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

Reserved on: 24th April, 2026
Pronounced on: 16th July, 2026

\+ W.P.(C) 2590/2005

ARJUN DEV (SINCE DECEASED) Through L.Rs. .....Petitioner

Through: Mr. Madan Gera and Mr. Jagat Mehra Ms. Megha Saxena, Advocates.

versus

UOI & ANR. .....Respondents

Through: Mr. Piyush Beriwal with Ms. Ruchita Srivastava, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Article 226 of the Constitution of India, 1950 has been filed seeking the following prayers:-

> "It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:
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> a) Grant a Writ, Direction or Order in the nature of prohibitive restraining the respondent from recovering/ levying damages on the property of the petitioner without any authority of law:
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> b) Grant a Writ of Mandamus directing the respondent to disclose the basis on which such damages can be levied.
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> c) Issue a Writ of Certiorari to quash/set aside the orders dated 14.8.02 and 20.11.2004 rejecting the application for conversion from lease hold to free hold.

> d) Issue a Writ of Mandamus to the respondent for conversion of lease hold to free hold the said property No. 3A/Block No.88 known as 8, Lady Harding Road, New Delhi and to allow the restoration of the lease as per Clause 4 (C) of the Notification dated 25.6.96 and Clause 1(C) of the Notification dated 24.7.96.
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> e) Pass such further order or orders, issue direction or directions, grant relief(s) which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case, to meet the ends of justice."

2. During the course of the proceeding, on 22.11.2014, petitioner herein *i.e.* Mr. Arjun Dev (hereinafter referred to as "**deceased petitioner**") passed away. Subsequently, legal representatives (hereinafter referred to as "**LRs**") of the deceased petitioner filed a CM No. 1322/2015 dated 20.01.2015 seeking impleadment of the formers in the present petition. *Vide* order dated 17.03.2015, the aforesaid application was allowed and LRs of deceased petitioner (hereinafter referred to as "**petitioners**") were impleaded as party in the present petition.

3. Relevant facts for adjudication of the present writ petition as pleaded are as follows:-

a) Property bearing no. 3A/88 known as 8, Lady Harding Road, New Delhi (hereinafter referred to as "**subject property**") was allotted by Land and Development Office (hereinafter referred to as "**L&DO**")/ respondent no. 1 in favour of late Lala Madho Ram *vide* perpetual lease deed dated 15.03.1922. As per the said lease deed, the usage of the property was designated as residential. On 15.01.1925, subject property was mutated in the name of Lala Banwari Lal. Subsequently, the subject property was transferred with the consent of the respondent no. 1 to Mr. Lakshmi Chand s/o Lala Banwari Lal on 09.09.1941.

Thereafter, Mr. Lakshmi Chand expired on 21.04.1961 and the respondent no. 1 *vide* letter dated 06.06.1963, mutated the subject property in the name of the deceased petitioner. However, different portions of the subject property let out to the tenants by the deceased petitioner were being misused by them for their offices.

b) *Vide* letter dated 16.04.1969, deceased petitioner admitting to the fact that some portion of the subject property is being used as office by the occupants since 01.06.1968, requested the respondent no. 1 to intimate the terms and conditions for regularization of breaches existing on the subject property. *Vide* letter dated 12.05.1969, the respondent no. 1 intimated the deceased petitioner that "in consequence of your failure to remedy the aforesaid breach the Lessor had been pleased to determine the Lease and re-enter upon the premises with effect from 5.4.1969…". In response to the same, deceased petitioner *vide* letter dated 01.07.1970, offered to pay the charges for misuse of the subject property and requested the respondent no. 1 to apprise him about the damages to be paid, so that the lease of the subject property may be restored and the re-entry may be withdrawn, but it went in vain and the deceased petitioner again reiterated the same *vide* letter dated 16.04.1973.

c) Subsequently, Estate Officer, L&DO/ respondent no. 2 issued a show cause notice dated 14.03.1974 to the deceased petitioner, to show cause on or before 29.04.1974 as to why an order of eviction should not be made against him. Deceased petitioner responded to the said notice *vide* letter dated 26.04.1974, requesting the respondent no. 2 to intimate him about the terms and conditions to regularize the breaches at the subject property.

d) *Vide* letter dated 08.09.1992, respondent no. 1 intimated the deceased petitioner that they would be pleased to withdraw its re-entry order and regularize the breaches upto 14.01.1993 provided that the deceased petitioner comply with the demand raised in the said letter, which amounted to Rs. 2 crores approximately.

e) Deceased petitioner *vide* letter dated 27.01.1993 objected to the respondent no. 1's letter dated 08.09.1992 alleging exaggerated demands made by the concerned officer for alleged misuse of the subject property by the tenants, who had already left the said property and stating that the deceased petitioner was now not in a position to recover the said charges from its defaulting tenants. Further, *vide* letter dated 01.08.1995, deceased petitioner intimated the respondent no. 1 that all the tenants have vacated the subject property on or before 30.06.1995 and there is no misuse or breach of the lease deed of the subject property.

f) Thereafter, deceased petitioner applied for conversion of the subject property from lease hold to free hold *vide* application dated 20.12.1999 and deposited a sum of Rs. 2,34,738/- as first installment of the conversion fee. However, *vide* letter dated 14.08.2002, respondent no. 1 rejected the said application in terms of clause 18 of 'Conversion From Lease Hold Into Free Hold' Brochure of July, 1999 (hereinafter referred to as "**conversion brochure**") and stated that the subject property has been re-entered and there is already a litigation pending between the lessee and the lessor.

g) *Vide* letter dated 28.04.2004, deceased petitioner requested for re-examination of his case of conversion of the subject property into free hold, in view of an identical case of property no. 103, Jor Bagh, New Delhi owned by one Mr. Dharam Vir Vohra, wherein conversion was allowed by the respondent no. 1. Moreover, deceased petitioner along with the said letter enclosed a fresh cheque of Rs. 2,34,316/- dated 28.04.2004, as the earlier deposited amount of Rs. 2,34,738/- as first installment of the conversion fee was returned back.

h) Thereafter, v*ide* letter dated 29.06.2004, deceased petitioner requested respondent no. 1 for an order to the effect that his request for conversion has been accepted as it was verified by him from the concerned Bank that his cheque dated 28.04.2004 was encashed on 22.05.2004 and believing that the same amounts to acceptance of his conversion application. Further, it was also stated in the said letter that the deceased petitioner will be submitting an application before the Court of Estate Officer to adjourn the proceedings pending *sine-die* as he was awaiting an order of acceptance for conversion of the subject property from the respondent no. 1.

i) Respondent no. 2 *vide* order dated 09.07.2004, rejected the application of the original petitioner to adjourn the proceedings *sine-die* on account of the fact that "*it is an established fact that when the lease has been determined and the ex-lessee has seized to have any leasehold right, there is nothing which remains to be converted into freehold so long as the re-entry is not withdrawn.*"

j) On 30.11.2004, respondent no. 1 communicated to the Pay & Accounts (Sectt.), Ministry of Urban Development that as the conversion application of the deceased petitioner was rejected *vide* letter dated 14.08.2002, sanction of President is conveyed for refund of Rs. 2,34,316/- sent by the deceased petitioner *vide* cheque dated 28.04.2004.

k) Aggrieved by the letter/ communication dated 14.08.2002 and 30.11.2004 (hereinafter referred to as "**Impugned Letters**") and the demand of damages raised *vide* letter dated 08.09.1992, present writ petition has been filed by the deceased petitioner.

l) Learned Single Judge of this Court *vide* Judgment dated 13.12.2010, allowed the present petition and set aside the impugned communication dated 14.08.2002. Moreover, directed the respondents to consider the application of the deceased petitioner for conversion of subject property from lease hold to free hold, in accordance with law and clarified that the respondents would only be entitled to recover levy damages in accordance with the terms of the lease.

m) Subsequently, respondents filed an LPA bearing no. 650/2011 against the Judgment dated 13.12.2010. The said LPA was disposed of *vide* order dated 07.08.2012, by setting aside the Judgement dated 13.12.2010 and restoring the present writ petition for adjudication afresh before the learned Single Judge.

4. Learned Counsel for the petitioners, in support of the present petition made the following submissions:-

i) No Show Cause Notice was served by the respondent no. 1 before passing the re-entry order dated 12.05.1969. As per law, every citizen has to be given a reasonable opportunity to explain before any action is contemplated or taken against him for his property. Thus, the respondent no. 1 illegally deprived the deceased petitioner of such opportunity and passed the re-entry order.

ii) Respondent no. 1 passed the re-entry order dated 12.05.1969 on the basis of the letter dated 07.10.1968, alleging that the breaches mentioned in the re-entry order dated 12.05.1969 have neither been removed nor regularized despite the notice dated 07.10.1968. However, the alleged notice dated 07.10.1968 is not on record and thus, it cannot in any manner be treated as a Show Cause Notice.

iii) Though lease deed dated 15.03.1992 is silent about giving any show cause notice before any action is contemplated but the principles of natural justice and *audi alteram partem* has to be read as if the same was a part of the codified law/ lease deed. The Hon'ble Supreme Court in **Kesar Enterprises Limited v. State of Uttar Pradesh & Ors.**[1] held that the principles of *audi alteram partem* and natural justice are there to check arbitrary exercise of power and non-observance thereof makes an order a nullity. In **Swadeshi Cotton Mills v. UOI**[2], Hon'ble Supreme Court further elaborated ingredients of the aforesaid rule by observing that the same cannot be sacrificed at the altar

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[1] **AIR 2011 SC 2709**
[2] **(1981) 1 SCC 664**

of administrative convenience. In **Aslam Mohd. Merchant v. Competent Authority & Ors.**[3], Hon'ble Supreme Court observed that once a show cause notice is found to be illegal then the same would vitiate all subsequent proceedings.

iv) No terms were communicated to the deceased petitioner despite writing approximately 31 letters, which are placed on record, prior to the issuance of the demand notice dated 08.09.1992. Further, no terms and conditions were given on account of which the misuse charges, if any, could not be collected from the tenants. Charges were intimated when tenants had vacated the subject property either on account of filling of the eviction petitions or otherwise. Thus, the deceased petitioner could not recover the misuse charges from the tenants in absence of any demand raised. Reliance is placed upon the Judgment of Hon'ble Division Bench of this Court dated 06.08.2012 in RFA (OS) 107/2009 titled as **UOI & Anr. v. Satish Kumar Mehta**, wherein, it was held that since no charges were intimated despite repeated requests, the same were not recoverable as the tenants who had misused the property had already left. The said legal proposition was reiterated *vide* Judgment dated 28.02.2012 disposing LPA No. 415/2005 titled as '**UOI V. Jor Bagh Association**' wherein it was held that where lessee is not at fault and it is tenant who commits offending act and lessee takes resort to all means to evict the tenant, it would be un-just for lessor to penalize the lessee as the same would violate jurisprudential norm that no person can be penalized for no fault of his own.

[3] **(2008) 14 SCC 186**

v) Though letter dated 07.10.1968 haven't been placed on record, however, the deceased petitioner had given reply to the same *vide* letter dated 16.04.1969. In the said letter it was stated that some portions of the subject property is being used as an office by the tenants since 01.06.1968. Further, in the said letter, respondent no. 1 was requested to intimate about the terms and conditions for regularization of the breaches, so that necessary charges could be paid accordingly.

vi) The aforesaid letter dated 16.04.1969, doesn't find any mention in the re-entry order dated 12.05.1969. This reflects non consideration of the said reply, while passing the re-entry order. Moreover, deceased petitioner had sent another letter dated 23.05.1968, even prior to the issuance of the purported Show Cause Notice dated 07.10.1968 and that too has not been considered before passing the re-entry order dated 12.05.1969. Reliance for the aspect of 'non-consideration of reply' has been placed upon the Judgment of Hon'ble Division Bench of this Court in **Hari Prakash Edn. Welfare Society & Ors. v. DDA & Anr.**[4]. In the said judgment, it was observed that as long as reply has been received before the order of cancellation, the competent authority has to apply its mind to the question of cancellation of the lease. It was also observed that not only there has to be a finding that there is misuse but there has to be an opportunity to rectify the same and a clear finding thereafter to the effect that the misuse had not been stopped and for the said purpose, a second inspection was necessary to verify whether or not the alleged misuse had stopped.

[4] **2008: DHC:9348-DB**

vii) Clause 18 of the conversion brochure states grounds on which conversion application can be rejected. According to Clause 18.1 of the said brochure, a conversion application can be rejected when the Lease stood determined or the properties stood re-entered and Clause 18.2 states that when there is a pending litigation between a lessee and the lessor, the conversion application will be rejected. In the present case, respondent no. 1 without affording any opportunity for hearing rejected the conversion application *vide* letter dated 14.08.2002 on the ground that a) the subject property has been re-entered and b) there is a litigation pending between the lessee and the lessor.

viii) With respect to the first ground of rejecting the conversion application, it is submitted that there was no inspection, no consideration of deceased petitioner's replies, no breaches as alleged and no opportunity of hearing before passing the re-entry order, thus, the re-entry order is *per se* illegal. With respect to the second ground of rejecting the conversion application, it is submitted that there was no pending litigation initiated by the deceased petitioner challenging any action of the L&DO. In fact, the proceedings were initiated by the L&DO under section 4 of the Public Premises Act, 1971. In furtherance of the re-entry proceedings, the proceedings under the Public Premises Act, 1971 follow impliedly as per practice adopted by L&DO and as a consequence thereof, the lessee is deemed unauthorized occupant. The Estate Officer gets jurisdiction only because of the said re-entry order and is not competent to see the validity or invalidity of the re-entry order. Thus, the proceedings initiated under the Public Premises Act, 1971 are compulsive in nature and cannot be treated as pending litigation. Hence, ground mentioned in clause 18.2 of the conversion brochure was also not made out and the conversion application has been rejected illegally.

ix) As per clause 4 of the Office Order dated 25.06.1996, it was clarified that in case of misuse of properties or unauthorized constructions thereon, if misuse is condonable as per the master plan provisions, no additional conversion fee would be charged. Further, it was also stated that where the property has been re-entered, the re-entry order will be revoked by the lease administrating authorities on payment of charges of Rs. 100/- per day or Rs. 3000/- per annum and in such cases, no damages on account of deemed unauthorized occupation of Government land/ property will be levied by the lease administrating authorities while allowing the conversion. Moreover, it was stated in the said order that in case of unauthorized construction and misuse of the property, action can be taken by the concerned authorities under the building bye-laws and zoning regulations even after the properties have been converted into free hold. Additionally, as per clause 5 of the said order, misuse charges/ damages for unauthorized construction, if any, claimed prior to the receipt of the application for conversion, should only be charged before allowing conversion and no fresh demand need to be raised by the lease administrating authority on this account.

x) Notably, according to clause 1(c) of Office Order dated 24.07.1996, fee for revocation of re-entry needs to be charged from the date of re-entry to the date of allowing the conversion.

xi) Clause 6 of the Office Order dated 28.06.1999 has not been considered by the respondent no. 1 while rejecting the conversion application of the deceased petitioner on 14.03.2002. The said clause states that it has been decided that unauthorized construction or misuse of the building ought to be taken care of by NDMC/ MCD/ DDA etc. under their laws/ regulations and the lease administering authority may permit conversion of all lease properties irrespective of any building violations or use violation that may exist.

xii) Reliance on Clause 18.1 of the conversion brochure can not be placed, which states that the conversion application will be rejected if the lease stood determined/ canceled or the property stood re-entered. As the Hon'ble Division Bench of this Court on 07.01.2005 in **UOI v. Vinay Kumar Agarwal**, LPA bearing no. 696/2004 held that the said Clause was already existing even in the earlier conversion brochure of April, 1992 and thereafter various Office Orders were issued which deals with the situation where the property has been re-entered on account of misuse/ unauthorised construction and its effect thereto on the conversion scheme. It was further held that various Office Orders issued by the respondent no. 1 would over ride the effect of Clause 18.1 of the conversion brochure of July, 1999. Thus, in view of the Office Order dated 25.06.1996, 24.07.1996 and 28.06.1999, re-entry ought to have been withdrawn and the application for conversion should have been processed by the respondent no. 1.

xiii) Further, Office Order No. 24/93 dated 20.10.1993 deals with recovery of misuse charges for conversion of the property into freehold and Clause (ii) of the said Office Order clearly specifies that in cases where misuse charges/ damages claimed earlier have not been paid by the lessee, such charges need not be reassessed/ worked out/ updated along with interest but instead the amount as per the demand raised earlier should be recovered before conversion is allowed. However, respondent no. 1 in violation of the said Office Order, updated the charges on the basis of increased land rates in its demand letter dated 21.01.2009, which was computed as per directions given by the learned Single Judge of this Court in the present case *vide* order dated 11.09.2008. The said updated demand is highly exorbitant and much beyond the demand earlier raised *vide* demand letter dated 08.09.1992.

xiv) The demand raised *vide* letter dated 08.09.1992 is time barred. The demand raised as per entries made at serial no. 1 to 7 in the said demand letter indicate that the misuse charges have been claimed from 01.08.1965 onwards, that is a claim of more than 28 years ago. Further, demands made at serial no. 8 onwards are from 14.01.1975 to 14.01.1993 *i.e.* exceeding the date of the demand notice dated 08.09.1992. In **Government of India v. Citedal Fine Pharmaceuticals, Madras & Ors.**[5], Hon'ble Supreme Court held that in absence of any period of limitation, every authority is to exercise power within a reasonable period. In **State of Punjab & Ors. v. Bhatinda District Co-op. Milk P. Union Limited AIR (2007) 11 SCC 363**, while considering demand under Punjab General Sales Tax Act, Hon'ble Supreme Court dismissed revisional jurisdiction exercised after a period of more than 5 years. In **DDA v.**

[5] **1989 (3) SCC 483**

Ram Prakash[6], Hon'ble Supreme Court refused to interfere with the judgment of Hon'ble Division Bench of this Court wherein LPA was dismissed holding that demand made after lapse of 25 years is arbitrary. In **Rattan Kaur v. DDA & Anr.**[7], learned Single Judge of this Court held that just like DDA cannot prosecute a person for an offence under Delhi Development Act, 1957 at any length of time, collection of fine/ penalties has also to be done within a reasonable time. Same was followed by the learned Single Judge of this Court in **Vikramaditya Bhartia v. DDA**[8].

xv) Under protest, even if the letter dated 07.10.1968 is considered as a Show Cause Notice for effecting the re-entry order, it is only the misuse demand at serial no. 1 to 6 in the said demand letter for which allegedly a Show Cause Notice dated 07.10.1968 was issued. For demands made at serial no. 7 to 15 in the demand letter dated 08.09.1992, there is admittedly no Show Cause Notice.

xvi) Clause 13 of the lease deed dated 15.03.1922 stipulates that the rent reserved may be enhanced on or after 01.01.1947 and thereafter at the end of each successive period of not less than 30 years and the said letting value shall be assessed by the Collector of Delhi provided always that such assessment of letting shall be subject to the same right on the part of the Lessee for Appeal from the orders of the said Collector and within such time as if the same were an assessment by a Revenue Officer within the meaning of Section 50 of Punjab Land Revenue Act, 1887. However, in the present case no such revision of

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[6] **AIR 2011 SC 1399**
[7] **2007 SCC OnLine Del 1016**
[8] **2013 SCC OnLine Del 2340**

ground rent has been made by the Collector, nor any Show Cause Notice was sent prior to enhancing the additional ground rent. Accordingly, the additional ground rent claimed at serial no. 18 and interest thereon at serial no. 19 of the demand notice are illegal and *ultra vires*.

xvii) According to Office Order no. 1/85 dated 04.01.1985, only the date of inspection should be taken as the date of commencement of misuse/ unauthorized construction. Moreover, as per Office Order No. 3/85 dated 06.02.1985, it is noted that there have been cases in which though certain misuse was noticed in an inspection but no notice was issued. In such case, it was ordered that L&DO cannot claim any charges. Therefore, in all those cases where inspections were made but no notice was issued, notices may be issued forthwith on the basis of previous inspection. In present case, no inspection at all had been carried nor any notice was given for inspection and straightaway a demand was raised, thus the same is contrary to the guidelines laid down above.

xviii) Office Order no. 23/76 dated 31.03.1976 states entire procedure to be followed after noticing a breach, whether it pertains to issuing a Show Cause Notice, Recovery of Charges for the breaches, date of determination for commencement and vacation of breaches, penalty and formula for calculation of charges for change of use. As per Clause 8 of the said Office Order, it is stipulated that where the lessee/ ex-lessee files suit for eviction against defaulting tenants on receipt of notice for misuse and are successful in evicting such tenants, one percentage of the charges will be recovered as token penalty in consultation with the Ministry of Works & Housing and Finance. The said Clause was enacted in order to give benefit to those lessees whose premises have been misused by the tenants and which lessees after the receipt of the Notices from L&DO instituted Eviction Petitions against their tenants and got them vacated. The words "token penalty" used in Clause 8 of the said Office Order does not make it as a penalty. It is only recovered in the nature of token penalty and nomenclatured so for administrative and accounting purposes. The charging of 'Penalty' as such has been stipulated in Clause 11 of the said Office Order. In view of the said Office Order, the respondent no. 1 was under an obligation to charge only 1% of the misuse charges as computed in toto.

xix) Following the Policy of L&DO, the deceased petitioner had filed 7 Eviction Petitions against the tenants and in pursuance of the said Eviction Petitions, all the tenants were evicted and misuse was stopped. Since the deceased petitioner had filed Eviction Petitions and was consequently successful in evicting the tenants, the petitioner is unequivocally entitled to the benefit given in Clause 8 of the Office Order 23/76 dated 31.03.1976.

xx) Office Order 23/76 dated 31.03.1976 have been considered by the Hon'ble Division Bench of this Court in **UOI v. P.R. Nair**[9], wherein the principle of 1% of the misuse charges was discussed and upheld. Relevant paragraphs of the said Judgment are as follows:-

> "10. We are unable to accept the contention of the learned ASG that the "rule" of 1% is applicable only to the levy of penalty and not to misuse charges, though we may notice that a learned Single Judge of

[9] **2012:DHC 4597-DB**

> this Court in Satish Kumar Mehta v. U.O.I. 168(2010) DLT 316 has held so. Though in the L&DO Manual as aforesaid, the said "rule" is mentioned after the formula for levying misuse charges as well as penalty but in the Office Order, the said "rule" precedes the provision regarding penalty. Ordinarily when the said "rule" is placed even before providing for levying of penalty, it cannot relate to penalty. Even otherwise, the language of the 1% "rule" does not restrict the applicability thereof to penalty charges only or exclude the applicability thereof to misuse charges. The expression used is "1% of the charges". Merely because the "rule" further proceeds to use the expression "token penalty", would not imply that the same is applicable qua penalty only. Further, at best, the language used is faulty and ambiguous. The same having been framed by the L&DO, it is the L&DO and not the lessee which ought to suffer for such ambiguity. We accordingly hold that where the lessee / ex lessee files suit for eviction against the tenant misusing the premises and is successful in evicting such tenant, the liability for misuse charges would be only 1% of the misuse charges otherwise payable in accordance with the formula laid down in the Office Order aforesaid."

The said judgment *qua* Clause 8 of the aforesaid Office Order is directly applicable to the facts of the present case and thus, the petitioner is also entitled to the benefit of the same. Thus, misuse charges claimable are only 1% of the misuse charges as computed by respondent no. 1 in the demand notice dated 08.09.1992.

xxi) As per Office Order No. 7/83 dated 22.03.1983 various Office Orders issued were consolidated and a complete list of condonable breaches were made. Based on the principles of entry nos. 17 and 26 in the said list, garage used for commercial purposes *qua* subject property cannot be subjected to any misuse charges. Similarly, as per entry 30(a) rooms being used for professional work by occupants in case the user does not exceed 30% of the covered area or 500 sq ft. whichever is less is also condonable.

xxii) Lease deed dated 15.03.1922 did not provide for damages charges either for misuse or for unauthorized construction and thus, the demand raised *vide* letter dated 08.09.1992 did not find support of the said lease deed. In **Jor Bagh Association (Regd.) & Ors. v. UOI & Ors.**[10], this Court held that no damages for unauthorized construction can be charged from the lessee, if the same are not provided for in the lease in question. Thus, in spite of the long standing practice by itself, having no support in any Clause in the lease in question, cannot justify the demands raised for such damages.

5. Refuting the submissions made on behalf of the deceased petitioner, learned Counsel for the respondents made the following submissions: -

i) The subject property was inspected on 11.09.1968 and the breaches of unauthorized construction/ misuse were intimated to the deceased petitioner *vide* notice dated 07.10.1968. In the said notice, deceased petitioner was requested to remove the said breaches within 30 days and to furnish certified copies of rent deed executed with the tenants. The deceased petitioner was again informed *vide* letter dated 25.01.1969 and 17.02.1969 to comply with the letter dated 07.10.1968. But since no reply was received from the deceased petitioner, the subject property was re-entered on 05.04.1969 and the same was communicated to the deceased petitioner on 12.05.1969.

ii) On the request to the deceased petitioner *vide* letter dated 30.01.1990,

[10] **2004 SCC OnLine Del 478**

terms for withdrawal of re-entry were duly communicated on 08.09.1992. However, since the deceased petitioner failed to comply with the said terms a case was filed before the Court of Estate Officer under the Public Premises (Eviction of unauthorised occupants) Act, 1971.

iii) Since, the deceased petitioner's letter dated 01.08.1995 was not found satisfactory, officers of the respondent no. 1 made a surprise visit to the subject property on 12.01.1997 to ascertain the correct position with respect to the subject property but the same was not allowed by the former. When the matter came up for hearing before the Estate Officer on 07.02.1997, the respondent no. 1 informed the deceased petitioner before the Court that the inspection would be carried out on 14.05.1997. But when the officers went for the same on 14.05.1997 and again on 14.01.1998, deceased petitioner again refused them for conducting inspection.

iv) Reliance cannot be placed upon the Judgment of Hon'ble Division Bench of this Court dated 07.01.2005 in LPA 696/2004 titled as "**UOI v. Vinay Kumar Agarwal**". As in the said case, proceedings under the Public Premises (Eviction of unauthorised occupants) Act, 1971 could not be initiated. However, in the present case, the proceedings before the Estate Officer were already initiated in 1973 and is still pending adjudication. Further, in the said case, the terms for withdrawal of re-entry were not communicated as there was no request for compromise. However, in the present case, a demand for charges for misuse/ unauthorised construction has been raised against the deceased petitioner, who had made an unconditional request *vide* letter dated 30.01.1990 for knowing the terms and the same has been duly communicated to him *vide* letter dated 08.09.1992. The relevant paragraphs of the aforesaid judgment are as follows:-

> "19. There is no gainsaying the fact that the lease was determined on 10.04.1970; that action remained unchallenged. Yet, the appellant did not take any action on it. Likewise, it made a demand sometime in the early nineteen seventies, but did not take any action to ensure payment.
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> 21.The circular dated 28.06.1999 made the conversion scheme applicable to plots over 500 sq. years. The reading of the second 1996 circular shows that applications for conversion into freehold were not to be rejected merely because there is re-entry which has taken place. It provides that the re-entry fee is to be charged from the date of re-entry to the date of allowing the conversion. The mode of charging of this re-entry fee was not specified but from the earlier circular dated 25.06.1996 it is obvious that the charges specified therein would apply to such withdrawal of re-entry. The first 1996 circular specified the rate, viz. Rs.100 per day or Rs.3000/- per annum. It is true, that was in respect of re-entry wherein sale took place. The learned single judge, in our view correctly held that this eventuality or situation was a step ahead of the present case where there is mere, or simplicitor re-entry and no further transfer was being made.
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> 22.Counsel for respondent submitted, and in our view, correctly that the 1999 Brochure or scheme did not supersede the two circulars issued in 1996. there is no intrinsic material to show that the earlier circulars, which had been issued as clarification while working out the 1992 scheme, were superseded. In fact, the 1999 Brochure, in its Introduction, makes mention of the 1992 scheme, and sets out the rationale for issuing the new Brochure. The provisions in the Brochure, in material particulars are similar to the 1992 scheme; it appears to be a compilation, put together in "Frequently Asked Questions" format, for the facility of easy reference. <u>Therefore, the claim of the appellant that Para 18.1 operates as a blanket bar in all cases of re-entry has to be viewed in the context of the situations where conversion is permitted in certain cases of re-entry, dealt with in the two circulars.</u>

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24. If one sees the power of the appellant in the perspective explained above, it would be apparent that there is no rationale why a person who has suffered re-entry should be denied the facility of conversion of his property from lease hold into freehold whereas a General Power of Attorney holder or even a lessor who sells the property, (when there is no authority to do so) can nevertheless be relieved of the rigors of such determination/ re-entry of lease, and be permitted to enjoy the benefit of conversion into freehold. We are conscious of the fact that the respondent has not attacked clause 18.1. We therefore cannot say that the condition is arbitrary or unreasonable. However, while construing the provisions of a policy, the court is bound to give it a reasonable, and non-arbitrary interpretation. It is settled that when confronted with two interpretations, one which leads to the action becoming Unconstitutional, and the other which, even while furthering the object of the measure, saves it the court must adopt the latter (U.P. Avas Evam Vikas Parishad v. Jainul Islam1 and Maharashtra SRTC v. State of Maharashtra,2)

25. The stand taken by the appellant that it can restore leases only in respect of those cases which relate to transfer, while not restoring the leases of those who seek no such transfers, is arbitrary. If it is possible to proceed and convert the leasehold rights of leases which have been determined, but where the lessees have transferred their rights, the ground of denial of such benefit in cases where there is no transfer, is indefeasible. The proper construction therefore, of Para 18.1 would be to read it down so as to extend the benefit of conversion in those cases of re-entry like the present, where the original lessor continues in possession, and applies in time, as per the Brochure of 1999.

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27. We therefore agree with the view taken by the learned single judge, that the application of the respondent could not have been rejected on the ground of re-entry but on the other hand in view of payment made, it ought to have been processed, is the correct one.

28.The learned single judge had directed processing of the respondent's application on the payment of the following amounts, aggregating Rs.61,705/-:

(i) Amount demanded by the office letter dated 9.7.1969 Rs.14331.00
(ii) 6% interest on above amount w.e.f. 9.7.1969 to 31.10.1971 Rs.1930.00
(iii) 8% intrest from 4.10.1971 to 28.8.19785 Rs.4473.00
(iv) 10% interest from 29.8.1975 to 31.3.2001 Rs.36672.00
(v) 10% interest from 1.4.01 to 31.3.04 Rs.4299.00

We may notice in this context that the respondent had sought for restoration of lease as per clause 4(c) of the first 1996 circular, and deposited Rs. 87,000/- (being the amount of Rs. 3000/- per annum for each years' misuse, till date of application, i.e. for 29 years). Such being the case, and having regard to the fact that the amount originally demanded by the appellant, viz Rs. 14,331/- being in respect of misuser which existed as of 1969, and not as charges for restoration of a lease that had been determined, it would not be appropriate to grant a relief that had not been claimed. Accordingly, we modify the direction contained in Para 23 of the judgment under appeal, so far as the amount is concerned, and affirm the operative portion in Para 24. Consequently, the appellant is directed to process the application of the respondent for conversion, by adjusting and accepting the amount of Rs. 87,000/- deposited as per para 4(c) of the circular dated 25.6.1996, along with the amount of conversion charges deposited. In case of any other formalities, they too shall be intimated to the respondent. The entire process shall be completed within six weeks."

v) Conversion application of the deceased petitioner was rejected on various grounds, which are as follows:-

a) There was no subsisting lease on the date of the conversion application, as the lease had been determined on 05.04.1969.

b) The deceased petitioner had applied under the conversion policy intimated in the brochure of July, 1999, where under clause 18.1 it is clearly mentioned that the conversion will be rejected when the lease has been determined and the property has been re-entered.

c) As per clause 18.2 of the conversion policy, the application of conversion will be rejected, if there is any pending ligation between the lessee and the lessor.

d) As per clause 18.8 of the conversion brochure, conversion application will also be rejected when the charges payable under different heads have not been paid. Clause 19 of the said brochure mentions that the amount that is payable for getting conversion done includes *inter alia*, as mentioned in sub clause 3 "*arrears of any other dues earlier levied by the lessor and not paid by the lessee*". In the present case, the deceased petitioner had been intimated *vide* letter dated 08.04.1992, the terms for temporary regularization of misuse and unauthorized construction. Further, para 13 of the said brochure, also mentions that when misuse charges were levied earlier by the lessor and have not been paid by the lessee, then such amount needs to be paid before the application for conversion can be considered.

vi) In **State of Uttar Pradesh v. Sudhir Kumar Singh v. Ors.**[11], Hon'ble Supreme Court observed that there cannot be any breach of natural justice where the person complaining, does not dispute the case against him. Relevant paragraphs of the said judgment are as follows:-

> "42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of

[11] **(2021) 19 SCC 706**

> facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice."

In the present case, deceased petitioner *vide* letter dated 01.07.1970, itself admitted to pay the additional charges payable for misuse regarding the subject property. Thus, re-entry was lawful and warranted due to the deceased petitioner persistent failure to comply with the lease conditions.

vii) The issue raised by the deceased petitioner regarding factum of re-entry are issue of facts which cannot be challenged in writ petition. Thus, the petitioners are misusing the process of law by filing the present writ petition.

viii) There is no reason for the deceased petitioner to file the present writ petition as the Estate Officer has neither issued any order nor the former has prayed for any early hearing/finalisation of proceedings. Further, it is well settled that an appeal against the orders of Estate Officer can only lie with the Appellate Court *viz.* the Court of District Judge.

ix) Further, Office Order dated 25.06.1996 is not applicable in the present case since the subject property has been re-entered. Whereas, the said Office Order clearly states in Para 4(c) that "*in such case no damages on account of deemed unauthorized occupation of Government land/ property will be levied by the lease administering authority while allowing conversion*". Further, Rs. 3000/- per annum is to be paid only in lieu of charges for deemed unauthorised occupation which are clearly distinguished and different from the charges for unauthorised construction and misuse.

x) Since the lease has been determined, there is no question to convert the subject property, when the lease in itself is not in existence since 05.04.1969.

xi) Office Order no. 23/76 dated 31.03.1976 has been modified *vide* Office Order no. 08/99, which specifically states that the penalty can be reduced from 10% to 1% if the ex-lessee took tangible steps for vacating the tenants from the Court of law but that would not effect the other Government dues which would be recoverable under the Government Policy.

6. Refuting the stand taken by the respondents, learned Counsel for the petitioners submitted that:-

i) After various representation made by the deceased petitioner in the year 1970, 1973 and 1974 with respect to regularization of alleged breaches, it was only after a period of 23 years that the respondent no. 1 demanded misuse charges amounting to Rs. Two crores (approx.) for withdrawal of its re-entry. Immediately thereafter, the deceased petitioner had made a representation for the arbitrary, illegal and exaggerated demand raised by the respondent no. 1 and pointed out that the tenants at the subject property had already left the premises and former was not in a position to recover such misuse charges from the defaulting tenants, but it went in vain.

ii) In view of the Officer Order dated 25.06.1996, 24.07.1996 and 28.06.1999, re-entry ought to have been withdrawn and the application for conversion should have been allowed by the respondent no. 1.

iii) It was specifically held in **UOI v. Vinay Kumar Aggarwal (Supra)** that Clause 18.1 of the conversion brochure has lost its effect in view of the various Office Orders issued by the Government of India. Further, conversion application cannot be rejected on the basis of Clause 18.2 of the said brochure because once the lease deed stood determined, necessary corollary *i.e.* eviction proceeding before the Estate Officer is followed. Moreover, since the conversion scheme itself stipulates the re-entry cases, the conversion application cannot be rejected on the ground of any such pending litigation before the Estate Officer. With respect to Clause 18.8 of the said brochure, it is submitted that the lease administrating authority cannot assume the functions which are to be exercised by the local bodies by claiming misuse charges and thus, reject the conversion application on these grounds.

iv) The contention raised by the respondents with respect to modification of Officer Order No. 23/76 dated 31.03.1976 is denied. As para 4(C) of Office Order dated 25.06.1996 clearly states that:-

> "the re-entry order will be revoked by the lease administering authorities on payment of prescribed charges of Rs. 100/- per day or Rs. 3000/- per annum and in such cases no damage on account of deemed unauthorized occupation of Government land/ property will be levied by the Lease Administering Authority while allowing conversion."

i) Reliance is placed upon **Dwarka Nath v. Income Tax Officer**[12],

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[12] **1965 SCC OnLine SC 61**

Berhampur University & Anr. v. Ganesh Chandra Behera & Ors.[13], **Rajesh Kumar & Ors. v. State of Bihar & Ors.**[14], **Bessy Edison & Anr. v. Indira Gandhi National Open University**[15] and **Major Amandeep Singh v. University of Delhi & Anr.**[16] to show that this Court under Article 226 of the Constitution of India has power to mould reliefs prayed for in the writ petition.

ANALYSIS AND FINDINGS

PREVIOUS PROCEEDINGS IN THE PRESENT PETITION

7. The present petition was disposed of by the learned Single Judge *vide* judgment dated 13.12.2010, while relying upon the decision of learned Division Bench in **Vinay Kumar Agarwal (*Supra*)**. Learned Single Judge while disposing the present petition observed as under:-

> "13. In this case, lease was re entered as far back as in the year 1969 and thereafter the petitioner has all along been ready and willing to pay the misuse charges, which may be quantified as per terms of the lease. Even at the time of sanction of the building plan, petitioner had deposited 5,658/- vide receipt No. L-74 dated 08.03.1968 towards misuse charges. The Division Bench in the case of **Vinay Kumar Aggarwal (Supra),** while relying upon the Circular of 1996 along with clarification has ruled that the application for conversion into free hold is not to be rejected, merely because there is re entry, which has taken place. The circular prescribes that the re entry fee is to be charged from the re entry to the date of allowing the conversion in the following terms, as per para 2 (c), which reads as under:

[13] **2021 SCC OnLine Ori 2399**
[14] **(2013) 4 SCC 690**
[15] **(2011) 121 DRJ 238**
[16] **2015 SCC OnLine Del 14584**

"c) The fee for revocation of re-entry should be charged from the date of the re-entry to the date of allowing conversion because re-entry order could be deemed to have been withdrawn only from the date conversion to freehold is allowed by the competent authority."

14. Counsel for the respondent has been unable to show that the present case is not covered by the decision of **Vinay Kumar Aggarwal (supra).** Consequently, the present petition is allowed. Impugned communication dated 14.08.2002, rejecting the application for conversion is set aside. Respondents will consider the application for conversion from lease-hold to free- hold, in accordance with law and would be only entitled to recover levy damages in accordance with the terms of the lease."

8. Subsequently, it is pertinent to note that the aforesaid decision in **Vinay Kumar Agarwal (*Supra*)** was expressly overruled by a Full Bench decision of this Court in **UOI & Ors. Vs. Engineering and Ind. Corporation Pvt. Ltd.** in LPA 1125/2007 dated 10.07.2012. Relevant portion of the said judgment reads as under:-

"14. In Vinay Kumar Aggarwal's case (supra), a Division Bench of this Court has opined that the clause in question mandates revocation of the re-entry made by the Lease Administering Authorities by charging `100/- per day or `3000/- per annum where re-entry was ordered on account of misuse of properties or unauthorized construction and this would mean that upon payment of said sums the breaches stand condoned, inasmuch as without the breach being condoned, re-entry cannot be revoked. To put it simply, the said amounts have been treated akin to compounding charges. The Division Bench has been influenced by the fact that the clause in question, vide para (a) thereof specifically deals with issues of misuse of properties or unauthorized construction thereon.

15. We may note that the decision of the Division Bench was challenged before the Supreme Court and Leave to Appeal was granted, but Civil Appeal No.1364/2006 UOI vs. Vinay Kumar Aggarwal was dismissed vide order dated February 18, 2010 which reads as under:-

"We are not inclined to interfere with the impugned judgments of the High Court. We however, leave the question of law that has been raised by the ASG, open for decision in some other case. With this observation the appeal is dismissed."

16. However, in a later decision pronounced by a Division Bench of this Court, following the law declared by the Division Bench in Vinay Kumar Aggarwal's case (supra), the Supreme Court granted Leave to Appeal in SLP(C) No.31868/2010 UOI vs. Anu Mehra and the matter is pending before the Supreme Court.

17. Sh.Amarjit Singh Chandhiok, learned ASG urged that the Division Bench of this Court in Vinay Kumar Aggarwal's case (supra), probably for the reason the argument was not advanced, did not consider the argument that when a lease is determined the continued possession of the lessee becomes unauthorized; rendering the lessee liable to pay damages on account of unauthorized occupation of the property leased and that the circular guideline in question merely contemplated this period of unauthorized occupation and provided that for each days unauthorized occupation damages would be paid at `100/- per day subject to a maximum of `3000/- per annum and not that this was the amount payable to regularize the breach. Per contra, learned counsel appearing for the respondents urged that the view taken by the Division Bench was correct and that if re-entry was effected due to misuse of property or an unauthorized construction being made, the revocation thereof on charges payable as per the circular would mean that the breach stood compounded.

18. Let us digest the clause in question. The opening words of the clause : „In this connection it is further clarified‟ makes it clear that the circular is clarificatory. The circular in question deals with various issues and one of them being the issue of re-entry being effected upon there being either misuse of property and/or unauthorized construction thereon. Vide para (a) of Clause 4 it is clearly contemplated that the clause deals with an issue concerning the misuse of property or unauthorized construction thereon and clarifies only with respect to misuse, evidenced by the fact that the said para refers to such misuse which is condonable as per Master Plan provisions or Zoning Regulations; Clause (b) contemplates situations of misuse not exceeding 25% of the built area or 500 sq. ft. Clause (c) contemplates situations of unearned increase. After listing, in clauses (a), (b) and (c) a particular situation pertaining to misuse,

unauthorized construction or a transfer, a residual provision is stipulated in the concluding paragraph of the clause, dealing by way of clarification, with properties which have been re-entered. It stands clarified that in cases of properties which have been re-entered, '<u>the re-entry order will be revoked</u> by the lease administering <u>authorities on payment of prescribed charges of Rs. 100/- per day or Rs.3,000/- per annum</u> and in such cases <u>no damages on account of deemed unauthorized occupation</u> of Government land/property will be levied by the lease administering authority while allowing conversion'.

19. The underlined portions in the extract of the policy guideline would highlight that the charges stipulated are in lieu of damages on account of unauthorized occupation of the demised property, upon the lease being determined, and ex-facie have no concern or connection with the misuse charges or charges towards unauthorized construction. Prima-facie, the error committed by the Division Bench is not to keep in view the distinction between a lessor being entitled to determine a lease upon breach of a condition thereof, but being willing to condone the breach if adequately recompensed, vis-à-vis a lessor determining the lease relegating the lessee to the status of an unauthorized occupant and becoming liable to pay damages for unauthorizedly occupying the premise in question, and the lessor fixing the damages to be paid to regularize the unauthorized occupation. The expression '<u>On account of deemed unauthorized occupation of Government land/property</u>', which immediately follows the expression '<u>On payment of prescribed charges of Rs.100/- per day or Rs.3000/- per annum</u>', makes it evident that the circular clearly conveys the view projected by the learned Additional Solicitor General and thus we accept the argument.

20. We accordingly overrule the view taken by the Division Bench of this Court in <u>Vinay Kumar Aggarwal's</u> case (supra) and answer the reference as per para 19 above. We hold that Rs.100/- per day, subject to a maximum of Rs.3000/- per annum payable as per the policy circular dated June 25, 1996 is restricted only to the period post re-entry being effected and is the amount towards damages payable for unauthorized occupation and that the said sum is not towards regularizing a breach in the form of misuse or unauthorized construction."

9. Learned counsel for the petitioners thereafter drew attention of this Court to an order dated 16.08.2023 passed by the Hon'ble Supreme Court in Civil Appeal No. 1958/2011 titled **UOI v. Anu Mehra**, whereby the said appeal was dismissed. It was submitted that the impugned judgment in the said appeal was also rendered relying upon **Vinay Kumar Aggarwal (*Supra*)**. The said order reads as under:-

> "Heard the learned senior counsel appearing for the appellant-Union of India.
>
> The challenge is to the judgment of the learned Single Judge of the Delhi High Court which is confirmed in Letters Patent Appeal by the Division Bench. The learned Single Judge recorded the following statement of the learned counsel appearing for the Union of India:
>
> > "Learned counsel for the Respondent very fairly states that the matter stands covered on all fours by these judgements. He however submits that a Special Leave Petition has been filed and notice has been issued by the Supreme Court. Since the impugned judgements have not been stayed, he correctly states that this writ should also meet the same result."
>
> In view of the said statement, the Writ Petition filed by the respondent was allowed in terms of the decision of the Delhi High Court in the case of Union of India v. Vinay Kumar Agarwal which was confirmed by the Division Bench. In the Letters Patent Appeal, the learned Additional Solicitor General represented the appellant. Even the Division Bench recorded the admitted position that the case was covered by Vinay Kumar Agarwal's case. Subsequently, the Special Leave Petition arising out of Vinay Kumar Agarwal's case was not entertained by this Court while leaving the question of law open for decision in some other case.
>
> We are, therefore, not inclined to interfere with the impugned orders. The appeal is accordingly dismissed."

10. It is pertinent to note that the learned counsel for the respondents at this stage pointed out that the decision of the Hon'ble Full Bench was not brought to the notice of the Hon'ble Supreme Court. In these circumstances, the judgment given by Hon'ble Full Bench in **Engineering and Ind. Corporation Pvt. Ltd. (*Supra*)** shall be binding on this Court.

11. The judgment dated 13.12.2010 disposing of the present petition was challenged by way of LPA 650/2011, which was disposed of by the learned Division Bench *vide* order dated 07.08.2012, which reads as under:-

> "1. The impugned order dated December 13, 2010 has decided the issue with reference to a decision of a learned Single Judge reported as 112(2004)DLT 690, *Jor Bagh Association (Regd.) and Others v. Union of India and Others*. The said decision has since been overruled by a Division Bench of this Court. The ancillary issue pertaining to a policy dated June 25, 1996 was thereafter answered by a Full Bench on July, 10, 2012.
>
> **2. A perusal of the writ petition would reveal that the demand on account of alleged misuse/unauthorized construction charges has been challenged by the writ petitioner on various other grounds including the ground of procedural and substantive unreasonableness in raising the demand.**
>
> **3. On the subject of procedural as also substantive and unreasonableness while raising a demand, the Division Bench has upheld the law declared by four Benches of this Court; which decisions have been noted in Paragraph 71 of the decision pronounced by the Division Bench on February 28, 2012.**
>
> 4. Accordingly, the issue other than the ones which are decided vide impugned order, require to be considered and adjudicated upon by the learned Single Judge.
>
> 5. The appeal stands disposed of setting aside the impugned order dated December 13, 2010.

6. W.P.(C) No.2590/2005 is restored for adjudication afresh with respect to such other contentions which were raised by the writ petitioner; and needless to state which had neither been taken note of nor decided, when order dated December 13, 2010 was passed.

7. Parties shall appear before the learned Single Judge when the writ petition shall be listed on 10th September, 2012.

8. No costs." **(emphasis supplied)**

12. Thus, in view of the above, reliance placed by learned counsel for the petitioners on the Office Orders dated 25.06.1996, 24.07.1996 and 28.06.1999 to contend that only charges for withdrawal of re-entry at the rate of Rs. 3000 per annum w.e.f. the date of re-entry to the date of allowing the conversion to free hold is liable to be paid and not any other charges for misuse of property cannot be accepted. It is, however, pertinent to note that the learned Division Bench, while disposing of the aforesaid LPA, in paragraph 3 thereof has upheld the law on the subject of procedural as also substantive unreasonableness while raising a demand by referring to a decision pronounced by the learned Division Bench in **UOI & Anr. v. Jor Bagh Asson. Regd. & Ors.**, in LPA 415/2005 dated 28.02.2012. Relevant portion of the said judgment bearing relevance in the present petition reads as under:-

"71. We would thus be obliged to make a reference, after framing a question to a Larger Bench, but before doing so, would be constrained to give an opinion on a supplementary issue which was argued before us with respect to the law declared in the decisions reported as 2000 (VIII) AD (Delhi) 363 Hari Prakash Edn. Welfare Society & Ors. vs. DDA & Anr., 2007 (VIII) AD (Delhi) 313 Ram Prakash (Prof.) vs. DDA, which decision was upheld by a Division Bench of this Court in LPA No.22/2008 and finally by the Supreme Court in SLP (C) No.27278/2009; 1987 (12) DRJ

170 <u>Sahib Singh vs. DDA & Anr</u>. and 2005 (V) AD (Delhi) 135 <u>Sant Ram Sodhi vs. LG & Anr</u>.

72. The decisions were cited on the subject of procedural fairness while levying a demand towards misuse charges or charges towards unauthorized construction. In <u>Hari Prakash's</u> case (supra) the Division Bench emphasized that before effecting re-entry for breach of a term of the lease, procedural fairness required the lessor to put the lessee to notice granting reasonable time to remedy the breach, before passing an order to re-enter the property. In <u>Sahib Singh's</u> case (supra) and Sant <u>Ram Sodhi's</u> case (supra), two learned single Judges of this Court held that where the misuse or the unauthorized construction was not by the lessee but by the tenant of the lessee and if the lessee established that the same was not with his consent and that the lessee resorted to the legal remedy available to the lessee by either evicting the tenant or requiring the tenant to remedy the wrong, no charges towards misuse or damages could be levied upon the lessee. In <u>Ram Prakash (Prof.) case</u> (supra), the learned Single Judge, on facts of the case, had highlighted that the lessor had been sending notices, being five in number, on various dates which were being responded to by the lessee and the lessor did not bother to consider the response filed as also the fact that the lessee had taken legal remedy against the tenant for the wrong committed by the tenant. The learned Single Judge quashed the demand. The view was upheld till the Supreme Court.

<u>73. Suffice would it be to state that where the lessee is not at fault and it is the tenant of the lessee who commits the offending act and the lessee takes resort to all means which he can possibly resort to; to either evict the tenant or to compel the tenant to remedy the breach, it would be unjust on the part of the State, as the lessor, to penalize the lessee for the same would violate the jurisprudential norms that no person can be penalized for no fault of his and that constructive liability cannot be fasten except when a law expressly so fastens.</u>

74. But, this would be an aspect to be gone into on the facts, if any pleaded, in each case.

*** *** ***

80. ....

<u>(F) Procedural fairness in the levy and demand of damages on account of misuse and/or unauthorized construction as explained in Hari Prakash's case (supra), Saheb Singh's case (supra), Sant Ram Sodhi's</u>

<u>**case (supra) and Ram Prakash (Professor)'s case (supra) would have to be observed by the lessor on the subject of levy and demand of damages on account of misuse and/or unauthorized construction.**</u>"

(**emphasis supplied**)

13. In the present case the deceased petitioner had taken a specific stand that the misuse was on account of the tenants in the subject property and he had initiated appropriate proceedings for their eviction. Relevant documents have been placed on record by the deceased petitioner with respect to the said proceedings. The learned Division Bench thus while remanding back the present Writ Petition had flagged this issue in view of the judgment in **UOI v. Jor Bagh** (***Supra***). This issue therefore has been dealt with in the latter part of the judgment.

14. It is also pertinent to note that learned Division Bench in **Vinay Kumar Aggarwal (*Supra)*** had also held that the stand of the appellant therein that it could restore leases only in respect of those cases which relate to transfer and not with respect to leases of those who seek no such transfers was arbitrary. It was observed and held as under: -

> "23. It is true that the appellant acts as a lessor, with all the attendant rights and privileges, when it frames policies, and negotiates with individual lessees for conferment of benefits in relation to property. Nevertheless, the peculiar position it enjoys, as a State within the meaning of Article 12 places certain inherent limitations upon its conduct. As a State or state agency, it is entitled to adopt a rational policy having universal application. However, in dealing with individuals or classes of persons, it has to keep within the bounds of Article 14, which makes non-arbitrary behavior imperative.
>
> 24. If one sees the power of the appellant in the perspective explained above, it would be apparent that there is no rationale why a person

who has suffered re-entry should be denied the facility of conversion of his property from lease hold into freehold, whereas a General Power of Attorney holder or even a lessor who sells the property, (when there is no authority to do so) can nevertheless be relieved of the rigors of such determination/re-entry of lease, and be permitted to enjoy the benefit of conversion into freehold. We are conscious of the fact that the respondent has not attacked clause 18.1. We therefore cannot say that the condition is arbitrary or unreasonable. However, while construing the provisions of a policy, the court is bound to give it a reasonable, and non-arbitrary interpretation. It is settled that when confronted with two interpretations, one which leads to the action becoming Unconstitutional, and the other which, even while furthering the object of the measure, saves it the court must adopt the latter (U.P. Avas Evam Vikas Parishad v. Jainul Islam and Maharashtra SRTC v. State of Maharashtra)

25. The stand taken by the appellant that it can restore leases only in respect of those cases which relate to transfer, while not restoring the leases of those who seek no such transfers, is arbitrary. If it is possible to proceed and convert the leasehold rights of leases which have been determined, but where the lessees have transferred their rights, the ground of denial of such benefit in cases where there is no transfer, is indefeasible. The proper construction therefore, of Para 18.1 would be to read it down so as to extend the benefit of conversion in those cases of re-entry like the present, where the original lessor continues in possession, and applies in time, as per the Brochure of 1999."

15. The aforesaid observation by the learned Division Bench that despite para 18.1 of the conversion brochure, the benefit of conversion in cases of re-entry apart from the cases where the lessees have transferred the rights, and in cases where the original lessor continues to be in possession should be extended has not been set aside by the learned Full Bench in **Engineering and Ind. Corporation Pvt. Ltd. (*Supra*)**.

16. As pointed out hereinabove, learned Full Bench overruled the judgment of learned Division Bench in **Vinay Kumar Aggarwal (*Supra)*** only with respect to calculation of damages. In any case *vide* the demand letter dated 08.09.1992, respondent no. 1 had agreed to withdraw the re-entry notice and temporarily regularised the breaches upto 14.01.1993, provided the deceased petitioner complies with the terms and conditions enumerated therein which included an amount of approximately Rs. 2 Crores.

17. Thus, in view of the aforesaid observation by the learned Division Bench in **UOI & Anr. v. Jor Bagh Asson. Regd. & Ors. (*Supra*)**, it was incumbent upon respondent no. 1 while calculating the misuse charges/ damages to consider that misuse was not on account of any deceased petitioner's conduct. It is also pertinent to note that even as per the documents placed on record, last inspection by respondent no. 1 was prior to the passing of the order dated 12.05.1969, *i.e.*, order of re-entry. Although, it has been claimed by respondent no. 1 in the counter-affidavit that there were various attempts to inspect the property but the same were not allowed by the deceased petitioner but nothing has been placed on record to demonstrate the same. It has also come on record that despite various communication, respondent no. 1 did not inform the deceased petitioner of the charges till 08.09.1992.

RE-ENTRY WITHOUT THE SHOW-CAUSE NOTICE: -

18. Application for conversion from lease hold to free hold on behalf of the deceased petitioner was rejected by respondent no.1 *vide* letter dated 14.08.2002, which records as under:-

"Government Of India
Ministry of Urban Development & Poverty Alleviation
Land & Development Office
Nirman Bhawan, New Delhi.

NO. L&DO/LI-9/88(3-A)/2002/357. Dated 14.8.2002

To,
Sh. Arjun Dev,
16- Todermal Lane,
New Delhi.

Sub.:- Premises situated on Plot No. 3-A, Block NO. 88 known as 8 Lady Harding Road, New Delhi- conversion of property.

*****

Sir,

I am directed to refer to your application NO. 164 for conversion of aforesaid property from lease hold into freehold and to say that as this property is re-entered and there is litigation pending between the lessee and the Lessor, the conversion application has been rejected by the Competent-Authority in terms of provision of clause 18 of the conversion brochure.

The conversion amount deposited by you is being refunded separately.

Yours' faithfully,

R.P.Singh

(R.P.Singh)
Assistant Settlement Commissioner"

19. Learned counsel for the petitioners vehemently argued that no show-cause notice was served by the respondent no. 1 before passing the re-entry order dated 12.05.1969. For the sake of completeness, the letter dated 12.05.1969 is reproduced as under: -

Regd.A.D. Annexure P-2

GOVERNMENT OF INDIA
MINISTRY OF HEALTH FAMILY PLANNING AND
WORKS HOUSING AND URBANDEVELOPMENT
LAND AND DEVELOPMENT OFFICE

No.11a-9/88(3a)63. New Delhi, dated the 12.5.1969.

From:

The Dy. Land & Development Officer
New Delhi.

To

Shri Arjan Dev
C/o. M/s. Banwari Lal Lakshmi Chand,
59, Panchkuin Road
New Delhi.

SUB: Premises situated on part Plot No.3, Block No.88, known as 8-Lady Harding Road, New Delhi.

****

Dear Sir,

The under mentioned breaches existing on the Lease hold premises cited as subject have neither so far been removed nor regularized by you despite a notice given to you in this behalf on behalf of the Lessor vide Land and Development Officer's letter No.LI!-9/88(3A)/63 dated 7.10.1968.

MAIN BUILDINGS

GROUND FLOOR:-

1. One bed room used as office of M/s. Tractor & Equipment Corporation Ltd., Area 18 ¼' x 18'.

2. One bed room used as office of M/s. British Broadcasting corporation. Area 20 3/8' x 12 ¼'.

FIRST FLOOR :-

3. One bed room used as office of M/s. Westing House Saxby Farmers (P) Ltd. Area 13 ¼' x 18'.
4. One bed room used as office by M/s. Philips India Ltd. Area 15' x 10'.
5. One bed room used as office by M/s. National Insurance Co., of Newzealand Ltd. Area 20 3/8' x 12 ¼'.

OUT HOUSES :

6. One room over garage used as office of M/s. Tractor and equipment Corporation Ltd. Area 11 x 9 ¼'.
7. One room on the end floor over garages used as office of M/s. Mutual Industries Corporation Ltd. Area 11' x 9 ¼'.

Please take notice, therefore, that in consequence of your failure to remedy the aforesaid breach the Lessor had been pleased to determine the Lease and re-enter upon the premises with effect from 5.4.1969 on and from which date, therefore all your rights and tide in the leasehold property in question have ceased.

2. The entire plot of land forming the subject matter of the relevant lease Deed and all the buildings standing thereupon including all structures, erections and fittings vest now in the President of India. Shri Bharat Bhushan, an Assistant Engineer of the Land and Development Office, has

been directed to take possession of the premises from you and he will call upon you for this purpose on 15.5.1969 at 10.30 A.M. and I, hereby call upon you to handover peacefully the possession of the premises including land, buildings, fittings fixtures, etc. to him.

Yours faithfully,

Sd/-
(SHITAL PRASAD)
Dy. Land and Development Officer,
For and on behalf of the President of India.

20. A perusal of the aforesaid letter would reflect that the same is based on a letter dated 07.10.1968, whereby, allegedly the deceased petitioner was put to notice with regard to breaches existing in the leasehold/ subject property not being removed/ regularized. However, the alleged notice dated 07.10.1968 is not on record. It is pertinent to note that in response to the aforementioned letter dated 12.05.1969, the petitioner addressed a communication dated 01.07.1970 to the respondent no. 1, wherein, it is recorded that the deceased petitioner had been asked to deposit a sum of Rs. 5,650/- in order to avoid the extreme penalty of re-entry and the same was deposited *vide* receipt dated 08.03.1968. It was further recorded in the said communication dated 01.07.1970, that in addition to the above amount the deceased petitioner was further prepared to pay any additional charges, chargeable under the rules, for misuse regarding the subject property and accordingly, it was requested that the deceased petitioner may be intimated about the said charges.

21. Learned counsel appearing on behalf of the respondent no. 1 drew attention of this Court to a letter dated 16.04.1969 addressed by the deceased petitioner to respondent no. 1, wherein, the communication of 07.10.1968 (alleged show-cause notice) has been referred to and argued that the stand of the deceased petitioner, that no show-cause notice was issued, is incorrect. It is pertinent to note that in the aforesaid letter dated 16.04.1969, the petitioner had requested respondent no. 1 to intimate about the terms and conditions for regularization of the breaches, so that the necessary charges could be paid accordingly. The said letter, does not find any mention in the re-entry order dated 12.05.1969.

22. Attention of this Court has also been drawn to a letter dated 23.05.1968, by the deceased petitioner to respondent no. 1, which was sent even prior to the issuance of alleged show-cause notice dated 07.10.1968 and that too has not been considered before passing the re-entry order dated 12.05.1969. It was thus, argued that the aforesaid re-entry order suffers from vice of non-application of mind as the competent authority did not consider the consistent offers made on behalf of the deceased petitioner to pay necessary charges for the breaches. The said letter dated 23.05.1968 reads as under:-

> "The Land & Development Officer, New
> New Delhi,
> Sub- Premises situated in part Plot No.3 Block No.88 known as 8, Lady Hardinge Road. New Delhi.
> Dear Sir,

With reference to the above I beg to submit the following few lines for your kind and favourable consideration and necessary orders thereon at an early date.

That I am the recognised lessee of the above noted premises situated on Part Plot No.3 Block No.88 known as 8, Lady Hardinge Road, New Delhi.

That I constructed an entirely new building on the above noted plot according to the plans sanctioned by the New Delhi Municipal Committee Vide their Resolution No.132 dated the 6th March, 1964 and Resolution No.55 dated the 9th April,1965.

That I applied to your office for the terms and conditions to get the plans regularised under the terms of the lease. The terms and conditions for the same were communicated vide your letter No.9/88(3-A)65 LIA dated 26-5-1967.

That according to the terms and conditions I was asked to deposit a sum of Rs. 5,650/- and in order to avoid the extreme penalty of re-entry a sum of Rs. 5,650/- was deposited vide Receipt No.L.74 dated 8th March,68.

That I came to know that the Ministry of Works, Housing and Supply issued a notification that the Lessees would get the same benefit as they would have got at the time of executing the original lease deed.

That the plans regarding the first floor were already sanctioned vide your letter No.611-L dated the 2rd July 1941 and vide New Delhi Municipal Committee's Resolution No.7 dated 18th June, 1941.

Under the circumstances it is, therefore, requested to

P.T.0.

Kindly re-consider the case according to the that the plans for the first floor here already been sanctioned in the year 1941, and regarding the latest directives of the Ministry of Works, Housing and Supply. Hence the Ground may kindly be revised and the excess amount so charges be adjusted in future demands of the ground rent accordingly and oblige.

Thanking you,

Yours faithfully,

Arjun Dev

Arjun Dev."

23. Learned counsel for the petitioners relied on **Hari Prakash Edn. Welfare Society & Ors.** for the aspect of 'non-consideration of reply' and in particular to the following paragraphs:-

> "**18.** That brings us to the question whether there was any basis for the DDA to cancel the allotment. The trial Court has recorded a finding that an inspection of the premises was carried out by the officers of the DDA who had submitted a report based on the same. That finding was assailed before us as being without any evidence whatsoever. Learned counsel for the respondent, however, made a valiant attempt to support the finding by reference to a xerox copy of the inspection report marked exhibit DW 2/1 and the deposition of DW-2 Sh. L.N. Garg who was posted as J.E.(Civil) with the DDA during the relevant period. In his deposition Sh. Garg states that he had inspected the said premises on 10th April, 2003 on the basis of an administrative order issued in that regard although the locality in which the premises is situated did not fall within his jurisdiction. The inspection was to be carried out by A.E.(IL) who did not accompany the inspection team. He states that the report submitted by him was based on a local inquiry made from the workers and employees of the Japanese School situated in front of the premises and other persons who were standing there. These workers, employees and other persons had not, however, disclosed their names nor were their signatures obtained on the report. The witness goes on to state that there was a signboard of "Tender Hands" at the gate of the premises. He also states that while there was a signboard of H.P. Institute of Vocational Studies, there was no board of girls hostel. According to the witness, the inspecting team could not enter the suit premises. He denied the allegation that no local inquiry was conducted or that exhibit DW 2/1 is a manipulated and fabricated document. The deposition of this witness is by far the only evidence adduced by the defendant to support its version that the premises was being used for unauthorized purposes, viz; a girls hostel and an institute for vocational studies. The alleged inspection, however, is wholly unsatisfactory to say the least. In the first place, the original inspection report has not been placed on record nor is there any explanation forthcoming for the failure of the defendant to do so. In the absence of the original document the plaintiff was justified in objecting to the proof and marking of a copy of the said report by the defendant. That apart, the conclusions drawn in the report were based not on an actual inspection of the premises but on the basis of some inquiry which was superficially conducted outside the

premises' gate. The witness has clearly admitted that he had not entered the premises to verify whether the same was being used for running a girls hostel or vocational training institute. The conclusion that there was a misuse of the premises was drawn based on the version of some persons found standing in front of the Japanese school perhaps situated across the road. Who were the persons from whom this information was collected is not known nor were their names and particulars noted. It is also not the case of the defendant-respondent herein that the management of the appellant-society had declined permission to them to enter or to carry out a detailed inspection of the premises for purposes of verifying whether there was any misuse. Such being the position, there was really no reliable evidence based on which the DDA or the authority competent could draw a conclusion that misuse of the property had been established. That is particularly so when the reply submitted by the Society had offered the joint inspection of the premises to the DDA and its officers for verifying the true facts. If the competent authority had looked into the said reply and applied its mind to the nature of the inspection and verified the basis of the adverse conclusion drawn in the same he would have been in all probability directed a joint inspection to be conducted before actually passing any order of cancellation. In as much as the authority acted upon a report which was unsatisfactory for all the reasons stated above the order of cancellation passed by it was unsustainable.

19. That leaves us with the only other argument advanced by Mr. J.P. Sengh in support of the appeal. It was contended that a cancellation order could be passed only if the competent authority came to the conclusion that the misuse of the property had not been stopped by the lessee despite the grant of a reasonable opportunity to do so. It was argued by Mr. Sengh and in our opinion rightly so that mere misuser could not result in a cancellation order in cases where the misuse was capable of being remedied. The lessee had to be given a reasonable opportunity to remedy the same. This would imply that not only had there to be a finding that there is misuse but there had to be an opportunity to rectify the same and a clear finding thereafter to the effect that the misuser had not stopped. Even assuming that the first part of the requirement was satisfied by the show cause notice itself inasmuch as it recorded a finding no matter even before the lessee could submit a reply that there was misuse, a second inspection was necessary to verify whether or not the alleged misuser had stopped. There may be situations where a lessee receives a show cause notice and stops the

> misuse as required but fails to submit a reply. The failure to submit a reply would not by itself expose him to suffer an order of termination of the lease. We say so, because even if there is no reply the lessee could stop the misuser and thereby avoid an order of termination. In the instant case not only was there a reply which denied the misuser, there was no inspection after the said denial to verify whether or not the premises was indeed being misused even after the society had been given reasonable notice to stop the same. The contention urged by Ms. Chandra that a second inspection would have been necessary only if there was a reply received from the lessee has not commended itself to us. So also the contention that the non-consideration of the reply did not make any material difference in the instant case because it did not contain any material that could have led the authority to a conclusion different from the one it has arrived at. We hardly need to emphasize that if consideration of the reply was essential as indeed it was, in our opinion, non-consideration would be sufficient to vitiate the order. A court of law would not uphold a termination order for the specious reason that the reply of the affected party was in any case of no significance. It is always for the authority who is required to consider the reply to determine the effect of the reply and not for the court examining the validity of the order of termination. In the circumstances and for the reasons stated by us above the order of the termination of the lease was not legally sustainable, the dismissal of the suit by the trial Court was not, therefore, justified."

24. Learned counsel for the petitioners had argued that although the lease deed dated 15.03.1922 does not provide for any show-cause notice but the principles of natural justice and *audi alteram partem* would be binding on the respondent no. 1. On the other hand, learned counsel for the respondent no. 1 had argued that the present petition does not even seek relief for setting aside of the re-entry order and moreover, there cannot be breach of natural justice, where the person complaining does not dispute the case against him. Learned counsel for the petitioners placed reliance on judgment of Hon'ble Supreme Court in **UMC Technologies Private Ltd. v. Food Corporation of India &**

Anr.[17], wherein the issue before the Hon'ble Supreme Court was with respect to the contents of a show-cause notice, in pursuance to which an adverse action of blacklisting was taken. The Hon'ble Supreme Court, while emphasizing that the contents of a show-cause notice would necessarily require that a particular penalty/action is proposed to be taken, observed and held as under: -

> "20. In the present case, the factum of service of the show-cause notice dated 10-4-2018 by the Corporation upon the appellant is not in dispute. Rather, what Shri Banerji has argued on behalf of the appellant is that the contents of the said show-cause notice were not such that the appellant could have anticipated that an order of blacklisting was being contemplated by the Corporation. *Gorkha Security Services* [*Gorkha Security Services* v. *State (NCT of Delhi)*, (2014) 9 SCC 105] is a case where this Court had to decide whether the action of blacklisting could have been taken without specifically proposing/contemplating such an action in the show-cause notice. For this purpose, this Court laid down the below guidelines as to the contents of a show-cause notice pursuant to which adverse action such as blacklisting may be adopted : (SCC pp. 118-19, paras 21-22)
>
> > "*Contents of the show-cause notice*
> >
> > *21*. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.
> >
> > *22*. The High Court has simply stated [*Gorkha Security Services* v. *State (NCT of Delhi)*, 2013 SCC OnLine Del 4289] that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No

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> doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:
>
> (*i*) The material/grounds to be stated which according to the department necessitates an action;
>
> (*ii*) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.
>
> We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."
>
> 21. Thus, from the above discussion, a clear legal position emerges that for a show-cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting."

25. In the present case as noted hereinabove, the alleged show-cause notice dated 07.10.1968 is not on record. Even the re-entry order dated 12.05.1969 does not state that the alleged show-cause notice dated 07.10.1968 had put the petitioner to show-cause that if the misuse charges are not cleared, then the order of re-entry would be made. Although, it is recorded in the re-entry order dated 12.05.1969 that the same was being passed on account of breaches being mentioned in letter dated 07.10.1968 not being removed. Moreover, the letter dated 23.05.1968 by the deceased petitioner offering to pay the misuse charges have not been considered. Attention of this Court was again drawn to aforesaid communication dated 01.07.1970, where the petitioner himself admitted to pay the additional charges, chargeable under the rule, for misuse regarding the subject property.

26. Some of the judgments relied upon by the learned counsel for the petitioners and their respective relevant paragraphs on the aforesaid issue, are as under: -

i) Kesar Enterprises Limited v. State of Uttar Pradesh & Ors. ***(Supra)***:-

> "23. Before we deal with the question, it would be necessary to understand and appreciate the concept of natural justice and the principles governing its application.
> 24. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action.
> 25. As observed by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see ITO v. Madnani Engg. Works Ltd. [(1979) 2 SCC 455 : 1979 SCC (Tax) 140])
> 26. In Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664] R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to a catena of decisions, His Lordship observed thus: (SCC p. 666)
> "Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem, and (ii) nemo judex in re

sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle—as distinguished from an absolute rule of uniform application—seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(emphasis added)

xxx xxx xxx

28. The question with regard to the requirement of an opportunity of being heard in a particular case, even in the absence of provisions for such hearing, has been considered by this Court in a catena of cases. However, for the sake of brevity, we do not propose to refer to all these decisions. Reference to a recent decision of this Court in Sahara India (Firm) v. CIT [(2008) 14 SCC 151] would suffice. In that case, the question for adjudication was whether in the absence of a provision in the Income Tax Act, 1961, an opportunity of hearing was required to be given to an assessee before an order under Section 142(2-A) of the said Act, directing special audit of his accounts was passed?

29. A Bench of three Judges, speaking through one of us (D.K. Jain, J.), explaining the concept of "natural justice" and the principles governing

its application, summed up the legal position as under: (Sahara India case [(2008) 14 SCC 151] , SCC p. 163, paras 19-20)

“19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

20. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined.”

30. Having considered the issue, framed in para 16, on the touchstone of the aforenoted legal principles in regard to the applicability of the principles of natural justice, we are of the opinion that keeping in view the nature, scope and consequences of direction under sub-rule (7) of Rule 633 of the Excise Manual, the principles of natural justice demand that a show-cause notice should be issued and an opportunity of hearing should be afforded to the person concerned before an order under the said Rule is made, notwithstanding the fact that the said Rule does not contain any express provision for the affected party being given an opportunity of being heard.

31. Undoubtedly, action under the said Rule is a quasi-judicial function which involves due application of mind to the facts as well as to the requirements of law. Therefore, it is plain that before raising any demand and initiating any step to recover from the executant of the bond

any amount by way of penalty, there has to be an adjudication as regards the breach of condition(s) of the bond or the failure to produce the discharge certificate within the time mentioned in the bond on the basis of the explanation as also the material which may be adduced by the person concerned denying the liability to pay such penalty. Moreover, the penalty amount has also to be quantified before proceedings for recovery of the amount so determined are taken.

32. In our view, therefore, if the requirement of an opportunity to show cause is not read into the said Rule, an action thereunder would be open to challenge as violative of Article 14 of the Constitution of India on the ground that the power conferred on the competent authority under the provision is arbitrary."

ii) Swadeshi Cotton Mills v. UOI *(Supra)*:-

"32. The maxim audi alteram partem has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Loreburn's oft-quoted language, is "a duty lying upon everyone who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justice" — as Lord Atkin felicitously put it — "are often not on speaking terms [General Medical Council v. Spackman, 1943 AC 627, 638] "."

iii) Aslam Mohd. Merchant v. Competent Authority & Ors. *(Supra)*.:-

"54. Non-application of mind on the part of the competent officer would also be evident from the fact that a property named "Rose Villa" which was the subject-matter of the decision of this Court in Fatima Amin [(2003) 7 SCC 436 : 2003 SCC (Cri) 1661] was also included herein. Once the show-cause notice is found to be illegal, the same would vitiate all subsequent proceedings."

27. In so far as the contention of the learned counsel for the respondent no. 1 to the effect that the present petition has not been filed seeking setting aside of the re-entry order is concerned, it is pertinent to note that the issue of noncompliance of principles of natural justice and *audi alteram partem* is a legal issue which would affect any administrative action taken on behalf of a Government agency. A litigant can't be stopped from taking such a legal plea at any stage of the proceedings. Moreover, the primary reason for rejecting petitioners application for conversion is the order of re-entry. Even the proceeding pending under the Public Premises Act, 1971 relate back to the re-entry order.

28. Be that as it may, in view of the aforesaid decision rendered by the learned Division Bench in **Vinay Kumar Aggarwal (*Supra*)**, this Court is of the considered opinion that the application of conversion to freehold could not have been rejected on the ground of re-entry and pending litigation between the parties. This Court thus need not adjudicate whether the re-entry order was vitiated on account of non-issuance of show-cause notice or that the said show-cause notice was invalid in law. Respondent no. 1 *vide* letter dated 08.09.1992 had already offered withdrawal of the aforesaid re-entry order on terms and conditions mentioned therein. The calculation of damages in the said letter has been discussed towards the later part of the judgment. Therefore, the order of re-entry would not be an impediment in considering application seeking conversion from leasehold to freehold by the respondent no. 1.

NO DEMAND DESPITE VARIOUS COMMUNICATIONS BY THE DECEASED PETITIONER: -

29. Learned counsel for the petitioners has drawn attention of this Court to various communications dated 23.05.1968, 16.04.1969, 01.07.1970, 16.04.1973 and 26.04.1974, wherein, repeatedly the deceased petitioner had been asking respondent no. 1 about the charges to be paid. The aforesaid letters clearly records the fact that the deceased petitioner had asked for necessary charges for removal of misuse, if any, at that relevant point of time. However, the same were not responded to by the respondent no. 1. It is only by way of letter dated 08.09.1992 that the said respondent had raised a demand of Rs. 2 Crores, approximately. The said letter has been reproduced as under, for the sake of completeness: -

44 ANNEX. P-7
4 copy

WITHOUT F

GOVERNMENT OF INDIA
MINISTRY OF URBAN DEVELOPMENT
LAND & DEVELOPMENT OFFICE
NIRMAN BHAWAN, NEW DELHI.

NO.L&DO/II-9/OL(3A)/92/ 557

Dated 8/9/92

TO

Sh. Arjun Dev,
(Ex-lessee and unauthorised occupant of Public Premises),
59, Panchkuin Road,
New Delhi.

SUB: Premises situated on plot No.3A Block 68 known as 8 Lady Harding Road, New Delhi.

Dear Sir,

With reference to your letter dated 30.1.90, I am to say that the lessor will bepleased to withdraw the re-entry orders in the premises mentioned above and temporarily regularisation the breaches upto 14.1.93 provided you comply with following terms and conditions in full and in advance :-

1. DINNING ROOM USED AS OFFICE BY M/S TRACTOR AND EQUIPMENT CORPORATION LTD. FOR AN AREA MEASURING 18¼'x18'=328.5 SQ.FT

a)	w.e.f. 1.8.65 to 14.7.68 @ Rs.356/-PA	Rs.1052.00
b)	w.e.f. 15.7.68 to 13.4.74 @ Rs.475/-PA	Rs.2732.00
c)	w.e.f. 14.4.74 to 13.1.75 @ Rs.712/-PA	Rs. 536.00

2. ONE BED ROOM BEING USED BY M/S BRITISH BROAD CASTING CORPORATION AREA MEASURING 20 3/8'x12¼'=250 SQ.FT.

a)	w.e.f. 16.6.65 to 14.7.68 @ Rs.270/-PA	Rs. 832.00
b)	w.e.f. 15.7.68 to 13.4.74 @ Rs.361/-PA	Rs.2075.00
c)	w.e.f. 14.4.74 to 13.1.75 @ Rs.541/-PA	Rs. 408.00

3. ONE BED ROOM BEING USED AS M/S WESTING HOUSE SAXBY FARMERS (P) LTD. AREA MEASURING 18¼'x18'= 329SQ.FT.

a.	w.e.f. 11.5.66 to 14.7.68 @ Rs.356/-PA	Rs. 657.00
b)	w.e.f. 15.7.68 to 13.4.74 @ Rs.475/-PA	Rs.2730.00
c)	w.e.f. 14.4.74 to 3.10.74 @ Rs.712/-PA	Rs. 338.00

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4. ONE BED ROOM BEING USED AS OFFICE BY M/S PHILIPS INDIA AREA MEASURING 15'x10'=150 SQ. FEET :

a) w.e.f. 1.8.65 to 14.7.68 @Rs.162/-PA Rs. 479.00
b) w.e.f. 15.7.68 to 13.4.74 @Rs.217/-PA Rs.1248.00
c) w.e.f. 14.4.74 to 3.10.74 @Rs.325/-PA Rs. 154.00

5. ONE ROOM BEING USED AS OFFICE M/S TRACTOR EQUIPMENT CORPORATION LTD. AREA MEASURING 11'x9¼'=102 SQ.FT.

a) w.e.f. 1.8.65 to 14.7.68 @Rs111/-PA Rs. 329.00
b) w.e.f. 15.7.68 to 13.4.74 @Rs.148/-PA Rs 851.00
c) w.e.f. 14.4.74 to 13.1.75 @Rs.221/-PA Rs. 167 00

6. ONE ROOM BEING USED AS M/S NATIONAL INSURANCE CO. AREA MEASURING 20 3/8'x12¼'=250 SQ. FT.

a) w.e.f. 1.8.65 to 14.7.68 @Rs.270/-PA Rs. 798.00
b) w.e.f. 15.7.68 to 13.4.74 @Rs.361/-PA Rs.2080.00
c) w.e.f. 14.4.74 to 13.1.75 @Rs.541/-PA Rs. 405.00

7. 2nd FLOOR OVER GARAGE BEING USED AS M/S MUTUAL INDUSTRIES CORPORATION AREA MEASURING 11'x9¼'=102 SQ.FT.

a) w.e.f. 1.8.65 to 14.7.68 @Rs.111/-PA Rs. 329.00
b) w.e.f. 15.7.68 to 13.4.74 @Rs.148/-PA Rs. 851.00
c) w.e.f. 14.4.74 to 13.1.75 @Rs.221/-PA Rs. 167.00

AREA INCREASED MEASURING 2(10'-1.1/2"x20')=265 SQ.FT. BY M/S NICHOLSIAL BROS.

d) w.e.f. 14.1.75 to 16.4.76 @Rs.1656/-PA Rs.2076.00
e) w.e.f. 17.4.76 to 31.3.79 @Rs.3160/-PA Rs.9342.00
f) w.e.f. 1.4.79 to 31.3.81 @Rs.18961/-PA Rs.37922.00
g) w.e.f. 1.4.81 to 23.6.85 @Rs.66059/-PA Rs.279439.00

contd...3....

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h) w.e.f. 24.6.85 to 31.3.87 @ Rs.62574/-PA Rs.1,10,748.00

i) w.e.f. 1.4.87 to 31.3.89 @ Rs.228444/-PA Rs.4,56,856.00

j) w.e.f. 1.4.89 to 31.3.91 @ Rs.417158/-PA Rs.8,34,316.00

k) w.e.f. 1.4.91 to 14.7.92 @ Rs.500590/-PA Rs.6,44,590.00

l) w.e.f. 15.7.92 to 14.1.93 @ Rs.500590/-PA Rs.2,50,295.00

8. <u>AREA MEASURING 3172 Sq.FT. BEING USED BY M/S INDIAN MOLASSES (P) LTD.</u>

a) w.e.f. 1.4.74 to 13.4.74 @ Rs.4575/-PA Rs. 163.00

b) w.e.f. 14.4.74 to 16.4.76 @ Rs.6863/-PA Rs.13,783.00

c) w.e.f. 17.4.76 to 27.11.78 @ Rs.13102/-PA Rs.34,281.00

<u>AREA REDUCED MEASURING 3063 Sq.FT. BEING USED AS M/S INDIAN MOLASSES (P) LTD.</u>

d) w.e.f. 28.11.78 to 31.3.79 @ Rs.16869/-PA Rs. 5,731.00

e) w.e.f. 1.4.79 to 31.3.81 @ Rs.75916/-PA Rs.1,51,832.00

f) w.e.f. 1.4.81 to 23.6.85 @ Rs.316322/-PA Rs.1338066.00

<u>AREA OF MISUSE INCREASED I.E. 3801 Sq.FT.</u>

g) w.e.f. 24.6.85 to 31.3.87 @ Rs.310903/-PA Rs.5,50,250.00

h) w.e.f. 1.4.87 to 31.3.89 @ Rs.1135050/-PA Rs.22,70,100.00

i) w.e.f. 1.4.89 to 31.3.91 @ Rs.2072703/-PA Rs.41,45,406.00

j) w.e.f. 1.4.91 to 14.7.92 @ Rs.2487244/-PA Rs.32,02,753.00

k) w.e.f. 15.7.92 to 14.1.93 @ Rs.2487244/-PA Rs.12,43,622.00

9. <u>FIRST FLOOR MAIN ROOM BEING USED BY M/S SUCCESS TEXTILES AREA MEASURING 28'-4.1/2"X17'-4.1/4"=493 Sq.FT.</u>

a) w.e.f. 1.4.74 to 13.4.74 @ Rs.711/-PA Rs. 26.00

b) w.e.f. 14.4.74 to 16.4.76 @ Rs.1667/-PA Rs. 2143.00

contd....4...

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c) w.e.f. 17.4.76 to 31.3.79 @ Rs.2037/-PA Rs. 6,038.00

d) w.e.f. 1.4.79 to 31.3.81 @ Rs.12224/PA Rs. 24,440.00

e) w.e.f. 1.4.81 to 23.6.85 @ Rs.42571/-PA Rs.1,80,082.00

10. FRONT BED ROOM BEING USED WITH SHAR MARKETING AREA MEASURING 15'X11'= 165 Sq.Ft.

a) w.e.f. 1.4.74 to 13.4.74 @ Rs.158/-PA Rs. 6.00

b) w.e.f. 14.4.74 to 16.4.76 @ Rs.357/-PA Rs. 717.000

c) w.e.f. 17.4.76 to 31.3.79 @ Rs.682/-PA Rs. 2016.00

d) w.e.f. 1.4.79 to 31.3.81 @ Rs.4090/-PA Rs. 8180.00

e) w.e.f. 1.4.81 to 23.6.85 @ Rs.14248/-PA Rs.60271.00

f) w.e.f. 24.6.85 to 31.3.87 @ Rs.13497/-PA Rs.23888.00

g) w.e.f. 1.4.87 to 20.9.88 @ Rs.49273/-PA Rs.72029.00

11. DINING ROOM AREA MEASURING 18'-3"X18'=329 Sq.FT. BY M/S SUCCESSION TEXTILES AREA MEASURING 18'-3"X18'=329 S.FT.

a) w.e.f. 1.4.74 to 13.4.74 @ Rs.475/-PA Rs. 17.00

b) w.e.f. 14.4.74 to 16.4.76 @ Rs.712/-PA Rs. 1,430.00

c) w.e.f. 17.4.76 to 31.3.79 @ Rs.1359/-PA Rs. 4,018.00

d) w.e.f. 1.4.79 to 31.3.81 @ Rs.8155/-PA Rs. 16,310.00

e) w.e.f. 1.4.81 to 23.6.85 @ Rs.28410/-PA Rs.1,20,178.00

12. REAR FIRST FLOOR BEING USED AS OFFIC. BY CHEMICAL AND ALLIED PRODUCTS (2771 Sq.FT):

a) w.e.f. 1.6.75 to 16.4.76 @ Rs.5995/-PA Rs. 5256.00

b) w.e.f. 17.4.76 to 31.3.79 @ Rs.11445/-PA Rs. 338[illegible].00

c) w.e.f. 1.4.79 to 31.3.81 @ Rs.68681/-PA Rs. 137362.00

d) w.e.f. 1.4.81 to 23.6.85 @ Rs.239200/-PA Rs.1012158.00

e) w.e.f. 24.6.85 to 31.3.87 @ Rs.226654/-PA Rs.401147.00

f) w.e.f. 1.4.87 to 31.3.89 @ Rs.827473/-PA Rs.1654946.00

g) w.e.f. 1.4.89 to 31.3.91 @ Rs.1511040/-PA Rs.3022080.00

h) w.e.f. 1.4.91 to 14.7.92 @ Rs.1813248/-PA Rs.2334268.00

i) w.e.f. 15.7.92 to 14.1.93 @ Rs.1813246/-PA Rs. 906624.00

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13. UN-AUTHORISE GARRAGE CONSTRUCTED IN REAR SIDE 10'X16' with fixed A.C. SHEETS

a)	w.e.f. 14.1.75 to 31.3.79 @Rs.167/-PA	Rs. 703.00
b)	w.e.f. 1.4.79 to 31.3.81 @Rs.714/-PA	Rs. 1,428.00
c)	w.e.f. 1.4.81 to 23.6.85 @Rs.11856/-PA	Rs.45,526.00

14. DAMAGES FOR UN-AUTHORISE CONSTRUCTION MEASURING
measuring 3'-6"x17½ 9'-6"x17' = 170 Sq.feet.

a)	w.e.f. 24.6.85 to 31.3.87 @Rs.3542/-PA	Rs. 6,237.00
b)	w.e.f. 1.4.87 to 31.3.89 @Rs.12709/-PA	Rs.25,418.00
c)	w.e.f. 1.4.89 to 31.3.91 @Rs.12709/-PA	Rs.25,418.00
d)	w.e.f. 1.4.91 to 14.7.92 @Rs.12709/-PA	Rs.16,418.00
e)	w.e.f. 15.7.92 to 14.1.93 @Rs.12709/-PA	Rs. 6,355.00

15.	1/10th PENALTY UPTO THE DATE OF LESSOR'S APPROVAL + 30 DAYS THEREAFTER i.e. 3.7.92	Rs.23,37,115.00
16.	Ground Rent w.e.f. 15.7.68 to 14.1.93 @ Rs. 4.54/-PA	Rs. 113.00

17. INTEREST ON ITEM NO.(16)

a)	6% w.e.f. 15.7.68 to 3.10.71	Rs. 2.00
b)	8% w.e.f. 4.10.71 to 28.8.75	Rs. 8.00
c)	10% w.e.f. 29.8.75 to 14.9.92 and thereafter @ Rs.1/-PA	Rs. 98.00

18.(a) ADDITIONAL GROUND RENT 15.7.68 to 14.1.70

	@ Rs.1376/-PA (1033+343=1376)	Rs.2,064.00
b)	w.e.f. 15.1.70 to 16.4.76 @ Rs.374/-PA	Rs.2,339.00
c)	w.e.f. 17.4.76 to 14.1.93 @ Rs.286/-PA	Rs.4,792.00

19. INTEREST ON ADDITIONAL GROUND RENT

a)	6% interest PA w.e.f. 15.7.68 to 3.10.71	Rs. 385.00
b)	8% interest PA w.e.f. 4.10.71 to 28.8.75	Rs. 1,150.00
c)	10% interest PA w.e.f. 29.8.75 to 14.9.92 and thereafter @ Rs.77/-P.A.	Rs.11,664.00

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20. UNDERTAKING:

Furnishing an undertaking on non judicial stamped paper of Rs.1.50 to the effect that (a) you shall remove the breaches by 14.1.93 or got them regularised beyond 14.1.93 on payment of such charges will be levied by the lessor in his absolute discre tion (b) You will pay the difference of damages charges if any due to revision of land rates w.e.f. 1.4.87 (c) You will also pay the revised ground rent as and when the same is decided by the Collector. The revised ground rent has already been fallen due.

If the above terms and conditions are acceptable, the acceptance thereof may please be communicated to this office in writing together with the necessary undertaking and a Crossed Cheque/demand draft covering the full amount drawn in favour of Land & Development Officer within 45 days from the date of receipt of this latter, failing which the above terms and conditions will automatically stand as withdrawn and cancelled further action for eviction under P.P.E. Act will be taken against you.

It may also be made clear that in case you fail to comply with the terms within the stipulated period the concession of limiting the penalty as above (15) will also be withdrawn and you will liable to pay the penalty upto the date of actual date of payment of the charges.

The present letter offering terms will not act as a waiver for recovery of the said damages which may in the discretion of the lessor to found payable by you beyond the dates mentioned above for breaches existing hereafter at site.

In case you have any point to clarify in connection with the above notice, you may kindly see the undersigned after prior appointment (Tel. No.3017871) between the 2.00 to 4.00 P.M. in the afternoon within a week of the date of receipt of this letter. It may, however, be clearly understood that your inability to avail of this opportunity of personal discussion will not be accepted as a ground for not taking further action in the matter.

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Signature Not Verified
Digitally Signed By:NEETI KUMARI SHARMA
Signing Date:17.07.2026 15:54:18

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It may please to clearly noted that this ~~permission or~~ regularisation ~~and~~ is without prejudice to the right of D.D.A under the Delhi Development Authority Act 57 or the rights of Local Body to take action for change of purpose.

Yours faithfully,

4/9/92

(G. [illegible] SEN, [illegible])
LAND & DEVELOPMENT OFFICER
FOR & ON BEHALF OF THE PRESIDENT OF INDIA

30. It is pertinent to note that by this time the tenants from the subject property had been evicted by filing of the eviction petitions or otherwise. It is further pertinent to note that the demand raised as per the entries made at serial nos. 1 to 7 in the aforesaid letter dated 08.09.1992 is with respect to the misuse charges claimed on 01.08.1965 onwards *i.e.,* claim of more than 28 years. The demands made at serial no. 8 onwards are from 14.01.1975 to 14.01.1993 *i.e.,* a date which exceeds the date of the demand notice dated 08.09.1992. Although, there is no period of limitation prescribed for such a demand to be raised, however it has been held that demand, if any, should be raised within a reasonable period of time and anything beyond that reasonable period of time would be arbitrary.

31. Learned counsel for the petitioners for the purpose of delay placed reliance on the following judgments and their respective relevant paragraphs: -

i) **Government of India v. Citedal Fine Pharmaceuticals, Madras & Ors. *(Supra)***:-

> "6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the rule is to be made, but that by itself does not render the rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assesee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice of demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

i) State of Punjab & Ors. v. Bhatinda District Co-op. Milk P. Union Limited *(Supra)*:-

"18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."

iii) DDA v. Ram Prakash *(Supra)*:-

"21. Having considered the submissions made on behalf of DDA and by the respondent appearing in person, and also having considered the reasoning of the learned Single Judge and the Division Bench in repudiating the claim of misuser charges by DDA, we are unable to convince ourselves that the decisions rendered by the High Court, both by the learned Single Judge as also the Division Bench, require any interference in these proceedings. The materials on record will show that the respondent took prompt steps against the tenants for their transgression. During arguments it was indicated that, in fact, one of the tenants had already vacated the portion of the premises occupied by him. It is also very clear that after issuing the show-cause notices, the petitioner did not take any follow-up action thereupon. Instead, after a lapse of 25 years, the petitioner set up a claim on account of charges for the entire period. It would be inequitable to allow the petitioner which had sat over the matter to take advantage of its inaction in claiming misuser charges.

22. Even as to the contention raised on behalf of the petitioner that there was no limitation prescribed for making a demand of arrear charges, the Division Bench relying on the decision of this Court in *State of Punjab* v. *Bhatinda District Coop. Milk Producers Union Ltd.* [(2007) 11 SCC 363] , observed that even where no period of limitation is indicated, the statutory authority is required to act within a reasonable time. In our view, what would construe a reasonable time, depends on the facts and circumstances of each case, but it would not be fair to the respondent if such demand is allowed to be raised after 25 years, on account of the inaction of the petitioner.

23. We do not, therefore, find any reason to interfere with the judgment either of the learned Single Judge or of the Division Bench of the High Court and the special leave petition is, accordingly, dismissed. There will, however, be no order as to costs."

iv) Rattan Kaur v. DDA & Anr. *(Supra)*:-

"27. The Court fails to appreciate the argument advanced that the DDA is, in not levying misuse charges for over 18 years, being actually lenient with the petitioner. This can hardly be the answer to the contention of the petitioner that the DDA cannot seek to revive a demand for misuse charges 18 years after the misuse has stopped. The DDA is charged with a statutory duty of ensuring that it takes prompt corrective action after the detection of misuse. Further, the underlying presumption of reasonable exercise of statutory powers in such instance would be that the further corrective action, after the stoppage of misuse, would also be taken within a reasonable time. Just like the DDA cannot seek to prosecute a person for an offence under the Delhi Development Act, 1957 at any length of time, likewise collection of fines and penalties will also have to be done within a reasonable time, if no outer limit for such recovery is specifically mentioned. In other words, there cannot be an open-ended time frame for recovery of misuse charges. If the DDA wants to avoid the loss it might suffer for the failure of its officials to act within a reasonable time, it requires to put its house in order and ensure that the necessary corrective action, in the event of a misuse, and the consequential action after the stoppage of such misuse is taken promptly. The answer to question (ii) is that the demand by the DDA made on 26.9.1997 for the misuse that stopped in February 1979 is unsustainable in law."

v) Vikramaditya Bhartia v. DDA *(Supra)*:-

"12. From the aforesaid, in my opinion, it is abundantly clear that the demand raised by the Respondent-DDA qua the Petitioner is contrary to its own policy as contained in Circular dated 26th March, 2010. Even otherwise, in my view, it could be inequitable to allow DDA which has sat over the matter from the year 1985 to take advantage of its inaction in claiming misuser charges. The impugned demand is dated 1st October, 2010 and has been raised after a lapse of 25 years from the date of the first Survey Report which indisputably is dated 27.6.1985. In an identical case decided by the Supreme Court reported in AIR 2011 SC 1399, Delhi Development Authority v. Ram Prakash where the Petitioner after issuing the Show Cause Notices did not take any follow-up action thereupon; instead, after a lapse of 25 years, the Petitioner set up a claim on account of misuser charges, the Supreme Court held that it would be inequitable to allow the Petitioner which had sat over the matter to take advantage of its inaction in claiming misuser charges. It further observed:-

"22. Even as to the contention raised on behalf of the petitioner that there was no limitation prescribed for making a demand of arrear charges, the Division Bench relying on the decision of this Court in State of Punjab v. Bhatinda District Coopervative Milk Producers Union Ltd. [(2007) 11 SCC 363]: [AIR 2007 SC (Supp) 473], observed that even where no period of limitation is indicated, the statutory authority is required to act within a reasonable time. In our view, what would construe a reasonable time, depends on the facts and circumstances of each case, but it would not be fair to the respondent if such demand is allowed to be raised after 25 years, on account of the inaction of the petitioner.""

32. It was also argued on behalf of learned counsel for the petitioners that even if the alleged show-cause notice dated 07.10.1968 is considered as a show-cause for effecting the re-entry order, it is only the misuse demand at serial nos. 1 to 6 in the aforesaid demand letter dated 08.09.1992 for which the alleged show-cause notice dated 07.10.1968 was issued. In these circumstances demands made at serial nos. 7 to 15 in the aforesaid demand letter dated 08.09.1992, there was admittedly no show-cause notice. It is also a matter of record that post the issuance of re-entry order dated 12.05.1969 and before issuing the demand letter dated 08.09.1992, there was no inspection carried out by the respondent no. 1.

33. Further, it was contended that the deceased petitioner had filed 7 eviction petitions against the tenants in pursuance of the policy of L&DO and the tenants were evicted and misuse was stopped. In these circumstances it is argued, petitioners are entitled to the benefit of clause 8 of the Office Order no. 23/76 dated 31.03.1976, which reads as under: -

"In case where the lessee/ ex-lessee files suit for eviction against defaulting tenants on receipt of out notice for misuse and are successful in evicting such tenants one percent of the charges will be recovered as token penalty in consultant with the Ministry of Works & Housing and Finance."

34. Reliance has further been placed on the judgment in **Shri. Sant Ram Sodhi v. Lt. Governor & Anr.**[18], wherein it was held as under: -

> "19. An analysis of the above show that the breaches or violation of the specific conditions have to be on account of the lessee's conduct. In other words, there must be a positive act or a positive ommission on the part of the lessee which would result in violation. Here, what emerges is that the petitioner is a victim by all counts. He was harassed by his tenant and subsequently by others, who engaged him in protracted litigation. After having gone through no less than three eviction proceedings, a civil suit, a revision proceeding, two execution proceedings and one contempt proceeding, in all of which the Courts consistently upheld the petitioner's pleas, (including the one that the premises had been unauthorizedly sublet, unauthorizedly constructed upon and misused), he is being charged for an act that was never committed by him. In my opinion, the stand of the DDA is arbitrary.
> 20. Every action of the State or a public body like the DDA has to be supported by reasons that are germane and relevant to the issue; and have to conform to principles of non-arbitrariness. The imperatives of Article 14 are fairness, reasonableness, non-arbitrariness and non-discrimination. To my mind, the complete non-application of mind of the DDA to the various Court orders, more particularly the eviction order which was passed upon the unauthorized construction and unauthorized use of the premises, betray a mechanical and arbitrary approach. They also betray disregard to the judicial process, which conclusively established, time and again that the petitioner was entitled to eviction on the ground of wrongful use and wrongful construction on the premises by the tenant."

35. On the other hand, learned counsel for respondent no. 1 submitted that the Office Order no. 23/76 dated 31.03.1976 has been modified *vide* Office

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[18] **2005:DHC:25635**

Order no. 08/99, which specifically states that penalty can be reduced from 10 % to 1 %, if the ex-lessee took tangible steps for vacating the tenants from the Court of law but that would not affect the other government dues which would recoverable under the government policy. Office Order no. 08/99 reads as under:-

"Government of India
Ministry of Urban Development
Government of India
Ministry of Urban Affairs & Employment Land and Development Office
Nirman Bhawan: New Delhi

No.24 (278)/99-CDN Dated: 6-4.99

OFFICE ORDER NO.8/99

With reference to Clause 8 of the Office Order No.23/76 dated 31.3.1976 certain clarifications were sought from the Ministry of Urban Affairs & Employment.

2. Ministry of Urban Affairs & Employment consultation with Finance Division & M/O Law has decided that "if any lessee, after receipt of our misuse notice files a suit for eviction against the defaulting tenants and succeeds in evicting such tenants, the lessee shall be liable to pay the misuse charges, irrespective of the fact that he/she got the tenant evicted through the Court. However, in such cases the penal charges shall be reduced to 18 instead of usual 10%. This issues with the approval of L&DO.

Sreekumar 6/4

(V.SREEKUMAR)
PUBLIC RELATION OFFICER

All Officers/Sections"

36. As pointed out hereinbefore, learned Division Bench while remanding the present petition had flagged the contention of the deceased petitioner with respect to substantive unreasonableness in raising the demand. It was further observed by the learned Division Bench that the judgment in **Union of India & Anr.** v. **Jor Bagh Association (Regd.) & Ors. (*Supra*)** had upheld the law declared by the four Benches of this Court, as duly noted in paragraph 71 of the said judgment. The aforesaid decision of the learned Single Judge in **Shri. Sant Ram Sodhi v. Lt. Governor & Anr.** (***Supra***) was also upheld by the aforesaid judgment rendered by the learned Division Bench. The case of the petitioners herein is similarly placed. It is a matter of record that the deceased petitioner had initiated several eviction petitions in pursuance of which the tenants had been evicted. Thus, the misuse, if any, in the subject property was not on account of any conduct of the deceased petitioner and was not in his hands. It is also a matter of record that since 23.05.1968, the deceased petitioner has been continuously sending communications to the respondent no. 1, requesting information with respect to the necessary charges as per rules, so that the same could be cleared, but there had been no response forthcoming on behalf of the respondent no. 1. It is a matter of record that the first communication with respect to the charges was sent to the deceased petitioner on 08.09.1992. It is also a matter of record that after the initial inspection on 11.09.1968, the property had never been inspected again by the respondent no. 1 nor any show-cause notices had been issued with respect to the removal of any breaches.

37. In view of the above, the demand made by the respondent no. 1 claiming damages of approximately Rs. 2 Crores at market rate for different periods of time cannot be considered as fair and reasonable. If any demand had to be raised, then the same should have been raised at the time when the deceased petitioner had been seeking the same. It is a matter of record, the demand for charges was raised for the first time on 08.09.1992 and no notice for inspections as claimed by the respondent no. 1 has been placed on record. It is also a matter of record in the counter-affidavit filed on behalf of the respondents that the deceased petitioner's request for regularization of breaches was not considered on the ground that the proceedings under the Public Premises Act, 1971 had been initiated. This stand has been taken in the counter affidavit, however, the same was never communicated to the deceased petitioner despite his several communications. Therefore, delay towards the payment of the misuse charges cannot be attributed to the deceased petitioner. It would, therefore, be inequitable to permit respondent no.1 to claim misuse charges along with penal/interest charges.

CONCLUSION:

38. In these circumstances, order dated 14.08.2002 rejecting the conversion application of the deceased petitioner, on account of the re-entry order and previous litigation pending between the parties, is hereby set aside. Respondent no. 1 is directed to re-consider the application for conversion from leasehold to freehold afresh and decide the same within a period of four weeks. Respondent no. 1 will be at liberty to inspect the subject property for the said purpose and in case of any breach a fresh show cause notice may be issued to the petitioner herein in accordance with law.

39. The present petition is accordingly disposed of.

40. Pending applications, if any, also stand disposed of accordingly.

41. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

JULY 16, 2026/kr/*sn*/sg