



2026:DHC:3295



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

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*Judgment Reserved on: 24.03.2026**Judgment Delivered on: 21.04.2026*+ **W.P.(C) 7998/2023, CM APPL. Nos. 30768/2023, 34555/2023 and 61475/2023**

AJAI CHOWDHRY

.....Petitioner

Through: Mr. Chander Uday Singh, Sr.
Advocate with Mr. Vivek Singh, Ms. Kirti
Mewar and Mr. Ajay Lulla, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

.....Respondent

Through: Ms. Kritika Gupta and Ms.
Vidushi Singhanian, Advocates.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J**

1. The case set out by the petitioner in the instant petition is that *vide* a Perpetual Lease Deed dated 06.04.1978, the President of India leased rights of Plot No. 10, *ad measuring* 598 square yards, situated at Ishwar Nagar, New Delhi (hereinafter referred to as 'the subject property'), in favour of Ishwar Nagar Co-operative Group Housing Society Ltd.

2. Subsequently, *vide* a registered Perpetual Sub-Lease Deed dated 16.08.1979, the President of India, in conjunction with Ishwar Nagar Co-operative Group Housing Society Ltd., perpetually sub-leased the subject property in favour of Mr. Vidur Bhaskar and Mrs. Chiterlekha Bhaskar. Thereafter, Mr. Vidur Bhaskar and Mrs. Chiterlekha Bhaskar, *vide* an



Agreement to Sell dated 09.10.1991, agreed to sell the said property to Mr. Joy Paul Vadakkal for a total sale consideration of Rs. 70,00,000/-.

3. In furtherance of the aforesaid agreement to sell, Mr. Vidur Bhaskar applied to the Income Tax Department (hereinafter 'the **department**') for permission to complete the aforesaid transaction by filing the requisite form. However, the department, exercising its powers under Section 269UD(1) of the Income Tax Act, 1961, declined to grant permission and ordered purchase of the said property by the Central Government for the same consideration of Rs. 70,00,000/-. Pursuant thereto, the Central Government paid the entire sale consideration to Mr. Vidur Bhaskar and acquired the said property.

4. Thereafter, the department auctioned the said property on 17.09.1993, in which the petitioner emerged as the highest bidder with a bid of Rs.1,12,90,000/-, which was duly accepted by the competent authority. Following this, and pursuant to the Supplementary Terms and Conditions of the auction sale deed, the respondent levied a demand of unearned increase and composition fee amounting to Rs.23,79,106/- upon the petitioner.

5. Subsequently, the President of India, acting through the Central Board of Direct Taxes, executed a Sale Deed dated 05.04.1994 in favour of the petitioner with respect to the subject property. The petitioner has remained in continuous possession of the said property ever since.

6. On 18.02.2022, the petitioner approached the respondent/DDA by submitting an online application on the respondent's e-portal, seeking conversion of the said property from leasehold to freehold.

7. The respondent's failure to process petitioner's leasehold-to-freehold conversion application within the prescribed two-month period and after



eight months of inaction, the petitioner escalated the matter through a formal letter to the Lt. Governor on 06.10.2022, and a personal meeting with the Vice Chairman the following day. Despite these efforts, the respondent/DDA remained silent until 06.12.2022, when it issued a demand on its e-Portal for a staggering sum of Rs. 8,94,98,546/- towards 'unearned increase'. This demand was coupled with a notice that the conversion application would be summarily rejected unless this amount was paid in a time-bound manner, effectively conditioning the conversion on the settlement of these disputed charges.

8. In response, the petitioner submitted a detailed representation on 27.12.2022, challenging the legality and calculation of the demand. The respondent has reportedly failed to provide a rational breakup of the nearly Rs. 9 crores demand or address the merits of the petitioner's legal objections.

9. The petitioner continued to exhaust administrative remedies throughout the first half of 2023, filing multiple representations on 26.04.2023, addressed to the Directors of the Land Costing and Land Disposal Wings. These efforts included a personal meeting and a follow-up letter dated 27.04.2023, to the Member (Finance), specifically contesting the calculation of the 'unearned increase' in light of the 1993 auction terms.

10. Despite these persistent inquiries and the use of the RTI mechanism to gain transparency, the petitioner's requests for a mathematical breakup or a substantive review of the nearly Rs. 9 crores demand have remained unaddressed by the Respondent.

11. Sequel to above, the petitioner filed an RTI application on 27.12.2022, seeking information regarding the breakup and details of the



alleged demand raised by the respondent. As per the reply dated 03.01.2023, the said RTI application was referred to the Accounts Branch of the Respondent and thereafter to the Management Wing. However, the status of the RTI application is reflected as 'disposed of'.

12. In the aforesaid factual backdrop, the present petition has been filed seeking the following relief:

“A. Issue a writ in the nature of certiorari quashing the demand dated 06.10.2022 raised by the Respondent to the tune of Rs. 8,94,98,546/- (Rupees Eight Crores Ninety-Four Lakhs Ninety-Eight Thousand Five Hundred and Forty Six Only) from the Petitioner on account of unearned increase.

B. Issue a writ in nature of mandamus or any other appropriate writ directing the Respondent to grant conversion of the property of the Petitioner into freehold;”

13. Mr. Chander Uday Singh, learned Senior Counsel appearing on behalf of the petitioner, at the outset submits that the impugned demand raised by the respondent is, in any event, hopelessly barred by limitation. From 05.04.1994, when the said property was conveyed to the petitioner by a duly registered Sale Deed, until the year 2022, the respondent never raised any demand whatsoever on account of unearned increase.

14. He submits that for nearly three decades, the respondent consistently accepted ground rent, permitted construction on the property, issued completion certificates, allowed mutation, and otherwise acquiesced in the petitioner's peaceful, open, and uninterrupted enjoyment of the property. A stale and dead claim cannot be revived merely because the petitioner subsequently applied for conversion of the property from leasehold to



freehold. The respondent, being a statutory authority cannot claim the benefit of any extended period of limitation and is squarely governed by the provisions of the Limitation Act, 1963.

15. He further submits that the very concept of 'unearned increase' has been fundamentally misconstrued and misapplied by the respondent. Unearned increase is attracted only in cases where a lessee proposes to transfer or sell leasehold rights and earns a windfall or profit arising from appreciation in land value, thereby entitling the lessor to a stipulated share. In the present case, however, the petitioner has neither sold nor contemplated any transfer of the property. Rather, the petitioner has merely sought the conversion of the said property from leasehold to freehold status which is a procedural transition.

16. He submits that the petitioner had purchased the property directly from the Government through a public auction conducted by the Income Tax Department wherein he had paid the full market value, after the Central Government had acquired the said property under statutory powers. Once the Government itself sells a property at prevailing market value, there can be no occasion to levy unearned increase upon the auction purchaser.

17. He further emphasizes the fact that the sale in petitioner's favour did not require any prior permission from the respondent as the unearned increase under the lease conditions is leviable only as a condition precedent for granting permission to transfer leasehold rights. Where no such permission is required, the very foundation for levying unearned increase disappears. The respondent cannot retrospectively resurrect a condition that was never triggered.



18. To buttress his contentions, he draws attention of the Court to the letter dated 29.09.1993, addressed to the respondent, whereby it was mentioned by the petitioner that as per the Supplementary Terms and Conditions of the Auction, a sum of Rs. 23,79,106/- towards unearned increase and composition fee had been levied upon the petitioner. Despite such prompt and *bona fide* intimation, the respondent neither raised any formal demand nor informed the petitioner of any procedure or compliance required on his part.

19. He vehemently assails the mathematical calculations placed on record by the respondent, submitting that they are based entirely on the respondent's own whims and fancies without any statutory backing. The respondent has failed to offer any rational explanation as to how an initial demand of Rs. 23,24,880/- pertaining to the first sale in the year 1992 has been inflated to Rs. 3,41,03,562.98/-. He submits that this 1992 demand is hopelessly barred by time; it cannot be resurrected as an inflated claim today, nor can any interest be charged upon it. Additionally, the imposition of a further unearned increase of Rs. 5,53,94,982.04/- for the second transaction i.e. the Sale Deed dated 05.04.1994, executed by the petitioner and the department is completely baseless and illegal.

20. He further submits that pursuant to the interim orders passed by this Hon'ble Court, the conversion of the subject property has already been granted and the conveyance deed has been executed. Therefore, the scope of the present writ petition is now strictly restricted to challenging the legality and validity of the unearned increase and other related dues wrongfully demanded by the respondent.



21. In support of his contentions, Mr. Singh has placed reliance on the following decisions:

- i. Delhi Development Authority v. Karamdeep Finance and Investment (India) Private Limited and Ors. (2020) 4 SCC 136;*
- ii. Deepak Lamba & Anr. V. Delhi Development Authority 2003 SCC OnLine Del 997;*
- iii. H.R. Vaish v. Union of India & Ors. 2002 SCC OnLine Del 831.*

22. *Per contra*, Ms. Kritika Gupta learned counsel appearing on behalf of the respondent submits that the present petition is misconceived and is liable to be dismissed at the threshold. The impugned demand has been raised strictly in accordance with the terms of the Sub-Lease Deed, the Supplementary Terms and Conditions of the Auction Sale, and the governing conversion policy.

23. In response to the plea of limitation raised by the petitioner, she contends that such plea is misconceived as there is no belated demand made by the respondent. The liability has always existed, and the petitioner himself has revived the issue by seeking conversion. A person who seeks equitable relief must first comply with lawful obligations and cannot invoke delay as a shield against payment of admitted dues.

24. She submits that the entire case of the petitioner is founded upon a letter dated 29.09.1993, which is stated to have been addressed to the respondent. It is categorically denied that the said letter was ever received by the respondent. The petitioner has failed to place on record any proof of service or receipt of the said letter. In the absence of such proof, no legal



presumption can arise, and the petitioner cannot be permitted to build his case on an unsubstantiated assertion.

25. She further submits that the petitioner was fully aware of the demand towards unearned increase and composition fee, which was an integral part of the Supplementary Terms and Conditions of the Auction Sale. The petitioner, despite being aware of this liability, consciously chose not to deposit the said amount and nevertheless proceeded with the execution of the Sale Deed. Having accepted the auction terms unconditionally, the petitioner is estopped from disputing the very liability which was expressly attached to the transaction.

26. Furthermore, Ms. Gupta draws the attention of the Court to *Clause 7 of the Sale deed dated 05.04.1994*. The said clause categorically mandates that the liability of payment of unearned increase to the DDA shall be borne by the petitioner.

27. She submits that the execution of the Sale Deed dated 05.04.1994, does not *ipso facto* extinguish the contractual and statutory obligations attached to the leasehold rights. The petitioner was aware of the subsisting conditions and cannot rely upon the execution of the Sale Deed dated 05.04.1994, to defeat the respondent's lawful entitlement. Furthermore, it is only during the petitioner's application for conversion of land from leasehold to freehold, did the respondent become aware of the Sale Deed dated 05.04.1994.

28. She also submits that the conversion from leasehold to freehold is not an automatic or vested right. It is a policy-based benefit, subject to fulfilment of all conditions, including clearance of outstanding dues. Until the petitioner deposits the amount lawfully demanded and completes the



formalities prescribed under the Conversion Brochure, the respondent cannot process the application for conversion.

29. She further submits that the impugned demand has been calculated strictly in accordance with prevailing policy and valuation norms, and a detailed break-up has already been furnished to the petitioner and placed on record. The respondent has acted transparently and in accordance with established procedure.

30. To buttress her contentions, Ms. Gupta has placed reliance on the following decisions:

- i. Delhi Development Authority v. Nalwa Sons (2020) 17 SCC 782;*
- ii. Indian Shaving Products Ltd. V. Delhi Development Authority 2001 SCC OnLine Del 1123;*
- iii. Delhi Development Authority v. Videocon Industries Ltd. & Anr. 2011 SCC OnLine Del 4725.*

31. I have heard the rival contentions and also perused the records placed by the parties.

32. The core dispute in the instant writ petition revolves around the legality and validity of the unearned increase demanded by the respondent/DDA, which is bifurcated into two distinct transactions -(i) the *first transaction* i.e. the acquisition of the subject property by the department *vide* order dated 23.01.1992 under Section 269 UD(1) of the Income Tax Act, and (ii) the *second transaction* which culminated in the execution of the Sale Deed dated 05.04.1994 in petitioner's favour of the petitioner by the department, pursuant to the auction of the subject property by the department.



33. Before progressing further, it is imperative to delve upon the fundamental concept of 'Unearned Increase'. The unearned increase demand is a difference between premium paid by the lessee and its market value at which he sells the property subsequently with permission of the lessor. The government's land owning agencies like DDA and L&DO originally lease properties to citizens at concessional/preferential rates rather than market value. To prevent these individuals from unfairly profiteering by later selling the land at full market price, authorities like DDA would incorporate a clause in the lease/sub-lease allowing them to claim 50% of the profit (the 'unearned increase') from the subsequent sale. Reference in this regard may be had to the observations of this Court in *Delhi Development Authority vs. Sheri Roshan Lal Chopra & Ors. (RSA 23/2009)*, which extensively explains the concept of 'unearned increase' in the following terms:

“6. First of all let us at this stage understand the meaning of the word ‘unearned increase’. This expression is best explained by means of an example. Where a lessee is granted a perpetual lease or sub-lease by the DDA for a sum of let us say Rs.100, and the sub-lessee/lessee voluntarily or involuntarily through sale etc. transfers the suit property to a third person for Rs.1000/-, then, Rs.900/- becomes the unearned increase. Unearned increase is therefore the price which the sub-lessee/lessee receives of transfer of the property which is more than the price which has been paid by the sub-lessee/lessee to the DDA. Out of the unearned increase, the appellant in terms of the relevant clauses claims 50% of the amount i.e. in the theoretical example before us a sum of Rs.450 i.e. half of Rs.900/-. The historical background and the reason for governmental authorities like the DDA and the L&DO claiming unearned increase by incorporation of a clause in the lease/sub-lease deed was that when the properties were given on lease/sub-lease to various persons in Delhi, the same used to be transferred to them at concessional



rates/preferential rates and not at the market rates. Since the transfer was at concessional rates, the lessee such as the DDA retained with it the right that in case the suit property is further transferred/assigned/sold etc, then, DDA becomes entitled to claim 50% of the unearned increase because the original sub-lessee/lessee cannot take benefit of the market price although he had transferred the property by means of a sub-lease/lease on concessional rates. To conclude this aspect I would like to state that over the last decade or so, the DDA and L&DO have now come out with policies whereby on payment of conveyance charges the properties have been converted from lease hold to free hold and once the property becomes free hold then the person in whose name the conveyance deed is executed becomes the exclusive owner (and not sub-lessee/lessee) and the person who becomes an owner under the conveyance deed does not have any further restrictions on transfer of the property such as of payment of unearned increase. The DDA receives in a way market price of the property by taking such charges which are called as the conversion/free hold charges. With this background let us now examine the relevant facts and issues in this case.”

(emphasis supplied)

34. With regard to the *first transaction* pertaining to the subject property, it is an undisputed fact that the department had addressed a letter dated 28.01.1992 to the DDA on acquiring the subject property, and enquired about the charges leviable on the subject property pursuant to its acquisition. In response, the DDA *vide* letter dated 07.02.1992 intimated the unearned increase to the tune of Rs. 23,79,106/-, however, the said demand was never paid by the department.

35. Subsequently, the subject property was put up for auction by the department wherein the petitioner emerged as the highest bidder. The petitioner places strong reliance upon the purported letter dated 29.09.1993



addressed to the DDA wherein, referencing *para 5* of the supplementary auction terms, the petitioner explicitly acknowledged the then outstanding liability of Rs. 23,79,106/- comprising unearned increase and composition fees *qua* the first transaction, the liability of which, had been passed on to the auction purchaser. Evidently, the petitioner sought to know the formalities to be fulfilled to deposit the said specific amount and obtain the necessary sale permission. However, the petitioner has not been able to place on record an iota of document to substantiate his claim of sending the aforesaid letter to the DDA or the said letter being received by the DDA. Be that as it may, by placing the said letter on record, the petitioner as an auction purchaser has acknowledged assuming department's liability to pay the unearned increase, to the tune of Rs. 23,79,106/-, to the DDA. The purported letter dated 29.09.1993, addressed by the petitioner to the DDA reads thus:

“September 29, 1993

*Ajai Chowdhry
M-173 Greater Kailash II
New Delhi - 110 048*

*The Deputy Director (Co-operative Societies)
Delhi Development Authority
I.N.A.
New Delhi*

*Dear Sir,
Sub: Plot No.10, Ishwar Nagar Co-operative
House Building Society Limited, Ishwar Nagar
New Delhi*



I have purchased Plot No. 10, Ishwar Nagar Co-operative House Building Society Ltd. Ishwar Nagar, New Delhi from the Income Tax Department in the public auction held on 17th September, 1993. As per Para 5 of the supplementary terms and conditions of the auction, Delhi Development Authority has a claim of Rs.23,79,106/- in respect of the said property, which liability has been passed on to the auction purchaser. The said clause is reproduced hereunder:-

"Property at S.No.5 is a lease-hold vacant plot of land. The property was purchased by the Central Government vide Appropriate Authority's order dated 25.1.92. DDA vide letter dated 2.2.92 has intimated the following dues outstanding:-

- | | | |
|----|---------------------------------|-----------------|
| 1. | Unearned increase (Provisional) | Rs.23,24,881.00 |
| 2. | Composition fees from 16.8.89 | Rs. 54, 225. 00 |
| | | ----- |
| | | Rs.23,79,106.00 |
| | | ----- |

This demand has to be paid by the auction purchaser. "

By this letter, I want to know the formalities to be fulfilled by me to deposit the said amount of Rs.23,79,106/- with you and to obtain necessary sale permission for the transfer of the said property by the Income Tax Department in my favour. For this purpose, I am hereby authorising Shri JR Midha, Advocate, whose power of attorney is also enclosed herewith.

Yours faithfully,

Ajai Chowdhry"

(emphasis supplied)



36. At this juncture, it would also be apt to refer to *Clause 7* of the Sale Deed dated 05.04.1994, which was executed by the department in favour of the petitioner pursuant to petitioner's bid being accepted in the auction. Said clause 7 also mandates that the liability of payment of unearned increase to the DDA in respect of the subject property shall be borne by the petitioner. The said clause is reproduced hereunder:

“Clause 7. The liability of payment of unearned increase payable in respect of the said property to the Delhi Development Authority shall be borne by the Vendee.”

37. The explicit contractual stipulation in *Clause 7* of the Sale Deed dated 05.04.1994, also passes on the department's liability on account of unearned increase to the petitioner. Further, a reading of purported letter dated 29.09.1993 clearly establishes the fact that the petitioner had indeed acknowledged and owned the liability on account of unearned increase, to the tune of Rs. 23,79,106/-, payable to the DDA *qua* the *first transaction*. It would also be significant to note that Mr. Chander Uday Singh, learned senior counsel for the petitioner, without prejudice to petitioner's contention as to limitation, had also submitted that the petitioner will pay the unearned increase to the tune of Rs. 23,79,106/-. However, the question of limitation shall be dealt with later in this judgment.

38. Before adverting to the imposition of the unearned increase demand to the tune of Rs. 5,53,94,982.04/- levied by the DDA on the *second transaction*, apposite would it be to refer to *Clause 6* of the perpetual sub-lease deed dated 16.08.1979, *vide* which the subject property was allotted to original allottee-Mr. Vidur Bhaskar. *Clause 6* reads thus:



“(6) (a) *The Sub-Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential 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 residential 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 residential plot at the time of sale, transfer, assignment, or parting with 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.”

(emphasis supplied)

39. This Court finds the demand of unearned increase on *second transaction* to be fundamentally misconceived and legally unsustainable. The very concept of 'unearned increase'(i.e. *the difference between the premium paid and the market value*), as noted above, hinges entirely on a sub-lessee reaping profit margin while selling the allotted property at market price, after having been allotted the same at a concessional/preferential rate. This foundational premise is entirely absent in the *second transaction* whereby the department auctioned the property to the petitioner.



40. The reason is three-fold - *Firstly*, the *second transaction* is not a transfer by lessee/sub-lessee upon seeking permission/consent of the lessor/DDA. It is the department which has auctioned the subject property after having acquired the same from the original allottee/sub-lessee namely, Mr. Vidur Bhaskar, by exercising its statutory power under section 269 UD(1) of the Income Tax Act. *Secondly*, the price at which the department acquired the subject property from the said sub-lessee cannot be construed as premium paid by the sub-lessee to the lessor (i.e. DDA) as the said rate is not the concessional/preferential rate at which allotment has been made by the lessor/DDA. *Thirdly*, the transaction by way of auction by the department is not a transfer of the subject property with the consent of the lessor/DDA, rather it is a sale of statutorily acquired property, by exercise of power under Schedule II of the Income Tax Act or akin thereto.

41. Reference in this regard may also be had to the decision of the Hon'ble Supreme Court in *Karamdeep Finance* (supra) wherein the court was confronted with similar issue. In the aforesaid case, the Income Tax Department had statutorily acquired a leasehold property under Section 269 UD of the Income Tax Act, 1961. The unearned increase demand, to the tune of Rs. 17,88,114.55/-, was paid by the Income Tax department to the DDA, following the statutory acquisition. Subsequently, the said property was put up for auction by the department wherein the appellant therein emerged as the highest bidder and the property was conveyed to the appellant by the department, through a Sale Deed. Thereafter, the appellant sought conversion of the property from leasehold to freehold, which triggered a demand of unearned increase to the tune of Rs. 1,43,90,348/- *qua*



second transaction. In this backdrop, *inter alia*, it was observed that the DDA was not entitled to raise any demand of unearned increase from the appellant as the Income Tax Department was not a lessee nor it had sought any permission or consent of the lessor/DDA for transferring the property to the auction purchaser. Further, the rights of lessee were purchased by the Income Tax Department by exercising its power under Section 269UD(1) of the Income Tax Act. It was further held that when the department makes an auction of the property acquired under Section 269UD(1) of the Income Tax Act on the market value, the lessor/DDA cannot claim unearned increase demand. Incidentally, in the said case the Income Tax Department had already paid the unearned increase demand *qua* the first transaction whereby it had acquired the property from the original lessee/sub-lessee. The relevant extracts from the said judgment, reads thus:

***“16. We have already noticed Clause (4)(a) of the perpetual lease deed dated 18-3-1970, which provided that in event sanction is given by the lessor to the lessee for sale, transfer or assignment, the lessor shall be entitled to claim and recover a portion of the unearned increase in the value. The unearned increase being the difference between the premium paid and the market value. The object behind the said clause was that a lessee when is permitted to transfer the leasehold rights, the lessor should not be deprived of the difference between the premium paid and the market value. The clause was inserted in the perpetual lease to compensate the lessor. The present is not a case where the lessee is making any transfer or seeking any permission from the lessor to give his consent.*”**

17. In the present case, the appropriate authority has exercised its power under Section 269-UD of the Income Tax Act for the purchase of the property by the Central Government. It is by exercise of statutory power that rights of the lessee were



purchased by the Central Government. The Central Government issued auction notice for auction of property in question. All bids in auction of a property are given normally to match the market price of the property. When the petitioner gave highest bid and became the successful auction-purchaser, the auction-purchase has to be treated on the basis of market value of the property. Clause (4)(a) of perpetual lease as noted above provided for payment of unearned increase to cover up the difference between premium paid and the market value. When the auction was made on the market value of the property, we are of the view that there was no question of claim of unearned increase by DDA.

18. We further noticed that on purchase of the property under Section 269-UD of the Income Tax Act, the Income Tax Department has already paid unearned increase to DDA. We, thus, are of the view that the High Court has rightly held that DDA was not entitled to raise any demand of unearned increase from the writ petitioner. We, thus, do not find any merit in the appeal filed by DDA, which deserves to be dismissed.

(emphasis supplied)

42. In the present case as well, as held in *Karamdeep Finance* (supra), indubitably, when the subject property was auctioned by the department, the bid of Rs. 1,12,90,000/- given by the petitioner represented the market value of the property at that given point in time, therefore, on the analogy of ratio in said decision, the question of claim of unearned increase by DDA does not arise in case of *second transaction*.

43. Thus, the imposition of an unearned increase amounting to Rs. 5,53,94,982.04/- levied on the *second transaction* i.e. the execution of the Sale Deed dated 05.04.1994, is *ex-facie* arbitrary, without authority of law, and cannot be sustained.



44. Now coming to the submission of Mr. Chander Uday Singh that the impugned demand raised by the DDA is hopelessly time barred, to be noted that the same is to be considered only in the context of *first transaction qua* the subject property, as the demand *apropos* second transaction has been held to be untenable. Mr. Singh has stated that from 05.04.1994, when the subject property was conveyed to the petitioner by a duly registered Sale Deed dated 05.04.1994, until the year 2022, the respondent never raised any demand whatsoever on account of unearned increase. Hence, the DDA cannot raise a stale demand after nearly three decades, merely because the petitioner subsequently applied for conversion of the property from leasehold to freehold. Further, it is contended that the respondent, being a statutory authority, cannot claim the benefit of any extended period of limitation and is squarely governed by the provisions of the Limitation Act, 1963.

45. At first blush, the contention raised by the learned Senior Counsel seems attractive, given the DDA's evident indolence in raising the demand following the execution of the Sale Deed in 1994, but it cannot be taken forward because of settled jurisprudential proposition that while the bar of limitation may prevent a person from instituting a suit to recover an outstanding amount, but it does not mean the debt itself ceases to exist. In other words, the remedy is barred, but the underlying right remains entirely unaffected. Consequently, before the DDA is compelled to relinquish its paramount title and convey freehold tenure to the petitioner, it is legally entitled to insist that all accrued dues payable in respect of the subject property be cleared.



46. However, pursuant to the interim orders of this Court in the instant case, the subject property has already been converted from leasehold to freehold, and the conveyance deed dated 10.01.2024 stands executed. Be that as it may, the obligation to pay the unearned increase *apropos* first transaction, is contractually binding under *Clause 7* of the Sale Deed dated 05.04.1994. Therefore, when the petitioner actively initiated the conversion process on 18.02.2022, seeking to convert the subject property from leasehold to freehold, the DDA was well within its right to levy and demand the unearned increase. The impugned demand of Rs. 23,79,106/- is thus, a valid exercise of DDA's right to have the existing property dues cleared prior to conversion, rendering it legally enforceable and undefeated by the mere passage of time.

47. Reference in this regard may be had to the decision of this Court in *Union of India & Anr. v. Jor Bagh Association Registered & Ors.* 2012 *SCC OnLine Del 1230* wherein the Court while dealing with similar situation, observed as under:

“76. The argument that where the demands were created but not enforced, and the period of limitation to recover the same has expired, to permit the lessor to recover the same as a condition for conversion would breach the well-recognized jurisprudential principle that what cannot be done directly cannot be done indirectly, as observed and applied in the decision reported as JT 2009 (10) SC 645 Subhash Chandra v. Delhi Subordinate Services Selection Board, has no application on the subject at hand, for the reason it is settled law that where the bar of limitation prevents a person from suing to recover the amount due, it does not mean that the amount ceases to be due. The right remains unaffected. Only the remedy is barred. If the lessor has a demand with respect to a



property, before the lessor is compelled to relinquish its title and convey free-hold tenure, the lessor would be permitted to insist that dues payable to it must be cleared.

XXXX XXXX XXXX XXXX XXXX

80. We summarize our opinion and then proceed to frame the question of law to be referred to a larger Bench:-

(A).....(G)

(H) A demand towards damages on account of misuse and/or unauthorized construction, if barred by limitation for the purposes of recovery thereof, would not denude the lessor the power to demand the same as a condition to convert lease-hold tenure into free-hold tenure.”

(emphasis supplied)

48. Having held that the demand of unearned increase pertaining to the *first transaction* is not barred by limitation and is legally tenable, this Court must now delve upon the last yet crucial issue pertaining to the quantum of interest, if any, leviable on the outstanding unearned increase to the tune of Rs. 23,79,106/-.

49. The law is well settled that interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect, and the same has been held to be payable on a market rate. It is equally settled that the rate of interest should be determined in a manner that balances both fairness and financial impact, taking into account the ‘loss of use’ principle and economic prudence, in the specific facts of each case.

50. This Court finds that both parties share the blame for the delayed payment of the Rs. 23,79,106/- unearned increase. Although the petitioner



consciously assumed the department's liability under the Sale Deed dated 05.04.1994 and claimed to have sent a letter dated 29.09.1993 acknowledging the debt, he has provided no proof of its despatch or delivery nor made any further efforts to deposit the amount of unearned increase, the liability which was explicitly acknowledged.

51. Likewise, the DDA demonstrated severe administrative lethargy; apart from an initial communication dated 07.02.1992 to the department regarding the quantification of demand *qua first transaction*, the DDA subsequently failed to raise demand to either the petitioner or the department.

52. That apart, DDA's revised impugned computation of unearned increase (*annexed as Document 6 to the counter-affidavit of the DDA*) in respect of the same transaction is at variance with the earlier demand of Rs. 23,79,106/-, despite DDA in its counter-affidavit clearly admitting crystallization of demand of Rs. 23,79,106/- on account of the unearned increase *qua first transaction*, and the same was also made a part of the Supplementary Terms and Conditions of the auction sale. The relevant extract from DDA's counter- affidavit reads thus:

“iv. That the Petitioner was aware of the demand which was raised by the Answering Respondent at the time of Sale deed but chose not to pay a sum of Rs. 23,79,106/- which was part of Supplementary Terms and Conditions of the Auction Sale. Therefore, the Petitioner cannot take the plea that he was not liable to pay the unearned increase in the value of the property.”



53. The formulation of revised figure of Rs. 65,29,080.34/- on account of unearned increase is thus, arbitrary and unjustified. Even the rate of interest levied by the DDA in its revised computation is stated to be 14% p.a. for 30 years 02 months which is exorbitant and against the principle of restitution, considering DDA's lackadaisical approach and passage of very long period.

54. Given concurrent negligence of the petitioner and the DDA, this court is of the view that the petitioner is liable to pay interest on the unearned increase demand to the tune of Rs. 23,79,106/-, but the rate of interest will have to be decided bearing in mind the totality of circumstances and not strictly as per the revised calculations carried out by the DDA wherein the unearned increase *qua first transaction* of the subject property has been recalculated to Rs.65,29,080.34/- and interest levied thereon at the rate 14% per annum, departing from earlier demand of Rs. 23,79,106/-, without any justification being put forth.

55. For deciding the rate of interest, it is profitable to refer to the decision of the Hon'ble Supreme Court in *DDA and Ors. v. Joginder S. Monga (2004) 2 SCC 297* wherein the Hon'ble Court has expounded on the applicability of the rule to award interest in equity. The relevant extracts from the aforesaid judgment, reads thus:

“52. By reason of the aforementioned interim order, the High Court directed payment of 18% interest. The rate of interest which was prevailing at the relevant time was 18%. However, the bank rate of interest has since gone down drastically. Grant of interest pendente lite and for future is a discretionary remedy. The court of appeal can, therefore, exercise the same power while finally disposing of the lis as that of the High Court keeping in view the principle engrafted in Section 34 of



the Code of Civil Procedure. The rate of interest may have to be fixed having regard to the principle of restitution.

53. Recently, this Court has examined this principle in South Eastern Coalfields Ltd. v. State of MP [(JT 2003 (supp. 2) SC 443], stating: (SCC p. 661, para 21)

‘21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (See: Chitty on Contracts, Edition 1999, Vol. II, Para 38-248, at page 712). Interest in equity has been held to be payable on a market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.’

54. Despite the same, the Court reduced the statutory rate of interest from 24% to 12% stating:

‘30. So far as the appeal filed by the State of Madhya Pradesh seeking substitution of rate of interest by 24% per annum in place of 12% per annum as awarded by the High Court is concerned, we are not inclined to grant that relief in exercise of our discretionary jurisdiction under Article 136 of the Constitution especially in view of the opinion formed by the High Court in the impugned decision. The litigation has lasted for a long period of time. Multiple commercial transactions have taken place and much time has been lost in between. The commercial rates of interest (including bank rates) have undergone substantial variations and for quite sometime the bank rate of interest has been below 12%. The High Court has, therefore, rightly (and reasonably) opined that upholding entitlement to payment of interest at the rate of 24% per annum would be excessive and it would meet the ends of justice if the rate of interest is reduced from 24% per annum to 12% per



annum on the facts and in the circumstances of the case. We are not inclined to interfere with that view of the High Court but make it clear that this concession is confined to the facts of this case and to the parties herein and shall not be construed as a precedent for overriding Rule 64A of the Mineral Concession Rules, 1960. It is also clarified that the payment of dues should be cleared within six weeks from today (if not already cleared) to get the benefit of reduced rate of interest of 12%; failing the payment in six weeks from today the liability to pay interest @ 24% per annum shall stand.'

XXXX XXXX XXXX XXXX

56. We may notice that in Pure Helium India Pvt. Ltd. vs. Oil & Natural Gas Commission [2003 (8) SCALE 553], the rate of interest awarded by the arbitrator was reduced to 6% in exercise of its power under Article 142 of the Constitution of India.

57. In the facts and circumstances of this case, we are of the opinion that grant of 9% interest shall meet the ends of justice. We, therefore, while dismissing the appeals direct that instead and place of 18% interest, the appellant shall be liable to pay interest @ 9% per annum. The amount payable to the respondents must be paid within a period of six weeks from this date together with interest failing which the respondents would be entitled to claim 18% interest on the expiry of the said period till actual payment is made."

(emphasis supplied)

56. Likewise, it would also be advantageous to refer to a recent decision of the Hon'ble Supreme Court in ***I.K. Merchants Pvt. Ltd. and Others v. State of Rajasthan and Others 2025 SCC OnLine SC 692*** wherein the Hon'ble Supreme Court again dealt with the issue of levying the interest rate



on the basis of equitable considerations. The relevant paras of the said judgment, reads thus:

*“16. Be it noted, while the discretion to award interest, whether pendente lite or post-decree, is well recognized, its exercise must be guided by equitable considerations. **The rate and period of interest cannot be applied mechanically or at an unreasonably high rate without any rationale. Though it is not possible to arrive at the actual value of improvement or the inflation on the fair consideration, if paid at the relevant point of time, it is just and necessary that the rate of interest must be a reparation for the appellant. The Court must ensure that while the claimant is fairly compensated, the award does not become punitive or unduly burdensome on the Judgment Debtor. Therefore, the rate of interest should be determined in a manner that balances both fairness and financial impact, taking into account the “loss of use” principle and economic prudence, in the specific facts of each case.***

17. Considering the prolonged pendency of the dispute regarding the valuation of shares, which has only been determined recently, and the substantial share amount involved, and also keeping in mind that this is a commercial transaction, and the entire burden of interest along with principal value falls upon the Government, it is necessary in the present case to award reasonable interest, in order to strike a balance between the parties. Thus, in these peculiar facts and circumstances, we deem it fit, just and appropriate to award simple interest at the rate of 6% per annum from July 1975, on the enhanced valuation of shares till the date of decree and interest at the rate of 9% per annum from the date of decree till the date of realisation. The interest shall be paid along with the amount due towards the enhanced value of the shares, after adjusting the amount already paid, to the appellants, within a period of two months from today.”

(emphasis supplied)



57. In light of the legal position on the payment of interest on equitable considerations and regard being had to the facts and circumstances of the present case and the downward trend in bank rates, this court deems it appropriate to award simple interest at the rate of 7% per annum from the date of the Sale Deed i.e. 05.04.1994 executed by the department in favour of the petitioner till the date of pronouncement of this judgment.

58. However, before parting, the decisions relied upon by the respondent may also be adverted to. The reliance placed by the respondent on the decisions in *Nalwa Sons* (supra), *Indian Shaving Products Ltd.* (supra) and *Videocon Industries Ltd.* (supra) is misplaced. Factually, *Nalwa Sons* (supra) involved a High Court-sanctioned demerger where the original lessee's property was transferred to and vested in a newly floated public limited company. Similarly, both *Indian Shaving Products* (supra) and *Videocon Industries Ltd.* (supra) dealt with schemes of amalgamation where the original lessee companies merged into distinct corporate entities, resulting in the leasehold properties being transferred to the transferee companies. In all three instances, there is no statutory acquisition of the subject property and the courts held that such corporate restructuring, which vested assets into new legal entities, constituted a definitive 'transfer' of property rights, thereby lawfully triggering the unearned increase demand. In stark contrast, the present matter involves statutory acquisition of the subject property by the department, which was subsequently put to auction/sale by the department on 17.09.1993.

59. Since it is an admitted position that pursuant to the interim orders passed by this Court, the conversion of the subject property has already been



granted and the conveyance deed dated 10.01.2024 has been executed, the present petition is disposed of with the following directions:

- (i) The impugned demand dated 06.12.2022 raised by the respondent/DDA on its e-portal, to the extent it levies an unearned increase of Rs. 5,53,94,982.04/- on the *second transaction*, is hereby quashed and set aside. As held above, the auction sale by the Income Tax Department after having statutorily acquired the subject property does not trigger a demand for unearned increase by the DDA.
- (ii) The petitioner is held liable to pay the unearned increase amount of Rs. 23,79,106/- pertaining to the *first transaction* along with simple interest at the rate of 7% per annum from the date of the Sale Deed dated 05.04.1994 up-to the date of pronouncement of this judgment .
- (iii) Accordingly, the respondent/DDA shall raise fresh demand in light of the direction given herein above and the same shall be communicated to the petitioner and the Registry within four weeks from the date of this judgment.
- (iv) Sequel to above, the Registry is directed to deduct the fresh demand amount, communicated by the DDA, from the monies already deposited by the petitioner i.e. Rs. 8,94,98,546/- and the same shall be transferred to the DDA. The remaining amount shall be remitted back to the petitioner along with interest accrued thereon.



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60. The writ petition is partly allowed and disposed of in the aforesaid terms. All pending applications, stand disposed of accordingly.

APRIL 21, 2026
N.S. ASWAL

VIKAS MAHAJAN, J.