D.D.A vs M/S.Anant Raj Agencies Pvt.Ltd on 12 April, 2016

Equivalent citations: AIR 2016 SUPREME COURT 1806, 2016 (3) ADR 394, AIR 2016 SC (CIVIL) 1384, (2016) 1 LANDLR 237, (2016) 2 RECCIVR 1005, (2016) 229 DLT 197, (2016) 1 RENTLR 479, (2016) 4 SCALE 80, (2016) 4 ALL WC 3688, (2016) 116 ALL LR 453, (2016) 2 CURCC 147, 2016 (11) SCC 406, (2016) 3 ALL RENTCAS 711, (2016) 4 CALLT 75, (2016) 161 ALLINDCAS 32 (SC), (2016) 122 CUT LT 68, (2016) 1 RENCR 464, (2016) 1 WLC(SC)CVL 742, (2016) 3 JCR 185 (SC), 2016 (2) KCCR SN 150 (SC)

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Bench: Arun Mishra, V. Gopala Gowda

REPORTABLE

IN THE

SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3783 OF 2016
(Arising out of S.L.P. (C) NO.6978 of 2012)

DELHI DEVELOPMENT AUTHORITY ..... APPELLANT

VERSUS

M/S ANANT RAJ AGENCIES PVT. LTD. ..... RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

This appeal by special leave is directed against the impugned judgment and order dated 31.05.2011 passed by the High Court of Delhi at New Delhi in RSA No. 6 of 1983, wherein the High Court has dismissed the second appeal filed by the appellant-Authority (hereinafter called "DDA") holding that acceptance of rent, in the instant case, by the DDA pursuant to a demand made by it amounts to a renewal of lease in respect of the property in question.

Brief facts are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:

The Delhi Improvement Trust vide lease deed dated 06.01.1951 granted lease of plot no.2, Jhandewalan, "E" Block, Delhi in favour of original lessee Balraj Virmani. After enactment of the Delhi Development Act, 1957, the DDA was constituted by notification of the Central Government and by virtue of Section 60 of the aforesaid Act, all properties, movable or immovable, vested in the Delhi Improvement Trust came to be vested in the DDA. The lease in respect of property in question was initially for a period of 20 years i.e., w.e.f. 11.08.1948 to 10.08.1968 and the same was liable to be extended for a further period of 20 years at the option of lessee in accordance with the terms and conditions contained therein. Clause (vi) of the lease deed is a relevant condition, which reads as under:

"vi) not to use the said land and buildings that may be erected thereon during the said term for any other purpose other than for the purpose of cold storage plant without the consent in writing of the said lessor; provided that the lease shall become void if the land is used for any purpose other than that for which the lease is granted not being a purpose subsequently approved by the lessor".

Clause III(b) is another relevant condition which reads thus: "III(b) in case this lease with the lessee shall continue for the said period of 20 years and provided the lessee has observed performed and complied with the terms and covenants, conditions and options to renew the lease on such terms and conditions as the lessor deems fit for further period of 20 years, provided that the notice of the intention of the lessee to exercise this option of renewal is given to the lessor six months before the expiration of the lease; provided further that if the lease is extended for a further period 20 years the lessor shall have the right to enhance the rental upto 50% at the original rent." On 23.02.1967, the original lessee approached the DDA for renewal of his lease. The DDA served a show cause notice dated 16.02.1968 to the original lessee for breach of the terms and conditions contained in the lease deed committed by him with respect to the lease. Following breaches were pointed out in the aforesaid show cause notice:

The mezzanine floor of the said building being used for printing press and office purposes by different tenants in contravention of the clause 1(vi) and (vii) of the lease deed.

Cold storage has been sublet to M/s Baikunth cold storage since December, 1965 in contravention of clause 1(vii) of the lease deed. Portion of mezzanine floor being used for residential purposes by the cold storage staff in contravention of clause 1(xv) of the lease deed. Only single storey building stands on the plot in place of four storied building in contravention of clause 1(xv)(c) of the lease deed.

By the said notice, 15 days time was given to the original lessee to remedy the breaches as pointed out in the show cause notice. The original lessee replied to the said show cause notice through various communications dated 01.03.1968,

26.06.1968 and 01.07.1968. However, no further communication was issued by the DDA in this regard.

The DDA vide notice dated 01.09.1972 terminated the lease of the said land on account of non-observation of the terms and conditions contained in the lease deed.

Aggrieved by the decision of the DDA, the original lessee filed original suit for perpetual injunction bearing no. 47 of 1975 before the Sub-Judge, Delhi seeking restraining order against the DDA. The learned Sub-Judge vide judgment and order dated 07.03.1981 decreed the said suit in favour of the original lessee. The learned Sub-Judge has found notice dated 01.09.1972 of the DDA to be arbitrary, illegal and without jurisdiction.

Aggrieved by the decision of the learned Sub-Judge, the DDA preferred the First Appeal vide RCA No. 75 of 1982 before the Court of Additional District Judge (ADJ), Delhi. The learned ADJ vide judgment and order dated 29.09.1982 dismissed the appeal and affirmed the judgment and order passed by the trial court.

Aggrieved by the said judgment of the learned ADJ, DDA preferred the Second Appeal vide RSA No. 06 of 1983, before the High Court of Delhi at New Delhi. During the pendency of the said second appeal an application vide CM No. 13336 of 2007 was moved under Order 22 Rule 10 of the CPC for substitution of M/s Anant Raj Agencies Pvt. Ltd.-the respondent herein in place of original lessee-Balraj Virmani. In the said application it was urged that the property in question had been purchased by the respondent vide sale deed in view of compromise decree dated 22.06.1988 passed by the High Court in terms of settlement between the original lessee and the respondent herein. The High Court vide order dated 03.11.2009 substituted the respondent in place of the original lessee-Balraj Virmani in the second appeal proceedings.

During the pendency of the said RSA No. 6 of 1983, the respondent applied to DDA for conversion of the said premises from leasehold to freehold vide application dated 26.03.2004. The respondent deposited a sum of Rs.96,41,982/- towards conversion charges as per the policy applicable, but the request for conversion was rejected by the DDA. Being aggrieved by the said decision, the respondent preferred writ petition being CWP No. 10015 of 2005 before the High Court of Delhi praying for directions to be issued to the DDA to consider the request of the respondent and grant conversion of the said premises from leasehold to freehold. The High Court by its order dated 19.07.2007 disposed of the said writ petition by directing DDA to decide the matter of conversion within a period of 8 weeks after the disposal of RSA No. 6 of 1983.

The High Court by its judgment and order dated 31.05.2011 has dismissed RSA No. 6 of 1983 filed by the DDA holding that its act of demanding and accepting rent tantamounts to renewal of lease in respect of the property in question. Hence, this appeal by way of special leave has been filed by the DDA raising certain substantial questions of law urging various grounds.

Mr. Ashwani Kumar, the learned counsel appearing on behalf of the DDA contended that the High Court has failed to appreciate that the original lessee has admittedly breached the terms and

conditions contained in the lease deed and thus, not entitled to the renewal of the same in his favour.

It was further contended by the learned counsel that the High Court has erred in not appreciating that both the courts below have proceeded on wrong interpretation of clause III (b) of the lease deed dated 06.01.1951 that the lease was unilaterally renewable at the option of the lessee in respect of the leased property in favour of the original lessee.

The learned counsel further contended that after the admission of the breaches, in respect of terms and conditions set out in the lease deed referred to supra, by the original lessee as pointed out in the show cause notice dated 16.02.1968, the same was not condoned by the DDA. In such a situation it is not right on the part of the trial court, the first appellate court and the High Court to hold that there was automatic renewal of the lease of the property in question only for the reason that the rent was deposited by the lessee in the office of the DDA.

It was further contended by the learned counsel that the High Court has failed to appreciate that the original lessee created an interest in the said property, in favour of third party-respondent, during the period when he was no more a lease holder, in respect of the said property, by virtue of determination of lease in his favour by efflux of time. Therefore, the original lessee, having no right, title or interest in the said property, could not have transferred the said property to the respondent and therefore, the alleged transfer of the property in question in his favour is void and the same is not binding upon the DDA.

The learned counsel further contended that the High Court has failed to appreciate that the deposit of the rent by the original lessee and its acceptance by the office of the DDA is administrative in nature and would not be construed as an estoppel or waiver of the DDA's right in respect of the property in question unless a specific intention to this effect is communicated to the original lessee.

Per contra, Mr. C.S. Vaidyanathan, the learned senior counsel appearing on behalf of the respondent contended that the present appeal is not maintainable as the DDA itself has intentionally acquiesced and agreed to the original lessee's continued use of the said property after the expiry of first term of lease on 10.08.1968. It was further submitted that the DDA after more than one year of the expiry of the first term of lease demanded rent in respect of the said property vide notice dated 03.10.1969, pursuant to which payments towards rent were made by the original lessee. The learned senior counsel further emphasised upon the point that the instant case differs from those cases where rent is tendered by the lessee sans demand from the lessor. He further submitted that the acceptance of rent by the DDA on various occasions pursuant to demand made by it, clearly proves the intention of the DDA that the lease is renewed in favour of the original lessee.

It was further contended by him that in view of the settled principle of law as well as the precedents laid down by this Court in a catena of cases that the exercise of option for renewal cannot be stalled on account of the alleged breaches of the terms and conditions of the lease when no steps were taken by the DDA to assert its right and power in respect of re-entry into the property in question till the option for renewal of lease exercised by the lessee and therefore, this appeal is not maintainable in

law as no substantial question of law arises for consideration of this Court in exercise of its appellate jurisdiction. It was further submitted by him that in the instant case, the DDA issued show cause notice dated 16.02.1968 to the original lessee informing him of four breaches of terms and conditions contained in the lease deed allegedly committed by him. The original lessee made detailed replies to the said notice vide communications dated 01.03.1968, 26.06.1968 and 01.07.1968. The DDA after receiving the replies from the original lessee neither communicated nor took any action to take the possession of the property in question and therefore, the conclusion that the DDA was satisfied with the replies made by the original lessee can be safely arrived at. In fact, the demand of rent by the office of the DDA on 03.10.1969 was immediately acceded. It was further submitted that in view of the aforesaid it can be safely concluded that after the expiry of the first term of the lease and acquiescence of the DDA in letting the original lessee to continue in possession of the said property, the lessee became a tenant at will in respect of the said property. Therefore, the impugned judgment and order passed by the High Court is not bad in law and thus, interference by this Court with the same is not warranted.

With respect to the substitution of the respondent in place of the original lessee, during pendency of the second appeal, it was submitted by the learned senior counsel that the said substitution of party was allowed by the High Court vide order dated 03.11.2009 in RSA No. 06 of 1983. The DDA did not even file a reply to the application for substitution filed by the respondent and therefore, it is estopped from questioning such substitution of the respondent in place of original lessee. It was further submitted by him that the order dated 03.11.2009 has not been challenged by the DDA and therefore, it has no right to raise any new plea in this regard at this stage.

The learned senior counsel further submitted that the DDA has deliberately and intentionally suppressed and concealed material fact from this Court i.e., the policy of the DDA for conversion of the property from leasehold to freehold is under consideration and the same is clear from the communication dated 22.01.2008 sent by the DDA to the respondent. He further submitted that admittedly, the DDA has not refunded the amount of Rs.96,41,982/- deposited by the respondent as conversion charges.

While concluding his contentions the learned senior counsel submitted that the courts below have rightly rejected the case of the DDA while holding the notice dated 01.09.1972, whereby it sought to determine the lease of the original lessee, arbitrary, illegal and without jurisdiction. The High Court has correctly held that the acceptance of rent by the office of the DDA, in respect of the said property, pursuant to the demand made by the office of the DDA amounts to renewal of lease in the instant case and therefore, no interference with the impugned judgment and order by this Court in exercise of its appellate jurisdiction under Article 136 of the Constitution of India is required.

On the basis of the aforesaid rival legal contentions urged on behalf of the parties the following points would arise for consideration of this Court:

> Whether the original lessee has acquired any right, in respect of the property in question after the termination of lease by efflux of time on 10.08.1968 and also by termination notice dated 01.09.1972, in the absence of renewal of lease by the DDA in

writing as provided under Clause III(b) of the lease deed, by virtue of payment of rent in the office of the DDA?

Whether the respondent herein acquires any right in respect of property in question by getting substituted in place of the original lessee by virtue of a compromise decree, between the original lessee and the respondent, based on a sale deed dated 14.10.1998 executed by the original lessee, by invoking Order 22 Rule 10 of the CPC during the pendency of the appeal before the High Court?

What order?

Answer to Point No.1 After careful examination of the material facts and evidence on record it is clear that on the basis of the admitted facts, the lease of the property in question is not renewed by the DDA in favour of the original lessee, in accordance with clause III(b) of the lease deed dated 06.01.1951. From a reading of the said lease deed it becomes very clear that the original lease period was initially for a period 20 years, which period expired on 10.08.1968 as the lease period commenced w.e.f. 11.08.1948. No doubt, the original lessee availed his option of the renewal of lease as provided in the lease deed by making a request to the DDA vide his letter dated 23.2.1967, but the same was not acceded to by the DDA. Before expiry of the original lease period, notices were issued by the office of DDA on 09.02.1968 and 16.02.1968 to the original lessee alleging certain breaches of the terms and conditions (extracted above) of the lease deed. The original lessee was given 15 days time to remedy the said breaches. Though the original lessee made several replies to the aforesaid notices but he had failed to rectify the said breaches notified to him. Therefore, the DDA vide notice dated 01.09.1972 decided not to renew the lease of the property in question and terminated the lease in respect of the same, though in law the same was not even required on the part of the DDA in view of the conditions of the lease deed as after the expiry of the original period of lease it stands terminated by efflux of time.

The concurrent findings recorded by the courts below declaring the termination notice dated 01.09.1972, terminating the lease of the property in question granted in favour of the original lessee, served by the DDA to the original lessee, as illegal, arbitrary and without jurisdiction on the erroneous assumption of the non-existent fact that there has been a renewal of the lease for the reason that the original lessee applied for the renewal of the lease within time as stipulated in the clause III(b) (supra) of the lease deed and has been paying rent for the property in question to the office of the DDA. In our view, the said conclusion of the courts below is erroneous in law as it is contrary to the Clause III (b) of the lease deed and also Sections 21(1) and 22 of the Delhi Development Act, 1957 (for short the “DD Act”) read with Rule 43 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (for short the “Nazul Land Rules”). In this regard, it would be necessary for this Court to refer to the decision relied upon by the learned counsel for the appellant, in the case of Shanti Prasad Devi & Anr. v. Shankar Mahto & Ors.[1] wherein this Court, while interpreting Section 116 of the Transfer of Property Act, 1882 with regard to its applicability and the effect of “holding over”, held that it is necessary to obtain assent of the landlord for continuation of lease after the expiry of lease period and mere acceptance of rent by the lessor, in absence of agreement to the contrary, for subsequent months where lessee continues to occupy lease premises cannot be said to be conduct signifying assent on its part. The relevant paras

18 and 19 of the case are extracted below :-

> "18. We fully agree with the High Court and the first appellate court below that on expiry of period of lease, mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying "assent" to the continuance of the lease even after expiry of lease period. To the legal notice seeking renewal of lease, the lessor gave no reply. The agreement of renewal contained in clause (7) read with clause (9) required fulfilment of two conditions: first, the exercise of option of renewal by the lessee before the expiry of original period of lease and second, fixation of terms and conditions for the renewed period of lease by mutual consent and in absence thereof through the mediation of local mukhia or panchas of the village. The aforesaid renewal clauses (7) and (9) in the agreement of lease clearly fell within the expression "agreement to the contrary" used in Section 116 of the Transfer of Property Act. Under the aforesaid clauses option to seek renewal was to be exercised before expiry of the lease and on specified conditions.
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> 19. The lessor in the present case had neither expressly nor impliedly agreed for renewal. The renewal as provided in the original contract was required to be obtained by following a specified procedure i.e. on mutually agreed terms or in the alternative through the mediation of Mukhias and Panchas. In the instant case, there is a renewal clause in the contract prescribing a particular period and mode of renewal which was "an agreement to the contrary" within the meaning of Section 116 of the Transfer of Property Act. In the face of specific clauses (7) and (9) for seeking renewal there could be no implied renewal by "holding over" on mere acceptance of the rent offered by the lessee. In the instant case, option of renewal was exercised not in accordance with the terms of renewal clause that is before the expiry of lease. It was exercised after expiry of lease and the lessee continued to remain in use and occupation of the leased premises. The rent offered was accepted by the lessor for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was "holding over" as a lessee within the meaning of Section 116 of the Transfer of Property Act." (emphasis supplied by this Court) To the same effect, the learned counsel has further, rightly placed reliance on another decision of this Court in the case of Sarup Singh Gupta v. S. Jagdish Singh & Ors[2], wherein this Court has held as under :-
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> "8...In our view, mere acceptance of rent did not by itself constitute an act of the nature envisaged by Section 113, Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted the rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled

to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by the courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended..." (emphasis supplied by this Court) Further, in the case of Ashoka Marketing Ltd. & Anr. v. Punjab National Bank & Ors[3], wherein the question for consideration was whether the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 overrides the provisions of Delhi Rent Control Act, 1958, the Constitution Bench of this Court after interpretation of the relevant provisions of both the Acts has clearly held that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 must prevail over the Rent Control Act. The relevant paras 55 and 70 of the decision read thus: "55. The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act.

70.....In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act." The Transfer of Property Act, 1882 is a general law governing the landlord and the tenant relationship in general. The specific Rent Control Acts are

advancement over the Transfer of Property Act, thereby providing more protection to the tenant from arbitrary increase of rent and ejectment from the rented premises by the landlord. Thus, in the light of the aforesaid case law, it can be concluded that the Transfer of Property Act, 1882 is not applicable in respect of the public premises. The property in question is public premises by virtue of Section 2(e)(3)(ii) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which is reproduced hereunder:

"2(e) "public premises" means— (3) in relation to the [National Capital Territory of Delhi]—

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;...." Therefore, in the instant case, as per clause III(b) of the lease deed and Sections 21 and 22 of the DD Act read with Rule 43 of the Nazul Land Rules and in the light of Shanti Prasad Devi, Sarup Singh Gupta and Ashoka Marketing Ltd. cases (supra), there cannot be an automatic renewal of lease in favour of the original lessee once it stands terminated by efflux of time and also by issuing notice terminating the lease. Merely accepting the amount towards the rent by the office of the DDA after expiry of the lease period shall not be construed as renewal of lease of the premises in question, in favour of the original lessee, for another period of 20 years as contended by the respondent.

Further, the property in question, vested in the DDA, is a Nazul land, a developed land as is defined under Rule 2(i) of the Nazul Land Rules, which reads thus:

"Nazul land" means the land placed at the disposal of the Authority and developed by or under the control and supervision of the Authority under section 22 of the Act" Section 3(2) of the DD Act says the Authority shall be a body corporate by the name Delhi Development Authority (DDA). Section 21 of the DD Act empowers the DDA in respect of the disposal of the land and sub-section (3) of Section 21 makes it very clear that nothing in the aforesaid Act shall be construed as enabling the Authority or the local Authority concerned to dispose of the land by way of gift, mortgage or charge but subject to certain reference in the DD Act with regard to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by creation of any easement right or privilege or otherwise. Since, the power conferred by the DD Act upon DDA to grant lease includes renewal of lease and in the absence of such a renewal of lease of the property in question in favour of the original lessee, as required in law, there cannot be an automatic renewal of the same in his favour. The non-grant of renewal of lease in favour of the original lessee is very clear from the fact that the original lessee failed to remedy the breaches pointed out by the DDA in its show cause notices dated 09.02.1968 and 16.02.1968 and further made very clear from the issuance of termination notice dated 01.09.1972, whereby the DDA has conveyed its clear

intention of non-renewal of the lease of the property in question. The relevant portion of the aforesaid termination notice reads thus:

"7. And whereas since you have failed to observe perform and comply with the terms and covenant, conditions of the above lease the said breaches still continue. It has been decided not to renew the lease for further period." Thus, it is abundantly clear from the aforesaid legal statutory provisions of the DD Act and terms and conditions of the lease deed and the case law referred supra that there is no automatic renewal of lease of the property in question in favour of the original lessee. Therefore, the concurrent findings of the courts below on the contentious issue in the impugned judgment are not only erroneous but also error in law and hence, the same cannot be allowed to sustain in law and liable to be set aside.

From the above discussion, it is clear that in the absence of renewal of lease, the status of the original lessee, in relation to the property in question, is that of an unauthorised occupant as he had continued in occupation of the property in question as an 'unauthorized person' in terms of Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which reads as under:

"2(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever." In the absence of renewal of lease after 10.8.1968, the pleadings of the original lessee that the DDA is estopped from taking the plea that there is no renewal of lease after having accepted the rent after 10.8.1968, in respect of property in question and after accepting certain sums in respect of the same, subsequently, for change of the property in question from leasehold to freehold are all irrelevant aspects for the reason that the same are contrary to the aforesaid provisions of the DD Act, the Nazul Land Rules applicable to the fact situation and the terms and conditions of the lease deed. Further, it is clear from the contents of the termination notice dated 01.09.1972 served upon the original lessee by the DDA that it has not only refused to renew the lease of the property but also asked the original lessee to hand over the possession of the property in question within 30 days, which is absolutely in consonance with Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

Without examining the case in the proper perspective that the property in question being a Public Premises in terms of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and that after expiry of lease period the original lessee has become unauthorized occupant in terms of Section 2(g) of the said Act in the light of relevant statutory provisions and rules referred to supra and law laid down by the Constitution Bench of this Court in the Case of Ashoka Marketing Ltd. &

Anr. (supra), the concurrent findings of the courts below on the contentious issue is not only erroneous but also suffers from error in law and therefore, liable to be set aside.

The grant of perpetual injunction by the Trial Court in favour of original lessee, restraining the DDA from taking any action under the said termination notice dated 01.09.1972, on the ground that the termination notice dated 01.09.1972 being illegal, arbitrary and without jurisdiction and the affirmation of the same by both the first appellate court, i.e., by the learned ADJ and further by the High Court by its impugned judgment and order are not only erroneous but also suffers from error in law. Thus, Point no.1 is answered in favour of the appellant.

Answer to Point no.2 The High Court's order dated 03.11.2009 whereby the respondent was substituted in place of the original lessee on its application under Order 22 Rule 10 of CPC for the reason of execution of sale deed dated 14.10.1998 by the original lessee in favour of the respondent by entering into compromise between them in Suit No. 601 of 1984 is also bad in law. The sale of the property in question to give effect to the compromise decree in aforesaid suit is void ab initio in law for the reason that the original lessee, in the absence of renewal of lease in his favour himself had no right, title or interest, at the time of execution of sale deed, in respect of the property in question. It is well settled position of law that the person having no right, title or interest in the property cannot transfer the same by way of sale deed. Thus, in the instant case, the sale of the property in question by the original lessee in favour of the respondent is not a valid assignment of his right in respect of the same. For the aforesaid reasons, the sale deed is not binding on the DDA. The High Court has failed to appreciate this important factual and legal aspect of the case.

The contention urged by the learned senior counsel for the respondent that it has deposited a sum of Rs.96,41,982/- as conversion charges of the property in question from leasehold to freehold right of the same is also of no relevance and lends no support to the respondent for the reason that in the absence of renewal of lease of the property by the DDA, the original lessee himself becomes an unauthorised occupant of the property in question. The deposition of conversion charges in respect of the same to the office of the DDA cannot help the respondent in claiming any right with respect to the property in question. The question whether such a procedure in respect of the public property is permissible in law or not is not required to be decided in this case. The instant case having peculiar facts and circumstances, namely, after 10.08.1968 the lease stands terminated by efflux of time, which is further evidently clear from the termination notice dated 01.09.1972 and thereafter, the original lessee becomes an unauthorised occupant in terms of Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and consequently, not entitled to deal with the property in question in any manner. The very concept of conversion of leasehold rights to freehold rights is not applicable to the fact situation.

Answer to Point no.3 The original lessee has been in unauthorised occupation of the property in question for around 30 years (till he executed a sale deed in favour of the respondent) and the

respondent has been illegally inducted in possession of the same, by the original lessee, who himself was in unauthorised possession of the property. For around 17 years the respondent has been enjoying the property in question without any right, title or interest. Thus, both are liable to pay the damages for unauthorised occupation and the DDA is empowered under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to claim damages from them. We record this finding in exercise of our appellate power in view of our finding and reasons assigned in this judgment holding that the concurrent finding is not only erroneous but also suffers from error in law in granting decree of permanent injunction in favour of the respondent who is not entitled in law for the same. There is a miscarriage of justice in granting the relief by the courts below in favour of the respondent. Further, keeping in view the public interest involved in this case and particularly having regard to the peculiar facts and circumstances of the case we have to allow this appeal of the DDA. Since we have answered the points framed in this appeal in favour of the appellant-DDA, we further, direct the DDA to take possession of the property immediately without resorting to eviction proceedings, as the respondent has been in unauthorised possession of the property in question, by virtue of erroneous judgments passed by the courts below. The respondent has been unlawfully enjoying the public property which would amount to unlawful enrichment which is against the public interest.

For the aforesaid reasons this appeal is allowed, the impugned judgment and decree of the High Court affirming the judgments and decrees of the First Appellate Court and the Trial Court in RCA No. 75 of 1982 and OS No. 47 of 1975 respectively, is hereby set aside. Accordingly, We pass the following order– The DDA is allowed to take the possession of the property in question immediately and dispose of the same in accordance with the provisions of the DD Act read with the relevant Rules in favour of an eligible applicant by conducting public auction, if it intends to dispose of the property. The DDA is entitled for the recovery of damages from both, the original lessee or his legal heirs and the respondent, for the period of their unauthorised occupation of the property at the market rate prevalent in the area.

The amount which has been deposited, with the DDA, by the respondent as conversion charges is to be adjusted towards the damages that may be determined by the DDA in accordance with law.

The costs of Rs.1 lakh is awarded to the DDA, payable by the respondent for these proceedings.

... ... J. [V. GOPALA GOWDA]
.....J. [ARUN MISHRA] New Delhi, 12th April, 2016

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[2] (2005) 5 SCC 543 [4] (2006) 4 SCC 205 [6] (1990) 4 SCC 406