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		<p style="text-align: center;">1</p> <p style="text-align: right;">CWP No 7514/20091</p> <p style="text-align: center;">IN THE HIGH COURT OF DELHI</p> <p style="text-align: center;">CW NO. 7514/2001</p> <p style="text-align: right;">Date of decision January 27, 2003</p> <p>Sujan Singh Oberoi</p> <p style="text-align: center;">versus</p> <p>Commissioner of Income Tax & Ors</p> <p style="text-align: right;">Petitioner through Mr Madan Lal Sharma, Advocate</p> <p style="text-align: right;">Respondent through Mr R D Jolly with Ms Rashmi Chopra for respondent No 1 Mr Rakesh Munjal, Sr Advocate with Mr Arjun Pant for respondent No 2</p> <p>CORAM</p> <p>HON'BLE MR JUSTICE SANJAY KISHAN KAUL</p> <p>1 Whether the Reporters of local papers may be allowed to see the judgment?</p> <p>2 To be referred to Reporter or not?</p> <p>3 Whether the judgment should be reported in the Digest?</p> <p><u>HON'BLE MR JUSTICE SANJAY KISHAN KAUL (Oral)</u></p> <p>1 The matter in issue relates to property No 7A/75, WEA Karol Bagh, New Delhi which was purchased by the Central Government vide its order dated 18th May 1987 passed by the Appropriate Authority under Section 269(UD)(1) of the Income Tax Act and thus vested in the Central Government. The said property was put to auction by the Chief Commissioner on 21st July 1987 and the petitioner was the highest bidder which bid was accepted by the Competent Authority. The possession</p>	
SHRI SHYAM SALES 02-03		of the property was thereafter delivered to the petitioner and a sale deed dated 9 th	



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		<p style="text-align: right;">2 CWP No 7514/20091</p> <p>January 1988 was executed by the President of India in favour of the petitioner. The petitioner requested respondent No 2, DDA for mutation of the property in question and vide letter dated 9th August 1988 the petitioner was intimated the amount of the unearned increase amounting to Rs 2,19,848.57 which had not been paid by respondent No 1, Commissioner of Income Tax. Respondent No 2 thus refused to carry out the mutation without payment of the said amount.</p> <p>2. The petitioner applied for conversion of the property into freehold on 23rd December 1999 and deposited the conversion charges but the property was not converted into freehold apparently for the same reason which is non-mutation of the property in favour of the petitioner on account of non-payment of unearned increase.</p> <p>3. In the counter-affidavit filed by respondent No 2, DDA, it is stated that a clause in the sale deed executed by the President of India in favour of the petitioner itself provided for payment of the unearned increase. The said clause is as under:</p> <p style="text-align: center;">"3. That the unearned increase in respect of the said property, if any, demanded by DDA shall be paid by the vendor."</p> <p>4. It is further stated that the Chief Commissioner of Income Tax has been informed about the requirement of payment of such amount in view of certain other cases also in terms of the letter dated 15th February 2002 which letter has been annexed with the counter-affidavit. It may also be noted that the letter dated 9th August 1988 addressed to the petitioner making the demand of unearned increase was duly marked to the Chief Commissioner.</p> <p>5. The letter dated 15th February 2002 is as under:</p> <p style="text-align: center;">"This is with reference to your DO Letter No CCIT/II/2001 02/848 dated 20.11.2001 addressed to VC, DDA regarding clarification about levy of unearned increase against property No 7A/75, WEA Karo Bagh, Delhi. The para-wise information as asked for is as follows:-"</p>



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		<p style="text-align: center;">3</p> <p style="text-align: right;">CWP No 7514/20091</p> <p>1 Clause-1(vii) of the Lease Deed provides that the lessee has to first obtain the consent of the Lessor for any sub division or parting the possession of the property</p> <p>2. On the basis of the above said provision of the Lease Deed, the Hon'ble Supreme Court of India has upheld the claim of the Authority to charge unearned increase in the case of DDA v The Official Liquidator & Anr , setting aside the Judgment of Hon'ble High Court, Calcutta on 4 4 2001. A copy of the above Judgment is enclosed for reference. Accordingly, the DDA has recovered the demanded amount of unearned increase in respect of Property No 4/13 A, Asaf Ali Road, Delhi</p> <p>Similarly, in the case of Property No 1 E/6, Jhandewalan, Delhi allotted to B K Khanna & Co Pvt Ltd , DDA has charged unearned increase. This fact has already been intimated vide this office letter No S&S II(140)88/ASO(D) dated 17 3 89 to Dy Commissioner, Income Tax, Delhi (copy enclosed for ready reference)</p> <p>3 As far as the case of Shri S Vasudevan & Others involving property No 18/2 WEA Karol Bagh is concerned, DDA has filed appca' before the Division Bench of High Court and the matter is sub judiced.</p> <p>From the perusal of the above, it may be seen that the Hon'ble Supreme Court of India has decided the issue of recovery of unearned increase in favour of the Authority. Therefore, you are requested to kindly issue necessary directions for release of the demanded amount of unearned increase together with interest @ 18% per annum "</p> <p>6 Learned counsel for respondent No 2 thus contends that there is no dispute about the payment of unearned increase and that respondent No 1 was liable to pay the said amount, which is the liability of the respondent No 1 in terms of the sale deed executed in favour of the petitioner</p> <p>7 Respondents No 1 and 3 have not filed any counter-affidavit despite opportunities granted. Rule was issued in the matter on 2nd August 2002. It is, thus, a case of no return so far as respondents No 1 and 3 are concerned. Learned counsel for respondent No 1 further contends with reference to the provisions of Section 269 (UE) of the Act that the first respondent authority had a limited role to play as the</p>



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		<p style="text-align: right;">CWP No 7514/20091</p> <p>property vests with the Central Government in terms of the agreement for transfer in terms of sub-clause (1) of the said Section and in terms of sub-clause (5), it has been made clear that nothing in this Section would operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and such liability is to be enforced against the transferor</p> <p>8 I am unable to accept the contention of the learned counsel for respondent No 1. Sub-clause (1) of the said Section itself makes it clear that the property has to vest in the Central Government in terms of the agreement for transfer. It is not for the petitioner who has purchased the property in auction to pay any unearned increase or for the original transferor. The liability, if any, has to be of respondent No 1.</p> <p>9 Learned counsel for respondent No 1, however, disputes the obligation to pay the said liability as it is contended that the DDA is not liable to charge any unearned increase in the particular fact of the case in view of the deed for perpetual lease. It may, however, be noticed that respondent No 1 has taken out no proceedings to challenge the decision of respondent No 2 to levy the unearned increase. This is a matter to be decided or adjudicated between respondents No 1 and 2 and the petitioner cannot suffer from the consequences thereof. If respondent No 1 was aggrieved by the decision of respondent No 2, it was always open for respondent No 1 to impugn the same in accordance with law.</p> <p>10 In view of the aforesaid, it is directed that respondent No 1 shall deposit the amount of unearned increase of Rs 2,19,848 57 with respondent No 2 within a period of four weeks from today without prejudice to the rights and contentions of</p>



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		<p style="text-align: right;">5 CWP No 7514/2001</p> <p>respondent No 1 to impugn the same in accordance with law against respondent No 2</p> <p>The case of the petitioner will be processed by respondent No 2 both for mutation as well as for conversion into freehold and the needful be done within a period of two months thereafter. Needless to say, the petitioner will cooperate and execute whatever documents are necessary for getting the property converted into freehold.</p> <p>11 Writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs</p> <p style="text-align: center;">Dasti to the parties</p> <p>January 27, 2002 '88</p> <p style="text-align: right;"><i>Sanjay Kishan Kaul</i> SANJAY KISHAN KAUL, J</p>