SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

UOI and Another Vs. Mohinder Pratap Soni and Others

UOI and Another Vs. Mohinder Pratap Soni and Others

SooperKanoon Citation : sooperkanoon.com/1183535

Court : Delhi

Decided On : May-04-2016

Judge : Rajiv Sahai Endlaw

Appeal No. : CM(M) No. 635 & 636 of 2008

Appellant : UOI and Another

Respondent : Mohinder Pratap Soni and Others

Judgement :

1. These petitions, both under Article 227 of the Constitution of India, impugn the common order dated 14th February, 2007 of the Court of Additional District Judge (ADJ), Delhi exercising jurisdiction as an Appellate Authority under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) allowing PPA No.188/2005 and PPA No.189/2005, filed by the respondent in CM(M) No.635/2008 and CM (M) No.636/2008 respectively, thereby setting aside the order dated 3rd October, 2005 of the Estate Officer of the petitioner Land and Development Officer (Land DO) of eviction of the respondent in both the petitions from the premises measuring 3255 sq. ft. situated at Plot No.1, Block No.124, known as 12 Partap Singh Building, Janpath Lane, Janpath, New Delhi.

2. Notice of both the petitions was issued and vide orders dated 8th April, 2009, the petitions admitted for hearing. The petitions are being listed together since entail the same facts and emanate from the common order of the Estate Officer

and of the ADJ. The respondent in both petitions died during the pendency of the petitions and their legal heirs were substituted. On 28th August, 2015, when the petitions came up before this Court, the counsels stated that they were not ready to address arguments and as such the petitions were adjourned to 29th October, 2015 and the petitioner Land DO was directed to produce the record of the Estate Officer before this Court. On 29th October, 2015 the counsel for the petitioner Land DO was heard; however the counsels for both the respondents again expressed inability to argue and sought adjournment. Finding the conduct of the respondents to be dilatory and vexatious orders were reserved in the petitions and liberty given to the counsels for the respondents to file written arguments. The petitioner having not produced the record of the Estate Officer, fresh directions for production thereof were issued. The counsels for respondents in both the petitions have filed their written arguments. The counsel for the petitioner Land DO has also produced the record of the Estate Officer. I have perused the records and considered the contentions of the counsel for the petitioner Land DO and the written arguments of the counsels for the respondent in both the petitions.

3. As per the order dated 3rd October, 2005 of the Estate Officer,

(i) Plot No.1, Block No.124 known as 12 Janpath Lane, New Delhi was leased out to Sh. Rana Partap and Sh. Mohinder Partap i.e. the respondent in each of the petitions;

(ii) the premises were inspected on 12th May, 1971 and 30th July, 1971 when breach of the terms and conditions of the perpetual lease of the land in the form of misuse of whole of the ground floor as a lodging place for hippies on commercial basis and unauthorized construction of a pucca kitchen measuring about 9 ft.- x 10 ft.- and unauthorized pucca bathroom constructed in the back open courtyard measuring 5ft. x 6ft.-3 were found;

(iii) the breaches aforesaid were in violation of Clauses (v) and (vi) of the lease deed;

(iv) a breach notice was issued on 7th July, 1972;

(v) the respondent in each of the petitions requested for charges recoverable in respect of the breaches;

(vi) the charges were conveyed to the respondent in each of the petitions on 5th March, 1973;

(vii) the respondent in each of the petitions requested to allow to make payment in installments;

(viii) the respondent in each of the petitions failed to get the breaches removed / regularized;

(ix) the premises were re-entered upon by the petitioner Land DO on 14th November, 1973;

(x) upon the request of the respondent in each of the petitions, the petitioner Land DO on 25th April, 1974 intimated fresh terms of compromise;

(xi) however the respondent in each of the petitions failed to comply with the terms of the compromise;

(xii) the petitioner Land DO approached the Estate Officer under the PP Act and the Estate Officer initiated the proceedings after issue of show cause notice dated 21st July, 1975 under Section 4(1) of the PP Act;

(xiii) the respondent in CM(M) No.635/2008 vide his letter dated 6th October, 1975 again asked the petitioner Land DO to re-calculate the charges payable and vide letter dated 29th October, 1990 intimated that he had closed the business of guest house and requested for easy installment for payment;

(xiv) the respondent in CM(M) No.636/2008 filed a detailed written objection dated 9th August, 1991 a) denying having raised any construction or having misused any portion of the property and hence being not liable for payment of any charges; b) contending that the misuse as well as unauthorized construction was with respect to the ground floor only which was in exclusive possession of the respondent in CM(M) No.635/2008 and who had also stopped the misuse after the letter dated 18th January, 1975; c) relying on the judgment of this Court in Savitri Devi Amar

Vs. A.M. Bose 1972 RCJ 815 to contend that residential use includes hostels and boarding houses;

(xv) the respondent in CM (M) No.636/2008 also filed a reply dated 25th May, 2000 pleading that he had filed original suit No.761/1993 titled Rana Partap Soni Vs. Mohinder Partap Soni in this Court and in which suit the Ministry of Urban Development and Land DO i.e. the petitioner herein were also impleaded as defendants no.2and3 and in pursuance to the interim order dated 18th October, 1995 in the said suit, he had submitted bank guarantee in the sum of Rs.50,000/-;

(xvi) the Estate Officer vide order dated 1st September, 2003 enquired from the parties the status of the suit aforesaid before this Court and whether the factum of pendency of proceedings under the PP Act has been disclosed in the said suit;

(xvii) the aforesaid direction was reiterated by the Estate Office vide order dated 23rd December, 2003;

(xviii) the Estate Officer on 29th March, 2004 was informed that the suit aforesaid filed in the High Court had been transferred to the lower Court but status thereof was not disclosed;

(xix) it was also the contention of the respondent in CM (M) No.635/2008 that the area of the guest house was less than 500 sq. ft. and the breach of the lease condition was thus condonable and clarification in this regard was sought from the petitioner Land DO;

(xx) the petitioner Land DO on the next date clarified that the condonation of breach was applicable only in the case of State Guest House and there was no case pending in the Court;

(xxi) though the respondent in each of the petitions was given an opportunity to file additional submissions if any but both stated that no further submissions were required to be made;

(xxii) it was thus on record that the respondents admitted having committed breaches and were very much prepared to pay the charges; the respondents

however thereafter changed their mind and started challenging the breaches on account of misuse etc.;

(xxiii) the respondents had also not got regularized the unauthorized construction / misuse nor paid the damages on account thereof;

(xxiv) thus the logical conclusion was that the respondents had violated the terms of the lease deed and having failed to remedy the same had become liable to be evicted under the provisions of the PP Act; and,

(xxv) accordingly the respondents and all other occupants were ordered to be evicted from the said premises.

4. Though there was one proceeding against the respondent in each of the petitions before the Estate Officer but the respondent in each of the petitions preferred separate appeal as aforesaid against the order of eviction of the Estate Officer and which appeals were allowed as aforesaid by the learned ADJ with a common order, finding/observing/holding:

(a) that the Secretary of State for India in Council had leased out a plot measuring 0.81 mtrs. in favour of one Sh. Lakhbir Singh on perpetual basis vide perpetual lease deed dated 13th May, 1922;

(b) that on the death of Sh. Lakhbir Singh his widow Smt. Jamna Devi and his son Sardar Mehraj Singh transferred the right, title and interest in the said land to Sardar Partap Singh vide sale deed registered on 28th September, 1930;

(c) that the said Partap Singh constructed a superstructure on the plot of land;

(d) that one of the superstructure bearing Municipal Nos.6210-1 and 8393-12 known as flat No.1 and flat No.12, Pratap Singh Mansion, Queensway Lane was sold to one Sh. Shiv Nath vide sale deed dated 25th May, 1937;

(e) that thereafter the said flats No.1 and 12 changed number of hands and were lastly purchased by the respondent in each of the petitions vide sale deed dated 28th October, 1957;

(f) that the property comprising of flat No.1 on the ground floor and flat No.12 above it along with leasehold rights in the land underneath the flat No.1 was mutated in the joint names of the respondent in each of the petitions in the records of the petitioner Land DO;

(g) that it was the case of the respondent Rana Partap Soni in CM (M) No.636/2008 that after purchase, he occupied the first floor only i.e. flat No.12 in or about 1960 and which was in his exclusive use and occupation and that his younger brother i.e. the respondent in CM(M) No.635/2008 Mohinder Partap Soni came into exclusive possession of the ground floor;

(h) that the two flats had separate entrances, separate water and electricity meters and owing to which had nothing in common as far as their use and occupation was concerned; property tax payable in respect of the two flats had also been bifurcated by the New Delhi Municipal Council (NDMC) by common assessment order;

(i) that it was further the case of the respondent in CM(M) No.636/2008 that since the alleged misuse and unauthorized construction pertained to the ground floor flat no.1 only which was in exclusive use and occupation of respondent in CM(M) No.635/2008, the said respondent only sought regularization of the breaches of the lease term;

(j) On the contrary, the respondent in CM(M) No.636/2008 represented that there was no misuse or unauthorized construction in his flat no.12 and that thus he could not be burdened with the regularization/damage charges and could not be evicted on account of non-payment thereof;

(k) that the respondent in CM (M) No.635/2008 also intimated the Estate Officer of the filing of the suit and the interim order therein;

(l) that it was the contention of the respondent in CM(M) No.636/2008 that notwithstanding the same, the Estate Officer had passed the eviction order against him also he could not be penalized for the violations committed by his brother i.e. the respondent in CM (M) No.635/2008 in his portion of the property;

(m) that it was the contention of the respondent in CM(M) No.635/2008 that besides the ground floor, he was also in use of the second floor and no partition existed between the two respondents and that he had not violated any term of the perpetual lease and that the order of the Estate Officer was violative of the interim order dated 18th October, 1995 in the Civil Suit No. 861/1993 titled Rana Partap Soni Vs. Mahinder Partap Soni filed by the respondent in CM(M) No.636/2008;

(n) that though the Estate Officer in his order has made reference to the contentions of respondent in CM (M) No.636/2008 but failed to consider the same and give findings thereon;

(o) that in view of the peculiar facts of the case, particularly as to the quantum of damages and whose liability it was to pay, which was under challenge and the same required leading of evidence; it was also to be considered whether the respondent in CM (M) No.636/2008 who was in occupation of the first floor where there was no misuse/ unauthorized construction, could be evicted for violation of terms of the lease deed on the ground floor, resorting to summary procedure under the PP Act;

(p) Supreme Court in Express Newspaper Pvt. Ltd. Vs. Union of India AIR 1986 SC 872 had held that a leasehold property cannot be termed as public premises within the meaning of Section 2(e) of the PP Act by virtue of cancellation of perpetual lease deed and re-entry of the property for this reason also the petitioner Land DO could not have been resorted to eviction proceedings under the PP Act.

Accordingly, the appeals were allowed.

5. It would thus be seen that the learned ADJ has set aside the order of the Estate Officer of eviction,

(i) relying upon Express Newspaper Pvt. Ltd. supra and holding that PP Act could not be invoked for eviction from premises lease whereof was granted by the public authority and even if the lease had been terminated and the ex-lessee was in unauthorized occupation thereof; and,

(ii) reasoning that invocation of proceedings under PP Act was not appropriate because quantum of damages for regularization of breaches, who i.e. which of the respondent was liable for payment thereof and whether for breaches on the ground floor eviction from the first floor also could be ordered, required determination.

6. Else, it was not disputed by the learned ADJ also that there were breaches of the lease deed of the land underneath and on account whereof the petitioner Land DO was entitled to terminate the lease and that the said breaches though could have been got regularized had not been got regularized.

7. Being of the view that the aforesaid reasoning of the learned ADJ was not in consonance with the current law particularly in view of the judgment of the Constitution Bench in Ashoka Marketing Ltd. Vs. Punjab National Bank (1990) 4 SCC 406, attention of the counsels during the hearing was drawn thereto as well as to the judgment dated 21st February, 2006 of the Division Bench of this Court in LPA No.976/2004 titled Delhi Development Authority Vs. Ambitious Gold Nib Manufacturing Co. Pvt. Ltd. dealt by me in Ocean Plastics and Fibres (P) Limited Vs. Delhi Development Authority 187 (2012) DLT 359 (against which LPA No.415/2012 was dismissed as withdrawn).

8. The counsel for the petitioner Land DO during the hearing however referred to Escorts Heart Institute and Research Centre Ltd. Vs. Delhi Development Authority AIR 2008 Del 70 where the Division Bench of this Court referring to Ashoka Marketing Ltd. and Ambitious Gold Nib Manufacturing Co. Pvt. Ltd. supra held that Express Newspaper Pvt. Ltd. supra does not lay down that the proceedings before the Estate Officer are not maintainable for recovery of possession of the premises lease whereof was earlier granted and had been terminated and all that was held therein was that in the facts of that case PP Act could not be invoked.

9. The counsel for the respondent in CM(M) No.635/2008 in his written submissions has contended:

(i) that the Estate Officer has not afforded opportunity and violated the principles of natural justice;

(ii) that this Court also has not given opportunity of hearing to the legal heirs of the respondent who had been brought on record on the previous date only;

(iii) that the premises of which lease had been granted earlier and had been terminated are not public premises within the ambit of the PP Act and again relying on Express Newspaper Pvt. Ltd. supra in-spite of what had transpired in the hearing;

(iv) that breach of condition of lease is compoundable and as such stringent order of eviction should not have been passed and further efforts should have been made for regularization and compounding of the breaches and for which the legal heirs of the respondents are still willing;

(v) that no show cause notice was issued before cancellation of the lease deed; and,

(vi) invocation of Article 227 of the Constitution of India in filing this petition against the order of the learned ADJ is not proper.

10. The counsel for the respondent in CM(M) No.636/2008 in his written argument has contended:

(a) that for breaches with respect to ground floor, eviction from the first floor cannot be ordered;

(b) that the Division Bench of this Court in Ambitious Gold Nib Manufacturing Co. Pvt. Ltd. supra has only distinguished Express Newspaper Pvt. Ltd. supra and could not possibly have overruled the Supreme Court and the law laid down by the Supreme Court in Express Newspaper Pvt. Ltd. supra which is in favour of the respondent would prevail;

(c) that since at the time of mutation by the petitioner Land DO in the joint names of the respondent in each of the petitions, the land had already been built upon, the liability with respect to the ground floor could not be of the first floor;

(d) that the respondent in each of the petitions were in exclusive possession of their respective floors;

(e) that the suit for partition which was filed in this Court and was transferred to the District Court had been decided vide order dated 13th August, 2010 by which the property had been horizontally partitioned i.e. flat No.1 on the ground floor had fallen to the share of Sh. Mohinder Partap Soni respondent in CM(M) No.635/2008 and the flat no.12 above that had fallen to the share of Sh. Rana Partap Soni respondent in CM(M) No.636/2008 and the said judgment had attained finality and the NDMC had also so mutated the flats;

(f) thus for all practical purposes the said two flats were independent with no interconnection;

(g) that the re-entry of flat no.12 on the first floor was thus not justified;

(h) that the respondent in CM (M) No.635/2008 only had admitted to the breaches and the said admission was not binding on the respondent in CM (M) No.636/2008;

(i) that the action of the petitioner Land DO was belated; the unauthorized construction was noted in 1971 and demand was raised with respect thereto in 1972 and 1973 and could not be enforced in the year 2015;

(j) that the terms of the lease also do not provide for recovery of damages;

(k) that according to Section 40 read with Section 11 of the Transfer of Property Act, 1882 also no restriction could be put by the transferor on the transferee;

(l) that thus the eviction order can only be with respect to flat no.1 on the ground floor and cannot be with respect to flat no.12 on the first floor;

(m) that the facts of the present case are distinguishable from the facts of Ambitious Gold Nib Manufacturing Co. Pvt. Ltd. supra.

11. It is unfortunate that in-spite of the Constitution Bench in Ashoka Marketing Ltd. supra and the judgments of the Division Bench of this Court in Ambitious Gold Nib Manufacturing Co. Pvt. Ltd. and Escorts Heart Institute and Research Centre Ltd. supra and in-spite of the attention of the counsels for the respondents having been drawn thereto, the counsel for the respondents in their respective written

submissions continue to harp upon the Express Newspaper Pvt. Ltd. supra.

12. It is now settled law:

(i) that the correctness or otherwise of the allegations of public authorities such as the petitioner Land DO or the Delhi Development Authority (DDA) on the basis of which determination of lease is effected is to be decided by the Estate Officer under the PP Act.

(ii) that whether the lessee has committed breach of the terms of the lease deed or not and whether the determination of the lease was legal or not are matters to be adjudicated by the concerned authority under the PP Act i.e. the Estate Officer and cannot be gone into in exercise of writ jurisdiction and the public authorities as the Land DO or the DDA cannot be asked to resort to the civil suit instead of the PP Act for eviction of the occupants even if an ex-lessee after the lease has been determined;

(iii) that the observations of the Supreme Court in Express Newspaper Pvt. Ltd. supra that the public authority as the Land DO and the DDA is required to file a civil suit and the proceedings under the PP Act are not maintainable is not good law;

(iv) that merely because the Estate Officer under the PP Act is not required to be a person well versed in law cannot be a ground for excluding from the ambit of PP Act the premises in unauthorized occupation of persons who had obtained possession as lessee;

(v) that a combined reading of Sections 4,5,8 and 9 of the PP Act shows that final order that is passed in the proceedings under the PP Act is by the judicial officer of the rank of a District Judge; the same also suggests that questions as to justification for determination of lease fall within the jurisdiction of the Estate Officer.

13. Though I am in the facts of the present petitions concerned only with the question whether the adjudication of the validity of the grounds for determination of lease is within the domain of the Estate Officer and in which respect the law as

aforesaid is well settled but I will be failing in my duty if do not refer to another judgment of the Division Bench of this Court in DCM Ltd. Vs. Delhi Development Authority (2013) 136 DRJ 688 holding that bona fide title disputes cannot be gone into under the PP Act. I have recently in Dr. Shekhar Shah Vs. Government of Maharashtra MANU/DE/0924/2016 dealt with the said aspect and in the light thereof need to say anything more is not felt especially as I am here not concerned with any title dispute but with a dispute as to validity of determination of lease and on which the judgments in Ashoka Marketing Ltd. supra applied by the Division Benches of this Court are final.

14. Thus the main reason given by the learned ADJ for allowing the appeals of the respondents i.e. of the order of the Estate Officer being contrary to Express Newspaper Pvt. Ltd. supra was in ignorance of the subsequent Constitution Bench judgment in Ashoka Marketing Ltd. supra and cannot be sustained and has to be set aside and the petition under Article 227 of the Constitution of India would be maintainable on this ground alone.

15. As far as the other reason given by the learned ADJ, of invocation of PP Act by the petitioner Land DO being not appropriate for the reason of the questions involved i.e. of computation of damages, which of the respondent is liable there-for and whether for breach of lease conditions by the occupant/owner of the ground floor, eviction from first floor can also be ordered is concerned, in my view once it is law that the PP Act constitutes Estate Officer as the exclusive fora to adjudicate whether a person is in unauthorized occupation and what charges for unauthorized occupation he/she is liable for and provides a complete machinery, including of appeal there-for, the question of whether it was appropriate for the petitioner Land DO to invoke PP Act does not and ought not to arise. Rather, the said reason is fully covered by the judgments aforesaid of the Supreme Court and this court and does not constitute a separate reason given by the learned ADJ but is adjunct of the reason given, of the proceedings before the Estate Officer being not maintainable for the reason of Express Newspaper Pvt. Ltd.

16. Once the Constitution Bench in Ashoka Marketing Ltd. supra has held that all questions as to the validity of determination of lease are in the domain of the

Estate Officer, axiomatically, the jurisdiction of the Civil Court to adjudicate the same would be excluded. Interestingly, though the respondents relied upon the interim order in the suit which was filed before this Court and by which interim order it appears that the petitioner Land DO was restrained from recovering damages (for breach of lease conditions) from the respondents subject to the respondents furnishing bank guarantee but though claim the suit to have been finally decided have not placed the copy of the said judgment and have merely informed that a decree for partition has been passed. It has not even been stated that any relief against the petitioner Land DO has been granted in the said suit. The obvious inference is that the claim even if any of the respondents in the said suit against the petitioner Land DO has not been allowed. The interim order in the suit relied upon, after the suit has been finally decided, would be of no avail.

17. I may even otherwise clarify that the Estate Officer had not been called upon by the petitioner Land DO to determine the damages payable by the respondents for breach of conditions of the lease of the land underneath. It was the case of the petitioner Land DO before the Estate Officer that the respondents, i) being the lessees of the land underneath the two flats had breached the terms of the lease; ii) had failed to have the said breach compounded and to remove the breach in-spite of opportunity given; iii) for this reason their lease had been determined; iv) after determination of lease the respondents were unauthorized occupants and liable to be evicted. The said claim of the petitioner Land DO, the Estate Officer was definitively empowered to adjudicate. The respondent in CM(M) 636/2008 however it appears in the partition suit filed by him against the respondent in CM(M)635/2008 also impleaded petitioner Land DO as defendant and also disputed the damages claimed by the petitioner Land DO for compounding the breaches and in which respect an interim order was made. I may add that neither on the record of Estate Officer nor of these petitions I find any pleadings of the suit. Though the suit is claimed to have been decided but it is not the case that there is any decision qua the quantum of the said damages. The fact thus remains that there is no adjudication in the suit thereon. The respondents, in the last over 40 years have not got the breaches compounded and the determination of the lease of land underneath the flats stands. Axiomatically the respondents are unauthorized occupants.

18. The argument of the respondent in CM(M) No.636/2008, that no order of eviction from flat no.12 on the first floor could be passed for breaches of the perpetual lease conditions on the ground floor is also without any merit. It is not in dispute that both, the ground floor and the first floor are constructed over land of which perpetual lease was mutated in the joint names of the respondent in each of the petitions. As far as the petitioner Land DO is concerned, the liability of the respondent in each of the petitions under the perpetual lease deed is joint and several and the lease is one. I fail to see as to how it can be urged that the eviction from the first floor constructed over the same leasehold land of which admittedly breach of lease terms has been committed can be saved for the reason of the breaches being on the ground floor. The division / partition even if any between joint lessees, it is the settled position in law, is of the superstructure only and not of the lease deed. Reference in this regard can be made to Madan Lal Vs. Kuldeep Kumar MANU/DE/4039/2013, M/s Pragun Buildtech (P) Ltd Vs. Sarla Aggarwal 2014 SCC Online Del 34 [SLP(C)1967/2014 where-against was dismissed on 23rd January, 2014], Surendra Pal Singh Vs. Ravindra Pal Singh (2014) 210 DLT 386 (DB) and Satish Kumar Chojar Vs. Subhashni Chopra (2014) 213 DLT 24. Thus, notwithstanding the partition of superstructure the lease of the land on which superstructure is constructed remains joint and the consequences of breach of conditions thereof, even if in one portion of the superstructure exclusively belonging to one of such joint lessees invites determination of lease and eviction also from partitioned portions of superstructure of other joint lessees who may not have committed breach of lease condition vis- -vis their portion. If the contention as raised by the respondent in CM(M) No.636/2008 were to be accepted then it would lead to an anomalous situation where the public authorities as the Land DO and DDA would never be able to re-enter the land and would only be able to re-enter portions of construction over the said land in which breach has been committed and would tantamount to partition/division of lease which also is not permissible under the terms thereof. The petitioner Land DO is concerned with the land only and not with the superstructure.

19. Else, having perused the record of the Estate Officer, I am of the view that there is no error in the order passed of eviction and I am constrained to say that the interference by the learned ADJ therein was on the basis of law which was no

longer valid and in ignorance of the latest law.

20. As far as the contention of the respondents having not been given opportunity of hearing by the Estate Officer or by this Court is concerned, all that can be said and which would be a complete answer thereto, is that more than 40 years have passed since the initiation of the proceedings before the Estate Officer vide show cause notice dated 21st July, 1975 and it does not lie in the mouth of the respondents to contend that the said time was not sufficient opportunity. The successive generations of the respondents cannot ask fresh opportunities. It may also be mentioned that this was not even the ground before the learned ADJ. The petitions before this Court also have remained pending for eight years and the respondents vide order dated 28th August, 2015 were sufficiently cautioned that the matter will be heard on 29th October, 2015 and even after respondents failed to argue on that date opportunity was given to them to file written arguments and which have been filed and have been considered by me hereinabove.

21. The other arguments vaguely urged and not even substantiated of, a) the land, at the time of mutation in the names of respondents being already built upon; b) the actions of petitioner Land DO being belated; c) of there being no provision in the lease for recovery of damages; and, d) determination of lease being contrary to the provisions of Transfer of Property Act, also have no merit. It matters not that the land was built upon at the time of mutation in the name of respondents; the respondents, by becoming lessees of the land underneath the flats, are bound by the terms and conditions of the lease. There was also no delay on the part of petitioner Land DO. The breaches were detected in the inspections on 12th May, 1971 and 30th July, 1971, breach notice was issued on 7th July, 1972, charges for compounding of breaches were conveyed on 5th March, 1973, the premises were re-entered on 14th November, 1973 and notice by Estate Officer under Section 4(1) of PP Act issued on 21st July, 1975. As far as the contention of there being no provision in lease for compounding of breaches on payment of damages is concerned, I fail to see how the same helps the respondents. That means, that once the breach is committed and on account thereof lease terminated, the ex-lessee has no recourse. I may also mention that though a Single Judge of this Court in Jor Bagh Association (Regd.) Vs. Union of India 112 (2004) DLT 690 held

that Land DO cannot recover damages for compounding the breaches but the said view was overruled in Union of India Vs. Jor Bagh Association Regd. 188 (2012) DLT 25 (DB). The argument, on the basis of provisions of Transfer of Property Act is also misconceived. The lease is a government grant and as per Section 2 of the Government Grants Act, 1895, the provisions of Transfer of Property Act are not applicable thereto.

22. The petitions are thus allowed.

23. The common order dated 14th February, 2007 of the learned ADJ impugned in these petitions is set aside. Resultantly, the order dated 3rd October, 2005 of the Estate Officer is restored.

24. Each of the respondents is also burdened with costs of Rs.50,000/- of these proceedings payable to the petitioner Land DO within four weeks hereof.

25. The record of the Estate Officer requisitioned in this Court be returned to the Estate Officer.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com