

(2022) 09 DEL CK 0145

In the Delhi High Court

Case No : Civil Writ Petition No. 4257 Of 2007 , Civil Miscellaneous Application
No. 13779 Of 2009

Soma Rani & Anr

APPELLANT

Vs

Lt Governor Of Delhi & Ors

RESPONDENT

Date of Decision : 23-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 9(3)

Citation : (2022) 09 DEL CK 0145

Hon'ble Judges : Chandra Dhari Singh, J

Bench : Single Bench

Advocate : Pawanjit S. Bindra, Vinayak Marwah, Anusuya Salwan, Bankim Garg,
Shakaib Khan, Rachit Wadhwa, Waseem Ahmed

Final Decision : Dismissed

Judgement

Chandra Dhari Singh, J

1. The instant petition under Article 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking a writ, order or direction in the nature of certiorari for quashing and setting aside letter No. 398 issued by the respondent dated on 21st March 2007 rejecting the representation of the petitioner for conversion of her premises from leasehold to freehold.

FACTUAL MATRIX

2. A brief background of the case which has led to the filing of the instant petition is delineated hereafter:-

I. The petitioner is the owner of premises bearing Plot No. 106, Functional Industrial Estate, Patparganj, Delhi which was allotted/leased out to M/s Premier Enterprises (hereinafter "the lessee") vide Perpetual Lease Deed dated 18th August 1992 through its proprietor Smt. Pushplata. The petitioner is also the General Power of Attorney holder (hereinafter "GPA") for the lessee. The lease for

the premises in question was cancelled by the order of the respondent no. 1/Lt. Governor of Delhi, under which the respondent no. 2 functions.

II. By an ex-parte order dated 28th May 1998, with corrigendum dated 30th June 1998, of the respondent no. 2, the aforesaid Lease Deed was cancelled on the ground that then lessee had sold the premises in question without the prior permission of the respondent and that the premises was being used for purposes other than stipulated under the Lease Deed. It is the case of the petitioner that she came to know about the passing of the ex-parte order against her and the lessee only when she received a notice under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter "PP Act"). Proceedings were, accordingly initiated under the PP Act before the Estate Officer.

III. The petitioner, thereafter, made a representation to the respondent no. 1 on 3rd January 1999, requesting for revocation of the ex-parte cancellation order and restoration of the Lease Deed so cancelled. Subsequent representations were made by the petitioner to the Lt. Governor vide representation dated 5th August 1999 and before the respondent on 11th September 2001 was made for restoration of lease deed.

IV. The matter before the Estate Officer came to a conclusion by passing of the impugned order dated 13th February 2003, whereby, proceedings for eviction of the petitioner were ordered to be initiated after observing on essentially the grounds, first, that reasonable opportunities were given to the petitioner to present their case before cancellation of the lease and completion of these proceedings, however, no response was submitted by them, secondly, that the petitioner was not running the industry for the purposes for which the lease was granted and plot was allotted to it and hence, it violated the terms of the lease, and thirdly, that Smt. Pushplata and Smt. Soma Rani/petitioner were unauthorized occupants of the premises in question under the PP Act.

V. Aggrieved by the said order of the Estate Officer, an Appeal was preferred before the Appellate Court, which also came to be decided against the petitioner by the passing of the impugned order dated 30th October 2009, wherein it was observed that adequate notice was served to the petitioners herein and they were given a fair, just and reasonable opportunity to present their case. It was further observed that the premises in question were in fact a public premise and thus, no grounds were found to interfere with the impugned order of 13th February 2003.

VI. During the pendency of the Appeal, a Scheme of Conversion from Lease-hold System into Free-hold for Industrial Plots and Built-Up Sheds was introduced by the respondent (hereinafter "the Scheme"). The petitioner, seeking benefits under the Scheme, approached the Office of Commissioner of Industries where she was told that since the lease deed in question had been cancelled, she could not apply for conversion.

VII. Thereafter, the petitioner made a detailed representation dated 14th

December 2006 requesting acceptance of her conversion application and submitted the same in a personal hearing. The said application came to be rejected by the respondents vide their communication bearing No. 396 dated 21st March 2007 (hereinafter "impugned order") on the ground that lease deed with respect to the property in question stood cancelled and the matter was sub judice at the time.

3. The petitioner is aggrieved by the impugned rejection order dated 21st March 2007 and has approached this Court seeking its quashing.

SUBMISSIONS

4. Mr. Pawanjit S. Bindra, learned senior advocate appearing on behalf of the petitioner submitted that the impugned order has been passed without appreciating the proper facts and circumstances and is therefore, liable to be set aside.

5. It is submitted that the order of cancellation was passed ex-parte without serving a Show Cause Notice to the petitioner. The grounds taken while cancelling the lease were unfounded and contrary to the factual situation. The lease deed dated 18th August 1992 was granted for the purpose of food processing, drugs and pharmaceutical industry and the inquiry report dated 8th April 2002 in this regard also revealed that there was no violation of the terms of the lease deed since the premises was being used for manufacturing of cornflakes, i.e., food processing. It is further submitted that the alleged violation at the premises in question were of remediable nature and the petitioner did not get a fair opportunity to clarify the situation and remove the alleged violation prior to cancellation of lease deed.

6. Learned senior counsel for the petitioner submitted that the respondent has erroneously passed the impugned order without appreciating the fabric of the Scheme of conversion. It is submitted that the Scheme brought about by the respondent is applicable to even those cases where the properties have been ordered to be re-entered. The Conversion Form should not have been rejected on the ground that re-entry orders had been passed since it is taken as a composite application for restoration as well as conversion. Clause 10(ii) also makes it clear that conversion will be allowed only after re-entry order is withdrawn. Meaning thereby that such a case will be and can be processed only when the owner approaches for conversion.

7. It is submitted that the respondents have stated in the impugned rejection order that the application of petitioner for conversion could not be considered as the matter was sub judice. It is submitted that the reasoning given by the respondents is wholly misconceived, since the only form of litigation, which is an embargo to acceptance/allowance of conversion application, as per the Scheme, is a litigation which pertains to the title of property. Clause 9 and 11 of the Brochure for conversion as issued by the respondents are very clear on this aspect. Such litigation should necessarily be between the lessee and the

subsequent purchaser; or between a subsequent purchaser and another subsequent purchaser; or between co-owner/co-lessees or between legal heirs of a deceased owner; or between partners of a partnership firm or subsequent transferee, etc. In the present case there is no such litigation or dispute. The Appeal filed by the petitioner challenging the order of the Estate Officer, which was pending at the time of filing the representation but now stands dismissed and has been assailed before this Court in W.P. (C) 217/2010, cannot be deemed to be an impediment to the consideration of the petitioner's conversion application since the same did not pertain to a dispute regarding the title of the property.

8. It is submitted that with regard to the Scheme, there are two relevant factors that are to be considered while adjudicating upon any property in question, first, that in case of multiple GPA where property has changed hands, the latest GPA holder of the lessee can seek conversion of the property in favour of the latest buyer who is in possession of the said property and secondly, that in cases where the property has been re-entered, upon lease deed being cancelled, the re-entry orders will get revoked when the applicant applies for conversion, and thereafter only the property will be converted from leasehold to freehold.

9. It is submitted that the other Government authorities such as Delhi Development Authority (hereinafter "DDA") and Land & Development Office (hereinafter "L&DO"), etc. have been following the above said procedure in conversion cases. DDA and L&DO have been accepting the conversion form from desirous applicants, even in cases where the lease deed has been cancelled and hence, different norms and rules may not be set under the same scheme for different departments.

10. Reliance has been placed upon the judgment of a Coordinate Bench of this Court in J.K. Bhartiya & Ors. vs. Union of India & Ors, 126 (2006) DLT 302, wherein it was held that the benefit of the Scheme of conversion would apply to properties where the lease has been cancelled which had been re-entered and those properties in which the original lessor/allottee had parted with the possession or entered into an Agreement to Sell with third parties. Further, in Union of India vs. Vinay Kr. Aggarwal, 116 (2005) DLT 322, a Division Bench of this Court observed that as per the Circular dated 25th June 1996, regarding the 1992 Scheme of conversion, that application for conversion into freehold were not to be rejected merely because there is re-entry. Further, in Bal Kishan Chhabra vs. Union of India, 127 (2006) DLT 460, it was reiterated that the conversion could not be refused only on the ground of existence of re-entry orders.

11. It is therefore submitted that the impugned order is liable to be set aside in light of the judgments stated and the law laid down.

12. Per Contra, learned counsel appearing for the respondents vehemently opposed the instant petition and submitted that there is no error or illegality in

the order passed by the respondent no. 2.

13. It is submitted that the petitioner has blatantly violated the terms of the Lease Deed dated 18th August 1992. The Lease Deed in favour of the lessee was executed for the purposes of carrying out activity of manufacturing surgical bandages. However, a report of Estate Officer dated 17th February 1997 revealed that the premises in question was converted into a Banquet Hall, namely, Jhankar Banquet Hall. Pursuant to this finding, Show Cause Notices were issued to the petitioner on 19th March 1997 and 26th September 1997 via registered post to the original allottee and was also endorsed to Jhankar Banquet Hall asking the lessee to show as to why the lessor, by virtue of powers conferred upon it under Clause 3 of the lease deed should not determine the lease, re-enter upon and take possession of the industrial plot in question on account of violation of the terms of the lease deed.

14. It is submitted that as per Clause 5(a) of the Lease Deed, the lessee/petitioner could not have sold, transferred, assigned, sublet or otherwise parted with the possession of whole or any part of the industrial plot except with the consent of the lessor in writing. It is submitted that the allottee was required to reply within seven days of issuance of the Notice dated 19th March 1997 and within fifteen days of issuance of the Notice dated 26th September 1997, however, no reply was received on the said notices.

15. It is submitted that subsequently, the allotment in the case was cancelled and the lease was determined with the approval of Lt. Governor of Delhi vide Order dated 28th May 1998. It is submitted that by the said Order, the lessee was required to hand over the peaceful possession of the said plot to the Estate Officer, Office of the Commissioner of Industries within seven days of receipt of the Order. The lessee also had the liberty to appeal before the Lt. Governor of Delhi within thirty days of the date of issuance of the letter. However, the possession was not handed over to the respondent and therefore, the matter was referred to the Estate Officer for initiation of eviction proceedings, consequent to which the Order dated 13th February 2003 was passed by the Estate Officer directing the original allottee and all persons in the occupation of the plot in question to vacate the same within fifteen days from the date of publication of order. The Appeal preferred by the lessee was also rightly dismissed vide order dated 30th October 2009 upholding the proceedings and order of the Estate Officer.

16. Learned counsel for the respondents submitted that the petitioner is seeking conversion from leasehold to freehold, however, such a conversion can only be affected in favour of the power of attorney holder when there is a valid subsisting allotment existing. In cases where the lease deed stands determined the allotment has to be restored and only then can application for conversion can be processed.

17. It is submitted that as per the Policy, under Para 6(ii) it is specifically

provided that in case of the re-entered properties, conversion would be allowed only when re-entry notice has been withdrawn and lease deed/allotment has been restored. It is further submitted that restoration of Lease Deed and conversion from leasehold to freehold is not a composite process rather it implies that the case of conversion would be allowed only after process of restoration, if any, as per merits, is concluded under the relevant provisions of the Land Management Guidelines and is allowed. In the case of the petitioner, the matter of revocation of order of determination of lease was sub judice at the time of consideration of application for conversion and it was found that until the plot was restored in the name of the petitioner there was no cause for allowing the conversion from lease hold to freehold.

18. It is further submitted that the Scheme for conversion from lease hold to free hold in respect of industrial built-up plots has been framed and made applicable by the Government of NCT of Delhi and as per the same, to record conversion as per Para 10(ii) in case of re-entered properties conversion would be allowed only when re-entry notice stands withdrawn and lease allotment is restored. Therefore, the restoration and conversion are not one composite process.

19. It is submitted that the respondent duly considered the representation dated 14th December 2006. The same was rejected vide letter dated 21st March 2007 clearly mentioning that the request for conversion cannot be accepted as the property in question is re-entered one. As a conversion can only be allowed when the reentering is revoked and the allotment is restored. Since the restoration of allotment is a matter of sub judice therefore, conversion cannot be allowed in respect of property in question. Moreover, the petitioner's representation for restoration of the lease and recall of the orders of re-entry was rejected by the competent authority after passing the speaking order and, therefore the conversion could not be affected as the competent authority did not restore the lease.

20. It is submitted that the rejection of the conversion from leasehold to freehold was on the basis of the facts and circumstances of the case of the petitioner and hence, there is no illegality in the order passed by the respondent no. 2, therefore, the instant petition is liable to be dismissed.

21. Heard learned counsel for the parties and perused the record.

ANALYSIS AND FINDINGS

22. At the very outset, it is pertinent to outline the scope of writ jurisdiction under Article 226 and 227 of the Constitution of India while examining and adjudicating upon an impugned order in the instant petition.

Scope of Writ Jurisdiction

23. Under Article 226 of the Constitution of India, High Courts have the power to adjudicate upon an impugned order along with the power to entertain writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and

certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and question of facts would amount to exceeding the jurisdiction. While examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record.

24. In *Nagendra Nath Bora vs. Commr. of Hills Division and Appeals*, AIR 1958 SC 398, the Hon'ble Supreme Court made the following observations while examining the scope of interference by High Courts in an order impugned and what would constitute an error apparent on record:-

"37. But the question still remains as to what is the legal import of the expression 'error of law apparent on the face of the record'. Is it every error of law that can attract the supervisory jurisdiction of the High Court, to quash the order impugned? This court, as observed above, has settled the law in this respect by laying down that in order to attract such jurisdiction, it is essential that the error should be something more than a mere error of law; that it must be one which is manifest on the face of the record. In this respect, the law in India and the law in England, are, therefore, the same. It is also clear, on an examination of all the authorities of this Court and of those in England, referred to above, as also those considered in the several judgments of this Court, that the common-law writ, now called order of certiorari, which was also adopted by our Constitution, is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction.

38. The principle underlying the jurisdiction to issue a writ or order of certiorari, is no more in doubt, but the real difficulty arises, as it often does, in applying the principle to the particular facts of a given case. In the judgments and orders impugned in these appeals, the High Court has exercised its supervisory jurisdiction in respect of errors which cannot be said to be errors of law apparent on the face of the record. If at all they are errors, they are errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inferences. In other words, those are errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected. As already indicated, the Appellate Authority had unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction. Section 9(3) of the Act, gives it the power to pass such orders as it thought fit. These are words of very great amplitude. The jurisdiction of the Appellate Authority, to entertain the appeals, has never been in doubt or dispute. Only the manner of the exercise of its appellate jurisdiction was in controversy. It

has not been shown that in exercising its powers, the Appellate Authority disregarded any mandatory provisions of the law. The utmost that has been suggested, is that it has not carried out certain Executive Instructions. For example, it has been said that the Appellate Authority did not observe the instructions that tribal people have to be given certain preferences, or, that persons on the debarred list, like smugglers, should be kept out (see p. 175 of the Manual). But all these are only Executive Instructions which have no statutory force. Hence, even assuming, though it is by no means clear, that those instructions have been disregarded, the non-observance of those instructions cannot affect the power of the Appellate Authority to make its own selection, or affect the validity or the order passed by it.

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41. A Constitution Bench of this Court examined the scope of Article 227 of the Constitution in the case of *Waryam Singh v. Amarnath* [(1954) SCR 565] . This Court, in the course of its judgment, made the following observations at p. 571:

“This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* [AIR (1951) Cal 193] , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Art 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art, 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. Hence, interference by the High Court, in these cases, either under Article 226 or 227 of the Constitution, was not justified.”

25. The Hon’ble Supreme Court in *Union of India vs. P. Gunasekaran*, (2015) 2 SCC 610, elaborating upon the extent of exercise of writ jurisdiction, held as under:-

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappraise the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be:....”

26. Further, the Hon’ble Supreme Court in *Sarvepalli Ramaiah vs. District Collector, Chittoor*, (2019) 4 SCC 500, made the observations as reproduced hereunder, while examining the scope of Article 226 of the Constitution of India:-

“41. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.

42. A decision may sometimes be set aside and quashed under Article 226 on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root of the decision and/or in other words an apparent error, but for which the decision would have been otherwise.

43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the Court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact.”

27. Further in *Sanjay Kumar Jha vs. Prakash Chandra Chaudhary*, (2019) 2 SCC 499, the following observations were made by the Hon’ble Supreme Court:-

“13. It is well settled that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as a court of appeal over the findings recorded by a competent administrative authority, nor reappreciate evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based on evidence and substitute its own findings, which the High Court has done in this case....”

28. The law, as has been interpreted by the Hon’ble Supreme Court, is clear that a High Court exercising its writ jurisdiction shall not appreciate evidence and must not interfere in the order impugned unless there is a gross illegality or error apparent on the face of record. Hence, this Court will also limit itself to the question of law and the contents of impugned order.

Scheme of Conversion from Leasehold to Freehold

29. The Scheme of Conversion from Lease-hold System into Free-hold for Industrial Plots and Built-Up Sheds was introduced by the Government of NCT of Delhi/respondent no. 3 in November 2005 to convert industrial built-up plots from leasehold to freehold. This step taken by the Government and its authorities

came into being as a welfare measure for the industry owners who were operating their industries on the plots and lands developed by the Delhi State Industrial Development Corporation Ltd. (hereinafter "DSI IDC") and allotted to them by the Government under the name of the President of India.

30. The Scheme provided for large scale conversion of property from leasehold to freehold, however, made it optional for the plot allottees/lessee to avail the benefits under the Scheme. It requires meeting certain eligibility criteria and other conditions for consideration of an application of a lessee seeking conversion under the Scheme and requires a comprehensive conversion form to be filled up by the applicant so as to ascertain their right, entitlement, claim and its extent as well as the liability to pay the damages, if any.

31. Although different authorities of the Government, operating at different level, accommodate the conversion of property from leasehold system to freehold systems, they all operate under their own schemes and policies having different eligibility criteria and varied conditions. In the case before this Court, as mentioned above, the relevant scheme is the Scheme of the DSI IDC of November 2005 which sets forth the following salient features and the primary conditions of the Scheme:-

"SALIENT FEATURES OF THE SCHEME

1. The scheme covers all built up Industrial Plots developed by the Industries Department and The Delhi State Industrial Development Corporation Ltd. (DSI IDC) including Industrial Sheds where the lease had been granted on behalf of the President of India. The Scheme, however, does not include industrial plots allotted under the Relocation Scheme.

2. The one time charges payable for conversion from leasehold to free hold are set out in Annexure-"A" .read with Annexure "B". These charges are to be paid in lump sum through Bank Draft payable at Delhi / New Delhi in favour of Commissioner of Industries. Original lessees/allottees would be entitled to 40% remission in the conversion charges as specified in Annexure -"A".

3. Conversion would be allowed only when the Industrial building on the plot has been constructed and completion certificate/'D' form for the building has been obtained.

4. The application for conversion shall not be entertained unless accompanied by prescribed documents.

5. The arrears of ground rent alongwith interest as prescribed in the lease-deed, wherever applicable, would have to be paid by the applicant before conversion can be permitted. In cases where revision of ground rent has become due, the revised amount of rent will be notified to the lessee for depositing the amount before the execution of the conveyance deed.

6. The conversion shall be applicable only for properties which are on land for

which the land use prescribed in the lease deed/allotment letter is Industrial.

7. In cases of mortgaged properties, conversion would be allowed only on submission of 'No Objection Certificate(s)' from all the mortgages? If the property has been mortgaged more than once, 'No Objection Certificates' from all the mortgages are required to be submitted.

8. In cases where lease deeds has not been signed, conversion will be allowed provided that the non-execution of the lease deed has been only on account of administrative reasons and not because of certain defaults on the part of the allottees. However in such cases the stamp duty would be payable on the amount of conversion charges and the surcharge wherever applicable as well as the price / premium of the property.

9. In case of any legal dispute relating to title of the property, conversion shall not be allowed until the legal dispute is settled.

10(i) Conversion will be allowed only when all dues including charges towards misuse, damages, ground rent, service/maintenance charges etc. have been paid by the applicant in respect of the property.

10(ii) In case of re-entered properties conversion would be allowed only when reentry notice has been withdrawn and the lease/allotment restored.

10(iii) For the purpose of conversion, misuse charges would be leviable upto the date of application of conversion even after which action against misuse would continue to be taken by the respective local bodies under the bye laws/regulations.

10(iv) Conversion to freehold shall not be permitted in respect of properties involving encroachment on government/public land. The lessee would have to vacate the encroached land before consideration of the conversion application and shall also be liable to payment of occupation charges for the part period as per normal rules.

11. In case of any dispute between the original lessee /allottee and Power of Attorney holder, application for grant of freehold rights would be entertained only after the dispute is settled.

12. In cases where applications for mutation or substitution are pending with the lessor, conversion would be allowed only after the necessary mutation/substitution has been carried out.

13. The conversion shall also be allowed in the cases where lessee/allottee has parted with the possession of the property, provided that:

a) Application for conversion is made by a person holding power of attorney from lessee/allottee to alienate (sell/transfer) the property.

b) Proof is given of possession of the property in favour of the person in whose name conversion is being sought.

c) Where there are successive power of attorneys, conversion will be allowed after verifying the factum of possession provided that the linkage of original lessee/ allottee with the last power of attorney is established and attested copies of power of attorneys are submitted.

In such cases, surcharge of 33-1/3% on the conversion fee would be payable over and above the normal conversion charges applicable for regular lessee (no unearned increase will be recoverable).

14 In case of the premises allotted / converted into Hire-Purchase on instalment basis, conversion shall be allowed only after all the instalments have been paid with interest, if any.

15. The scheme of conversion is optional.

16 (i) The Zone-wise conversion rates for industrial plots have been given in Annexure 'A'. The location-wise rates are given in Annexure 'B'. The localities for which land rates have not been given in Annexure 'B', the rates of the adjoining / comparable locality would be applicable.

16 (ii) A remission of 40% on the conversion charges will be allowed in case of conversion in favour of original lesees.

17. Model calculations of conversion charges, and surcharge have been given in the Annexure – 'C'

18. The requisite conversion charges, and surcharge as applicable alongwith processing fee of Rs.500/- are required to be deposited at the time of submission of applicable form.

19. Mode of remittance shall be only by pay order, bank draft drawn in favour of Commissioner of Industries payable at Delhi. The amount of remittance has to be rounded off to the nearest rupee. The payment is to be made through Pay Order/ Bank Draft. Name of the applicant and serial no. of application form should be mentioned on the back side of the pay order/Bank Draft. After depositing the application form and the conversion charges, applicants must ensure to obtain an acknowledgement from the officer in-charge designated by the Commissioner of Industries.

The conversion charges, and surcharge wherever applicable, are to be deposited in lump-sum.

20. The original lease deed should be produced at the time of execution of the conveyance deed. The same will be cancelled and returned along with the conveyance deed.

21. If the original lease deed was lost, the lessee/applicant must issue notice in a prominent news paper having circulation in the area where the property is situated also execute an affidavit before the 1st Class Magistrate indicating therein how the original lease deed was lost. A copy of the public notice

published in the news-paper and the original affidavit must be submitted at least 10 days before the date of execution of the conveyance deed.

32. These features/conditions of the Scheme of conversion of 2005, not only stipulate the conditions for conversion from leasehold to freehold and the requirements to be met for eligibility but also set out a comprehensive procedure for making an application seeking such conversion.

33. In the instant case, the relevant provisions of the Scheme include Clause 6, 9, 10 (ii) and 11, which have been argued on behalf of the parties. Hence, the validity of the rejection order dated 21st March 2007 shall also be considered on a conjoint reading of the Scheme and the contents of the impugned order.

Rejection Order dated 21st March 2007

34. The impugned order rejecting the representation of the petitioner spelt out the following grounds:-

"With reference to your application dated 14.12.2006 for conversion of Plot No. 106, FIE, Patparganj from leasehold to freehold, I am directed to say that your case has been considered and rejected by the Competent Authority, as the property in question is re-entered one and the matter is sub-judice. The conversion can be allowed only after the allotment is restored."

35. The primary ground taken by the concerned authority while rejecting the application is that the lease deed dated 18th August 1992, in the name of the original lessee, M/s Premier Enterprises, stood cancelled and the property had been re-entered. The issues concerning the validity of the order of cancellation of lease deed, the petitioner's representation for revocation of ex-parte cancellation order, the proceedings under PP Act and its subsequent appeal are not the subject matters of the instant petition and have been delineated in the connected Civil Writ Petition bearing no. 217/2010 and hence, will not be appreciated again. The limited issue before this Court in the instant petition is whether the impugned rejection order dated 21st March 2007 has been passed in accordance with law.

36. The lease deed in favour of the lessee was cancelled vide the ex-parte order dated 28th May 1998 when the property was found to be transferred vide a Sale Agreement and GPA in the name of one Mr. Balvinder Sachdeva and was being used for purposes other than provided under the lease deed. The concerned authority being prima facie satisfied of the inquiry report in this regard issued Show Cause Notice to the lessee, however, no response was received by it on the said notices. The challenge to the impugned order has also been made with the primary objection that even though the lease deed was cancelled, whether rightly or wrongly, the concerned authority/respondent no. 3 ought not to have rejected the application merely on the ground that the property in question had been re-entered.

37. The petitioner has urged that the conversion of the property could have been

allowed and affected even after the lease deed had been determined. To adjudicate this question, the relevant clauses of the Scheme of conversion of 2005 may be looked into.

38. Clause 9 of the Scheme clearly and unequivocally states that a conversion cannot be allowed with respect to any property where there is any legal dispute relating to the title of the property. Admittedly, the petitioner had made the representation for conversion of the property during the pendency of the Appeal bearing No. PPA No. 4/08/03 before the learned District Judge against the order of the Estate Officer directing the petitioner and the original allottee to vacate the premises in question. The said appeal filed against eviction stemming out of cancellation of the lease deed order passed when the property in question was found to be sold and transferred in the name of Balvinder Sachdeva in contravention of the conditions of the lease deed, thereby creating a dispute regarding the title of the property. Therefore, at the first instance, the application/representation of the petitioner was barred under Clause 9 of the Scheme.

39. The second pertinent condition stipulated under the Scheme lies under Clause 10 (ii) which mentions that in case of properties which have been re-entered, conversion would only be considered when the re-entry notice has been withdrawn. The petitioner applied for revocation of the re-entry and cancellation order, however, the same was to no avail. Ultimately, the eviction proceedings were initiated and decided against the petitioner and the lessee and even the Appeal against the said order stood dismissed. It is evident that the re-entry order was not revoked or withdrawn till the time of filing of the representation for conversion, therefore, the bar under Clause 10 (ii) stood as an impediment to the application of the petitioner for conversion. There is no force in the argument of the petitioner that conversion and restoration of lease deed is a composite process. The language used in Clause 10 (ii) is "conversion would be allowed only when re-entry notice has been withdrawn" which necessarily means that conversion would follow withdrawal of restoration of lease and withdrawal of re-entry. The conversion of a lease deed not in existence, let alone in operation, cannot give rise to a right under the Scheme and be converted into a freehold in the facts and circumstances of the instant case.

40. For the issue as aforementioned, the petitioner placed reliance on the cases of this Court to submit that re-entered properties can also be converted from leasehold to freehold. However, it is found that the same have been passed under different schemes/policies of different departments and authorities of the Government. These policies diverged in the very spirit of provision and therefore, also in terms and conditions and overall applicability. The departments and authorities having different schemes apply to varied categories of plots allotted. The policies and schemes discussed in judgments of this Court relied upon were with respect to residential plots allotted under various schemes of the authorities, including DDA and L&DO, and hence, may not be equated with the instant Scheme which was meant for industrial plots and its fair and honest

usage in accordance with the terms of the lease executed allotting the said plot to individuals, businesses and industries. The petitioner has argued that the Scheme of conversion of 2005 is an extension and elaboration of 1992 policy however the same is not the case and there is no force in this ground.

41. The misuse of the property in question did not pertain to a residential accommodation and allotment but was for a specific industrial purpose. Same rules cannot be applied to residential plots, where families live and sustain their entire life, as opposed to industrial properties, which are allotted for a specific purpose for carrying out commercial activities for profit motives. There is a stark difference in the nature of title, purpose and use in these two kinds of properties and hence, the rules applied to them would also be different without amounting to discrimination or arbitrariness. The purpose for which the lease deed in question was allotted was "Surgical Bandages" and hence, using a property meant for pharmaceuticals and medical equipment, including surgical bandages, as a Banquet and Party Hall could not have invoked any action other than cancellation of lease deed for violation of terms. Therefore, the reliance on the said judgments is completely misplaced.

42. This Court does not deem it necessary to examine the applicability of Clause 11 of the Scheme since neither the same has been argued by the respondent nor is it applicable in the facts and circumstances of this case.

43. It is also found that there is no provision in either the Scheme of 2005 or in any other such policy which mandates the conversion from leasehold to freehold. Apart from meeting the eligibility and conditions of the Scheme, other intervening facts and circumstances also may be appreciated by the concerned authority, without exceeding its powers. Upon receiving a representation/application for conversion from leasehold to freehold, the authority concerned would necessarily examine the application in light of the provision under the Scheme and then decide the application keeping in view the merits in the case of the applicant. Filing an application in the prescribed form along with all necessary documents does not create an absolute right or entitlement for the application to be allowed and the merits of the case may also be looked into and accordingly, accepted or rejected.

CONCLUSION

44. Keeping in view the aforesaid facts, circumstances, structure of the Scheme of conversion as well as the contents of the impugned order, it is found that the concerned authority appreciated the facts of the case in consonance with the provisions, terms and conditions under the Scheme and only then rejected the application of the petitioner. It was found that the property in question had been re-entered and that at the time of the representation, the matter was sub-judice, moreover, the demand drafts submitted by the applicant along with the application of conversion were also fairly returned. Therefore, the grounds taken by the authority while rejecting the representation do not warrant interference

from this Court since there is no gross illegality or error apparent on the face of record in the same.

45. For the reasons stated above, this Court finds that there is no need to interfere in the impugned order/communication no. 398 dated 21st March 2007 issued by the respondent no. 3 upon the detailed representation of the petitioner for conversion from leasehold to freehold.

46. Accordingly, the instant petition is dismissed for being devoid of any merit.

47. Pending applications, if any, also stand disposed of.

48. The judgment be uploaded on the website forthwith.