Delhi Development Authority vs M/S. Karamdeep Finance And Investment ... on 12 February, 2019

Equivalent citations: AIRONLINE 2019 SC 558

Author: Ashok Bhushan

Bench: K.M. Joseph, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1533 Of 2019

DELHI DEVELOPMENT AUTHORITY ...APPELLANT(S)

VERSUS

M/S. KARAMDEEP FINANCE &
INVESTMENT (I) PVT. LTD. & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 1534 Of 2019

M/S. KARAMDEEP FINANCE &
INVESTMENT (I) PVT. LTD. ...APPELLANT(S)

VERSUS

DELHI DEVELOPMENT AUTHORITY & ORS. ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals have been filed against the judgment dated 30.03.2016 of Delhi High Court by which judgment Delhi High Court has partly allowed the LPA No.226 of 2014 (Delhi Development Authority vs. M/s. Karamdeep Finance and Investment (I) Pvt. Ltd. and Ors.). The Delhi Development Authority as well as M/s. Karamdeep Finance & Investment (I) Pvt. Ltd., the writ petitioner have filed these two separate appeals challenging the same judgment. Both the appeals have been heard together and are being decided by this common judgment.

2. The brief facts of the case necessary for deciding these two appeals are:

2.1 One Shri Trilochan Singh Rana purchased Plot No.14, Block A-2, Safdarjung Development Area, New Delhi measuring 725 sq. yards in a public auction by DDA. A Perpetual Lease Deed was executed in his favour on 18.03.1970. As per clause (4)a) of the Perpetual Lease Deed, the lessee was not entitled to sell, transfer, assign or otherwise part with the possession of the whole or any part of the plot except with previous consent in writing of the lessor, that is, the President of India. In the event of the consent being given, the lessor was entitled to impose such terms and conditions as he deems fit and the lessee was under an obligation to pay 50% unearned increase of the market value of the plot (i.e. the difference between the premium paid and the market value) of the residential plot at the time of sale, transfer, assignment, or parting with the possession.

2.2 On 29.09.1988, Shri Trilochan Singh Rana entered into an agreement to sell the said property to M/s Ocean Construction Industries Pvt. Ltd. The application in Form 37-I for sale of the said property was filed on 06.10.1988 under Section 269UD of Income Tax Act, 1961 seeking NOC from the Appropriate Authority, Income Tax Department. Later, an order under Section 269UD(1) of the Income Tax Act, 1961 was passed by the Appropriate Authority for compulsory acquisition of the property at Rs.76,00,000/- on 13.12.1988.

2.3 Thereafter, the DDA (Finance Member) vide letter dated 12.01.1989 required the Chief Commissioner (Tech.) Income Tax Department, Central Revenue Building, New Delhi, to pay an amount towards unearned increase to the extent of Rs.17,88,114.55. The Chief Commissioner, Income Tax Department vide his letter dated 30.01.1989 remitted a cheque for Rs.17,86,420/- favouring Delhi Development Authority towards payment of unearned increase in respect of said property.

2.4 The said property was put to public auction on 20.03.1989 and M/s. Karamdeep Finance & Investment (I) Pvt. Ltd. (hereinafter referred to as the “writ petitioner”), the appellant(writ petitioner) was the highest bidder for an amount of Rs.1,08,05,000/-. The said bid was accepted by the Department. The writ petitioner was put in actual physical possession of the said property on 25.04.1989.

On 25.09.1997, a registered Sale Deed was executed in favour of the writ petitioner by the President of India through the Director, Department of Revenue, Ministry of Finance. 2.5 The writ petitioner moved an application with the DDA for conversion of leasehold rights in the plot into free-hold rights and also deposited a sum of Rs.3,45,729/- as conversion charges with the DDA. On receipt of the application for conversion, the DDA calculated the 50% amount of unearned increase of the market value and intimated the same (i.e. Rs.48,16,853/-) to the auction-purchaser i.e. the writ petitioner. Thereupon, the DDA by a letter dated 28.04.2000 raised a demand of Rs.1,43,90,348/-.

2.6 Thereafter, the writ petitioner filed a Writ Petition being W.P.(C)No.4152 of 2000 before Delhi High Court. The learned Single Judge vide its order dated 26.09.2013 had allowed the writ petition and the demand of Rs.1,43,90,348/- raised by the DDA vide demand letter dated 28.04.2000 was set aside being illegal and also directed the DDA to return the amount of Rs.3,45,729/-, which had been deposited by the writ petitioner towards the conversion charges with interest. 2.7 Thereafter, the DDA filed a Letters Patent Appeal i.e. LPA No.226 of 2014 before the Delhi High Court against the judgment and order dated 26.09.2013 passed by the learned Single Judge in W.P.(C)NO.4152 of 2000. 2.8 The Delhi High Court passed the impugned judgment and final order dated 30.03.2016 in LPA No.226 of 2014 vide which the direction of learned Single Judge in W.P.(C)No.4152 of 2000 to refund the amount of conversion fee paid by the writ petitioner has been set aside and partly allowed the appeal of the appellant-DDA and also held that the unearned increase is not payable by the purchaser to the DDA. Both the parties being aggrieved by the judgment of the Division Bench has filed these appeals.

3. We have heard Shri Aman Lekhi, learned Addl. Solicitor General for the DDA. Shri Dhruv Mehta, learned senior counsel has appeared for M/s. Karamdeep Finance & Investment (I) Pvt. Ltd. We have also heard learned counsel for the Union of India.

4. Shri Aman Lekhi, learned Addl. Solicitor General submits that both the learned Single Judge and Division Bench erred in setting aside the demand raised by the DDA of unearned increase. It is submitted that admittedly the property in question was leasehold property leased out to Shri Trilochan Singh Rana. The interest of Shri Trilochan Singh Rana was acquired under Chapter XXC of the Income Tax Act, 1961. In the auction notice which was issued by the competent authority, the leasehold rights of the property were sought to be put for auction. The writ petitioner could not have purchased in auction anything more than the leasehold rights. The depositing of conversion charges by the writ petitioner itself indicates that the understanding was that they have purchased in auction only the leasehold rights. The view of the High Court that the unearned increase is liable to be paid only in case of voluntary transfer is erroneous. The liability to pay unearned increase is fasten on all transfers. The writ petitioner being the highest bidder of the auction was liable to pay unearned increase. The value of the property having substantially increased the unearned increase ought to have been paid and both the Single Judge and the Division Bench erred in setting aside the demand of unearned increase.

5. Shri Dhruv Mehta, learned senior counsel appearing for the writ petitioner refuting the submissions made by the learned counsel for the appellant-DDA supported the judgment of the High Court in so far as it held that there is no liability to pay unearned increase on the auction-purchaser. He submits that there was no condition in the auction notice that unearned increase is to be paid by the auction-purchaser. More so unearned increase was paid by the Income Tax Department earlier which has been noticed in the conveyance deed itself, unearned increase having been paid when the Income Tax Department acquired the property there was no occasion to make any further payment by auction- purchaser. In support of the appeal filed by the writ petitioner, Shri Mehta submits that what was conveyed to the auction-purchaser is not a leasehold right but absolute right to the property. The auction-purchaser having become absolute owner of the property, there was no occasion to pay any conversion charge. It is submitted that it was under some

mis-conception that the writ petitioner had deposited the conversion charges under some bona fide mistake. Hence, they filed a writ petition for refund of the conversion charges which were deposited by them under bona fide mistake. He submits that competent authority having acquired the right of the property under Chapter XXC of the Income Tax Act, the leasehold rights are also vested in the Government. There is merger of leasehold rights in the lessor, the Government. The lesser right having been merged in the higher right, the principle of merger becomes applicable. What was sold to the writ petitioner was absolute right. The lease came to end when Income Tax Department purchased the property.

6. Shri Mehta further referring to the Sale Deed executed in favour of the writ petitioner, submits that Clause 1 and Clause 2 of the Lease Deed clearly vest absolute right to the aforesaid property in favour of the vendee. He further submits that Clause 3 of the Sale Deed which refers to terms of agreement for transfer dated 29.09.1988 between transferor and M/s. Ocean Construction Industries is not compatible with Clauses 1 and 2 and hence has to give way to the Clauses 1 and 2. He submits that Sale Deed read as a whole clearly indicates that what was sold was absolute right.

7. Shri Aman Lekhi making his submission in rejoinder contends that condition of the auction of the property under which the writ petitioner was declared the highest bidder itself mentions that what was proposed to be sold was leasehold rights. He has referred to auction notice and submits that mention of leasehold rights with regard to present property in question and mention of an absolute right with regard to certain other properties clearly indicates that in the auction notice what was proposed to be transferred was leasehold rights of the property in question. He further submits that the principle of merger is inapplicable since necessary conditions of merger are not fulfilled in the present case. The Income Tax Department which acquired the property was not in the capacity of lessor, hence, the condition is not fulfilled. He submits that conveyance deed in favour of writ petitioner has to be construed as a whole. The document cannot be construed in part. He submits that Clause 11 and some other Clauses mention “ground rent” etc. which indicates that there is no question of absolute sale. The property is never vested in the writ petitioner, the depositing of conversion charges itself indicated that the writ petitioner is aware of what he purchased is only leasehold rights. The Division Bench has rightly held that writ petitioner is liable to pay conversion charges.

8. Learned counsel for the parties have relied on various judgments of this Court and Delhi High Court which shall be referred to while considering the submissions in detail.

9. From the pleadings of the parties and submissions made before us, following are the two issues, which arises for consideration:-

> (i) Whether writ petitioner was liable to pay unearned increase in value of the property to the DDA?
>
> (ii) Whether writ petitioner was entitled to get refund of conversion charges deposited by it?

Issue No.1

10. In Perpetual Lease, granted to Shri Trilochan Singh Rana and Mrs. Rani Rana, one of the conditions provided that lessor may impose conditions to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the residential plot at the time of sale, transfer, assignment or parting with the possession, the amount to be recovered being fifty percent of the unearned increase. The relevant clause (4)(a) of the Perpetual Lease is as follows:-

> "(4)(a) The Lessee shall not sell, transfer assign or otherwise part with the possession of the whole or any part of the residential plot except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute direction.
>
> Provided that such consent shall not be given for a period of ten years, from the commencement of the Lease unless, in the opinion of the Lessor, exceptional circumstances exist for the grant of such consent.
>
> Provided further that in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor 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 the market value) of the residential plot at the time of sale, transfer, assignment or parting with the possession, the amount to be recovered being fifty percent of the unearned increase and the decision of the Lessor in respect of the market value shall be final binding."

11. We have already noticed above that original lessee Trilochan Singh Rana entered into agreement of sale with M/s. Ocean Construction Industries Pvt. Ltd. dated 29.09.1988 to transfer the rights for a consideration of Rs.76,00,000/-. Exercising power under Section 269UD of Income Tax Act, 1961, appropriate authority passed a purchase order dated 13.12.1988 of the property in question. After the aforesaid purchase order an amount of Rs.17,86,240/- towards payment of unearned increase was paid to the DDA by Income Tax Department. After the aforesaid purchase order, auction notice dated 20.03.1989 was issued giving details of the properties, which included the property in question. In pursuance of the auction notice, the writ petitioner gave highest bid and was declared auction purchaser for an amount of Rs.1,08,05,000/-. The writ petitioner paid the full amount and was delivered the possession on 25.04.1989. Sale Deed was also executed in favour of writ petitioner on 25.09.1997. The petitioner made an application to the DDA for grant of freehold rights and also deposited amount of Rs.3,45,729/-. While processing the application for conversion of leasehold rights to free hold rights, DDA made a demand of Rs.1,43,90,348/- towards unearned increase, which was challenged by the writ petitioner. Whether the writ petitioner was liable to pay unearned increase payment is the question to be answered.

12. We have already noticed the clause (4)(a) of the Perpetual Lease Deed dated 18.03.1970, which provided that in event sanction is given by lessor to the lessee for sale, transfer or assignment, lessor shall be entitled to claim and recover a portion of the unearned increase in the value. The unearned

increase being the difference between the premium paid and the market value. The object behind the said clause was that a lessee when is permitted to transfer the leasehold rights, the lessor should not be deprived of the difference between the premium paid and the market value. The clause was inserted in the Perpetual Lease to compensate the lessor. The present is not a case where lessee is making any transfer or seeking any permission from the lessor to give his consent. In the present case, the appropriate authority has exercised its power under Section 269UD of the Income Tax Act for the purchase of the property by the Central Government. It is by exercise of statutory power that rights of lessee were purchased by Central Government. Central Government issued auction notice for auction of property in question. All bids in auction of a property are given normally to match the market price of the property. When the petitioner gave highest bid and became the successful auction purchaser, the auction purchase has to be treated on the basis of market value of the property. Clause (4)(a) of Perpetual Lease as noted above provided for payment of unearned increase to cover up the difference between premium paid and the market value. When the auction was made on the market value of the property, we are of the view that there was no question of claim of unearned increase by the DDA. We further noticed that on purchase of the property under Section 269UD of the Income Tax Act, the Income Tax department has already paid unearned increase to the DDA. We, thus, are of the view that High Court has rightly held that DDA was not entitled to raise any demand of unearned increase from the writ petitioner. We, thus, do not find any merit in the appeal filed by the DDA, which deserves to be dismissed. Issue No.2

13. The submission, which has been much pressed by learned counsel for the writ petitioner is that, what was sold to writ petitioner by Sale Deed dated 25.09.1997 was absolute rights with all rights and interests in the property. The sale in favour of writ petitioner was not sale of leasehold rights rather it was for all rights, title and interests, hence writ petitioner acquired freehold rights. It is submitted that application for conversion of leasehold rights into freehold rights and deposit of the amount on the said application by writ petitioner was under bonafide mistake. He submits that in the writ petition, the petitioner has alternatively prayed for refund of the amount paid for conversion.

14. Learned counsel for the petitioner has relied on Clauses 1 and 2 of the Sale Deed, which are to the following effect:-

> "1. That in pursuance of the said auction and consideration of the sum of Rs. 1,08,05,000/- (Rs. One Crore Eight Lakh and Five Thousand only) already paid by the Vendor/Auction Purchaser to the Vendor as aforesaid, the receipt of which the Vendor hereby acknowledged, the Vendor hereby transfers, conveys and sells to the Auction Purchaser, the Vendee, by way of sale of that plot of land measuring 725 sq. yds. bearing No. 14 in Block A-2 in the lay out plan of Safdarjung Development Scheme, Ring Road, South Delhi (Villages Mohammadpur Munirka and Humayunpur Revenue Estate, together with all rights, titles, interests, appurtenances, easements, privileges in and pertaining to the aforesaid property in favour of the Vendee absolutely and forever, with the provisions of Section 269UE(1) of the Income Tax Act, 1961 and all the powers rights and interests vested in the Vendor with regard to the sale, transfer and conveyances of the aforesaid property to

the Vendee hereto.

2. That on the execution of this sale deed, the Vendee has become the absolute and exclusive owner of the property hereby sold, conveyed and transferred to it and that the Vendee shall have absolute rights and title to the same and to deal with the property in any manner it likes. It is made clear that the Vendor has no right and is left with no.....interest, claim or title of any nature whatsoever into on upon the aforesaid property."

15. A plain reading of the above clauses does give impression that what was sold to the writ petitioner was all rights, titles, interests and appurtenances but when we read Clause 3 of the same Sale Deed, the said clause gives a different impression. Clause 3 of the Sale Deed is as follows:-

"3. That the Vendor hereby represents and assures to the Vendee that his right in the property hereby sold, transferred and conveyed is in terms of agreement for transfer dated 29-9-1988 between Mr. Trilochan Singh Rana and Mis, Rani Rana transferor and M/s. Ocean Construction Industries Pvt. Ltd. (through its Director Shri Jugal Kishore Malhan) transferee."

16. The principles of construction of documents are well settled. While construing the documents/intention of the parties have to be ascertained. In this context, reference is made to judgment of this Court in Sahebzada Mohammad Kamgarh Shah Vs. Jagdish Chandra Deo Dhabal Deb and Others, AIR 1960 SC 953. In Paragraph Nos. 12 and 13, following was laid down:-

"12. In his attempt to establish that by this later lease the lessor granted a lease even of these minerals which had been excluded specifically by Clause 16 of the earlier lease, Mr Jha has arrayed in his aid several well established principles of construction. The first of these is that the intention of the parties to a document of grant must be ascertained first and foremost from the words used in the disposition clause, understanding the words used in their strict, natural grammatical sense and that once the intention can be clearly understood from the words in the disposition clause thus interpreted it is no business of the courts to examine what the parties may have said in other portions of the document. Next it is urged that if it does appear that the later clauses of the document purport to restrict or cut down in any way the effect of the earlier clause disposing of property the earlier clause must prevail. Thirdly it is said that if there be any ambiguity in the disposition clause taken by itself, the benefit of that ambiguity must be given to the grantee, the rule being that all documents of grants must be interpreted strictly as against the grantor. Lastly it was urged that where the operative portion of the document can be interpreted without the aid of the preamble, the preamble ought not and must not be looked into.

13. The correctness of these principles is too well established by authorities to justify any detailed discussion. The task being to ascertain the intention of the parties, the cases have laid down that that intention has to be gathered by the words used by the

> parties themselves. In doing so the parties must be presumed to have used the words in their strict grammatical sense. If and when the parties have first expressed themselves in one way and then go on saying something, which is irreconcilable with what has gone before, the courts have evolved the principle on the theory that what once had been granted cannot next be taken away, that the clear disposition by an earlier clause will not be allowed to be cut down by a later clause. Where there is ambiguity it is the duty of the Court to look at all the parts of the document to ascertain what was really intended by the parties. But even here the rule has to be borne in mind that the document being the grantor's document it has to be interpreted strictly against him and in favour of the grantee."

17. This Court further in Paragraph No.14 has held that in cases of ambiguity, several parts of the document have to be examined to find out what was really intended by the parties. In Paragraph No. 14, following was laid down:-

> "14. .....In cases of ambiguity it is necessary and proper that the court whose task is to construe the document should examine the several parts of the document in order to ascertain what was really intended by the parties. In this much assistance can be derived from the fourth condition of the conditions which were imposed by the lease as regards the grant of sub-leases. This condition provided inter alia that all such under- leases to be granted by the lessee shall be subject to the provisions of Clause 16 of the principal lease....."

18. Before we construe the document, we need to first notice the auction notice by which the property was put to auction. Auction notice, which has been brought on the record as Annexure-R1 indicate that details of four properties were given in the auction notice. It is useful to look into the details given as follows:-

	Details of Properties	Reserve Price
1.	Property No. B-6, Friends Colony Mathura Road, New Delhi. This is a lease hold residential plot measuring 195.097 sq. Mt. together with buildings and structure thereon and fixtures and fitting therein	34.20 lacs

2. Property No. 14, Block A-2, 1.08 crores Safdarjung Development Area, New Delhi.

This is a lease hold residential plot measuring (725 sq. yds.) with a double storeyed building. The Ground Floor consists of drawing dining bed room, kitchen and a garage. The First Floor consists of 3 bed rooms, 3 bath rooms, store and a lobby over the garage. There are 2 floors each having a servant room W.O. and a cocking verandah.

3. Property No. A-8/23, Vasant 36.60 Lacs Vihar, New Delhi.

This is a lease hold residential plot N. 23 in Street No. A-8 in the lay out plan of Vasant Vihar of the Government Servants Cooperative. House Building Society Ltd., and measuring 150 Sq. yds alongwith the super structure build thereon. (Covered area 1350 Sq. Ft).

4. Property bearing House No. E- 25.60 lacs 444 (Ground Floor), Greater Kailash Part-II, New Delhi-

110048.

All rights, titles and Interests in the dwelling unit on ground floor, and mazanine floor of House No. E-444, Greater Kailash, Part-

II, New Delhi, together with undivided. Indivisible and impartible ownership right of 35% in the land underneath of the said building and including the followings :-

1. One drawing-cum-dining hall, three bed rooms with attached bath rooms, balcony, kitchen, storage space (servants Quarters) and servant's bath rooms on ground floor.

2. Front lawn and back courtyard on the ground floor.

Parking space for a Maruti Car in the Driveway.

Ingress and Egress from the main gate to the dwelling unit.

19. A perusal of the details of the properties indicate that property in question is included as Item No. 2, which is mentioned as “This is a lease hold residential plot”. It is to be noticed that in so far as properties at Sl. Nos. 1, 2 and 3, the words mentioned are “leasehold residential plots” whereas with regard to property details given at Sl. No.4, it has been mentioned that “all rights, titles and interests in the dwelling unit”, which, if contrasted with details of properties given at Sl. Nos. 1, 2 and 3 contains the intendment. Thus, there cannot be any doubt that property in question, which was put in auction was a property as lease hold rights residential plots. When property is auctioned, the terms and conditions of auction are binding on both the parties. When petitioner submitted his bid in pursuance of the auction notice, he was bidding for lease hold residential plot with a double storied building. While interpreting the Sale Deed, the auction notice has to be looked into to find out the nature of transaction. The Sale Deed cannot be read divorced to the auction notice or contrary to auction notice. Auction of a leasehold residential plot and auction of freehold residential plot carries different connotations. Leasehold rights are limited rights, which are subservient to freehold rights of a property. In giving bid for leasehold rights and freehold rights, different considerations are there. Clause 3 as noted above indicate that the property sold and transferred is in terms of the agreement dated 29.09.1988 between Trilochan Singh Rana and Mrs. Rani Rana to M/s. Ocean Construction Industries Pvt. Ltd. Trilochan Singh Rana and Mrs. Rani Rana were only lease holders. Thus, they could best transfer their right, which was conferred to them by the

Indenture dated 18.03.1970. Learned counsel for the writ petitioner has submitted that Clause 3 being clearly contradictory to Clauses 1 and 2 has to give way to earlier clauses in the Sale Deed. He has placed reliance on judgment of this Court in Radha Sundar Dutta Vs. Mohd. Jahadur Rahim & Ors., AIR 1959 SC 24. In Paragraph Nos. 11 and 13, following was laid down:-

> "11. Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "ut res magis valeat quam pereat". What has to be considered therefore is whether it is possible to give effect to the clause in question, which can only be by construing Exhibit B as creating a separate Patni, and at the same time reconcile the last two clauses with that construction. Taking first the provision that if there be other persons entitled to the Patni of lot Ahiyapur they are to have the same rights in the land comprised in Exhibit B, that no doubt posits the continuance in those persons of the title under the original Patni. But the true purpose of this clause is, in our opinion, not so much to declare the rights of those other persons which rest on statutory recognition, but to provide that the grantees under the document should take subject to those rights. That that is the purpose of the clause is clear from the provision for indemnity which is contained therein. Moreover, if on an interpretation of the other clauses in the grant, the correct conclusion to come to is that it creates a new Patni in favour of the grantees thereunder, it is difficult to see how the reservation of the rights of the other Patnidars of lot Ahiyapur, should such there be, affects that conclusion. We are unable to see anything in the clause under discussion, which militates against the conclusion that Exhibit B creates a new Patni.
>
> 13. We must now refer to the decision on which the learned Judges in the Court below have relied in support of their conclusion.

In Kanchan Barani Debi v. Umesh Chandra, AIR 1925 Cal. 807, the facts were that the Maharaja of Burdwan had created a Patni of lot Kooly in 1820. The Choukidari Chakran lands situated within that village were resumed under the Act and transferred to the Zamindar who granted them in 1899 to one Syamlal Chatterjee in Patni on terms similar to those in Exhibit B. In 1914 the Patni lot Kooly was sold under the Regulation, and purchased by Smt Kanchan Barani Debi. She then sued as such purchaser to recover possession of the Choukidari Chakran lands. The defendants who represented the grantees under the Patni settlement of 1899 resisted the suit on the ground that the sale of Patni Kooly did not operate to vest in the purchaser the title in the Choukidari Chakran lands, as they formed a distinct Patni. Dealing with this contention, B.B. Ghose, J. who delivered the judgment of the Court, observed:

> "It is certainly open to the only two parties concerned to alter the terms of the original patni if they chose to do so; and what we have to see is whether that was done. In order to do that, we have to examine the terms of the pattah by which the Choukidari Chakran lands were granted to Syamlal Chatterjee." The learned Judge

then refers to the two clauses corresponding to the last two clauses in Exhibit B, and comes to the conclusion that their effect was merely to, restore the position as it was when the original Patni was created, and that, in consequence, the purchaser was entitled to the Patni as it was created in 1820, and that the plaintiff was entitled to the possession of the Choukidari Chakran lands as being part of the Patni. Now, it is to be observed that in deciding that the Choukidari Chakran lands granted in 1899 became merged is lot Kooly, as it was in 1820, the learned Judge did not consider the effect of the clause providing for sale of those lands as a distinct entity under the provisions of the Regulation when there was default in the payment of rent payable thereon under the deed, and that, in our opinion, deprives the decision of much of its value. In the result, we are unable to hold that the two clauses on which the learned Judges base their conclusion are really inconsistent with the earlier clauses which support the view that the grant under Exhibit B is of a distinct Patni. Nor do we agree with them that the earlier clause providing for the sale of the Chaukidari Chakran lands in default of the payment of jama, should be construed so as not to override the later clauses. If, in fact, there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa. In Forbes v. Git, (19220 1 AC 256, Lord Wrenbury stated the rule in the following terms:

"If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails. In this case the two clauses cannot be reconciled and the earlier provision in the deed prevails over the later." We accordingly hold that Exhibit B created a new Patni and that the sale of the lands comprised therein is not bad as of a portion of a Patni."

20. There cannot be any dispute to principles of construction of document as laid down by this Court as noticed above. But we have to look into the different clauses to find out the real intention of the granter. We need to notice that present is a case of Government grant where Government has granted rights by Sale Deed to the writ petitioner. Section 3 of the Government Grants Act, 1895 provides for Government grants to take effect according to their tenor. Section 3 is as follows:-

3. Government grants to take effect according to their tenor.- All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

21. This Court in S.N. Ranade Vs. Union of India and Another, AIR 1964 SC 24 while considering the case of Inam laid down following:-

"……when the said Government made a grant to the appellant's predecessors, the principle enunciated by Section 8 of the Transfer of property Act should be applied and the grant should be construed to include all rights, title and interest of the grantor, unless there is a contrary provision either expressly made, or implied by necessary implications."

22. Normally, the grant should be construed to include all rights, title and interest of the grantor, unless there is a contrary provision either expressly made, or implied by necessary implications, is the principle, which has been laid down by this Court in above case. Paragraph No.3 contains the intention of the granter to transfer the rights to the writ petitioner in terms of the agreement dated 29.09.1988. Clause 3 limits and explain the rights, which were given in Clause Nos. 1 and 2 of the Sale Deed, but it cannot be said that Clause 3 is totally contradictory to Clauses 1 and 2. The three clauses have to be harmoniously construed to give effect to the intention of the granter. Furthermore, as we have noticed that auction notice provided for auction of leasehold rights, which is an important factor, which cannot be brushed aside while interpreting the Sale Deed.

23. With reference to Clause 3 in the Sale Deed a statutory provision also needs to be noticed. Section 269UE of the Income Tax Act, 1961 deals with vesting of property in Central Government. Section 269UE has been amended by Finance Act, 1993 w.e.f. 17.11.1992.

Amended Section 269UE sub-section (1) is as follows:

"269UE. Vesting of property in Central Government.—(1) Where an order under sub-section (1) of section 269UD is made by the appropriate authority in respect of an immovable property referred to in sub- clause (i) of clause (d) of section 269UA, such property shall, on the date of such order, vest in the Central Government in terms of the agreement for transfer referred to in sub-section (1) of section 269UC:

Provided that where the appropriate authority, after giving an opportunity of being heard to the transferor, the transferee or other persons interested in the said property, under sub-section (1A) of section 269UD, is of the opinion that any encumbrance on the property or leasehold interest specified in the aforesaid agreement for transfer is so specified with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or leasehold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrance or leasehold interest.

(2) *** *** *** "

24. In sub-section (1) of Section 269UE in place of words "free from all encumbrances" the words "in terms of the agreement for transfer referred to in

sub-section (1) of Section 269UC" have been inserted.

When the Sale Deed was executed in favour of the auction-purchaser above amendment in Section 269UE sub-section (1) had already been inserted. The vesting of property in Central Government when is in terms of agreement for transfer referred to in sub- section (1) of Section 269UE at the time of execution of Sale Deed, the statutory mandate has been reflected in Clause 3. We, thus, neither can ignore Clause 3 of the Sale Deed nor can hold that said Clause has to give way to Clauses 1 and 2 of Sale Deed. While finding out the tenor of grant as reflected in Sale Deed, the provisions of sub-section (1) of Section 269UE as amended by Finance Act has also to be taken note of.

25. We, thus, find that on true construction of Sale Deed, it is clear that all rights, titles and interests were not conveyed to the petitioner in the leasehold residential plot, when we read Clauses 1, 2 and 3 together.

26. Learned counsel for the writ petitioner relying on provisions of Section 111 of the Transfer of Property Act, 1882 contends that leasehold rights have been merged in the lessor since when lessor's interest coalesces with lessee's interest, the principle of merger comes into play. He has placed reliance on judgment of this Court in T. Lakshmipathi and Others Vs. P. Nithyananda Reddy and Others, (2003) 5 SCC 150 and Pramod Kumar Jaiswal and Others Vs. Bibi Husn Bano and Others, (2005) 5 SCC 492. This Court in T. Lakshmipathi (supra) had examined the doctrine of merger as contained in Section 111(d). In Paragraph Nos. 14 to 17, following was laid down:-

> "14. The common-law doctrine of merger is statutorily embodied in the Transfer of Property Act, 1882. Section 111(d) provides:
>
> "111. Determination of lease.—A lease of immovable property, determines— * * *
>
> (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

* * *" A bare reading of the doctrine of merger, as statutorily recognized in India, contemplates (i) coalescence of the interest of the lessee and the interest of the lessor, (ii) in the whole of the property, (iii) at the same time, (iv) in one person, and (v) in the same right. There must be a complete union of the whole interests of the lessor and the lessee so as to enable the lesser interest of the lessee sinking into the larger interest of the lessor in the reversion.

15. In Badri Narain Jha v. Rameshwar Dayal Singh, AIR 1951 SC 186, it was held by this Court that if the lessor purchases the lessee's interest, the lease no doubt is extinguished as the same man cannot at the same time be both a landlord and a tenant, but there is no extinction of the lease if one of the several lessees purchased only a part of the lessor's interest. In such a case the leasehold and the reversion cannot be said to coincide.

16. In Sk. Faqir Bakhsh v. Murli Dhar, AIR 1931 PC 63, the plaintiff was holding on lease a portion of the entire property. Subsequently, the plaintiff and the defendant became pro indiviso joint

proprietors of the property by purchasing shares from the earlier owners. The lease was subsisting when the shares were bought by the parties. In a suit for accounts filed by the plaintiff it was held that the plaintiff's rights under lease of a part do not merge in his rights as joint proprietor of the whole of the property as between the parties the plaintiff held a valid and subsisting lease.

17. A Division Bench of the Patna High Court in Parmeshwar Singh v. Sureba Kuer, AIR 1925 Pat 530, held that Section 111(d) applies only to a case where the interests of the lessee and of the lessor in the whole of the property become vested at the same time in one person in the same right. Where a co-proprietor in the property purchased for himself the interest of the lessees of the whole property, there could be no merger. On purchase of a partial interest in tenancy rights by the owner, the onus of proving that the distinction between the interests continued to be kept alive subsequently also cannot be placed on the party alleging that the distinction was so kept alive. To the same effect is the view of the law taken in Lala Nathuni Prasad v. Syed Anwar Karim, AIR 1919 Pat

390. Merger is largely a question of intention, dependent on circumstances, and the courts will presume against it when it operates to the disadvantage of a party, as was held by this Court in Nalakath Sainuddin v. Koorikadan Sulaiman, (2002) 6 SCC 1 (SCC para 20)."

27. To the same effect is judgment of this Court in Pramod Kumar Jaiswal (supra). There cannot be any dispute to the proposition laid down by this Court in reference to Section 111(d). We, however, find that in the present case, we need not rely on doctrine of merger as contained in Section 111(d). Present being a case of a Government grant by virtue of the Section 2 of the Government Grants Act, 1895, nothing in the Transfer of Property Act, 1882, shall apply or be deemed ever to have applied to any grant or other transfer. The principles contained in the Transfer of Property Act have been applied while construing the Government grants as has been noticed above. But herein issue being Government grant, the principle of merger may not be of much relevance. More so, we having construed the Sale Deed as not having conveyed all rights and interests in the leasehold property, the principle of merger does not in any manner advance the claim of the writ petitioner.

28. Learned counsel for the writ petitioner has also referred to and relied on judgment of the Division Bench of Delhi High Court in M/s. Bansal Contractors (India) Ltd. & Anr. Vs. Union of India and Others, 76 (1998) DLT 805. In the above case, sale of property was made in public auction after exercising the power under Section 269UD. From the judgment of Delhi High Court, it is not clear that as to whether any clause similar to Clause 3 as contained in the Sale Deed in question, was there. In absence of any such clause, interpretation put to the Sale Deed by the Delhi High Court cannot be faulted. It is further relevant to notice that details of the auction notice are not noticed in the judgment to find out what was the nature of the property, which was sought to be put for auction. We, thus, are of the view that judgment of Delhi High Court was on its own facts and cannot be relied on by the writ petitioner in the facts of the present case. We, thus, do not find any error in the judgment of the Division Bench setting aside the direction made by the learned Single Judge to refund the amount of conversion. The writ petitioner has made an alternative prayer in the writ petition seeking a writ of mandamus directing the respondents to allow/order the conversion of the lease hold rights into freehold rights in respect of the aforesaid plot of land without payment of any

amount of alleged unearned increase and or interest due thereon.

29. We having held that writ petitioner is not entitled for refund of conversion charges, we direct the DDA to process the writ petitioner's application for conversion of the leasehold rights into freehold rights. The Civil Appeal No.1534 of 2019 filed by M/s. Karamdeep Finance and Investment (I) Pvt. Ltd. is disposed of upholding the order of Division Bench, however, with direction to DDA to process the application for conversion in accordance with law. The Civil Appeal No. 1533 of 2019 is dismissed. The parties shall bear their own costs.

.....J. (ASHOK BHUSHAN) .....J. (K.M. JOSEPH) New Delhi, February 12, 2019.