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

Judgment reserved on: 23.01.2026
% Judgment delivered on: 22.04.2026

\+ **LPA 364/2024 & CM APPLs. 26948-49/2024 & 26952/2024**

NEW DELHI MUNICIPAL COUNCIL .....Appellant

Through: Ms. Malvika Trivedi, Sr. Adv. with Mr. Sriharsha Peechara, Standing Counsel and Mr.Ashish Tiwari, ASC, Ms.Bani Dixit, Mr.Soumit Ganguli, Mr.Shailendra Slaria, Ms.Sujal Gupta, Ms.Ravicha Sharma, Ms.Shruti Agarwal, Mr. Sahib Patel, Mr.Akash Sharma and Mr.Anurag Tiwari, Advs.

versus

BHARAT HOTELS LTD & ANR. .....Respondents

Through: Mr. Sandeep Sethi, Sr. Adv., Mr.Darpan Wadhwa, Sr. Adv. & Mr.Shyel Trehan, Sr. Adv. with Mr.Amer Vaid, Mr.Manmilan Sidhu, Mr.Ankit Tyagi, Mr.Gyanendra Singh, Mr.Anubhav Yadav, Ms.Bhumika Bhatnagar, Mr.Sonali Jaitley Bakhshi, Mr.Jaiyesh Bakhshi, Mr.Ravi Tyagi, Mr.Mayank Mishra, Mr.Rohan Poddar, Ms.Riya Kumar, Ms.Shreya Sethi, Ms.Vidhi Jain and Mr.Krishna Gambhir, Advs.

\+ **LPA 387/2024 & CM APPLs. 28948-49/2024, 28952/2024, 2799/2025 & 50420/2025**

NEW DELHI MUNICIPAL COUNCIL .....Appellant

Through: Ms. Malvika Trivedi, Sr. Adv. with Mr. Sriharsha Peechara, Standing

Counsel and Mr.Ashish Tiwari, ASC, Ms.Bani Dixit, Mr.Soumit Ganguli, Mr.Shailendra Slaria, Ms.Sujal Gupta, Ms.Ravicha Sharma, Ms.Shruti Agarwal, Mr. Sahib Patel, Mr.Akash Sharma and Mr.Anurag Tiwari, Advs.

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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. Since the facts of these two *intra-court* appeals are intertwined, they have been heard together and are being decided by the common judgment, which follows:

CHALLENGE

2. Under challenge in these appeals is the judgment and order dated 06.12.2023 passed by learned Single Judge, whereby *W.P.(C) 2496/2020* and

W.P.(C) 2497/2020, which were instituted by the respondent no.1, have been allowed and the notice of demand dated 13.02.2020 as also the communication of the same date terminating the Licence Deed dated 22.04.1982, have been quashed.

3. *W.P.(C) 2496/2020* was filed by the respondents assailing the validity of the notice of demand dated 13.02.2020, whereby the appellant demanded the respondent no.1 to pay an amount of Rs.1063,74,59,852/- (Rupees One Thousand Sixty Three Crore Seventy Four Lakh Fifty Nine Thousand Eight Hundred Fifty Two only) as arrears of licence fee at the rate of Rs.98 Crore per annum w.e.f. 11.03.2014 with interest, arrears of outstanding licence fee with interest, arrears of interest and arrears of statutory payments with interest. The respondent no.1 was required to pay the said amount in three equal installments, first of which was payable, according to the demand notice, on 13.03.2020.

4. On the day the aforesaid demand notice was issued, another communication was made to the respondent no.1, whereby the licence granted to the respondent no.1 *vide* Licence Deed dated 22.04.1982, executed in favour of the respondent no.1 by the appellant in respect of a plot of land admeasuring 06.058 acres at Barakhamba Lane, New Delhi, was terminated with immediate effect. The respondent no.1 was also required to handover the peaceful possession of the premises to the appellant within 90 days. This communication terminating the Licence Deed was assailed by the respondents by instituting *W.P.(C) 2497/2020.*

5. Both the above writ petitions have been allowed *vide* impugned judgment and order dated 06.12.2023 passed by learned Single Judge, which is under challenge herein.

FACTS

6. Certain facts which are necessary for appropriate adjudication of the issues involved in these appeals are as under:

6.1. In November 1973, the then Ministry of Works and Housing (presently, the Ministry of Housing and Urban Affairs) of the Government of India allotted the subject land to the New Delhi Municipal Committee (predecessor of New Delhi Municipal Council). For the sake of clarity, since the New Delhi Municipal Council is the successor of New Delhi Municipal Committee, both these bodies will hereinafter be referred to as the **"NDMC - appellant"**.

6.2. At this juncture itself, it is relevant to mention that New Delhi Municipal Committee was a municipal body constituted under the Punjab Municipal Act, 1911 (hereinafter referred to as the **"Punjab Act"**). The Punjab Act was applicable to New Delhi and was administered by New Delhi Municipal Committee. In the year 1994, the Parliament passed New Delhi Municipal Council Act, 1994 (hereinafter referred to as the **"NDMC Act"**) to form a municipal council for New Delhi, which came into force w.e.f. 25.05.1994.

6.3. Section 3 of the NDMC Act provides that there shall be a Council charged with municipal government of New Delhi to be known as New Delhi Municipal Council which is a body corporate having perpetual succession and common seal with power to acquire, hold and dispose of property. "New Delhi" has been defined in Section 2(27) of the NDMC Act to mean the area within the boundaries described in the First Schedule appended to the Act. Section 416 of the NDMC Act provides that from the date of establishment

of the NDMC, the Punjab Act as applicable to New Delhi shall cease to have effect within New Delhi.

6.4. In respect of the subject property, an agreement of licence was entered into on 11.03.1981 between the NDMC and M/s. Delhi Automobiles Private Limited and accordingly, a licence deed was executed. The said licence was for a period of 99 years and it provided that M/s. Delhi Automobiles Private Limited shall form a public limited company within 12 months and shall apply to the NDMC within 6 months thereafter for transfer of the licence to the said public limited company. The licence deed further provided that the NDMC shall transfer the licence to the said public limited company on the terms and conditions incorporated in the licence deed dated 11.03.1981. The land was, thus, given on licence for construction and commission of a Five-Star Hotel.

6.5. Challenging the licence dated 11.03.1981, a PIL petition was filed before this Court, being *Civil Writ No. 1839 of 1981*, ***S.S. Sobti v. Union of India & Ors.*** (***1981 SCC OnLine Del 254),*** which was dismissed *vide* its judgment dated 09.09.1981.

6.6. The land in question was placed at the disposal of NDMC as part of a plan to redevelop the area. It was also envisaged in the said plan that a portion of the land to be redeveloped should be used for construction of a Five-Star Hotel and for the said purpose, the tenders were floated, wherein M/s. Delhi Automobiles Private Limited was adjudged the highest bidder. However, the allotment in favour of the NDMC was cancelled in March, 1978 and the amount deposited by M/s. Delhi Automobiles Private Limited was refunded, which instituted *Civil Suit No. 144/1979* before this Court for

specific performance of contract/damages. The said suit resulted in a compromise, which led to execution of a new licence in favour of M/s. Delhi Automobiles Private Limited by NDMC, however, the licence fee was fixed at Rs.1.45 Crore in place of the previous amount of Rs.37.78 Lakh per annum. Pursuant to the Licence Deed dated 11.03.1981, M/s. Delhi Automobiles Private Limited formed a company with the name and style of M/s. Bharat Hotels Limited, which is the respondent herein. In continuation of the earlier licence deed dated 11.03.1981, a Licence Deed dated 22.04.1982 was executed between the appellant and the respondent no.1 for construction and commissioning of a Five-Star Hotel and two commercial towers/buildings by 31.12.1984. The licence fee fixed *vide* Licence Deed dated 22.04.1982 was Rs.1.45 Crore per annum to be paid by the respondent no.1 to the appellant. As per the Licence Deed dated 22.04.1982, the term of the licence is for a period of 99 years w.e.f. 11.03.1981.

6.7. Clause 11 of the Licence Deed dated 22.04.1982 clearly provides that the licensee, i.e. the respondent no.1, shall not be at liberty in any way to sublet, underlet, encumber, assign or transfer their rights and interests or part with the possession of the land and the building thereon or any part thereof or any share therein to any person directly or indirectly without previous consent of the appellant, except that the respondent was given the right to sub-license the licenced property in terms of Clause 29 of the Licence Deed. Clause 29 of the Licence Deed provides that the licensee shall run the Five-Star Hotel, which may allow sub-licensees for running (1) car parking, (2) cycle/scooter stand for parking, (3) shopping arcado and (4) banks and offices within the shopping arcade. It further stipulates that the licensee shall be responsible for conduct of various sub-licensees and shall be further

responsible to answer that the sub-licensee shall not get any right over and above the rights and privileges of the licensee. Clause 11 and 29 of the Licence Deed dated 22.04.1982 are extracted herein below:

> "***11.*** *The licencees shall not be at liberty in any way to sublet, underlet, encumber. assign or transfer their rights and interest or part with possession of the land and the building thereon or any part thereof or share therein to any person, directly or indirectly without the previous written consent of the licensor, But the licences shall have the right to sub-licence the licensed property as stipulated in clause 29 of this licence agreement."*
>
> *"**29.** The licencees shall run the Five Star Hotel themselves, However, the licencees may allow sub-licencees within the period of licence for running car parking, cycle scooter stand for parking and shopping arcado, banks office, within the shopping arcade etc. The licensees shall be further responsible for the conduct of various sub-licencees shall be further responsible to answer that the sub-licencees shall not get any right over and above the rights and privileges of the licencees."*

6.8. Clause 30 of the Licence Deed provides that except what has been provided for in Clause 29, the respondent no.1 shall not transfer or assign or part with the building or any portion thereof permanently or temporarily to anyone else. Clause 30 is also extracted herein below:

> *"**30.** Save as provided in the preceding area, the licensees during the tenure of the licence shall not transfer, assign or part with the building any portion thereof permanently or temporarily to anybody else."*

6.9. Clause 48 of the Licence Deed dated 22.04.1982 contains a provision for enhancement of licence fee, according to which the licence fee will be enhanced after every 33 years provided that increase in licence fee at each time shall not exceed 100% of the licence fee immediately before enhancement is due. Clause 48 also provides that for determination of increase, the percentage increase will depend on the market value of the subject plot at the relevant time. It also provides that decision, in this regard,

of the appellant shall be final and binding on the respondent no.1. Clause 48 of the Licence Deed dated 22.04.1982 reads as under:

> *"**48.** The licence fee will be enhanced after every 33 years provided that the increase in the licence fee at each such time shall not exceed 100% of that immediately before the enhancement is due. For determination of the increase the percentages increase would depend on the market value of the plot at the relevant time. In this regard, decision of the licensor shall be final and binding on the licencees."*

6.10. The Licence Deed dated 22.04.1982 also contains a specific provision regarding termination of licence. Clause 42 prescribes that in case of breach of terms and conditions of the licence, the appellant shall terminate and revoke the licence and, on such revocation, it shall be the duty of the respondent no.1 to quit and vacate the premises without any resistance and obstruction and to give the premises in complete control of the appellant. Clause 42 of the Licence Deed is extracted herein below:

> *"42. In the event of breach of any of the terms and conditions of the licence, the licensor shall terminate and revoke the licence. On the revocation being made, it shall be the duty of the licencees to quit and vacate the premises without any resistances and obstruction and give the complete control of the premises to the licensor."*

6.11. We may also note that the Licence Deed dated 22.04.1982 also contains an arbitration clause, according to which in case of any dispute or difference between the parties, the same shall be referred to the Sole Arbitration of the Lt. Governor of Delhi and the award of said Arbitrator shall be binding. Clause 50 of the Licence Deed is as follows:

> *"50. In the event of any question, disputes or difference or differences arising in regard to these terms and conditions and their interpretation, the same shall be referred to the sole arbitration of the Lt. Governor of Delhi and the award of the said Arbitrator shall be binding on the licensees and licensor."*

6.12. In terms of the Licence Deed dated 22.04.1982, the respondent no.1 created certain sub-licences in the premises in question in favour of various

entities such as New Bank of India, Dinner Club of India Private Ltd., Escorts India Ltd. and Geotze India Ltd. after seeking prior approval from the appellant. It is also to be noted that on each such occasion, the appellant agreed to and recognised the sub-licences created by the respondent no.1.

6.13. The respondent no.1 applied for grant of completion certificate on 02.11.1989 which was issued by the appellant on 17.11.1989 certifying that the building has been completed in accordance with the revised plans. In the year 1989 itself, the appellant started raising certain demands on account of arrears/damages/interests, etc. which, though, were disputed by the respondent no.1 through various correspondences.

6.14. The respondent no.1, on 04.02.1994, entered into a sub-licence agreement with M/s. Sonia Farms Private Limited for shop/office space nos. 28, 29, 30 & 31 situated on the ground floor of the building (the World Trade Centre).

6.15. On 10.11.1995, NDMC was established under Section 3 of the NDMC Act, 1994 and as per the scheme of the NDMC Act, all the municipal functions being performed by the New Delhi Municipal Committee were taken over by New Delhi Municipal Council.

6.16. It is also on record that M/s. Sonia Farms Private Limited, in whose favour sub-licence was executed by the respondent no.1, on 31.05.1999, appointed and authorised one Mr. Amresh Bahadur as its nominee and thereafter by endorsement on the original sub-licence agreement, on 25.04.2011 the said Mr. Amresh Bahadur was substituted by Ms. Ghazala Shameem and Mr. Owais Usmani as nominees. Finally, on 31.03.2016 and

04.05.2016, Ms. Ghazala Shameem and Mr. Owais Usmani were substituted with M/s. Indian Wind Power Association (IWPA).

6.17. The records further reveal that on 01.05.2016, Ms. Ghazala Shameem and Mr. Owais Usmani executed four documents which were titled as "Full and Final Agreement of Sale, Purchase and Transfer" in favour of M/s IWPA in respect of shop/office space nos.28, 29, 30 & 31. These four documents executed on 01.05.2016 by Ms. Ghazala Shameem and Mr. Owais Usmani were presented before the Sub-Registrar for their registration and were temporarily registered by the Sub-Registrar on 15.11.2016.

6.18. The SDM issued a show cause notice to respondent no.1 as also M/s. Sonia Farms Private Limited on 12.01.2017 for deficient payment of stamp duty on execution of the instrument styled as Sub-Licence Agreement dated 04.02.1994, which was executed by the respondent no.1 in favour of M/s. Sonia Farms Private Limited regarding shop/office space nos. 28, 29, 30 and 31 at Ground Floor, World Trade Centre, which is situated in the same premises. In fact, apart from the Sub-Licence Agreement executed by respondent no.1 in favour of M/s. Sonia Farms Private Limited, the sale agreements which were executed by Ms. Ghazala Shameem and Mr. Owais Usmani in favour of M/s. IWPA also became the subject matter of proceedings before the Collector of Stamps, Chanakya Puri, New Delhi district.

6.19. Another show cause notice was issued by the Collector of Stamps to the respondent no.1 on 08.12.2017 for deficiency in payment of stamp duty in respect of the Licence Deed dated 22.04.1982, which was executed by the appellant in favour of the respondent no.1. The proceedings instituted on the

basis of the aforesaid show cause notices culminated in the order dated 26.06.2018 passed by the Collector of Stamps, whereby the document dated 22.04.1982 was held to be a 'lease' and not a 'licence' and accordingly, it was found that the respondent no.1 was liable to pay the stamp duty of Rs.46,40,000/-. The said order dated 26.06.2018 passed by the Collector of Stamps also imposed a penalty of Rs.4,64,00,000/-. The Collector of Stamps, thus, directed the respondent no. 1 to pay the deficient stamp duty and penalty, totaling to Rs.5,10,40,000/-.

6.20. Pursuant to the order of the Collector of Stamp, dated 26.06.2018, a notice of recovery was issued against the respondent no.1 by the Assistant Collector under Section 136 of the Delhi Land Reforms Act, 1954 for recovering the amount as arrears of land revenue. This notice of recovery dated 31.08.2018 was challenged by the respondent no.1 by way of filing *W.P.(C) 11232/2018* before this Court. In this writ petition, apart from challenging the notice of recovery dated 31.08.2018, the order dated 26.06.2018 passed by the Collector of Stamps was also challenged. This writ petition was finally disposed *vide* order dated 25.10.2018 with the direction that the recovery proceedings shall stand deferred till the Chief Controlling Revenue Authority (CCRA) takes a final decision on the Revision Petition filed by the respondent no.1 against the order of the Collector of Stamps, dated 26.06.2018.

6.21. At this juncture itself, we may note that the Revision Petition preferred by the respondent no.1 against the order of Collector of Stamps dated 26.06.2018 was decided by the Revisional Authority, i.e. CCRA, *vide* order dated 06.02.2024, wherein it has been observed that the issue as to whether the instrument dated 22.04.1982 is a 'lease' or a 'licence' can get clarified

from the appellant. The CCRA further observed in this order that the Collector of Stamp ought to have taken the views of the appellant in respect of nature of the instrument. Accordingly, by the order dated 06.02.2024, the CCRA set aside the order dated 26.06.2018 passed by the Collector of Stamps and remitted the matter to the Collector of Stamps for adjudicating the same afresh by taking the views of the appellant *qua* the nature of instrument.

6.22. We need to refer to an application dated 17.07.2018 submitted by M/s IWPA to the Sub-Registrar-VII, District New Delhi, which is in respect of withdrawal of registration of four "Full And Final Agreement Of Sale, Purchase and Transfer" documents, which were entered into between Ms. Ghazala Shameem and Mr. Owais Usmani and M/s IWPA for shop/office space nos. 28, 29, 30, 31 situated at ground floor of World Trade Centre, which is within the subject premises. This application was made in respect of four agreements of sale, purchase and transfer dated 01.05.2016, which were presented for registration before the Sub-Registrar and were temporarily registered on 15.07.2016 by the office of the Sub-Registrar. M/s IWPA requested in the said application for withdrawal of these documents dated 01.05.2016.

6.23. We also notice from the record available before us on these appeals that provisional demand notices dated 01.12.2016 and 02.01.2017 were issued by the appellant demanding the payment of licence fee. These provisional demand notices became subject matter of challenge in *W.P.(C) 484/2017* filed by the respondent no.1, which was finally disposed of by the learned Single Judge of this Court *vide* order dated 18.01.2017, whereby the

provisional demand notices/bills were quashed and a direction was issued to the appellant to raise fresh bills towards the enhanced licence fee.

6.24. After disposal of *W.P.(C) 484/2017* by this Court *vide* order dated 18.01.2017, the respondent no.1 instituted another writ petition, namely *W.P.(C) 6953/2017*, which was based on apprehension that the bill regarding payment of licence fee may be issued by the appellant which would be against the terms of the Licence Deed dated 22.04.1982. This Court *vide* its order dated 23.08.2017, disposed of the said writ petition, while noticing the order dated 18.01.2017 passed in *W.P.(C) 484/2017*, directing the appellant to issue appropriate/final bill within four weeks.

6.25. A committee was constituted by the appellant for fixing the licence fee to be paid by the respondent no.1 which, in its meeting held on 28.09.2017, took certain decisions, including a decision to impress upon the SBI Capital Markets Limited (SBICAPS) to complete the valuation of the hotel property. Pursuant to the said decision, SBICAPS submitted its report in April, 2019. In the process of completing its task, SBICAPS had hired two sub-consultants, i.e. CBRE and Knight Frank. The conclusion drawn in the said report are extracted herein below:

> "***8 Conclusions***
>
> *The two valuation sub-consultants i.e. CBRE and Knight Frank have independently visited the subject Property and independently assessed the likely licence fee that the present Licensee is required to pay to NDMC from April 1, 2019 onwards, as provided below:*
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> ***Table 8.1: Likely Licence Fee as Estimated by the Sub-consultants (excluding unauthorised area)***

Name of sub-consultants	***Range of Licence Fee chargeable from April 1, 2019***
CBRE	*Rs 92.5 crore to Rs. 96.5 crore* *(Hotel – Rs. 51.7 crore to Rs. 53.2 crore)* *(Commercial Block – Rs. 40.8 crore to Rs. 42.8*

	crore)
Knight Frank	*Rs 86.5 crore to Rs. 98.0 crore* *(Hotel – Rs. 42.5 crore to Rs. 50.0 crore)* *(Commercial Block – Rs. 44.0 crore to Rs. 48.0 crore)*

If the unauthorised area of 144.60 sq. mt in World Trade Centre is also taken into consideration, then as per the two valuation sub-consultants, the likely annual licence fee for the subject Property from April 1, 2019 onwards could be within the following range.

Table 8.2: Likely Licence Fee as Estimated by the Sub-consultants (including unauthorised area)

Name of sub-consultants	***Range of Licence Fee chargeable from April 1, 2019***
CBRE	*Rs 92.7 crore to Rs. 96.7 crore* *(Hotel – Rs. 51.7 crore to Rs. 53.7 crore)* *(Commercial Block – Rs. 41.0 crore to Rs. 43.0 crore)*
Knight Frank	*Rs 87.0 crore to Rs. 98.0 crore* *(Hotel – Rs. 42.5 crore to Rs. 50.0 crore)* *(Commercial Block – Rs. 44.5 crore to Rs. 48.5 crore)*

The licence fee so estimated by each of these sub-consultants is dependent on a number of key assumptions that have been listed in this report. It may also be noted that both the sub-consultants have not assumed any revenue sharing arrangement between the present Licensee and NDMC as the existing licence deed does not provide for any such revenue sharing arrangement. Recently, NDMC has successfully conducted the e-auction of licence rights of three hotel properties, wherein the successful bidders are required to pay the higher of (i) annually escalated fixed licence fee or, (ii) revenue share linked to gross revenues of the property as licence fee. The details of the winning bids are as given below;

Table 8.3: Revenue Share as Discovered Through e-Auction

37, Shaheed Bharat Singh Marg	*20-Jun-18*	*31.50%*
1, Janpath Lane	*21-Jun-18*	*39.50%*
1, Man Singh Road	*28-Sep-18*	*32.50%*

In light of recent experience, NDMC may consider adopting such arrangement with the present Licensee also for the subject property, if deemed necessary."

6.26. It is noticeable that SBICAPS, in its aforesaid report, mentions the likely licence fee to be paid by the respondent no.1 is between Rs.92.7 Crore to Rs.96.7 Crore as estimated by CBRE and between Rs.87.0 Crore to Rs.98.0 Crore as estimated by Knight Frank. This estimate as mentioned in the conclusion includes the licence fee for the hotel property as also the World Trade Centre.

6.27. On receipt of the report prepared by SBICAPS for determination of likely licence fee to be paid by the respondent no.1 in respect of the property in question, the matter was again considered by the appellant and accordingly, the notice of demand dated 13.02.2020 was issued, whereby the respondent no. 1 was directed to pay Rs.1063,74,59,852/- in three equal installments within 90 days from the date of the notice of demand. Along with the notice of demand, a detailed statement of accounts giving the particulars of conclusion for the amount demanded in the notice, was also given. It is this notice of demand dated 13.02.2020, which was challenged by the respondent no.1 by instituting *W.P.(C) 2496/2020* that has been decided by the impugned judgment and order dated 06.12.2023 passed by learned Single Judge.

6.28. Apart from issuing the notice of demand dated 13.02.2020, a communication of termination of the Licence Deed dated 22.04.1982 was also made by the appellant to the respondent no.1, whereby the Licence Deed dated 22.04.1982 was terminated with immediate effect and the respondent no.1 was directed to handover the peaceful possession of the premises in question to the appellant within 90 days and also to pay the arrears of licence fee along with other statutory and non-statutory dues till the date of vacation. It is this communication dated 13.02.2020 terminating the Licence Deed

dated 22.04.1982 that became the subject matter of *W.P.(C) 2497/2020* filed by the respondent no.1, which has been allowed by impugned judgment and order dated 06.12.2023 passed by learned Single Judge.

6.29. After disposal of the aforesaid writ petition by the learned Single Judge vide the impugned judgment and order dated 06.12.2023 the Land and Development Office, Ministry of Housing Affairs, Government of India (L&DO) issued a demand notice dated 08.12.2023 to the NDMC-appellant requiring it to pay a total amount of revised ground rent of Rs.162,33,64,076/- (One Hundred Sixty Two Crore Thirty Three Lakhs Sixty Four Thousand and Seventy Six Only) @ Rs.15,45,45,615/- per annum w.e.f. 15.07.2013 to 14.01.2024. The said demand notice was issued by the L&DO on the premise that allotment of the land to NDMC by Government of India was made on 15.07.1983 and such allotment contained a clause of revision of ground rent on expiration of period of 30 years from the date of allotment, which ended on 15.07. 2013 and thus revision of ground rent had become due on 15.07.2013. Accordingly, as per the terms and conditions of allotment of the subject land made on 15.07.1983 by the Government of India to the appellant–NDMC, the L&DO decided to enhance/revise the ground rent @ Rs.15,45,45,615/- per annum w.e.f. the date the revision fell due that is 15.07.2013. Thus the respondent no.1 is paying licence fee to the appellant–NDMC @ 1.45 crore per annum in terms of the Licence Deed dated 22.04.1982, which if revised even in terms of Clause 48 of the said Licence Deed dated 22.04.1982 will be Rs.2.90 crore per annum on account of there being a cap of 100% imposed for enhancement on expiration of period of 30 years from the date of the Licence Deed i.e. from 22.04.1982. Accordingly, as against the demand of the ground rent @ Rs.15,45,45,615/- per annum

made by the L&DO, Government of India from the appellant–NDMC as is reflected from a perusal of the letter of the Government of India dated 08.12.2023, the respondent no.1 is currently paying the licence fee @ Rs.1.45 crore and @ Rs.2.90 crore per annum if the same is enhanced in terms of Clause 48 of the Licence Deed dated 22.04.1982. There is nothing on record from where we can decipher that the respondent no.1 has been paying the licence fee @ Rs.2.90 crore per annum as no such demand appears to have been raised. It appears that though the demand of licence fee at the enhanced rate was raised by the appellant vide demand notice dated 13.02.2020, however, the licence fee at the enhanced rate could not be realised as learned Single Judge in its order dated 04.03.2020 noted the statement made by the learned counsel for the appellant that till 23.03.2020 no coercive action was contemplated to be taken against the respondent no.1. In any case, there is nothing on record which suggest that the respondent no.1 has paid the licence fee of even @ Rs.2.90 crore per annum.

6.30. Feeling aggrieved by the aforesaid judgment and order dated 06.12.2023 passed by learned Single Judge, whereby *W.P.(C) 2496/2020 and W.P.(C) 2497/2020* have been allowed and the demand notice dated 13.02.2020 and the communication terminating the Licence Deed dated 22.04.1982 have been quashed, the appellant has preferred these two appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT–NDMC

- ***In respect of Demand Notice dated 13.02.2020:-***

7. Ms. Malvika Trivedi, learned senior counsel representing the appellant while impeaching the impugned judgment and order passed by the learned Single Judge has vehemently argued that the learned Single Judge, while

quashing the demand notice dated 13.02.2020, has not taken into consideration the provisions of section 141(2) and 416(2)(a) of the NDMC Act in their correct perspective. She has also argued that the impugned judgment ignores the principle of law which mandates maximization of revenue by the State in cases where natural resources are alienated for commercial purposes of profit making by private enterprises, as laid down by the Apex court in ***Natural Resources Allocation, IN RE, Special Reference no. 01 of 2012 [(2012) 10 SCC 1]***. According to Ms. Trivedi, Section 141(2) of the NDMC Act will have full application in the facts of the present case which clearly mandates that consideration for which any immovable property may be sold or leased or otherwise transferred shall not be less than the value which such property would fetch in normal and fair competition. In other words, any transaction in respect of any immovable property cannot take place for a consideration, which is less than the market value of the property. She has also argued that admittedly Clause 48 of the Licence Deed dated 22.04.1982 stipulates that licence fee shall be enhanced after every 33 years and therefore enhancement of the licence fee being paid by the respondent no.1 became due in the year 2014, having regard to the fact that the initial licence deed was executed by the appellant–NDMC on 11.03.1981 in favour of predecessor and interest of respondent no.1 namely M/s Delhi Automobiles Private Limited. Further submission by Ms. Trivedi is that when the question arose before the appellant–NDMC as to the determination of the quantum of enhanced licence fee after completion of 33 years of currency of the Licence Deed, section 141(2) of the NDMC Act was applied and according to which no transaction in respect of any immovable property belonging to NDMC could take place for a consideration which is less than the market value or in other words, which is less than what such property

would have fetched had the transaction took place under normal and fair competition.

8. Accordingly, the contention is that while determining the quantum of enhanced licence fee to be paid by the respondent in respect of the said subject property, the same was calculated at the market rate and for the said purpose a study was commissioned which was conducted by SBICAPS and such determination has been made taking into account the recommendations made by the SBICAPS. Our attention has been drawn by the appellant–NDMC to the report submitted by SBICAPS which is based on the estimation of likely licence fee by sub-consultants, namely, CBRE and Knight Frank. It has been argued that it is based on the recommendations of SBICAPS regarding likely licence fee that the demand notice dated 13.02.2020 was issued according to which the respondent no.1 has been required to pay the licence fee @ Rs.98 crore per annum w.e.f. 11.03.2014 with interest and total demand of arrears raised in the sad demand notice is One Thousand Sixty Three Crore Seventy Four Lakh Fifty Nine Thousand Eight Hundred and Fifty Two. Referring to the observations made by Hon'ble Supreme Court in ***Presidential Reference (supra)***, it has been stated that the appellant–NDMC, while raising the demand vide demand notice dated 13.02.2020, has given due weightage to the law laid down by the Apex Court in the said judgment, according to which in a situation where any policy decision in relation to alienation of natural resources is not backed by a social or welfare purpose and precious and scarce natural resources are alienated for commercial pursuit of profit maximising by private entrepreneurs, any method for such alienation, which is not competitive and which does not maximise revenue, will be arbitrary and violative of Article 14 of the Constitution of India.

Invoking the principle of safeguarding public interest by State and its instrumentalities in all their actions, learned counsel representing the appellant has submitted that considering the current market value of the land, the revenue which is being fetched by the appellant–NDMC, if the same is not enhanced in terms of market value, is exceedingly meagre, which is opposed to public interest and therefore the demand raised by the appellant vide demand notice dated 13.02.2020 is completely justified.

9. We have been taken to the notice of demand dated 08.12.2023 issued by the L&DO, Government of India to the appellant–NDMC and it has been submitted that the Government of India is demanding a ground rent of the same land which is the subject matter of the Licence Deed dated 22.04.1982 @ Rs.15,45,45,615/- per annum w.e.f. 15.07.2013, whereas as per the respondent no.1, it is entitled to pay the licence fee only at the enhanced rate, @ Rs.2.90 crore per annum.

10. Ms.Trivedi has thus pointed out the huge difference between the annual ground rent to be paid by the appellant-NDMC to the L&DO, Government of India and the licence fee which the respondent no.1 intends to pay in respect of the same land i.e., the subject property, and submitted that if the NDMC is not permitted to realise the licence fee from the respondent no.1 in terms of the demand notice dated 13.02.2020, it will result in a very anomalous situation.

11. According to the learned senior counsel for the appellant, though sub-Section 2 of Section 141 of the NDMC Act, 1994 does not specifically mention “licence”, however, in the facts of the present case it will operate in full force for the reason that, Section 141, if read as whole, reveals that the

said provision is in respect of all kinds of disposal of immovable properties. Reliance in this regard has been placed by the appellant on a Division Bench judgment of this court in ***The Indian Hotels Company Limited v. New Delhi Municipal Council [2016 SCC OnLine Delhi 5733]***, wherein it has been held that the appellant–NDMC would be obliged on the principle of Trust to obtain the best price while creating any interest in its property in favour of a third-party. Ms. Trivedi has also referred to yet another judgment of Supreme Court in ***Aggarwal & Modi Enterprises (P) Ltd. v. NDMC [2007 8 SCC 75]*** wherein referring to section 141(2) of the NDMC Act, it has been held that disposal of public property partakes the character of trust and that any approach for disposal of any interest in the public property should be for public purpose and in public interest.

12. Referring to section 416 of the NDMC Act, which is the repeal and savings clause, it has been argued on behalf of the appellant–NDMC that on establishment of New Delhi Municipal Council, the Punjab Act as applicable to New Delhi ceased to have effect, however, as per sub-Section 2(a), any licence issued or permission granted under the Punjab Act, which was in force immediately before establishment of the New Delhi Municipal Council, shall continue to be in force and shall be deemed to have been granted under the NDMC Act, only so far as such licence or permission is not in derogation of the NDMC Act. It is the submission on behalf of the appellant that since Clause 48 of the Licence Deed dated 22.04.1982 provides enhancement in the licence fee after 33 years, which is subject to a cap of 100% and such enhancement, if determined in terms of clause 48 of the said Licence Deed, does not, in any way, match the amount as per the market value and therefore the stipulation contained in the Licence Deed dated 22.04.1982 putting a cap

of 100% for enhancement runs contrary to section 141(2) of the NDMC Act and accordingly after NDMC Act was enforced, the said clause, to the extent it is inconsistent with section 141(2) of NDMC Act, will not continue to operate. It has also been submitted on behalf of the appellant–NDMC that the phrase "licence" occurring in section 416(1)(a) of the NDMC Act is not confined to statutory licences issued under the Punjab Act. The emphasis is on the occurrence of the phrase "licence or permission" in Section 416(2)(a) and on that basis it is the contention of the appellant–NDMC that the licence deed dated 22.04.1982 did not create any right in the respondent no.1; it only granted permission of the NDMC for using the subject land for the purposes of construction and commissioning of Hotel and other ancillary buildings. Accordingly, it has been argued that the Licence Deed dated 22.04.1982 is referable to the word 'permission' occurring in section 416(2)(a) of the NDMC Act and such 'permission' would deemed to continue only in so far as it is not inconsistent with the provisions of Section 141(2) of the NDMC Act. Noticing the inconsistency in respect of the licence fee to be charged in terms of Section 141(2) of the NDMC Act and the licence fee chargeable under clause 48 of the Licence Deed dated 22.04.1982, it has been argued that the enhanced rate of licence fee to be revised on completion of 33 years will thus be determined at the market rate which cannot be less than the rate which the subject property, if given on licence, would have fetched under a normal and fair competition.

13. Another ground urged on behalf of the appellant–NDMC to defend the demand notice dated 13.04.2020 is that the Licence Deed dated 22.04.1982 cannot be termed to be a 'contract' within the meaning of the said expression occurring in section 416(2)(b). In this regard it has been argued that the word

contract occurring therein has to be read *"noscitur a socii"*, that is to say, the word 'contract' has to be in relation to the other words occurring before 'contract' in the said provision that is "debts", "obligations" and "liabilities". The submission is that since the Licence Deed dated 22.04.1982 does not create either any debt or obligation or liability on the appellant–NDMC as such the same in its original form cannot be saved applying Section 416(b) of the Act.

14. In this respect, finding recorded by the learned Single Judge in the impugned judgment to the effect that the Licence Deed dated 22.04.1982 is not violative of section 141(2) of NDMC Act because of the judgment rendered by this case in ***S. S. Sobti (supra)***, has been attacked by the learned senior counsel for the appellant–NDMC, stating that the Licence Deed dated 22.04.1982 was not the subject matter of challenge in ***S. S. Sobti (supra)***. It is stated that in ***S. S. Sobti (supra)***, what was under challenge was the licence dated 11.03.1981 executed by the appellant–NDMC in favour of M/s Delhi Automobiles Private Limited and therefore in her submission, Ms.Trivedi has argued that reliance placed by learned Single Judge on ***S. S. Sobti (supra)*** is misconceived and erroneous.

15. To strengthen the submission that the Licence Deed dated 22.04.1982 will be covered by the phrase 'licence' occurring in section 416(2)(a) of the NDMC Act, it has been stated on behalf of the appellant that Section 188(d) of the Punjab Act vested the requisite authority in the appellant–NDMC to make bye-laws for providing for licensing of Hotels and Lodging Houses and for the fees payable for such licences on conditions on which they may be granted and revoked. According to the learned senior counsel for the appellant–NDMC, the Licence Deed dated 22.04.1982 executed by

appellant–NDMC in favour of respondent no.1 not only permitted construction of the Hotels but its commissioning and running as well and therefore, once the appellant–NDMC has the power to provide for licensing of Hotels and for the fee payable for such licences under section 188(d) of Punjab Act, the Licence Deed dated 22.04.1982 has to be read as a licence under the said provision and therefore it is statutory in nature. Further, it has been argued that such statutory licences have been saved under Section 416(2)(a) of the NDMC Act only to the extent it is consistent with the provisions of NDMC Act and since Clause 48 of the Licence Deed dated 22.04.1982 is in derogation of section 141(2) of the and NDMC Act in so far as it provides for enhancement of the licence fee not at the market rate, therefore, Clause 48 of the licence dated 22.04.1982 cannot be said to be saved by the repeal and saving clause of NDMC Act.

- ***<u>In respect of Communication dated 13.02.2022 terminating the Licence Deed dated 22.04.1982:-</u>***

16. On behalf of the appellant–NDMC, the termination notice dated 13.02.2020 has been defended stating the reason that the Licence Deed was terminated on account of fundamental breach of the terms of the Licence Deed dated 22.04.1982 itself, which entailed its termination. Drawing our attention to Clause 29 of the licence deed dated 22.04.1982, it has been submitted that the said clause unequivocally stipulates that sub-licensee shall not get any right above the right of the respondent no. 1 and further that the respondent no.1 will be responsible for the conduct of the sub-licensee. It is stated in this regard that Ms. Ghazala Shameem and Mr. Owais Usmani, the nominees of the sub-licensee–M/s Sonia Farms has executed four documents on 01.05.2016 in favour of M/s IWPA in respect of shop/office space nos. 28, 29, 30 and 31, which are agreements of sale, purchase and transfer and such

agreement/transfer is in clear breach of Clause 29 and therefore, as per Clause 42 of the Licence Deed dated 22.04.1982, the Licence Deed was rightly cancelled. It is also contented on behalf of the appellant that the reason given by learned Single Judge setting aside the termination of the Licence Deed dated 22.04.1982 is that the respondent no.1 did not have the knowledge of the transfers effected *vide* document dated 01.05.2016 by Ms. Ghazala Shameem and Mr. Owais Usmani in favour of M/s IWPA, which is contrary to record. The submission is that, as a matter of fact, the respondent no.1 had knowledge of the said document dated 01.05.2016 as is apparent from a perusal of the order dated 26.06.2018 passed by the Stamp Collector, where in para 06 it has clearly been recorded that the transfer dated 01.05.2016 had been confirmed by M/s Bharat Hotel–respondent no.1.

17. Our attention has also been drawn to recital made in para 08 of the order of Collector of Stamps where it has been recorded that notices were issued in the proceedings under the Stamp Act not only to Ms. Ghazala Shameem and Mr. Owais Usmani, but also to M/s Sonia Farms and M/s Bharat Hotels Limited–respondent no.1. On this count, it is argued on behalf of the appellant–NDMC that the findings recorded by the learned Single Judge that the respondent no.1 did not have knowledge of the document of the transfer dated 01.05.2016 in respect of shop/office space nos. 28, 29, 30 and 31 is contrary to records. Para 06, 08 and 12 of the order dated 26.06.2018 passed by the Collector of Stamp are extracted here in below:

> *6. Further, Mrs. Ghazala Shameem &Mr Owais Usmani have transferred all rights in the above said Sub-Licence Agreement to M/s Indian Wind. Power Association on 04.05.2016 after receiving of consideration amount Rs.3,03,33,750/- on the basis of Full and Final Agreement of Sale/Purchase and Transfer dated: 01.05.2016 and the above said transfer has been confirmed by M/s Bharat Hotels on the terms & condition of Sub Licence Agreement. The deposit amount in respect of*

shop/office space mentioned above has also transferred in the name of M/s Indian Wind Power Association vide Transfer Form dated: 04.05.2016

8. The Collector of Stamp, Chanakyapuri, New Delhi issued notices to M/s Bharat Hotels Ltd, M/s-Sonia Parms Pvt. Ltd, Sh. Amiresh Bahadur, Mrs. Ghazala Sharneem. & Mr. Owaish Usmani and M/s Indian Wind Power Association for non-payment of complete stamp duty, due at the time of execution of the instruments which is a violation of Section 62 of the Indian Stamp Act 1899 and as to why penal action as contemplated under law should be initiated against them."

12. Notices were issued for appearance on 09.11.2017 and 21.11.2017. Sh. Sumit Sharma was present on behalf of M/s Bharat Hotels Ltd. and submitted reply which was not conclusive and sought time to file reply alongwith relevant documents on next date of hearing. Sh. Lokesh on behalf of M/s Sonia Farms Pvt. Ltd. (Now merged with M/s AerensGoldsouk International Ltd.) and seeks to file reply. Sh. Ronit Mathur, Grandson of Sh. Amrish Bahadur and seeks time to file replay. Case adjourned to 07.12.2017."

18. Reference has also been made to the recital made in the reply dated 30.01.2017 filed before the Collector of Stamps in the proceedings initiated under the Indian Stamp Act, 1899 in respect of documents dated 01.05.2016 by M/s IWPA wherein it was stated *inter alia* that, "that thereafter the main licensee, M/s Bharat Hotels, for a deposit of Rs.4,78,800/- by way of transfer form, transferred the possession for use from 04.05.2016 to M/s IWPA". Thus, the submission is that the argument that respondent no.1 did not have knowledge about the documents dated 01.05.2016 executed by Ms. Ghazala Shameem and Mr. Owais Usmani in favour of M/s IWPA is apparently false and therefore, on the said basis, the findings recorded by learned Single Judge regarding non-violation of Clause 29 of the Licence Deed dated 22.04.1982 is also erroneous. Regarding the alleged withdrawal of the document dated 01.05.2016 executed by Ms. Ghazala Shameem and Mr. Owais Usmani in favour of M/s IWPA it has been stated that no benefit is

available to the respondent no.1 from the said alleged withdrawal of the documents for the reason that the said document was a conclusive sale and that unless and until the document is cancelled, only withdrawal does not bear any legal sanctity, especially keeping in view the fact that the withdrawal letter dated 17.07.2018 does not mention return of payment of consideration or transfer of possession to either the respondent no.1 or to its sub-licensee.

19. Over and above the aforesaid submissions, it has emphatically been argued by the learned senior counsel for the appellant–NDMC that continuance of such licence deed is opposed to public interest for the reason that NDMC is a public body which has to pay ground rent in respect of subject property to the L&DO, Government of India @ Rs.15.45 Crore per annum, whereas the licence fee being paid annually by respondent no.1 is only Rs.1.45 Crore and the difference between the annual ground rent to be paid by appellant–NDMC to the L&DO, Government of India and the licence fee being paid by the respondent no.1 is huge, which burden would ultimately fall on the public at large. It has, thus, been urged that the appeals be allowed and the impugned judgment rendered by learned Single Judge be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

- ***In respect of Demand Notice dated 13.02.2020:-***

20. Defending the impugned judgment and order passed by the learned Single Judge, Mr. Sandeep Sethi, learned senior counsel has argued that the impugned judgment has been passed on a proper analysis of facts, various provisions of Licence Deed dated 22.04.1982, the Punjab Act and the NDMC Act and, accordingly, the impugned judgment does not call for any

interference by this Court in these appeals and, therefore, the appeals are liable to be dismissed.

21. It has been argued that the demand notice dated 13.02.2020 is absolutely illegal for the reason that in terms of Clause 48 of the Licence Deed dated 22.04.1982, the quantum of enhanced licence fee which is to be determined after 33 years can be maximum of Rs.2.90 crore for the next 33 years.

22. It is stated in this regard that Clause 48 provides that the determination of the increased licence fee, though, would depend on the market value of the plot in question, however, such enhancement cannot exceed 100% of the amount of licence fee which is due immediately before the enhancement. It is thus the submission of Mr. Sethi, that the agreed licence fee for first 33 years of the Licence Deed dated 22.04.1982 was Rs.1.45 crore which could be enhanced to the maximum of Rs. 2.90 crore in terms of Clause 48 of the Licence Deed dated 22.04.1982. The determination of the enhanced licence fee to be paid by the respondent No.1 as per the demand notice dated 13.02.2020 is absolutely illegal, being contrary to such a stipulation.

23. It has been argued that so far as the Licence Deed is concerned, the decision of this Court in ***S.S. Sobti v. Union of India (Supra),*** has clearly upheld its legality and the licence fee to be paid thereunder. It is submitted further that reference to the provisions of Section 416(2)(a) of the NDMC Act to assert that by virtue of operation of the said provision Clause 48 of the Licence Deed dated 22.04.1982 shall be rendered inoperative is highly misplaced. According to Mr. Sethi, Section 416(2)(b) saves all contracts entered into by the New Delhi Municipal Committee, the predecessor of New

Delhi Municipal Council, which were entered into between the parties before establishment of the NDMC and that the Licence Deed dated 22.04.1982 is a contract and not a statutory licence and, therefore, it is saved under Section 416(2)(b) of the NDMC Act.

24. It has further been argued that transfer of immovable property is provided for as a contract in Section 46 and 47 of the Punjab Act, which falls under the Chapter "Contracts" of the Punjab Act and, therefore, power to transfer immovable property under the Punjab Act is only through a contract and not through a licence.

25. Mr. Sethi has also stated that the phrase "licences and permissions" occurring in Section 416(2)(a) of the NDMC Act has to be interpreted applying the principle of *noscitur a sociis* and, therefore, the word "licence" occurring therein in the said provision has to be interpreted seated in the vicinity of the other phrases occurring prior to "licence" such as "appointment", "notification", "order", "scheme", "rule", "form", "notice" or "by law".

26. Accordingly, the submission is that licence referred to in Section 416(2)(a) has to necessarily mean a statutory licence and will not cover the Licence Deed dated 22.04.1982. In this view, the submission is that even if the Licence Deed dated 22.04.1982 is found to be inconsistent with the provisions of Section 141(2) of the NDMC Act, the same will be saved in its entirety.

27. It has, thus, been argued that a statutory licence issued under the Punjab Act which is inconsistent with the NDMC Act would lose its effect as per Section 416(2)(a) of the NDMC Act, however, any such contract in its

entirety will be saved owing to provisions of Section 416(2)(b) of the NDMC Act. To buttress this submission, it has been stated by Mr. Sethi that the legislature has consciously saved the contracts as it is by enactment of Section 416(2)(b) of the NDMC Act, and such contract has not consciously been made subject to inconsistency in terms of Section 416(2)(a), whereas any statutory licence which is inconsistent with the provisions of NDMC Act has not been saved by operation of Section 416(2)(a) of the NDMC Act. The argument, thus, is that the legislature has purposely not made continuance of the contracts subject to inconsistency by enacting Section 416(2)(b) and, therefore, even if any clause in the Licence Deed dated 22.04.1982 is found to be inconsistent with Section 141(2) of the said Act, the same shall be saved.

28. Referring to the principle regarding prospective application of savings and repeal clause as per Section 6 of the General Clauses Act, 1897, it has been submitted that even if Section 416(2)(a) is applicable in the facts of the instant case, the vested right created in respondent No.1 under the Licence Deed dated 22.04.1982 cannot be taken away for the provisions of NDMC Act are applicable prospectively in absence of any stipulation in the Act to the contrary.

29. Relying on the findings recorded by the learned Single Judge in respect of setting aside the demand notice dated 13.02.2020, it has been argued on behalf of the respondents that Section 141(2) of the NDMC Act cannot be invoked for the reason that Section 141(2) would apply to disposal of immovable property which would occur after enforcement of the NDMC Act and will have no application so far as the Licence Deed dated 22.04.1982 is

concerned for the reason that the same was entered into between the parties prior to enforcement of the NDMC Act.

30. Further submission in respect of inapplicability of Section 141(2) of the NDMC Act by Mr. Sethi, is that the same will be applicable in a situation where the agreement or contract has expired or is pending renewal. In other words, the submission is that Section 141(2) can be invoked in case of fresh transaction and will have no applicability so far as the transactions which are governed in terms of any agreement or contract entered into between the parties prior to enforcement of the NDMC Act. Reference has also been given to sub-Section 4 of Section 141 of the NDMC Act, according to which, Section 141 would be applicable only in respect of prospective cases of transfer of immovable property and the same cannot be applied retrospectively so as to change any specific clause in a contract or agreement which has been entered into prior to formation of New Delhi Municipal Council.

31. The submission made on behalf of the appellant based on the judgment of the Apex Court in ***Presidential Reference (supra)*** has been refuted by Mr. Sethi stating that auction of public property is not the only mode of alienating the public assets and further that such mode for disposal of public property has to be assessed based on the requirement and objectives of alienation of the property at the relevant point of time. It has been argued that at the relevant point of time, the appellant was in need of having a Five-Star Hotel to be used for conducting the Asian Games and development of the hotel was envisaged at the cost to be borne by the respondent No.1 which required huge investment and, therefore, rules of the game cannot be changed once huge

expenditure has been incurred by the respondent No.1 on the basis of the licence agreement dated 22.04.1982.

32. Being critical of the report of SBICAPS, Mr. Sethi has stated that the demand notice assumes that the appellant–NDMC is the owner of the land and, therefore, no reference has been made to any ground rent payable to the L&DO, Government of India. It has also been argued that the letter dated 08.12.2023 whereby the L&DO, Government of India has demanded the ground rent having revised the same from Rs.43,91,211/- per annum to Rs. 15,45,45,615/-, was issued after the impugned judgment rendered by the learned Single Judge and, therefore, the revision of ground rent by the L&DO, Government of India cannot be said to be the basis of the demand notice dated 13.02.2020.

- ***In respect of Communication dated 13.02.2020 terminating the Licence Deed dated 22.04.1982:-***

33. As far as the communication dated 13.02.2020 cancelling the Licence Deed dated 22.04.1982, it has been argued on behalf of the respondents that to enter into sub-licence agreements, the respondent No.1 has been taking permission from time to time in terms of the requirement of Clause 29 of the Licence Agreement dated 22.04.1982.

34. In respect of the four Sale Agreements dated 01.05.2016 executed by Mrs. Ghazala Shameem and Mr. Owais Usmani in favour of M/s IWPA, it is stated on behalf of the respondents that the respondent was never aware of any such sale agreement and, therefore, the finding recorded by the learned Single Judge to the effect that transfer of rights by way of Sale Agreements by Mrs. Ghazala Shameem and Mr. Owais Usmani in favour of M/s IWPA was not in the knowledge of the respondent No.1, never was there any active

participation or consent, is correct. It is also stated that once the documents dated 01.05.2016 in respect of shop/office space nos. 28, 29, 30 and 31 came to the notice of the respondent No.1, it immediately directed the M/s IWPA to withdraw the Sale Agreements and simultaneously the respondent No.1 apprised the appellant–NDMC of the order of the Collector of Stamps and, therefore, it did not conceal the transactions made by Mrs. Ghazala Shameem and Mr. Owais Usmani by executing the Sale Agreements dated 01.05.2016. According to Mr. Sethi, the learned Single Judge in the impugned judgment has correctly held that the said transaction never reached fruition and, therefore, it remained a dead letter and hence the same cannot form a lawful basis to terminate the Licence Deed dated 22.04.1982.

35. In respect of the proceedings drawn by the Collector of Stamps, it has been submitted on behalf of the respondent no.1 that it had no prior knowledge of the origin of the proceedings and further that it responded to the notice issued by the Collector of Stamps from time to time and it was only upon passing of the order by the Collector of Stamps on 26.06.2018 that the respondent No.1 became aware of the documents dated 01.05.2016 executed by Mrs. Ghazala Shameem and Mr. Owais Usmani in favour of M/s IWPA. Referring to Clause 6 of the Licence Deed dated 22.04.1982, it has also been submitted on behalf of the respondent no.1 that the said clause provides for a notice of intent to terminate the Licence Deed stating the alleged breach, however, before issuing the communication terminating the Licence Deed, no such notice was given to the respondent no.1.

36. It has also been argued that had any such notice been given, as contemplated in Clause 6 of the Licence Deed, the same would have been appropriately replied to.

37. Mr. Sethi, as observed above, has argued that the respondent No.1 became aware of the documents dated 01.05.2016 executed by Mrs. Ghazala Shameem and Mr. Owais Usmani only after the order passed by the Collector of Stamps, dated 26.06.2018 and immediately thereafter the respondent No.1 *vide* its letter dated 12.07.2018 required M/s IWPA to withdraw and cancel the said documents dated 01.05.2016 whereafter on 17.07.2018, M/s. IWPA withdrew the Sale Agreements from registration.

38. In conclusion, Mr. Sethi has submitted that the learned Single Judge has quashed the communication terminating the Licence Deed dated 22.04.1982 by giving adequate reasons. He has stated that the unilateral action of sub-licensing to enter into a Sale Agreements dated 01.05.2016 without consent or knowledge of the respondent No.1 cannot be said to be a fundamental breach of Clause 29 of the Licence Deed dated 22.04.1982 as the Sale Agreements dated 01.05.2016 were without participation of the respondent No.1. Additionally, it has also been stated that before issuing the communication terminating the Licence Deed dated 22.04.1982, no opportunity of hearing was provided to the respondent No.1 in respect of breach of the terms of Licence Deed and, therefore, termination of Licence Deed is in violation of principles of natural justice.

39. On the aforesaid counts, Mr. Sethi has urged that the appeal be dismissed.

STATUTORY PROVISONS

40. Certain statutory provisions will be referred in our discussion and analysis which are as under:

Punjab Municipal Act, 1911

Section 18

*"**18. Incorporation of Committee:-** Every committee shall be a body corporate by the name of the municipal committee of its municipality; and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and subject to the provisions of this Act, or of any rules made thereunder to transfer any property held by it to contract and to do all other things necessary for the purposes of its constitution; and may sue and be sued in its corporate name."*

Section 46

*"**46. Authority to contract. -** (1) The committee of any municipality of the first class may, subject to the provisions of this Act, delegate to one or more of its members 6 [other than an associate member] the power of entering on its behalf into any particular contract whereof the value or amount does not exceed five hundred rupees, or into any class of such contracts. (2) No contract by or on behalf of any committee whereof the value or amount exceeds five hundred rupees shall be entered into until it has been sanctioned at a meeting of committee."*

Section 47

*"**47. Mode of executing contracts and transfer of property. -** (1) Every contract made by or on behalf of the committee of any municipality of the first class whereof the value or amount exceeds one hundred rupees, and every contract made by or on behalf of the committee of any municipality of the second 7 [and third class] whereof the value or amount exceeds fifty rupees, shall be in writing, and must be signed by two members, of whom the President or a Vice President shall be one, and countersigned by the Secretary : Provided that, when the power of entering into any contract on behalf of the committee has been delegated under the last foregoing section, the signature or signatures of the members to whom the power has been delegated shall be sufficient. (2) Every transfer of immovable property belonging to any committee must be made by an instrument in writing, executed by the President or Vice President, and by at least two other members of committee, whose execution thereof shall be attested by the Secretary. (3) No contract or transfer of the description mentioned in this section executed otherwise than in confirmity with the provisions of this section shall be binding on this committee."*

Section 188

*"**188. General bye-laws :-** A committee may, and shall if so required by the State Government by bye-law, -*
(a) render licences necessary for the proprietors or drives of vehicles [other than motor vehicles] or animals kept or playing for hire within the limits of the municipality, and fix the fees payable for such licenses and

the conditions on which they are to be granted and may be revoked, and may by such conditions provide among other things for a minimum breadth for wheel tyres and for a minimum diameter of the wheels;
(b) limit the rates which may be demanded for the hire of any carriage, cart, or other conveyance, or of animals hired to carry loads or persons, or for the services of persons hired to carry loads or to impel or carry such conveyances and limit the loads which may be carried by any animal or carriage, cart or other conveyance, playing for hire, within the limits of the municipality:
Provided that no bye-laws made under clause (a) or clause (b) by the committee of a municipality in which the Hackney Carriage Act, 1879, is in force shall apply to any vehicle to which that Act applies:
Provided also that operations of any bye-law made under the provisions of clause (a) or clause (b) or of any rules made under the Hackney Carriage Act, 1879, may, with the sanction of the State Government, be extended to-
(i) any railway station;
(ii) the whole or part of any road so far as such road is situate within ten miles of the limits of the municipality;
(iii) the whole or any part of road leading from the limits of any one municipality or notified area to the limits of any other municipality or notified area, if the distance between the said municipalities or notified areas does not exceed fifty miles, and the committees of the said municipalities or notified areas consent to the extension of such bye-laws;
(c) provide for the proper registration of births, marriages and deaths, and for the taking of a census;
(d) fix, and from time to time vary, the number of persons who may occupy a building or part of a building, which is let in lodgings or occupied by members of more than one family, or which is situated within such congested bazar areas as may be specified in the bye-law; and provide-
(i) for the registration and inspection of such buildings.
(ia) for the licensing of hotels and lodging-houses and for the fees payable for such licences and the conditions on which they may be granted on or revoked].
(ii) for promoting cleanliness and ventilation in such buildings.
(iii) for the notices to be given and the precautions to be taken in the case of any infections or contagious disease breaking out in such buildings.
(iv) for the scavenging, removal and disposal of all rubbish, filth, nightsoil, sullage or sewage in such buildings,
(v) in the case of hotel, serai and lodging, house keepers and the secretaries of residential clubs for the maintenance of registers, in such form as the committee may prescribe, of visitors and lodgers, and
(vi) generally for the proper regulation of such buildings;
(e) provide-

(i) for the inspection and proper regulation of encamping grounds, pounds, serais, bakeries, acrated-water factories, ice factories, dhobis ghats, flour mills, foodgrain godowns, dispensing chemists shops, slaughter houses and places licensed under section 121.
(ii) for the inspection and proper regulation of markets [and stalls] for the preparation and exhibition of a price current and for fixing the fees, rents and other charges to be levied in such markets [and stalls].
(iii) for defining the standard weights and measures to be used in the municipality and for inspection of weights and measure under section 207.
(iv) for the holding of fairs and industrial exhibitions within the municipality or under the control of the committee, and for the collection of fees under section 187.
(v) for controlling and regulating the use and management of burial and burning grounds.
(vi) for the supervision, regulation and protection from pollution of public wells, tanks, springs or other sources from which water is or may be made available for the use of the public, whether within or without the municipality.
(vii) for the licensing, inspection and proper regulation of theatres and other places of public resort, recreation or amusement.
(viii)for inspection and proper regulation of channels which are supplied with water from any canal to which either the Northern India Canal and Drainage Act, 1873, or the Punjab Minor Canals Act, 1905, applies.
(f) require and regulate the appointment by owners of buildings or land in the municipality, who are not resident in the municipality, of persons residing within or near the municipality to act as their agents for all or any of the purposes of this Act or any rule thereunder;
(g) where the collection of an octroi [or terminal tax] has been sanctioned, fix limits for the purpose of collecting the same, and may prescribe routes by which [animals or articles] or both which are subject to octroi [or terminal tax] may be imported into the municipality [or exported therefrom];
(h) render licences necessary for using premises as stables, cow- houses or houses or enclosures for sheep goats [or swine], and regulate the grant and withdrawal of such licences;
(i) in any municipality where a reasonable number of slaughter-houses has been provided or licensed by the committee control, regulate or prohibit the admission within the municipal limits for the purposes of sale of the flesh (other than cured or preserved meat) of any cattle, sheep, goat or swine slaughtered at any slaughter-house or place not maintained or licensed under this Act, and may provide for the seizure, destruction or disposal otherwise of any flesh brought within municipal limits in contravention of any such bye-law;
(j) fix premises within the municipality in which the slaughter of animals of any particular kind, not for sale, shall be permitted, and prohibit,

except, in case of necessity, such slaughter elsewhere within the municipality:
Provided that no such bye-laws shall apply to animals slaughtered for any religious purposes;
(k) prohibit the letting off of fire-arms, fire-works, fire balloons, bombs or detonators except (i) with the permission of the committee or of a municipal officer empowered to give such permission, (2) subject to such conditions as the committee may impose, and (3) on payment of such fees (if any) as may at any time have been fixed by the committee in that behalf;
(l) regulate the making and use of connections or communications between private houses and premises and mains or service cables, wires, pipes, drains, sewers and other channels established or maintained by the committee under any of the provisions of this Act:
[(m) regulate the collection, storage preservation from pollution and use of rain- water, and the carrying out of the provisions of section 96 to 2 [(102)];
(n) regulate the posting of bills and advertisements, and the position, size, shape and style of name-boards, sign boards and sign posts;
(o) provide for, regulate, require or prohibit the construction, pattern of construction, maintenance and materials of boundary walls, hedges and fences hereafter erected or re-erected so as to abut on a public street or upon property vested in the committee;
(p) regulate or prohibit any description of traffic in the streets and provide for the reduction of noise caused thereby;
(q) prohibit the storage of more than a fixed maximum quantity of any explosive, petroleum, spirit naptha or other inflammable material in any building not registered or licensed under section 121;
(r) provide for the seizure and confiscation of ownerless animals straying within the limits of the municipality;
(s) provide for the registration of all or any specified classes of dogs and in particular and without prejudice to the generality of foregoing –
(i) provide for the imposition of an annual fee for such registration;
(ii) require that every registered dog shall wear a collar to which shall be attached a metal token to be issued by the committee;
(iii) provide that any dog, not registered and wearing such token, may if found in any public place, be detained at a place to be set apart for the purpose and will be liable to be destroyed or otherwise disposed of after a period to be specified in the bye-laws;
[(t) render licenses necessary for hand carts employed for transport or hawking articles for sale, and for the persons using such hand-crafts, and prescribe the conditions for the grant and revocation of such licenses];
[(u) regulate the conditions on which and the period for which permission may be given under sub-section (1) of section 172 and sub-section (1) of section 173, and provide for the levy of fees and rents for such permission [(uu) provide for the registration, inspection and proper regulation of buildings ordinarily utilized for the residence or treatment

of persons suffering from infectious diseases and for the limiting of the number of such persons who reside in such buildings or part of such buildings; and]
(v) generally provide for carrying out the purposes of this Act."

New Delhi Municipal Council Act, 1994

Section 141

*"**141 Disposal of immovable property**.—(1) The Chairperson may, with the sanction of the Council, lease, sell, let out on hire or otherwise transfer any immovable property belonging to the Council.*
(2) The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition.
(3) The sanction of Council under section 140 or this section may be given either generally for any class of cases or specially for any particular case.
(4) Subject to any conditions or limitation that may be specified in any other provisions of this Act the foregoing provisions of section 140 and this section shall apply to every disposal of property belonging to the Council made under, or for any purpose of this Act.
(5) Every case of disposal of property under sub-section (1) of section 140 shall be reported by the Chairperson without delay to the Council."

Section 416

*"**416. Repeal and savings_**.—(1) As from the date of the establishment of the Council, the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), as applicable to New Delhi, shall cease to have effect within New Delhi.*
(2) Notwithstanding the provisions of sub-section (1) of this section,— _
(a) any appointment, notification, order, scheme, rule, form, notice or bye-law made or issued, and any licence or permission granted under the Act referred to in sub-section (1) of this section and in force immediately before the establishment of the Council, shall, in so far as it is not inconsistent with the provisions of this Act continue in force and be deemed to have been made, issued or granted, under the provisions of this Act, unless and until it is superseded by any appointment, notification, order, scheme, rule, form, notice or bye-law made or issued or any licence or permission granted under the said provisions;
(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the New Delhi Municipal Committee before the establishment of the Council shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Council under this Act;
(c) all budget estimates, assessments, valuations, measurements or divisions made by the New Delhi Municipal Committee shall in so far as

they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under the provisions of this Act unless and until they are superseded by any budget estimate, assessment, valuation, measurement or division made by the Council under the said provisions;

(d) all properties, movable and immovable and all interests of whatsoever nature and kind therein, vested in the New Delhi Municipal Committee immediately before the establishment of the Council shall with all rights of whatsoever description, use, enjoyed or possessed by New Delhi Municipal Committee vest in the Council;

(e) all rates, taxes, fees, rents and other sums of money due to the New Delhi Municipal Committee immediately before the establishment of the Council shall be deemed to be due to the Council;

(f) all rates, taxes, fees, rents, fares and other charges shall, until and unless they are varied by the Council continue to be levied at the same rate at which they were being levied by the New Delhi Municipal Committee immediately before the commencement of this Act;

(g) all suits, prosecutions and other legal proceedings instituted, or which might have been instituted by or against the New Delhi Municipal Committee may be continued or instituted by or against the Council."

General Clauses Act , 1897

Section 6

*"**6. Effect of repeal.—**Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

ISSUES

41. On the basis of pleadings of the parties and the rival submissions made by learned counsel appearing for the respective parties, the following issues emerge for our consideration and adjudication:

In Re: Demand Notice dated 13.02.2020

(a) As to whether, Clause 48 of the Licence Deed dated 22.04.1982, to the extent it provides for a cap of 100% increase in licence fee at the time of its enhancement after 33 years, survives in view of Section 416(2)(a) of the NDMC Act for the reason that it is inconsistent in terms of Section 141(2) of the NDMC Act.

DISCUSSION AND FINDINGS

42. We have already noticed and extracted Section 416(2)(a) and (b) as also Section 141 of the NDMC Act. Section 416 is the repeal and savings clause which provides that from the date of establishment of NDMC, the Punjab Act, as applicable to New Delhi, shall cease to have effect within New Delhi. The NDMC was established on 10.11.1995 and accordingly, by operation of Section 416, Punjab Act ceased to have application with effect from the said date within New Delhi.

43. Sub-Section 2 of Section 416, however, contains, apart from repeal, the savings clause as well. Section 416(2)(a) provides that (i) appointment, (ii) notification (iii) order, (iv) scheme, (v) rule, (vi) form (vii) notice or (vii) bye-law, made or issued which were in force immediately before the establishment of the Council, shall continue to be in force to the extent they are not inconsistent with the provisions of the NDMC Act. It further provides that any "licence or permission" granted under the Punjab Act, shall also

continue to be in force to the extent the "licence and permission" is not inconsistent with the NDMC Act.

44. Section 416(2)(b) provides that all (i) debts, (ii) obligations and (iii) liabilities incurred and all contracts entered into and all matters and things engaged to be done by, with or for the New Delhi Municipal Committee before establishment of the Council shall be deemed to have been incurred, entered into or engaged to be done by NDMC under NDMC Act.

45. From a perusal of Section 416(2)(a) and (b) what we find is that there is apparent distinction between these two provisions contained in sub-clause (a) and (b). The debts, obligations and liabilities incurred and contracts entered into, are saved under sub-Section (2)(b) without any qualification, however, the (i) appointment, (ii) notification (iii) order, (iv) scheme, (v) rule, (vi) form (vii) notice or (vii) bye-law made and "licence or permission" granted are saved in terms of sub-Section (2)(a) only to the extent they are consistent with the NDMC Act. The condition of consistency is absent in sub-Section (2)(b) and accordingly, all such things provided in sub-Section (2)(a) are saved on establishment of the NDMC, only to the extent they are not inconsistent with NDMC Act.

46. Sub-Section (2)(b) of Section 416 of the NDMC Act, however, saves all things done as mentioned therein without any qualification, in other words these are saved even if they are found to be inconsistent with the provisions of the NDMC Act. The appellant has argued that the Licence Deed dated 22.04.1982 which was granted by New Delhi Municipal Committee prior to enforcement of NDMC Act, has to be construed as "licence or permission" occurring in sub-Section (2)(a) of Section 416 for the reason that the Licence

Deed dated 22.04.1982 was granted by the New Delhi Municipal Committee under the Punjab Act and is referable to Sections 188(d) and 189 of the Punjab Act.

47. The case put forth by respondent no.1 is that the Licence Deed dated 22.04.1982 is a contract and is referable to Section 18 and 47 of the Punjab Act and it is not a statutory licence. The submission is that since the Licence Deed dated 22.04.1982 is not a statutory licence, rather it is a contract referable to Section 18 and 47 of the Punjab Act, it will be saved by virtue of operation of Section 416(2)(b) of NDMC Act and therefore, even if clause 48 of the Licence Deed dated 22.04.1982 is held to be inconsistent with Section 141(2) of the NDMC Act, the said clause in its entirety will continue to operate.

48. Having considered the rival submissions made by the parties in this regard, we are unable to agree with the arguments made on behalf of the respondents that on establishment of New Delhi Municipal Council under the NDMC Act, Clause 48 of the Licence Deed dated 22.04.1982 is saved, for the following reasons:

(i) If we carefully examine the provisions of Section 412(2)(a) what we find is that apart from the appointment/notification/order/scheme/rule/form/ notice/bye-law, “licences and permissions” granted under the Punjab Act are also saved subject to the condition that these are not inconsistent with the provisions of NDMC Act. The instrument dated 22.04.1982 is a “licence or permission” granted by then New Delhi Municipal Committee to the respondent no. 1 for use of the subject land for the purposes of constructing and commissioning a Five-Star Hotel.

(ii) Even if we agree that the Licence Deed dated 22.04.1982 is not a statutory licence within the meaning Section 188 of the Punjab Act, i.e., the licence granted by the New Delhi Municipal Committee under the Punjab Act for certain things such as licence to drive vehicles, to keep animals or plying them, licence regarding rates which may be demanded for hire of any carriage, car, or animals to carry loads or for the services of persons hired to carry loads, licence fixing the number of persons who may occupy a building or a part of building which is let in lodgings etc., the instrument dated 22.04.1982 is certainly a permission granted for constructing and commissioning a Five-Star Hotel and other ancillary buildings.

(iii) What all has been done by executing by the document dated 22.04.1982 is that respondent no.1 was permitted to construct and commission a Five-Star Hotel on the subject land on payment of an annual licence fee. It is certainly a licence for the reason that the said document does not transfer any right in the subject land in favour of respondent no.1, rather it only grants certain permissions, such as permission to construct and commission a Five-Star Hotel and ancillary building. The phrase "licence or permission" specifically occurs in sub-Section (2)(a) of Section and the said phrase is clearly disjuncted by the word "and" from the other phrases mentioned therein, such as appointment, notification, order, scheme, rule, form, notice and bye-law.

(iv) The submission made by learned counsel for the respondents that the phrase "licence or permission" occurring in Section 416(2)(a) has to be read with the aid of the legal principle *noscitur a sociis* cannot be accepted for the reason that such principle is applied to interpret or construe meaning of any term occurring in a statute only in case there is any ambiguity.

(v) The Latin phrase "*noscitur a sociis"* means "it is known by its associates". The submission made by learned counsel for the respondent no.1 is that applying the said legal principle for interpreting the phrase "licence or permission" occurring in Section 416(2)(a) of the NDMC Act, its meaning has to be deciphered keeping in view the other phrases or words which occur near the said phrase. However, it is a settled law that *noscitur a sociis* can be employed only if meaning of a word or phrase is unclear.

(vi) The phrase *noscitur a sociis* has been described at Page No.1271 in the 12th Edition of Black's Law Dictionary, as under:

> *"noscitur a sociis (nos-ə-tər ay [or ah] soh-shee-is). [Latin "it is known by its associates"] (18c) A canon of construction holding that the meaning of an unclear word or phrase, esp. one in a list, should be determined by the words immediately surrounding it. – Also termed associated-words canon. Cf. EJUSDEM GENERIS; EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS; RULE OF RANK.*
> *"The ejusdem generis rule is an example of a broader linguistic rule or practice to which reference is made by the Latin tag noscitur a sociis. Words, even if they are not general words like 'whatsoever' or 'otherwise' preceded by specific words, are liable to be affected by other words with which they are associated." Rupert Cross, Statutory Interpretation 118 (1976).*
> *"We rely on the principle of noscitur a sociis – a word is known by the company it keeps – to 'avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.'" Yates v. U.S., 574 U.S. 528, 543, 135 S.Ct. 1074, 1085 (2015)."*

(vii) Reference is this regard may be had to a judgment of the Hon'ble Supreme Court in the case of ***State of Bombay v. Hospital Mazdoor Sabha, 1960 SCC OnLine SC 44*** wherein it has clearly been held that it must be borne in mind that '*noscitur a sociis'* is merely a rule of construction and it cannot prevail in cases where it is clear that wider words have been elaborately used in order to make the scope of defined word correspondingly

wider. The relevant observation made in paragraph 9 of the report in ***Hospital Mazdoor Sabha (supra)*** is extracted herein below:

> *"9. It is, however, contended that, in construing the definition, we must adopt the rule of construction noscuntur a sociis. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases (Vol. XIV, p. 207):" Associated words take their meaning from one another under the doctrine of noscuntur a sociis the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim Ejusdem Generis". In fact the latter maxim "is only an illustration or specific application of the broader maxim noscuntur a sociis". The argument is that certain essential features or attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that noscuntur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service. As has been observed by Earl of Halsbury, L.C., in Corporation of Glasgow v. Glasgow Tramway and Omnibus Co. Ltd.1 in dealing with the wider words used in Section 6 of Valuation of Lands (Scotland) Act, 1854, "the words 'free from all expenses whatever in connection with the said tramways' appear to me to be so wide in their application that I should have thought it impossible to qualify or cut them down by their being associated with other words on the principle of their being ejusdem generis with the previous words enumerated". If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the legislature in defining "industry" in Section 2(j). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of its provisions would be realised if we bear in mind the definition of "industrial dispute" given by Section 2(k), of "wages" by Section 2(rr), "workman" by Section 2(s), and of*

"employer" by Section 2(g). Besides, the definition of public utility service prescribed by Section 2(m) is very significant. One has merely to glance at the six categories of public utility service mentioned by Section 2(m) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by Section 2(1)."

(viii) As already observed above, the other phrases occurring in Section 416(2)(a) of the NDMC Act in the vicinity of the phrase "licence or permission" are clearly disjuncted by the word 'and' preceded by a comma (,) and therefore, the legislature did not leave any ambiguity so far as interpretation of the phrase "licence or permission" is concerned. In our opinion, thus, "licence or permission" occurring in Section 416(2)(a) has to be interpreted not as a statutory licence as would be the case with appointment, notification, order, scheme, rule, form, notice and bye-law. The phrases other than "licence or permission" occurring in Section 416(2)(a) may be related to statutory appointment, statutory notification, statutory order, statutory scheme, statutory rule, statutory form, statutory notice and statutory bye-law, however, on account of the fact that the phrase "licence and permission" is separated by the word 'and', which is preceded by a comma (,), it cannot be said that "licence or permission" in Section 416(2)(a) has to be read as statutory licence.

(ix) Section 18 of the Punjab Act vests in every municipal committee, which would include New Delhi Municipal Committee as well, the power to acquire and hold property, both moveable and immovable. It also permits transfer of any such property held by it to contract and to do all things necessary for the purposes of its constitution.

(x) Learned counsel for the respondent has argued that what all Section 18 of Punjab Act permits is that any immovable property held by the municipal

committee could only be transferred to contract. In our opinion the said submission does not hold any ground for the reason that if the municipal committee under Section 18 of the Punjab Act was vested with the power of holding an immovable property, granting licence or permission to a third party for doing something without transferring any right in the property will be intrinsic in the power to hold the property. The Licence Deed dated 22.04.1982 does not transfer any rights which were available in the subject land with the New Delhi Municipal Committee. What all it does is that it permits the respondent no.1 to construct and commission a hotel. By virtue of Licence Deed dated 22.04.1982, the respondent no.1 would not become owner or title holder of the subject land. It was only permitted to do a certain acts, i.e. construction and commissioning of a hotel.

(xi) Accordingly, we are of the opinion that the permission accorded to respondent no.1 for constructing and commissioning a hotel in the subject land by executing the Licence Deed dated 22.04.1982 is referable to Section 18 of Punjab Act for the reason that granting a licence or permission to do certain act by a third party is intrinsic in its power to hold immovable property.

(xii) The submission made by learned counsel for respondent no.1 that the instrument dated 22.04.1982 will be covered by the word "contracts" occurring in Section 416(2)(b) is not acceptable for the reason that the said instrument is a licence/permission which permitted the respondent no.1 for construction and commissioning of a Five-Star Hotel and since under Section 416(2)(a), "licence or permission" is not confined to statutory licence or permission, in our opinion the said instrument will be covered by the phrase "licence or permission" occurring in Section 416(2)(a) of the NDMC Act.

(xiii) Having held that the instrument dated 22.04.1982 is a licence or permission within the meaning of the said phrase occurring in Section 416(2)(a) of the NDMC Act, only that portion of Clause 48 of the said instrument will be saved which is not inconsistent with the provisions of the NDMC Act.

(xiv) Clause 48, as already noticed above, is in respect of enhancement of licence fee after every 33 years of the term of the Licence Deed dated 22.04.1982, however, the said provision fixes a cap of 100 % increase at the time of enhancement. In other words, if Clause 48 is held to be operative as it is, at the time when enhancement in the licence fee fell due after completion of 33 years i.e. in the year 2014, the maximum licence fee which is permissible to be charged by the appellant will be Rs.2.90 crores annually, as the initial licence fee chargeable under the licence was Rs.1.45 crores. We now need to examine as to whether Clause 48 of Licence Deed dated 22.04.1982, which fixes a cap of 100% increase at the time of enhancement of licence fee, is in any manner inconsistent with any of the provisions of the NDMC Act.

(xv) On behalf of the appellant, it was argued that the said provision contained in Clause 48 is not consistent with sub-Section (2) of Section 141 of the NDMC Act. Section 141, which has already been quoted above, permits the NDMC to lease, sell, let out on hire or otherwise transfer any immovable property belonging to it. Sub-Section (2) of Section 141, however, stipulates that consideration for which any immovable property may be sold or leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition.

(xvi) In other words, consideration for which certain rights can be created in third party in respect of any immovable property held by NDMC cannot be less than the market rate and accordingly, for quantifying consideration, the market value of the immovable property has to be taken into consideration. It is true that sub-Section 2 of Section 141 does not use the word "licence" rather it uses the modes of transfer of rights in immovable properties such as a sale, lease, and let out on hire or otherwise. However, Hon'ble Supreme Court in ***Aggarwal & Modi Enterprises (P) Ltd. v. New Delhi Municipal Council, (2007) 8 SCC 75*** has clearly held that Section 141(2) of the NDMC Act will be applicable to licences as well. The Apex Court in ***Aggarwal & Modi Enterprises (supra)*** has observed that mandate of Section 141(2) is that any immovable property belonging to NDMC is to be sold, leased, licenced or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased or transferred in fair competition.

(xvii) The Apex Court has further held that NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for immovable property. Paragraph 22 of ***Aggarwal & Modi Enterprises (supra)*** is extracted herein below:

> ***"22.*** *The mandate of Section 141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair competition". In other words, NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The courts have accepted*

public auction as a transparent means of disposal of public property. (See State of U.P. v. Shiv Charan Sharma [1981 Supp SCC 85 : AIR 1981 SC 1722] , Ram & Shyam Co. v. State of Haryana [(1985) 3 SCC 267] , Sterling Computers Ltd. v. M & N Publications Ltd. [(1993) 1 SCC 445] , Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. [(1993) 2 SCC 279] , Pachaiyappa's Trust v. Official Trustee of Madras [(1994) 1 SCC 475] , Chairman and MD SIPCOT v. Contromix (P) Ltd. [(1995) 4 SCC 595] , New India Public School v. HUDA [(1996) 5 SCC 510 : AIR 1996 SC 3458] , State of Kerala v. M. Bhaskaran Pillai [(1997) 5 SCC 432] and Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496] .)"

(xviii) In ***Indian Hotels Company Ltd. v. New Delhi Municipal Council, 2016 SCC OnLine Del 5733*** a Division Bench of this Court has also held that harmonious construction of Section 141(1) and 141(2) of the NDMC Act supports the view that it is incumbent upon the NDMC to sell, lease, let out or otherwise transfer any immovable property at the value at which it could be sold, leased out, let out or otherwise transferred in normal and fair competition. The Court has further opined that omission of the word "let out" in Section 141(2) is clearly on account of an error in legislative drafting.

(xix) In the ***Indian Hotels Company (supra)***, this Court has also held that a statutory authority, specially a municipal statutory authority, would be obliged, on the principle of trust, to obtain the best price by creating any interest in its property in favour of the third party and further that it is the inherent right of every proprietor to secure maximum consideration for his property in all transactions apart from transactions where the law limits consideration, that can be charged by the proprietor, for any public purpose or in public interest. Paragraph 50 of the judgment in ***Indian Hotels Company (supra)*** is extracted herein below:

*"**50.** The Council as a juristic entity would be the New Delhi Municipal Council and having perpetual succession and common seal, this juristic entity would have the power to acquire, hold and dispose of property. The members referred to as the Council under Section 4 would not be the juristic entity. They would be akin to the Board of Directors or the*

Governing Council of a company/society. The Chairperson of the Council is the one who performs the ministerial act of executing the required document concerning the immoveable property belonging to the Council : the juristic entity. But this would be subject to the sanction of the Council i.e. the members referred to under Section 4. The consideration would be the one which would be fetched at a fair competition. Now, the expression 'let-out on hire' which finds reference in sub-Section (1) of Section 141 is missing in sub-Section (2), but that in our opinion is irrelevant for the reason a statutory authority and especially a Municipal Statutory Authority would be obliged on the principle of a Trust to obtain the best price while creating any interest in its property in favour of a third party. It is the inherent right of every proprietor to secure maximum consideration for his property in all transactions, apart from transactions where the law limits consideration that can be charged by the proprietor, for any public purpose or in public interest. In the case of governmental bodies like the NDMC, the implicit right of a proprietor to maximize consideration for its property is also a duty since these bodies own and transact property in a fiduciary capacity for the general public. A similar view has been expressed by the Supreme Court in the decision reported as (2012) 3 SCC 1 Centre for Public Interest Litigation v. Union of India, wherein the Supreme Court held that the doctrine of equality enjoins that the public is adequately compensated for the transfer of natural resources and/or their products to the private domain. Thus, in exercising its right/discharging its duty to secure maximum consideration for grant of licence in relation to property bearing No. 1, Man Singh Road, New Delhi, NDMC is within its power to ensure that such measures are adopted by it which fetch the maximum revenue. As a consequence of NDMC's proprietary right and fiduciary duty to secure maximum consideration for public property, Section 141(2) of the NDMC Act, 1994 must be interpreted to include within its ambit all transactions involving immoveable property and the grant of licences cannot be dehors Section 141(2) of the NDMC Act, 1994. A harmonious construction of Section 141(1) and 141(2) of the NDMC Act, 1994 supports the view that it is incumbent on the NDMC to sell, lease, let out or otherwise transfer any immoveable property at the value at which such immovable property could be sold, leased, let out or otherwise be transferred in normal and fair competition. The omission of the word 'let out' in Section 141(2) of the NDMC Act, 1994 is clearly on account of an error in legislative drafting. Section 141(1) lists the modes and the manner in which the immoveable property belonging to the NDMC may be disposed off while Section 141(2) of the NDMC Act, 1994 provides the necessary condition of securing adequate compensation, which represents the fiduciary duty of the NDMC to the general public, to be fulfilled while disposing off the property as per Section 141(1) of the NDMC Act, 1994."

(xx) Accordingly, in view of the pronouncement of the Hon'ble Supreme Court in ***Aggarwal & Modi Enterprises (supra)*** and by this Court in ***Indian Hotels Company (supra)***, we have no ambiguity in our mind that sub-Section (2) of Section 141 will be applicable even in case of a licence which may be executed by NDMC granting permission to a third party to do something in or on its immovable property which is held by it.

(xxi) About applicability/non-applicability of Section 141 of the NDMC Act to the facts of the instant case, a submission has been made by learned counsel for the respondent no.1 that in view of the settled principle of law, any statutory provision operates prospectively and not retrospectively, unless the statute itself provides for its retrospective application and, therefore, Section 141 cannot be put to service by the appellant to urge that Clause 48, so far as it puts a cap of 100 % increase in licence fee, is inconsistent with the provisions of NDMC Act.

(xxii) The aforesaid submission to us appears to be erroneous and misconceived. So far as the legal principle that any statutory provision will operate prospectively unless specifically provided for its retrospective application is concerned, there cannot be any quarrel on the same, however, the question of prospective/retrospective application of Section 141 of the NDMC Act in the facts of the instant case does not arise at all. The reason is that Section 416(2)(a) will save the terms of "licence or permission" granted to respondent no.1 *vide* instrument dated 22.04.1982 only to the extent it is not found to be inconsistent with the provisions of NDMC Act. The element of inconsistency/consistency with the NDMC Act will have to be thus found on the anvil of the provisions of the NDMC Act itself as enacted by the legislature. If any Act done in past by New Delhi Municipal Committee on a

date prior to establishment of NDMC is found inconsistent with the provisions of the NDMC Act after establishment of NDMC, the same in our opinion cannot be permitted to continue as it will not be saved by operation of Section 416(2)(a) of the NDMC Act.

(xxiii) Differently put, any act done by the New Delhi Municipal Committee prior to establishment of NDMC is saved in terms of Section 416(2)(a) only to the extent it is not inconsistent with NDMC Act and, therefore, whether or not, such an act is inconsistent will have to be tested on the anvil of the provisions of the NDMC Act when the NDMC Act comes in operation. For this reason, the argument related to prospective/retrospective application of Section 141 of the NDMC is absolutely misplaced.

(xxiv) What we intend to emphasize when we say that the issue of prospective or retrospective application of Section 141 of the NDMC Act is misplaced in the facts of the instant case is that what has been saved by Section 416(2)(a) are the past acts of New Delhi Municipal Committee which was the predecessor of NDMC, however, as to whether such an act done by New Delhi Municipal Committee will be saved or not, can be decided as to whether such past act is consistent or inconsistent with the NDMC Act. Consistency/inconsistency has to be tested on the basis of the provisions of the NDMC Act which is in currency as on today and in the instant case on the date when enhancement of licence fee became due after completion of 33 years.

(xxv) Reliance placed by learned Single Judge on the judgment of this Court in ***S. S. Sobti (supra)*** to record the finding that the transaction cannot be said to be violative of Section 141(2) of the NDMC Act does not seem to be correct. Learned Single Judge has held that once the decision in ***S. S. Sobti***

(supra) had upheld the transaction and found it to have been concluded by following a fair and transparent procedure, there would not be any reason to review the same. Such observations in our opinion are again misplaced for two reasons. Firstly, what was under challenge in ***S. S. Sobti (supra)*** was not the Licence Deed dated 22.04.1982 executed by the then New Delhi Municipal Committee in favour of respondent no.1, rather the challenge therein was the grant of licence dated 11.03.1981 by the New Delhi Municipal Committee in favour of M/s Delhi Automobiles Private Limited. Secondly, the question in ***S. S. Sobti (supra)*** did not relate to saving or continuity of Clause 48 of the Licence Deed dated 22.04.1982 by operation of Sections 416 and 141 of the NDMC Act.

(xxvi) For the aforesaid reasons, we are of the considered and clear opinion that Clause 48 of the Licence Deed dated 22.04.1982, to the extent it puts a cap of 100% increase in licence fee at the time of its enhancement after completion of 33 years, is inconsistent with sub-Section 2 of Section 141 of the NDMC Act and hence, the same cannot be saved under Section 416 of the NDMC Act.

In Re: Communication dated 13.02.2020 terminating the licence agreement dated 22.04.1982.

(b) Whether communication dated 13.02.2020 terminating the licence agreement dated 22.04.1982 for breach of the terms of licence is unlawful?

DISCUSSION AND FINDINGS

49. Clause 42 of the Licence Deed dated 22.04.1982 unambiguously stipulates that if the licensee breaches any of the terms and conditions, the licensor shall terminate and revoke the licence. It further stipulates that on revocation the licensee shall quit and vacate the premises without any

resistance and obstruction and give the complete control of the premises to the licensor. The question, therefore, is as to whether, the respondent no.1 is in breach of any of the terms and conditions of the Licence Deed dated 22.04.1982.

50. Clause 11 of the Licence Deed dated 22.04.1982 provides that the licensee shall not in any way sub-let, underlet, encumber, assign or transfer his right or interest or part with possession of the land and the building thereon or share therein to any person, directly or indirectly, without prior written consent of the licensor. It also provides that the licensee shall have the right to sub-licence the subject property in terms of clause 29 of the licence agreement.

51. Clause 29 of the Licence Deed dated 22.04.1982 clearly stipulates that the Five-Star Hotel shall be run by the licensee himself. It, however, permits the licensee to allow sub-licences for running (i) car parking, (ii) cycle, scooter stand for parking, (iii) shopping arcado, (iv) bank offices within the shopping arcade. One of the most relevant stipulation in Clause 29 of the Licence Deed dated 22.04.1982 is that the licensee shall be further responsible for conduct of various sub-licensees and shall be responsible to answer that the sub-licensees will not get any right over and above the rights and privileges of the licensee.

52. We may also refer to Clause 30 of the Licence Deed dated 22.04.1982 which provides that the licensee shall not transfer, assign or part with the building or any portion thereof, permanently or temporarily to anyone else except as provided for Clauses 11 and 29.

53. In view of the aforesaid stipulations made in the Licence Deed dated 22.04.1982 the question, therefore, which falls for our consideration is as to

whether in the facts of the case, the respondent no.1 has breached any of the terms of the Licence Deed.

54. It is on record that in terms of the permissibility of executing sub-licences, as per Clause 29 of the Licence Deed dated 22.04.1982 certain sub-leases were executed by respondent no.1 initially with the written permission of the NDMC. However, the breach of the terms of the licence arose when Ms. Ghazala Shameem and Mr. Owais Usmani executed four documents on 01.05.2016 which were titled as "Full and Final Agreement of Sale, Purchase and Transfer" in favour of M/s IWPA. These deeds were executed by Ms. Ghazala Shameem and Mr. Owais Usmani in respect of shop/office space nos. 28, 29, 30 and 31 situated in the World Trade Center, which is a building constructed and situated on the subject land.

55. The execution of the four documents as "Full and Final Agreement of Sale, Purchase and Transfer" by Ms. Ghazala Shameem and Mr. Owais Usmani in favour of M/s IWPA has not been disputed by the respondent no.1. What all has been argued on behalf of respondent no.1 in respect of these documents dated 01.05.2016 is that they were not having any knowledge of these documents prior to the order dated 26.06.2018 passed by the Collector of Stamps. It has further been submitted on behalf of the respondents no.1 that once the documents executed on 01.05.2016 by Ms. Ghazala Shameem and Mr. Owais Usmani came to the notice of respondent no.1, it immediately instructed M/s IWPA to withdraw the said documents from registration, pursuant to which the M/s IWPA wrote a letter on 17.07.2018 to the sub-Registrar, withdrawing the registration of the said documents.

56. The ignorance feigned by respondent no.1 about execution of the four documents dated 01.05.2016 by Ms. Ghazala Shameem and Mr. Owais Umsani in favour of M/s IWPA does not come to their rescue to argue that they were not in breach of Clauses 11 and 29 of the Licence Deed dated 22.04.1982 for the following reasons:

(i) The Collector Stamps in his order dated 26.06.2018 has clearly recorded that the transfer effected by Ms. Ghazala Shameem and Mr. Owais Usmani through the said documents in favour of IWPA were all with confirmation by the respondent no.1. In these proceedings, the Collector Stamps has further recorded that notices were issued to the respondents as well apart from M/s. Sonia Farms Private Limited, Mr. Amresh Bahadur, Ms. Ghazala Shameem, Mr. Owais Usmani and M/s IWPA. The Collector of Stamps in his order dated 26.06.2018 has also mentioned that on issuance of notices on 09.11.2017 and 21.11.2017 in the proceedings drawn under the Indian Stamp Act, 1899 a representative of the respondent no.1, namely, one Mr. Sumit Sharma was present and had submitted his reply as well.

(ii) It is only after the order dated 22.06.2018 passed by the Collector of Stamps that respondent no.1 is said to have written a letter on 12.07.2018 to M/s IWPA to withdraw the documents dated 01.05.2016, pursuant to which M/s IWPA made application for withdrawal on 17.07.2018.

(iii) On the aforesaid counts, it is difficult to believe that transactions made by Ms. Ghazala Shameem and Mr. Owais Usmani by

executing four documents on 01.05.2016 in respect of shop/office space nos. 28, 29, 30 and 31 were without the knowledge of respondent no.1. We may also note at this juncture that Clause 29 of the Licence Deed dated 22.04.1982, though, permits respondent no.1 to allow sub-licences but it also, in unequivocal terms, casts an obligation on respondent no.1 that it shall be responsible for the conduct of various sub-licensees and also that it shall be responsible to answer that sub-licensees shall not get any right over and above the rights and privileges of the licensee. Thus, the entire responsibility as per Clause 29 of the Licence Deed dated 22.04.1982 for execution of the four documents dated 01.05.2016 whereby, shop/office space nos.28, 29, 30 and 31 were sought to be transferred in favour of M/s IWPA by the sub-licensees - Ms. Ghazala Shameem and Mr. Owais Usmani rested on respondent no.1 who cannot seek any escape from such responsibility.

(iv) The execution of the four documents dated 01.05.2016 by Ms. Ghazala Shameem and Mr. Owais Usmani in favour of M/s IWPA indisputably cannot be denied, which in our opinion amounts to fundamental breach of Clauses 11 and 29 of the Licence Deed dated 22.04.1982.

(v) So far as argument raised on behalf of respondent no.1 regarding non-issuance of notice in terms of Clauses 6 and 43 of the Licence Deed dated 22.04.1982 before terminating the same is concerned, the fact of execution of the sale deeds dated 01.05.2016 appear to be undeniable and since this is the basis of

terminating the licence, even if opportunity would have been given, the same would not have improved the case of the respondents.

(vi) It is further to be noticed that all the four sale deeds dated 01.05.2016 executed in favour of M/s IWPA are styled as "Full and Final Agreement of Sale, Purchase and Transfer". The terms of the said documents render the documents as conclusive sale. The various phrases occurring the said documents are owners, seller, title, sale price, possession etc.

(vii) We may also note that so far as alleged withdrawal of the document by M/s IWPA is concerned, there is nothing on record which establishes that the possession was handed over to the sub-licensee or the sale consideration paid by M/s IWPA was refunded to the sub-licensee. It is noteworthy that no such averment in the application made by M/s IWPA to the sub-Registrar *vide* its letter dated 17.07.2018 has been made.

57. For all these reasons, we have no hesitation to hold that respondent no.1 has rightly been found to be in fundamental breach of Clauses 11 and 29 of the Licence Deed dated 22.04.1982 and therefore, the licence has rightly been terminated as per Clause 42 of the Licence Deed dated 22.04.1982.

58. The entire issue engaging our attention in this matter can be viewed from another angle as well. The law recognizes a difference between a lease and a licence. 'Lease' has been defined in Section 105 of the Transfer of Property Act, 1882 which is a transfer of right to enjoy immovable property for a certain time or in perpetuity in consideration of a price paid or promised

to be paid. 'Licence' has been defined in Section 52 of the Indian Easements Act, 1882 which is granted by the licensor to the licensee of a right to do or continue to do something in or upon the immovable property, which would in absence of such right, be unlawful. However, such right granted by a licensor does not amount to creation of any interest in the immovable property. The licensee gets a right to remain in use of the immovable property, so long as the licence is not revoked or the licensee is not evicted either in accordance with law or otherwise.

59. There is yet another reason for us to not agree with the impugned judgment rendered by the learned Single Judge and the reason emanates from the principle governing alienation or parting of rights in natural resources to a third party by State or its instrumentalities. Learned Single Judge in the impugned judgment has extensively quoted certain observations made by Hon'ble Supreme Court in ***Presidential Reference (supra).*** We may, however, state that underlying principle laid down by the Apex Court in the said judgment is that such alienation or parting of natural resources should always be guided by public interest which is embedded in fundamental conception of Article 14 of the Constitution of India.

60. While we acknowledge that alienation of natural resources is a policy decision, as held in ***Presidential Reference (supra)***, however, when such a policy decision is not backed by a social or welfare purpose and precious and scarce natural resources are alienated for commercial pursuits of profit maximizing by private entrepreneurs, adoption of means other than those which are competitive and maximise revenue may be arbitrary and violative of Article 14 of the Constitution of India. Such observations have been made

in paragraph 149 of the report in ***Presidential Reference (supra)*** which is extracted here under:

> *"**149.** Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."*

61. If we analyse the facts of the instant case from the aforesaid point of view, what we find is that Clause 48 of the Licence Deed dated 22.04.1982 permits maximum licence fee of Rs.2.90 crores annually, whereas, the L&DO has demanded from the appellant a sum of Rs.98 crores per annum towards the ground rent. Obviously, the huge difference between the licence fee permissible under Clause 48 of the Lease Deed dated 22.04.1982 and the ground rent being demanded by L&DO by the appellant will have to be ultimately borne by the public at large, who are residents of New Delhi and are paying taxes in various forms to the NDMC.

62. There cannot be any doubt that land in New Delhi is one of the scarcest natural resource which has been put to management by the owner of the land, namely, L&DO, to the NDMC and accordingly, if any transaction in respect of such a land is resulting in such a huge loss to NDMC, the burden gets transferred to the tax payer, who are the residents of New Delhi. Such a

transaction, in our opinion, cannot be approved of, else it will be violative of the Article 14 of the Constitution of India.

63. Hon'ble Supreme Court in a three-judge bench judgment in ***Shiv Shankar Dal Mills v. State of Haryana, (1980) 2 SCC 437,*** has opined that remedy available under Article 226 of the Constitution of India is an extraordinary remedy which is essentially discretionary and that it is perfectly open for the Court that while exercising this power, such orders may be passed as are dictated by public interest and equity. Relevant observations made in ***Shiv Shankar Dal Mills (supra)*** are contained in paragraph 6 of the report, relevant extract of which is as under:

> *"**6.** Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects:*
> *"Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest... [27 Am Jur 2/d Equity, p. 626]"*

64. Hon'ble Supreme Court while referring to and placing reliance on ***Shiv Shankar Dal Mills (supra)*** in ***M.S. Sanjay v. Indian Bank, 2025 SCC OnLine SC 368,*** has categorically observed that legal formulations cannot be enforced, *de hors* from the fact situation of the case. Hon'ble Supreme Court has further stated that while administering law, it is to be tempered with equity and if the equitable situation demands, after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction.

65. It has further been held that if an action or order is challenged in a petition under Article 226 of the Constitution of India which is found to be illegal and invalid, the High Court exercising its extraordinary jurisdiction can even refuse to upset such action or order with a view to doing substantial justice between the parties. Paragraph 10 of the judgment in ***M.S. Sanjay (supra)*** is extracted below:

> *"**10.** It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal Court of Appeal, which it is not. It is a settled principle of law that the remedy under Article 226 of the Constitution of India is discretionary in nature and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties."*

66. In view of the aforesaid law laid down by the Apex Court in ***Shiv Shankar Dal Mills (supra)***, as followed in ***M.S. Sanjay (supra)***, we are of the opinion that any consideration and adjudication of the issues involved in these appeals cannot be bereft of the possible impact of our judgment on larger public interest. If the judgment rendered by the learned Single Judge results, which actually will result, in burdening the tax payers with bearing the huge difference of amount of annual licence fee to be paid by respondent no.1 and the ground rent being demanded by the L&DO from the NDMC, in our opinion, the impugned judgment passed by the learned Single Judge needs to be set aside.

67. In conclusion, we do not find ourselves in agreement with the impugned judgment of the learned Single Judge whereby, the aforementioned writ petitions have been allowed and the notice of demand dated 13.02.2020 as also the communication dated 13.02.2020 terminating the Licence Deed dated 22.04.1982 have been quashed.

68. Resultantly, the appeals are allowed and the judgment and order dated 06.12.2023 passed by the learned Single Judge in *W.P.(C) 2496/2020* and *W.P.(C) 2497/2020* is set aside.

69. In view of the above, the pending applications stand disposed of.

70. There will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

APRIL 22, 2026
Shailndra, S.Rawat, N.Khanna, MJ