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

% **Judgment reserved on : 15 October 2024**
Judgment pronounced on: 25 October 2024

\+ **W.P.(C) 9983/2020**

UDAY KAUSHISH .....Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Akhil Sachar, Ms. Sunanda Julysan, Ms. Muskan Mehra, Mr. Chaitanya Malhotra and Mr. Shrey Sharna, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ORS.
.....Respondents

Through: Mr. Sanjay Katyal, Standing Counsel with Mr. Nitin Mishra, Adv. for R-1/DDA
Ms. Ann Joseph, Adv. for Ms. Beenashaw N. Soni, ASC for DDA
Mr. Kunal Sinha and Mr. Sarthak Sharma, Advs. for R-2
Mr. Rajesh Kumar, SPC with Mr. Rahul Kumar Sharma, Adv. for R-3/Ministry of Housing and Urban Affairs
Ms. Samaya Khanna, Adv. for R-4 to R-7

\+ **W.P.(C) 1602/2023 & CM APPL. 6077/2023**

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Ms. Samaya Khanna, Adv. for R-4 to R-7

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgment shall decide the above-noted writ petitions which have been preferred by the petitioner, thereby invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking certain reliefs against the respondent No.1/Delhi Development Authority ["**DDA**"], raising common questions of law and facts and can be conveniently disposed of together. However, in order to avoid any confusion and for better appreciation, this Court would present the facts of the two writ petitions separately.

W.P.(C) 9983/2020

2. Briefly stated, the case of the petitioner is that a commercial plot of land bearing Municipal No. 28360 admeasuring 5444 Square

Yards situated at Desh Bandhu Gupta Road, Paharganj, Delhi-110055, formerly known as "Arakashan Paharganj" (*hereinafter referred as the '**subject property**')*, was leased out by the Secretary of State for India in favour of late Shri Durga Chand Kaushish S/o late Pandit Lakshmi Chandra *vide* registered lease deed dated 17.09.1931[1]. It is stated that the said lease was for a term of 90 years commencing from 01.04.1931 and it was agreed that it could be renewed for a further period of 70 years. It is stated that the lessee, late Shri D.C. Kaushish, paid a premium of Rs. 18,242/- besides agreeing to pay annual rent @ Rs. 365/- payable in two equal half yearly instalments of Rs. 182.50 Paisa. It stated that in furtherance of the Scheme by the Delhi Improvement Trust ["**DIT**"] for the improvement and development of the Basti Ara Kashan area wherein the subject property was comprised, an agreement dated 27.05.1955 was also executed between the DIT and late Shri Durga Chand Kaushish, whereby the same terms and conditions of the original lease deed dated 17.09.1931 were reiterated, as also yearly rent. It appears that after the abolition of DIT and advent of the respondent No.1/DDA in 1957, dispute arose between late Shri Durga Chand Kaushish and the respondent No.1/DDA with respect to the quantum of rent, and on 03.06.1964, a sum of Rs. 4657.75 Paisa was recovered from the lessee as arrears of rent through the Collector, which was paid under protest. Aggrieved thereof, late Shri Durga Chand Kaushish filed a suit before this Court seeking reliefs in the nature of injunction, thereby restraining the DDA

[1]Registered with the office of Sub-Registrar as document No. 203 in Additional Book No.1, Volume No. 30 on pages 327 to 341 dated 25.01.1932

from recovering anything in excess of the rent of Rs. 365/- per annum. It is stated that the said suit was decreed *ex parte* in favour of the original lessee i.e., late Shri Durga Chand Kaushish on 10.09.1967, thereby holding that on proper construction of the lease deed, no rent in excess of Rs. 365/- could be recovered from the lessee until the expiry of initial 90 years of lease i.e. until 01.04.2021. The *ex parte* decree dated 10.09.1967 was, however, set aside by this Court *vide* order dated 08.01.1969 by the learned Single Judge, which order was assailed in RFA[2] (OS) No. 16/1970 before the Division Bench of this Court, which appeal was allowed in favour of late Shri Durga Chand Kaushish *vide* judgment and decree dated 26.05.1971 and it was held that that the original lessee was only required to pay a sum of Rs. 365/- as the annual rent during the subsistence of the lease deed dated 17.09.1931. This led to the respondent No.1/DDA preferring an appeal bearing Civil Appeal No. 298/1972[3] before the Supreme Court, which was dismissed *vide* judgment dated 28.08.1973.

3. In order to address the matters in issue, cutting the long story short, it appears that on the death of Shri Durga Chand Kaushish, a suit for partition was instituted bearing CS (OS) No. 414/2008 which led to passing of a preliminary decree by this Court dated 24.03.2009 and in the said suit, *vide* order dated 07.08.2009, it was *inter alia* recorded that steps would be initiated for conversion of the subject property to freehold basis, by which time it appears that there was running 'Sheila Cinema Complex' at the subject property. The suits

[2] Regular First Appeal
[3] Delhi Development Authority v. Durga Chand Kaushish, [(1973) 2 SCC 825]

between the legal heirs of deceased were consolidated and ultimately compromised *vide* judgment and decree dated 06.11.2012 was recorded, giving different shares to each of the legal heirs in the properties left behind by the deceased Shri Durga Chand Kaushish, and Mr. Rajat Aneja, Advocate was appointed as Court Commissioner, who took up the matter with the respondent No.1/DDA as well as respondent No.2 and respondents No. 4 to 7, thereby calling upon the respondent No.1/DDA *inter alia* to intimate the tentative amount required to be paid along with requisite documents for effecting conversion, including the amount of ground rent and other charges in respect of the subject property. It appears that during the pendency of the partition suit bearing CS (OS) No. 414/2008, the Ministry of Urban Development, Land & Development Office, Union of India, *vide* its communication dated 29.05.2013 clarified that the existing scheme for conversion of leasehold tenures into freehold tenures shall also be applicable to cinema sites for which lease deeds/perpetual leases have been executed and construction thereupon stands completed. In between, there were directions by this Court in the aforesaid partition suit to the Court Commissioner to expedite the pending process of conversion of the subject property from leasehold to freehold and as it appears that there was no response from respondent No.1/DDA, this Court in the aforesaid partition suit *vide* order dated 15.07.2013 issued notice to the learned Standing Counsel for the respondent No.1/DDA, who appeared on 08.08.2013 and submitted that there was no policy of conversion of Cinema Halls from leasehold to freehold, hence no document/information could be

supplied on behalf of the DDA.

4. The delay in such conversion irked the respondent No.2 and he moved an application for recalling of the judgment and decree dated 06.11.2012, however, during the pendency of the present petition, the said suit for partition was disposed of *vide* order dated 23.11.2021 upon a Memorandum of Family Settlement dated 12.11.2021 being entered into by and between the parties to the suit.

5. Furthermore, a notice was issued by this Court in Civil Suit (OS) 3411/2015 directing the appearance of the learned Standing Counsel for the respondent No.1/DDA, who appeared on 21.05.2019 and sought time to seek instructions as to whether or not the subject property could be converted into freehold and if so, on what terms. Apparently, as no action was taken, the present suit was filed in which the following relief is claimed:

> "Issue a Writ, Order or direction in the nature of Mandamus and/or a Writ, order or direction in the nature of Mandamus calling for the records of the case and after examining the legality and validity of the same direct the Respondent No.1 and 2 to convert the Commercial Plot of Land bearing Municipal No.28360 admeasuring 5444 Square Yards situated at Desh Bandhu Gupta Road, Paharganj, Delhi-1100055, formerly known as "Arakashan Pahar Ganj Delhi from leasehold to freehold"

6. On filing of the present writ petition, notice was issued to the respondent No.1/DDA and respondent No.3/Union of India besides respondents No. 2 and 4 to 7, who are legal heirs of late Shri Durga Chand Kaushish. The main contest to the present petition is mounted by the respondent No.1/DDA. It is pertinent to mention here that during the pendency of this case, certain orders dated 21.01.2021 and 27.04.2022 were passed, whereby it was brought out that the issue as

regards the applicable conversion charges was being shuttled between the respondent No.1/DDA and the respondents No.3/ Ministry of Urban Development, Land & Development Office, Union of India. Anyhow, in the counter-affidavit dated 01.09.2021 filed by the respondent No.1/DDA through Mr. Indresh Kumar, Deputy Director (OSB), DDA, New Delhi acknowledging the broad facts of this case, it was also acknowledged that mutation letter dated 22.07.2009 has been issued, thereby recording the property in the name of Shri Sanjay Kaushish, Uday Kaushish and Smt. Anita Kaushish, each to the extent of 1/3rd share. However, it was pointed out that FIR[4] No. 27/2014 lodged at Police Station Sarita Vihar dated 09.01.2014 under Sections 420/406/34 of the Indian Penal Code, 1860 in respect of Shiela Cinema Plot is under investigation and a civil suit bearing No. 3411/2015 titled 'Shri Sanjay Kaushish v. Shri Uday Kaushish & Ors.' is also *sub judice* before this Court and as per order dated 13.02.2020 passed in the said civil suit proceeding, the settlement between the owners of the subject property has failed. All the same, *vide* paragraph (5) and (6) it was deposed as under:

> "5. That the property under reference at present cannot be converted into freehold as conversion rates for Cinema and Hotel plots are not decided yet. The orders of L&DO(MoUD) dated 29.05.2013(Anncxure B) giving thereby 3 options for adopting the land rates for calculating the conversion fees/charges for the Hotel/Cinema Sites could not be implemented by DDA due to ambiguity as is evident from various correspondence made between and DDA and MoHUA. (Copy of letter dated 16.11.2017 of MoUD is attached as Annexure C and Copy of letter dated 03.10.2018 issued by Director/CL is attached as Annexure D). As per letter dated 03.10.2018, it is quite clear that clarification has

[4] First Information Report

been sought from MoHUA about the charging of highest land premium out of given three options is yet to be received from MoHUA. Online conversion application ID no. LD08562OSB/CON/30032021 with processing fee of Rs. 200/- has been applied by:-

(i) Sh. Sanjay Kaushish S/o Sh. D C Kaushish
(ii)Smt. Jaya Dhawan D/o Sh. Ajaya Kaushish
(iii) Smt. Amita Kaushish D/o Sh. D C Kaushish
(iv) Sh. Uday Kaushish S/o Sh. D C Kaushish

6. That if conversion rates of cinema plots is decided, DDA can only consider a request where property is free from any title dispute and all legal encumbrances. In view of above submission, the writ petition is liable to be dismissed."

W.P. (C) 1602/2023

7. While the aforesaid issue is about the quantum of conversion rates that would be applicable in respect of the subject property, it appears that an application dated 01.03.2021 was moved by the petitioner before the respondent no.1/DDA, seeking renewal of the lease as well as application for conversion of the subject property from leasehold to freehold, which led to passing of the impugned order dated 29.12.2022 bearing Reference No. S/1(51)2014/ OSB/938 by the respondent No.1/DDA, aggrieved of which, the present writ petition was filed. Suffice to state that the background of the instant writ petition is *ditto* as in the previous writ petition No. 9983/2020 and the following relief is claimed:

"Issue a Writ, Order or direction in the nature of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the same quash the Order dated 29.12.2022 being Reference No.S/1(51)2014/OSB/938 rejecting the renewal of the Lease Deed dated 17.09.1931 with regard to Commercial Plot of Land bearing Municipal No.28360 admeasuring 5444 Square Yards situated at Desh Bandhu Gupta Road, Paharganj, Delhi-1100055, formerly known as "Arakashan Pahar Ganj Delhi.""

8. Again the same set of parties are involved and the main contest is by the respondent No.1/DDA, which in its counter-affidavit dated 13.12.2023 filed through Mr. Dishant Chaudhary, Deputy Director (OSB), DDA, Vikas Sadan, New Delhi has come out with the defence that the application dated 01.03.2021 preferred by the petitioner for renewal of the lease in terms of Clause (9) of the lease deed dated 17.09.1931 has been considered and the same has been rejected since the term of lease has expired and it is the duty of the lessee, as represented by the legal heirs, to handover the possession of the subject property to the DDA as they have become 'unauthorized occupants' in the same. It is stated that the DDA is a statutory body and cannot act beyond the mandate of Delhi Development Act, 1957 (*hereinafter referred to as '**DDA Act**')* and has to deal with the subject property as per DDA (Disposal of Developed Nazul Land) Rules, 1981 *(hereinafter referred to as '**Nazul Rules**').* It is stated that on expiry of the lease deed, the leased property can only be auctioned or be leased out after inviting tenders in terms of Proviso to Rule 42(4) of the aforesaid Nazul Rules. It would be pertinent to reproduce certain relevant defenses which have been raised by the respondent No.1/DDA in the counter-affidavit, which are as under:-

> "**XIII**. The petitioner has no privity of contract with DDA and DDA is under no legal obligation, either statutory or contractual, to execute conveyance deed in favour of the petitioner, or to renew the period of lease.
> **XIV**. Even if it is assumed (without admitting), though not suggested by a plain reading of the lease and its clause (8), that the lease makes it mandatory for DDA to renew it for any period beyond the prescribed 90 years, then too, the said action will have to conform to the extant rules. A covenant executed by any public authority is invalid and unenforceable to the extent to which it is in

conflict with the rules (Refer to Section 23 of the Indian Contract Act). It is the statute which is to prevail over terms of the contract. The contention raised by the petitioner in paragraph 33 of the petition are incorrect and are specifically denied, as alleged. There was no such understanding as alleged. It is specifically denied that the renewal of the Lease deed was a mere formality, as alleged.

XV. When land is allotted to a person on leasehold basis for a fixed tenure, he does not assume the character of an owner. As a lessee, he is under an obligation to give back the land on the expiry of tenure fixed in the lease. In the present case, the lease was for a fixed tenure of90 years. The lease deed dated 17.09.1931 clearly provides that the lease shall be *"for the term of 90 years commencing from 1st day of April, 1931* ". It was not a perpetual lease. The said period of lease has already expired. The contention of the petitioner that the Lease was (beyond the stated 90 year period) further renewable for another period of 70 years is entirely against the record/Lease Deed and is nothing but an incorrect and illegal interpretation to suit the petitioner. In terms of clause 8 of the lease deed, it was obligatory on the lessee to hand over vacant possession of the land to DDA. That has not been done. Even if clause 8 had not existed in the lease deed, by expiry of the term of lease and by operation of Section 111(a) of Transfer of Property Act, 1882 the lessee is liable to hand over possession of the land. On failure of the lessee to do so, DDA is bound to invoke its power under the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 to recover possession."

9. There is no necessity for this Court to delve into the rejoinders which have been filed on behalf of the petitioner to the aforesaid counter affidavit filed by the respondent No.1/DDA in the aforesaid writ petition, as they are a reiteration of certain facts and harp upon certain case law which would be discussed later on in this judgment.

LEGAL SUBMISSIONS ADVANCED ON BEHALF OF THE PARTIES:

ON BEHALF OF PETITIONER:

10. The main plank of the submissions advanced by Mr. Ravi Gupta, learned Senior Counsel for the petitioner is that although the

lease deed dated 17.09.1931 as ratified by the DIT *vide* communication dated 27.05.1955 was given the nomenclature of a 'lease', it was out-rightly a transaction in the nature of 'purchase of the property' on the payment of a premium of Rs. 18,242/- based on the then prevalent market value of the property, and alluding to Clause (9) of the lease deed, it was urged that not only the fact that the agreement provided for an initial period of 90 years of lease, but it also provided further renewal for a period of 70 years *viz.*, first renewal after 20 years, a second renewal after 20 years, and a third renewal after 30 years.

11. It was pointed out that the aforesaid Clause (9) of the lease deed dated 17.09.1931 came to be interpreted by the Division Bench of this Court *vide* judgment dated 26.05.1971 as also by the Supreme Court in the Civil Appeal No. 298/1972 *vide* judgment dated 28.08.1973, putting it beyond any shadow of doubt that in the initial lease period of 90 years, the DIT or for that matter its successor-in-interest i.e. the respondent No.1/DDA had no right to seek enhancement of ground rent so much so that even after the expiry of 90 years *vide* Clause (10) of the lease deed, it was provided that the ground rent would be increased to only 100% for the second renewal of 20 years and beyond that, subject to negotiations between the parties. It was emphasized that the aforesaid decisions by the Division Bench of this Court as well as by the Supreme Court have clearly laid down that after the expiry of the initial lease period of 90 years, the lease mandates a further renewal of 70 years.

12. Mr. Gupta, learned Senior Counsel for the petitioner pointed out that at the time prior to filing of the W.P. (C) No. 9983/2020 as also subsequently therein during its pendency, the issue of conversion remained stalled on account of there being no unanimity between the respondent No.1/DDA and respondent No.3/Union of India, as regards the applicable conversion rates, and there was a complete somersault by the respondent No.1/DDA by rejecting the petitioner's application for extension of lease *vide* impugned order dated 29.12.2022 that is being assailed in the second W.P. (C) 1602/2023. It was urged that until the passing of the impugned order, there was no challenge to the legal rights of the petitioner and other legal heirs as to their leasehold rights in the subject property for the initial period of 90 years plus further renewal for the next 70 years.

13. Learned Senior Counsel for the petitioner took this Court through the provisions of Section 22 and 60 of the DDA Act besides Rule 42(4) read with Rule 2(i) of the Nazul Rules and it was vehemently urged that the entire defence of the respondent No.1/DDA that the subject property is a '*nazul* land', cannot be accepted since the *Nazul* Rules came into force w.e.f. 26.09.1981 and the lease deed was executed prior to the coming into force of the DDA Act, and thus, the respondent No.1/DDA is bound by the contract entered into by its predecessor by virtue of Section 60(2)(c) of the DDA Act. In his submissions, Mr. Gupta, learned Senior Counsel for the petitioner relied on decision in the case of **Gwalior Development Authority v.**

Bhanu Pratap Singh[5] to buttress the point that once the lease deed had been executed, the same cannot be altered even under writ jurisdiction. Reference was made to the decision in **Rajesh Khanna v. DDA**[6] to canvas the point that *Nazul* Rules would only apply if the lease was executed after the Rules came into force. Reliance was also placed on the decision in **K.K. Birla Academy v. DDA**[7] wherein it was held that the DDA cannot review the allotment once the premium has been paid by the allottee as the same creates an indefeasible right in favour of the allottee. Reliance was also made to the decision in **Ispat Industries Ltd. v. Commissioner of Customs, Mumbai**[8], in which it was held that in case of a conflict between the provisions of Act and Rules framed thereunder, the former will prevail. Further reference was invited to the decisions in **Addl. District Magistrate (Revenue) Delhi Administration v. Siri Ram**[9]; **Gen Officer Commanding-in-chief v. Dr. Subhash Chandra Yadav**[10] and it was urged that the Rules framed under the Act cannot travel beyond the scope of the enabling provisions. It was urged that the DDA Act would only be applicable where the *Nazul* lands are placed at the disposal of the DDA in terms of Section 22 of the DDA Act for which reliance was placed on the decision in **Madhvi Jain v. Govt. of NCT of Delhi**[11]. Lastly, it was vehemently urged that once the jurisdiction is accepted by a party, it cannot later on turn around and challenge the

[5] 2023 SCC OnLine SC 450
[6] 2013 SCC OnLine Del 2024
[7] 2004(78) DRJ 520
[8] (2006) 12 SCC 583
[9] (2000) 5 SCC 451
[10] (1998) 2 SCC 351

same, for which reliance was placed on the decision in **Mamleshwar Prasad v. Kanahaiya Lal**[12].

ON BEHALF OF RESPONDENT NO.1/DDA

14. Mr. Sanjay Katyal, learned Standing Counsel for the respondent No.1/DDA urged that Section 6 of the DDA Act is the fountainhead of the said Act and the Rules framed therein, besides that the DDA is the custodian of the public land, holding and disposing the same by following the doctrine of 'public trust'. Taking this Court through the provisions of Section 60 (d), (e) and (f) of the DDA Act, it was urged that whatever was vested with the DIT has been vested in the DDA and the fact remains that in terms of the lease deed dated 17.09.1931, it is the DDA alone which would now, if at all, decide the issue of conversion from leasehold to freehold and/or for that matter, renewal of the lease, for the simple reason that the subject property is now part and parcel of the '*nazul* land' that has been placed at its disposal impliedly. It was vehemently urged that the petitioner has become an 'unauthorized occupant' upon expiry of the period of lease and in terms of Proviso to Rule 42(4) of the *Nazul* Rules, the only option available to the DDA is to auction the property or invite tenders for disposal, or lease or allotment thereof.

15. Mr. Katyal, learned Standing Counsel for the respondent No.1/DDA urged that in the cited case of ***DDA v. D.C. Kaushish (supra)***, the only issue that was considered by the Supreme Court was with regard to the right of the DDA to seek enhancement of rent i.e.,

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[11] 2009 (3) ILR (Del) 58
[12] 1975 AIR (SC) 907

ground rent, during subsistence of the lease deed. It was urged that there was neither any case nor any plea by the petitioner or finding given by the Supreme Court that the lease shall have to be mandatorily renewed after the expiry of the initial lease period of 90 years. Much was urged that Clause (9) of the lease deed is not happily worded and in any case, it clearly provides that whenever the issue of extension or renewal of the lease would arise, it would be the sole discretion or prerogative of the respondent No.1/DDA to extend the period of lease. It was also pointed out that the petitioner and the other legal heirs, during the subsistence of the lease, also sought to sell the subject property in complete violation of the lease deed, therefore, they are not entitled to any relief since there is apparently a commercial motive behind the reliefs sought..

16. Mr. Katyal also referred to the decision of this Court in LPA[13] No. 497/2023 dated 06.10.2023 in the case of **Roshanara Club v. Delhi Development Authority** and the directions of the Supreme Court in this regard dated 19.10.2023 and it was urged that facts in the case of Roshanara Club are almost identical and the possession of the property has already been taken over by the DDA.

17. In rebuttal, Mr. Ravi Gupta, learned Senior Counsel for the petitioner referred to the decision by the DDA whereby conversion of lease had been allowed in the matter of Delite Cinema as also Milan Cinema way back on 20.11.2015 and it is vehemently urged that the petitioner and other legal heirs have been singled out for a different kind of treatment. Acknowledging that the petitioner/legal heirs had

indeed negotiated for sale, it was urged that such disposition is not prohibited as such and could have been allowed *vide* Clause (12) of the lease deed but in any case, no such sale has been effected.

ANALYSIS & DECISION:

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

19. First things first, it is an admitted fact that the subject property was transferred to the predecessor-in-interest of the petitioner in terms of lease deed dated 17.09.1931, which was registered on 21.01.1932 providing leasehold rights in the subject property for a period of 90 years commencing from 01.04.1931. The recitals of the lease deed would show that subject property was demised on payment of 'premium' of Rs. 18,242/- (Rupees Eighteen Thousand Two Hundred and Forty Two Only) and it would be relevant to reproduce the relevant clauses/recitals of the lease, which read as under-

> "**8.** The Lessee will, on expiration or sooner determination of the said term, peaceably yield up the said demised land with any building standing thereon unto the Lessor provided that the lessor may, at the expiry or sooner determination of the lease, take over the said building at a valuation he so desires, otherwise the Lessee has the right to remove the same at this own cost. Provided further that if during the period of the lease the said premises are required for public purpose, compensation shall be payable to the Lessee only for the building standing on the land at the time and the decision of the Deputy Commissioner of Delhi, as to the amount of such compensation, shall be final and conclusive against the lessee.
>
> **9.** The Lessor will at the request and cost of the Lessee at the end of the term hereby granted and soon from time to time thereafter at the end of each such successive further term of years as shall be granted, execute to the Lessee a new lease of the

[13] Letters Patent Appeal

premises hereby demised by way of renewal for a further terms as follows :-

a) At the first renewal ..... Twenty years
b) At the second renewal ..... Twenty years
c) At the third renewal .....Thirty years

Provided always that each such renewed term of year as shall be granted shall not with the original term of years and any previous renewals exceed in the aggregate the period of ninety years.

10. The rent of the said prem1ses hereby demised is hereby expressly made subject to enhancement on the granting of each renewed lease but the enhancement on the first renewal shall not exceed one hundred per cent of original rent and the enhancement on the second renewal shall not exceed one hundred percent of that reserved at the first renewal. Leases renewed for the third period provided for in the last preceding clause may be granted at the then prevailing market rate of rents for building land in the vicinity.

11. Save as to the amount to be thereby reserved and as to the term to be thereby granted every renewed lease of the said premises hereby demised shall contain such of the covenants, provisos and conditions m these presents contained as shall be applicable."

20. It is then brought on the record that a sum of Rs. 10,888/- (Rupees Ten Thousand Eight Hundred and Eighty Eight Only) was further paid by the lessee/predecessor-in-interest of the petitioner to the DIT under an agreement executed by and on behalf of the President of India and DIT, who are described as the lessors, which was titled as 'Lease Agreement' but in fact intended payment for the development and betterment charges of the building according to the plan sanctioned by the DIT. However, it is also pertinent to mention that the aforesaid agreement dated 27.05.1955 recites the history of lease from 1931 and *vide* paragraph (6) it goes to provide as under:

"Inspite of this agreement, the parties hereto shall have the same rights at hereto before under the aforesaid lease, dated September 17, 1931"

21. Although, there is some merit in the plea taken by Mr. Katyal, learned Standing Counsel for the respondent No.1/DDA that the aforesaid clauses were interpreted by the Division Bench of this Court *vide* judgment dated 26.05.1971 and later by the Supreme Court in Civil Appeal No. 298/1972 *vide* judgment dated 28.08.1973 qua issue of enhancement of ground rent, however, there is more to the story that needs to be appreciated. It appears that the genesis of the suit filed by the lessee/predecessor-in-interest of the petitioner was a challenge by the lessee/predecessor-in-interest against the recovery of Rs. 4657.75 Paisa effected from him as arrears of rent on 03.06.1964 by respondent no.1/DDA through Collector, which was paid under protest. The said levy was made by the respondent no.1/DDA on the assumption that at the end of 20 years commencing from 1st April, 1931, the rent became enhanced by 100%.

22. It would not be out of place to mention that the initial lease deed dated 17.09.1931 stipulated that yearly rate of rent would be Rs. 365/- payable in two equal instalments half yearly. It would be expedient to reproduce the discussions and observations of the Hon'ble Judges of the Division Bench of this Court while interpreting the aforesaid clause, that go as under:

> "The opening paragraph clearly connotes two things: (1) the lease was for a term of 90 years, commencing from the 1st day of April 1931; (2) during the said term, i.e., until 1st April 2021, the yearly rent was Rs. 365/ only, clear of all deductions, which was to be paid in equal half-yearly instalments, on the first day of January and first day of July at Rs. 182/8/- each at the Nazul Office of the Deputy Commissioner, Delhi. The first of such payments was to be paid on the first day of July next.

The exceptions, reservations and conditions, referred to in the opening paragraph are to be gathered from clauses 1 to 16 of the lease deed. The first clause provides that the premium of Rs. 18, 252/ would be paid by the plaintiff in instalments; according to the second clause the lease shall become determined ipso facto on breach of the said condition in clause I, the sixth clause provides that the arrears of rent and other payments due in respect of the demised premises would be recoverable in the same manner as arrears of land revenue.

In the view of the learned single Judge though the ninth clause was not happily worded the proviso to the said clause made it clear that renewals were to be made within, but not after, the period of 90 years from 1st April 1931. The learned Judge felt that this view would give effect to all the clauses of the lease deed, whereas if the construction sought to be placed on it by the plaintiff is to be adopted it would render the proviso to the ninth clause nugatory.

The principles of construction of documents are well known. The intention of the parties has to be gathered by reading the document as a whole and by giving effect to all the words used therein. The surrounding circumstances can also be taken into account to understand the document. In a document *inter vivos* if there is any conflict between the earlier and later clauses and it is not possible to give effect to all of them then the earlier clause will over-ride the later but not vice versa (*vide Radha Sundar Datta v. Mohd. Jahadur Rahim AIR 1959 SC 24)(*) and Gowramma v. Yella Reddy Changa Reddy and others-AIR 1965 AP.226)(P).*

The learned single Judge construed the later clauses in such a manner as to interpret paragraph 1 of the lease deed in the manner contended for by the second defendant. We respectfully differ because our reading of paragraph 1 of the lease deed does not warrant the interpretation placed upon it by the second defendant. On the other hand, it seems to us that the interpretation placed upon the lease deed by the second defendant would render the provisions of paragraph 1 of the lease deed both with reference to the term as well as rent nugatory. It also seems to us that the interpretation placed upon the said lease deed by the plaintiff has the merit of harmoniously interpreting all the clauses in the lease deed without rendering any particular clause, particularly the proviso to clause 9, nugatory.

When a lease is executed for a fixed term (in this case 90 years) it cannot include (within it) a period to be extended by way of the lessee exercising an option to renew the said lease. The term of 90 years, therefore, was a term which had been agreed upon between the lessor and the lessee independently of any option on

the part of the lessee to renew; in other words, the term of the lease was fixed-for 90 years from 1st April 1931. Not only was the term thus fixed to cover a period of 90 years, even the rent to be paid by the lessee for the entire period of 90 years was fixed at Rs. 365/- per year. It would not be permissible to curtail by a process of interpreting any later clause in the said deed the term of the lease, which had been thus fixed as 90 years from 1st April 1931 or enhance the rent, which had been fixed at the said figure for the entire period of 90 years.

The next question for consideration is whether on a construction of clauses 9 and 10 of the lease deed a meaning conflicting with what is thus apparent from the opening clause of the lease deed can be spelt out. Clause 9 of the lease deed provides for the period after the expiry of its term of 90 years and this is made clear by the words "at the end of the term hereby granted". On the expiry of the aforesaid term of 90 years several options are open to the lessee. He may ask for renewal of the lease only for 20 years in which case "a new lease by way of renewal" for a term of 20 years without any option for further renewals shall be granted. Or he may ask for renewal of the lease for 20 years with an option to re- quest for further renewals in which case "a new lease-by way of renewal" far a term of 20 years with such option shall be granted and further new leases will be granted as and when the period of the new lease or leases by way of renewal expires.

The other option of the lessee is that he may, on the expiry of the term of 90 years, request for the grant of a new lease, not being a new lease by way of renewal, for a further term of years "succeeding the term of 90 years". It the re- quest is granted, the new lease for the renewed term will not be a "new lease-by way of renewal" but a new lease for a renewed term. On the expiry of the "renewed term" of the new lease. a similar new lease for another renewed term may be granted and so on. These new leases will give to the lessee a right to obtain new leases by way of renewal for the three period of 20 years; 20 years and 30 years. It is when such new leases for renewed terms, which are not specified in clause 9 are granted that the proviso comes into play. It provides that the aggregate period of such new leases for renewed terms which are not by way of renewal and the aggregate term of the leases by way of renewals shall not exceed ninety years.

On this interpretation, every word and expression in Clause 9 is given effect and meaning. In short, clause 9 means that a lessee can remain a lessee for a maximum period of 160 years comprising the first period of ninety years and the period of 70 years for the three renewals if new leases for renewed terms after the expiry of the first 90 years are not granted. But

if such new leases for renewed terms are granted, he can remain a lessee for a maximum period of 180 years including the period of the three renewals.

On the interpretation advanced by the second defendant the words "and soon from time to time thereafter at the end of each such successive further term of years as shall be granted " in clause 9 are not given any meaning at all and would be redundant.

The same conclusion could be reached by another process of reasoning also. The entire difficulty is caused by reading "with" in the proviso as meaning "in addition". Among the meanings of the expression "with", stated in the Webster's Third New International Dictionary Volume III, Page 2626, is "along side of". Understood in that sense the proviso would only mean that each such renewed term of years of the new lease as shall be granted shall not, along side the original term of years and any previous renewals exceed in the aggregate the period of ninety years. If the proviso is understood in this manner no violence would be done to the opening paragraph of the lease fixing the term at 90 years.

After the opening paragraph set out both the term of the lease as well as the rent payable during the said term, clauses 1 to 16 were incorporated as the exceptions, reservations, conditions and convenants subject to which the lease deed has been executed. Clause 4 of the lease deed has specifically referred to the lessee having agreed "during the term hereby granted" to pay to the lessor the yearly rent reserved "on the days and in the manner hereinbefore appointed" those days were the first day of January and first day of July--the amount was Rs. 182.50 paise for each of those two instalments and the manner was to pay the said instalments to the Nazul Officer of the Deputy Commissioner, Delhi, or such officer as may from time to time be appointed by the local Government in this be- half. It is important to bear in mind that clause 4 of the said lease deed referred to the payment of rent reserved on the days and in the manner "hereinbefore appointed".

We are fortified in reading the lease deed (Ex. P.3) in the above manner for the following additional reasons:-

(1) There was no request by the lessee for renewal of the lease at the end of 20 years from 1st April 1931; nor did the lessor call upon the lessee to exercise the option of renewals at the end of 20 years from 1st April 1931 and to execute a new lease.

(2) Under the Agreement (Exhibit P.4), executed on 27th May 1955, between the plaintiff and the Trust, the predecessor-in-interest of the second defendant, the original annual rent of Rs. 365/- was maintained even though the plaintiff had been required to agree to develop

> the property on the lines required by the second defendant and a betterment levy was also charged from him. This would not have been the case if the lease deed required a renewal at the end of 20 years from 1st April 1931 and enhanced rent was payable on the expiry of 20 years from the said date.
>
> It is also worth noticing that if the second defendant's construction were to be adopted the defendant could not claim any enhancement of rent without the execution of a fresh lease at the end of 20 years from 1st April 1931 (i.e. on 1st April 1951). In other words, if renewal of the lease was necessary the plaintiff, admittedly not having executed a fresh lease by exercising his option to renew, would in law be only a tenant at will who was holding over at the expiry of the term and the original annual rent of Rs. 365/- alone could be demanded from him. In no view of the matter, therefore, could the second defendant make any claim for any enhanced rent."

23. The aforesaid decision was challenged in Civil Appeal No. 298/1972 before the Supreme Court and the appeal was dismissed. It would be expedient to reproduce the relevant observations made by the Hon'ble Judges of the Supreme Court with regard to the interpretation of the relevant clauses/recitals in the lease deed dated 17.09.1931 particularly clause (9) of the said deed, besides subsequent agreement with the DIT dated 27.05.1955, which go as under:

> **"26.** If the ambiguity created by the words used in the proviso to the 9th covenant can be resolved, assuming that two interpretations of it are reasonably possible, as it seems possible, **the principle to apply would be that the interpretations favouring the grantee as against the grantor should be accepted.** This was also one of the grounds for the decision of this Court in *Kamgar Shah case.*
> **27.** Learned counsel for the appellant, however, contends that this principle itself is out of date and inapplicable in this country today. He submitted, at the same time, that the deed must be construed in favour of the appellant, representing the grantor, **on grounds of public interest. No authority is cited to substantiate such a proposition.** But, learned counsel relied, for this submission, on the British rule regulating grants by the Sovereign: a grant should

be construed in favour of the Sovereign and against the subject when it is susceptible of two meanings.

28. We think that the argument that the rule that a grant capable of two interpretations, should be construed in favour of the grantee, is obsolete and that we should employ some test of public interest amounts to a plea that we should depart from established cannons of construction of deeds containing grants on grounds of public policy which has been described as an "unruly horse". **It is more appropriate to address arguments based on public interest and public policy to a Legislature where such policies are given legal expression. Our task, as we conceive it in the present case, is merely to construe an agreement embodied in a lease, in which the lessor is the grantor,** according to ordinary well recognised rules of construction one of which is found stated in *Smt Bina Das Gupta case*.

29. We may also cite here *Raja Rajendra Chand* v. *Mst Sukhi* [AIR 1957 SC 286, 292 : 1956 SCR 889 : 1957 SCJ 119] where it was pointed out that the English rule that a grant should be construed most favourably to the Sovereign was subject to the exception that, in cases of grants made for valuable consideration, as is the position in the lease before us, the Sovereign's honour must take precedence over the Sovereign's profit. This Court said (at p. 292) there:

> "It is, we think, well settled that the ordinary rule applicable to grants made by a subject does not apply to grants made by the Sovereign authority; and grants made by the Sovereign are to be construed most favourably for the Sovereign. This general rule, however, is capable of important relaxations in favour of the subject. It is necessary to refer here to such only of those relaxations as have a bearing on the construction of the document before us; thus, if the intention is obvious, a fair and liberal interpretation must be given to the grant to enable it to take effect; and the operative part, if plainly expressed, may take effect notwithstanding qualifications in the recitals. In cases where the grant is for valuable consideration, it is construed in favour of the grantee, for the honour of the Sovereign; and where two constructions are possible, one valid and the other void, that which is valid ought to be preferred, for the honour of the Sovereign ought to be more regarded than the Sovereign's profit (see para 670 at p. 315, of *Halsbury's Laws of England*, Vol. VII, Section 12, Simonds Edition)."

30. We doubt whether a lease granted by the Secretary of State for India even before 1950 could be interpreted today by

relying upon any special rule of construction applicable to leases by or on behalf of the British Sovereign. Indian citizens are now governed by the Indian Constitution on matters relating to the Sovereignty. It may be that a rule or construction traceable to the prerogatives of the Sovereign, in the feudal age, is no longer applicable in a Democratic Republican State, set up by our Constitution, when dealing with its citizens. There appears to be no just and equitable ground why the State as the lessor grantor, with all its resources and experienced draftsman and legal advisers and enjoying a practically invincible bargaining position as against a citizen lessee grantee, should enjoy the benefit of some nebulous and unjust rule of construction so as to enable Courts to rewrite its defectively drafted deeds in its favour. We think that it is not the ordinary rule of construction, applicable to grants capable of two constructions, which could be obsolete in this country today, but, it is the reversal of that rule in the case of the grant by the Sovereign — a feudal relic — which could more aptly be said to be inapplicable here today. And, as we have already pointed out, even that feudal relic was subject to the exception that it could not stand in the way of even handed justice where Sovereign had received valuable consideration. The lease before us was for valuable consideration.

31. It may be mentioned here that not only was consideration in the form of premium of Rs 18,154 received at the time of grant of the lease, but a further sum of Rs 10,888 was paid by the lessee to the Delhi Improvement Trust under an agreement to which both President of India and the Improvement Trust were parties as lessors. As already mentioned earlier, this agreement (Ex. P-4), headed as "lease agreement", was, in fact, intended for the payment of development and betterment charges for building according to a plan sanctioned by the Improvement Trust. But, the document gives the history of the lease from 1931, and, in para 6 of the agreement, goes on to provide:

> "In spite of this agreement, the parties hereto shall have the same rights at heretofore under the aforesaid lease, dated September 17, 1931."

32. The plaintiff respondent had, in para 4 of the plaint, laid the factual foundation for a plea of estoppel also against the defendants who had accepted consideration and an yearly rent at Rs 365 per annum without enhancement until after Exhibit P-4 was executed in 1955. No mention of any liability to pay enhanced rent is found in the deed of 1955. It was only in June 1962, that somebody in the

> appellants office seems to have suddenly thought of taking advantage of the ambiguous proviso on behalf of defendant-appellant so that an enhancement of annual rent from Rs 365 to Rs 730 with retrospective effect from April 1, 1951 was demanded. This amount was paid by the respondent under protest and after warrant of arrest had been issued against him. As the plaintiff had not relied upon an estoppel even though facts, which may give rise to it, were stated, that question need not be considered by us here."
>
> **[BOLD EMPHASIS SUPPLIED]**

24. In view of the aforesaid decision by the Division Bench of this Court as upheld by the Supreme Court, the factual and legal position that emerges is as under:

> "(i) that the transfer/demise in the subject property was initially for a period 90 years w.e.f. 01.04.1931 in terms of lease deed dated 17.09.1931;
> (ii) premium of Rs. 18242/- ***plus*** Rs. 10,888/- was paid and the annual rent for the entire length and breadth of the initial period of lease, unless and until determined for violation of any clauses of the deed such as non-payment of rent or any other contravention in law, was reserved for Rs. 365/-;
> (iii) In other words, it was categorically held that the DDA had no right under the contract to demand/collect premium or rent beyond what was provided by way of deed dated 17.09.1931
> (iv) The lease deed envisaged that after expiry of period of 90 years, lease may be extended in three trenches i.e., first renewal for 20 years, second renewal for 20 years and third renewal for 30 years."

25. All said and done, evidently the lease has expired on 16.09.2021 and before we advert to the issue as to whether or not the relief as to conversion of leasehold to freehold can be considered in law, the moot question is: **whether in terms of the lease deed dated 17.09.1931, the lease is mandated to be renewed or extended for a further period of 20 years by way of first renewal ?** The plea by Mr. Katyal, learned Standing Counsel for the respondent No.1/DDA that the lease could only be extended in terms of the statutory

provisions, needs deeper examination. It would be relevant to reproduce Section 6 of the DDA Act, which lays down the objective of the authority as under:-

> "**6. Objects of the Authority**.—The objects of the Authority shall be to promote and secure the development of Delhi according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:
> Provided that save as provided in this Act, nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force."

26. It would also be pertinent to refer to Sections 22 and 60 of the DDA Act, which provides as under:

> **"22. Nazul lands.**—(1) The Central Government may, by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as "nazul lands") for the purpose of development in accordance with the provisions of this Act.
>
> (2) No development of any nazul land shall be undertaken or carried out except by, or under the control and supervision of, the Authority after such land has been placed at the disposal of the Authority under sub-section (1).
>
> (3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.
>
> (4) If any nazul land placed at the disposal of the Authority under sub-section (1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that Government upon such

terms and conditions as may be agreed upon between that Government and the Authority.

x x x x x x x

60. Repeal, etc., and savings.—(1) As from the date of constitution of the Authority,—

(a) the United Provinces Town Improvement Act, 1919 (U.P. Act VIII of 1919), shall cease to have effect in the 1 [National capital territory of Delhi]; and

(b) the Delhi (Control of Building Operations) Act, 1955 (53 of 1955), shall stand repealed.

(2) Notwithstanding the provisions of sub-section (1)—

(a) every officer and other employee serving under the Delhi Improvement Trust or the Delhi Development (Provisional) Authority immediately before the date of the constitution of the Authority shall, on and from such date, be transferred to and become an officer or other employee of the Authority with such designations as the Authority may determine and shall hold office by the same tenure, at the same remuneration and on the same terms and conditions of service as he would have held the same if the Authority had not been constituted, and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Authority: Provided that any service rendered by any such officer or other employee before the constitution of the Authority shall be deemed to be service rendered under it: Provided further that the Authority may employ any such officer or other employee in the discharge of such functions under this Act as it may think proper and every such officer or other employee shall discharge those functions accordingly;

(b) anything done or any action taken (including any appointment, delegation, notification, order, scheme, permission, rule, bye-law, regulation or form made, granted or issued) under any of the aforesaid Acts, shall, so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been done or taken under the provisions of this Act unless and until it is superseded by anything done or any action taken under the said provisions;

(c) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Delhi Improvement Trust or the Delhi Development (Provisional) Authority shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Authority;

> **(d)** all properties movable and immovable vested in the Delhi Improvement Trust or the Delhi Development (Provisional) Authority shall vest in the Authority;
> **(e)** all rents, fees and other sums of money due to the Delhi Improvement Trust or the Delhi Development (Provisional) Authority shall be deemed to be due to the Authority;
> **(f)** all suits, prosecutions and other legal proceedings instituted or which might have been instituted by, for or against the Delhi Improvement Trust or the Delhi Development (Provisional) Authority may be continued or instituted by, for or against the Authority."

27. At this stage, it would also be relevant to refer to Rules 2(i) and 42(4) of the Nazul Rules, which provide as under:

> "**2(i)** "Nazul land" means the land placed at the disposal of the Authority **and** developed by or under the control and supervision of the Authority under Section 22 of the Act.
>
> x x x x x x x
>
> **42(4)** The rate of the ground rent in all cases shall be subject to enhancement after period of thirty years from the date of allotment. Provided that notwithstanding anything contained in this rule, the Authority may allot Nazul land on free hold basis either through auction or by tender of residential purpose or commercial purpose:
>
> Provided further that in the case of allotment on free hold basis, the allotee shall execute a conveyance deed in Form BA."

28. Indeed, by virtue of section 6 of the DDA Act, certain objectives are spelled out for the Authority i.e., the respondent No.1/DDA inasmuch as it has to promote and secure the development of Delhi according to plan and for that purpose, it has the power to acquire, hold, manage and dispose of land. However, it is rightly canvassed by the learned Senior Counsel for the petitioner that the subject property in question has not been declared as '*Nazul* Land' since no notification has been issued by the Central Government under Section 22 of the DDA Act, thereby placing the subject property or vesting the same in the respondent No.1/DDA. There is force in the

submissions of Mr. Ravi Gupta, learned Senior Counsel for the petitioner that the '*Nazul* Rules' came into force w.e.f. 26.09.1981 and that being the case, the subject property would not become '*Nazul* Land' for the elementary reason that the lease deed had been executed prior in time i.e., on 17.09.1931.

29. For the sake of convenience, it can be said that in case there is a first, second and third renewal, or for that matter there is no second or third renewal, it is only in such a case that the respondent No.1/DDA would be within its rights to re-claim the property in terms of the aforesaid provisions. Be that as it may, it is pertinent to mention that the Supreme Court in its Judgment in Civil Appeal No. 298/1972 dated 28.08.1973 has categorically provided that the task of the Court in the present case was merely to construe an agreement embodied in the lease, in which the lessor is the grantor, and according to ordinarily well-recognized rules of construction, the terms of the lease have to be given precedence.

30. Incidentally, in the case of **Smt. Beena Das Gupta v. Sachindra Mohan Das Gupta**[14], the ratio of which was quoted with approval by the Supreme Court in the aforementioned civil appeal,

> "It is a settled rule of construction that where there is a grant and an exception out of it, the exception is to be taken as inserted for the benefit of the grantor and to be construed in favour of the grantee. If then the grant be clear, but the exception be so framed as to be bad for uncertainty, it appears to us that on this principle the grant is operative and the exception fails."

[14] AIR 1968 SC 39

31. The inevitable conclusion of the aforesaid discussion is that this Court is merely interpreting the terms of contract, which is lease deed dated 17.09.1931 executed between the two warring parties, and that being the process of judicial review in the present case, Section 60(2)(c) of the DDA Act clearly provides that all debts, obligations and liabilities incurred and all contracts entered into and all matters engaged to be done by the DIT shall be deemed to have been incurred, entered into or engaged to be done with or for the DDA.

32. To sum up, the aforesaid discussion although the subject property is vested in the respondent No.1/DDA by virtue of section 60(d), it does not become 'Nazul Land' and the respondent No.1/DDA is bound by the lease deed dated 17.09.1931 executed between the lessor and lessee, and thus the respondent No.1/DDA is subject to all such obligations in the aforesaid contract that were entered into and agreed upon by the erstwhile authority. There is no gainsaying that there is no provision in the DDA Act and for that matter in the *Nazul* Rules to the effect that any agreement/contract executed in respect of any perpetual lease or for that matter, a fixed tenure lease with renewal clauses, shall stand nullified or shall be superseded by any of the provisions of the DDA Act. The issue before us is not whether the subject property is '*Nazul* Land', rather it is purely in the realm of law governing contractual relationship between two private parties, who should remain bound by their respective obligations arising from such contract.

33. At this juncture, it needs to indicated that the Land & Development Officer, MOUD wrote letter dated 29.05.2013(Annexure

P-11) addressed *inter alia* to the Vice-Chairman DDA that there was a mechanism in vogue for conversion of hotels and cinema sites from leasehold to freehold as per the Conversion Policy of 2003 and the letter inviting attention to certain parameters for the conversions including the rates. However, it appears that at some stage thereafter there was some re-thinking on the part of authorities concerned to revise the rates that led to the present imbroglio. Further, it would not be out of place to indicate that it goes without saying that prior to filing of the first writ petition bearing W.P. (C) 9983/2020 and even during the pendency of the proceedings, there was never any denial of the right of the petitioner to get the subject property converted into freehold and the stand of the respondent No.1/DDA was that the issue of conversion rates/charges was pending consideration with the Ministry of Housing and Urban Development.

34. It was recorded on **21.01.2021 in WP(C) 9983/2020 that learned Additional Standing Counsel appearing for the respondent no.1/DDA made a statement that the directions of the Supreme Court with regard to extension of the lease shall be complied with. Interestingly, in the counter affidavit dated 01.09.2021 filed by the Respondent no.1/DDA in W.P.(C) 9983/2020, no objection or submission with respect to expiry of the lease was raised, on the other hand the Respondent no.1/DDA only responded to state that the prayer for conversion of the plot cannot be processed due to non-determination of the rate of conversion charges for the commercial plot by the concerned Ministry. Further, in a subsequent order dated 27.04.2022 passed**

by this Court, Ms. Aishwarya Bhati learned ASG appearing for the Respondent no.1/DDA stated that the respondent requires some time to resolve the issue with respect to the conversion charges which were to be paid by the Petitioner to the Respondent no.1/DDA.

35. Thus, at the relevant time, the respondent no.1/DDA was in principle agreeable to carry out the conversion except for the rates to be determined by the MOUD. A new twist to the story, there was a complete somersault as regards such principled position resulting in passing of the impugned order dated 29.12.2022 whereby a new cause was espoused that the respondent No.1/DDA is under a legal mandate to generate maximum revenue for itself to promote and secure the planned development of Delhi, and therefore, canvassing the plea that the subject property needs to be reclaimed/re-possessed, and thereafter, could only be put to use by way of auction and inviting tender in general public interest. At the cost of repetition, despite the avowed object spelled out in the impugned order dated 29.12.2022, the respondent No.1/DDA by virtue of Section 60(2)(c) of the DDA Act is duty bound to comply with the terms of the contract and its obligation as contained in the lease deed dated 17.09.1931.

36. Incidentally, coming to the issue of conversion, learned Senior Counsel for the petitioner placed on the record copies of two orders[15] to the effect that in the case of Milan Cinema located at Nazafgarh Road, Karampur Community Centre, New Delhi-110015, the

[15] S/1(835)2003/OSB/Pt./2014/3003 dated 20.11.2015
S/1(835)2003/OSB/Pt./2014/3001 dated 20.11.2015

respondent No.1/DDA allowed conversion from leasehold to freehold in terms of extant policy dated 29.05.2013 conveyed to DDA by the Ministry of Urban Development, the Finance Department of DDA, and accordingly, the DDA calculated the conversion charges to the tune of Rs. 11,21,00,282/- taking the land rates @ Rs. 3,77,136/ per sq. metre for 100 FAR and after applying rate 10% conversion charges on permissible FAR for 2972.41 sq. metre in terms of the policy No. F.24(372)/2006-CDN/261 dated 29th May, 2013.

37. It is likewise pointed out that in the case of Delite Cinema located at Asaf Ali Road, New Delhi in terms of the same extant policy, the DDA calculated the conversion charges to the tune of Rs. 13,72,05,153/- taking the land rates @ Rs. 2,53,333/ per sq. metre for 3.66 FAR and after applying rate 10% conversion charges on permissible FAR for 5416 sq. metre in terms of the policy No. F.24(372)/2006-CDN/261 dated 29th May, 2013. Well, if that the case, the petitioner and other legal heirs have been singled out for a different treatment prejudicial to their legal rights in the subject property.

38. Avoiding a long academic discussion, in my view, support could be found from the decision in **D.N. Cooper v Shiavax Cowasji Cambata**[16]. It may also be expedient to refer to a recent judgment by the Supreme Court in the case of **Subodh Kumar Singh Rathour v. Chief Executive Officer**[17] wherein certain earlier decisions on the sanctity of a contract vis-à-vis public interest were

[16] AIR 1949 BOMBAY 131
[17] 2024 SCC OnLine SC 1682

discussed. It may be recalled that the plea of the respondent/DDA is that putting the subject property to auction or inviting tender for its disposal would generate more revenue for it. One of the earlier decisions that were discussed in the aforesaid case is **Vice Chairman & Managing Director, City & Industrial Development Corporation of Maharashtra Ltd. v. Shishir Realty Pvt. Ltd**[18] wherein it was held as under:

> "58. When a contract is being evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State claiming loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and the fairness of public authorities is also in play. Courts need to have a broader understanding of public interest, while reviewing such contracts."

39. The Supreme Court also referred to another judgment titled **Vasantkumar Radhakisan Vora (Dead) by His LRs. v. Board of Trustees of the Port of Bombay**[19] and held that wherever a public authority seeks to resile or relieve itself from the enforcement of a promise made or obligation undertaken in the name of public interest, it is legally bound to first show the material or circumstances by which public interest would be jeopardised if such enforcement is insisted. The relevant observations read as under:—

> "20. When it seeks to relieve itself from its application the government or the public authority are bound to place before the court the material, the circumstances or grounds on which it seeks to resile from the promise made or obligation undertaken by insistence of enforcing the promise, how the public interest would be jeopardised as against the private interest. It is well settled legal

[18] 2021 SCC OnLine SC 1141
[19] (1991) 1 SCC 761

> proposition that the private interest would always yield place to the public interest. […]"

40. Thus, what can be deciphered from the aforesaid decisions is that the Apex Court has consistently underscored that any decision to terminate a contract must be grounded in a real and palpable public interest, duly supported by cogent materials and circumstances but the said public interest cannot be used as a pretext to arbitrarily terminate any contract. The sanctity of a contract is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. There is no gainsaying that when public authorities enter into a contract, they create a legitimate expectation to the effect that the State will honour its obligations. Thus, in a final analysis, the respondent/DDA cannot be allowed to wriggle itself out of the obligations contained the lease agreement dated 17.09.1931.

FINAL DIRECTIONS:

41. In view of the above discussion, this Court has no hesitation in finding that the stand or the defences taken by the respondent No.1/DDA in the impugned order dated 29.12.2022 cannot be sustained in law. The respondent no. 1/DDA delayed the decision on the application of the petitioner to convert the property from leasehold to freehold on the ground that the rates of conversion charges were *in limbo*, and then, as soon as a request was made to renew the lease, it has taken a diametrical stand that the lease stands expired and the subject property be vacated in its favour.

42. In view of the stand taken by the respondent No.1/DDA in these proceedings, respondent No. 1/DDA is estopped from treating the

lease of the subject property as having been expired by efflux of time and not renewable. Resultantly, the respondent No. 1/DDA is also bound to consider the request of conversion of the subject property as per the applicable Rules and rates/charges and accord parity to the petitioner as done in respect of two other Cinema properties referred hereinabove.

43. Accordingly, the following directions are passed:

(1) the respondent No.1/DDA is directed to renew the lease deed for a further period of 20 years in terms of the original lease deed dated 17.09.1931 the initial period of ninety years of which expired on 16.09.2021, within four weeks from today; **AND**

(2) Secondly, on effecting such renewal of the lease deed, the respondent No.1/DDA and respondent No.3/UOI are directed to take measures for conversion of the subject property i.e., the commercial plot bearing Municipal No. 28360 admeasuring 5444 Square Yards situated at Desh Bandhu Gupta Road, Paharganj, Delhi-11000 from leasehold to free hold within four weeks commencing from the end of the first directions above; **AND**

(3) Although the instant writ petition bearing WP(C) 9983/2020 was instituted on 07.12.2020 by the petitioner, in so far rates of conversions are concerned that shall be reckoned as per the rates prevalent or applicable on the date order dated 08.08.2013 passed in CS(OS) No. 414/2008, by which it was recorded at the instance of the

respondent /DDA for the first time that the policy decision on the rates to allow conversion is yet to be framed; **AND FURTHER**

(4) The DDA shall be liable to pay the costs of the legal proceedings which are quantified at Rs. 2,51,000/- as a token amount in respect of both the writ petitions, which shall be adjusted by respondent No. 1/DDA from the conversion charges that would be ultimately payable by the petitioner.

44. Both the writ petitions along with the pending application(s) stand disposed of.

DHARMESH SHARMA, J.

October 25, 2024
Sadiq