

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

% *Date of Judgment : 20.07.2010*

R.S.A. No. 78/1991

+ DELHI DEVELOPMENT AUTHORITY

.....Appellant

Through: Mr. Rajiv Bansal, Advocate.

Versus

SMT. PRAKASH MALIK

.....Respondents

Through: Mr. Harish Malhotra, Sr. Advocate
with Mr. Tanuj Khurana, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.(Oral)

1. This appeal has been directed against the impugned judgment dated 6.07.1991 passed by the first appellate court endorsing the finding of the trial judge dated 12.10.1989, wherein the suit of the plaintiff namely, Prakash Malik, for injunction had been decreed in her favour. The defendant/DDA had been restrained from dispossessing the plaintiff- Prakash Malik from the suit property.

2. Briefly stated the facts of the case are that:

(i) Plot no. B-1/16, Safdarjung Residential Scheme was purchased by the plaintiff at a bid mount of Rs. 15,100/- in an open auction on 08.02.1964.

(ii) The lease deed was executed on 24.11.1967 and possession was handed over to the plaintiff on the same date.

(iii) On 13.1.1983, the defendant noticed that the premises were being misused by the lessee by running an inn namely "Ashok Inn" which was in contravention in terms of the lease.

(iv) Show cause notices dated 08.03.1983, 07.04.1983 and 23.05.1983 were issued to the plaintiff/lessee to show cause as to why the lease be not determined.

(v) On 24.04.1983, the lessee vide her communication of even date reported that she had taken on paying guests to compensate her earnings.

(vi) The lessee was given an opportunity to remove the mis-user but she did not adhere to this.

(vii) On 06.10.1983, the LG determined the lease of the plaintiff/lessee.

3. The plaintiff had filed a suit for perpetual injunction seeking a restrain order against the Delhi Development Authority from dispossessing the plaintiff from the suit property. The trial judge had framed four issues. While dealing with Issue no. 1 and 2, the trial court concluded that the running of a guest house did not amount to a commercial housing; not being a commercial activity, there was no violation of Clause 13 of the lease deed. The cancellation of the lease deed by the LG was illegal.

4. This finding of the trial judge was endorsed and confirmed by the appellate court vide its impugned judgment dated 06.07.1991. The appellate court relied upon two judgments i.e. Baba Holiday Home Vs. DDA reported in 1981 (RLR) Note 99 as also Ramunja Vs. Ajit Singh reported as AIR 1978 Delhi 286.

5. On 22.11.1991, the appeal was admitted and the substantial question of law was framed as under:

“As to whether the user as an Inn of the premises, built on a plot which is the subject matter of lease in favour of the owner with restrictive Clause to the effect that the premises were not to be used or permitted to be used for any trade or business whatsoever or for any purposes other than that of private dwelling, is or not violative of the terms of the lease deed.”

6. On behalf of the appellant, the counsel for the DDA has submitted that the judgments on which reliance had been placed upon by the first appellate court since stand over ruled. Reliance has been placed on DRJ 1992 (23) Delhi Development Authority Vs. M/s Maharaja Hotel and Others wherein this court had held that the question whether the running of a guest house is a non-confirming user or not stood settled by the Division Bench Judgment of this court in the judgment reported as 38 (1989) DLT 357 A.N. Shervani and another Vs. Lt. Governor & Others. Learned counsel for the appellant has also placed reliance upon 106 (2003) DLT 445 R.K. Khanna Vs. NDMC and (2000) 2 SCC 494 NDMC Vs. Sohan Lal Sachdev. It is submitted that in this judgment, the words “commercial” and “domestic” came up for interpretation. Reliance has also been placed upon 1966 8 SSC 27 NDMC Vs. Mafatlal Industries and Others to support the submission that words and phrases should be ascribed their plain meaning unless the context otherwise prescribes. It is submitted that in this case, the lease deed has specifically mentioned that the disputed property is for “private residential use” and the word “private” cannot be over looked; it has to be given its due meaning. It is submitted that in the judgment of the Chancery Division reported in 1808 H. 168 Hobson Vs. Tulloch, the use of the words “private residence” has been expounded. In this case, a covenant not to use the house “for any trade or manufacture, or for any other purpose than a private residence” was held broken by using it as a

boarding- house for scholars attending a school in the neighbourhood; such a user had practically converted the house from a "private residence" to a business of a boarding house.

7. These submissions have been countered by the learned counsel for the respondents. Reliance has been placed upon the judgment of this court in WP (C) No. 2004/1997 titled as Sh. Vikramjit Kapoor Vs. Union of India. It is stated that in this case the question of the user of a residential plot as a guest house which as per the terms of the lease was to be used for a residential purposes only had been raised. The DDA had claimed misuser charges w.e.f. 25.07.1989. The MPD-2001 had been promulgated w.e.f. 01.08.1990. In view thereof relying upon the judgment of this court reported in 2003 III AD (Delhi) 634, Ashwani Kumar Khanna Vs. DDA, the court had directed the DDA to consider the conversion application filed by the petitioner seeking conversion of his leasehold property to a freehold with a further direction that the misuser charges raised by the DDA stood quashed. This judgment is not applicable to the facts of this case as in this case, admittedly, the misuser charges are being claimed much prior to the MPD-2001 having come into force i.e. w.e.f. 13.01.1983.

8. The learned counsel for the respondent has submitted that the petitioner had also preferred CWP No. 2139/1993 seeking a mandamus that a perpetual lease deed dated 24.11.1967 in respect of this residential plot i.e. plot bearing no. B-1/16, Safdarjung residential scheme be converted from leasehold into a freehold. This request of the petitioner had been declined by the DDA on the ground that there was a misuse in the property and the lease had stood cancelled. After hearing the parties as also keeping in view

the fact that at that time the present RSA No. 78/1991 had been dismissed on 14.07.2003 (thereafter it was restored); accordingly writ of mandamus was issued to the department/DDA to process the application of the petitioner for conversion of her leasehold plot into freehold within a period of three months.

9. Since the department had not complied with this direction, a contempt petition i.e. the contempt case (c) 663/2003 had been filed by the petitioner.

10. On 17.02.2004, directions were given in this contempt petition which inter alia reads as follows:-

“It is further stated that amount of damages are liable to be paid by the petitioner only in case the respondent succeeds in the RSA and subject to the right of the petitioner to dispute the quantification of the same”.

11. On 10.03.2007, further directions were given in this contempt petition which inter alia reads as follows:-

“Thus, in my considered view, restoration charges are not liable to be paid at this stage, but in case the respondent ultimately succeeds in RSA, these charges would be liable to be paid by the petitioner and this is acceptable to the petitioner. Needless to say, this will be subject to any further remedy as available in law to the parties to impugn the decision in the RSA”.

12. Further direction had been given to the DDA that the document with regard to the conversion of the lease hold property into free hold be executed within one month.

13. On 26.05.2004, the conveyance deed for the said property had been executed by the DDA in favour of the petitioner whereby the disputed property stood converted from leasehold into free hold. These factual submissions are not disputed.

14. Learned counsel for the respondent has pointed out that in this scenario when the property already stands converted from leasehold into freehold, the question of the dispossession of the petitioner from the said property does not arise and even

presuming there are any misuse charges liable to be paid by the respondent/Prakash Malik, in terms of the orders of this court dated 17.02.2004 and 10.03.2004 passed in contempt case (C) 663/2003, the respondent is at liberty to dispute the quantification of the same. The respondent, at this stage, had conceded that there has been the misuse of the disputed premises. This was first noticed on 13.1.1983 i.e. the date when the inspection of the property was conducted and it came to the notice of the department that the premises were being misused by the lessee by running an inn namely "Ashoka Inn" which was in contravention in terms of the lease.

Respondent, however, seeks liberty of this court to file his objections before the DDA as and when the misuser charges are raised upon him.

15. The substantial question of law which had been formulated on 22.11.1991 is accordingly answered as under:-

"The respondent/plaintiff Prakash Malik had contravened the terms of the lease deed dated 24.11.1961 by misusing it in terms of running an inn namely "Ashoka Inn" which was in contraventions of the terms of the lease."

16. The legal consequences which flow from this answer may be taken recourse too by the appellant/DDA with the right of the respondent to raise objections on the quantification of the demand of misuse as and when raised by the appellant.

17. With these directions, this appeal is disposed of.

INDERMEET KAUR, J.

July 20, 2010
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