

**S. Ourbachan Singh and anr. Vs. Delhi Development Authority and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/698652](http://sooperkanoon.com/698652)

**Court :** Delhi

**Decided On :** May-18-1994

**Reported in :** 1994IIIAD(Delhi)157; 1994(30)DRJ56

**Judge :** D.P. Wadhwa and; D.K. Jain, JJ.

**Acts :** [Constitution of India](#) - Article 226; [Delhi Development Act, 1957](#); [Government Grants Act, 1895](#); [Transfer of Property Act, 1882](#)

**Appeal No. :** Civil Writ Petition No. 2985 of 1993

**Appellant :** S. Ourbachan Singh and anr.

**Respondent :** Delhi Development Authority and ors.

**Advocate for Pet/Ap. :** C.S. Vohra,; M.S. Vohra and; T.R. Chopra, Advs

**Judgement :**

**D.P. Wadhwa, J.**

(1) Rule D.B.

(2) The two petitioners, by this petition filed under Article 226 of the Constitution, seek to have the notice dated 11 February 1993 issued by the respondents cancelling the perpetual lease in respect of an industrial plot of which they are the lessees quashed. Then they are seeking consequential reliefs. There are three

respondents. First respondent is the Delhi Development Authority (D.D.A.), a body constituted under the [Delhi Development Act, 1957](#); the second is the Lt. Governor of Delhi; and the third Union of India through the Secretary, Ministry of Urban Development, New Delhi. A perpetual lease deed dated 20 July 1974 respecting industrial plot bearing No. B-62, Wazirpur Industrial Area, was executed in favor of the petitioner by the President of India. All the powers exercisable by the Lesser, the President of India, under this lease could be exercised by the Chief Commissioner, Delhi, by whatever name called. Now his designation is Lt. Governor. These would be clauses VIII and IX of the lease deed. Clause XI says that the lease is granted under the [Government Grants Act, 1895](#). The Lt. Governor determined the lease of the plot by his order dated 6 May 1992 for violation of the various clauses of the lease deed. The impugned notice dated 11 February 1993 refers to clauses 11(2), 11(4)(a) and 11(12) of the lease deed breach of which is complained. We may as well reproduce the impugned notice :- 'Sub:- Determination of Lease Deed of Plot No. B-62, Wazirpur Industrial Area. Whereas by virtue of lease deed dated 20.7.74 made and executed between S/Shri Gurbachan Singh and Gurbax Singh and President of India, you are the lessee of the plot of land referred to above. And Whereas by virtue of clause 11(2) of the lease deed, you shall not deviate in any manner from the lay-out plan nor alter the size of the industrial plot whether by sub-division, amalgamation or otherwise. And Whereas by virtue of clause 11(4)(a) of the lease deed you shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the industrial plot except with the previous consent in writing of the Lesser, which he shall be entitled to refuse in his absolute discretion. And Whereas by virtue of the clause 11(12) of the lease deed, the lessee shall not without the written consent of the Lesser use, or permit to be used, industrial plot or in any building thereon for residence or for carrying on any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of carrying on the manufacturing process or running all light industries as per MASTER Plan except food products, cold storage, ice factory, acid and Chemicals or such other manufacturing process or industry as may be approved from time to time by the L.G. or do or suffer to be done therein any act or thing whatsoever which in the opinion of the Lesser may be nuisance, annoyance or disturbance to the Lesser

and persons living in the neighborhood. And Whereas it has come to the notice tht you are using allotted site for the purpose of Steel Rolling Mills and also constructed un-authorized sheds and shop and subletted to some one for Steel Rolling Mills, which is the contrary/breach of the aforesaid clauses of the lease deed. And Whereas in spite of sufficient opportunities given to you vide this office show cause notice dated 30.10.84, 23.11.90, 27.2.91 and 14.5.91 you have failed to.remove the aforesaid breaches. And Whereas the lease deed of the plot has been determined by the L.G., Delhi vide his order dated 6.5.92 for violation of the aforesaid clauses of the lease deed. You are, thereforee, directed to hand over peaceful possession of the Plot No. B-62, Wazirpur Industrial Area along with the building and fixtures standing thereon to the Assistant Engineer (Indl.) on 15.2.1993 at 11.00 A.M. sd/- Deputy Director (Industrial) Delhi Development Authority.'

(3) By an interim orderdated 25Junc 1993 this.Court directed that status quo as of that date shall be maintained respecting the plot. At the same time notice was issued to the respondents to show cause as to why rule nisi be not issued. Parties have since completed their pleadings and we have heard them at length.

(4) Though the lease deed was executed on 20 July 1974 the petitioners had purchased the leasehold rights of the plot in the year 1-968 and the same was allotted to them in January 1971. Petitioners say they raised construction of industrial building in accordance with the sanctioned plan dated 3 September 1971 and the occupancy certificate was granted to them on 13 July 1982, and that in the course of time they started the manufacture of plastic items in their factory constructed on the said plot. Petitioners say they have got the license from the Municipal Corporation of Delhi for the purpose and they also got an electric connection in their factory premises from the Delhi Electric Supply Undertaking. They say even the Central Pollution Control Board under the Ministry of environment and Forests, Government of India, issued a consent order dated 6/10 July 1990 for discharge of the effluent from the factory premises which certificate was valid up to 15 July 1993. Petitioners say they have been running their manufacturing activities as per law, and they did not commit breach of any of the terms of the perpetual lease deed. Petitioners, thereforee, say that the impugned

notice determining their lease is illegal. They also say that no notice was given to them before their lease was determined. They deny any violation of the terms of the lease deed.

(5) Respondents in their counter-affidavit submitted that the petitioners did violate various clauses of the lease deed mentioned in the impugned notice, and as the inspection reports of their field staff would show that the petitioners had unauthorisedly and without permission of the Lesser sublet the premises, and had also made unauthorised construction of a shed in front set back and three shops without the permission of the Lesser and against the approved building plans. They said that the person to whom the premises had been sublet was using the same for steel rolling mills which was vocative of the terms of the lease deed. In the lease deed it was mentioned that the lessee shall not use the plot, which was industrial, or any building thereon for residence or for carrying on any trade-or business what so ever or use the same or permit the same to be used for any purpose other than that of carrying on the manufacturing process or running all light industries as per master plan except food products, cold storage, ice factory, acid and Chemicals, or such other manufacturing process or industry as may be approved from time to time by the Chief Commissioner. This is clause 11(12) of the lease deed. There is also a proviso that if any change in user was required, this could be done with the prior permission of the Lesser, but subject to such conditions as he might impose in his absolute discretion. Respondents said that before the lease was determined various notices were sent to the petitioners and in spite of their having received the same, they did not respond to them and ultimately the Lt. Governor approved the determination of the lease.

(6) The Lt. Governor had approved the determination of the lease on 6 May 1992 with the following observation :- 'Approved subject to re-verification that show cause notices were duly and legally served. ' Thereafter, a letter was addressed to the post office to find out if the last show cause notice which was dated 15 May 1991 and was sent under registered cover on 16 May 1991 was served upon the petitioners or not. A reply was received from the Department of Post that this show cause notice had been duly served to the addressee on 17 May 1991. We also find that the notices which were earlier addressed to the petitioners were at their

address at the plot in question and we have to presume that in normal course these notices were also received by the petitioners. Their denial that they did not receive the notices is not correct.

(7) Mr. Vohra, learned counsel for the petitioners, raised three points: (1) the lease deed was a grant under the [Government Grants Act, 1895](#), and could not, therefore, be determined; (2) the Lt. Governor had approved the determination of the lease subject to verification if show cause notices had been served on the petitioners and that after the verification by the D.D.A. the file was not put up to the Lt. Governor which vitiated his action; and (3) Clause Vi of the lease deed provided for arbitration.

(8) Taking the last point first, this Clause Vi, in relevant part, is as under :-

'VI. In the event of any question, dispute or difference, arising under these presents, or in connection therewith (except as to any matters the decision of which is specially provided by these presents), the same shall be referred to the sole arbitration of the Chief Commissioner or any other person appointed by them. It will be no objection that the arbitrator is a Government servant, and that he has to deal with the matters to which the Lease relates, or that in the course of his duties as a Government servant he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties.'

But the lease deed itself provides that the decision of the Lt. Governor to determine the lease is final, and it will not, therefore, be subject to any arbitration agreement. This is clause lii of the lease deed and, in relevant part, is as under :-

'III.....OR if there shall have been, in the opinion of the Lesser, whose decision shall be final, any breach by the Lessee or by any person claiming through or under him of any of the covenants or conditions contained herein and on his part to be observed or performed, then and in any such case, it shall be lawful for the Lesser, notwithstanding the waiver of any previous cause or right of re-entry upon the industrial plot hereby demised and the buildings thereon, to re-enter upon and take possession of the industrial plot and the buildings and fixtures thereon, and

thereupon this Lease and everything herein contained shall cease and determine and the Lesser shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him.'

The argument, therefore, that there is an arbitration agreement covering the dispute in question is rejected.

(9) We do not think it was necessary that the matter should be again referred to the Lt. Governor after he had approved the determination of the lease. It was only subject to re-verification which was done. It was not necessary to send the matter to the Lt. Governor again. The second ground of attack has no basis.

(10) Lastly and the first point is, no doubt, correct that the lease was granted under the [Government Grants Act, 1895](#). We have, however, been unable to understand what argument could be based on that. It is a grant but subject to certain conditions and grant could be revoked if there is breach of the conditions of the grant. Under section 2 of this Act, [Transfer of Property Act, 1882](#), is not to apply to the Government grants, and under section 3 the Government grants are to take effect according to their tenor. On this aspect it would be better to refer to a decision of the Supreme Court in *Express Newspapers Pvt. Ltd. and others v. Union of India and others*, : AIR 1986 SC872 , where the court said as under (paras 78 and 79) :- '78. It is common ground that the perpetual lease was a Government grant governed by the Crown Grants Act, 1895, now known as the Government Grants Act. The Act is an explanatory or declaratory Act. Doubts having arisen as to the extent and operation of the [Transfer of Property Act, 1882](#) and as to the power of the Government to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, the Act was passed to remove such doubts as is clear from the long title and the preamble. The Act contains two sections and provides by S.2 for the exclusion of the [Transfer of Property Act, 1882](#) and, by S. 3 for the exclusion of any rule of law, statute or enactment of the Legislature to the contrary. Ss. 2 and 3 read as follows : '2-[Transfer of Property Act, 1882](#), not to apply to Government grants - Nothing in the [Transfer of Property Act, 1882](#), contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein

heretofore made or hereafter to be made by or on behalf of the Government to, or in favor of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.'

'3-GOVERNMENT grants to take effect according to their tenor - All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.' 79. It is plain upon the terms that S. 2 excludes the operation of the [Transfer of Property Act, 1882](#) to Government grants. While S. 3 declares that all provisions, restrictions, conditions and limitations contained over any such grant or transfer as aforesaid shall be valid and shall take effect according to their tenor, notwithstanding any rule of law, statute or enactment of the Legislature to the contrary. A series of judicial decisions have determined the overriding effect of S. 3 making it amply clear that a grant of property by the Government partakes of the nature of law since it overrides even legal provisions which are contrary to the tenor of the document.'

(11) We, therefore, hold that the lease has been properly determined under the terms of the grant,

(12) We may note that at the time when the petition was filed on 22 June 1993 the Vacation Bench had appointed a Local Commissioner to find out what nature of work was being carried on at the plot subject-matter of the lease deed, and his report had been filed. We do not think it is necessary to refer to the report of the Local Commissioner as we are not deciding as to what work was being carried on on the date of the appointment of the Local Commissioner. We have only to see if the impugned action of the respondents is as per law which we find it is. Accordingly, this petition fails and is dismissed. Rule is discharged. There will be no order as to costs.