

SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)

**Link Engineers Pvt. Ltd. Vs. Delhi Development Authority and ors.**

**Link Engineers Pvt. Ltd. Vs. Delhi Development Authority and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/701809](http://sooperkanoon.com/701809)

**Court :** Delhi

**Decided On :** Jul-25-1997

**Reported in :** 1997VAD(Delhi)180; 68(1997)DLT324

**Judge :** Devinder Gupta and; K.S. Gupta, JJ.

**Acts :** [Constitution of India](#) - Article 226

**Appeal No. :** Civil Writ Appeal No. 2000 of 1991

**Appellant :** Link Engineers Pvt. Ltd.

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

**Advocate for Pet/Ap. :** S. Mukherjee,; Ravinder Sethi and; Abhilesh Verma, Advs

**Judgement :**

**K.S. Gupta, J.**

(1) Link Engineers Pvt. Ltd. has filed this petition under Article 226 of the [Constitution of India](#), inter alia, on the allegations that the petitioner entered into an agreement of sale of industrial shed bearing No. A-10, Okhla Industrial Area, Phase-11, New Delhi with Atam Prakash Mehta and Suresh Mehta by whom the said shed was purchased from Dda, respondent No. 1. in an open auction for a consideration of Rs. 2,68,000.00 on October 30, 1981. Liability to pay all charges for obtaining transfer of the shed as per the agreement was that of the petitioner.

In March, 1986 the petitioner applied to respondent No. 1 for grant of permission for the purpose of sale. This was followed by a reminder dated 21.1.1987. Respondent No. 1 kept on asking the petitioner to carry out unnecessary formalities one after another. Ultimately respondent No. 1 asked the petitioner to produce the registered relinquishment deed from aforesaid Atam Prakash Mehta and Suresh Mehta.

(2) It is alleged that when the petitioner approached the Collector of Stamps for registration of the relinquishment deed he declined to register it on the ground that shed being respondent No. 1's property permission be obtained first from respondent No. 1. However, respondent No. 1 was not willing to grant the sale permission till the relinquishment deed was registered. The petitioner was thus compelled to file writ petition being No. 2142/89. Initially, show cause notice was issued to the respondents who filed their respective replies. After rule nisi was issued the writ petition was disposed of by an order dated 27.9.1990 (Annexure P 1). By this order respondent No. 1 was directed to communicate to the petitioner within four weeks from the date of the order the extent of the unearned increase to be paid by the petitioner pursuant to the application made by it as far back as in 1987. It was further directed that on payment of the amount of unearned increase petitioner would be granted the sale permission. It is stated that the petitioner Along with the communication dated 20.11.1990 sent by registered A.D. post to respondent No 1 enclosed the certified copy of the aforesaid order dated 27.9.1990 and called upon respondent No. 1 to effect the compliance thereof without any delay. Reminder dated 17.12.90 was also sent through registered A.D. post to respondent No .1. Thereafter, petitioner's representative made repeated visits to the office' respondent No. 1 for securing the compliance of the aforementioned order dated 27.9.1990. It is further alleged that petitioner received communication dated 15.5.1991 from respondent No. 1 requiring it to deposit exorbitant amount of unearned increase of Rs. 1,48,903.00 within a period of 10 days. Respondent No. 1 allotted shed for Rs. 2,68,000.00 and the proposed sale consideration is Rs. 3,75,000.00 . thereforee, the gross unearned increase being the difference between these two amounts comes to Rs. 1,07,000.00 and 50% thereof comes of Rs. 53,500.00 . Respondent No. 1 is entitled to collect 50% unearned increase and that to in relation to land component and not on

superstructure. Out of the difference amount of Rs. 1,07,000.00 , more than half is attributable to the structural portion. Aforesaid letter dated 15.5.1991 was dispatched on 29.5.1991 i.e. much after the period of 10 days allowed for making the payment. It is stated that respondent No. 1 is not entitled to charge any amount more than Rs. 26,750.00 . or at the maximum Rs. 53,500.00 . It was prayed that the demand for Rs. 1,48,903.00 and also the interest raised through the communication dated 15.5.1991 may be quashed being illegal and respondent No. 1 be directed to grant the sale permission on petitioner's depositing Rs. 26,750.00 or any other amount. Direction is further sought against respondents 2 and 3 to accept registration of the deed of relinquishment dated 29.11.1988 and other necessary documents.

(3) By the order dated 21.6.1991 writ petition was disposed of extending the time for payment of the amount demanded in the communication dated 15.5.1991 up to 20.7.1991. Liberty was further reserved to the petitioner to make a representation to respondent No. 1 taking all the grounds which he had taken in the petition and respondent No. 1 was directed to dispose of the representation within a month from the date of receipt thereof in its office. However, by a subsequent order dated 24.7.1991 petition was revived and Rule Db was issued. Time for making the payment was extended till further orders.

(4) In response to the notice D.D.A. has filed reply on the affidavit of N.Balachandran, Director (CL). It is stated that the amount conveyed through the communication dated 15.5.1991 was calculated in accordance with the market-value in the year of the making of the application, namely, 1987 by the petitioner. Consideration mentioned in the documents on the basis whereof the sale permission was sought by the petitioner, did not reflect the actual market value in 1987. Demanded amount also includes Rs. 49,634.28 towards penalty it being a clandestine sale. It is denied that the demanded amount is excessive as alleged. It is stated that the calculation of 50% of the unearned increase was a time-consuming process and there was no intention to disobey the Court's order dated 27.9.1990.

(5) We have heard the learned Counsel for the parties and have been taken through the record.

(6) Controversy between the parties centres around the quantum of the unearned increase and the interest payable by the petitioner Company to respondent No. 1. During the pendency of the petition, the petitioner filed additional affidavit dated 16.11.1992 as well as reply to the additional affidavit of respondent No. 1 on 19.7.1993. Respondent No. 1 filed additional affidavit dated 22.4.1993 pursuant to the Court's directions dated 9.3.1993. Both these additional affidavits are material for deciding the controversy at hand. In the additional affidavit dated 16.11.1992 it is, inter alia, averred that the petitioner Company filed contempt petition being Ccp 173/91 of which notice was issued to the contemners and Rakesh Behari, Commissioner (Lands), Dda was also directed to be personally present on 11.3.1992. Few days prior to 11.3.1992 an offer was made by respondent No. 1 that it was prepared to reduce the amount of the unearned increase by deleting the penalty amount of Rs. 49,634,38. The petitioner who felt harassed by the prolonged litigation, conveyed through letter dated 9.3.1992 that it was prepared to pay the amount of Rs. 9,900.00 subject to there being no demand for Rs. 49,634.38 towards penalty and interest for the period up to May, 1991. The petitioner further undertook to pay interest after May, 1991 up to the date of payment at minimum possible interest rate. Even after sending of the aforesaid letter, eight months have passed without any decision being taken thereon by respondent No. 1. In the additional affidavit dated 22.4.1993 filed on behalf of the Dda / respondent No. 1 it is stated that after personal appearance in Court of the Commissioner (L) and Director (Land Costing) on 11.3.1992 the question of payment of unearned increase etc. was re-examined at the level of the Lt. Governor and it has been decided to recover unearned increase as per 1987 rates @ Rs. 3,893.00 per sq. mtr. amounting to Rs. 99,268.56 on a nominal penalty of Rs. 20.00 and interest @ 18% p.a. on the amount of the unearned increase w.e.f. 21.1.1987 up to the actual date of payment. The amount of interest works out to Rs. 1,03,487.48 up to 31.10.1992. It is further stated that the interest is being recovered on equitable principles by way of compensation for late payment inasmuch as the possession of the shed was transferred in contravention of the terms of allotment namely Clause 6 of the lease deed.

(7) nothings made on pages 72 and 73 of the Dda file No. F 47 (30) 81 / Impl. / L.133 relating to auction of aforesaid shed No. A-10. Okhla Industrial Area, Phase-11 and grant of sale permission which was retained by us reveals that lease deed of the shed had not been executed even in favor of the auction-purchasers. There is reference of Clause Iv of the sale terms and conditions which puns as under:

'The terms/conditions of the lease deed are those which are contained in the form of the perpetual lease deed. The intending purchaser shall be deemed to have agreed to all the terms/conditions contained therein. The intending purchaser shall execute the lease deed in the said form when called upon to do so'.

(8) There is also reference of Clause 6 of the lease deed format to the following effect:

'6. The lessee shall not transfer, assign, or otherwise part with the possession of the whole or any part of the said land and/or the shops except with the previous consent of the Lesser in writing, which it shall be entitled to refuse in its absolute discretion. Provided that in the event of transfer being made without obtaining previous consent of the Lesser in writing, such transfer shall not be recognised by the Lesser and it shall be open to the Lesser to terminate the lease. Provided further that in the event of the consent being given, the Lesser may impose such terms/conditions as it thinks fit, and the Lesser shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and market value) of the said land at the time of sale, transfer, assignment or parting with the possession, the amount to be recovered being fifty percent of unearned increase and the decision of the Lesser in respect of the market value shall be final and binding.

(underlined by us)

(9) By virtue of aforesaid Clause Iv of the sale terms and conditions, the above Clause 6 of the format of lease deed is applicable to the petitioner Company being transferee from Atam Prakash Mehta and Suresh Mehta, auction purchasers. That be so, decision taken by the Lesser in regard to the market value of the aforesaid shed being @ Rs. 3,893.00 per sq. mtr. as per 1987 rate for the purpose of

calculation of unearned increase as reflected in the additional affidavit dated 22.4.1993 is final and binding on the petitioner Company. Moreover, as may be noticed from the additional affidavit dated 16.11.1992 the petitioner Company itself through the letter dated 9.3.1992 offered to pay Rs.99,000.00 towards unearned increase to respondent No. 1. It is thus not open to the petitioner Company now to contend that the 50% amount of unearned increase would be Rs. 53,500.00 only being the difference between the auction price and the sale consideration agreed upon.

(10) This brings us to the controversy in regard to the interest part. In the additional affidavit dated 22.4.1993 respondent No. 1 claimed Rs. 1,03,487.48 towards interest from 21.1.1987 to 31.10.92 @ 18% p.a. being the amount of compensation for later payment. It is pertinent to note that on the petitioner's application for grant of the sale permission made as far back as in 1987 the extent of the amount of unearned increase payable by the petitioner being Rs. 99,268.56 was disclosed for the first time by respondent No. 1 in the afore mentioned additional affidavit dated 22.4.1993. There was thus no occasion for the petitioner Company to have paid the aforesaid amount prior to 22.4.1993. Obviously, respondent No. cannot legally claim the aforementioned amount of Rs. 1,03,487.48 towards interest up to 31.10.1992.

(11) Since the aforesaid amount of Rs. 99,268.56 towards unearned increase was made known in the additional affidavit dated 22.4.1993 the petitioner should have at least deposited the same with respondent No. 1 without waiting for the decision of the Court in regard to its liability to pay interest for the period 21.1.1987 to 31.10.1992. Needless to repeat that in the letter dated 9.3.1992 the petitioner had offered to pay interest at a reasonable rate on the amount of Rs.99,000.00 after May, 1991. Petitioner cannot blow hot and cold in the same breath as regards liability to pay interest w.e.f. 23.4.1993. Respondent No. 1 is, therefore, entitled to claim interest @ 18% p.a. on the afore mentioned sum of Rs. 99,268.56 w.e.f. 23.4.1993 till payment is made.

(12) Writ petition is disposed of with the directions that on payment being made by the petitioner Company of Rs. 99,268.56 plus interest thereon @ 18% w.e.f. w.e.f.

23.4.1993 within a month from today respondent No.1 will grant permission for transfer of shed No. A-10, Okhla Industrial Area, Phase-11, New Delhi in favor of the petitioner Company within two months thereafter. Of course, on receipt of the sale permission petitioner Company will be entitled to have the relinquishment deed registered by the Collector of Stamps on payment of such duty and penalty, if any, which maybe payable by it in accordance with law. No order as to costs is made.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**