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

\+ **LETTERS PATENT APPEAL NO. 842 OF 2003**

Reserved on : 25th July, 2011.
% **Date of Decision** : 16th August, 2011.

THE COMMISSIONER OF INCOME TAX, DELHI-IX.. Appellant
Through Mr. Sanjeev Rajpal, Advocate.

VERSUS

M/S MONOFLEX INDIA P. LTD. & OTHERS ..Respondents
Through Mr. Vinay Kumar Garg, Ms. Namrata Singh & Mr. Fazal Ahmad, Advocates for respondent No. 1.

CORAM:
HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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 the judgment should be reported in the Digest ? Yes

SANJIV KHANNA, J.:

Commissioner of Income-Tax, Delhi–IX has filed the present intra-Court appeal under the Letters Patent Act and has assailed the decision dated 22nd August, 2003 allowing Writ Petition (Civil) No. 3736/2001 filed by Monoflex India (Pvt.) Limited, the respondent No. 1 herein. The second respondent to the present appeal is the Delhi Development Authority.

2. The appeal was admitted to hearing on 24th November, 2003 and an interim order was passed staying operation of the impugned

decision. After hearing on 21st February, 2011, the matter was relist on 26th April, 2011 as some doubts had cropped up. Thereafter, the matter was listed on 6th May, 2011 and the counsel for the respondent No. 1 was granted time to file an affidavit impleading auction purchasers as co-respondents. On 25th July, 2011, a copy of the perpetual sub-lease deed dated 10th January, 1973 was placed on record. The said document is relevant and was referred to by the learned single judge but was not previously on record. The respondent No. 1 in the meanwhile had filed an affidavit along with annexures. The said affidavit and the contents thereof have been examined below.

3. Property No. A-35, Mohan Cooperative Industrial Estate, New Delhi (Property, for short) was put to auction by the Tax Recovery Officer for realization of income tax dues from Gulab Singh Sethi and Sons. The property is leasehold, the respondent No. 2 being the lessor. In the public auction held on 18th September, 1981, the property was purchased for Rs. 13,22,000/- by R.K. Dhingra for and on behalf of M/s R.K.Enterprises. The Tax Recovery Officer on 19th Oct., 1981 confirmed the sale and issued the order of confirmation. On 30th January 1982 certificate of sale of immovable property was issued in favour of Raj Kumar Dhingra (HUF), Kaushaliya Devi Dhingra, Vijay Krishan, Inder Kumar and Ravinder Kumar (hereinafter referred to as

the purchasers, for short) and each of them were declared as having 1/5th share in the property.

4. The purchasers/ the respondent No.1 called upon the respondent no.2, the lessor, to mutate the property and called upon the appellant to get the sale certificate registered.The respondent No. 2 demanded 50% unearned increase for mutation of the property in favour of the purchasers/respondent no.1. Disputes arose as to the liability to pay unearned increase and whether the same was payable by the purchasers/respondent no.1 or by the Income-Tax Department or as claimed by the appellant by the original sub-lease i.e. the defaulter assessee. As the disputes could not be resolved, the respondent No. 1 filed Writ Petition (Civil) No. 3736/2001, which has been allowed by the impugned decision dated 22nd August, 2003. The learned Single Judge has issued a direction that the appellant shall deposit unearned increase of Rs.6,12,852.04 with the respondent No. 2. The said respondent will also have a right to claim interest on the unearned increase from the appellant, if advised, by initiating appropriate legal proceedings. The respondent No. 2 will issue a no objection certificate (NOC) and the same will be registered with the Registering Authority to confer a proper title on the purchasers. The respondent No. 2 shall also issue NOC to the purchasers for sanctioning the building plan

simultaneously on mutation being carried out in order to enat construction on the plot in question.

5. It may be stated here that the respondent No. 1, Monoflex India Private Limited is a private limited company and is not the auction purchaser. This fact is noticed in the impugned decision (refer paragraph 23). Raj Kumar Dhingra had initially participated in the auction on behalf of partnership firm M/s R.K Enterprises though subsequently the sale certificate was issued in the name of five persons mentioned above with 1/5th share to each including Raj Kumar Dhingra (HUF). The learned Single Judge has held as under:

> "23)……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."

6. After the order dated 6th May, 2011 was passed, Raj Kumar Dhingra has filed an affidavit. In the said affidavit he has stated that he is the founding director of the respondent No. 1 company and the other founding directors were her mother, Kaushaliya Devi Dhingra, Vijay Kishan, Inder Kumar and Ravinder Kumar, his three brother-in-laws. They are the same persons in whose favour the sale certificate has been issued. Kaushaliya Devi Dhingra, it is stated, expired on 9th January, 2007 leaving behind Raj Kumar Dhingra and her five daughters. The

daughters have relinquished their interest in favour of Raj Kum Dhingra. Vijay Kishan has also relinquished his interest in favour of Raj Kumar Dhingra. Inder Kumar and Ravinder Kumar have executed registered power of attorney in the joint name of Raj Kumar Dhingra and Manish Kumar Dhingra. Copies of these documents have been enclosed. Accordingly, Raj Kumar Dhingra and Manish Kumar Dhingra have been impleaded as respondent Nos. 3 and 4.

7. The inter se transactions/agreements between the five purchasers and respondent No. 1 are not subject matter of the present decision and we are not examining the said aspect. However, affidavit filed by Raj Kumar Dhingra has been taken on record and as we have impleaded Raj Kumar Dhingra and Manish Kumar Dhingra as respondent Nos. 3 and 4, the objection relating to locus standi of the respondent No. 1 to file the writ petition no longer survives and has to be rejected. It is again clarified that this observation on the question of locus standi does not mean and imply that this Court has accepted that the sale certificate issued by the income-tax authorities in favour of the purchasers stands transferred to the respondent No. 1. This course has been adopted to avoid another round of litigation. The Court has also not opined on the validity of the "alleged transfer" inter-se the purchasers and the respondent no.1 and/or the effect thereof. It may be also noticed that the learned single Judge has in paragraph 11 of the impugned decision

mentioned that at the stage of entertaining the writ petition a issuance of notice on 1st June, 2001, the Court had recorded the submission made by the counsel for the respondent No. 1 herein that though transfer was sought in the name of the respondent No. 1, a private limited company, the said respondent was willing to accept the conveyance deed in the name of the original purchasers. Respondent No.1 will be bound by the said statement.

8. This brings us to the core and the main issue, whether or not unearned increase is payable and if payable, whether the same is payable by purchasers or by the appellant or by the original sub-lessee. The relevant clauses of the perpetual sub-lease read as under:

> "(6)(a) The Sub-Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the industrial plot in any form or manner, benami or otherwise, to a person who is not a member of the Lessee.
>
> (b) The Sub-Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the industrial plot to any other member of the Lessee except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion.
>
> PROVIDED that, in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e., the difference between the premium paid and the market value) of the industrial plot at the time of sale, transfer, assignment, or parting with the possession, the

amount to be recovered being fifty per cent of the unearned increase and the decision of the Lessor in respect of the market value shall be final and binding.

PROVIDED FURTHER that the Lessor shall have the pre-emptive right to purchase the property after deducting fifty per cent of the unearned increase as aforesaid.

(c) Notwithstanding anything contained in sub-clauses (a) and (b) above, the Sub-Lessee may, with the previous consent in writing of the Chief Commissioner, mortgage or charge the industrial plot to such person as may be approved by the Chief Commissioner in his absolute discretion.

PROVIDED that, in the event of the sale or fore-closure of the mortgaged or charged property, the Lessor shall be entitled to claim and recover the fifty per cent of the unearned increase in the value of the industrial plot as aforesaid, and the amount of the Lessor's share of the said unearned increase shall be a first charge, having priority over he said mortgage or charge. The decision of the Lessor in respect of the market value of the said industrial plot shall be final and binding on all parties concerned.

PROVIDED FURTHER that the Lessor shall have the pre-emptive right to purchase the mortgaged or charged property after deducting fifty per cent of the unearned increase as aforesaid.

(7) The Lessor's right to the recovery of fifty per cent of the unearned increase and the pre-emptive right to purchase the property as mentioned hereinbefore shall apply equally to an involuntary sale or transfer whether it be by or through an executing or insolvency court.

(8) Whenever the title of the Sub-Lessee in the industrial plot is transferred in any manner

> whatsoever the transferee shall be bound by all the covenants and conditions contained herein or contained in the Lease and be answerable in all respects therefor in so far as the same may be applicable to, affect and relate to the industrial plot."

9. The proviso to clause 6(b) of the sub-lease clearly stipulates that 50% unearned increase is payable on the transfer of the leasehold rights in the property and the decision of the lessor in respect of market value shall be final and binding. The second proviso gives pre-emptive right to the lessor to purchase the property after deducting 50% unearned increase. Unearned increase is also payable in case of involuntary sale or transfer, whether it is by or through an executing or insolvency court.

10. Absolute ownership consists of a bundle of supporting rights. Ownership is an aggregate of several rights, like right to possession, right to enjoy the usufruct of land, etc. An absolute owner is entitled to transfer his entire bundle of rights which he enjoys or transfer one or more of the supporting rights. Transfer of rights whether in entirety or in part can be made by the absolute owner in a manner prescribed under the Transfer of Property Act,1882 read with or in terms of other statutory enactments, if applicable. Transfer by way of lease is not an absolute transfer but a transfer of some of the supporting rights, as the absolute owner who becomes a lessor retains certain rights. The lessor

who executes the lease does not cease to be the owner. The rigl which are transferred to the lessee may be conditional or unconditional. The rights between the lessor and the lessee if in writing are governed by the instrument i.e. the lease deed. The terms of the lease are binding between the lessor and the lessee.

11. Under Section 108(j) of the Transfer of Property Act, 1882 a lessee is entitled to transfer leasehold right, which he enjoys, to a third party, subject to a contract to the contrary. However, the lessee continues to be liable for the terms and conditions of the lease.

12. In view of the aforesaid legal position and the terms of the sub-lease quoted above, there cannot be an iota of doubt that unearned increase is payable under the provisions of Transfer of Property Act, 1882 and the sub-lease, with special regard to provisions in the said sub-lease deed on the involuntary sale and transfer of the leasehold rights in favour of the purchasers for recovery of the dues payable by the defaulting assessee/lessee Gurcharan Singh Sethi. Payment of unearned increase is a pre-condition imposed in the sub-lease deed for transfer of the leasehold rights from the sub-lessee to a third party. The said term/condition is binding and without the same being satisfied, the rights in the property, i.e., sub-lease rights, cannot be transferred from the sub-lessee, i.e., Gurcharan Singh Sethi, to any

third party i.e. the purchasers. Payment of unearned increase is condition precedent and not a condition post transfer.

13. This brings us to the IInd Schedule of the Act and whether the said statutory provisions have any stipulation or provision to the contrary. In case of a conflict, the polarity has to be resolved. The relevant Rules 4, 6, 8, 11 and 16 are reproduced below:

> "**4.** If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes :—
> (*a*) by attachment and sale of the defaulter's movable property;
> (*b*) by attachment and sale of the defaulter's immovable property;
> (*c*) by arrest of the defaulter and his detention in prison;
> (*d*) by appointing a receiver for the management of the defaulter's movable and immovable properties."

> **"6.** (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.
> (2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute"

> **"8.** (1) Whenever assets are realised by sale or otherwise in execution of a certificate, the

proceeds shall be disposed of in the following manner, namely :—

(*a*) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;

(*b*) if there remains a balance after the adjustment referred to in clause (*a*), the same shall be utilised for satisfaction of any other amount recoverable from the assessee under this Act which may be due on the date on which the assets were realised; and

(*c*) the balance, if any, remaining after the adjustments under clauses (*a*) and (*b*) shall be paid to the defaulter.

(2) If the defaulter disputes any adjustment under clause (*b*) of sub-rule (1), the Tax Recovery Officer shall determine the dispute.]"

"11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that—

(*a*) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(*b*) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."

"16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the

> property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment."

14. Rule 4 permits and allows Tax Recovery Officer to recover the arrears of tax by attachment and sale of "defaulter's immoveable property". Thus, what can be sold and attached is a defaulter's immoveable property i.e. the interest of the defaulter in the immoveable property and not interest of a third person in the immoveable property. Obviously respondent No.2's interest could not have been sold or transferred for recovery of the defaulter's dues. The right of the defaulter in the immoveable property could be sold and transferred. This becomes clear when we examine Rule 6. The said Rule states that when a property is sold in execution of a certificate what will vest with the purchaser are merely the right, title and interest of the defaulter at the time of sale. It is only the right, title and interest of a defaulter in the immoveable property which is sold. If there are any fetters or pre-conditions on the right, title and interest of the defaulter in an immoveable property, they have to be complied with. They do not get abrogated or unwritten. On execution of the sale certificate by the Tax Recovery Officer the right, title and interest in the property is deemed to vest in the purchaser from the time when the property was sold. Rule 8 deals with how the proceeds from the sale

have to be distributed. The appellant is correct that the Rule 8 does n stipulate that payment has to be made to a third party or the lessor, but this is inconsequential or ineffective. Rule 8 is silent. It cannot be read either in affirmative or in negative. Intention of the legislature can be gathered from the provisions of the IInd schedule. Rule 8 stipulates that the sale proceeds sale should be first adjusted towards the amount due under the certificate and the balance, if any, towards satisfaction of any other amount due from the defaulter assessee under the Act. The remaining amount, if any, is to be paid to the defaulter assessee. Defaulter assessee as in the present case had leasehold rights which had been transferred to him by the owner or the absolute owner. Further transfer of the leasehold rights is subject to pre-condition i.e. the condition to pay 50% unearned increase to the lessor. The requirement to pay unearned increase is imposed by way of a condition and restricts the right of the sub-lessee to make a third party transfer. A pre-condition or a fetter of this nature on the right of the sub-lessee, who also happens to be a tax defaulter, is not redundant. It is a part or a condition of the leasehold rights which have been conferred and granted to the defaulter assessee. These have not been ignored and undone or unwritten by the Schedule II of the Act. What the Act permits and allows is that the Tax Recovery Officer can sell the right, title and interest of the defaulter assessee and nothing more. If the said

right, title and interest is hedged with the conditions or fetters, the sa will be made subject to the said condition/fetters. The rights of the lessor do not get affected.

15. The question whether a prior charge/condition on an immoveable property can be ignored by a Tax Recovery Officer on the ground that income tax dues are State dues and have to be given precedent, is well settled. It has been held that income tax dues will not have precedent or priority, subject to Rule 16 of the II Schedule. (See Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co. & Ors., (2000) 5 SCC 694). It is not the case of the appellant that Rule 16 has been invoked or is applicable in the present case. Rule 16 per se is not applicable as the covenant relating to 50% unearned increase is specified in the sub lease deed itself by which the leasehold rights were transferred to the defaulter assessee.

16. In this regard, it may be appropriate to refer to Rule 11.Rule 11 of the Schedule II relates to investigation by the Tax Recovery Officer when there is a dispute about the title of the property i.e. whether the defaulter assessee has any right, title and interest in the property or the right, title and interest in the property vests with a third party. In the present case, there is no dispute about the sub leasehold right, title and interest in the property. It is accepted that the respondent no.2 is a lessor or the absolute owner and sub lease rights were transferred to

Gurcharan Sigh Sethi, to then conditionally vest with the defaul assessee. Sub-Rule (1) of the Rule 11 is to be read with Sub-Rule 4. Any decision of the Tax Recovery Officer in respect of claim of the property preferred can be made subject matter of a suit in the civil court. Subject to the decision of the civil court, the decision of the Tax Recovery Officer is final [Sub-Rule (6) of 11]. As noticed above, the decision of the Tax Recovery Officer is only required if there is a dispute as specified by sub-Rule 4 to Rule 11. If there is no dispute, jurisdiction of the civil court is not required to be invoked. We need not examine what is covered or the scope of sub-Rule 4 to the Rule 11 as the said aspect is not relevant in the present matter.

17. As noticed above, under the IInd Schedule, Rule 6 a certificate is to be issued in favour of the purchaser by the Tax Recovery Officer and on the said certificate being issued the right, title and interest of the defaulter assessee vests with the purchaser. If there is a pre-condition of payment of unearned increase, the right, title and interest of the defaulter assessee cannot vest with the purchaser unless said amount is paid. In view of the aforesaid discussion, the pre-condition or the restrictions imposed in the sub lease have to be complied with. This would include the pre-condition to pay 50% of unearned increase. Without the payment of the unearned increase the leasehold right, title and interest of the sub-lessee will not vest in the purchaser.

18. Thus, unearned increase is payable.

19. The second question is who is liable to pay the unearned increase. Learned Single Judge has, in the impugned judgment, specifically referred and has quoted the public notice by which sale was made. The said notice reads as under:-

> "Industrial plot No.A-35 Mohan Cooperative Industrial Estate,
> New Delhi measuring about 5300 sq. yard.
> Under instruction 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 realization 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. atSite.
> 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 deed 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 TRO 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, Vikash 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 auntion will be announced on the spot.

7. 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.2000/- advance towards the Security deposit with the Cashier of the Department on the sport before bidding.

By order
Sh. C.L. Arora
Nath
TRO XX (N.D.)"

Auctioners
J.R. Basheshar

20. The aforesaid terms and conditions did not stipulate that the bidder would have to pay 50% unearned increase or bear such burden. There was no such stipulation. The sub-lease deed or copy thereof was with the appellant and they had finalised the terms of sale. In case 50% unearned increase was to be paid separately by the purchaser, it should have been so indicated and mentioned. This would have resulted in a lower bid amount. It is not the case of the appellant that sale consideration paid by the purchasers was less than the market price. No document has been placed on record to establish that the bid amount was low because the bidders were aware or were made aware that they have to bear 50% unearned increase separately. It is not the contention of the appellant that the parties were not ad idem and therefore the there was no concluded contract. On the other hand, the plea which has been taken by the appellant is that 50% unearned increase is payable by the original sub lessee and not by the appellant or the Tax Recovery

Officer. The terms of auction did not stipulate that the original sub-less shall pay 50% unearned increase. The appellant had agreed and promised to issue sale certificate to the auction purchaser, whose bid was accepted. It is only on payment of 50% unearned increase that an effective transfer can be made by the said sale certificate. In these circumstances, it is for the appellant to make payment of unearned increase. Of course, in case its dues are still payable, it is open to them to take appropriate proceedings against the defaulter assessee in accordance with law.

21. What should be the 50% unearned increase and whether the demand raised by the second respondent including interest is justified or not, is an issue between appellant and respondent No.2. This can be taken up by the appellant with the respondent No.2 and in case they are not able to resolve and settle the same, appropriate proceedings can be initiated. We agree with the directions given by the single judge in this regard. Time for compliance is extended by a period of 2 months from today. The relevant para is reproduced below:

> "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 six 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 no objection certificate within a period of two weeks thereafter and on such no objection certificate being submitted and formalities being completed, the sale certificate shall be registered by the registering authority within a maximum period of one 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 one month thereafter. Respondent No. 2 shall also issue no objection certificate 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 two years from the date of grant of no objection certificate for sanction of building plans. The writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs. Dasti to learned counsel for the parties."

[Emphasis supplied]

22. Under Section 40-A of the Delhi Development Act, 1957, any money due to the Authority on account of fees or charges, or from the disposal of lands, buildings or other properties, moveable or immoveable, or by way of rents and profits may, if the recovery thereof is not expressly provided for in any other provisions of this Act, be recovered by the Authority as arrears of land revenue.

23. We may add that in the impugned judgment it is recorded th the property is mortgaged with State Bank of Bikaner and Jaipur and title deeds are lying in the said Bank. The said bank is not a party before the writ court or before us. Observations made above will not affect their rights, if any, under the law.

24. The appeal is accordingly disposed of. There shall be no order as to cost.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

August 16, 2011
V**KR/Vld**