.2001, the Court recorded the submission of learned counsel for the petitioner that though the petitioner had sought transfer in the name of the petitioner, which is a private limited company, the petitioner was willing to accept the conveyance in the name of the original purchasers in the auction. It appears that the family members are Directors of the petitioner company with Shri Raj Kumar Dhingra as the Managing Director.
- 12) The petitioner has claimed in the petition that the terms of auction had clearly stated that the property was free from all encumbrances and there was no provision prescribed therein for payment of unearned increase. It is, thus, stated that in case the liability had to be put on the purchasers for unearned increase, there should have been a specific clause in the public auction. This is more so in view of the fact that even as per the terms and conditions of the perpetual sub-lease, the liability is not of the purchasers. It is further submitted that it is the duty of respondent No. 1 to have got the property mutated in favour of the petitioner by clearing whatever dues, if any, payable to respondent No. 2.
- 13) A reference has also been made to the proceedings of Lok Adalat when the petitioner on 13.02.2001 had suggested that it was willing to deposit the sum of unearned increase but without interest with respondent No. 2 DDA with liberty to get the amount recovered from respondent No. 1. However, this was not acceptable to DDA which wanted interest also to be paid.
- 14) In the writ petition, the petitioner has denied the liability to pay unearned increase since the sale was by an auction by the income-tax authorities and the sale was made by the President of India who is also the perpetual lessor of the plot. A



reference has also been made to the fact that the petitioner has not been able to construct on the property and, on the one hand, the property was not being mutated in the name of the petitioner, while, on the other hand, respondent No. 2 had issued a public notice that if the construction was not completed on the plots including the plot in question by 30.06.2001, the said respondent would proceed to cancel the plot. The construction cannot be raised till NOC is issued by respondent No. 2 DDA for sanction of the plans and the said NOC has not been issued on account of non-mutation in the name of the petitioner.

15) In the counter affidavit filed by respondent No. 2 DDA, reliance has been placed on the terms and conditions of the perpetual sub-lease deed. It has, thus, been stated that the unearned increase is liable to be paid in terms of clause II(6) and even in such cases as the present case where the property is sold in pursuance to the attachment carried out by the tax authorities, there is no exemption from payment of unearned increase in view of clause II(7).

16) The counter affidavit of respondent No. 1 being the tax authority has disputed the rights of the petitioner to file the petition in view of the fact that the purchasers were Shri R.K. Dhingra (HUF) and other members having one-fifth share each as per the sale certificate. It is further stated that in view of the attachment order, the property vested in the Income Tax Department by virtue of the provisions of the said Act for purposes of recovery of arrears of income-tax and, thus, no liability could be fasten on the said respondent.

17) The petitioner with the rejoinder has filed certain documents, which are communications with the tax authorities. One of the documents is the letter dated 11.04.1983 addressed by the Tax Recovery Officer to the Sub-Registrar, Asaf Ali



Road asking for registration of the sale in favour of five purchasers as per the sale certificate issued.

- 18) There is another letter of 03.08.1983 again by the Tax Recovery Officer to the Sub-Registrar stating that the registration could not take place since the plot was mortgaged with State Bank of Bikaner and Jaipur and the title deeds were lying with the bank. Thus, the Department had to make payment to the bank for release of the title deeds and some time was taken for taking administrative approval for making payment to the bank. The last paragraph of the letter stated as under :-

“ It is further clarified that this property was sold by the Tax Recovery Officer - XX for recovery of Income Tax Demand in the case of M/s. Gulab Singh Sethi & Sons on behalf of the President of India.”

- 19) A further letter was addressed by the Tax Recovery Officer to DDA on 04.03.1985 stating that the claim of unearned increase should be settled with the sub-lessee Shri Puran Singh Sethi directly and that they were not liable to pay the unearned increase. The contents of the said letter are as under :-

“ Please refer to your office F.No.15(28-NC)(E)/73/ K&B/LSB(1) dated 25.2.1985 on the above subject. In this connection your attention is invited to this Office letter No. TRO-XX/82-83/02 dated 14.2.1983 addressed to Shri Kailash Chandra, Asstt. Housing Commissioner (CS), Delhi Administration, Land & Building Department, New Delhi vide which it was stated that you should settle your claim of unearned increase with the sub-lessee, Shri Puran Singh Sethi directly. It was further informed that since it was an involuntary sale, having not been made by the sub-lessee but by the Tax Recovery Officer by a public auction, as per the provisions of Part-III of the Second Schedule of Income-tax Rules, 1960 - for recovering the the outstanding dues covered by the Recovery Officer Certificate and further as the L&DO as one of the interested parties to the property did not make any application under Rule 60 of I.T.C.P. Rules for setting aside the impugned sale so made by the T.R.O. as also keeping in view the Indemnity Bond filed by the defaulter, para-III of clause (7) of your Lease Deed in this case is not



applicable.

In view of these circumstances, you are once again requested to settle your claim of unearned increase directly with the Sub-lessee."

20) Learned counsel for the petitioner has more or less made the same submissions as set out in the writ petition. Learned counsel has further relied upon a Division Bench judgment of this Court in Bansal Contractors (India) Ltd. & Anr. v. Union of India & Ors., 1998 VII AD (Delhi) 315. In the said case, the property was compulsorily acquired by the appropriate authority under Section 269-UD of the said Act. The Division Bench held that the property vested absolutely with the Central Government and even if the property was subject to payment of some ground rent to the Central Government, before the acquisition took place, the property once vesting in the Government is exonerated of such liability and the subsequent purchaser is not required to pay such ground rent or enhanced ground rent to the Settlement Commissioner to whom the land was subjected before acquisition. The Division Bench noted that a sale deed has been executed in pursuance to the public auction and, thus, no reference could be made to the documents earlier executed.

21) Learned counsel has also referred to another judgment dated 27.01.2003 of this Court in CWP No. 7514/2001 titled 'Sujan Singh Oberoi v. Commissioner of Income Tax & Ors.', which was also a case of compulsory acquisition of the property under Section 269(UD) of the said Act. In the said case, the sale deed executed by the President of India in favour of the petitioner therein provided for payment of unearned increase and the clause stated that in case of such demand by DDA, the same was to be paid by the Vendor. Despite this and the demand raised by DDA, the Chief Commissioner of Income Tax had not paid the unearned



increase. In those circumstances, it was directed that the Tax Department should deposit the unearned increase with DDA for execution of the documents in favour of the petitioner therein leaving it open for the tax authorities to challenge the decision of DDA to impose the unearned increase.

22) Learned senior counsel for respondent No. 2 DDA has referred to the fact that in public auction notice, it is stated that the property was being sold in pursuance to attachment proceedings and the attachment is, thus, covered under the requirement of an involuntary sale or transfer as contained in clause II(7) and the unearned increase is liable to be paid. It is submitted that the unearned increase is liable to be paid to DDA before the mutation is carried out and, thus, no mutation could be carried out or NOC issued till the amount is paid to DDA.

23) Learned counsel for respondent No. 1 tax authorities initially sought to contend that the petition filed by the petitioner herein is not maintainable in view of the fact that the petitioner entity did not purchase the property. It may, however, be noticed that the petitioner has been communicating with the tax authorities and Managing Director of the company is Shri Raj Kumar Dhingra, who had initially participated in the auction on behalf of M/s. R.K. Enterprises, though subsequently the sale certificate was issued in the name of five persons with one-fifth share each including Shri R.K. Dhingra (HUF). This aspect, in my considered view, is not really material in view of the submission recorded on the initial date of hearing itself that without going into the question of the successor entities, the transfer be made in the name of five persons in whose favour the sale certificate was issued.

24) Learned counsel for respondent No. 1 contends that the present case is not one of compulsory acquisition of property under Section 269(UD) of the said Act, but of



attachment of the property for realisation of tax dues and Schedule II to the said Act would apply, which contains the rules relevant in this behalf. Learned counsel referred to rule 6 of the said Schedule, which describes the purchaser's title and, thus, what was vested in the purchasers was only the rights of the defaulter at the time of the sale. The said rule is as under :-

“ 6. Purchaser's title.- (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

... ..”

25) Learned counsel also referred to the fact that on such attachment and execution of sale, the proceeds have to be distributed in terms of rule 8 being first adjusted against the amount due under the certificate, next to be utilised for satisfaction of any other amount due from the assessee under the Act and the balance to be refunded to the defaulter. It is, thus, stated that the Department only recovered its dues and would have refunded the balance, if any, to the perpetual lessee whose property was sold. Learned counsel, however, is not in a position to state as to how much was the amount attached and what balance, if any, was paid to the original party. Learned counsel has also referred to the provisions of rules 60 to 65, which provides the methodology on an application being made to set aside the sale of immovable property, the confirmation of sale and issuance of the sale certificate. It is stated that, in the present case, no one objected to the sale nor did the purchaser at any stage point out that he was not willing to pay the unearned increase. Thus, the sale was confirmed in terms of rule 63 and became absolute and the sale certificate was issued under rule 65.

26) A reference has been made also to another Division Bench of this Court in G.N.



Gandhi v. Tax Recovery Officer-IV & Others, (1987) 168 I.T.R. 625. The said sale also dealt with the public auction though the facts would not be directly relevant to the present case as they raise the issue of previous and the subsequent sale. It is, however, relevant to note that the Division Bench took note of the terms and conditions of the sale. The payment of unearned increase was provided in the proclamation of sale itself in the first auction and since the maximum bid was below the reserved price, the highest bid was rejected and a second auction was conducted. The material difference was that the corresponding clause, relating to unearned increase being paid by the purchaser in addition to the bid money, was changed to the same being borne by the Income Tax Department on behalf of the owner. This change was stated to be a somewhat incorrect representation in view of the clarification having been received from DDA that no unearned increase was payable in terms of the lease deed in view of the transaction being a case of first sale.

27) It is, thus, the contention of learned counsel for respondent No. 1 that the liability towards unearned increase can be either of the petitioner or the DDA should recover the same from the original perpetual lessee, but respondent No. 1 cannot be burdened with this liability as it only stepped into the shoes of the original sub-lessee when it attached the property and issued the proclamation of sale.

28) I have considered the submissions advanced by learned counsel for the parties.

29) In order to appreciate the rival contentions, the most important document is the conditions of auction. This is so as the factual matrix is not disputed to the extent that the property in question was attached under the provisions of the said Act for realization of the income-tax dues of the sub-lessee. The public auction notice



states that the property has been attached and specifies the conditions of sale. Condition 5 provides that transfer will be made by sale certificate to the auction purchaser whose bid is accepted. The transfer in favour of the purchasers was, thus, accordingly sought to be made by issuance of the sale certificate in their favour. The conditions of sale nowhere provide that there is any liability on the purchasers to pay the unearned increase. Thus, to impose the liability of unearned increase on the purchasers would amount to burdening the purchasers with a liability, which was not provided for in the conditions of sale. In case, such a provision would have been made, it is possible that the purchasers would have taken into account this factor of payment while bidding for the same.

30) The concept of unearned increase has also to be understood in the context that the present case is not a unique case of such auction for realization of tax dues. In fact, in G.N. Gandhi's case (supra), there was an attachment, which took place and the property was put to sale. The provision for unearned increase was made in the terms and conditions of auction when the same had to be borne by the purchasers, which was the case of first auction notice in the said case. However, on enquiry from the DDA, it was found that no unearned increase was payable in view of there being no such levy on the first transaction of sale and in the second auction notice, it was specifically provided that the unearned increase would be borne by the Tax Department. Such an important aspect cannot be left unspecified by respondent No. 1 tax authority.

31) It is also relevant to note that stand of the Tax Department was that the Department was not liable to pay any amount nor were the purchasers liable. This is apparent from letter dated 04.03.1985 addressed by the Tax Recovery Officer to



DDA wherein it is stated that the claim of unearned increase should be settled with the sub-lessee. In fact, the plea was taken therein that the perpetual lessor did not make any application for setting aside the impugned sale.

32) There is no doubt that judgment of the Division Bench in Bansal Contractors (India) Ltd.'s case (supra) has been passed with reference to the provisions of Section 269(UD) of the said Act, which deals with compulsory acquisition. In the said case, the property was vested with the President of India and thereafter the sale deed was executed. It was, thus, held by the Division Bench that there could not be any question of past liability being paid by the purchasers since once the property vests in the government, the subsequent purchasers cannot be subjected to the liabilities *de hors* the terms of the sale deed.

33) In the present case also, even the sale certificate issued does not mention any liability towards the unearned increase and rightly so, since that was not a condition of the auction. Thus, there can be no question of burdening the petitioner with the said liability.

34) As far as the plea of learned counsel for respondent No. 1 based on the rules contained in Schedule II of the said Act is concerned, rule 6 provides that the property sold shall vest in the purchaser and that where the property is sold in execution of a certificate, the same shall vest in the purchaser merely the right, title and interest of the defaulter at the time of sale, even though the property itself be specified. The plea is that it is not all rights, which have been transferred to the purchasers, but only such rights as were vested in the defaulter. Thus, it is the rights conferred on the sub-lessee, which have been sold to the purchasers. This has to be appreciated keeping in mind the plea of respondent No. 1 that respondent



No. 1 while attaching the property merely stepped into the shoes of the sub-lessee. If this plea is taken into account, the purchasers have got the same rights as conferred on the sub-lessee under the sub-lease deed. However, the sale has been executed by respondent No. 1 in favour of the purchasers. Thus, if the terms of the sub-lease deed are taken into account, it is the sub-lessee who is liable to pay the amount and not the purchasers and if respondent No. 1 claims to have stepped into the shoes of the sub-lessee and executed the sale certificate in favour of the purchasers, then the liability is of the sub-lessee or respondent No. 1, but certainly not of the purchasers.

35) The occasion for anyone to file objections to sale could not arise so far as the purchasers are concerned as the purchasers can hardly be expected to object to the sale having participated in the same and not being put to notice that there was any obligation on the part of the purchasers to pay the unearned increase.

36) Respondent No. 2 DDA, of course, claims to be only concerned with realization of the unearned increase. In attempting to distinguish the consequence of the judgment of the Division Bench of this Court in Bansal Contractors (India) Ltd.'s case (supra) by claiming that the said transaction was one of the compulsory acquisition and, thus, the property vested in the Central Government while this was not so in the present case, respondent No. 1 has, in fact, fallen into a trap of accepting that a liability would arise of payment to respondent No. 2, as only the rights of the sub-lessee are transferred. I would not like to proceed further in this matter because, really speaking, the present case is not concerned with inter se liability of the respondents, but the writ petition has been filed by the petitioner aggrieved by imposition/demand of the said liability on the petitioner.



37) In view of the aforesaid emerging facts, I am inclined to follow the path adopted in Sujan Singh Oberoi's case (supra). It would not make a difference that in the said case there was a specific provision for payment to be made by the Vendor in case demanded by DDA. This is so since the absence of any stipulation to fix the liability on the purchasers in the auction notice would also result in a consequence where the liability cannot be fasten on the purchasers.

38) Insofar as the plea of learned counsel for respondent No. 1 is concerned, the obligation to pay should not be affixed on the said respondent, but on the sub-lessee, this is the matter to be sorted out inter se the respondents. In view of the demand of unearned increase by respondent No. 2 DDA, it was for respondent No. 1 to take out appropriate proceedings to challenge the decision and the matter to be decided and/or adjudicated between respondents No. 1 and 2 for which the petitioner cannot be made to suffer. If respondent No. 1 was aggrieved by the decision of respondent No. 2 DDA to levy unearned increase, it was always open for respondent No. 1 to impugn the same in accordance with law.

39) In view of the aforesaid, I consider it appropriate that respondent No. 1 shall deposit the amount of unearned increase of Rs.6,12,852.04 with respondent No. 2 within a period of 6 weeks from today without prejudice to the rights of respondent No. 1 to impugn the same in accordance with law against respondent No. 2. Respondent No. 2 will also have a right to claim interest on the unearned increase from respondent No. 1, in case so advised, by initiating appropriate legal proceedings. The case of the purchasers will be processed by respondent No. 2 for issuance of NOC within a period of 2 weeks thereafter and on such NOC being submitted and formalities being completed, the sale certificate shall be registered



by the Registering Authority within a maximum period of 1 month thereafter. The purchasers shall on registration of the sale certificate file the same with respondent No. 2 for mutation and complete the necessary formalities and respondent No. 2 shall mutate the property in the name of the purchasers within a maximum period of 1 month thereafter. Respondent No. 2 shall also issue NOC to the purchasers for sanction of building plans simultaneously on the mutation being carried out in order to enable construction on the plot in question. In view of the fact that the matter has got delayed as a consequence of the differences between the two respondents, who are Government and Government Authority, the time period for completing construction in respect of the plot in question shall be extended for a period of 2 years from the date of grant of NOC for sanction of building plans.

40) The writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

41) Dasti to learned counsel for the parties.

August 22, 2003
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SANJAY KISHAN KAUL, J.