

**Vikramaditya Bhartia Vs. Dda**

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**SooperKanoon Citation :** [sooperkanoon.com/976849](http://sooperkanoon.com/976849)

**Court :** Delhi

**Decided On :** Jul-02-2013

**Judge :** Reva Khetrapal

**Appellant :** Vikramaditya Bhartia

**Respondent :** Dda

**Advocate for Def. :** Ms. Shobhana

**Advocate for Pet/Ap. :** Mr. S.K. Rungta, Mr. Prashant Singh, Ms. Pratiti Rungta

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) No.6513/2011  
VIKRAMADITYA BHARTIA Through: . Petitioner Mr. S.K. Rungta, Sr. Advocate  
with Mr. Prashant Singh and Ms. Pratiti Rungta, Advocates Versus DDA Through:  
. Respondent Ms. Shobhana Advocate Takiar, CORAM: HONBLE MS. JUSTICE  
REVA KHETRAPAL % Date of decision: July 02, 2013 JUDGMENT : REVA  
KHETRAPAL, J.

1. The petition impugns the demand contained in letter dated 1 st October, 2010 of  
` 13,00,286/- of the Respondent-DDA on the Petitioner on account of alleged  
misuse charges in respect of Shed not A-94, Okhla Industrial Estate, Phase-II,  
New Delhi. The Petitioner claims to have paid the said amount to the Respondent  
DDA under protest and seeks a mandamus to the Respondent-DDA to refund the  
said amount to the Petitioner along with interest @ 6% per annum.

2. The factual matrix giving rise to the present petition is that Plot not A-94, Okhla Industrial Area, Phase-II, New Delhi was purchased on lease by the Petitioner in an auction held on 4.11.1981 for a sale consideration of ` 2,18,000/-. The constructed industrial shed was transferred in favour of the Petitioner vide Conveyance Deed dated 22nd February, 1983 while the land underneath was given on perpetual lease basis to the Petitioner vide Perpetual Lease Deed dated 22nd February, 1983. Since then, the Petitioner is in peaceful ownership and possession of the said industrial shed and land underneath it.

3. Sometime in the year 2003, the Respondent-DDA formulated and notified a scheme of conversion into freehold of different types of properties which were given on perpetual lease basis. The Petitioner applied for conversion of land underneath the aforesaid industrial shed into freehold vide application dated 26.2.2009. Since, however, the Respondent-DDA proposed to charge conversion charges treating the land underneath the shed on the basis of commercial land rates, the Petitioner filed W.P.(C) No.10922 of 2009 with the following prayers:(i) Issue a writ of certiorari or any other appropriate writ order or direction thereby calling for the records relating to the demand of ` 4,51,528/- in respect of conversion charges computed on the basis of rates applicable for conversion of commercial property instead of industrial property towards conversion of the land underneath the industrial shed not A-94, Okhla Industrial Estate, Phase II, Okhla New Delhi into freehold, examine the same and quash it and/or in the alternative (ii) Issue a writ of mandamus or any other appropriate writ order or direction thereby directing the Respondent DDA either to charge conversion charges applicable to industrial properties like the property in question or to allow the user of the property in question as commercial if the same is charged on the basis of rates applicable to commercial property and further direct the respondent to allow conversion of the land underneath industrial shed not A-94, Okhla Industrial Estate, Phase-II, Okhla New Delhi into freehold with either the commercial user if charged on that basis or with industrial user if charged on that basis.

4. The issue raised in the said writ petition was resolved resulting in the withdrawal of the petition vide order dated 1.2.2011, which reads as follows:WP(Civil) 10922/2009 and CM APL No.10078/2009 Learned counsel for the Petitioner states

that the demand in the Petitioners case has been recomputed by the DDA, subsequent to the filing of this petition, on the basis of the commercial rates and not industrial rates. The Petitioner has also paid necessary charges so calculated for execution of the conveyance deed. He seeks permission to withdraw this petition. Accordingly, the petition is dismissed as withdrawn. application also stands dismissed.

5. The pending During the pendency of the aforesaid writ petition, however, the Respondent-DDA raised the impugned demand letter dated 1.10.2010 on the Petitioner on account of misuse charges. The Petitioner disputed the said demand vide its letters dated 18.10.2010 and 8.11.2010, both of which were duly receipted by the Respondent DDA as borne out from the record. However, since the matter had already been prolonged, the Petitioner paid the impugned demand under protest vide its letter dated 20.11.2010 and without prejudice to his contentions raised in his earlier communications dated 18.10.2010 and 8.11.2010. The present writ petition is accordingly filed claiming refund of the said amount on the following grounds:(i) By a Show Cause Notice dated 8.7.1985 the Respondent DDA alleged that by lowering the floor and constructing the basement the Petitioner had breached the terms and conditions particularly Clause 3 of the terms of the Conveyance Deed and Clause 13 of the Perpetual Lease Deed dated 22nd February, 1983. The Petitioner replied to the said letter vide reply dated 23.7.1985 denying the alleged contravention of the Conveyance Deed and Lease Deed. Admittedly, thereafter no further action was taken by the Respondent-DDA thereby entitling the Petitioner to presume that the Respondent-DDA was satisfied with the reply and the matter stood closed. (ii) The impugned demand is barred by limitation as the alleged misuser was alleged to be in the year 1985 whereas the demand raised is in the year 2010. (iii) The impugned demand is contrary to the Respondents own policy with regard to charging of misuse charges vide its Circular not F1(07/2008/DD/Coordination/LD/

101) dated 26.3.2010. Moreover, the period of alleged misuse is stated to be between 1985 to 1992 which indicates that there was no misuse even on the date of application for conversion i.e. on 26-2-2009. This being so, the impugned demand is contrary to DDAs own resolution and policy. It may be noted that this

submission is made without prejudice to the contention of the Petitioner that there was no misuse at any point of time. (iv) Though the Respondent-DDA has claimed that there was another inspection on 16.3.1989, i.e., four years after the issuance of show cause notice dated 8.7.1985, admittedly no communication was sent to the Petitioner about the said inspection nor any Show Cause Notice issued to the Petitioner as is borne out from the records. (v) It is claimed by the Respondent-DDA that another Show Cause Notice was sent to the Petitioner in the year 1993, receipt of this has been denied by the Petitioner and the Respondent-DDA has not been able to produce any proof of service of the said show cause notice to the Petitioner. The basis on which the said show cause notice was issued is also not understandable when admittedly no inspection had taken place immediately prior thereto or even during the period of four years after the alleged inspection in the year 1989, i.e., on 16.3.1989. (vi) It is evident from the notings on the file of the Respondent-DDA upto Director Commercial (Land) as well as the Planning Department of the Respondent-DDA that the Respondent itself was not sure as to whether lowering of the floor would amount to misuser or not. The said notings are annexed with the writ petition. Thus, when the Respondent-DDA itself is not sure whether the alleged lowering of floor amounts to misuser, the very substratum of the demand falls to the ground. Further, the Petitioners request for grant of permission for further renewal of the mortgage of the shed in favour of DFC was approved even after noting the alleged misuse and after examining the effect of lowering of the floor by the Planning Department.

6. Per contra, the Respondent-DDA contested the petition on the following grounds: (i) The petition is not maintainable and liable to be dismissed being barred under Order II Rule 2 of the CPC and by the principles of res judicata since the present petition is not based on any subsequent cause of action after the withdrawal of the earlier writ petition, i.e., W.P.(C) No.10922 of 2009 for conversion of the property from leasehold to freehold. Hence after withdrawal of the earlier petition the present petition is not maintainable and liable to be dismissed. (ii) As per the Circular/Policy dated 26.3.2010, the period of misuse was taken from the initial date of detection, i.e., 27.6.1985 upto three years after the last inspection report, i.e., 16.3.1989, which comes to 27th June, 1985 to 16th March, 1992. The Respondent as per the Policy/Circular asked the Petitioner vide

letter dated 1st October, 2010 to deposit a sum of ` 13,00,286/- on account of misuse charges for the period 27th June, 1985 to 7th May, 1992. Further, as per the Circular the present case falls in Category-VI(a) and thus misuse charges are recoverable from the initial date of detection upto three years after the last report, i.e., 27.6.1985 to 16.3.1992. The Petitioner accepted the said demand and made payment, hence the present petition is not maintainable and the Petitioner is estopped from re-agitating the issues raised in his letters dated 8th November, 2010 and 18th October, 2010 which were set at rest after withdrawal of the earlier petition.

7. I have heard Mr. S.K. Rungta, learned senior counsel for the Petitioner and Ms. Shobhana Takiar, learned counsel for the Respondent-DDA and scrutinized the record including the order dated September 6, 2011 passed by my learned predecessor (Honble Mr. Justice Rajiv Sahai Endlaw) and the order dated 23rd December, 2011 passed in LPA No.1103/2011 whereunder the orders of the learned Single Judge dismissing the writ petition in limine were set aside and the writ petition restored for adjudication with liberty to the Petitioner to place before the Single Judge the letters dated 18.10.2010 and 8.11.2010, reference whereof had been made by the Petitioner in letter dated November 20, 2010.

8. The contention of the Respondent that the Petitioner having withdrawn the earlier petition without disputing the misuser charges the present petition is not maintainable by virtue of the provisions of Order II Rule 2 CPC appears to me to be entirely misconceived. The controversy in the earlier writ petition, i.e., W.P.(C) No.10922 of 2009 which was withdrawn by the Petitioner on 1st February, 2011 was not regarding the misuser charges but the rate at which the Petitioner should be charged for conversion from leasehold to freehold, viz. industrial or commercial land rates. This is evident from a reading of the prayer clause in the said writ petition reproduced hereinabove. Furthermore, when the earlier writ petition, being W.P.(C) No.10922 of 2009 was filed in the year 2009, the impugned letter was not yet issued, which came to be issued on 1.10.2010 and, therefore, there is no question of applicability of Order II Rule 2 of CPC or the principles of res judicata. I am buttressed in coming to the aforesaid conclusion from the order dated 1 st February, 2011 whereunder the Petitioner withdrew the earlier writ petition. The

order clearly states that the demand in the Petitioners case had been re-computed by the DDA subsequent to the filing of the petition on the basis of commercial rates and not industrial rates. Thus, quite apparently the challenge in the earlier petition was to the issue of computation of conversion charges treating the same to be commercial and not industrial. The letter demanding alleged misuser charges was issued subsequent to the filing of the writ petition and was not the subject matter of the earlier petition. Furthermore, as evidenced by the record the Petitioner disputed the said demand vide its letters dated 18.10.2010, 8.11.2010 and 20th November, 2010, wherein the Petitioner clearly stated that the alleged demand was not only illegal but contrary to DDAs own Circular no F.1 (07/(2008)/DD/Co-ord./LD/101 dated 26th March, 2010, which was issued in implementation of the Authoritys Resolution No.35/2010 passed in the meeting held on 17.2.2010 with a view to rationalize the levy of misuse charges.

9. Since there exists a controversy between the Petitioner and the Respondent-DDA as to whether the case of the Petitioner falls under Category III of the Circular in question as contended by the Petitioner or Category VI-a as contended by the Respondent-DDA, it is deemed expedient at this juncture to reproduce hereinbelow the relevant part of the said Circular, which reads as follows:- DELHI DEVELOPMENT AUTHORITY OFFICE OF THE COMMISSIONER [LD] [not Misc/Sr AO(RL)/Misuse Dated:26th March 2010 Policy/2008] F.1(07(2008/DD/Co-ordination/LD/101 CIRCULAR Sub: Rationalization of procedure for levying misuse charges In accordance with the Resolution No.35/2010 passed by the Authority in its meeting held on 17.2.2010, following procedure is laid down for levying of misuse charges: (i) Criterion for ascertaining the period of misuse: Category Particulars Views finalized during meeting I II III Cases where complaint/report about misuse is available on file and Show Cause Notices were issued but the allottee denied violations but no further action/inspection was undertaken by Fresh inspection to be done. In case the misuse is noticed then misuse charges to be levied for a period from initial date of detection to the date of filing of conversion application. Before levying such misuse, SCN to be issued. However if the misuse is not found during the fresh inspection, then misuse charges should DDA. IV V VI-a Cases where complaint/report about misuse is available on file and Show Cause Notices were issued and allottee informed about

removal of violations and further inspection was undertaken by DDA confirming existence of violations at the time of inspection. After confirmation of violation next SCN was also issued negating reply of the allottee about removal of violations but there was no response from the allottee. Fresh site inspection to be done. In case misuse is noticed then misuse charges to be levied from the initial date of detection to the date of filing of conversion application. However if the misuse is not found during the fresh inspection then misuse charges to be levied for a period from initial date of detection upto: VI-b VII 10. not be levied. three years after the last confirmation of the misuse OR the date of first sale after the confirmation of the misuse, whichever is earlier. Learned counsel for the Petitioner contended that as per Category III before levying misuse charges fresh Show Cause Notice is to be issued. However, if misuse is not found during the fresh inspection then misuse charges cannot be levied. In the instant case, the fresh inspection after issuance of the Circular on 26th March, 2010 is stated to have taken place in 27th April, 2010 when no misuse was found. In any case, no fresh Show Cause Notice was issued for charging misuser charges pursuant to the said inspection. As per the learned counsel for the Respondent-DDA, on the other hand, the present case falls in Category-IV-(a) and the misuser charges are recoverable from the initial date of detection upto three years after the last report, i.e., 27.6.1985 to 16.3.1992. She has relied upon the following facts derived from the records and reproduced in her counter-affidavit: Survey Report (Floor lowered & basement constructed) 27.6.1985 Show cause notice 8.7.1985 Reply (denied violations) 23.7.1985 Inspection carried out (violations confirmed) 16.3.1989 Show Cause notice (depression of floor & Mezzanine floor) Conversion application received 10.2.2010 Fresh Inspection (no violations) 11. 28.12.1993 27.4.2010 On a careful scrutiny of the Circular dated 26th March, 2010 and even assuming the contention raised in the Counter Affidavit to be correct, I am of the view that Category VI-(a) cannot be pressed into service by the Respondent-DDA for the reason that it envisages complaint cases where the complaint/report about misuse is available on file and Show Cause Notices were issued and thereafter allottee informed about removal of violations and further inspection was undertaken by DDA confirming existence of violations at the time of inspection. After confirmation of violation, next Show Cause Notice was issued negating reply of the allottee about removal of violations

but there was no response from the allottee. In the instant case, it is not even the case of the Respondent-DDA that the Petitioner/allottee informed about removal of violations and thereafter further inspection was undertaken by DDA confirming existence of violations at the time of inspection. It is also not the case of the DDA that after confirmation of violation, next Show Cause Notice was issued negating the reply of the allottee about removal of violations. The chart filed by the DDA as part of its counter-affidavit itself suggests that a show cause notice was issued to the Petitioner on 8 th July, 1985 pursuant to Survey Report dated 27th June, 1985. In reply thereto, the Respondent denied violations. Denial of violations to my mind is altogether different from the allottee stating that violations had been removed. Thereafter, an inspection is stated to have been carried out on 16th March, 1989 confirming existence of violation at the time of inspection, which inspection admittedly was without notice to the Petitioner. No Show Cause Notice was issued in this regard to the Petitioner though violations were stated to be confirmed. As a matter of fact, Show Cause Notice is stated to have been issued on 28th December, 1993, after a gap of about four years, the receipt of which is denied by the Petitioner, and as stated above, has not been proved by the Respondent-DDA. Then again, as per the Respondent, fresh inspection was carried out on 27th April.2010 when no violations were found to exist. To be noted that the Show Cause Notice was issued on 1st December, 2010.

12. From the aforesaid, in my opinion, it is abundantly clear that the demand raised by the Respondent-DDA qua the Petitioner is contrary to its own policy as contained in Circular dated 26th March, 2010. Even otherwise, in my view, it could be inequitable to allow DDA which has sat over the matter from the year 1985 to take advantage of its inaction in claiming misuser charges. The impugned demand is dated 1st October, 2010 and has been raised after a lapse of 25 years from the date of the first Survey Report which indisputably is dated 27.6.1985. In an identical case decided by the Supreme Court reported in AIR 201.SC 1399.Delhi Development Authority vs. Ram Prakash where the Petitioner after issuing the Show Cause Notices did not take any follow-up action thereupon; instead, after a lapse of 25 years, the Petitioner set up a claim on account of misuser charges, the Supreme Court held that it would be inequitable to allow the Petitioner which had sat over the matter to take advantage of its inaction in claiming misuser charges. It



further observed:22. Even as to the contention raised on behalf of the petitioner that there was no limitation prescribed for making a demand of arrear charges, the Division Bench relying on the decision of this Court in State of Punjab v. Bhatinda District Coopervative Milk Producers Union Ltd. [(2007) 11 SCC 363.: [AIR 200.SC (Supp) 473], observed that even where no period of limitation is indicated, the statutory authority is required to act within a reasonable time. In our view, what would construe a reasonable time, depends on the facts and circumstances of each case, but it would not be fair to the respondent if such demand is allowed to be raised after 25 years, on account of the inaction of the petitioner.

13. In the aforesaid conspectus of facts and keeping in mind the fact that the Petitioner throughout contested the levy of misuse charges and ultimately paid the same under protest and without prejudice to its contentions raised in the communications dated 18.10.2010 and 8.11.2010 in order to avoid further delay in conversion of the land from leasehold to freehold, I am of the considered opinion that the Petitioner is entitled to the relief prayed for in the present writ petition. Accordingly a writ of mandamus is issued directing the Respondent/DDA to refund the amount of ` 13,00,286/- paid by the Petitioner under protest against the impugned demand raised by it along with interest @ 6% per annum thereon.

14. Petition stands disposed of in the above terms. REVA KHETRAPAL JUDGE  
July 02, 2013 km

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