

**(2002) 12 DEL CK 0069**  
**In the Delhi High Court**  
**Case No : CW No. 552 of 1990**

Ram Gopal Nayyar and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 20-12-2002

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 80

**Citation :** (2003) 66 DRJ 545 : (2003) 2 RCR(Civil) 477

**Hon'ble Judges :** Manmohan Sarin, J

**Bench :** Single Bench

**Advocate :** K.N. Kataria, Ashok Marwaha and Rachna Kataria, for the Appellant;  
Jayant Bhushan and Anil Dutt, for the Respondent

**Final Decision :** Allowed

## Judgement

Manmohan Sarin, J.—Petitioners, Ram Gopal Nayyar Son of late Lachman Dass Nayyar and Mr. Harish Nayyar son of Mr. Ram Gopal Nayyar have filed the present writ petition seeking number of reliefs. Petitioners assail the demand for payment of unearned increase by the L & DO, as a condition for grant of consent for transfer as un-warranted under the terms of perpetual lease and under the provisions of the Government Grants Act.

2. During the course of the hearing of the writ petition, Mr. K.N. Kataria, learned senior Advocate for the petitioner, on instructions from Mr. Ashok Marwaha, Advocate and petitioner Mr. Ram Gopal Nayyar, who was present in court, stated that the petitioners would be satisfied, if the unearned increase is charged from them at the rates, which were prevailing upon the date of application made for seeking consent for transfer.

3. It would be relevant at this stage to note the facts in brief:

(i) The L & DO had executed a registered perpetual lease deed in respect of plot of land situated at K-2A, Block-1 in the New Capital of Delhi, now known as 41 Prithvi Raj Road, New Delhi admeasuring 1.036 acres in favor of Shri B.N.

Bhambri. Pursuant to the grant of lease and taking possession, the said Shri B.N. Bhambri constructed two independent houses on the said plot of land after obtaining permission from the authorities and getting the plan sanctioned. Petitioners claim that one house was built on an area of 2465.3 sq.yds. now numbered as 41, Prithvi Raj Road and the other on an area of 2459.7 sq.yds. now numbered as 41-A, Prithvi Raj Road, New Delhi. It is claimed that two separate houses have separate approach and passages for ingress and egress etc. Mr. B.N. Bhambri, the original lessee died on 25.12.1960 and the plot/property was mutated in the name of Shri Bajjar Sen Bhambri and Shri Ravinder Sen Bhambri, his sons on the basis of his last Will dated 25.4.1950.

(ii) Petitioner No. 1 and his wife late Smt. Sharda Nayyar, entered into an agreement dated 24.5.1972 to purchase house built on 41, Prithvi Raj Road, New Delhi admeasuring 2465.3 sq.yds. It is claimed that in part performance of the contract, the petitioners were put in possession of the property on 24.5.1972 and has since then been paying the property tax. Wife of petitioner No. 2 expired and thereupon her rights devolved upon petitioner No. 2, son of the petitioner.

(iii) Vendor Bajjar Sen Bhambri and Ravinder Sen Bhambri applied to the Secretary, Land and Building Department, Delhi Administration for grant of permission for the sale of bungalow No. 42, Prithvi Raj Road, New Delhi held under the lease from Land and Building office (Works and Housing) Nirman Bhawan, New Delhi. Thereafter vendors responding to letter dated 18.7.1972 from the respondent gave the status of occupation of the house in respect of property No. 41, Prithvi Raj Road, New Delhi. Respondents were also informed that House No. 41A, Prithvi Raj Road had been duly mutated. Request was made for mutating the property in favor of the said vendors. On 19.10.1974, a notice u/s 80 CPC was sent on behalf of petitioner No. 1 and his wife, notifying the respondents that permission of the government to sell property No. 41, Prithvi Raj Road, New Delhi, to the petitioner be granted with intimation of the same being also sent to the vendors Bhambri brothers, so that the petitioners could obtain the conveyance from the said Bhambri brothers. Respondents were notified that in case the above demand was not complied with, a suit for specific performance would be instituted. Petitioners thereafter instituted suit bearing No. 71/75 for specific performance in respect of the agreement dated 24.5.1972 impleading respondent L&DO as a party.

(iv) Counsel for the respondents made a statement during the proceedings in suit to the effect that they would consider the request for transfer in case the petitioners were successful in obtaining a decree in the suit against the vendors. Respondents were thereupon deleted from the array of defendant in suit. Liberty was also granted to the petitioners to avail of legal remedies in case the respondents declined or refused permission. The suit was decreed on 9.7.1985. A decree of specific performance was granted on 9.7.1985. No appeal was preferred against the judgment passed in the said suit. As the vendors failed to execute the sale deed and have the same registered within the stipulated period,

the sale deed was executed and registered by an officer of this court in favor of the petitioner on 13.9.1985.

(4) Petitioners thereafter approached the respondents for mutation of the property in their favor. Vendors also gave "No Objection Certificate" in favor of the petitioners. Vendors also addressed a communications to L & DO for granting mutation in favor of the present petitioners. Vide communication addressed by their counsel dated 23.7.1987 and 21.10.1987 demanded that mutation be carried out in their client's favor. This was also followed by reminders dated 2.5.1988, when requisite declarations were also filed with the respondents. Petitioners also wrote letters dated 24.5.1988 and 9.12.1988 reiterating their request for grant of mutation. Requisite permission received from the Income Tax Department was also enclosed. There being no response from the respondents to the repeated entreaties, the petitioners filed the present writ petition on being orally informed by the respondents, concerned official that unearned increase at the current rates amounting to approximately Rs. 2,14,000/- would be payable by them.

(5) In the aforesaid background of facts, learned senior counsel for the petitioner had assailed the non-grant of mutation as also refusal to sub-divide the plot. Counsel for the petitioner submitted that the petitioners were being treated in a discriminatory manner as the respondents had allowed mutation and sub-division in respect of other plots, namely, 4, 10, 10-A, 20, 20-A and 20-B etc. Prithvi Raj Road, New Delhi, which were similarly placed. Petitioner's counsel also relied on the judgment of a learned Single Judge of this Court in *Sunil Vasudeva and Ors. v. D.D.A.* reported at Vol. XXXIX Delhi Law Times 1988 39. The learned Judge in the cited case while interpreting the terms of the lease and the provisions of the Government Grants Act, held that the lease terms would prevail. Further while giving consent for sub-division/transfer, DDA could not claim any unearned increase.

(6) It is not necessary go into this question as to whether under the provisions of the Government Grants Act or the lease terms the Lesser can demand unearned increase as a condition for grant of consent as the same is not being pressed. Petitioners have submitted that it would not press this plea, in case the petitioners are charged at unearned increase as were prevalent at the time when the permission was sought.

(7) In view of the above statement, the only question surviving for consideration is whether the petitioner ought to be charged the rates as were prevalent at the time of application or the rates as are currently applicable since the permission is being granted now? Learned counsel for L & DO has placed reliance on office order No. 10/94, in terms of which various sections of L & DO have been directed to follow the guide-lines for permission to sell contained in the letter bearing No. J-13019/1/93-LD dated 11.3.1994. The relevant clauses of these guide-lines are reproduced as under:-

1(i) The application should be submitted in the prescribed format complete in all respects. It should be signed by the lessee(s) or duly authorised attorneys of the lessee(s).

1(v) If the application is not accompanied by the requisite documents, the same should be returned at the receipt stage in the L&DO. All the applications received should be first scrutinised to see whether the application is complete in all respects or not. If the application received in the office is found to be incomplete, it should be returned to the applicant within 7 days of the receipt.

1(vi) The date of receipt of the complete application in L & DO would be the crucial date for calculation of unearned increase.

2(ii) The unearned increase should be calculated by taking the date of receipt of complete application as the crucial date and the original premium/last transaction value as the case may be and the notified land rates applicable for the crucial date as the relevant factors.

2(vi) If the applicant/lessee makes the payment after the expiry of the stipulated period, the crucial date will be shifted to the date of such payment and if there is change in the land rates during the intervening period, the applicant/lessee(s) will be liable to pay the difference in the unearned increase etc. before granting the sale permission.

5(ii) If the sale deed is executed without prior permission of the Lesser and an application is made for mutation of the property, the date of intimation of transfer along with certified copy of the sale deed would be the crucial date for purposes of calculating unearned increase. Though in the normal course, the demand of unearned increase should be on the lessee, in such cases where the sale deed has already been executed.

(8) To summarise the effect of these clauses would be that the guide-lines require a complete application as per the format to be submitted. Incomplete application was required to be returned after scrutiny. The date on which completed application is received is to be regarded as a crucial date for computation of the unearned increase. The unearned increase is to be calculated by applying the rate prevalent on the crucial date. In case, the sale deed is executed without prior permission, then the rate applicable on the date of intimation of the sale deed is to be taken.

(9) Mr. Jayant Bhushan submits that as per these guide-lines the petitioner would be liable to pay the unearned increase on the current rates or at best the rate in 1987, when the certified copy of the sale deed was given and it would be regarded as intimation of the sale deed without permission.

(10) I am not persuaded to accept this submission. It is not in dispute that the present petitioners entered into an agreement to purchase the property on 24.5.1972. The possession of the plot/property was also taken on 24.5.1972. The petitioner and his family have been residing in the said property since then.

The petitioners have also been paying the municipal taxes as per their agreement. The sale consideration of Rs. 5,20,000/- (Rupees Five lacs and twenty thousand only) was paid by the petitioners in 1972 for purchase of the property. Petitioners, who have purchased this property for a total consideration of Rs. 5,20,000/- (Rupees Five lacs and twenty thousand only), cannot be now called upon to pay a sum of Rs. 1,42,78,856/- (Rupees One crore forty two lac seventy eight thousand eight hundred and fifty six only) as unearned increase and interest on the basis of the prevailing land rates in 1987 with interest. This is especially so when the unearned increase is intended to recover from the vendor 50% of the profit, which he acquires out of the sale transaction. Moreover, there is merit in the contention of the counsel for the petitioner that the guide-lines have come into force only in 1994. Petitioners sought permission for transfer in the year 1972 and thereafter again 19.10.1974, when notice u/s 80 CPC were also served. Even if the application made in the year 1972 is held to be not properly addressed or incomplete, the notice u/s 80 CPC that was served in 1974 gave all the requisite details. It also may be noted that the suit for specific performance was decreed on 9.5.1985. During the proceedings in the suit, the respondents had also agreed to consider the request for transfer and mutation upon the petitioners succeeding in the suit. Suit for specific performance itself has been filed in 1975. Thus this is a case where the petitioner, who had bonafide purchased the property upon payment of the entire sale consideration of Rs. 5,20,000/- had taken possession and applied for transfer. Petitioners cannot be made to pay the unearned increase as demanded on the basis of the currently prevalent land rates of 1987.

(11) Be it may, in my view the respondents can claim only the rates as were applicable in May 1972. The petitioners would have been required to pay the amount in 1972 for availing the benefit of the land rates. It would be just and reasonable to require the petitioners to pay interest @ 10% per annum on the amount of unearned increase as computed on the land rates of 1972. Respondents have computed the amount payable to Rs. 6,53,670/- as on 31.10.2002 with interest. Let the petitioners pay interest on the sum of Rs. 2,14,297/- @ 10% per annum from 1.5.72 till the date of payment. Upon the petitioners paying the aforesaid amount of Rs. 2,14,297/- together with interest at the rate of 10% on or before 28.2.2003, respondents shall grant mutation in favor of the petitioner on the basis of their undivided joint share in the total plot/property.

Writ petition stands allowed in the above terms.