

## Union Of India And Ors vs Dev Raj Gupta And Ors on 23 October, 1990

**Equivalent citations:** 1991 AIR 93, 1990 SCR SUPL. (2) 300, AIR 1991 SUPREME COURT 93, 1991 (1) SCC 63, (1990) 42 DLT 566, 1991 (1) UJ (SC) 68, 1990 HRR 655, (1990) 4 JT 176 (SC), (1990) 19 DRJ 325, (1991) 1 RRR 109, (1991) 1 ALL RENTCAS 391

**Author:** P.B. Sawant

**Bench:** P.B. Sawant, K. Ramaswamy

PETITIONER:  
UNION OF INDIA AND ORS.

Vs.

RESPONDENT:  
DEV RAJ GUPTA AND ORS.

DATE OF JUDGMENT 23/10/1990

BENCH:  
SAWANT, P.B.  
BENCH:  
SAWANT, P.B.  
RAMASWAMY, K.

CITATION:  
1991 AIR 93                      1990 SCR Supl. (2) 300  
1991 SCC (1) 63                JT 1990 (4) 176  
1990 SCALE (2) 794

ACT:  
Delhi Development Act, 1957 : Section 7--Town  
planning--Master Plan--Land leased by Government--Conversion  
of user-Residential to commercial--Application and en-  
quiry--Difference between--Absence of prescribed  
form--Relevance of-- levy of conversion charges--Reckoning  
of relevant date--Region in which the leased land  
situated--Declared to be commercial zone--Land user--Whether  
results in automatic and statutory conversion.

HEADNOTE:

The land in this case was leased by the Government to  
one R in 1931 and a regular lease deed was drawn in 1938. It

was a perpetual lease. The lessee constructed a residential building on the land, and assigned the lease in favour of one L. On the death of L, the interest in the lease devolved on the respondents. Respondent No. 1 sent a letter through his Advocate to the Land & Development Officer, stating that he proposed to construct a multi-storeyed building demolishing the bungalow and demanding to know the charges for conversion of the land use from residential to commercial purposes. The Land & Development Officer replied that the letter was receiving attention. Actually the names of the respondents were mutated in the property register after the exchange of the above letters. However, no application for conversion of the land user was made on behalf of the lessees of the land.

Again in 1978 the parties sent a letter to the Land & Development Officer demanding to know the terms for construction of a commercial building on the lease land and the charges to be paid for the same. The Assistant Settlement Commissioner sent a reply requesting that a formal application be made in the prescribed proforma for permission to construct multi-storeyed commercial building duly signed by all the co-lessees. In 1980 a reminder was sent to the parties. Only thereafter the parties filed an application in the prescribed form. In 1984, the Government intimated the parties that it was willing to comply with the request, provided the parties were willing to abide by certain terms and conditions in advance.

The parties made a representation to the Works & Housing Minis-

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ter requesting for reconsideration of the terms and conditions. After a good deal of correspondence the Government rejected the representation. Thereafter the parties approached the High Court by way of a Writ Petition challenging the terms and conditions imposed by the Government. It was contended that since they applied for permission to convert the user of land on 15.2.1978, they were liable to pay charges calculated with reference to that date only; that no charges for misuse of the land could be levied after 15.2.1978; that no interest could be charged on the alleged additional premium which was calculated by taking into consideration May 25, 1981 as the base date. Accepting the contentions, the High Court held that there was no need to make any application for conversion after 1962 when the Master Plan was prepared by the Delhi Development Authority declaring the region as a commercial zone and that the conversion was automatic and statutory. The High Court held that the Respondents were not, obliged to make the payment of conversion charges calculated at rates prevalent in April, 1984 instead of the rates obtaining in February, 1978. It directed the Government to recompute the additional premium and other charges.

Aggrieved by the High Court Judgment, the Government

preferred the present appeal. The same contentions as were raised in the High Court were advanced before this Court, by both the parties.

Allowing the appeal, this Court,

HELD: 1. The land has to be used as per the agreement between the contracting parties, and no change of the user can be made contrary to the agreement even if the Master Plan permits such user. The Plan helps the parties to change the user, if the parties mutually agree to do so. It does not permit the occupant to change the user unilaterally. It is not, therefore, correct to say that no permission of the landlord was needed to change the user of the land. The High Court is not right in holding that there was an automatic or a statutory conversion of the user of the land because in the Plan the land in question fell in the area reserved for commercial use. The High Court failed to appreciate that the change of user of the land permitted by the Plan was only enabling in nature. It lifted the restriction which was otherwise there for using the land for commercial purpose. [312B-C & A]

2. All that the parties wanted to know from the Land & Development Officer were the terms and conditions for the construction of a commercial building on the land and the charges to be paid for the same. This can hardly be called an application for permission to con-

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struct a commercial building on the land. It is no more than an enquiry. It is immaterial in this connection whether any regular form of application was prepared and was available for use at the relevant time. Even assuming that such a form was prescribed for the first time on June 15, 1978, the letter of February 15, 1978 could hardly be described as an application signed by the lessees-meaning thereby all the lessees--for permission to convert the user of the land. The absence of a prescribed form does not make the letter the required application. The least that is expected in an application for the purpose is a request by all the lessees to permit the change of the user of the land showing readiness and willingness to abide by the terms and conditions for such conversion or the user. The letter in question, on the other hand, did nothing more than make an enquiry suggesting that the application for the change of the user would be made after the terms and conditions including the charges for the same are known. Thus, the letter of February 15, 1978 was not an application made for the change of the user of the land. [309F-H; 310A-B]

3. It is clear from the authority's letter dated March 1, 1980 that different persons were seeking permission for change of the user of the land and some of them were not even the co-lessees of the land. Since there was no firm application by the authorised person or persons for conversion of the user of the land the authority had asked the lessees to sent the application in the prescribed form duly

signed by all the co-lessees. There was no reply to this letter of March 1, 1980 and hence a reminder was sent by the authority on June 3, 1980 warning the lessees that in case no reply was received from them within 15 days, the matter would be treated as closed. It is pursuant to this reminder that on February 27, 1981 a letter accompanied by an application in the prescribed form was sent, and both the letter as well as the prescribed form were duly signed for the first time by all the co-lessees. The contents of the accompanying letter make it clear that even the lessees treated this application as the first duly-made application for the purpose. As has been stated in the application, the plans for the construction of the commercial building were sanctioned only on January 21, 1981 and the exemption application made to the competent authority under Section 20(1) of the Delhi Development Act, 1957 was even then still under process. It is in response to this application that the sanction was given by the authority on January 12, 1984 to convert the user of the land. Thus, it was only on February 27, 1981 that an application for the change of the user of the land was made by or on behalf of the respondent-lessees of the land. [310G-H; 311A-D]

4. There is no explanation given by the appellants as to why the  
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application made by the respondents on February 27, 1981 was not replied to till January 12, 1984. Hence in the absence of anything else on record, it will have to be taken that the date with reference to which conversion charges have to be counted is 27th February, 1981. [311E]

5. The additional premium should be calculated by the appellants on the basis of the rate which was prevalent as on February 27, 1981 which is the date of the application made for the change of the user. The interest should be charged on such additional premium w.e.f. 12th April, 1984 since a period of three months from the date of notice, viz., January 12, 1984 was available to the respondent-lessees to make the payment of the additional premium. The respondent-lessees would not be entitled to convert the present user of the land into the commercial user unless and until the last of the three annual installments of the additional premium together with the interest thereon is paid. [312C-E]

6. The respondents will further be liable to pay the misuse charges mentioned at items 6 and 7 of the notice of 12.1.1984 till 12th April, 1984 from which date, they would be paying the conversion charges. [312F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1996 of 1990.

From the Judgment and Order dated 14.9. 1989 of the Delhi High Court in Civil Writ No. 2038 of 1988. T.S. Krishnamurthy Ayer, T.V.S.N. Chari and C.V. Rao for the Appellants.

Ashok Grover and V.N. Kaura for the Respondents. The Judgment of the Court was delivered by SAWANT, J. This appeal raises some questions which are important both for the Delhi Administration as well as for their lessees of land. Shortly stated, the questions involved are: (a) what constitutes an application for permission to convert the user of the land? (b) from which date the conversion charges are leviable? and (c) from which date interest is chargeable on the conversion charges?

2. The land involved in the present case is at 20, Barakhamba Road, New Delhi and admeasures about 0.956 acre. It was leased by the Governor General in Council to one Smt. Rama Bai on November 17, 1931. The regular lease-deed was drawn up in 1938. It was a perpetual lease given on a premium of Rs.8,000 at the annual rent of Rs.400. Smt. Rama Bai constructed a residential building on the land. On May 20, 1938, Smt. Rama Bai assigned the lease in favour of Smt. Leelawati who died on November 6, 1969. The interest in the lease devolved on respondents 1-4 and one Hans Raj Gupta and their names were mutated in the record of rights as is evidenced by the Government Memo of November 21, 1977. Hans Raj Gupta died on July 31, 1985. Respondents 5-11 are his heirs and legal representatives. It appears that Hans Raj Gupta had left a will. It is the subject matter of probate proceedings in Suit No. 62 of 1985 which is being contested. If the will is probated then share of the late Hans Raj Gupta will devolve upon respondents 6-9; otherwise, it will devolve on all his heirs, viz., respondents 5-11. For the purpose of the questions to be answered in this appeal, we are not much concerned with the devolution of property after the death of late Hans Raj Gupta.

3. In September 1962, the Delhi Development Authority prepared a Master Plan for Delhi under Section 7 of the Delhi Development Act, 1957 (hereinafter referred to as the "Act").

4. Before the names of respondents 1-4 and the late Hans Raj Gupta were mutated in the property register on November 21, 1977, a letter was written on April 25, 1977 by one of the lessees--to be precise, by the first respondent, through an advocate, to the Land & Development Officer which read as follows:

".... My client Shri Dev Raj Gupta son of late Smt. Leela Gupta proposes to construct a multi-storeyed building on the above mentioned plot. Please let me know the charges, if any, payable for conversion of the land use from residential to commercial for constructing a multi-storeyed commercial building on the said plot after demolishing the existing bungalow constructed on the above said plot. Your early response in the matter shall highly be appreciated.

Thanking you, We do not have on record reply, if any, sent to this letter. But it appears that there was some letter of the same date, viz., April 25, 1977 addressed by "the heirs and executors" of the estate of late Smt. Leelawati Gupta, C/o Shri Prem Shankar, Advocate, i.e., the very same advocate who had written the letter earlier

alluded to on behalf of the first respondent, and a reply was given by the office of the Land & Development Officer on July 29, 1977 to this letter of the "heirs and executors etc." stating therein that their letter was receiving attention. What that letter was has not come on record. The only development thereafter was, as stated earlier, the Government Memo of November 21, 1977 communicating that the names of respondents 1-4 and of the late Hans Raj Gupta were mutated in the property register against the leased land. It may be mentioned here that this Government Memo was addressed to the late Hans Raj Gupta and respondents 1-4 care of the said Advocate, Shri Prem Shankar. We are informed at the Bar that the request for such mutation was made on October 12, 1972 on the basis of a partition deed of December 15, 1970 after the death of Smt. Leelawati on November 26, 1969. What is important to note from the developments so far, as far as the issues involved in this appeal are concerned, is that no application for conversion of the land was made on behalf of the lessees of the land.

5. On February 15, 1978, the late Hans Raj Gupta, for himself and "Dev Raj Gupta and others", wrote a letter to the Land & Development Officer stating therein as follows:

"Under the Master Plan and the Zonal Plan the above plot now residential can be developed for the construction of a Commercial building.

Please let me know your terms in respect thereof together with commercialisation charges that will have to be paid by us.

The plans have already been submitted to the N.D.M.C. after their approval by the Urban Land Art Commissioner.

Yours faithfully, S/-d Hans Raj Gupta for Hans Raj Gupta, Dev Raj Gupta and Others"

We have then on record a letter dated March 1, 1980 by the Assistant Settlement Commissioner to the lessees as follows:

S/Shri Hans Raj Gupta, Dev Raj Gupta, Prem Raj Gupta Pardeep Kumar Gupta, C/o Shri Hans Raj Gupta, 3-Ratendon Road, New Delhi.

Sub: Premises situated on Plot No. 5, Block No. 205 known as 20-Barakhamba Road, New Delhi. Dear Sir, I am to say that the applications in respect of the above mentioned premises received so far from different persons (some of them are not co-lessees) to intimate conversion charges for the construction of Multi-storied Commercial building and your intention to sell the property to M/s. Central Investment (P) Ltd. and the United Towers India (Pvt.) Ltd. but rejection of the same by the competent authority under Urban (Ceiling & Regulation) Act, 1976 have created some doubts about that ownership. It has therefore been decided that a

fresh application for the permission to construct the Multi-storeyed Building duly signed by all the co-lessees be asked for.

You are therefore requested to make an application in the prescribed proforma for the permission to construct the Multi-storeyed Commercial building duly signed by all the co-lessees.

Yours faithfully, S/d Encl. As above. (R.L. Gupta) Asstt. Settlement Commissioner".

On June 3, 1980, a reminder was sent by the Government to the late Hans Raj Gupta and respondents 1-4 which reads as follows:

" ..... I am to refer to this Office Letter No. LI--9/205(5)/ 80/197 dated 1.3.1980 on the above subject and to say that no reply thereto has to far been. (sic.) In case no reply is received from you within 15 days from the said date of receipt on this letter, then it will be presumed that you are not interested for the permission to construct the multi-storeyed Commercial Building and the case will be treated as closed ....."

To this reminder, the late Hans Raj Gupta replied that the letter of March 1, 1980 sent by the Government appeared to have been lost in transit and did not reach their hands and requested for a duplicate of the same to enable them to take necessary steps. The Government by its letter of August 11, 1980 sent a copy of its letter of March 1, 1980 and along with it also sent to the late Hans Raj Gupta and others a show cause notice dated May 31, 1980 which had also been received back by the Government undelivered. Thereafter, on February 27, 1981, the late Hans Raj Gupta, and one Raj Kumar Gupta as a constituted Attorney for respondents 1-4, sent an application in the prescribed form. In the accompanying letter of the same date, it was mentioned that the application was sent with reference to the Land & Development Officer's letter dated March 1, 1980 and the discussions held in his office on February 9, 1981 for permission to construct a multi-storeyed building. All that is necessary for us to note from the contents of the application-form is firstly that it was mentioned there against the relevant query that the plan for constructing commercial building was sanctioned on January 21, 1981 by the New Delhi Municipal Committee and that exemption application under Section 20(1) of the Urban Land (Ceiling & Regulation) Act, 1976 was being processed. On January 12, 1984, the Government intimated to the parties that with reference to their letter of February 27, 1981 seeking permission for construction of multi-storeyed commercial building, the lessor, i.e., the Government was willing to consider their said request provided they were willing to comply with the terms and conditions mentioned therein full in advance. The terms and conditions mentioned in this communication included, among other things, the payment of additional premium of Rs.1,77,31,548 in jumpsum and payment of interest on the additional premium at 10 per cent per annum from 27th May, 1981 to 14th July, 1983 being Rs.37,84,349.55 and from 15th July, 1983 to the date of payment, at Rs. 1,47,762.90 per month. The other terms and conditions imposed by the said letter are not in dispute and, therefore, they need not be reproduced here.

6. On receipt of this letter, the late Hans Raj Gupta and other lessees made a representation on March 31, 1984 to the Works & Housing Minister of the Government of India requesting reconsideration of the terms and conditions imposed in the Government's letter of permission of January 12, 1984. It appears that thereafter there was a correspondence between the parties which finally culminated in the Government's letter of June 12, 1987 which virtually rejected the representations of the lessees. Further representations were made thereafter for reconsideration of the terms and conditions offered by the Government for conversion of the use of the leased land but it appears that they were not replied to. The result was that the lessees approached the High Court by a writ petition challenging the appellant's letter dated June 12, 1987 reiterating the terms and conditions which were intimated earlier by the letter of January 12, 1984.

7. The main challenge in the petition was to the base year for the calculation of the charges for conversion of the land from the residential to the commercial purpose. It was the contention of the petitioners that since they had applied to the respondents for permission to convert the user on February 15, 1978, they were liable to pay charges calculated with reference to the said date and not as the respondents had done with reference to May 25, 1981. Their second contention was that for the same reason no charges for the misuse of the land could be levied after February 15, 1978 and their third contention was that no interest could be charged on the alleged additional premium which was calculated by taking into consideration May 25, 1981 as the base date. The High Court accepted all the said three contentions by holding that the date with reference to which the conversion charges had to be calculated was February 15, 1978 when according to the court the respondents had duly applied for conversion of the user. The High Court also held that in fact there was no need to make any such application for conversion after September 1962 when the Master Plan was prepared by the Delhi Development Authority declaring the region in which the leased land was situate as a commercial zone. According to the court, there was an automatic and statutory conversion of the use of the land from residential to commercial purpose and hence there was no question of either payment of conversion charges or the misuse charges. In this view of the matter the court held that the demand which had been made by the appellants for conversion charges calculated on the basis of the rate prevalent in April, 1981 instead of the rate prevalent on February 15, 1978 was not in accordance with law and the respondents were not obliged to make the payment pursuant to an invalid demand. The High Court, therefore, quashed the demand for conversion charges contained in the appellants letters dated January 12, 1984 and June 12, 1987 and directed the appellants to recompute the additional premium and other charges within a period of six months in accordance with law and in accordance with the observations made by it. It is this decision which is challenged in this appeal.

8. While narrating the facts we have referred to the alleged application made by the respondents or on their behalf on April 25, 1977 and February 15, 1978. Since the respondents do not contend that their alleged application of April 25, 1977 was an application for conversion of the user of the land, it is not necessary for us to deal with the same. However, since it is contended vehemently on their behalf that the application of February 15, 1978 was a proper application for conversion of the user of the land and the High Court has also accepted it as such, it is necessary to deal with the same. The contents of the said application have been reproduced above. In the first instance, this application was sent by the late Hans Raj Gupta for himself and for "Dev Raj Gupta and others". The late Hans



Raj Gupta did not sign it for Dev Raj Gupta and others as the holder of the power of attorney from them. Nor did he make clear who "the said others were". The lessees of the property at that time were Dev Raj Gupta Prem Raj Gupta and Pradeep Kumar Gupta in addition to the late Hans Raj Gupta. Neither the said letter was signed by Dev Raj Gupta Prem Raj Gupta and Pradeep Kumar Gupta nor was it stated anywhere in the letter that they had authorised the late Hans Raj Gupta to seek permission on their behalf. As far as the contents of the letter are concerned, they are self-explanatory. All that the late Hans Raj Gupta wanted to know from the Land and Development Officer were the terms and conditions for the construction of a commercial building on the land and the charges that would have to be paid for the same. This can hardly be called an application for permission to construct a commercial building on the land. It is no more than an enquiry. We are, therefore, unable to appreciate the contention that this letter constituted an application for permission to use the land for commercial purposes. It is for this reason that we are unable to agree with the High Court's finding that this letter was an application for the conversion of the user of the land. It is immaterial in this connection whether any regular form of application was prepared and was available for use at the relevant time. Even assuming that such a form was prescribed for the first time on June 15, 1978, the letter of February 15, 1978 could hardly be described as an application signed by the lessees, meaning thereby, all the lessees for permission to convert the user of the land.

The absence of a prescribed form does not make the letter the required application. The least that is expected in an application for the purpose is a request by all the lessees to permit the change of the user of the land showing readiness and willingness to abide by the terms and conditions for such conversion of the user. The letter in question, on the other hand, did nothing more than make an enquiry suggesting that the application for the change of the user would be made after the terms and conditions including the charges for the same are known. We are, therefore, satisfied that the letter of February 15, 1978 was not an application made for the change of the user of the land.

9. It is for this very reason that we are of the view that it was for the first time on February 27, 1981 that a proper application was made for the purpose. As has been pointed out hereinabove, after the letter of February 15, 1978 addressed by the late Hans Raj Gupta and others to the authority, we have on record only the letter of March 1, 1980 addressed by the authority to Hans Raj Gupta and others pointing out that applications in respect of the land were received by him from different persons some of whom were not even co-lessees, to intimate conversion charges for the construction of "multi-storeyed commercial building". The letter also referred to their intention to sell the property to M/s. Central Investment Private Limited and the United Towers India Private Limited". The authority also referred to the reflection of the same by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 stated that the same had created some doubts about the ownership of the land. It was, therefore, necessary according to the authority that a fresh application for the permission to construct the multi-storeyed building" duly signed by all the co-lessees" in the prescribed form should be sent. It is obvious from this letter that there was some correspondence between the parties between February 15, 1978 and March 1, 1980 which has not come on record. The letter of March 1, 1980 is obviously not a reply sent by the authority to the late Hans Raj Gupta's letter of February 15, 1978, for the latter does not refer to the construction of a multi-storeyed building or the intended sale of the property to a third party. The letter is also

addressed not to the late Hans Raj Gupta and Dev Rai Gupta and others, but to the late Hans Raj Gupta, Dev Raj Gupta, Prem Raj Gupta and Pradeep Kumar Gupta. It is also clear from the authority's letter that different persons were seeking permission for change of the user of the land and some of them were not even the co-lessees of the land. The situation which obtained till March 1, 1980 was, therefore, that there was no firm application by the authorised person or persons for conversion of the user of the land and it is for this reason that the authority had asked the lessees to send the application in the prescribed form duly signed by all the co-lessees. There was no reply to this letter of March 1, 1980 and hence a reminder was sent by the authority on June 3, 1980 warning the lessees that in case no reply was received from them within 15 days, the matter would be treated as closed. It is pursuant to this reminder that on February 27, 1981 a letter accompanied by an application in the prescribed form was sent, and both the letter as well as the prescribed form were duly signed for the first time by all the co-lessees. The contents of the accompanying letter make it clear that even the lessees treated this application as the first duly-made application for the purpose. It may also be mentioned here that, as has been stated in the application, the plans for the construction of the commercial building were sanctioned only on January 21, 1981 and the exemption application made to the competent authority under Section 20 (1) of the Act was even then still under process. It is in response to this application that the sanction was given by the authority on January 12, 1984 to convert the user of the land. We are, in the circumstances, of the view that it was only on February 27, 1981 that an application for the change of the user of the land was made by or on behalf of the respondent lessees of the land.

10. There is no explanation given by the appellants as to why the application made by the respondents of February 27, 1981 was not replied to till January 12, 1984. Hence in the absence of anything else on records, it will have to be held that the date with reference to which conversion charges have to be counted is 27th February, 1981. The authority has calculated additional premium with reference to May 27, 1981 on the footing that the outer limit for granting permission was three months from the date of the receipt of the application. There is no justification for the authority to hold thus, for they are expected to process the application as early as possible and not to wait till the end of three months. Unless there are valid reasons for them to do so or the delay is caused on account of an omission or commission on the part of the applicants, it is not proper to take the end of the three months as the date with reference to which the conversion charges should be calculated.

We are, however, informed that in the present case it makes no difference whether the charges are calculated with reference to 27th February 1981 or May 27, 1981. Hence, the difference in dates is immaterial for our purpose.

11. The High Court is further not right in holding that there was an automatic or a statutory conversion of the user of the land because in the Master Plan the land in question fell in the area reserved for commercial use. The High Court failed to appreciate that the charge of user of the land permitted by the Plan was only enabling in nature. It lifted the restriction which was otherwise there for using the land for commercial purpose. The land has to be used as per the agreement between the contracting parties, and no change of the user can be made contrary to the agreement even if the Plan permits such user. The Plan helps the parties to change the user, if the parties mutually agree to do so. It does not permit the occupant to change the user unilaterally. It is not, therefore, correct

to say that no permission of the landlord was needed to change the user of the land.

12. In the view we have taken, we direct that the additional premium should be calculated by the appellants on the basis of the rate which was prevalent as on February 27, 1981 which is the date of the application made for the change of the user. The interest should be charged on such additional premium w.e.f. 12th April, 1984 since a period of three months from the date of notice, viz., January 12, 1984 was available to the respondent-lessees to make the payment of the additional premium. Taking into consideration the facts and circumstances of the present case, the appellants should be given the facility to make the payment in three equal annual installments and the interest should be charged on such deferred payment at not more than 14 per cent per annum. The respondent-lessees would, however, not be entitled to convert the present user of the land into the commercial user until and unless the last of the amount of the additional premium together with the interest thereon is paid.

The respondents will further be liable to pay the misuse charges mentioned at items 6 and 7 of the notice of 12.1.1984 till 12th April, 1984 from which date, they would be paying the conversion charges as above.

The appellants will give the respondents the facility to pay the rest of the amounts, i.e., the amounts other than the conversion charges in twenty four monthly installments with interest at no more than 10 per cent annum.

13. The decision of the High Court is set aside and the appeal is allowed accordingly with no order as to costs.

G.N.  
allowed.

Appeal allowed.