$~

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

Judgment reserved on : 13.02.2026

% Judgment delivered on: 02.06.2026

\+ LPA 732/2025 & CM APPL. 75989/2025

UNION OF INDIA & ANR. .....Appellants

Through: Mr. Chetan Sharma, ASG with Mr. Rajesh Gogna, SPC, Mr. Shivam Tiwari, Mr. Amit Gupta, Mr. Shubham Sharma, Mr. Yash Wardhan Sharma, Mr. Naman, Mr. Tejendra Pratap Singh and Ms. Priya, Ms. Rebina, Ms. Punita, Advs.

versus

THE KHETRI TRUST .....Respondent

Through: Mr. Ajay Verma, Sr. Adv. with Mr. Ishaan Verma, Ms. Diviani K. Verma, Mr. Armaan Verma, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. This intra-Court appeal seeks to challenge the judgment dated 18.12.2024 passed by the learned Single Judge in W.P.(C) No. 17407/2024, whereby the demand letter dated 12.06.2024 issued by the Land and Development Office, Ministry of Housing and Urban Affairs, Union of India (hereinafter referred to as L&DO) demanding an amount of Rs.4,34,92,812/-

towards Unearned Increase from the respondent– The Khetri Trust, has been quashed. By the impugned order it has further been provided that substitution in favour of The Khetri Trust in respect of the subject property shall remain subject to outcome of the decision of the Hon'ble Supreme Court in SLP (C) Diary No.45720/2023.

FACTS

2. A perpetual lease was executed in respect of the property no.5, Sardar Patel Marg, New Delhi by the Government of India on 24.04.1962 in favour of Raja Bahadur Sardar Singh of Khetri, the original lessee.

3. The original lessee executed a Will dated 30.10.1985 and Codicil dated 07.11.1985, whereby the subject property was bequeathed in favour of respondent–The Khetri Trust. The original lessee died on 28.01.1987 without leaving any heir. In accordance with the Will dated 30.10.1985, the respondent Trust was created by executing a Trust Deed dated 04.04.1987. On the basis of the said Will dated 30.10.1985 a Testamentary Case No.26/1987 was filed before this Court for grant of probate, however the said Testamentary Case was dismissed by the learned Single Judge of this Court, who refused to grant the probate, by means of the judgment dated 03.07.2012. This judgment of learned Single Judge was assailed in FAO(OS) 348/2012 before a Division Bench of this Court which was allowed by the Division Bench vide judgment dated 11.07.2023 and the Division Bench was pleased to grant probate of the Will dated 30.10.1985.

4. The judgment of the Division bench dated 11.07.2023 granting probate was assailed by the State of Rajasthan and Surender Singh & Ors.,

who claimed to be the agnates of Raja Bahadur Sardar Singh of Khetri by instituting special leave petitions, which too have been dismissed by Hon'ble Supreme Court vide two separate orders passed on 01.09.2025, the one is reported in ***2025 SCC Online SC 1992*** and the other is reported in ***2025 SCC Online SC 1993***.

5. After grant of probate by the Division Bench of this Court vide judgment dated 11.07.2023 the respondent applied to the L&DO–appellant no.2 for substitution of its name in place of original lessee in respect of subject property. The said application was processed by the appellant no.2 and vide email communication dated 09.04.2024 it was informed that, substitution application has been cleared for property ID 21950. However, the appellant no.2 issued a demand letter to the respondent Trust on 12.06.2024 requiring the Trust to pay an amount of Rs. 4,34,92,812/- towards Unearned Increase as a condition precedent to substitution. It is the case of the L&DO that substitution based on testamentary bequest to a non-family entity (in the present case a charitable Trust created by the Testator) falls within the realm of transfer attracting Unearned Increase as per the terms of the lease as also in terms of the Office Memorandum (O.M.) dated 20.10.2000. The relevant clause entitling the appellants to claim and recover the portion of the Unearned Increase, which is the difference between premium paid and current market value in the value of land at the time of transfer, can be found in Clause 13 of the lease dated 24.04.1962, which is extracted hereunder:-

> *"(13) The Lessee shall before any assignment or transfer of the said premises hereby demised or any part thereof obtain from the Lessor or such officer or body as the Lessor may authorise in this behalf*

approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the Lessee shall he bound by all the covenants and conditions herein contained and be answerable in all respects therefor,

Provided also that the Lessor shall be entitled to claim and recover a portion of the unearned increase (i.e., the difference between the premium already paid and current market value) in the value of land the decision of the Lessor in this behalf shall be final at the time of transfer (whether such transfer is an entire site or only a part thereof), the amount to be recovered being 50 per cent of the unearned increase.

The Lessor shall the pre-emptive right to purchase the property after deducting 50 per cent of the unearned increase as aforesaid."

6. As per Clause 13 of the lease as quoted above, the amount to be recovered shall be 50% of the Unearned Increase. The appellant no.2 issued an O.M. providing therein *inter alia* that where the deceased lessee leaves a Will in favour of family members such as husband, wife, mother, father, son, daughter, grand-son, grand-daughter, daughter in law, brother and sisters and the testator does not have any child of his own, the property shall be substituted without charging any Unearned Increase. However, the said O.M. further provides that where the deceased lessee leaves a Will in favour of a person other than the family members, Unearned Increase will be chargeable as per the provisions of the lease deed before carrying out mutation in favour of such person.

7. When the respondent sought mutation of its name in respect of the subject property though by email communication dated 09.04.2024 it was informed that substitution application has been cleared, however vide the demand letter dated 12.06.2024, the respondent was directed to pay Unearned Increase as a pre-condition for substitution. It is this demand

letter dated 12.06.2024, which was under challenge before the learned Single Judge in the writ petition instituted by the respondent, which has been allowed by the impugned order.

SUBMISSIONS

8. On behalf of the appellants, learned Additional Solicitor General of India and Senior Counsel, Mr.Chetan Sharma has vehemently argued that the learned Single Judge has completely ignored the judgment of Hon'ble Supreme Court in ***Delhi Development Authority v. Vijaya C Gurshaney [(2003) 7 SCC 301]***. He has further argued that the impugned judgment rendered by the learned Single Judge effectively neutralise the operation of Clause 13 of the lease in its operation in cases of probated Wills favouring non-family Trust. It has also been argued that the probate cannot operate as a waiver of the dues emanating from the lease. Mr.Sharma has further submitted that the impugned judgment, whereby the demand of Unearned Increase has been quashed, has imminent financial implication resulting in loss of quantified Unearned Increase to the public exchequer and that the judgment has wider ramifications across similarly placed Government lease hold properties where testamentary disposition to non-family entities are invoked to seek substitution/mutation without satisfying the demand of Unearned Increase amount, which emanates from relevant clauses of the leases.

9. It has also been argued that the learned Single Judge has erred while ignoring the terms of lease especially Clause 13, which expressly provided for recovery of 50% of Unearned Increase where the property is transferred whether by assignment or bequest or otherwise to any person outside the

immediate family of the lessee. Further submission is that grant of probate cannot nullify lease obligations and though probate establishes the genuineness of Will but it does not dispense with the compliance of contractual covenants and conditions under the lease. Mr.Sharma has also submitted that the learned Single Judge has erroneously treated the probate as extinguishing the liability to pay Unearned Increase as the rights of the lessor under the terms of lease would survive notwithstanding the testamentary disposition. In this regard, it has been stated that the respondent Trust is neither an heir nor a family member and, thus, was bound to pay Unearned Increase amount before claiming mutation or substitution of its name.

10. Reliance has also been placed on behalf of the appellants on the O.M. dated 20.10.2000, which, according to them, provides that where any leased property devolves on operation of Will in favour of non-family members, levy of Unearned Increase amount is mandatory before mutation can be effected. It is also stated on behalf of the appellants that the O.M. dated 20.10.2000 is a policy measure evolve to preserve misuse of testamentary instruments as a device to circumvent restrictions on transfer.

11. In the aforesaid background, it is the submission on behalf of the appellants that the learned Single Judge has rendered the policy decision embodied in the O.M. dated 20.10.2000 otiose by quashing the demand of Unearned Increase amount and has created an exception, which is neither supported by any statute nor the terms of the lease.

12. Mr.Ajay Verma, learned Senior Advocate representing the respondent

has refuted the submissions made on behalf of the appellants. While defending the impugned judgment rendered by the learned Single Judge, it has been argued by Mr.Verma that reliance placed by the appellants on ***Vijaya C Gurshaney*** *(supra)* is misplaced as already explained by this Court in ***Lala Diwan Chand Trust v. New Delhi Municipal Council [2015 SCC OnLine Del 6676]***. He has further argued that this Court in ***Aroti Das & Ors. v. Union of India & Ors. [MANU/DE/4032/2007]*** has considered a case which is similar on facts and has opined that demand of Unearned Increase, on blind application of the policy, which dictates that only specified heirs would be recognized and others have to pay Unearned Increase as a pre-condition for transfer of lease hold rights appear to be utterly unreasonable.

13. Reliance has also been placed by Mr.Verma representing the respondent on yet another judgment of a Division Bench of this Court in ***Delhi Development Authority v. Shanti Swaroop Goyal [2012 SCC OnLine Del 3912]*** where guidelines framed by the Delhi Development Authority (DDA) on similar lines as the O.M. dated 20.10.2000 was considered and it has been held that in a case where legatee of a Will is not found to have practiced fraud or misrepresentation the reasoning of ***Vijaya C Gurshaney*** *(supra)* would not apply. He has further stated that the said judgment further holds that transfer prohibited under the terms of the lease would be transfer *inter vivos* and in absence of any prohibition in law or in express terms of the lease, property rights to bequeath any property to anyone cannot indirectly be extinguished.

14. Drawing our attention to certain observations made by Hon'ble

Supreme Court in ***Vijaya C Gurshaney*** *(supra)*, it has been argued that the said case dealt with a situation of a camouflage sale transaction and it is in this background fact that it was held that rationale behind the formulation of such a policy is to curb illegal transactions in favour of persons not of blood relation of the lessee, which is practiced rampantly and the property is transferred by an underhand sale in the garb of Will or Power of Attorney. Mr.Verma has, thus, argued that such is not a fact situation in the instant case for the reason that the Will executed by the original lessee has been probated by a judgment of Division Bench of this Court, which has been upheld by Hon'ble Supreme Court.

15. He has also argued that transfer in the wake of the lease deed means transfer by a living person to another and since a Will remains only a wish and it operates and passes upon the death of the testator. He has further stated that there is no indication in the lease deed that testamentary transfers cannot be made.

16. On behalf of the respondent further submission is that in the instant case the original lessee/testator did not have any Class I heir, who bequeath the property to a charitable Trust to be set up as per his instructions in the Will itself after his death and, therefore, there was no and could not be any sale or transfer of the property *inter vivos* for the reason that the property or the possession thereof did not pass to the Trust/legatee during the life time of the original lessee and, therefore, in such circumstances Unearned Increase is not leviable.

DISCUSSIONS AND CONCLUSION

17. We have given our careful consideration to the submissions made by the learned counsel for the parties and have also perused the records available before us on this Letters Patent Appeal.

18. A Division Bench of this Court vide its judgment and order dated 11.07.2023 has granted probate based on the Will executed by the original lessee, dated 30.10.1985. The said judgment of the Division Bench of this Court dated 11.07.2023 has been upheld by Hon'ble Supreme Court in two separate SLPs the one filed by State of Rajasthan and the other by Surender Singh & Ors. claiming themselves to be the agnates of the deceased lessee.

19. The law relating to levy of Unearned Increase as a *sine qua non* for mutation/substitution has been settled by Hon'ble Supreme Court in ***Vijaya C Gurshaney*** *(supra)*. The said matter related to a perpetual lease granted by the Government of India, Clause 4 whereof prohibited the transfer or assignment of the leased property except with the written consent of the DDA subject to such terms and conditions as the DDA might impose including recovery of 50% of the Unearned Increase in the value of plot. The DDA on 26.07.1988 formulated a policy and issued guidelines in respect of payment of 50% of Unearned Increase in the value of land if mutation or substitution is claimed on the basis of Will left by the deceased allottee which required a person, who was not a blood relation of the testator and sought mutation on the basis of Will to submit certain documents. In ***Vijaya C Gurshaney*** *(supra)* the legatee applied for grant of Letters of Administration (hereinafter referred to as LoA) to the District Judge on the strength of a Will executed by the original allottee which was granted and

thereafter an application was made to the DDA for substitution of the name of the legatee in place of the original allottee, whereupon the applicant seeking mutation was issued a letter of demand requiring him to pay 50% of the Unearned Increase as per the terms and conditions stipulated in the lease deed as the transfer through the Will was not favour of the blood relation of the original allottee. The letter of demand was challenged before this Court by means of a writ petition where the DDA contended that the Will was actuated by monitory considerations and was in fact a sale and further that the Will was actually a transfer of land to a non-blood relation and, therefore, it was in violation of the terms and conditions of the lease deed hence the applicant seeking mutation was liable to pay 50% of Unearned Increase in the value of the property. This Court allowed the writ petition holding therein that grant of LoA was a judgment *in rem* and was a conclusive proof of existence and genuineness of the Will and, therefore, it effects could not be nullified except by proceedings for revocation of LoA.

20. Hon'ble Supreme Court in ***Vijaya C Gurshaney*** *(supra)* however reversed the judgment of this Court holding that a testamentary Court is only concerned with finding out whether or not the testator executed the testamentary instrument on his free will. It was also held by Hon'ble Supreme Court that LoA issued on the basis of a Will merely enables administration of the estate of the deceased. Further observations made by Hon'ble Supreme Court in ***Vijaya C Gurshaney*** *(supra)* is that rationale behind formulation of its policy and guidelines issued by the DDA is to curb illegal transactions in favour of persons, who are not blood relations of the allottee, which is practised rampantly and the property gets transferred by an

under hand sale in the garb of Will or Power of Attorney etc., and since DDA is a statutory body, any policy decision or guidelines formulated by such authority will have binding effect in the parties in absence of any rule to the contrary.

21. We may, however, note that in ***Lala Diwan Chand Trust*** *(supra)* this Court while considering ***Vijaya C Gurshaney*** *(supra)* has held that Hon'ble Supreme Court has upheld the policy of the DDA to demand Unearned Increase in the value of land in cases where lease hold property was sought to be transferred under the garb of a Will, however, in cases where Will represented a genuine desire of a testator to bequeath its property to a particular legatee a demand for Unearned Increase would not be sustainable. It has further been held in ***Lala Diwan Chand Trust*** *(supra)* that in case of a bona fide transmission of property by a Will no distinction could be drawn on the basis of the relationship between the testator and the legatee. ***Lala Diwan Chand Trust*** *(supra)* also places reliance on ***Aroti Das*** *(supra)* where challenge relating to demand of Unearned Increase by L&DO in respect of immovable property bequeath by a lessee to one of his relative, who did not fall within the definition of family member had succeeded. Paragraphs 10, 11 and 13 of ***Lala Diwan Chand Trust*** *(supra)* are extracted herein below:-

> *"10. The rationale for demanding unearned increase in cases where the property is transmitted by way of a Will is to ensure that the parties are unable to escape payment of unearned increase by disguising a transaction of sale and purchase of the leasehold property as a bequest. It has been a well established practice in Delhi for persons to enter into transactions for sale and purchase of immovable property by execution of various documents such as General Power of Attorney, Affidavits, Will etc. Undisputedly, in these*

circumstances, the demand for unearned increase would be warranted. The guidelines exempt payment of unearned increase where a lessor bequeaths the leasehold property in favour of his natural heirs. This only indicates that the respondent did not intend to recover unearned increase in cases of genuine transmission of property by a testator. In DDA v. Vijaya C. Gurshaney : (2003) 7 SCC 301 the rationale of the policy to charge unearned increase in respect of properties sought to be transferred by way of a Will was explained as under : -

> *"10. The rationale behind the formulation of its policies and guidelines issued by DDA is to curb illegal transactions in favour of persons not of blood relation of the allottee, being practised rampantly and the property being transferred by an underhand sale in the garb of will and power of attorney etc. DDA has formulated a policy that in such cases the Department would ask for 50% of unearned increase in the value of property. It is always open to the appellants to inquire whether an alleged will is in actuality a sale in the garb of will in total disregard of the policy decision of the authority. Merely because probate/letters of administration are granted, would not preclude DDA from so inquiring. It must be grasped that DDA has been given no notice of the testamentary proceedings. Therefore, it would have no right to appear or oppose such proceedings. As already said, DDA is a creature of the statute and any policy decision or guidelines formulated by such Authority will have a binding effect on the parties, in absence of rules to the contrary."*

11. The Supreme Court upheld the policy of DDA to demand unearned increase in the value of land in cases where the leasehold property was sought to be transacted under the garb of a Will. However, in cases where Will represented a genuine desire of a testator to bequeath its property to a particular legatee, a demand for unearned increase would not be sustainable.

13. A Coordinate Bench of this Court in the case of Aroti Das v. Union of India : W.P. (C) 8081-82/2005 had considered the challenge relating to the demand of unearned increase by L&DO in respect of the immovable property bequeathed by a lessor to one of his relatives who did not fall within the definition of a family member under the guidelines. It is noteworthy that the language of the guidelines applicable in that case was similar to the language of

clause (5) of the guidelines as referred to by the learned counsel for the respondent. This Court set aside the demand of unearned increase and held as under : -

> *"**10.** In the face of these facts, the demand for unearned increase, in my opinion, on a blind application of a policy which dictates that only specified heirs would be recognized and others have to pay unearned increase as a pre-condition for transfer of leasehold rights appears to be utterly unreasonable."*

22. In ***Aroti Das*** *(supra)* this Court considered the fact situation where the deceased lessee was not survived by any Class 1 heir and had died unmarried and the beneficiaries under the Will executed by him were wife and son of the pre-deceased brother of the original lessee. The Will executed by the original lessee was said to be proved in a probate proceedings vide judgment of the District Judge and thus it was held that the Will executed by the original lessee was put to scrutiny and proved. It was also held that there was no doubt as to the genuineness of the claim of the legatees of the Will, who were claiming substitution/mutation of their names. It is in these facts that ***Aroti Das*** *(supra)* holds that demand for Unearned Increase, on a blind application of a policy which dictates that only specified hears would be recognized and others have to pay Unearned Increase as a pre-condition for transfer of lease holds rights, appears to be utterly unreasonable.

23. In ***Shanti Swaroop Goyal*** *(supra)* while discussing the similar policy of the DDA of levying the Unearned Increase amount, this Court has held that in absence of any prohibition in law or express terms of the lease, property rights to bequeath any property to anyone cannot indirectly be extinguished. The Court has further held that insistence of the DDA in the

said case upon payment of Unearned Increase would attract violation of Article 300A of the Constitution of India. The facts which were considered in ***Shanti Swaroop Goyal*** *(supra)* were the DDA had finalised the mutation in favour of the legatee of the Will in 1985 whereas the guidelines providing for levy of the Unearned Increase was promulgated in the year 1988 i.e. after DDA had accepted the Will and probate in favour of the legatee. It is in these facts and circumstances that the Court found that the DDA failed to show that the policy promulgated in the year 1988 could apply and cover a case where the property was already mutated in the year 1985 on the basis of the Will. It was also found by the Court that there was no material suggesting that the legatee had practised fraud and misrepresentation of facts. The Court in paragraph 10 of the judgment in ***Shanti Swaroop Goyal*** *(supra)* has summarised that the DDA had failed to show how policy guidelines of the year 1988 could validly apply and cover a case where the property had already been mutated in the year 1985 and that there was no material which suggested that the legatee had practised fraud or misrepresentation of the facts. Accordingly, it was found by the Court in ***Shanti Swaroop Goyal*** *(supra)* that reasoning of ***Vijaya C Gurshaney*** *(supra)* would not apply to the said case. Paragraph 14 of the judgment in ***Shanti Swaroop Goyal*** *(supra)* is extracted herein below:-

> *"14. To summarize, it is held that in this case, the DDA has been unable to show how the later policy, embodied in its guidelines of 1988 could validly apply and cover the petitioner's case; the property had been mutated in 1985, and there was no new material disclosed in the records, suggesting that the legatee (Ms. Saroj Kumari) had practised fraud or misrepresentation of facts. Thus, the reasoning in Gurshaney would not apply to this case. Furthermore, the transfer prohibited under terms of the lease, would be transfer inter vivos; in the absence of any prohibition in law, or express terms of the lease,*

the property rights - which are indefeasible and vest as an incident of ownership, - to bequeath any property to anyone, cannot be indirectly, through sleight of interpretation, of a mere lease deed, extinguished, as was sought to be done by DDA, by refusing to recognize the will, which was proved in accordance with procedure established by law. The DDA's refusal to recognize it, and insist upon payment of unearned increase, in such cases, at least, would attract the odium of violation of Article 300-A of the Constitution of India. Lastly, the DDA cannot refuse to convert the property into lease hold in this case, because in terms of its policies, framed from time to time from 1994 onwards, completely irregular transactions like power of attorney sales, and even in cases where the lease had been cancelled were eligible for conversion into lease hold, in the hands of the applicant transferee."

24. In the light of the discussions made above what we conclude is that though ***Vijaya C Gurshaney*** *(supra)* was a judgment in relation to guidelines regarding levying Unearned Increase by DDA, which are of similar nature as those contained in the O.M. dated 20.10.2000 issued by the appellant no.2, however the said judgments still holds the field.

25. ***Vijaya C Gurshaney*** *(supra)* considered the relevant clause of the lease which clearly provided that the lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the subject property in the lease without the previous consent in writing of the lessor. Similar provision exists in Clause 13 of the lease deed dated 24.04.1962, which also provides that the lessee before any assignment or transfer of the demised premises or any part thereof shall obtain from the lessor approval in writing of such assignment or transfer and all such assignees, transferees and heirs of the lessee shall be bound by all the conditions of the lease. It is to be noticed that in the lease, the expression "transfer" has not been defined. However, as held in ***Shanti Swaroop Goyal*** *(supra)* by a Division Bench of

this Court transfer has to be understood in the context to mean conveyance of an interest, or divesting of one's title in respect of immovable property. Having regard to provision Section 5 of Transfer of Property Act, ***Shanti Swaroop Goyal*** *(supra)* further holds that the concept of transfer is transfer *inter vivos* or by a living person to another. The Court further held that in case of any testamentary document, such as a Will, the bequest remains only a wish of the testator which operates only upon testator's death and only then the title passes to the legatee. In the instant case, the lease deed dated 24.04.1962 does not contain any prohibition that testamentary transfers cannot be made. As held in ***Shanti Swaroop Goyal*** *(supra)* in absence of any indication in the lease deed if it is held that testamentary transfer cannot be made, the same would lead to legal consequences which would be startling for the reason that it would lead to altering the property rights of the lessee. Accordingly, in the instant case as well there cannot be any dispute that in absence of any prohibition in the lease deed dated 24.04.1962, the deceased lessee during his lifetime could have executed the Will dated 30.10.1985.

26. On the basis of the said Will, probate has also been granted by a judgment of the Division Bench of this Court, dated 11.07.2023, which has been upheld by Hon'ble Supreme Court *vide* its order dated 01.09.2025. Reverting to the law laid down by Hon'ble Supreme Court in ***Vijaya C Gurshaney*** *(supra)* what we find is that rationale behind formulating a policy by the L&DO levying Unearned Increase amount is to curb illegal transaction in favour of persons, who are not blood relation family members of the lessee. The Supreme Court has laid down in the said case that since

such a practice of illegal transaction in favour of persons not of blood relations was rampant and the properties are being transferred by an underhand sale in the garb of Will and Power of Attorney etc., DDA had formulated the policy that in such cases it would levy 50% of the Unearned Increase in the value of property as a condition precedent for mutation/substitution. The Supreme Court in ***Vijaya C Gurshaney*** *(supra)* has also held that it is always open to the lessor to inquire whether an alleged Will is actually a sale in the garb of Will and further that merely because probate/LoA is granted, it would not preclude the lessor from making such inquiry.

27. In the instant case, as already observed above, probate has been granted on the basis of the Will dated 30.10.1985. In ***Vijaya C Gurshaney*** *(supra)* as well, LoA was granted and it is in the background of the said fact that it was held that merely because LoA was granted, it would be wrong to hold that the lessor cannot inquire into the true nature of the transaction. The Supreme Court in the said case further observed that a testamentary Court while granting probate or LoA does not even consider, particularly in uncontested matters, the motive behind the execution of a testamentary instrument and further that a testamentary Court is only concerned with finding out whether or not the testator had executed the testamentary instrument of his free will. It has also been held that grant of probate or LoA does not confer title to property; they merely enable administration of estate of the deceased and, therefore, it is always open to dispute the title even though probate or LoA have been granted.

28. Paragraphs 8 and 10 of the ***Vijaya C Gurshaney*** *(supra)* are relevant

to be extracted here, which read as under:-

> *"8. In this case the alleged will was executed on 26-10-1977. Ram Dhan died on 18-9-1978. Letters of administration were granted on 7-5-1980. Admittedly, the respondent is not related to the deceased Ram Dhan. The High Court clearly erred in holding that merely because letters of administration are granted the appellants cannot inquire into the true nature of the transaction.* ***It is settled law that a testamentary court, whilst granting probate or letters of administration does not even consider particularly in uncontested matters, the motive behind execution of a testamentary instrument. A testamentary court is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will. It is settled law that the grant of a probate or letters of administration does not confer title to property. They merely enable administration of the estate of the deceased. Thus, it is always open to a person to dispute title even though probate or letters of administration have been granted****."*
>
> *"10. The rationale behind the formulation of its policies and guidelines issued by DDA is to curb illegal transactions in favour of persons not of blood relation of the allottee, being practised rampantly and the property being transferred by an underhand sale in the garb of will and power of attorney etc. DDA has formulated a policy that in such cases the Department would ask for 50% of unearned increase in the value of property.* ***It is always open to the appellants to inquire whether an alleged will is in actuality a sale in the garb of will in total disregard of the policy decision of the authority. Merely because probate/letters of administration are granted, would not preclude DDA from so inquiring. It must be grasped that DDA has been given no notice of the testamentary proceedings. Therefore, it would have no right to appear or oppose such proceedings. As already said, DDA is a creature of the statute and any policy decision or guidelines formulated by such Authority will have a binding effect on the parties, in absence of rules to the contrary****."*
>
> (emphasis supplied)

29. Thus, having regard to the facts of the instant case and the law laid down by Hon'ble Supreme Court in ***Vijaya C Gurshaney*** *(supra)* our

conclusions are as follows:-

(i) There being no prohibition in the lease deed dated 24.04.1962, the deceased lessee was competent to execute the Will dated 30.10.1985.

(ii) Transition of rights in the subject property to the legatee on the basis of Will dated 30.10.1985 cannot be said to be transfer or assignment for which approval of the lessor is required in terms of Clause 13 of the lease dated 24.04.1962.

(iii) The testamentary Court while granting probate/LoA does not consider the motive behind execution of a testamentary instrument such as Will; the Court is only concerned with finding out whether or not the testator executed the Will of his free will.

(iv) The rationale behind and purpose of formulation of the policy/guidelines embodied in the O.M. dated 20.10.2000 issued by the appellant no.2 is to check illegal transactions in favour of persons, who are not blood relations or family members of the lessee. In case, by way of Will some transaction in relation to immovable property takes place which, in fact, turns out to be an underhand sale in the garb of Will, it is absolutely lawful for the appellant no.2 to levy the Unearned Increase.

(v) Merely because probate or LoA is granted, it would not preclude the appellant no.2 from inquiring as to whether such transaction is, in fact, an underhand/illegal sale in the garb of Will and in case it is found that such transaction is an underhand sale in the garb of Will, in our opinion, the appellant no.2 would be legally entitled to levy the Unearned Increase,

which will be in tune with Clause 13 of the lease deed read with the policy decision embodied in O.M. dated 20.10.2000.

(vi) The appellants have specifically pleaded that on grant of probate when the respondent Trust approached the appellant no.2 on 23.10.2023 seeking substitution/mutation in its favour, such request necessitated examination of lease and the applicable policy framework including the O.M. dated 20.10.2000 and after preliminary correspondence the matter was scrutinized, whereupon vide demand letter dated 12.06.2024, the appellant no.2 required the respondent Trust to pay the amount indicated therein towards Unearned Increase.

(vii) However, what we also simultaneously find is that the demand letter dated 12.06.2024, which was under challenge before the learned Single Judge and which has been quashed by the impugned judgment, does not give any indication whatsoever that on any inquiry the transaction which occurred under the Will dated 30.10.1985 was an underhand/illegal sale or transfer in the garb of Will dated 30.10.1985. Nothing has been brought on record even before us which may, at this juncture, suggest existence of any material whereby it could be concluded that it was a case where the original lessee had entered into any illegal or underhand sale or transaction of the rights in the subject property in favour of the respondent Trust.

(viii) In our opinion, for demanding Unearned Increase amount under the O.M. dated 20.10.2000 in the light of what has been held in ***Vijaya C Gurshaney*** *(supra)*, there should exist some material to show that the deceased lessee has left a Will in favour of persons, who are not his blood

relations or family members, and the Will was a camouflage and in fact by executing the Will, an underhand sale or transfer had taken place.

(ix) There is nothing on record, except the averment made by the appellants that the matter was scrutinized in the light of the policy and the terms of lease, which could show or establish that the appellants are possessed of any material leading to the conclusion that Will was sham and in fact by executing the Will some illegal/underhand sale or transaction had taken place between the original lessee and the respondent Trust.

(x) On the other hand, it is to be noticed that respondent Trust has been created/constituted as per the wish of the original lessee in the Will itself executed by him. In absence of any such material pointing out the Will being sham or a camouflage it is difficult for us, at this juncture, to conclude and hold that the Will in fact was an underhand sale or transaction.

30. For the aforesaid reasons, applying the principles of law laid down in ***Vijaya C Gurshaney*** *(supra)*, we are unable to take a view different from the view taken by the learned Single Judge in the impugned judgment.

31. The appeal is, thus, dismissed along with pending application(s). However, as laid down in ***Vijaya C Gurshaney*** *(supra)*, even on grant of probate on the basis of a Will executed by the original lessee in favour of an entity or a person who is not a blood relation of the lessee or is not his family member, enquiry is permissible to be conducted by the lessor to ascertain whether the transmission of rights through Will is a camouflage and the Will actually is an underhand sale/ transfer in the garb of Will, it is provided that it will be open for the Appellant No.2 to conduct such an

enquiry in accordance with law and take further action which may be permissible and warranted under the law.

32. There will be no orders as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

JUNE 02, 2026
S.Rawat