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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11th March, 2026

Pronounced on: 30th June, 2026

+ W.P.(C) 11286/2016

SANJEEV KUMAR MALHOTRA

.....Petitioner

Through: Ms. Ridhima Malhotra, Advocate.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Ms. Saroj Bidawat, SPC with Mr. A.K. Rohila, Consultant (L&DO)

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Article 226 of the Constitution of India, 1950, seeks the following prayers: -

“In view of the above submissions and facts it is most humbly prayed that this Hon'ble Court be pleased to grant a Writ of Mandamus, Certiorari and/or any other writ, order or direction thereby requiring the respondents No. 1 and 2 to deal with the application of the petitioner seeking conversion of property bearing No.21/24, West Patel Nagar, New Delhi vide application No.105593 dated 14.4.2011 seeking conversion of the said property from leasehold to freehold and to grant such request upon payment



of a reasonable amount of conversion fee and nominal interest without imposing any penalties or calculating compound interest in view of the clear responsibility of said respondents in causing such delay in the matter by returning even the initial deposit of the requisite charges as early as in the year 2006 when the petitioner had initially sought the conversion of property bearing No.21/24, West Patel Nagar, New Delhi more particularly shown in the site plan filed from lease hold to freehold one;

And to pass such other or further directions which this Hon'ble Court may deem fit and proper to meet the ends of justice.

Costs of the proceedings be also granted against the respondents No.1 and 2 and in favour of the petitioner.”

2. The present petition is filed under Article 226 of the Constitution for seeking directions to the respondent Nos.1 and 2 to convert the property bearing no. 21/24 West Patel Nagar, New Delhi, from leasehold to freehold on the payment of reasonable charges.

BRIEF BACKGROUND

3. Brief facts, as stated in the petition, necessary for the disposal of the present petition are as under: -

i) It is stated that the petitioner is the co-owner of property bearing No.21/24, West Patel Nagar, New Delhi, (for short, 'subject property'), and had acquired such right through succession upon demise of his father-Late Sh. Mulkh Raj Malhotra. It is further stated that the petitioner is holding $\frac{1}{2}$ half share in the subject property along with respondent No.3, who is representing interest of her husband-Late Sh.



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Suresh Kumar Malhotra (brother of the petitioner). Third shareholder-Smt. Sudesh Kapoor (sister of the petitioner) had relinquished her right in the subject property in favour of the petitioner and respondent No.3. It is further stated that respondent No.3 has been impleaded as one of the respondents as she was reluctant to join the petitioner being the other co-owner of the property, although no relief is being claimed against her.

ii) It is stated that the subject property is a leasehold property which was allotted and owned by Late Mulk Raj Malhotra-father of the petitioner. Initially, it was leased by way of a duly registered lease deed dated 31.01.1964 in favour of father of the petitioner. It is the case of the petitioner that *vide* letter dated 17.01.2006, respondent No.2 had acknowledged the transfer and mutation of names of the petitioner and respondent No.3 being legal heirs/representatives of Late Mulk Raj Malhotra, and they were substituted as the lessees in the subject property as held by their father on the basis of the aforesaid registered lease deed. It is further stated that property tax and other relevant dues of the subject property were being constantly paid by the owners to the concerned authorities.

iii) The petitioner applied for the conversion of the subject property from leasehold to freehold *vide* application No.08451 dated 23.01.2006 along with duly supported documents, and payment of conversion charges of Rs.62,175/- and other dues totalling Rs.70,000/- was deposited with respondent No.2 by the petitioner, and the receipt of



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said application was duly acknowledged by respondent No.2 *vide* Acknowledgement Slip dated 27.01.2006. It is further stated that respondent no.2 had written to the petitioner and respondent no.3 *vide* letter dated 27.02.2006 asking the petitioner to furnish the completion certificate of the property, and further claiming that inspection of the subject property had revealed that petitioner had encroached on government/public land and that such alleged encroachment be removed. The petitioner immediately informed respondent no.2 by letter dated 16.03.2006 that the encroachment had already been removed and requested the authorities to inspect the property at any time and further that the proof of removal of such construction was already submitted to them.

iv) It is further stated that respondent No.2 had sent different letters various dates to the petitioner, informing him that their duly authorised representative will inspect the subject property; however, such inspection was postponed on several occasions as the same can be seen from letters dated 01.06.2006, 06.06.2006, and 14.07.2006. Thereafter, on 04.08.2006, respondent no.2 sent a letter in the form of show cause notice alleging that petitioner was preventing the inspection of the subject property and the petitioner was also threatened regarding re-entry into the subject property in the event of petitioner prevented the inspection. A communication dated 03.10.2006 was also sent to petitioner by the respondent No.2 mentioning details of alleged illegal or unauthorised constructions/alterations, and the petitioner was required to remedy the alleged breaches.



v) In compliance thereof, the petitioner and respondent no.3 wrote a letter dated 16.10.2006 thereby apprising respondent no.2 that existing construction in the subject property was raised by Late Mulk Raj Malhotra on the basis of duly sanctioned building plan but since the documents were not traceable at that time, the petitioner undertook to submit the certified copies of approved/sanction building plan as and when same were received from concerned authorities.

vi) It is further stated that since the petitioner failed to pay any heed to the demand of respondent No.2, the latter *vide* letter dated 08.11.2006 being dissatisfied with the same informed the petitioner that his application for conversion of subject property from leasehold to freehold had been rejected and refund, if any, with respect to the same was taken separately. As per the petitioner, he had deposited Rs.70,000/- with respondent No.2; however, refund cheque of Rs.62,175/- was prepared in the joint name of petitioner and Neelam Malhotra (respondent No.3), despite there being no pressure or demand from the petitioner. Thereafter, petitioner had sent one request after the other to respondent Nos.1 and 2 for conversion of the subject property from leasehold to freehold; however, said respondents continued to raise one objection or the other for deferring such conversion.

vii) It is further stated owing to family disputes and changing times, petitioner and respondent no.3 intended to develop the subject property for their mutual benefit and the petitioner then took the issue of



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conversion with respondent no.2 and confronted them with astronomical demand of money and requested them to arrive at a reasonable settlement; however, the same were in vain. It is further the case of the petitioner that upon receipt of such renewed request, the respondent acknowledged the request for conversion; however, increased the demand for the same to an astronomical amount of Rs.24,16,362/-.

viii) It is further stated that after waiting for a reasonable demand and positive action, the petitioner and respondent no.3 once again applied for the conversion of the subject property from leasehold to freehold by an application dated 14.04.2011 supported by payment of even date and same was acknowledged by respondent no.2 through receipt. It is further stated that said application was duly supported by an affidavit to fulfil other conditions of respondent(s) and accepting the financial liability which may be reasonably created by respondent no.2. Thereafter, respondent no.2 sent a letter/inspection notice dated 18.08.2011 to petitioner raising objections and showing its intention to inspect the subject property through their surveyor. The said surveyor inspected the subject property and the objections raised by him at that time were removed to the satisfaction of respondent no.2 and the petitioner awaited for the approval of his request for conversion of the subject property. It is further stated that despite the removal of objections raised by respondent no.2, said respondent sent a letter dated 10.10.2011/26.09.2011 followed by another letter dated 17.05.2013



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raising the demand for payment of Rs.24,16,362/- before conversion of subject property into freehold.

ix) The petitioner, thereafter, made a representation before said respondent that there was delay in granting his application for conversion, and therefore, the respondent should not penalise the petitioner for such delay, which had occurred only due to failure of respondent no.2 in granting such requests. The petitioner had also offered to pay amount with the reasonable increase in conversion fee and had requested the said respondents not to impose penalty for the delay, which was unintended on his part or compound interest calculated over the initial demand amount should be removed.

x) It is further stated that owing to aforesaid circumstances, the petitioner served a legal notice dated 12.05.2016 under Section 80 of the CPC requiring the respondent Nos.1 and 2 to pass directions for converting subject property from leasehold to freehold on payment of such reasonable charges as may be payable without demanding any interest on the amount of alleged penalties, so to be imposed against the petitioner and other co-owner of the property. Respondent No.2 instead of providing relief to the petitioner inflated the demand amount to ₹35,76,629/- by a letter dated 02.09.2016 before granting the request for conversion. It is further the case of the petitioner that such unilateral increase by respondent Nos.1 and 2 without giving any opportunity of being heard to the petitioner shows that they were raising such demands arbitrarily. It is further stated that the amount arrived at and demanded



by respondent No.2 is not on the basis of revised circle rates and employing other methods and is in clear breach of fundamental rights of the petitioner. Therefore, the present petition has been filed seeking the reliefs as noted hereinbefore.

4. The captioned petition was dismissed for non-prosecution *vide* order dated 01.11.2018 by learned Predecessor Bench. Thereafter, an application, **CM No.50602/2018**, under Order IX Rule 9 read with Section 151 of the CPC was filed on behalf of the petitioner seeking restoration of the captioned petition. The said application was allowed *vide* order dated 05.12.2018, and the petition was restored to its original number.

5. During the pendency of the present petition, *vide* order dated 09.02.2024, learned Predecessor Bench of this Court had directed respondent Nos.1 and 2 to make fresh inspection of the subject property regarding the unauthorised construction and encroachment. Thereafter, on 08.05.2024 following order was passed by learned Predecessor Bench: -

“1. The Senior Panel Counsel for the respondents no. 1 and 2 stated that in pursuance of order dated 09.02.2024, the property in question bearing no. 21/24, West Patel Nagar, New Delhi was inspected on 09.04.2024 and at that time, although no encroachment was found but unauthorised constructions were noticed there for which, breach notice has already been issued on 06.05.2024.

2. The Senior Panel Counsel for the respondents no. 1 and 2 undertakes to supply the copy of the breach notice to the counsel for the petitioner within 02 days.

3. It is also stated on behalf of the Senior Panel Counsel for the respondents no. 1 and 2 that the concerned officers are in the process of



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assessing the damages which are required to be paid by the petitioners before conversion of the property in question from leasehold to freehold.

4. Ms. Rekha Aggarwal, Advocate appearing on behalf of the petitioner stated that the petitioner reserves the right to dispute any assessment on damages to be made by the respondents no. 1 and 2 in accordance with law.”

6. Subsequently, learned counsel for the petitioner has placed on record a response in respect of breach notice issued on 06.05.2024. Learned SPC for respondent Nos.1 and 2 has placed on record assessment of the damages in respect of the subject property in question by way of an affidavit dated 24.02.2025. In the said affidavit it is stated as under: -

“1. That I am presently working as Deputy Land and Development Officer and am fully conversant with the facts of the case on the basis of the record maintained and made available in this regard and as such competent to depose and swear the present affidavit on behalf of respondents.

2. That the instant affidavit is being filed pursuant to order dated 06/12/2024 whereby Hon'ble Court directed to file an affidavit stating the details of assessment of damages to be paid by petitioner in respect of the property in question.

3. That in pursuance of order dated 09.02.2024, the property in question bearing no. 21/24, West Patel Nagar, New Delhi was inspected on 09.04.2024 and at that time, although no encroachment was found but unauthorised constructions were noticed there for which, breach notice was issued on 06.05.2024.

4. That the petitioner has not filed any reply to the said breach notice till date.

5. That the petitioner was served with the demand letter vide dated 16.12.2024 after assessing all the damages, interest and for temporary regularization of the breaches and was directed to make the payment of Rs. 5825976/- within 30 days from the issuance of the said demand



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letter, failing which further action under the terms of the lease will be taken against him without any further reference. (copy of the demand letter along with calculation sheet is annexed here with as Annexure R-1.)

6. That the petitioner was also given opportunity of personal hearing if he had any point to clarify in connection to the said notice within a week of the date of receipt of this letter. Further, if he is unable to avail this opportunity of the personal hearing /discussion will not be accepted as a ground for not taking further action in the matter.”

7. Thereafter, learned SPC for respondent Nos.1 and 2 in pursuance of order dated 09.07.2025, had placed on record original documents in respect of the subject property in support of the affidavit filed by the answering respondents.

SUBMISSIONS ON BEHALF OF THE PETITIONER

8. Learned counsel for the petitioner has made the following submissions in support of latter's case: -

i) It is the case of the petitioner that conversion charges which were initially Rs.70,000/- *qua* the subject property have escalated to more than Rs.35 Lakhs now, and the same is clear from the communication dated 02.09.2016 which has been sent by respondent No.2 to the petitioner. It is submitted that the same is an arbitrary demand. It is submitted that respondent Nos.1 and 2 have been wrongly sitting over the request of the petitioner and respondent No.3 for conversion of the subject property from leasehold to freehold since 2010 when the petitioner had first filed application for such conversion. As per



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petitioner, the objections raised by the said respondents at the relevant time were duly removed to the satisfaction of the surveyor and a report to said effect is available in the case file of the subject property.

ii) The petitioner had initially applied for conversion of subject property in 2006 by completing all formalities and depositing Rs.70,000/- approx. demanded at that time and thereafter, in 2010, and despite passage of six years after second application, the respondents had failed to do the needful. The demand of ₹24,81,862/- including penalties and compound interest was not only atrocious, but also unfounded. In view of the fact that delay, if any, in disposing of the pending request of the petitioner for conversion was not attributable towards the petitioner and the respondents had arbitrarily by letter dated 02.09.2016 had increased the demand amount by 40%. It is pointed out that the objections raised by said respondents with regard to use of the subject property were removed by the petitioner way back and the same is evident from the reports made by their officials. It is further submitted that the demand of ₹35,76,629/- is absolutely illegal and unfounded and cannot be used as basis for rejecting the petitioner's application for conversion of the subject property. It is the case of the petitioner that the said demand is not being based on any equitable calculation or lawful bases and is to be revised in a suitable manner for facilitating the conversion of the subject property.



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iii) It is further submitted that respondents have refused to rely on the survey reports of their own officials with respect to the removal of all objections and temporary obstruction in the subject property.

iv) It is pointed out that as per Inspection Report dated 06.05.2024, there was no encroachment on Government Land; however, some unauthorised construction was found, in respect of which the lessees (including the petitioner herein) were served a breach notice dated 08.05.2024. It is further submitted that the alleged unauthorized construction of 0.0180 yd.² was not an outward extension/expansion, but is a part of the main area of bedroom on each floor and no alteration, addition, extension has been done in the bathrooms. It is further submitted that removing the said menial extent of construction was not possible owing to the risk involved in its removal as the subject property is already in dilapidated condition. Insofar as the fresh authorised construction of a temporary bedroom as mentioned in breach notice dated 06.05.2025 is concerned it is submitted that the same was done to meet up the needs of growing family of the petitioner and no permanent ceiling, construction had been done. It is further pointed out that petitioner was ready to pay reasonable charges for the same. It is further the case of the petitioner that respondent no.2 had, without taking into consideration the objections filed by the petitioner to the earlier breach notices, issued latest demand notice dated 18.12.2025, raising the demand of ₹58,00,000/- including earlier demands which the petitioner had vehemently denied.



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v) It is further submitted that there is no basis whatsoever for levying charges with retrospective effect from 1974. Respondent No.2 has relied on an inspection notice dated 26.09.1974 and inspection report dated 15.10.1974 to content that the inspection of the said property was first carried out in 1974. It is the case of the petitioner that said inspection notice was addressed to Janaki Devi who was not even the lessee of the subject property at that time, and thus, the inspection notice is on the face of it is illegal and in admissible.

vi) It is further submitted that demand notice dated 17.05.2013 is exorbitant and unfounded. It is submitted that no demand notice was ever issued in 2006 and as per respondent no.2's own inspection, in 2011, no encroachment was found on government land. It is further submitted that the alleged authorised construction of 0.0180 square yards was constructed by original lessee on the basis of sanctioned building plans. It is further submitted that the petitioner has expressed his readiness and willingness to pay reasonable charges for the same by letter dated 15.10.2011. It is further submitted that the interest component which is accumulating at compounded rate has now escalated to more than ₹58 Lakhs and the same is illegal and unwarranted since the owners of the subject property had way back in 2011 requested department/respondent no.2 to fairly assess the damages for the relevant period so that their application for conversion could be processed without any further delay.



vii) Reliance has been placed on the judgment passed by learned Division Bench of this Court in **Union of India v. Satish Kumar Mehta**¹, to contend that it would not only be procedurally unreasonable, but even substantially unreasonable to raise back dated demands with retrospective effect. Reliance has also been placed on the judgement passed by learned Coordinate Bench in **Tek Chand Narula & Ors. v. Union of India**², to contend that in said case, L&DO was held guilty of delay and laches in not crystallising the demands which the petitioner therein or their predecessor in interest was required to pay to condone the violation of the covenant(s) of the lease deed. Reliance has also been placed on the judgement passed by learned Coordinate Bench in **L&DO v. Lachami Narain HUF & Ors.**³, to contend that L&DO cannot adopt a policy of complete silence for 35 years, and then raise a demand for damages under presumption of unauthorized construction, and such an approach would be unfair to the owners. Reliance has also been placed on the judgement passed by learned Coordinate Bench in **Rattan Kaur v. DDA**⁴, to contend that it would be unreasonable and arbitrary for DDA to seek to levy misuse charges after a gap of 18 years.

viii) In view of the aforesaid facts and circumstances of the present case, it is prayed that respondent Nos.1 and 2 be directed to convert the

¹ 2012 SCC OnLine Del 4052

² 2019 SCC OnLine Del 9924

³ 2018 SCC OnLine Del 9838

⁴ 2007 VII AD (Delhi) 189



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subject property bearing no. 21/24 West Patel Nagar, New Delhi, from leasehold to freehold on the payment of reasonable charges.

SUBMISSIONS ON BEHALF OF RESPONDENT NOS.1 AND 2
(ANSWERING RESPONDENTS)

9. Learned SPC for respondent Nos.1 and 2, while refuting the aforesaid submissions made on behalf of the petitioner, has made the following submissions: -

i) The petitioner and the respondent No.3 are the joint lessees of the property in question and did not allow the property to be inspected as there is an encroachment and unauthorised constructions by the petitioner and the respondent No.3. It is submitted that the demand raised by present respondents is right in terms of lease/conveyance deed and under the conversion policy of 2003. It is the case of respondents in terms of clause 7 of the conveyance deed, the petitioner is bound to allow the inspection of the demised premises. However, the same was not allowed by co-lessees of the property at different times. It is submitted that the petitioner is liable to pay all government dues under the conversion policy of 2003.

ii) It is submitted that subject property was inspected on 15.10.1974 and some authorized construction and encroachment was found regarding which certain objections were raised under intimation to the petitioner. It is further submitted that to confirm the status of



encroachment, whether the same was removed or not, a letter dated 01.06.2006, was written to the petitioner for inspection of the premises on 06.06.2006; however, respondent no.3 did not allow the inspection and stated that the prior information was not received regarding such inspection. It is further submitted that, thereafter, on several occasions inspection was not allowed to be conducted. It is further submitted that the property was inspected by the respondent on 14.08.2006 and breach of unauthorised constructions and encroachment were found. It is pointed out that the letter dated 21.03.2006 by the petitioner that they have already removed encroachment was found wrong. The petitioner thereafter answered to breach reported on 14.08.2006 stating that property was constructed in 1969–70 with approved plan from MCD. However, the said plan was not readily available with the petitioner. It is pointed out that in the said letter, the petitioner did not reply about the encroachment whether the same was removed or not.

iii) It is further submitted that under the conversion policy, as the encroachment was still existing in the subject property, the application of the petitioner for conversion from leasehold to freehold of the subject property was rejected *vide* letter 08.11.2006 and the conversion charges deposited by the petitioner with conversion application was also refunded by letter dated 08.11.2006.

iv) The petitioner (along with respondent No.3) again applied for conversion on 12.04.2011/ 25.04.2011 and intimated the respondents that they have already removed the encroachment and unauthorised



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construction. It is the case of the respondent that again notice for inspection was issued to the petitioner and property was inspected on 23.08.2011 and it was noticed that earlier encroachment reported were removed but unauthorised constructions was still found on the subject property. The petitioner showed his willingness by letter dated 15.10.2011 that he is ready to pay the charges for temporary regularisation of unauthorised construction and also give an undertaking that they will not encroach upon any public/government land in future. It is further submitted that thereafter, the respondent raised government dues by letter dated 17.05.2013 whereby, penalty for unauthorised occupation charges was claimed from the date when the property was found under encroachment. The representation from co-lessee/ respondent no.3 was received on 13.06.2013 with request to re-examine the demand raised by the respondent. However, after examination of the representation, it was found that the demand has been correctly raised.

v) The respondent had denied that they had failed to grant the request of the petitioner for conversion of the subject property from leasehold into freehold despite a lapse of period of more than 10 years, since the first filing of application. It is the case of the respondent that petitioner himself was not interested in removing encroachment reported in the subject property and as such the conversion application filed on 23.01.2006 was rejected under clause 20.10 of the conversion policy which provided that the property involved in encroachment on government/public land is not entitled for its conversion from leasehold



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to freehold. Therefore, respondent no.2 has legally demanded the government dues against the subject property.

vi) It is further submitted that the petitioner has been served with demand letter dated 18.12.2024 during the pendency of the present petition, after assessing all the damages, interest and for temporary regularisation of the breaches and was directed to make payment of ₹58,25,976/-. It is further submitted that the petitioner has also been served with a fresh breach notice dated 06.05.2025, with respect to the unauthorised construction and encroachment on government/public land. It is further pointed out that the petitioner has not removed the illegal encroachment on government/public land and had not paid the damages in terms of the breach notices issued to him. Further, the inspection of the subject property was done during the pendency of the present petition only, and prior thereto, the petitioner did not allow the inspection of the subject property, and owing to this reason, the application filed by the petitioner for conversion of the subject property from leasehold to freehold was delayed.

vii) Learned SPC for respondent Nos.1 and 2 in pursuance of order dated 09.07.2025, had placed on record original documents in respect of the subject property and had shown the same to the Court during the course of proceedings. Relying on the said documents, it has been contended that show cause/demand notice was, in fact, issued to the petitioner with respect to the alleged unauthorised construction and encroachment in pursuance of inspection dated 15.10.1974.



viii) In view of the aforesaid facts and circumstances of the present case, it is prayed that the present petition may be dismissed.

ANALYSIS AND FINDINGS

10. Heard learned counsel for the petitioner as well as learned SPC for respondent Nos.1 and 2 and perused the records.

11. For the adjudication of the present petition, following list of dates and events are relevant: -

Date	Event
31.01.1964	Perpetual lease of the subject property granted to Late Mulk Raj Malhotra, and father-in-law of respondent No.3 by way of registered lease deed.
26.09.1974	Respondent No.2/L&DO issued an Inspection Notice.
15.10.1974	Inspection report issued by respondent No.2 but no-show cause notice/demand notice raised regarding the same.
13.05.2000	Father of the petitioner-Mulk Raj Malhotra expired.
17.01.2006	Names of the petitioner and respondent No.3 were substituted as lessees by respondent No.2. However, no demand was raised.
23.01.2006	Petitioner applied for conversion of the subject property <i>vide</i> application No.08451 dated 23.01.2006 duly supported by



	relevant documents along with payment of conversion charges of Rs.62,175/- and other dues totalling Rs.70,000/- were deposited with respondent Nos.1 and 2.
27.02.2006	Respondent No.2 wrote to the petitioner requiring him to furnish completion certificate of property alleging that inspection of the property revealed encroachment on Government/Public Land and advising him to remove the alleged encroachment.
16.03.2006	Petitioner informed respondent no.2 that aforesaid encroachment had already been removed and requested the concerned authorities to inspect the subject property at any time and the proof of construction was also submitted.
04.08.2006	Respondent no.2 sent a letter to the petitioner in the form of show cause notice alleging that the petitioner was preventing the inspection of the subject property and also, threatened him to re-enter the property in the event of the petitioner preventing the inspection.
03.10.2006	Respondent no.2 communicated the details of the alleged illegal or unauthorised constructions/alterations. The petitioner was asked to remedy the alleged breaches.
16.10.2006	Petitioner and respondent no.3 apprised the concerned authorities that the existing construction in the subject property was raised by Late Mulk Raj Malhotra on the basis of a duly sanctioned plan; however, the documents pertaining to the same were not reachable at the time and time was



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	sought by the petitioner to submit the certified copies of the same as in when they will become available.
08.11.2006	Respondent no.2/L&DO rejected the application dated 23.01.2006 of the petitioner for conversion of the subject property and refunded the amount deposited by the petitioner
14.04.2011	The petitioner made renewed request/Application for conversion of the subject property from leasehold to freehold
18.08.2011	Inspection notice issued by respondent no.2/L&DO in respect of the subject property
10.10.2011 /26.09.2011	Notice issued to the lessee/petitioner to remedy the breaches before exercising right of re-entry with respect to unauthorised construction/misuse of subject property
17.05.2013	Demand/terms for temporary regularisation of breaches/NOC/extension of time for completion/execution of lease deed in respect of subject property whereby, the petitioner was required to furnish an amount of ₹ 2481862/-
12.05.2016	Notice under Section 80 of the CPC served on the respondents/Authorities requiring them to pass directions for converting the subject property from leasehold to freehold upon payment of reasonable charges without demanding any interest on the amount of alleged penalties sought to be imposed on the petitioner and other co-owner of the property
30.08.2016	Demand/terms for temporary regularisation of breaches/NOC/extension of time for completion/execution of lease deed/withdrawal of re-entry in respect of subject



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	property whereby, the petitioner was required to furnish an amount of ₹ 3576629/-
03.11.2016	The present petition was filed seeking directions to the respondent Nos.1 and 2 to convert the property bearing no. 21/24 West Patel Nagar, New Delhi, from leasehold to freehold on the payment of reasonable charges.

12. From perusal of the aforesaid dates and events as well as the original records placed on record by the answering respondents, it emerges that respondent No.2/L&DO had issued an inspection notice on 26.09.1974 to the petitioner in respect of the subject property. Inspection report regarding the same was issued on 15.10.1974. It is pertinent to note here that no demand was ever raised by respondent no.2 nor any show cause notice was ever sent to the predecessor in interest of petitioner or respondent no.3 (co-owner/lessee the subject property) for explaining or rectification of the alleged breaches in terms of the inspection of the subject property carried out in 1974. The petitioner moved an application for conversion of the subject property on 23.01.2006. The very first demand notice for regularisation of breaches/NOC/extension of time for completion/execution of lease deed and for withdrawal of right of re-entry in respect of subject property/demised premises was made on behalf of answering respondents on 17.05.2013 whereby, the petitioner was required to furnish an amount of ₹24,81,862/-. A perusal of the said demand notice shows that the answering respondents had calculated and claimed the penalties for unauthorised occupation charges, balance cost of land, revised ground rent and interest thereon to be payable from when the subject property was found under encroachment *vide*



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inspection report dated 15.10.1974 to 22.08.2011, *i.e.*, one day before the encroachment found removed on inspection of the premises on 23.08.2011.

13. Admittedly, no demand notice or show cause notice was ever issued to the petitioner prior to 17.05.2013. Further, there is nothing on record to show that pursuant to alleged inspection on 15.10.1974, respondent no.2 quantified the dues *qua* the alleged breaches in respect of the subject property and any communication thereof with respect to any demand notice was made to the then, lessee-Late Mulk Raj Malhotra. It is further pertinent to note that no demand notice was issued by respondent no.2 even when the petitioner moved application for conversion for the first time in 2006. There was absolutely no reference to the alleged earlier breaches at any point in time till 17.05.2013.

14. Perusal of the record further shows that after the first application for conversion was preferred by the petitioner on 23.01.2006, an inspection was carried out and *vide* letter dated 27.02.2006, the petitioner was directed to furnish completion certificate of the property alleging that in said inspection there was encroachment on government/public land and the petitioner was advised to remove the alleged encroachment. On 16.03.2006, the petitioner informed respondent no.2 that alleged encroachment had already been removed, and the concerned authorities may inspect the subject property at any time. Even after this second inspection in 2006, no demand notice for payment of dues, damages, penalties, etc., was issued by answering respondents to the petitioner till the issuance of first demand notice was raised on 17.05.2013. It is only after the issuance of demand notice on 17.05.2013, the issue of unauthorised construction was first brought to the notice of the



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petitioner. The petitioner cannot be penalised as no notice was ever given to him in respect of alleged encroachment since 1974, and it would be illegal and unwarranted to automatically deem encroachment since 1974. No explanation has been given by answering respondents as to, why they did not exercise their rights under lease deed over the said period of 32 years. Therefore, in absence of any intimation/notice to the lessee, it would be highly unjust and unfair to presume encroachment and unauthorised construction from 1974 and thus, there is no basis for claiming such damages and penalties from the petitioner. Therefore, the demand notice issued by answering respondents on 17.05.2013 was not in accordance with law inasmuch as no such demand notice was issued to the petitioner after the inspection conducted in 1974 till the raising of demand notice dated 17.05.2013.

15. Insofar as the reliance placed by learned SPC for the answering respondents on the original documents in respect of property shown to this Court, in terms of order dated 09.07.2025, to claim that show cause/demand notice was, in fact, issued to the petitioner with respect to the alleged unauthorised construction and encroachment in pursuance to inspection dated 15.10.1974 is concerned, it is pertinent to note that said documents are in fact undated and unsigned and are with respect to payment of ground rent and premium etc., and are not related to the inspection report dated 15.10.1974.



16. Learned Coordinate Bench of this Court in **Tek Chand Narula and Others v. Union of India and Others**⁵, wherein L&DO had failed to crystallise the charges payable for the alleged breaches by way of demand letter, had observed and held as under: -

“106. The respondents, for the first time, brought on record a demand which is dated 14 March 2011. In the demand letter, there is a reference to an earlier demand made on 14 April 1980. While there is a reference to demand of this date (i.e. 14 April 1980) with the reply filed to the writ petition, no such demand letter has been appended to the reply. I must state that in the reply the respondents have averred that such demand was served on the petitioners in the suit court. The petitioners in their rejoinder have denied this fact. Therefore, in my opinion, it was incumbent on the respondents to place on record the demand letter dated 14 April 1980.

107. **In the absence of this demand letter, one can only conclude that for the first time misuse charges and damages for unauthorized construction were conveyed to the petitioners on 14 March 2011.** The petitioners, as noticed above, however, challenged the demand by amending its writ petition being W.P.(C) No. 11388/2009. This writ petition was, however, disposed of on 26 February 2013 and the matter was remanded to the L&DO to re-consider the case of the petitioners. The remand was made based on the submissions advanced by the counsel for the L&DO in the wake of the judgment of the Division Bench of this Court in Jor Bagh Association.

108. As indicated above, that judgment of the Division Bench squarely discussed the Office Order No. 23/1976, in particular, as to whether or not that Office Order was the source of power for levying misuse charges and damages for unauthorized construction or, did it provide the mode and manner of levying misuse charges and/or damages. The Court in that case, as noticed above, concluded that the source of power lay in the Government Grants Act and the manner of levy of such charges and damages was provided in the Office Order No. 23/1976. Therefore, given this background, it was incumbent on the L&DO to consider the impact of the Office Order No. 23/1976, in particular, Clause 7 of the said

⁵ 2019 SCC OnLine Del 9924



Office Order. A perusal of the order dated 26 August 2014 would show that there is no discussion whatsoever as to the impact of Clause 7 of the Office Order No. 23/1976.

109. The L&DO via the order dated 26 August 2014 has only conceded to reduction of penalty from 10% to 1%.

110. Mr. Jha's argument that the eviction proceedings carried out were collusive or that the rent shown to have been collected by the petitioners from its various delinquent tenants was not the actual amount received by the petitioners are submissions which are bereft of any material. The L&DO could have asked for relevant documents from the petitioners to justify its claim that it had recovered from its delinquent tenants a sum of only Rs. 4,68,732/-. The L&DO failed to make any inquiry in that behalf and as a matter of fact, passed a perfunctory order on 26 August 2014.

111. The result is that the petitioners' application for mutation and conversion of the property from leasehold to freehold remains pending.

112. Thus, having regard to the aforesaid, it is, to my mind, clear that the L&DO has ended up piling the demand by delaying the crystallization of misuse charges and damages for unauthorized construction. It is well established that even in situations where a period of limitation is not prescribed requiring the State or its instrumentality to discharge its duty within a particular timeframe; it is obliged in law to discharge its obligations towards the citizens within a reasonable time.

113. In the context of crystallization of misuse charges and the delay in freezing the same, the Supreme Court has made the following crucial observations in the judgement rendered in Delhi Development Authority v. Ram Prakash, (2011) 4 SCC 180 : AIR 2011 SC 1399.

“21. Having considered the submissions made on behalf of the 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 the 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 Cooperative 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.”

(Emphasis is mine)

114. Therefore, I have no hesitation in holding that respondent No. 2/L&DO was guilty of delay and laches in not crystallizing the amounts which the petitioners or their predecessor-in-interest was required to pay to condone the violation of the covenants of the perpetual lease deed, in particular, Clause 2(5) and 2(6).

115. Thus, given the foregoing discussion, the two orders of even date dated 18 October 2007 issued by the L&DO rejecting the petitioners' application for mutation and conversion of property from leasehold to freehold are quashed. Likewise, the demand notices dated 14 March 2011 and order dated 26 August 2014 are also quashed. The L&DO is directed to recalculate the misuse charges and damages for unauthorized



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construction after giving the benefit of Clause 7 of Office Order No. 23/1976.”

(emphasis supplied)

17. In the present case as well, first demand letter with respect to the alleged breaches and unauthorised construction was issued to the petitioner on 17.05.2013 claiming damage charges for unauthorised construction, and penalties from 15.10.1974, the day when the subject property was initially inspected. It is a matter of record that no show cause notice or demand for charges was made pursuant to aforesaid inspection in 1974. The next inspection was carried out on 14.08.2006. However, no demand was raised after inspection carried out in 2006. The application of the petitioner dated 23.01.2006 for conversion of the subject property was rejected on 08.11.2006. Thereafter, petitioner made renewed request/application for conversion of the subject property from leasehold to freehold. Fresh inspection notice was issued by respondent No.2/L&DO on 18.08.2011, and after inspection on 23.08.2011, breach notice was issued on 10.10.2011/26.09.2011. The first demand notice was issued to the petitioner on 17.05.2013 which included the period for 15.10.1974 to 14.08.2006 and from 14.08.2006 till the date of the said demand notice. Similarly, demand notice dated 30.08.2016 also included the period from 15.10.1974 to 17.05.2013, and from 18.05.2013 till 30.08.2016.

18. In view thereof, the demand notice dated 17.05.2013 issued by answering respondents with respect to misuse/unauthorised construction along with damages and interest from 15.10.1974 till 14.08.2006 (date of first



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inspection after the mutation in name of petitioner) is not valid in the eyes of law on account of following reasons: -

- i)** First inspection of the subject property with respect to unauthorised construction was done on 15.10.1974. However, as per the original records no show cause notice/breach notice/demand notice was issued with respect to the same.

- ii)** First intimation by respondent No.2 to the petitioner with respect to breach and unauthorised construction, after the application dated 23.01.2006 of the petitioner for conversion was given on 27.02.2006; however, no demand notice was raised at that time. The petitioner's application dated 23.01.2006 for conversion of the subject property from leasehold to freehold was rejected on 08.11.2006.

- iii)** After renewed application for conversion of the petitioner in 2011, inspection was done on 10.10.2011/26.09.2011; however, no demand notice was raised at that time as well.

- iv)** No demand notice was raised by the answering respondents *qua* misuse/unauthorised construction in the subject property till 17.05.2013. The said demand notice issued to the petitioner included the period for 15.10.1974 to 14.08.2006 and from 14.08.2006 till the date of the said demand notice. In these circumstances, the demand concerning the aforesaid period from 15.10.1974 to 14.08.2006 cannot be sustained.



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v) For the period 15.08.2006 to demand notice dated 17.05.2013, the answering respondent will not be entitled to charge any penalty/interest, as the delay in raising the demand for the said period is solely attributable to them.

19. Further, the demand notice dated 30.08.2016 is also not valid for the following reasons: -

i) The said demand notice was issued including the period from 15.10.1974 to 14.08.2006 and from 14.08.2006 till the date of the said demand notice. As noted above, the answering respondents raised first demand notice *qua* misuse/unauthorised construction in the subject property on 17.05.2013. Therefore, period from 15.10.1974 to 14.08.2006 has to be fully excluded.

ii) Similarly, the penalty/interest charged by the answering respondents for the period 14.08.2006 till 18.05.2013 also has to be excluded in view of the aforesaid findings.

iii) The present petition is dated 03.11.2016 and was filed on said date. Thus, from 18.05.2013 till the filing of the present petition, *i.e.*, 03.11.2016, the answering respondents can claim damages for misuse/unauthorised construction along with interest thereon as per rules applicable.

20. In these circumstances, the demand notices dated 17.05.2013 and 30.08.2016 are set aside.



21. During the pendency of the present petition, answering respondents had issued breach notice dated 06.05.2024 to the petitioner in respect of inspection done on 09.04.2024, in terms of order dated 09.02.2024 passed learned Predecessor Bench in the present petition. The petitioner had also filed a reply dated 09.09.2024 to the said breach notice before answering respondents/L&DO. Further, answering respondents have also issued latest demand notice on 18.12.2024 on the basis of the inspection conducted on 09.04.2024 to which replies/objections have been raised on behalf of the petitioner. In the said demand letter/notice, respondent No.2/L&DO has claimed damage charges for misuse/unauthorised construction till 14.01.2025 including earlier demand interest balance as well as interest on previous damage charges for the period from 15.10.1974 to 17.05.2013, and from 18.05.2013 till issuance of this demand notice. Admittedly, the petitioner was not served with any demand notice prior to 17.05.2013. The present petition was filed on 03.11.2016. The aforesaid demand letter raised during the pendency of the present petition for the period till 09.04.2024 is also not valid, and therefore, the same is also set aside.

22. The respondent No.2/L&DO is at liberty to issue fresh show cause/breach notice with respect to the damages for misuse/unauthorised construction from 14.08.2006 till 17.05.2013; however, no interest/penal charges would be claimed for this period. The respondent No.2 can further raise demand for the period from 18.05.2013 till 03.11.2016 as per Rules. Thereafter, for the period from 03.11.2016 till 09.04.2024, respondent No.2 can claim damages/charges for breaches but any interest/penal charges cannot



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be claimed for this period on account of pendency of the present writ petition. The answering respondents shall pass a reasoned order regarding the damages for misuse/unauthorised constriction after providing an opportunity of hearing to the petitioner within a period of 4 weeks. Thereafter, the application No.105593 dated 14.04.2011 filed by the petitioner seeking conversion of property bearing No. 21/24, West Patel Nagar, New Delhi, from leasehold to freehold shall be decided by the answering respondents within a period of 4 weeks after passing of the reasoned order *qua* the misuse/unauthorised charges under intimation to him.

23. Needless to state that, if the petitioner is aggrieved by the order of the L&DO/respondent No.2, he will at liberty to take recourse to an appropriate remedy, which may be available to them, in accordance with law.

24. The present petition is disposed of with the aforesaid directions.

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

26. The original record of the subject property retained with Court may be returned to the learned SPC for respondent Nos. 1 and 2, Ms. Saroj Bidawat.

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

**AMIT SHARMA
(JUDGE)**

JUNE 30, 2026/kr/ns