2025:DHC:635

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

% **Judgment reserved on : 06 December 2024**
Judgment pronounced on: 03 February 2025

\+ W.P.(C) 11167/2021 & CM APPL. 34376/2021

VINOD CHAWLA (SINCE DECEASED) THROUGH LEGAL REPRESENTATIVE ..... Petitioner

Through: Mr. Jatan Singh, Sr. Advocate with Mr. Arun Adlakha and Ms. Vanshika Adhana, Advs.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR. .....Respondents

Through: Mr. Nitin Mishra and Mr. Arun Sharma, Advs. for DDA.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner herein invokes the extra-ordinary jurisdiction of this Court by instituting the present writ petition under Article 226 of the Constitution of India, 1950, by seeking the following reliefs against the respondents herein:

> "(a) Issue a Writ of Mandamus, any other suitable Writ, an Order, or a Direction, setting aside the impugned demand letter dated 22.11.2019, issued by Respondents.
> (b) Issue a Writ of Mandamus, any other suitable Writ, an Order, or a Direction, directing the Respondents to approve and allow the application dated 31.01.2000, for conversion of demised property from leasehold to freehold, without any further delay.
> (c) Award costs of this Petition and damages to the Petitioner for inordinate delays and hardships caused to the Petitioner.
> (d) Pass such further order, or orders, as this Hon'ble Court may deem fit, just and proper, in the interest of Justice."

FACTUAL MATRIX

2. Shorn of unnecessary details, a plot of land bearing Plot No. 55, Block No. A-1, admeasuring 667 square yards i.e. 557.67 square metres, in the lay-out plan of Safdarjung Development Residential Scheme, New Delhi 110029 (hereinafter to be referred to as "**subject property**"), was perpetually leased out by the respondents/DDA for residential purpose, in favour of the petitioner herein (now deceased) *vide* perpetual lease deed dated 27.02.1967 for a total consideration/premium of Rs. 46,100/-.

3. Thereafter, the petitioner claims to have constructed a house over the subject property and has disclosed the following details as regards the total constructed area of the subject property:

a)	Total covered area on basement	- 2612.50 sq. ft.
b)	Total covered area on Ground Floor	- 2685.00 sq. ft.
c)	Total covered area on First Floor	- 2685.00 sq. ft.
d)	Total covered area on Barsati	- 500.00 sq. ft.

Total covered area = 8482.50 sq. ft.

As one sq. ft. = 0.0929 sq. meter, hence in this ibid case total area of constructed 8482.50 sq. ft. is equal to 788.024 sq. mtr.

Thus,	Basement Area of 2612.50 sq. ft	=	242.70 sq. mtr.
	Ground Floor Area of 2685 sq. ft.	=	249.43 sq. mtr.
	First Floor Area of 2685 sq. ft.	=	249.43 sq. mtr.
	Barsati Area of 500 sq. ft.	=	46.45 sq. mtr.
			788.01 sq. mtr.

4. Admittedly thereafter, the subject property which was leased out only for residential purpose, was used for commercial/non-residential purposes by a company, namely M/s. Mudra Communications Limited, for operating its business activities and running a Guest House in the

name of 'Rajdoot Guest House' at the subject property. It was also found that a garments' export business and a beauty parlour were also operating at the subject premises from time to time. Pursuant to several show cause notices being served upon the petitioner by the respondents/DDA to explain the misuse, ultimately what followed was that the respondents/DDA determined the lease of the subject property for use of the said property other than residential purposes and communicated such decision to the petitioner *vide* letter dated 09.03.1995.

5. As a matter of record, on 30.01.2000, upon payment of the self-assessed conversion charges amounting to Rs. 2,88,500/-, the petitioner filed an application seeking conversion of the subject property, which came to be rejected by the respondents/DDA on 31.07.2000. Aggrieved thereof, the petitioner filed a writ petition before this Court bearing WP(C). 10601/2006 seeking quashing of the proceedings under the Public Premises Act, 1971, initiated by the Estate Officer, DDA against the petitioner, besides seeking conversion of the subject property.

6. During the pendency of the said writ petition, the petitioner, on affidavit, undertook to pay the misuse charges and other dues as and when demanded by the DDA in respect of the subject property, for the purpose of restoration of the lease. The said proposal was approved by the respondents/DDA on 12.04.2019. Pursuant thereto, the petitioner withdrew W.P.(C) No. 10601/2006 from this Court on 03.05.2019. In compliance with the directions of this Court, the Competent Authority restored the lease of the subject property in favour of the petitioner, subject to payment of the applicable dues.

7. The events that transpired thereafter go to the root of the dispute at hand. Evidently, *vide* letter dated 28.05.2019, the petitioner informed the respondents/DDA that he has deposited an interim amount of Rs. 3,28,256/- to the DDA as penalty for the alleged misuse of the subject property at his behest. The said amount was self-calculated by the petitioner and alleged to have been arrived at by applying the formula provided in Office Order No. PS/DIR-(RL)/2016/Misuse Policy/164 dated 05.05.2016 issued by the DDA, Land Disposal Department, towards payable misuse and conversion charges, which goes as under:

BASE RATE OF THE ZONE X 25% OF THE AREA OF THE PLOT IN SQ. MTR. X TIME FACTOR X HISTORICAL FACTOR

$$\frac{11200 \times 554.35 \text{ Sq. mtr} \times 1 \times IX}{4} \quad \frac{12}{100} = \text{Rs. } 1,86,261.60$$

The petitioner further submitted a letter dated 29.08.2019, thereby informing the respondents/DDA that he has already deposited necessary conversion charges to the tune of Rs. 2,88,500/- in June, 2000 as per the prevailing policy.

8. However, it is brought out from the record that the respondents/DDA, *vide* letter dated 22.11.2019, issued a demand of Rs. 2,98,33,822/- upon the Petitioner towards misuse charges as per the current policy existing on Misuse, after seeking approval from the Competent Authority. The calculation by which the said amount was arrived at by the Competent Authority, as contained in the letter dated 22.11.2019, is reproduced hereinunder:

Misuse charges + interest upto 4.11.19	Rs. 2,98,66,694=00
Less already paid	Rs.3,28,256=00
	Rs. 2,95,38,438=00
Interest uto 4.12.19	Rs. 2,95,384=00
	Rs. 2,98,33,822=00

9. Thus, the instant matter now boils down to only one issue that requires determination *viz.* the quantum of misuse charges payable to the respondents/DDA by the petitioner herein.

PROCEEDINGS BEFORE THIS COURT:

10. During the pendency of the present writ proceedings, on 11.12.2022, the petitioner, namely Mr. Vinod Chawla, passed away leaving behind three legal heirs. Consequently, an application bearing CM Appl. No. 11568/2024 under Order XXII Rule 3, Code of Civil Procedure, 1908, came to be filed by one Ms. Jigisha Chawla seeking her substitution as sole legal heir of the deceased petitioner to the exclusion of other two legal heirs, namely daughter Ms. Purnima Chawla and son Mr. Vardaan Chawla of the deceased, on the premise that the latter two had relinquished their right in favour of the applicant Ms. Jigisha Chawla. Accordingly, an amended memo of parties was taken on record by this Court in terms of the aforesaid application.

11. Pursuant to the orders of this Court, Mr. Prashant Kumar Prasad, Deputy Director, LAB (Resdl), DDA filed a counter affidavit dated 15.04.2022 on behalf of the respondents herein. In order to justify the demand of Rs. 2,98,33,822/- raised upon the petitioner, the

respondents/DDA have placed on the record a statement indicating floor-wise, period-wise and area-wise misuse of the subject property, based on which they have computed and arrived at the final figure of Rs. 2,98,33,822/- as misuse charges payable by the petitioner. The said computation is reproduced hereinbelow:

S. No.	Misuse period	Area	Misuse period	As per Formula	
1.	Rajdoot Guest House	1040.39 sqm.	31.01.83 to 15.03.84	14908x1040.39x1x0.25	3877533.53
2.	Beaty Parlour	condoned			
3.	Export & Research	791.63 sqm	12.03.87 to 07.09.94	14908x791.63x1.25x0.5	7376012.525
4.	Mudra Communications	745.16 sqm	08.09.94 to 01.06.00	14908x745.16x1.25x0.75	10414542.45
			TOTAL		21668088.51
	PERIOD			INTEREST	TOTAL
	5 NOV 16	4 MAY 17	6m	1300085	22968173.82
	5 MAY 17	4 NOV 17	6m	1378090	24346264.24
	5 NOV 17	4 MAY 18	6m	1460776	25807040.10
	5 MAY 18	4 NOV 18	6m	1548422	27355462.50
	5 NOV 18	4 MAY 19	6m	1641328	28996790.26
	5 MAY 19	4 NOV 19	3m	869903.7	29866693.96
					29866693.96

12. At this juncture, it would be apposite to reproduce the relevant provisions of the Office Order dated 05.05.2016 titled *"New Comprehensive Policy for levying Misuse Charges in supersession of all previous policies on the same subject"* containing the currently applicable formula for calculation of misuse charges, which read as under:

> "**[III] FORMULA FOR CALCULATION OF MISUSE CHARGES:**
> (a) For calculation of Misuse Charges the base rates in various zones are as follows. The applicants is requested to identify the location of his

property and apply the applicable base rate in the formula for calculation of Misuse Charges.

S.No.	Zone	Base Rate*
1.	Central, South & Dwarka	Rs.11,200/-
2.	West, North, East & Rohini	Rs.7,800/-
3.	Narela	Rs.3,100/-

*Base rate is related to the commercial rate for conversion and will be revised as and when the commercial rate for conversion are revised and the present rates are linked to rate of 2016-17.

(b) Depending on the number of years the applicant has misused the property, the time duration factor has been introduced in the formula and the applicant is requested to identify the number of years of Misuse and apply the applicable time duration factor in the formula.

Period (in years)	Factor
0 to 5	1
Above 5 and less than 10	1.25
Above 10	1.50

(c) Finally the applicant will have to identify the historical factor which is based on the period during which the misuse was carried out and apply the same into the formula. The table for Identifying historical factor is as follows;-

Period (in years)	Historical Factor
Prior to 1.4.1985	0.25
1.4.1985 to 31.3.1995	0.50
1.4.1995 to 31.3.2005	0.75
1.4.2005 upto date	1

In case the Misuse is over lapping in more than one of the above mentioned period then factor of the period in which the period of misuse is larger will be taken into consideration.

The formula for calculation of Misuse Charges will be as follows: -

(i) In cases where area of misuse is not clear or ambiguous or disputed:-

Base rate of the Zone x 25% of the area of the plot in sq. mtr. x time factor x historical Factor

(ii) In cases where area of misuse is clear and not in dispute and has been accepted by the applicant and DDA.

Base rate of the Zone x total area under misuse in sq. mtr. x time factor x historical factor"

13. It would also be apposite to reproduce the proviso contained in Clause (II)(X) of the Office Order dated 05.05.2016 which reads as under:

> "The applicants who apply within first six months of implementation of the policy will not have to pay any interest charges on the misuse charges calculated as per new formula and thereafter interest charge of 12% compounded every six months will have to be borne by the applicant. In the old pending cases where the demand has already been raised and the applicant wishes to clear the misuse charges as per old policy, will have the option to do so within first six months of Implementation of the new policy without paying any interest charges on the demand raised. However, if he does not come forward within first six months for settling the old demand then he will have to apply afresh in the new policy and interest charges as applicable in the new policy will be levied on the calculated misuse charges."

14. The respondents/DDA have taken a stand that the petitioner/lessee has failed to take advantage of the said proviso and did not apply within the six-month period, as prescribed, for paying the misuse charges. It is further contended that the main objective of the petitioner behind challenging the demand letter dated 22.11.2019 by way of the present writ petition is that the previous Misuse Policy/Circular dated 04.08.2015 provides rebates up to 75% for levying misuse charges, whereas the present Misuse Policy/Circular dated 05.05.2016 does not provide any such rebate. In the aforesaid backdrop, it is asserted that the petitioner cannot be allowed to seek a writ of mandamus challenging the rates calculated on the basis of the current existing policy on Misuse Charges as it is the settled position of law that the current law/policy shall always prevail over the previous law/policy unless there is a specific provision made therein for the application of previous law/policy.

ANALYSIS AND DECISION:

15. I have bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the relevant record of the present case.

16. At the outset, the impugned demand towards conversion charges raised by the respondent/DDA cannot be sustained in law. **First things first,** as detailed in paragraph (8) hereinabove, it is pertinent to mention that the aforesaid computation was supplied by the respondent/DDA on 15.04.2022 in its counter affidavit, pursuant to the directions of this Court dated 30.09.2021, apparently claiming misuse charges from 31.01.1983 to 01.06.2020 i.e. for a period spanning over 37 years. Evidently, though there were SCNs issued by the respondent No.2 during the period 1983 to 1991, it is also borne out from the record that a reply was filed by the petitioner, but no action was taken. Secondly, it is also pertinent to mention that computation given in the calculation sheet of misuse charges (Annexure R-1) enclosed with the counter affidavit of the respondent dated 15.04.2022 is on the face of it palpably wrong and misguided since it pertains to calculation of misuse charges in respect of second floor to the extent of 2676.79 sq. ft. i.e. 248.77 sq. mts. which computation cannot be sustained in view of the admitted position that the subject property comprised of only a basement, ground floor and first floor. The details of the subject property as indicated in Annexure P-4 which is an application dated 30.01.2000 moved by the petitioner for conversion of the subject property are in fact acknowledged in the aforesaid counter affidavit whereby the total plot area is 557.61 sq. mts. The impugned demand charges *vide* letter dated 22.11.2019 appear to be based on the prevailing policy of the DDA at the time of its issuance but then the computation in the calculation sheet of the respondent no.1/DDA makes an interesting note to the following effect:

> "The file was sent to Finance Department vide note dated 27.05.19 at p.174/N. They have returned without routing the same through Dir.(LC)/Comm. (LD) and without calculations, stating that since the misuse calculations have **huge financial implications** while comparing the calculations coming out of earlier policy and as per current policy. Further, proving the finance view in one case and not in others will not suffice the uniform applicability of latest misuse policy dt. 05.05.2016. Therefore, this office is of the view that one set of uniform clear policy guidelines is much required for the Finance Wing i.e. either to proceed or not to proceed for further calculation/verification of the misuse charges.
>
> Whereas this office has put in best efforts to calculate the same however still it is felt that being a matter of calculations, Accounts Branch may check and intimate correctness of the same.
>
> In view of the above, and being VC's PH Case it is requested that file may be please be placed before worth FM, DDA to kindly issue orders for calculations/checking the correctness of misuse charges as calculated above"

17. A bare perusal of the aforesaid noting in the computation *vide* Annexure R-1 would show that respondent/DDA itself was not clear as to which policy would be applicable for calculation of the conversion charges. In fact, in paragraph (6) of the counter affidavit dated 15.04.2022 it is deposed as under:

> "**6.** The Answering Respondent introduced the liberalised policy of Misue Charges dated 05.05.2016 which was published in the newspapers. As per the policy the applicant was to calculate the misuse charges of their own and submit the challan to DDA with required documents as published in the policy. Copy of the policy of Misuse Charges dated 05.05.2016 is annexed herewith and marked as Annexure R-2."

18. Further, in paragraph (7) of the counter affidavit it is also acknowledged that misuse policy/circular dated 05.05.2016 provided that it was a comprehensive policy for levying misuse charges in supersession of all previous policies on the subject and such policy came to be operational with immediate effect. But there is a turn around

on the part of the respondents/DDA in quoting Clause (X) under the head (II) Rules of the Misuse Policy/Circular dated 05.05.2016 and taking the position that an advantage could have been availed by the petitioner within six months of the prescribed period of payment of misuse charges. It is acknowledged that the petitioner showed his intention to pay misuse charges through a letter dated 20.06.2017 and subsequently by way of affidavit-cum-undertaking dated 28.08.2018 and letter dated 19.02.2019 but what is overlooked is that W.P.(C) 10601/2006 was pending during the relevant time, which was decided *vide* order dated 03.05.2019. It is only after the decision in the aforesaid writ that the petitioner sought to avail benefit of the misuse policy dated 05.05.2016.

19. The bottom line is that the action of the respondent/DDA in levying the misuse charges after almost 37 years for the period 1983 to 2020 is clearly not sustainable in law. Reference in this regard can be had to decision in the case of **DDA v. Ram Prakash**[1] wherein too the DDA sought to claim misuse charges with regard to use of the basement, mezzanine floor as well as terrace for different period issuing Show Cause Notice in 1983 and in 1990 but then on reply being filed by the lessee, no action was taken and it was after 25 years that misuse was detected, which by all means had stopped much prior to the issuance of the demand notice. In the aforesaid circumstances, it was held as under:

> **"15.** Ultimately, on a question of limitation being raised in respect of the demand of misuser charges, the Division Bench observed that where no period of limitation is prescribed, action has to be taken by

[1] (2011) 4 SCC 180

the authorities within a reasonable period of time, but by no stretch of imagination, could it be said that after a lapse of almost 25 years DDA had not acted arbitrarily or at least unfairly insofar as the respondent is concerned. In addition, the respondent was never informed by DDA that he was required to pay any misuser charges. On the basis of such reasoning, the Division Bench of the High Court dismissed the appeal and upheld the order of the learned Single Judge.

x x x x x x

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.

20. Additionally, it may also be seen that the misuse with regard to the use of Parlour was condoned and insofar as levy of misuse charges

for running a private Company Guest House is concerned, which was evidently for residential purposes only, the levy of misuse charges thereupon also cannot be sustained in law, for which reference can be invited to the decision in the case of **Union of India v. Deepak Singh**[2], wherein it was observed as under:

> "**5.** It is therefore quite clear that what was let out to the tenant-company was a letting out only and only for a residential purpose for residence of its personnel. Obviously, a company being a legal entity cannot physically stay in a premises and surely on its behalf, only its employees can stay in the premises.
>
> x x x x x x
>
> **10.** Learned counsel for the appellant sought to place reliance upon *NDMC* v. *Sohan Lal Sachdev (dead) Represented by Mrs. Hirinder Sachdev, W/o. Late Shri Sohan Lal Sachdev* 2000 (2) SCC 494 to argue that the Supreme Court has held that use of a guest house amounts to use for a commercial purpose. Reliance was also placed upon a judgment of a single judge of this Court in the case of *DDA* v. *Maharaja Hotel* ILR 1993 Delhi 64 that user of a guest house amounts to use for a commercial purpose.
>
> **11.** Both the judgments which are relied upon by the learned counsel for the appellant have absolutely no application to the facts of the present case. In the facts of the case before the Supreme Court in the case of *NDMC* v. *Sohan Lal Sachdev* (supra), the letting out was to a tenant, M/s. Sachdev guest house for running a commercial guest house i.e. like a hotel almost. This letting out for running a guest house is therefore surely a commercial purpose as distinguished from a letting out to a company for residential use of its employees, and this guest house use cannot by any stretch of imagination be equated with commercial guest houses which dot this city. The description in this case by the company/tenant of a guest house was for the obvious reason that the premises are not going to be used by any single/one employee of the company but will be used by different employees who will come at different points of time to stay in the premises and therefore the term guest house, however, the same cannot mean that the letting out is for a purpose of a guest house as a commercial guest house and which were the facts in the case of *NDMC* v. *Sohan Lal Sachdev*(supra) before the Supreme Court. In the case of *DDA* v. *Maharaja Hotel* (supra), there was a finding of the fact that the hotel was being run in the premises and

[2] 2011 SCC OnLine Del 3883

> which was called running of a guest house and therefore the same amounted to a non-conforming use or commercial use. Again the said judgment has no application in the facts of the present case as letting out the premises was only and only for residential purpose."

21. In view of the foregoing discussion, although no period of limitation is prescribed, the respondent/DDA failed to take action within the reasonable period of time, and it cannot be allowed to claim misuse charges based on Misuse Policy 2016 with retrospective effect for 37 years or so in the instant matter. Mr. Jatan Singh, learned Senior Advocate for the petitioner, however, submitted that in view of the undertaking given by the petitioner at the time of disposal of W.P.(C) 10601/2006 and for the fact that the lease was restored on 25.04.2019 by the respondent, they admit their liability in terms of Misuse Policy-2016 and on behalf of the petitioner, the following tabular computation was filed:

S. No.	**Alleged Misuse Description**	**As per formula/ petitioner**	**As per respondents/DDA**
1	Rajdoot Guest House	Rs.3,90,376.00 [11200 x 139.42 x 1 x 0.25]	Rs.38,77,533.53 [14908 x 1040.39 x 1 x 0.25]
2	Beauty Parlour	Condoned	Condoned
3	Export and Research	Rs.9,75,940.00 [11200 x 139.42 x 1.25 x 0.5]	Rs.73,76,012.525 [14908 x 791.63 x 1.25 x 0.5]
4	M/s Mudra Communications	Rs.14,63,910.00 [11200 x 139.42 x 1.25 x 0.75]	Rs.1,04,14,542.45 [14908 x 745.16 x 1.25 x 0.75]
	Total	**Rs.28,30,226.00**	**Rs.2,16,68,088.51**

22. To cut the long story short, it has been submitted that in all fairness the petitioner is ready and willing to pay total Rs. 28,30,226/- towards misuse charges minus the amount of Rs. 3,28,256/- paid by the

petitioner *vide* letter dated 28.05.2019. The computation carried out by the petitioner appears to be well founded based on the misuse policy-2016 as such liability is acknowledged by the petitioner.

23. In view of the foregoing discussion, the present writ petition is allowed and the impugned demand for conversion *vide* letter dated 22.11.2019 is hereby set aside/quashed. The respondent/DDA is directed to approve and allow the petitioner's application dated 30.01.2000 for conversion of the subject property from leasehold to freehold on payment of Rs. 28,30,226/- minus Rs. 3,28,256/- that was already paid by the petitioner, thus amounting to Rs. 25,01,970/-, within a month from today in favour of the respondent/DDA.

24. In the given facts and circumstances, where the respondent/DDA has miserably failed to substantiate its case and has caused undue harassment to the petitioner and now his legal heirs, it is directed that the entire cost of purchase of stamp papers as well as registration towards execution of the Conveyance Deed shall be borne by the respondent/DDA. The entire process be completed within four weeks of the deposit of the aforesaid misuse charges by the petitioner.

25. The present writ petition along with pending application stands disposed of.

DHARMESH SHARMA, J.

FEBRUARY 03, 2025
Sadiq