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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19th May, 2026
Pronounced on: 31st August, 2026

\+ W.P.(C) 12275/2004

M/S ALFA GARDENS (ALFA SPICE) .....Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv, with Mr. Ashwani Kr. Dhatwalia, Ms. Iti Sharma, Advs.
(M: 9811356366)

versus

UOI & ORS. .....Respondents

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\+ W.P.(C) 2217/2013 & CM APPL. 20053/2025, CM APPL. 20054/2025

M/S GIAN CHAND KEDAR NATH .....Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv, with Mr. Ashwani Kr. Dhatwalia, Ms. Iti Sharma, Advs.
(M: 9811356366)

versus

D.D.A. AND ANR. .....Respondents

Through: Mr. Kailash Vasdev, Sr. Adv. & Mr. Sanjay Katyal, SC with Ms. Chand Chopra, Mr. Umrao Singh Rawat, Ms. Neomi Vasdev, Mr. Punishk Handa, Ms. Anushka Mamgain, Ms. Shivani Sethi, Advocates for DDA
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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

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INTRODUCTION:

1. *W.P.(C) 12275/2004* has been filed under Article 226 of the Constitution of India, 1950 **("Constitution")**, seeking quashing of the orders dated 24th June, 2004, and 16th July, 2004, issued by the Municipal Corporation of Delhi **("MCD")** and the Collector of Excise, Government of NCT of Delhi **("GNCTD")**, respectively. The petitioner further seeks

restoration of the *ad-hoc* registration and the bar licence granted earlier to M/s Alfa Spice by the respondent – MCD and GNCTD respectively, as well as directions restraining the respondents from taking any action to evict and dispossess the petitioner from plot bearing no. *4A, Pusa Road, New Delhi – 110005* **("subject property")**.

2. *W.P.(C) 2217/2013* has been filed under Article 226 of the Constitution seeking directions to the respondents to convert the term lease dated 13th January, 1950, of the petitioner into a perpetual lease deed with regards to the subject property, in view of policy dated 21st January, 2011, and Office Order dated 11th March, 2011. There is a further prayer of conversion of the user of the subject property to commercial/permissible user, and direction to the respondent not to dispossess and interfere with the petitioner's use of the subject property.

3. It is further to be noted that *CM APPL. 20053/2025*, filed under Order I Rule 10 of the Code of Civil Procedure, 1908 **("CPC")**, in *W.P.(C) 2217/2013,* seeking impleadment of the applicant, i.e., Sh. Chandan Chadha as respondent no. 3 in the present case, has also been heard at the time of final arguments.

4. At the outset, it is to be noted that the petitioners have submitted before this Court that the outcome in *W.P.(C) 12275/2004* is dependent on the outcome of *W.P.(C) 2217/2013*, and that, in case, no relief is granted to the petitioner in *W.P.(C) 2217/2013*, no relief would be available to the petitioner in *W.P.(C) 12275/2004* as well. Thus, *W.P.(C) 2217/2013* is treated as the lead matter.

<u>FACTUAL MATRIX</u>:

5. The relevant facts for the adjudication of the present matters, as culled

from the record, are as follows:

5.1. The Delhi Improvement Trust **("DIT")** executed a lease deed dated 13th January, 1950, in respect of the subject property, on a premium of Rs. 85,132/- for an ice factory in favour of Sh. Bhag Ram Handa. The said lease was for a term of 20 years which was to commence from 01st June, 1948, and end on 31st May, 1968. Clause IV(c) of the said lease provided for an option for renewal of the lease for a further period of 20 years.

5.2. The lessee, i.e., Sh. Bhag Ram Handa, shortly after the execution of the lease deed, executed a registered sale deed dated 01st February, 1950, in favour of the petitioner in *W.P.(C) 2217/2013*, i.e., M/s Gian Chand Kedar Nath. Further, by way of a registered release deed dated 15th March, 1954, M/s Gian Chand Kedar Nath surrendered 0.4 acres of the subject property to the DIT for the purposes of widening roads. Thus, the subject property now measures 1.55 acres.

5.3. Upon enactment of the Delhi Development Act, 1957 **("DD Act")**, DIT was succeeded by the Delhi Development Authority **("DDA")**. The first Master Plan for Delhi was notified in 1962 **("MPD–1962")**, which changed the prescribed use of the subject property to 'residential', and the subject property was earmarked for a 'higher secondary school'.

5.4. DDA *vide* notice dated 15th December, 1967, informed the petitioner that the lease would not be renewed, and offered to shift the petitioner to an alternative site, in view of MPD – 1962.

5.5. The petitioner *vide* letter dated 15th January, 1968, refused the offer of the DDA for alternative land, and requested for renewal of the lease for a further period of 20 years. The petitioner had also made payment of the ground rent and premium till the year 1975. However, the same was refused and returned by the DDA. DDA again *vide* letter dated 25th May, 1970, informed the petitioner that the lease was not renewed.

5.6. The petitioner issued a legal notice dated 10th December, 1975, to DDA, calling upon them to accept the ground rent w.e.f. 01st June, 1968, on the ground that the lease stood renewed.

5.7. By way of the letter dated 16th December, 1982, DDA again offered an alternative site to the petitioner in Patparganj Industrial Complex. However, the said offer was rejected by the petitioner.

5.8. Apprehending forcible dispossession from the subject property, the petitioner in the year 1983 filed a writ petition bearing no. *C.W. 2002/1983* before this Court. The said writ petition was disposed of as withdrawn *vide* order dated 22nd May, 1984, upon the submission of DDA that resumption of the subject property shall be done in accordance with law.

5.9. Subsequently, in the year 1987, DDA initiated eviction proceedings against the petitioner under Section 4 (1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 **("Public Premises Act")**, which culminated in an Eviction Order dated 02nd May, 1991, passed against the petitioner.

5.10. Upon an appeal by the petitioner, the said Eviction Order was set aside by the Additional District Judge, Delhi **("ADJ")** *vide* judgment dated 19th October, 2000, in *P.P.A. 209/2000*, holding that the petitioner was not an unauthorized occupant of the subject property. As per the orders passed by the ADJ, the petitioner deposited Rs. 80,000/- as ground rent *vide* challan nos. *048164* and *048165* on 13th November, 1997. Aggrieved thereby, DDA filed *C.W. 1295/2001,* challenging the said judgment dated 19th October, 2000.

5.11. The petitioner filed representations dated 13th July, 1998, 03rd May, 1999, and 06th July, 1999, with DDA, Lieutenant Governor, Delhi **("LG")**, Ministry of Urban Development, respectively, seeking conversion of the term lease into a perpetual lease.

5.12. In the meantime, the petitioner also started a banquet hall and a restaurant-cum-bar under the name and style of Alfa Spice in the subject property. Pursuant thereto, DDA issued a Show Cause Notice dated 29th August, 2001, to the petitioners seeking reasons as to why action should not be taken under Sections 14 and 29 (2) of the DD Act for running a banquet hall in contravention of the Master Plan for Delhi **("MPD")** and the Zonal Development Plan **("ZDP").**

5.13. The MCD *vide* letters dated 23rd May, 2003, and 26th April, 2004, sought clarification from DDA *qua* the ownership of the subject property. DDA *vide* letter dated 12th May, 2004, informed MCD that eviction proceedings had been initiated against the petitioner, and an appeal in this regard is pending before this Court.

5.14. Accordingly, MCD issued a Show Cause Notice dated 11th June, 2004, and ultimately, *vide* order dated 24th June, 2004, the *ad-hoc* registration of eating house license of the petitioner-M/s Alfa Spice was revoked. The petitioner replied to the Show Cause Notice by way of representations dated 02nd July, 2004, and 16th July, 2004.

5.15. The Office of Collector of Excise, GNCTD **("Excise Commissioner")**, also issued a Show Cause Notice dated 06th July, 2004, to the petitioner-M/s Alfa Spice, who sent a reply dated 15th July, 2004, thereto. However, the Excise Commissioner *vide* order dated 16th July, 2004, suspended the L-4 license of the petitioner.

5.16. Moreover, DDA also issued a Show Cause Notice dated 12th July, 2004, to the petitioner-M/s Alfa Spice seeking to know why action under Section 14 and 29 (1) of the DD Act should not be taken for misuse of the subject property. On 19th July, 2004, the petitioner-M/s Alfa Spice responded to the Show Cause Notice dated 12th July, 2004, issued by the DDA.

5.17. The Monitoring Committee of the Supreme Court, pursuant to *W.P.(C) 4677/1985*, submitted a report in respect of the subject property, *inter-alia,* stating that no sanction plans were obtained for construction of the restaurant and bar, and while MCD sealed the premises pursuant to directions of the Committee, the seals were tampered with. The subject property was re-sealed on 02nd November, 2006; however, the seals were again tampered with, and the restaurant and bar were found to be running by the petitioner.

5.18. The petitioner-M/s Alfa Spice filed two applications before the Supreme Court for de-sealing of the subject property, however, the same were dismissed *vide* order dated 14th May, 2007, in *W.P.(C) 4677/1985*, with direction to this Court to expeditiously dispose of *C.W. 1295/2001*.

5.19. Subsequently, the said petitioner filed another writ petition being *W.P.(C) 3813/2010* seeking de-sealing of the subject property. This Court *vide* order dated 31st May, 2010, directed MCD to treat the said petition as a representation, and pass a speaking order. Consequently, MCD *vide* order dated 09th July, 2010, stated that it is permissible to use the subject property as a banquet hall as per the Master Plan for Delhi, 2021 **("MPD–2021")**, subject to payment of conversion and parking charges to MCD.

5.20. In the interregnum, petitioner – M/s Gian Chand Kedar Nath sent a representation dated 01st February, 2010, to DDA seeking conversion of the term lease of the subject property to perpetual lease. Additionally, the petitioner filed a writ petition, being *W.P.(C) 3728/2010,* seeking conversion of the term lease to a perpetual lease on the ground of parity with other similarly situated leases. The said writ petition was disposed of *vide* order dated 06th October, 2010, with directions to DDA to decide the representation of the petitioner dated 01st February, 2010, within four months.

5.21. Accordingly, Director (Lands), DDA **("Director-Lands")** accorded personal hearing to the petitioner on multiple dates, and subsequently recorded an internal note dated 03rd December, 2010, recommending the renewal of the lease with respect to the subject property on grounds of equity. However, the said internal note was never communicated to the petitioner.

5.22. Due to non-receipt of any final order from DDA, the petitioner filed application being *CM 7103/2011* in *W.P.(C) 3728/2010* as well as a contempt case being *CONT.CAS(C) 647/2011* against DDA. In both the said cases, this Court directed DDA to expeditiously decide the petitioner's representation dated 01st February, 2010.

5.23. Thereafter, the Director-Lands *vide* order dated 23rd August, 2011, sought certain documents from the petitioner, pursuant to which, the petitioner filed an Affidavit dated 01st September, 2011.

5.24. Finally, the Director-Lands *vide* order dated 08th September, 2011, rejected the petitioner's representation dated 01st February, 2010, on the grounds that the petitioner's term lease had not been extended for a further period of 20 years; the case of the petitioner was not similarly placed to other lessees; the activity of running an ice factory was no longer permissible under the MPD-1962; the subject property has been earmarked for a senior secondary school. The said order also noted misuse of the subject property and unauthorized construction therein.

5.25. The petitioner challenged the said order dated 08th September, 2011, by filing a representation dated 26th September, 2011, before the LG.

5.26. During the pendency of such representation before the LG, this Court *vide* judgement dated 21st November, 2011, allowed the *C.W. 1295/2001* filed by the DDA, and therefore, upheld the Eviction Order dated 02nd May, 1991. Since the claim of the petitioner for grant of perpetual lease and change of land use was negated by the DDA, and the same had been challenged by petitioner on account of discrimination, therefore, purely as an interim measure, the petitioner was granted 12 weeks to vacate the subject property.

5.27. The petitioner filed a Review Petition bearing no. *742/2011* in respect of the aforesaid judgment dated 21st November, 2011. Since the question of entitlement of the petitioner to conversion from term lease to perpetual lease was left open, and was being actively considered by LG, the time to retain the subject property was extended by 08 weeks by way of the order dated 14th February, 2012, passed in the said review petition.

5.28. With respect to the representation dated 26th September, 2011, filed by the petitioner, the LG on 02nd May, 2012, in an internal noting recorded that the lease of the petitioner should be renewed from the standpoint of equity, and misuse charges may be recovered. The internal noting was never communicated to the petitioner, who became aware of the same through an RTI application.

5.29. The counsel for the petitioner informed the Court in *Review Petition 742/2011* on 09th November, 2012, that the renewal of the lease already stands approved by the LG on 02nd May, 2012. Thus, the Court directed that the interim order dated 14th February, 2012, would continue till the review petition is disposed of.

5.30. Upon representations made on behalf of the petitioner, the LG, on 12th October, 2012, and 30th October, 2012, sought a Status Report from the DDA officials on the internal noting dated 02nd May, 2012, and sought information as to whether the same has been communicated to the Court.

5.31. Subsequently, DDA issued a letter dated 11th February, 2013, informing the petitioner that the LG has directed that the directions of this Court in judgement dated 21st November, 2011, be implemented strictly.

5.32. The *Review Petition 742/2011* was disposed of *vide* judgment dated 18th July, 2013, holding that the internal noting dated 03rd December, 2010, is a mere recommendation and it stands superseded by the LG's decision communicated *vide* letter dated 11th February, 2013.

5.33. The petitioner again sent representations dated 02nd January, 2014, and 29th September, 2014, to the DDA seeking restoration of the term lease in respect of the subject property.

5.34. The petitioner also preferred an *LPA 966/2013* challenging the judgments dated 21st November, 2011, and 18th July, 2013, passed in *C.W. 1295/2001* and *Review Petition 742/2011,* respectively. The said LPA was disposed of *vide* order dated 04th February, 2014, with a direction that the Eviction Order dated 02nd May, 1991, shall be kept in abeyance till the adjudication of the present writ petitions.

5.35. Pursuant to the directions issued by this Court *vide* orders dated 07th

July, 2015, and 12th October, 2015, to decide the petitioner's representations dated 02nd January, 2014, and 29th September, 2014, in a time bound manner, DDA rejected the said representations *vide* letter dated 03rd February, 2016.

SUBMISSIONS BY THE PARTIES:

SUBMISSIONS BY THE PETITIONERS:

6. The submissions made by the petitioners have been condensed as under:

6.1. The representation of the petitioner for conversion of the term lease into perpetual lease has been denied by the DDA in an arbitrary and discriminatory manner, in violation of Article 14 of the Constitution.

6.2. Despite the case of the petitioner being recommended for conversion in various internal noting of DDA, and the LG directing the renewal of the petitioner's lease from the standpoint of equity by way of order dated 02nd May, 2012, DDA has refused renewal/conversion of the petitioner's lease.

6.3. The said order dated 02nd May, 2012, passed by the LG has already allowed the representation of the petitioner for conversion of lease, and the same having not been challenged or set aside is binding on DDA, which cannot refuse compliance thereof.

6.4. The action of DDA is further vitiated by the unfair treatment meted out to the petitioner, particularly, when the leases of other similarly situated lessees have been renewed and converted from term leases to perpetual leases. All the other leases were granted to ice factories on identical terms and conditions, as is evident from the internal noting of DDA, and the petitioner is also entitled to the same treatment on the principle of parity. It is settled law that similarly situated individuals cannot be treated differently.

6.5. The order dated 02nd May, 2012, as passed by the LG, the note of opinion, and the opinion of the ASG dated 28th August, 2015, all recommended the renewal/conversion of the petitioner's lease on grounds of equity and parity. The Principal Commissioner of DDA *vide* note dated 08th December, 2010, has also admitted that the DDA has converted term lease into perpetual lease in various cases, and the petitioner is identically placed to them. Further, it was discussed that use of subject property as ice factory was permissible in residential area.

6.6. Petitioner has been in possession of subject property for several decades under a valid government grant, and has made substantial investments in the subject property. Thus, the action of the respondent-DDA in dispossessing the petitioner while extending benefits to similarly situated entities is violative of Article 14 read with Article 300A of the Constitution.

6.7. In terms of Clause IV(c) of the lease deed dated 13th January, 1950, the petitioner exercised the option for renewal of lease by way of letter dated 15th January, 1968, and the respondent-DDA had no right to refuse extension. Therefore, even if no formal approval was granted by the respondent, the lease was automatically renewed till the year 1988. However, DDA arbitrarily initiated proceedings for eviction against the petitioner in the year 1987, i.e., during the currency of the lease.

6.8. The petitioner has also deposited lease rent up to the year 2030 under the directions of the ADJ in *P.P.A. 209/2000*. In the Note of Opinion by DDA, the factual position depicted shows that the lease stood extended till 15th September, 1988, and that the said fact had been concealed in the eviction proceedings. The DDA had accepted lease premium up to the year 2030, paid by the petitioner under the order of the Court in *P.P.A. 209/2000* proceeding under Section 9 (1) of the Public Premises Act.

6.9. This Court in order dated 06th October, 2010, in *W.P.(C) 3728/2010* had directed the Director-Lands to decide the representation of the petitioner. Although the petitioner was given a detailed hearing, the Director-Lands passed two contradictory orders, i.e., order dated 03rd December, 2010 and order dated 08th September, 2011. By way of order dated 03rd December, 2010, the Director-Lands allowed the representation of the petitioner for conversion of the lease. However, *dehors* any change in material circumstances or a fresh hearing, and without referring to the order dated 03rd December, 2010, the Director-Lands rejected the representation of the petitioner by way of the order dated 08th September, 2011. Thus, the two inconsistent orders by the same officer demonstrates complete arbitrariness and non-application of mind. Furthermore, the Director-Lands had no power to recall his earlier order dated 03rd December, 2010, particularly, without affording a fresh hearing.

6.10. The conduct of respondent-DDA is also evident from the fact that even though order dated 03rd December, 2010, had been passed by the Director-Lands finally deciding the representation of the petitioner, however, the same was never disclosed to the High Court in *W.P.(C) 3728/2010* on the hearing dated 19th May, 2011. Rather, the respondent-DDA on the said date of hearing, obtained further time to decide the representation of the petitioner herein.

6.11. The order dated 08th September, 2011, as passed by the Director-Lands was challenged before the LG, who allowed the representation of the petitioner by way of order dated 02nd May, 2012.

6.12. The LG on 12th October, 2012, and 30th October, 2012, had sought

Status Report from the DDA as to whether the Court has been informed about the order dated 02nd May, 2012, and thus, recognized the same to have been served upon the petitioner. Further, on passing of the order dated 02nd May, 2012, the eviction proceedings could not have been continued as the conversion of the petitioner's lease stood allowed.

6.13. However, instead of implementing the said order, the DDA issued a letter dated 11th February, 2013, to the petitioner, stating that the LG has directed that the judgment dated 21st November, 2011, passed in *C.W. 1295/2001* has to be strictly implemented.

6.14. The said letter dated 11th February, 2013, is *ex facie* illegal and unsustainable because at the time of issuance of the said letter, the operation of judgment dated 21st November, 2011, passed in *C.W. 1295/2001* had already been stayed by order dated 14th February, 2012, in *Review Petition 742/2011* and the possession of the subject property with the petitioner had been protected.

6.15. It is evident that the respondent-DDA misled the LG by concealing the factum of a stay operating on the judgment dated 21st November, 2011, and obtained the letter dated 11th February, 2013, by misrepresentation.

6.16. Even otherwise, the letter dated 11th February, 2013, does not set-aside/recall the earlier order dated 02nd May, 2012, which has attained finality. The letter dated 11th February, 2013, merely directs compliance of judgment dated 21st November, 2011, which had already been stayed.

6.17. The contention of the respondent-DDA that the order dated 02nd May, 2012, was never communicated to the petitioner is also liable to be rejected as the said order was communicated to the petitioner under the Right to Information Act, 2005 **("RTI Act")**.

6.18. Thus, after passing of the said order dated 02nd May, 2012, the only surviving aspect was quantification of charges and execution of lease deed.

6.19. The DDA has ignored its own policy of 21st January, 2011, on renewal of term leases of Old Scheme Branch **("OSB")** properties, since the petitioner applied for renewal of lease on 15th January, 1968, i.e., prior to expiry of the lease, and lease in question is a premium lease, which stands paid. The petitioner is covered under the said policy, and is entitled to benefits thereunder.

6.20. The denial of renewal of the lease by the respondent-DDA on account of misuse of subject property is factually incorrect and wholly misconceived as there has been no misuse of the subject property.

6.21. The action of the respondent-DDA in declaring the use of ice factory as non-conforming to the MPD-1962 is violative of Articles 14 and 300A of the Constitution. The subject property has been used as an ice factory since the year 1950, which predates the MPD-1962. Therefore, the said use stands statutorily protected by virtue of the *proviso* to Section 14 of the DD Act, which allows continuance of any use of land/building which was lawfully in existence or in usage on the date of enforcement of a Master Plan. Thus, the use of subject land as ice factory cannot be defeated by subsequent change in land use classification. Further, as per MPD-1962, the ice factory, being a service industry, was permissible in a residential area.

6.22. Although DDA had issued a Show Cause Notice dated 29th August, 2001, under Section 14 read with Section 29(2) of the DD Act for running a banquet hall in violation of ZDP, however, no further action has been taken by the DDA pursuant thereto, in view of the reply filed by the petitioner.

6.23. Ice factory being a service industry is not a pollutive industry, and is therefore allowed in a residential area. Moreover, the area in which the subject property is situated in, i.e., the Karol Bagh Zone (D-6 Zone), is a special area under the MPD, where mixed land use is allowed under certain circumstance. As per MPD-2001, the Karol Bagh Zone is a special area, which cannot be developed on the basis of normal regulations. Rather, special regulations have been worked out for this area and incorporated into the development code.

6.24. In a special area, the ground floor is allowed to be used for commercial purposes, while the floor above can be used for office and residential purposes, as per Floor Area Ratio **("FAR")** rules, subject to payment of conversion charges. The subject property has a single storey building except in the extension of main building, which is a double storey building. The petitioner has been and still is willing to pay the conversion charges. Therefore, the petitioner is entitled to use the subject property for commercial purpose.

6.25. The alternate land offered by DDA was rejected by the petitioner as the said area was under-developed and had no local demand for ice. It was also located far away from the subject property. The petitioner had requested for allotment of an alternative land either in Karol Bagh or in Pitampura, Delhi, however, the same was also declined by DDA.

6.26. The respondent's plea that the subject land was required for a higher secondary school is untenable, as the minimum area prescribed for a higher secondary school is 4 acres, whereas, the subject property is only 1.55 acres. The said plea of respondent-DDA has also been questioned by the Ministry by way of letter dated 05th July, 1996.

6.27. DDA filed *C.W. 1295/2001* against the order dated 19th October, 2000, seeking directions to the petitioner to use the subject property for the original purpose of allotment, i.e., use as an ice factory. However, on account of change of land use under MPD-1962 and the controversy raised by DDA, the petitioner started a banquet hall in the subject property. A banquet hall is permissible in a residential area if the area of the plot is more than 219 square meters, and the subject property exceeds these measurements.

6.28. The use of the property for banqueting activity is also permissible under the MPD-2021. MCD has issued the Office Order dated 07th June, 2010, for conversion of properties from industrial to commercial/banquet hall and also determined the applicable charges for the same. Additionally, the MCD *vide* Office Order dated 09th July, 2010, specifically held that the subject property can be used as a banquet hall under Clause 7.8 of Chapter 7 (Industry), MPD-2021 and it does not attract Clause 15.7.4 of MPD-2021.

6.29. Thus, the MPD-2021 permits the user of the subject property for mixed land use, including banqueting activity, upon payment of charges. Moreover, the required conversion and parking charges have already been deposited by the petitioner.

6.30. The respondent-DDA has ignored the policy framework governing conversion and regularization. Even otherwise, assuming any deviation/misuse existed, the same was covered under the misuse/regularization policy of DDA and could be regularized upon payment of charges, as has been done in the case of similarly situated lessees, where even land usage was converted by DDA from industrial to commercial. Further, the LG *vide* order dated 02nd May, 2012, has already held that misuser charges may be recovered.

6.31. The user of the premises and conversion of term lease into perpetual lease are distinct issues, and the refusal to regularization/renewal of lease despite such misuse/regularization policy is wholly arbitrary. Thus, the vested right of the petitioner cannot be rejected on account of false ground of misuse of the property.

6.32. In the judgment dated 18th July, 2013, in the review petition filed against the judgment dated 21st November, 2011, it was specifically noted that the Eviction Order will not come in the way of the concerned authorities, if they choose to reconsider the petitioner's case and if the plea of discrimination finds favour with them. The Division Bench *vide* order dated 04th February, 2014, passed in *LPA 966/2013* clarified that eviction proceedings shall not come in the way of adjudication of the present writ petitions on merits, and the Eviction Order was kept in abeyance.

6.33. Moreover, since the lease was granted under the Government Grants Act, 1895 **("Government Grants Act")**, and the provisions of the Public Premises Act are not applicable, and therefore, the Eviction Order passed by the Estate Officer is a nullity.

6.34. The petitioner has a vested, accrued and enforceable right for renewal/conversion of the lease, as the petitioner exercised renewal rights in time. The entire lease premium stands paid, ground rent has been continuously accepted, and similarly situated lessees have been granted renewal/conversion. Since the LG has already directed renewal and judicial protection has operated in favor of the petitioner, the right of the petitioner cannot be defeated by arbitrary administrative action.

6.35. It is settled law that once a decision has been officially made, any internal official noting, that formed part of the decision-making process, can be looked into by Court for the purpose of judicial review to satisfy the impeccability of the decision. In the present case, the official noting disclose that the petitioner's case was repeatedly recommended for renewal/conversion, and the DDA itself accepted that petitioner stood identically placed with other lessees.

6.36. The conduct of respondent-DDA is marked with suppression of material facts and contradictory stands. The respondent deliberately failed to disclose the order dated 03rd December, 2010, passed by Director-Lands, the subsequent order dated 02nd May, 2012, by the LG and the repeated internal recommendations supporting renewal/conversion of the lease in favor of the petitioner. The respondent sought to defeat the legitimate rights of the petitioner, despite favorable recommendations from its own officers and legal advisors, and the same demonstrates clear arbitrariness and mala-fides in decision making process by the respondent-DDA.

6.37. The contention of the respondent-DDA that since the lease expired in 1968, or even with extension, by 1988, the petitioner had no right to occupy the subject property and is an authorized occupant, is patently wrong. This is because since the year 1984, the subject property was under various litigations between the parties, and the occupation of the petitioner has been protected by various Court orders.

6.38. Further, petitioner had paid the premium in respect of the lease till the year 2030, and DDA having accepted the said premium, cannot allege that the petitioner was an unauthorized occupant.

6.39. The objection of the respondent-DDA that the petitioner has neither sought implementation of order dated 02nd May, 2012, nor quashing of the letter dated 11th February, 2013, is hyper-technical and must be rejected. In the entire writ petition, the petitioner has sought implementation of the order dated 02nd May, 2012, passed by the LG for renewal/conversion of the lease deed. The real nature of the controversy and the substantive relief sought by the petitioner is explicit, unequivocal and borne from the pleadings as a whole. Merely because the prayer clause does not have elaborate drafting cannot defeat the substantive right of the petitioner. It is trite law that procedural technicalities cannot override substantive justice.

6.40. Since the respondent-DDA had knowledge that the petitioner seeks enforcement of the order dated 02nd May, 2012, no prejudice shall be caused to it.

6.41. The Revocation Notice dated 24th June, 2004, by MCD is a non-speaking order, passed in violation of the Principles of Natural Justice.

6.42. The ice factories are service industries, and are located in the Karol Bagh Zone (D-6 Zone) under the MPD-1962, which was considered as special zone as being commercial-cum-residential. Therefore, the allottee, i.e., the petitioner is entitled to use the subject property for commercial use. A banquet hall is permitted in a residential area if the plot is of more than 219 square meters.

6.43. At the time of issuance of the letter dated 12th May, 2004, by DDA to MCD, there were no eviction proceedings pending and the order dated 19th October, 2000, by the ADJ was in force, which stated that the petitioners are not unauthorized occupants in the subject property. Thus, the DDA has misused and abused the services of other government services.

6.44. While on one hand, DDA till year 2001 maintained that use of the subject property for a purpose other than residential/institutional was a non-conforming use and refused to allow the petitioner to use it for a commercial purpose, while on the other hand, DDA itself filed *C.W. 1295/2001* seeking directions to the petitioner to use the subject property for the purpose for which it was allotted, i.e., for an ice factory.

6.45. The judgment dated 16th February, 2006, passed by the Supreme Court in *W.P.(C) 4677/1985*, is not applicable to the petitioner, as in the present case there is no misuse of residential premises. Admittedly, the subject property was allotted for industrial purposes.

6.46. The petitioner was persuaded by the MCD in view of the aforesaid judgment to file the Affidavit undertaking to close its eating house and banquet hall, to which the petitioner conceded in order to avoid sealing of the subject property.

6.47. The petitioner resumed its commercial activities after the Government of India issued a notification dated 20th May, 2006, granting moratorium for a period of one year against the demolition and sealing of misuse of residential premises for commercial purposes. Even otherwise, the petitioner is entitled to regular registration of eating house, as the *ad-hoc* registration certificate issued by the MCD, was without considering the land use and development rules prescribed for Karol Bagh Zone.

6.48. DDA tried to achieve indirectly what it could not achieve directly by misusing and abusing the services of other government agencies in Delhi to harass the petitioner with a view to get the subject plot vacated. The MCD and Excise Collector, acted without verifying the information given by the DDA and in violation of Principles of Natural Justice.

SUBMISSIONS BY THE RESPONDENTS:

Submissions by Excise Commissioner, New Delhi:

7. The submissions made on behalf of respondent no. 2 in *W.P.(C)*

12275/2004, i.e., Excise Commissioner, New Delhi, are as follows:

7.1. It is a matter of record that the Show Cause Notice dated 06th July, 2004, was issued to the petitioner with a direction to appear before the Collector of Excise on 15th July, 2004, at 03:00 PM. The Show Cause Notice was issued on account of non-filing of documents, i.e., MCD Trade Licence.

7.2. However, instead of appearing, the petitioner, i.e., the bar licence holder, *vide* letter dated 15th July, 2004, requested for an adjournment. Considering the facts and circumstances of the case, and the direction of the Deputy Health Officer, MCD, to close down the business of the eating house and other establishment within three days, the bar licence could not continue.

7.3. The bar licence of the petitioner was suspended with immediate effect under Section 36 of the Punjab Excise Act, 1914 **("Punjab Excise Act")**, which is extended to NCT of Delhi, till such time the licencee produces a valid MCD eating house licence.

Submissions by Health Officer, Health Department, MCD:

8. The submissions made by respondent no. 3 in *W.P.(C) 12275/2004*, i.e., MCD, are summarised as under:

8.1. The petitioner has come before this Court with unclean hands, on account of suppressing material facts.

8.2. The petitioner had been granted *ad-hoc* registration in the name of Sh. Harish Bhasin on 08th September, 2000, for operating an eating house with seating capacity of 45 seats. The *ad-hoc* registration did not provide any protection to the occupant, i.e., the petitioner, against any action by any government agency.

8.3. For the grant of the *ad-hoc* registration, the petitioner executed an

Affidavit, Indemnity Bond, and proof of occupancy, thereby, undertaking that the registration so granted for trade in non-conforming areas is liable to be withdrawn/revoked/cancelled at any time by the Commissioner, MCD, without any notice. Further, in terms of the Indemnity Bond, the petitioner undertook not to hold the MCD liable for any action against the petitioner by the MCD, DDA, Delhi administration, or any other authority, arising from or out of the *ad-hoc* registration granted to the petitioner.

8.4. After multiple reminder letters by the MCD, the DDA replied *vide* a Letter dated 12th May, 2004 stating that the petitioner's occupancy is doubtful, and the DDA has started eviction proceedings against the petitioner. It was further stated that the matter is under inquiry/investigation by the Central Bureau of Investigation **("CBI")** and the relevant files are in custody of the CBI.

8.5. The Health Inspector, MCD, inspected the subject property on 11th June, 2004, and found that the petitioner had shifted the eating house from the registered portion to an unregistered portion in the subject property. The petitioner was found operating an unauthorized eating house, at the unauthorized portion, with the capacity of 78 seats along with kitchen under unhygienic conditions, while the prescribed capacity was of 45 seats. The petitioner had also started a bakery manufacturing unit in the subject property without any municipal licence, and was carrying out sale of the same. The Health Inspector, MCD issued a *challan* dated 11th June, 2004, under Sections 397, 417, and 421 of the Delhi Municipal Corporation Act, 1957 **("DMC Act")**.

8.6. Subsequently, the Health Department, Karol Bagh Zone, MCD, issued a Show Cause Notice dated 11th June, 2004, to the petitioner on account of change of site for which the *ad-hoc* registration was originally granted, i.e., an eating house with the capacity of 45 seats in non-conforming area in the subject property.

8.7. The MCD has revoked the petitioner's *ad-hoc* registration *vide* Revocation Order dated 24th June, 2004, after the occupancy of the eating house was held to be illegal by DDA, and no satisfactory explanation was given by the petitioner. However, the petitioner did not stop operation of the eating house as well as the manufacturing and sale of bakery products.

8.8. Subsequently, MCD issued the Closure Notice dated 23rd July, 2004, under Sections 423 and 419(5) of the DMC Act, as per law and by providing adequate opportunities to the petitioner. However, this Court *vide* order dated 29th July, 2004, in *W.P.(C) 12275/2004,* stayed the Revocation Order dated 24th June, 2004, pursuant to which, the petitioner has continued to run the eating house with impunity.

8.9. The petitioner has failed to meet the statutory requirements as enumerated in 'Technical Instructions and Bye Laws for Trade Licences' issued by the Health Department, MCD, which provides for the grant of registration for running an eating house. The aforesaid have been duly adopted and implemented by MCD under Section 417 and 421 of the MCD Act.

8.10. The petitioner had filed an application dated 30th May, 2005, under Sections 417 and 421 of the DMC Act, seeking renewal of the Registration Certificate for the year 2005-2006 to run the eating house. However, MCD is not in a position to allow the grant of *ad-hoc* registration to the petitioner as the petitioner has miserably failed to comply with the pre-requisite statutory requirements till date. Furthermore, in accordance with the site inspection conducted by MCD, there has been no change in circumstances since 24th July, 2004, when the revocation of Registration Certificate was issued.

8.11. The petitioner, under the garb of the stay issued by this Court, has been running the eating house in the form of a banquet hall in violation of various provisions of the DMC Act. Such use is impermissible as it still exists in a non-conforming area and in view of the mandate of the judgment dated 16th February, 2006, passed by the Apex Court in *W.P.(C) 4677/1985,* titled as *M.C. Mehta Versus Union of India & Ors.,* holding that all *ad-hoc* registrations are liable to be cancelled. The Apex Court in the order dated 10th August, 2006, in *W.P.(C) 263/2006,* titled as *Delhi Pradesh Citizen Council Versus Union of India & Anr.*, has directed various activities, including banquet halls, shall not be carried out in residential areas.

8.12. In compliance of the judgement dated 16th February, 2006, the petitioner filed an application dated 16th March, 2006, undertaking to close the eating house and other commercial activities in the subject property.

8.13. However, when MCD carried out another inspection on 02nd September, 2006, a huge gathering inside the subject property was found. The said gathering indicates that the subject property was being used as a banquet hall. Additionally, two kitchens were found to be running at the subject property in absolute unhygienic conditions, thereby violating the technical norms of the health department of DMC. The food so prepared in the kitchens is injurious to health of people at large.

8.14. MCD *vide* a Public Notice dated 25th August, 2006, published in the Times of India and other leading newspapers, had already notified that the activities as mentioned in the said notice, including the running of banquet halls in residential areas, should be removed by 31st August, 2006. Therefore, the commercial activities carried out by the petitioner are liable to be stopped with immediate effect. In view thereof, the petitioner is not entitled to any relief.

<u>Submissions by the DDA</u>:

9. The submissions made on behalf of the respondent-DDA, are condensed as under:

9.1. The petitioner is not entitled to any relief as the present petition has been filed by Sh. Harish Bhasin, purporting to be partner of the petitioner, However, Sh. Harish Bhasin is a stranger to the firm, and is not a partner in the records of DDA. Further, any reconstitution of the petitioner firm is contrary to the policies of the DDA, and no right can be thus asserted.

9.2. This Court *vide* judgment dated 21st November, 2011, in *C.W. 1295/2001*, and judgment dated 18th July, 2013 in *Review Petition 742/2011,* has held that the lease deed dated 13th January, 1950, stands expired in the year 1968 itself, on account of its non-renewal. Further, the Eviction Order has been upheld in the *LPA 966/2013*. Therefore, the petitioner is an unauthorized occupant and trespasser *qua* the subject property. In the absence of any lease in existence, the petitioner cannot seek conversion from fixed term lease to perpetual lease or any other relief.

9.3. The lease deed commenced from 01st June, 1948, and in terms of Clause IV(c) therein, the lease expired after a period of 20 years, i.e., 31st May, 1968. Although Clause IV(c) provides option for renewal of the lease for a further period of 20 years, the decision not to renew the lease was communicated to the petitioner by notice dated 15th December, 1967.

9.4. The petitioner *vide* letter dated 15th January, 1968, requested for renewal of the lease, and refused to apply for an alternative site, despite DDA stating that the existence of the ice factory amounts to non-conforming use in terms of the MPD-1962, and therefore, the lease would not be renewed. Meanwhile, the lease expired on 31st May, 1968, due to efflux of time, and DDA once again *vide* letter dated 25th May, 1970, informed the petitioner that the lease was not renewed.

9.5. The DDA had returned the cheques for ground rent deposited by the petitioner, against which, the petitioner had sent a legal notice dated 10th December, 1975, to accept ground rent with effect from 01st June, 1968.

9.6. The contention of the petitioner that the lease stood automatically renewed has already been rejected by judgment dated 18th July, 2013 in *Review Petition 742/2011*, which has now attained finality. Thus, the said contention cannot be re-agitated in the present proceedings under the principles of *res judicata* and *constructive res judicata*.

9.7. Once the lease stood expired, and was never renewed, the petitioner had no right, title, or interest in the subject property, and cannot seek conversion. Be that as it may, the petitioner has neither prayed for restoration of the expired lease nor for execution of a fresh lease in their favor. The petitioner has merely sought conversion of a term lease into a perpetual lease, on the assumption that there is a lease in favor of the petitioner, when none exists. However, once the lease deed has expired, any claim to conversion made thereafter, is *void ab initio*.

9.8. The petitioner has also neither challenged the order dated 08th September, 2011, passed by the Director-Lands rejecting the representation of the petitioner, nor impugned the letter dated 11th February, 2013, by the LG directing implementation of the Eviction Order.

9.9. Thus, the petitioner having failed to seek the necessary foundational relief cannot seek consequential relief. Reliefs that have not been sought cannot be granted in writ proceedings.

9.10. In *W.P.(C) 3728/2010*, the petitioner had sought a direction to DDA to convert the user of the subject property from commercial to any permissible use. However, the said prayer was given up by the petitioner in the said proceedings and only continued to contest conversion from term lease to perpetual lease.

9.11. The contention of the petitioner that contradictory orders were passed by the Director-Lands is misconceived. Director-Lands, after giving a hearing to petitioner, submitted for approval the petitioner's representation for conversion of the lease to perpetual lease by way of internal file noting dated 03rd December, 2010. The same is only an internal file noting, and it was admittedly never communicated to the petitioner.

9.12. DDA *vide* letter dated 23rd August, 2011, informed the petitioner that there were reports of unauthorized construction, misuse of subject property due to running of a banquet hall and bar, and sealing of the subject property by the Monitoring Committee for misuse. DDA asked the petitioner for sanction plans, details on extent of unauthorized construction and steps taken by the petitioner to regularize the same, details on use of property from the date of possession to date of representation, and status and interest of Alfa Garden operating from the property.

9.13. However, the affidavit filed by the petitioner in response, on 01st September, 2011, actively concealed details of unauthorized construction and misuse of the subject property. No details as to deviations from sanctioned plan were mentioned, nor steps taken for regularization.

Although the petitioner states in the said Affidavit that the use of land is commercial, the petitioner in the present petition has sought directions to the DDA for converting user of land to commercial.

9.14. Admittedly, the *ad-hoc* registration of M/s Alfa Spice was cancelled by MCD, and is under challenge in the present proceedings. There is also overwhelming evidence of unauthorized construction and misuse of the property.

9.15. Therefore, by way of order dated 08th September, 2011, the Director-Lands rejected the representation of the petitioner. Instead of challenging the said order in accordance with law, the petitioner made a representation to the LG, styling the same as an appeal.

9.16. The LG *vide* an internal file noting dated 02nd May, 2012, directed that misuse charges be recovered and lease deed be renewed from the standpoint of equity. Subsequently, the LG was apprised of certain facts, and by way of letter dated 11th February, 2013, the petitioner was informed that the LG had directed strict implementation of the judgment dated 21st November, 2011, and rejected the petitioner's representation.

9.17. The internal file noting dated 02nd May, 2012 has admittedly never been communicated to the petitioner, who received its knowledge only through reply to an RTI application filed by the petitioner.

9.18. The note dated 03rd December, 2010 was a mere recommendation and the same stands superseded by the LG's communication dated 11th February, 2013, as categorically held in the judgment dated 18th July, 2013 in *Review Petition 742/2011*.

9.19. It is a settled law that until and unless the decision taken on file is converted into a final order and is communicated and duly served upon the concerned party, no right accrues to the said party. Admittedly, none of the two internal noting were formalized as a decision and communicated to the petitioner.

9.20. No reliance can be placed on the internal noting dated 03rd December, 2010 and 02nd May, 2012, when they have culminated into order dated 08th September, 2011 and letter dated 11th February, 2013, respectively, which have been communicated to the petitioner and have finally rejected the prayer of the petitioner for conversion of term lease into perpetual lease.

9.21. The petitioner cannot be permitted to re-agitate the same issues by making repeated representations dated 02nd January, 2014, and 29th September, 2014, and the same do not confer any legal right nor vest any equity in favor of the petitioner. In terms of directions dated 07th July, 2015 and 12th October, 2015 of this Court in the present proceedings, after a detailed consideration of all facts and circumstances, the LG rejected the aforesaid representations of the petitioner, and the same was communicated to the petitioner by the Director - Land *vide* letter dated 03rd February, 2016. This letter dated 03rd February, 2016 has not been challenged by the petitioners.

9.22. The petitioner's claim for parity is misconceived. In the case of DLF Universal Ltd., there was a pre-existing and continuing lease in favor of the lessee, and the conversion was permitted by the Court as the DDA did not have any objection to the same. However, in the present case, the lease of the petitioner already stood expired by the efflux of time, and the petitioner is a rank trespasser on public land.

9.23. Further, the other ice factories situated in non-conforming areas were provided alternative plots by the DDA during the currency of their respective leases. The petitioner refused to accept the offer of the DDA to shift to an alternative site way back on 15th January, 1968.

9.24. It is a well settled law that conversion of leasehold to freehold is not a matter of right/statutory entitlement, and a policy permitting conversion of leasehold rights to freehold does not confer a vested or indefeasible right to conversion. Various representations of the petitioner have been duly considered and rejected by the DDA.

9.25. The reliance placed by the petitioner on the Office Order dated 11th March, 2011, issued by the Old Scheme Branch (DDA), is of no help to the petitioner, whatsoever, as the said Office Order only applies to cases where the allotees of land applied for renewal/conversion of lease before its expiry. DDA never consented to the renewal of the lease in 1968 itself, on account of change in land use in terms of the MPD-1962, and the same had been communicated to the petitioner *vide* letter dated 15th December, 1967 itself. Although the land was initially allotted for the purpose of an ice factory, the same became non-conforming use after the notification of the DD Act and the MPD-1962. Further, even as per MPD-2001 and MPD-2021, the use of the land is residential.

9.26. Additionally, conversion of lease depends upon a number of considerations, such as land use as per Master Plan, unauthorized occupation, re-entry, expiry/determination of temporary/term lease, and approval by the Ministry of Finance Division. However, in the present case, there is overwhelming evidence of misuse of the subject property by the petitioner by running a banquet hall, which was sealed by the Monitoring Committee, and thereafter, running a restaurant-cum-bar.

9.27. It is evident from a bare perusal of the letter dated 03rd February, 2016 issued by DDA to the petitioner in response to their representation that misuse was found as late as 26th October, 2015 after a field inspection.

9.28. The Monitoring Committee constituted by the Supreme Court found 15 alterations in the subject property, even though no sanction plan was obtained for construction. Despite sealing of the subject property, the petitioner tampered with the seals twice in November, 2006, leading to registration of FIRs. The gross misuse of public land disentitles the petitioner from seeking any conversion of the lease.

9.29. Thus, the petitioner's case has been given ample consideration by DDA, and it has been rejected by way of two separate and detailed order and letter, dated 08th September, 2011, and 03rd February, 2016, respectively.

SUBMISSIONS BY THE APPLICANT IN CM APPL. 20053/2025 IN W.P.(C) 2217/2013:

10. The submissions put forth by the applicant are as follows:

10.1. One Late Sh. Bhim Sen Chadha and his brother Late Sh. Brindra Bhan Chadha established a firm in the name and style of "M/s Gian Chand Kedar Nath & Co", which was a proprietorship firm incorporated for running business of ice factories in Lahore, Pakistan.

10.2. After partition, the partners of the said firm migrated to Delhi and made claims for ice factories to the Ministry of Rehabilitation, Government of India. Pursuant thereto, shares of the claim were given to all partners individually, including, Late Sh. Kushal Chand Chadha, i.e., son of Late Sh. Bhim Sen Chadha.

10.3. All said shareholders accumulated their shares and made a single corpus thereof. As the Constitution was not in force and lease could not be executed in the name of migrants, the shareholders approached Sh. Bhag Ram Handa, maternal cousin of Late Sh. Kushal Chand Chadha, a resident of Delhi, to buy land for the shareholders for starting the business of ice factory.

10.4. On 01st October, 1955, all the said shareholders incorporated a fresh partnership under the same name, i.e., M/s Gian Chand Kedar Nath & Co., with head office at the subject property. Subsequently, a Shops and Establishment Certificate dated 29th March, 1957, was issued.

10.5. With the passage of time, the older partners of the petitioner firm were succeeded by their children through inheritance. Therefore, on 16th July, 1962, another indenture pertaining to the partnership deed dated 01st October, 1955, was executed, which included the name of Late Sh. Santosh Kumar Chadha, i.e., the grandfather of the applicant.

10.6. As per Clause 10 of the partnership deed dated 01st October, 1962, no partner shall be entitled to sell, pledge, mortgage, assign or otherwise dispense with the share in the partnership.

10.7. In 1967, the DDA without any prior information to the petitioner-firm intended to allot the subject land to St. Michel's Church, even though at that time the lease of the petitioner-firm was still subsisting.

10.8. The interest of the DDA was always adverse in the subject property as evident from the lease only for a period of 20 years, even though the said property was given to the petitioner in *lieu* of the land and ice factory which the shareholders of the petitioner had left behind in Lahore, Pakistan.

10.9. In the year 1987, before the expiry of the lease, the DDA corresponded with the petitioner firm treating it as a lessee, and offered it alternative sites in the year 1982.

10.10. The lease in favour of the petitioner firm was executed in terms of the Government of India Grants, wherein, the lease overrides provisions of any other Act, and thus the Public Premises Act is not applicable on the lease of the petitioner.

10.11. The issues in the present writ petition are the same as raised in the petitioner's representation dated 01st February, 2010, which already stands decided as per the directions contained in *W.P.(C) 3728/2010*, filed by the petitioner firm for conversion of the lease to perpetual lease deed, and the final order dated 02nd May, 2012, passed by the LG.

10.12. Late Smt. Kamla Chadha expired on 28th October, 2011, and bequeathed her share in the petitioner firm to the minor son of the applicant *vide* Will dated 12th September, 2011.

10.13. The petitioner has no *locus* to file the instant petition and he has no right to file any claim in any court on behalf of the petitioner-firm. The petitioner herein has illegally and unauthorizedly claimed himself as the partner and authorized representative of the petitioner-firm.

10.14. The petitioner fails to disclose as to how he stepped into the shoes of a partner in the petitioner firm. The petitioner came in possession of the subject property as a licencee through a General Power of Attorney without any such authority from the petitioner-firm having parted with the possession of the subject property to the petitioner herein.

10.15. The applicant has made repeated requests with the respondents by way of RTI applications *qua* the subject property, but has not received satisfactory answers to his queries.

10.16. The applicant thus prays for the grant of perpetual lease as per the prayers of the present petition.

FINDINGS AND ANALYSIS:

11. I have heard learned counsels for both the parties and have perused the record.

PROCEDURAL HISTORY:

12. At the outset, it is to be noted that by way of interim order dated 29th July, 2004 in *W.P.(C) 12275/2004*, operation of the impugned order dated 24th June, 2004 passed by the MCD and the order dated 16th July, 2004 passed by GNCTD were stayed. Further, directions were issued to the Collector (Excise) to remove the seal affixed on the bar.

13. DCP (Licensing), Delhi Police was impleaded as respondent no. 4 in *W.P.(C) 12275/2004*. Further, on 03rd August, 2006, counsel for the petitioner sought time to seek instruction to file an undertaking that the banquet hall has been closed and the subject property will not be used for running the banquet hall in future, subject to any rights determined in future. However, no such undertaking was filed by the petitioner.

14. MCD was also permitted to file additional affidavit with plans and photographs to show unauthorized construction made by the petitioner in the subject property *vide* order dated 13th September, 2006.

15. The interim order dated 29th July, 2004 was made absolute by the Court in *W.P.(C) 12275/2004* on 23rd April, 2009, on the condition that in case the banquet hall sealed by the Monitoring Committee was de-sealed, the petitioner shall use the same strictly in accordance with the provisions of law.

16. In *W.P.(C) 12275/2004,* by way of order dated 08th August, 2013, MCD was directed to produce the record at the time of hearing of the writ petition, whereas, the right of petitioner therein to file rejoinder stood

forfeited *vide* order dated 12th December, 2018.

17. It is also pertinent to be note that *W.P.(C) 2217/2013* had initially been disposed of *vide* order dated 08th April, 2013, and the order of the LG dated 11th February, 2013, was kept in abeyance till disposal of the Review Petition bearing no. *742/2011*. Upon dismissal of the aforesaid Review Petition, the *W.P.(C) 2217/2013* was revived on 11th November, 2013.

18. By way of order dated 12th August, 2013, the parties were directed to maintain *status quo* with respect to the subject property, and the said interim directions were made absolute *vide* order dated 25th February, 2014.

19. On 07th July, 2015, DDA was directed to dispose of petitioner's representations for restoration of lease, and also produce the original file pertaining to the petitioner's case. Further, *vide* order dated 12th October, 2015, the Court directed the Vice Chairperson, DDA to convene a meeting of all responsible officers and after taking a considered decision, communicate the same to the petitioners within three weeks.

20. It is essential to note that in terms of the aforesaid directions of this Court, DDA considered the petitioner's representations dated 02nd January, 2014, and 29th September, 2014, and rejected the same by way of letter dated 03rd February, 2016.

21. By way of order dated 05th December, 2016, the petitioner was permitted to file an amended writ petition stating that DDA's order dated 03rd February, 2016, was contrary to policy dated 21st January, 2011, and Office Order dated 11th March, 2011.

22. On 12th January, 2024, additional documents filed by the petitioner were taken on record. Further, order dated 07th July, 2025 records the submission made by DDA that it has no relation to the inter-se dispute

between the petitioners and the applicant in *CM APPL. 20053/2025*.

23. In terms of order dated 04th August, 2025 passed by this Court, the petitioner has inspected and placed documents from the original file of DDA before this Court, along with an affidavit.

24. *CM APPL. 20053/2025* filed in *W.P.(C) 2217/2013* has been heard during final arguments in the petition.

DISPUTE BETWEEN THE PARTIES:

25. The petitioner seeks direction to the respondent-DDA to convert the petitioner's expired term lease into a perpetual lease. The claim of the petitioner rests principally on an internal noting recorded by the Director-Lands on 03rd December, 2010, internal noting recorded by LG on 02nd May, 2012, DDA's policy dated 21st January, 2011, and the Office Order of DDA dated 11th March, 2011, and parity with other lessees, in particular, M/s DLF Universal Limited.

26. On the other hand, the respondent-DDA resists the petition on the ground that the petitioner's original lease expired by efflux of time on 31st May, 1968, and was never formally renewed. Further, the internal noting relied upon by the petitioner never matured into communicated orders and were in any event, superseded by reasoned decision of the Director-Lands dated 08th September, 2011; decision of the LG as communicated to the petitioner *vide* letter dated 11th February, 2013, followed by DDA's formal order dated 03rd February, 2016, rejecting the petitioner's representations.

27. First and foremost, it is to be noted that the Eviction Order dated 02nd May, 1991, against the petitioner herein passed by the Estate Officer has been upheld in judgment dated 21st November, 2011, passed in *C.W. 1295/2001,* and judgment dated 18th July, 2013 in *Review Petition 742/2011*,

as well as order dated 04th February, 2014, in *LPA 966/2013*. As noted in the aforesaid judgments and orders, the lease stood expired in the year 1968 itself.

28. As per the facts on record, the lease deed dated 13th January, 1950, was executed in favour of proprietor of Handa Ice Factory, who subsequently transferred the said lease in favour of the petitioner.

29. The lease deed in favour of the petitioner-firm expired on 31st May, 1968, due to efflux of time. It is undisputed that the said lease was thereafter never formally renewed.

30. The main dispute in the present petition is whether or not the petitioner is entitled to a conversion of term lease into perpetual lease on the grounds of parity. This necessarily entails enquiry into whether the decision taken by the DDA of rejecting the application of the petitioner, in this regard, is arbitrary or based on sound reasons.

SCOPE OF INTERFERENCE BY COURT IN ADMINISTRATIVE DECISIONS:

31. It is a well settled principle of law that the Writ Court does not sit as an Appellate Court over the administrative decisions taken by statutory authorities. The Court cannot supplant its own reasoning, and its interference is not warranted in case of two possible perspectives, and the authority having taken one.

32. It is not permissible for the Court to examine the validity of the decision but only the correctness of the decision-making process. The Court undertakes an examination into whether the impugned decision is vitiated by an apparent error of law. Thus, in the case of ***Municipal Council, Neemuch Versus Mahadeo Real Estate and Others, (2019) 10 SCC 738***, it was held

as follows:

"xxx xxx xxx

13.** In the present case, the learned Judges of the Division Bench have arrived at a finding that such a sanction was, in fact, granted. We will examine the correctness of the said finding of fact at a subsequent stage.* ***However, before doing that, we propose to examine the scope of the powers of the High Court of judicial review of an administrative action. Though, there are a catena of judgments of this Court on the said issue, the law laid down by this Court in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] lays down the basic principles which still hold the field*. Para 77 of the said judgment reads thus: (SCC pp. 677-78)*

> *"77.* ***The duty of the court is to confine itself to the question of legality. Its concern should be:***
>
> ***1. Whether a decision-making authority exceeded its powers?***
>
> ***2. Committed an error of law,***
>
> ***3. committed a breach of the rules of natural justice,***
>
> ***4. reached a decision which no reasonable tribunal would have reached or,***
>
> ***5. abused its powers****.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. *Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:*

> *(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
>
> *(ii) Irrationality, namely, Wednesbury unreasonableness.*
>
> *(iii) Procedural impropriety.*

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secy. of State for Home Department, ex p Brind [R. v. Secy. of State for Home Department, ex p Brind, (1991) 1 AC 696: (1991) 2 WLR 588 (HL)], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. ***In all these cases, the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention***'."

14. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of "Wednesbury unreasonableness" or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

15. *This Court recently in W.B. Central School Service Commission v. Abdul Halim [W.B. Central School Service Commission v. Abdul Halim, (2019) 18 SCC 39: 2019 SCC OnLine SC 902] had again an occasion to consider the scope of interference under Article 226 in an administrative action:*

> *"31.* ***In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record****, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137].* ***If the provision of a statutory rule is reasonably***

capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

33. ***However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ court does not interfere, because a decision is not perfect***.

16. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice.

xxx xxx xxx"

(Emphasis Supplied)

33. Likewise, delving on the aspect that the scope of judicial review in

administrative decisions of statutory authorities is limited, Supreme Court in the case of ***Om Kumar and Others Versus Union of India, (2001) 2 SCC 386***, held as follows:

> *"xxx xxx xxx*
>
> ***24.*** *We agree that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as Wednesbury principles, (See Associated Provincial Picture Houses v. Wednesbury Corpn. [(1948) 1 KB 223:(1947) 2 All ER 680 (CA)]). This Court had occasion to lay down the narrow scope of the jurisdiction in several cases. The applicability of the principle of "proportionality" in administrative law was considered exhaustively in Union of India v. Ganayutham [(1997) 7 SCC 463:1997 SCC (L&S) 1806] where the primary role of the administrator and the secondary role of the Courts in matters not involving fundamental freedoms, was explained.*
>
> ***25.*** *We shall therefore have to examine the cases of Shri Om Kumar and of Shri Virendra Nath from the standpoint of basic principles applicable under administrative law, namely, Wednesbury principles and the doctrine of proportionality. It has, therefore, become necessary to make reference to these principles and trace certain recent developments in the law.*
>
> *I (a) Wednesbury principles*
>
> ***26.*** *Lord Greene said in 1948 in the Wednesbury case [(1948) 1 KB 223:(1947) 2 All ER 680 (CA)] that* ***when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action.*** *It is equally well known that in 1983,*

Lord Diplock in Council for Civil Services Union v. Minister of Civil Service [(1984) 3 WLR 1174: 1985 AC 374: (1984) 3 All ER 935 at 950j] (called the GCHQ case) summarised the principles of judicial review of administrative action as based upon one or other of the following viz., illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".

(b) Proportionality

***27.** **The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principle of "proportionality" to legislative action since 1950, as stated in detail below**.*

28.** **By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.

***29.** The above principle of proportionality has been applied by the European Court to protect the rights guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and in particular, for considering whether restrictions imposed were restrictions which were "necessary" — within Articles 8 to 11 of the said Convention [corresponding to our Article 19(1)] and to find out whether the restrictions imposed on fundamental freedoms were more* *excessive than required. (Handyside v. UK [(1976) 1 EHR 737]). Articles 2 and 5 of the Convention contain provisions similar to Article 21 of our Constitution relating to life and liberty. The European Court has applied the principle of proportionality also to questions of discrimination under Article 14 of the Convention (corresponding to Article 14 of our Constitution). (See European Administrative Law by J. Schwarze, 1992, pp. 677-866)*

(II) Proportionality and Legislation in UK and India

xxx xxx xxx

***32.** **So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable** [see Air India v. Nergesh Meerza [(1981) 4 SCC 335:1981 SCC (L&S) 599] (SCC at pp. 372-373)]. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in State of A.P. v. McDowell and Co. [(1996) 3 SCC 709].*

xxx xxx xxx

***42.** While the courts' level of scrutiny will be more in case of restrictions on fundamental freedoms, the courts give a large amount of discretion to the administrator in matters of high-level economic and social policy and may be reluctant to interfere: (R. v. Secy of State for the Environment, ex p Nottinghamshire County Council [1986 AC 240:(1986) 1 All ER 199:(1986) 2 WLR 1 (HL)]; R. v. Secy. of State for Environment, ex p Hammersmith and Fulham London Borough Council [(1991) 1 AC 521:(1990) 3 All ER 589:(1990) 3 WLR 898] (AC at p. 597). Smith speaks of "variable margin of appreciation". The new Rule 1 of the Civil Procedure Rules, 1999 permits the courts to apply "proportionality" but taking into account the financial issues, complexities of the matter and the special facts of the case.*

(v) Post-Smith and the Human Rights Act, 1998

xxx xxx xxx

66. *It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.*

67. ***But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of Royappa [(1974) 4 SCC 3 : 1974 SCC (L&S) 165] (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary****. [In G.B. Mahajan v. Jalgaon Municipal Council [(1991) 3 SCC 91] (SCC at p. 111).] Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata Cellular v. Union of India [(1994) 6 SCC 651] (SCC at pp. 679-80), Indian Express Newspapers Bombay (P) Ltd. v. Union of India [(1985) 1 SCC 641:1985 SCC (Tax) 121] (SCC at p. 691), Supreme Court Employees' Welfare Assn. v. Union of India [(1989) 4 SCC 187: 1989 SCC (L&S) 569] (SCC at p. 241) and U.P. Financial Corpn. v. Gem Cap (India) (P). Ltd. [(1993) 2 SCC 299] (SCC at p. 307) while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always.*

*68. **Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as "arbitrary" under Article 14, the principle of secondary review based on Wednesbury principles applies.***

xxx xxx xxx"

(Emphasis Supplied)

DECISION DATED 08TH SEPTEMBER, 2011 BY DIRECTOR-LANDS, WELL-REASONED:

34. In the present case, the petitioner had sent a representation dated 01st February, 2010, seeking conversion of the term lease deed into perpetual lease. By way of the final decision dated 08th September, 2011, the Director-Lands rejected the representation of the petitioner on the following grounds:

i. Although there was a submission of the petitioner's counsel on 06th October, 2010, before this Court in *W.P.(C) 3728/2010*, stating that the dispute *qua* the user of the property has been resolved. However, the records of DDA do not show any evidence about resolution of dispute regarding user of the property between DDA and the petitioner. Thus, the statement of the counsel for the petitioner was unsubstantiated, unilateral, and without any evidence.

ii. In terms of order dated 06th October, 2010, in *W.P.(C) 3728/2010*, only the question of renewal of term lease into perpetual lease is being considered.

iii. The lease was not renewed mainly on the ground that when the lease became due for renewal, the MPD-1962 had come into operation, as per which, the subject property was demarcated as a residential area, and the subject property was earmarked for a higher secondary school.

iv. As per legal opinion received from the Legal Department of DDA, *proviso* to Section 14 of the DD Act has to be read harmoniously with the MPD and ZDPs. The words *"use upon such terms and conditions as may be prescribed"* in the *proviso* enable the Authority to restrict by regulations the use of any land or building for a purpose for which it was being previously used. In other words, subsequent to framing of regulations and notification of MPD and ZDP, any land or building can neither be used nor be permitted to be used otherwise than in conformity with such regulations and provisions of MPD and ZDP. Therefore, the present case will be governed according to the MPD and ZDP.

v. The argument of petitioner that their term lease be extended for another 20 years is devoid of merits.

vi. The argument of petitioner w.r.t similarly placed cases, viz., M/s Raisina Ice Factory and M/s Imperial Ice Factory, was rejected as the facts of those cases were different. In the above two cases, land use of the property was not under question.

vii. However, in the present case, the Planning Department of DDA has informed that as per MPD-2021, the subject property remained part of residential land use, and its use as an ice plant is not permissible in residential areas. As per MPD-1962 and MPD-2001 also, the subject property was part of residential land use. Further, a higher secondary school is a residential land use. Thus, land use of land allotted to petitioner is different from land use under the MPD, the other cases become distinguishable.

viii. Comparison of present case with the case of the lease of M/s DCM Limited is not justifiable to seek conversion to perpetual lease, as in M/s DCM case, lease has not been renewed in perpetuity as yet.

ix. The case of DLF Universal Limited was also distinguished. The said case was based on letter dated 08th June, 1984, of the Ministry of Works & Housing, as per which, conversion of term lease into perpetual lease has to be in accordance with MPD/ZDP, subject to certain factors such as unauthorised occupation, re-entry, determination of temporary lease, land use shown in ZDP/MPD, date of application requesting for conversion of temporary lease into permanent lease, etc. In such cases, approval of Ministry of Finance Division is also obtained.

x. As per the office records of DDA, there is unauthorised construction, misuse (ice factory in residential area), misuse by running restaurant-cum-bar as well as banquet hall, which has been sealed by Monitoring Committee. These violations would disqualify the petitioner to be considered for conversion of period lease into perpetual lease.

xi. *Vide* order dated 23rd August, 2011, petitioner was given opportunity to clarify about the unauthorised construction and misuse in the interest of natural justice. But the reply by the petitioner does not furnish the information sought.

35. Thus, it is seen that the case of the petitioner was considered comprehensively upon the representation dated 01st February, 2010,

submitted by the petitioner, and the said representation was disposed of by a detailed Speaking Order dated 08th September, 2011.

36. The contention of the petitioner that the aforesaid order dated 08th September, 2011, is arbitrary as the Director-Lands had earlier passed a contradictory order dated 03rd December, 2010, is misconceived and is liable to be dismissed. The present is not a case where the Director-Lands passed two contradictory orders, one allowing the representation of the petitioner and another disallowing the same. The order dated 03rd December, 2010, is merely an internal noting which records the preliminary opinion/ recommendation of the Director-Lands, and not the final adjudication of the representation of the petitioner. It is pertinent to note, that the said noting was never officially communicated to the petitioner.

37. Pursuant to the aforesaid internal noting dated 03rd December, 2010, the Director-Lands *vide* order dated 23rd August, 2011, noted that as per guidelines issued by the Government of India by way of letter dated 08th June, 1984, conversion of term lease into perpetual lease is to be decided on merits, on factors such as unauthorised occupation, re-entry, determination of temporary lease, land use shown in MPD/ZDP, date of application requesting for conversion of temporary lease into permanent lease, etc. Further, perusal of the file of the subject property disclosed number of reports about unauthorised construction, misuse of premises by running banquet hall as well as a bar, and sealing of the subject property by the Monitoring Committee.

38. Thus, in order to consider the representation of the petitioner, and to take a decision on issue of conversion of term lease into perpetual lease, the

Director-Lands *vide* order dated 23rd August, 2011, called upon the petitioner to furnish the following information:

> *"xxx xxx xxx*
>
> 1. Whether the petitioner had got building Plan sanctioned before commencement of construction, if the answer is in affirmative a copy of the same.
> 2. Extent of unauthorized construction/deviation from the sanctioned building plan and the action taken by the petitioner to regularize the same.
> 3. A true copy of your letter dated 15.01.1968 vide which the petitioner has claimed to have applied for renewal of the lease.
> 4. The details of use of the property from time to time right from the date of handing over possession to date of submitting his aforesaid representations.
> 5. Status and interest of Alfa Garden operating from the property.
>
> *xxx xxx xxx"*

39. The petitioner *vide* Affidavit dated 01st September, 2011, denied any unauthorised construction in the property, however, mentioned that the subject property was being used for commercial purpose. It was indicated by the petitioner that the property was rented out to M/s Alfa Bhoj Ltd., of which M/s Alfa Gardens is a unit. Further, Sh. Harish Bhasin was stated to be the director of M/s Alfa Bhoj Ltd. The petitioner also furnished documents, viz., lease deed dated 13th January,1950; building permit dated 16th February, 1950; Completion Certificate and letter dated 15th January, 1968.

40. Thus, it is evident that the note dated 03rd December, 2010, was only an internal note, whereafter, the DDA sought additional information from the petitioner, which was given an opportunity to file the requisite information in compliance of Principles of Natural Justice. The final order dated 08th September, 2011, passed by the Director-Lands took cognizance of the said Affidavit of the petitioner, and found that it did not furnish the requisite information. Thus, the said final order came to be passed by DDA thereby, rejecting the representation of the petitioner.

41. In view of the additional information sought by DDA, and the Affidavit provided by the petitioner in response, the contention of the petitioner that the final order dated 08th September, 2011, was passed without any material change in circumstances from the internal noting dated 03rd December, 2010, is completely bereft of merits. It is apparent that a detailed order was passed on 08th September, 2011, after seeking opinion from the legal department as well as the planning committee.

42. It is also pertinent to note that this Court in the judgment dated 18th July, 2013, in Review Petition bearing no. *742/2011,* filed in *C.W. 1295/2001*, has already held that the note dated 03rd December, 2010, of Director-Lands was a mere recommendation.

43. Accordingly, it is held that the petitioner's contention that the Director-Lands' final order dated 08th September, 2011, is vitiated by arbitrariness and perversity, is contrary to the facts on record and is bereft of any merits. It is manifest that after recording the internal noting, the Director-Lands had called upon the petitioner to present its case by submitting documents, and passed the final order after consideration of the documents so submitted by the petitioner. Thus, an opportunity was granted to the petitioner to present its case, and the final order dated 08th September, 2011, came to be passed only after consideration of the facts and documents on record.

DECISION OF LG COMMUNICATED VIDE LETTER DATED 11TH FEBRUARY, 2013, NOT ARBITRARY:

44. This Court also notes that the petitioner had filed before the LG, the representation dated 26th September, 2011, against the final order dated 08th September, 2011, passed by the Director-Lands.

45. The decision taken by the LG on the said representation of the petitioner was communicated to the petitioner by the DDA *vide* letter dated 11th February, 2013. The LG directed that the judgment dated 21st November, 2011, in *C.W. 1295/2001*, by which the Eviction Order dated 02nd May, 1991, had been upheld, be implemented strictly. The LG therefore, did not interfere with the Director-Lands' decision rejecting the petitioner's request for conversion.

46. It is the contention of the petitioner that the LG *vide* order dated 02nd May, 2012, had held that the lease of the petitioner should be renewed from the standpoint of equity, and misuse charges may be recovered. However, subsequently, the LG issued a contrary order, which was communicated to the petitioner *vide* letter dated 11th February, 2013.

UNCOMMUNICATED INTERNAL NOTING, NOT FINAL DECISION:

47. However, the aforesaid contention of the petitioner is without any merits, and therefore, warrants dismissal on the following grounds:

47.1. On 02nd May, 2012, the LG merely recorded an internal noting.

47.2. There has been no official communication of the said noting, therefore, it is not an order. The said noting had only been received by the petitioner *vide* reply dated 31st May, 2012, issued by the DDA to the RTI application by the petitioner.

47.3. At the time of passing of the aforesaid noting, deliberations were still ongoing *qua* the representation of the petitioner.

47.4. There is no contradiction between the final direction of the LG and the said internal noting. Though the final order passed by the Director-Lands was challenged before the LG, the said internal noting was not the final adjudication upon the final order passed by the Director-Lands.

47.5. The LG had sought a Compliance Report from DDA *qua* the internal noting only, and to know what steps were undertaken thereto.

47.6. The reliance placed by the petitioner on the internal noting of DDA, particularly, the internal note dated 02nd May, 2012, passed by the LG, the note of opinion, the consequent opinion of ASG dated 28th August, 2015, and the note dated 08th December, 2010, by the Principal Commissioner of DDA, would be of no assistance to the petitioner. Although there were few internal noting which recommended the case of the petitioner for conversion of lease, the same did not fructify into any final decision on the rights of the petitioner. Such notings by officers are only expression of their viewpoints on subjects for internal use, and for consideration by other officials. Even if some recommendations favorable to the petitioner were floated at certain stages of the decision-making process, the same would be of no consequence. Such internal noting or legal opinions do not confer any right on the petitioner nor bind DDA.

48. It is a well-established principle of law that an internal noting does not translate into approvals or decisions, unless communicated to the party. The Supreme Court has held in categorical terms that a noting on the departmental file is no more than the expression of a provisional view of an officer. Only when it is authenticated in the manner required and communicated to the person concerned, it becomes an order of the government, and thereby, capable of binding anyone or creating any right or obligation.

49. In this regard, reference may be made to the judgment in the case of ***Sethi Auto Service Station and Another Versus Delhi Development Authority and Others, (2009) 1 SCC 180***, wherein, it was held as follows:

"xxx xxx xxx

14. <u>It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned</u>.

15. <u>In Bachhittar Singh v. State of Punjab [AIR 1963 SC 395 : 1962 Supp (3) SCR 713], a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to Article 166(1) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said article and was then communicated to the party concerned. The Court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the "order" of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.</u>

16. <u>To the like effect are the observations of this Court in Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5 SCC 413], wherein it was said that a right created under an</u>

> ***order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right***.
>
> ***17.*** *In view of the above legal position and in the light of the factual scenario as highlighted in the order of the learned Single Judge, we find it difficult to hold that the recommendation of the Technical Committee of DDA fructified into an order conferring legal right upon the appellants.*
>
> *xxx xxx xxx*
>
> ***22. From the afore-extracted notings of the Commissioner and the order of the Vice-Chairman, it is manifest that although there were several notings which recommended consideration of the appellants' case for relocation but finally no official communication was addressed to or received by the appellants accepting their claim. After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposal was rejected by the Vice-Chairman, the final decision-making authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of the State Level Coordinator (Oil Industry) and the Technical Committee but these did not ultimately fructify into an order or decision of DDA conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision-making process, in our view, are of no consequence and shall not bind DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did not confer any right upon the appellants as long as they remained as such. We do not find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench, warranting interference.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

50. Likewise, holding that mere noting and in-principle approvals do not confer a vested right, the Supreme Court in the case of ***Delhi Development Authority Versus Hello Home Education Society, (2024) 3 SCC 148***, held as follows:

"xxx xxx xxx

19.7. ***The issue relating to internal notings as to whether it would confer any right or not has been adequately dealt with and settled by series of judgments of this Court. It is well settled that until and unless the decision taken on file is converted into a final order to be communicated and duly served on the party concerned, no right accrues to the said party. Mere notings and in-principle approvals do not confer a vested right.*** *Relevant extracts from judgments of this Court in this regard are being reproduced hereunder.*

(a) ***Bachhittar Singh [Bachhittar Singh v. State of Punjab, 1962 SCC OnLine SC 11 : AIR 1963 SC 395]:(AIR p. 398, paras 9-10)***

"9. ***The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file****. …*

10. … ***Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character****."*

(emphasis supplied)

(b) ***Sethi Auto Service Station [Sethi Auto Service Station v. DDA (2009) 1 SCC 180] (SCC pp. 185-87, paras 14 & 22)***

"14. ***It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department***

and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is *communicated* to the person concerned.

22. ***From the afore-extracted notings of the Commissioner and the order of the Vice-Chairman, it is manifest that although there were several notings which recommended consideration of the appellants' case for relocation but finally no official communication was addressed to or received by the appellants accepting their claim. After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposal was rejected by the Vice-Chairman, the final decision-making authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of State Level Coordinator (Oil Industry) and the Technical Committee but these did not ultimately fructify into an order or decision of the DDA, conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision-making process, in our view, are of no consequence and shall not bind DDA***. *We are, therefore, in complete agreement with the High Court [Sethi Auto Service Station v. DDA, 2006 SCC OnLine Del 162] that the notings in the file did not confer any right upon the appellants, as long as they remained as such. We do not find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench [Sethi Auto Service Station v. DDA, 2006 SCC OnLine Del 162], warranting interference."*

(emphasis supplied)

(c) ***Mahadeo [Mahadeo v. Sovan Devi, (2023) 10 SCC 807], (SCC pp. 813-14, para 15)***

"15. ***It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right.*** *This Court examined the said question in a judgment reported as Omkar Sinha v. Sahadat Khan [Omkar*

Sinha v. Sahadat Khan, (2022) 12 SCC 228: (2023) 2 SCC (L&S) 391]. Reliance was placed on Bachhittar Singh v. State of Punjab [Bachhittar Singh v. State of Punjab, 1962 SCC OnLine SC 11: AIR 1963 SC 395] to hold that ***merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file."***

(emphasis supplied)

19.8. *Reference can also be made to another judgment of this Court in Municipal Committee, Barwala v. Jai Narayan & Co. [Municipal Committee, Barwala v. Jai Narayan & Co., (2023) 14 SCC 786: 2022 SCC OnLine SC 376], wherein this Court took a similar view.*

xxx xxx xxx"

(Emphasis Supplied)

51. Applying the aforesaid principle, it is undisputed that neither the note dated 03rd December, 2010 of the Director-Lands, nor the noting dated 02nd May, 2012 of the LG, was ever formally communicated to the petitioner. The petitioner learnt of the note dated 03rd December, 2010, upon inspection of DDA's file, and of the noting dated 02nd May, 2012, through an RTI reply issued by DDA. The said internal noting were superseded, Firstly, by way of order dated 08th September, 2011 issued by the Director-Lands; Secondly, by the communication dated 11th February, 2013, issued by DDA informing the petitioner that the LG had directed implementation of the judgment of this Court dated 21st November, 2011; Thirdly, by DDA's subsequent communication dated 03rd February, 2016, thereby, rejecting the petitioner's representations dated 02nd January, 2014, and 29th September, 2014, for

restoration of the lease in respect of the subject property. The orders/decisions passed by the DDA are comprehensive and well-reasoned, and address all the aspects of the matter, including, the prevalent ground situation existing in the property and the material facts and circumstances of the case.

DECISIONS OF DDA, AS PER APPLICABLE POLICY:

52. Furthermore, the decisions of the Director-Lands and the LG cannot be said to be in contravention of the applicable policy at the time. While no formal policy was present which dealt with conversion of leases, a letter dated 08th June, 1984, of the Ministry of Works & Housing, provided that conversion of term lease into perpetual lease has to be done in accordance with MPD/ZDP and subject to certain factors such as unauthorised occupation, re-entry, determination of temporary lease, land use shown in Zonal/Master Plan, date of application requesting for conversion of temporary lease into permanent lease, etc.

53. The detailed discussion herein brings forth that the petitioner is an unauthorised occupant of the subject property. Besides, there is overwhelming evidence of the petitioner grossly misusing the subject property by running a banquet hall, a bar and a restaurant. This Court notes the submission of the DDA that apart from the fact that the lease has already expired by efflux of time, such misuse of the subject property by the petitioner also disentitles the petitioner from seeking conversion of lease in respect of the subject property. It is evident from a bare perusal of the letter dated 03rd February, 2016, issued by the DDA to the petitioner that misuse was found in the subject property as late as 26th October, 2015, after a field inspection.

54. In the present case, the application dated 01st February, 2010 for conversion of the lease has been made only after the expiry of the term lease itself. Further, after the expiry of the term lease, the possession of the petitioner had become that of an unauthorised occupant. The Eviction Order passed against the petitioner has also been upheld in the litigations between the parties. Additionally, the term lease could not be converted into a perpetual lease in contravention of the MPD/ZDP, as per which, the land use of the subject property was now "residential" and earmarked for building a higher secondary school. The functioning of an ice factory would be impermissible in terms of the provisions of the MPD/ZDP. While considering the aforesaid representation, the Director-Lands also took note of the report of the Monitoring Committee with respect to misuse of the subject property. Thus, the decision of the Director-Lands dated 08th September, 2011 rejecting the representation dated 01st February, 2010 cannot be regarded as being wholly arbitrary or so irrational, that no reasonable person would come to the said conclusion.

NO PERVERSITY IN THE DECISION DATED 03RD FEBRUARY, 2016:

55. It is also to be noted that after the rejection of the earlier representations *vide* aforesaid order dated 08th September, 2011 and 11th February, 2013, the petitioner again sent representations dated 02nd January, 2014, and 29th September, 2014, to DDA seeking restoration of the term lease in respect of the subject property. DDA, upon directions of this Court *vide* orders dated 07th July, 2015, and 12th October, 2015, considered the said representations of the petitioner.

56. Upon consideration, the aforesaid representations dated 02nd January, 2014 and 29th September, 2014 were rejected. Thus, *vide* letter dated 03rd

February, 2016, issued by the DDA, it was stated that the LG has rejected the aforesaid representations on the following accounts:

i. The recorded lessee Sh. Bhag Ram Handa committed breach of lease conditions and transferred the leased land through his attorney Sh. Ved Pal Syal *vide* registered sale deed dated 01st February, 1950, in favour of petitioner within 2 days of execution of the lease deed, without construction of ice factory as mandated under Clause II (vii) of the lease deed dated 13th January, 1950, which reads as under:

"xxx xxx xxx

(vii) Without first obtaining such consent not to subdivide the said land or to part/with the possession or sub-lease a part only of the said land. No transfer of lease rights is permitted until the Ice factory is constructed on the said land.

xxx xxx xxx"

ii. The lease deed required the lessee to erect an ice factory within a period of 12 months from 01st June, 1948. The building constructed could not be used for any other purpose except for an ice factory, without written consent of lessor. Lease rights could not be permitted to be transferred until ice factory was complete. All these conditions were violated.

iii. Lease expired by efflux of time on 03rd May, 1968, and there was no formal renewal of the lease.

iv. By way of the letter dated 16th December, 1982, an alternative site was offered to the ex-lessee for equivalent area but the same was not availed by the ex-lessee. Therefore, petitioner cannot contend discrimination.

v. The Eviction Order dated 02nd May, 1991, has not been set aside.

vi. Report of the Monitoring Committee appointed by Supreme Court gives detailed account of the illegal and unauthorized construction, misuse, tampering of seals and FIRs in respect of the subject property on account of tampering of seals.

vii. Field Inspection Report dated 26th October, 2015, shows running of bar-cum-restaurant having sitting capacity of 100 persons, which is misuse of the subject property.

57. This Court finds no perversity with the aforesaid decision as communicated *vide* letter dated 03rd February, 2016 by DDA. The said decision is detailed and well-reasoned. The said decision has been passed after the Vice Chairman, DDA, convened a meeting on 16th October, 2015, which was attended by the Principal Commissioner (LD) and the Chief Legal Advisor, DDA, who put up a detailed note for perusal of the competent authority, i.e., the LG, who then passed the direction.

POLICY OF DDA DATED 21ST JANUARY, 2011, AND OFFICE MEMORANDUM DATED 11TH MARCH, 2011:

58. The petitioner's contentions that DDA has ignored their own policy dated 21st January, 2011, and the Office Memorandum dated 11th March, 2011 is not tenable, as the policy of DDA is only applicable in the cases, wherein, the application for conversion of the lease has been made during the currency of a lease, and while the application is being processed, the lease ceases to operate.

59. The policy as contained in the Resolution dated 21st January, 2011 of the DDA, reads as under:

"

DELHI DEVELOPMENT AUTHORITY

Minutes of the meeting of the Delhi Development Authority held on 21st January, 2011 at 10.30 a.m. at Raj Niwas, Delhi.

xxx xxx xxx

ITEM NO.11/2011

Sub: Renewal of Term Leases of OSB properties where applications for renewal/conversion were received in time but the lease expired during processing period.
F.PS/C(LD)/2010

Proposals contained in the agenda item were approved by the Authority.

Matter is not required to be referred to the Ministry of Urban Development.

xxx xxx xxx"

60. The Office Order dated 11th March, 2011, incorporating the policy of DDA, reads as under:

"

DELHI DEVELOPMENT AUTHORITY
(OLD SCHEME BRANCH)

Office Order No. 01

Dated: 11.03.2011

OFFICE ORDER

Old Scheme Branch (OSB), DDA handles many Nazul-I properties which were disposed off on term lease basis. These properties were initially disposed off after receiving premium for a period of 20 or 30 years with specific provision for renewal on their expiry.

In such term leases, there was a provision for enhancement of ground rent at subsequent renewals of lease deed. In 1998, it was decided that in such cases where ground rent of the leases is required to be revised due to renewal of lease prior to conversation, the ground rent was provisionally enhanced and fixed at a rate five times higher than the existing ground rent before allowing conversion.

In the recent past many applications have been received in time for renewal and/or for conversion of such term leases but the leases have expired before a final decision could be taken regarding renewal or conversion in such cases.

There is no explicit policy to deal with such matters. In all such cases where the allottees have applied for renewal/conversion of lease deed in time but leases expired during the period they were being processed by the Management Wing, the lessee can not held to be at fault.

It has been decided vide Authority Resolution No. 11/20111 dt. 21.1.2011 that in all Nazul-I term lease properties containing provision of renewal, applications for conversion or renewal will be considered for conversion or renewal subject to the following:

1. The case is otherwise covered under conversion/renewal policy.
2. Subject to payment of all dues such as 5 times the existing ground rent and other usual charges.
3. Above policy will not be applicable on license properties or premium free lease properties.

   After proposed contained in the agenda item was approved by the Authority vide its resolution no.11/2011 dated 21.1.2011.

(Asma Manzer)
Commissioner (Land Disposal)
No.PS/C(LD)/2010/265 Dt: 11/3/2011 ,,

61. However, in the present case, the representation for conversion was subsequent to the expiration of the term lease. The first representation in this regard was given only on 13th July, 1998, followed by representations dated 03rd May, 1999, and 01st February, 2010, i.e., way beyond the expiration of the lease deed in 1968. Even assuming that the lease deed was extended, it could only be till year 1988, and not beyond.

62. The order dated 08th September, 2011, passed by the Director-Lands, as well as the communication dated 11th February, 2013, informing about the decision passed by the LG, have not been challenged, and therefore have attained finality. This Court finds no perversity or arbitrariness in the letter dated 03rd February, 2016, as it is well-reasoned decision, and therefore, there is no occasion for this Court to intervene in the same.

PETITIONER AN UNAUTHORISED OCCUPANT UPON EXPIRY OF LEASE BY EFFLUX OF TIME:

63. Another factor to be noted is that the lease deed dated 13th January, 1950, stood terminated by the efflux of time, and the same was never renewed by DDA. The lease was set to commence from the year 1948 for a term of 20 years, and subsist till the year 1968.

64. This Court in the judgment dated 21st November, 2011, in *C.W. 1295/2001,* has held that the lease in respect of the subject property has come to an end by the efflux of time, and admittedly, there was no renewal of lease.

65. Furthermore, in the judgment dated 18th July, 2013, in the review petition bearing no. *742/2011,* filed in *C.W. 1295/2001*, it was held that the reading of Clause IV (c) of the lease deed dated 13th January, 1950, does not indicate that there is automatic renewal of the lease upon an option being

exercised by the lessee. Significantly, the words *"if the lease is extended"* used in Clause IV (c) of the lease deed in question, conferred discretion upon DDA whether or not to extend the lease.

66. Clause IV (c) of the lease deed dated 13th January, 1950, reads as under:

> *"xxx xxx xxx*
>
> (c) At the expiry of the said terms of 20 years, the Lessee shall be allowed on option to renew the lease for a further period of 20 years provided further that if the lease is extended for a further term of 20 years the Lessor shall have the right be enhance the rental up to 50% of the original rent.
>
> *xxx xxx xxx"*

67. Upon perusal of the aforesaid Clause, it is evident that the said Clause only provides for allowance of an option to the petitioner for renewal of the lease for a further period of 20 years. Thus, the said Clause only provides for an option to be granted to the petitioner, and not for the lease to be mandatorily renewed after expiration of the first term.

68. The said position becomes all the more clear upon reading of the words *"if the lease is extended"* in the said Clause. It provides for a possibility of the lease getting extended, and not a mandate for the same. It is provided that only if the lease is extended, then the same shall be subject to enhancement of the rent up to 50% of the original rent by DDA.

69. The petitioner's contention of automatic renewal of lease deed is liable to be rejected as the said Clause provides for discretion to the DDA. It is further to be noted that no formal lease was executed after the expiry of the initial lease period in the year 1968.

70. Once the lease stood expired, there is no vested right of the petitioner in the subject property and the petitioner is a rank trespasser. Thus, holding that in the absence of renewal of the lease, the status of the original lessee is that of an unauthorised occupant, in the case of ***Delhi Development Authority Versus Anant Raj Agencies Private Limited, (2016) 11 SCC 406***, it was held as follows:

> *"xxx xxx xxx*
>
> ***29.*** *Section 3(2) of the DD Act says the Authority shall be a body corporate by the name Delhi Development Authority (DDA). Section 21 of the DD Act empowers DDA in respect of the disposal of the land and sub-section (3) of Section 21 makes it very clear that nothing in the aforesaid Act shall be construed as enabling the Authority or the local authority concerned to dispose of the land by way of gift, mortgage or charge but subject to certain reference in the DD Act with regard to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by creation of any easement right or privilege or otherwise.* ***Since the power conferred by the DD Act upon DDA to grant lease includes renewal of lease and in the absence of such a renewal of lease of the property in question in favour of the original lessee, as required in law, there cannot be an automatic renewal of the same in his favour.*** *The non-grant of renewal of lease in favour of the original lessee is very clear from the fact that the original lessee failed to remedy the breaches pointed out by DDA in its show-cause notices dated 9-2-1968 and 16-2-1968 and further made very clear from the issuance of termination notice dated 1-9-1972, whereby DDA has conveyed its clear intention of non-renewal of the lease of the property in question. The relevant portion of the aforesaid termination notice reads thus:*
>
> > *"7. And whereas since you have failed to observe, perform and comply with the terms and covenant, conditions of the above lease the said breaches still continue. It has been decided not to renew the lease for further period."*

30. __Thus, it is abundantly clear from the aforesaid legal statutory provisions of the DD Act and terms and conditions of the lease deed and the case law referred supra that there is no automatic renewal of lease of the property in question in favour of the original lessee. Therefore, the concurrent findings of the courts below on the contentious issue in the impugned judgment are not only erroneous but also error in law and hence, the same cannot be allowed to sustain in law and liable to be set aside__.

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

> *"**2. (g)** "**unauthorised occupation**", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."*

__32.__ In the absence of renewal of lease after 10-8-1968, the pleadings of the original lessee that DDA is estopped from taking the plea that there is no renewal of lease after having accepted the rent after 10-8-1968, in respect of property in question and after accepting certain sums in respect of the same, subsequently, for change of the property in question from leasehold to freehold are all irrelevant aspects for the reason that the same are contrary to the aforesaid provisions of the DD Act, the Nazul Land Rules applicable to the fact situation and the terms and conditions of the lease deed. Further, it is clear from the contents of the termination notice dated 1-9-1972 served upon the original lessee by DDA that it has not only refused to renew the lease of the property but also asked the original lessee to hand over the possession of the property in question within 30 days, which is absolutely in consonance with Section 5 of the

Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

33. *Without examining the case in the proper perspective that the property in question being a public premises in terms of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and that after expiry of lease period the original lessee has become unauthorised occupant in terms of Section 2(g) of the said Act in the light of relevant statutory provisions and rules referred to supra and law laid down by the Constitution Bench of this Court in Ashoka Mktg. Ltd. [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406], the concurrent findings of the courts below on the contentious issue is not only erroneous but also suffer from error in law and therefore, liable to be set aside.*

34. *The grant of perpetual injunction by the trial court in favour of the original lessee, restraining DDA from taking any action under the said termination notice dated 1-9-1972, on the ground that the termination notice dated 1-9-1972 being illegal, arbitrary and without jurisdiction and the affirmation of the same by both the first appellate court i.e. by the learned ADJ and further by the High Court by its impugned judgment and order [DDA v. Balraj Virmany, 2011 SCC OnLine Del 2507] are not only erroneous but also suffers from error in law.*

35. *Thus, Point (i) is answered in favour of the appellant.*

Answer to Point (ii)

36. *The High Court's order dated 3-11-2009 [DDA v. Balraj Virmany, RSA No. 6 of 1983, order dated 3-11-2009 (Del)] whereby the respondent was substituted in place of the original lessee on its application under Order 22 Rule 10 CPC for the reason of execution of sale deed dated 14-10-1998 by the original lessee in favour of the respondent by entering into compromise between them in Suit No. 601 of 1984 is also bad in law.* ***The sale of the property in question to give effect to the compromise decree in the aforesaid suit is void ab initio in law for the reason that the original lessee, in the absence of renewal of lease in his favour, himself had no right, title or interest, at the time of execution of sale deed, in respect of the property in question. It is well-settled position of law that the person having no right, title or interest in the property cannot***

transfer the same by way of sale deed. Thus, in the instant case, the sale of the property in question by the original lessee in favour of the respondent is not a valid assignment of his right in respect of the same. *For the aforesaid reasons, the sale deed is not binding on DDA. The High Court has failed to appreciate this important factual and legal aspect of the case.*

37. *The contention urged by the learned Senior Counsel for the respondent that it has deposited a sum of Rs 96,41,982 as conversion charges of the property in question from leasehold to freehold right of the same is also of no relevance and lends no support to the respondent for the reason that* ***in the absence of renewal of lease of the property by DDA, the original lessee himself becomes an unauthorised occupant of the property in question. The deposition of conversion charges in respect of the same to the office of DDA cannot help the respondent in claiming any right with respect to the property in question****. The question whether such a procedure in respect of the public property is permissible in law or not is not required to be decided in this case. The instant case having peculiar facts and circumstances, namely, after 10-8-1968 the lease stands terminated by efflux of time, which is further evidently clear from the termination notice dated 1-9-1972 and thereafter, the original lessee becomes an unauthorised occupant in terms of Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and consequently, not entitled to deal with the property in question in any manner. The very concept of conversion of leasehold rights to freehold rights is not applicable to the fact situation.*

Answer to Point (iii)

38. *The original lessee has been in unauthorised occupation of the property in question for around 30 years (till he executed a sale deed in favour of the respondent) and the respondent has been illegally inducted in possession of the same, by the original lessee, who himself was in unauthorised possession of the property. For around 17 years the respondent has been enjoying the property in question without any right, title or interest. Thus, both are liable to pay the damages for unauthorised occupation and DDA is empowered under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to claim damages from them. We record this finding in exercise of our* *appellate power in view of our finding and reasons assigned in this judgment holding that the concurrent finding is not only erroneous but also suffers from error in law in granting decree of permanent injunction in favour of the respondent who is not entitled in law for the same. There is a miscarriage of justice in granting the relief by the courts below in favour of the respondent. Further, keeping in view the public interest involved in this case and particularly having regard to the peculiar facts and circumstances of the case we have to allow this appeal of DDA.*

xxx xxx xxx"

(Emphasis Supplied)

71. It is essential to note that the Eviction Order dated 02nd May, 1991, has been upheld across the various litigations between the parties. In *LPA 966/2013,* the Eviction Order has merely been put in abeyance till the determination of the present writ proceedings. Thus, the said Eviction Order has attained finality.

72. As noted above, the petitioner's lease expired by efflux of time on 31st May, 1968. In the judgment dated 21st November, 2011, in *C.W. 1295/2001,* rendered in a *lis* between DDA and the petitioner before this Court, it was reaffirmed that the petitioner's lease expired by efflux of time on 31st May, 1968, and that no renewal was granted in favour of the petitioner. It was, thus, held that the petitioner was an unauthorized occupant liable to eviction under the Public Premises Act. The said finding was neither disturbed in the judgment dated 18th July, 2013 in the review filed against the aforesaid judgment, nor by the Division Bench in judgment dated 04th February, 2014, in *LPA 966/2013.*

73. As noted above, the application/representation by the petitioner for conversion was subsequent to the expiration of the term lease. Thus, when it stands established that no renewal of the lease was ever granted in favour of

the petitioner, the reliance by the petitioner upon the policy of DDA dated 21st January, 2011 and 11th March, 2011, is misplaced. The policy of DDA as aforesaid, addresses conversion of subsisting leases, and was never intended to revive claims already extinguished by non-renewal.

74. Thus, the petitioner cannot certainly seek to place reliance on the policy dated 21st January, 2011, and the Office Order dated 11th March, 2011 of DDA for seeking conversion of its lease, when there is no subsisting lease in favour of the petitioner. The aforesaid policy of DDA is not shown to be unreasonable or perverse in any manner.

<u>PETITIONER'S CLAIM FOR PARITY, MISCONCEIVED:</u>

75. Another issue under consideration of this Court is the claim of the petitioner for parity with other similarly situated leases for ice factories, on the basis of internal noting of DDA.

76. It is unequivocal that Article 14 of the Constitution guarantees equality among equals. It does note entitle a party to claim, as of right, a benefit extended to another, unless the party claiming parity is shown to be similarly situated in all material aspects. In this regard, the Supreme Court in ***State of Kerala and Another Versus N.M. Thomas and Others, (1976) 2 SCC 310,*** held as follows:

> *"xxx xxx xxx*
>
> *31. **<u>The rule of parity is the equal treatment of equals in equal circumstances</u>**. The rule of differentiation is enacting laws differentiating between different persons or things in different circumstances. **<u>The circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different sets of circumstances. The principle of equality does not mean that</u>***

every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require special treatment*. The legislature understands and appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds. The rule of classification is not a natural and logical corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality.* ***Equality means parity of treatment under parity of conditions. Equality does not connote absolute equality. A classification in order to be constitutional must rest upon distinctions that are substantial and not merely illusory.*** *The test is whether it has a reasonable basis free from artificiality and arbitrariness embracing all and omitting none naturally falling into that category.*

xxx xxx xxx"

(Emphasis supplied)

77. In the case of ***State of Punjab and Others Versus Davinder Singh and Others, (2025) 1 SCC 1,*** the Supreme Court has held that parity of treatment must be under parity of conditions. Therefore, laws are enforced equally amongst equals, and equality does not entail sameness. The relevant excerpt of the said judgment, reads as under:

"xxx xxx xxx

(a) The contours of Article 14

84. Article 14 employs two expressions — equality before the law and equal protection of the laws. Both different in content and sweep [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 (Reddy, J., SCC para 643)]. "Equality before the law", an expression derived from the English Common law, entails absence of special privileges for any individual within the territory. It does not mean that the same law should apply to everyone, but that the same law should apply to those who are similarly situated. [Gauri Shanker v. Union of India, (1994) 6 SCC 349:AIR 1995 SC 55] The expression "equal protection of the laws" means that among equals, laws must be

<u>equally administered. It enjoins the State with the power to reasonably classify those who are differently placed</u>. *The mandate of "equal protection of laws" casts a positive obligation on the State to ensure that everyone may enjoy equal protection of the laws, and no one is unfairly denied this protection.* ***<u>In essence, the guarantee of equality entails that all persons in like circumstances must be treated alike. That there must be a parity of treatment under parity of conditions. [Indra Sawhney case, 1992 Supp (3) SCC 217 (Thommen, J., SCC para 260)] Equality does not entail sameness.</u>*** *The State is allowed to classify in a manner that is not discriminatory. The doctrine of classification gives content to the guarantee of equal protection of the laws. [H.M. Seervai, Constitutional Law of India, 4th Edn., Vol. I, p. 439.] Under this approach, the focus is on the equality of results or opportunities over equality of treatment. [Sandra Fredman, "Substantive Equality Revisited", 2016 International Journal of Constitutional Law, Vol. 14, Issue 3, pp. 712-738.]*

xxx xxx xxx"

(Emphasis supplied)

78. In this regard, reference may also be made to the judgment in the case of ***Union of India and Others Versus M.K. Sarkar, (2010) 2 SCC 59***, wherein, it has been held as follows:

"xxx xxx xxx

26. <u>A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same</u>. *On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is* *not a ground to grant relief to a person who is not entitled to the relief.*

xxx xxx xxx"

(Emphasis Supplied)

79. Applying the law, as aforesaid, to the present case, it is clear that the petitioner's claim for parity is misconceived. The petitioner cannot claim parity with other ice-factories on account of the following:

i. In the cases of other ice-factories, there were pre-existing and continuing leases in their favor, and they had applied for conversion to perpetual lease during the currency of their respective leases. However, the petitioner only applied for conversion of the lease post the expiration of their lease deed dated 13th January, 1950.

ii. The other ice factories, which were situated in non-conforming areas were provided alternate plots by DDA during the currency of their respective leases. However, the petitioner chose not to accept the same despite being offered by the DDA. Hence, now the petitioner cannot be permitted to claim that hostile discrimination was meted out to them.

iii. In the case of M/s DLF Universal Ltd., there was a pre-existing and continuing lease in favor of the lessee, and the conversion was permitted by the Court as the DDA did not have any objection to the same. However, in the present case, the lease of the petitioner already stood expired by the efflux of time when the application for conversion was moved by the petitioner, and the petitioner is a rank trespasser on public land.

iv. In the case of M/s DLF Universal Ltd., DDA had resolved to recommend conversion of the lease, and there was no dispute on the principle of conversion, but only on its terms. In contrast, in the present case, DDA has consistently reiterated its position that the petitioner's claim for conversion has not been accepted for stated and substantial reasons, as recorded therein. In the present case, there is no comparable undisputed admission by DDA that it agreed in principle that the lease should be converted.

v. In the case of M/s DLF Universal Ltd., no adverse or final finding of unauthorized occupation had been recorded. However, the case of the petitioner herein stands on a materially different footing, having been held to be in unauthorized occupation of the premises in various judgments passed by this Court.

vi. Instances in the present case like final adverse Eviction Order and unauthorized commercial misuse, clearly bring forth distinguishing features, thereby, negating the claim of the petitioner to equal treatment being 'similarly situated'.

vii. Thus, the case of the petitioner is materially different from that of the other lessees, and no parity can be sought between un-likes.

viii. It is pertinent to note that the internal noting of DDA do not communicate any official decision taken by the department, and they are mere deliberations done on part of the Authority. Furthermore, the legal opinion sought of the ASG is also not binding upon DDA.

VIOLATION OF TERMS OF LEASE DEED DATED 13TH JANUARY, 1950:

80. Another important point to be considered is that perusal of the documents and facts on record, clearly point out that the petitioner has violated the terms of the lease deed dated 13th January, 1950, on three counts.

80.1. Sh. Bhag Ram Handa, the earlier lessee, just within a short period from execution of lease deed dated 13th January, 1950, transferred the lease rights of the subject property to the petitioner in *W.P.(C) 2217/2013*, i.e., M/s Gian Chand Kedar Nath *vide* the registered sale deed dated 01st February, 1950. However, transfer of lease rights in respect of the subject property was prohibited under Clause II (vii) of the lease deed, until the construction of the ice-factory on the subject property was completed.

80.2. Subsequently, the petitioner in *W.P.(C) 2217/2013*, i.e., M/s Gian Chand Kedar Nath, admittedly, parted with possession of the subject land as they leased/rented it to M/s Alfa Spice, which is a unit of M/s Alfa Bhoj Ltd, of which Sh. Harish Bhasin is the Managing Director, who is also a partner in M/s Gian Chand Kedar Nath. However, Clause II (vii) also restricts parting with possession from the subject property, without prior consent of the lessor, i.e., DDA. Therefore, the petitioner violated Clause II (vii) of the lease deed on another count.

80.3. The petitioner, at one point, started running a banquet hall and restaurant-cum-bar. It is important to note that Clause II (vi) of the lease deed prohibits the use of the subject property for any other purpose than an ice-factory. Running a banquet hall is a new use of the subject property, and the permission of the lessor, i.e., DDA was required to be sought. However, the same was not sought by the petitioner. The relevant sub-clause reads as under:

> *"xxx xxx xxx*
>
> (vi) Not to use the said land and buildings that may erected there on during the said term fro any other purpose than for the purpose of Ice Plant without the consent in writing of the Lessor; provided that the lease shall become void if the land is used for any purpose other than for which the lease is granted not being a purpose subsequently approved by the Lessor;
>
> *xxx xxx xxx"*

81. In view of the above stated violations, DDA was well within its rights to exercise its discretion for non-renewal of the lease deed dated 13th January, 1950, in favour of the petitioner, i.e., M/s Gian Chand Kedar Nath.

GRANT OF PERPETUAL LEASE, NOT A MATTER OF RIGHT:

82. Grant of a perpetual lease over government land, in supersession of an expired term lease, is a matter that lies within the policy discretion of DDA and the LG. It is not a right that a lessee, regardless of however long in occupation, can claim as a matter of entitlement.

83. This has recently been affirmed by a Division Bench of this Court in relation to materially similar government lease of cold storage/industrial land containing a resumption clause. It was held that length or renewability of a lease does not transform it into ownership. Furthermore, conversion under a leasehold to freehold policy confers at most, a right to have an application considered under that policy, and not a right to obtain conversion.

84. Thus, the position that emerges is that conversion of leasehold rights into freehold or grant of perpetual lease is not a matter of statutory

entitlement, and a policy permitting conversion does not confer a vested or indefeasible right to conversion. Accordingly, in the case of ***Union of India and Others Versus National Cold Storage & Refrigeration Pvt. Ltd., 2026 SCC OnLine Del 141***, Division Bench of this Court has held as follows:

> *"xxx xxx xxx*
>
> ***49.*** *This issue goes to the heart of the present batch of matters. It concerns the legality of the order dated 05.04.2010 passed in W.P.(C) 1278/2007, whereby the learned Single Judge quashed the order dated 27.12.2006 rejecting the request of NCSRPL for conversion of the remaining leasehold land into freehold and directed the L&DO to effect such conversion subject to payment of requisite charges.*
>
> ***50. At the outset, it is necessary to note that conversion of leasehold rights into freehold, under the policy framed by the Government in 2003, is not a matter of statutory entitlement. The policy is an executive measure intended to extend a facility or concession to eligible lessees, subject to fulfilment of prescribed conditions and subject to administrative discretion. It does not, by its own force, confer a vested or indefeasible right to conversion****.*
>
> ***51. The legal character of such a policy has been consistently recognised as conferring, at the highest, a right to apply for conversion and to have such application considered in accordance with the policy. It does not create a mandamus-enforceable right to obtain conversion, particularly where the foundational eligibility conditions are absent or where overriding public interest considerations intervene****.*
>
> ***52. When the terms of the lease deed dated 06.09.1951 are examined, certain features assume central importance. The lease was granted for a defined purpose, namely the establishment and operation of a cold storage, with a clear prohibition against user for any other purpose. The lease further contained an express and unqualified resumption clause, Clause (xi), which reserved to the Government the right to take back the land, together with buildings and structures, at any point during the currency of the lease if the land was***

required for a public or administrative purpose.

*53. **The existence of a renewal clause permitting extension for two further periods of 30 years does not dilute the legal effect of the resumption clause. Renewal only prolongs the tenure of the lease; it does not convert the nature of the interest into ownership nor does it negate the overriding right of the lessor to resume the land for public purposes. The lease, therefore, even though long in duration, remained a lease subject to stringent conditions and defeasible at the instance of the Government.***

*54. **It is in this context that the rejection of the conversion application on the ground that the allotment was "temporary" must be understood. The expression "temporary" cannot be read in a purely arithmetical sense of duration alone. A lease may endure for several decades and yet remain temporary in character if it is purpose-specific, conditional, and expressly resumable at any time for public purposes. The substance of the rights conferred, rather than the length of tenure, is determinative.***

***55.** By the time the application for conversion came to be considered, significant developments had already occurred. Substantial portions of the leased land had been resumed for public purposes, first for the Delhi Metro Rail Project and thereafter for traffic streamlining. These resumptions were not speculative or hypothetical; they were actual, implemented, and irreversible. The remaining portion of land was also stated to be required imminently for public purposes, a fact which subsequently culminated in statutory acquisition proceedings.*

***56.** In such a situation, directing conversion of the residual land into freehold would have the effect of fundamentally altering the legal relationship between the parties. Conversion would extinguish the Government's reversionary interest and resumption rights and would convert a defeasible leasehold interest into absolute ownership, only to be followed by compulsory acquisition and payment of full market value compensation.*

***57.** Such a course would result in a consequence which the* *policy was never intended to achieve, namely, the creation of ownership rights in favour of a lessee in respect of public land, immediately prior to acquisition, thereby obligating the State to pay compensation as if it were acquiring private property. This would amount to converting a policy-based concession into a vehicle for unjust enrichment.*

58. ***The Court cannot be oblivious to the fact that, under the lease deed, the lessee never possessed an unfettered right in the land. The land at all times remained Government land, subject to a limited right of use, and subject to resumption without payment of compensation for land. To compel conversion in such circumstances would be to rewrite the contract between the parties and to defeat the express terms of the lease****.*

59. *The learned Single Judge, while directing conversion, appears to have proceeded primarily on the premise that the lease was a long-term lease and therefore could not be characterised as temporary. With respect, such an approach places undue emphasis on duration and insufficient emphasis on the decisive features of the lease, namely purpose restriction, Government ownership, and unconditional right of resumption.*

60. *Equally significant is the fact that the conversion policy itself contains exclusions and safeguards. Clauses barring conversion where disputes relating to Government dues subsist, or where litigation between the lessor and lessee is pending, are not empty formalities. In the present case, multiple litigations concerning resumption, compensation, valuation, and entitlement were pending at the time when conversion was sought and directed. Grant of conversion in the midst of such disputes runs counter to the express policy framework.*

61. ***This Court is therefore unable to accept the proposition that NCSRPL had an enforceable right to conversion of the leasehold land into freehold, or that rejection of its application was arbitrary or illegal. The direction for conversion effectively compelled the Government to part with ownership of land which it required, and was entitled to resume, for public purposes****.*

62. *In view of the foregoing, this Court holds that the order*

dated 05.04.2010 directing conversion of the leasehold land into freehold is legally unsustainable and warrants interference. The said order is set aside. Once the order directing conversion is set aside, the legal character of the residual land remains that of Government land held under lease, subject to Clause (xi).
xxx xxx xxx"

(Emphasis Supplied)

85. The principal concepts as elucidated by the learned Division Bench in the aforesaid case, would also apply to the issues of conversion from term lease to perpetual lease, as involved in the present case. Accordingly, it is evident that grant of a perpetual lease is a matter of policy discretion and not an enforceable right.

86. The petitioner has failed to establish that it is similarly situated with other ice-factories. Further, the benefits under the policy dated 21st January, 2011, or the Office Order dated 11th March, 2011, issued by the DDA, are not available to the petitioner in the absence of a subsisting renewal of the lease.

87. Another important aspect to be noted herein is that even at the time of filing the writ petitions, the petitioner did not have any right, title or interest in the subject property, as the lease in its favour had stood expired by efflux of time. The petitioner has already been held to be a rank trespasser in the proceedings under the Public Premises Act. The said findings against the petitioner have attained finality and the petitioner, by way of the present petitions, cannot seek to undo the effect in law of the same. Thus, when there is no lease in existence, the petitioner has no right to seek conversion from fixed term lease to perpetual lease. The petitioner is an unauthorised occupant and a trespasser in the subject property.

PRESENT PETITION BARRED BY DELAY AND LACHES:

88. The present petition is also hopelessly barred by delay and laches. It has come to the fore that the petitioner's lease expired by efflux of time on 31st May, 1968. However, the petitioner made representation for conversion of the term lease to perpetual lease for the first time *vide* representation dated 13th July, 1998, followed by representations dated 03rd May, 1999, and 06th July, 1999. Merely on account of the fact that there were directions to consider the representation of the petitioner, would not furnish a fresh cause of action in reviving a stale claim. Mere continued writing of representation would not condone delay in invoking the extraordinary writ jurisdiction of this Court.

89. It is settled law that making repeated representations cannot confer any legal right or vest any equity in favour of the petitioner. Particularly, the same can in no manner come to the aid of the petitioner or explain the delay by the petitioner in exercising its legal remedies. The said position has been settled in a series of judgments. Thus, in the case of ***Union of India and Others Versus M.K. Sarkar (Supra)***, the Supreme Court held as follows:

> *"xxx xxx xxx*
>
> ***15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches***.

16. ***A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect***.

xxx xxx xxx"

(Emphasis Supplied)

90. Likewise, in the case of ***Sudhir Bhatia Trading AS V. Bhatia International Versus Central Government of India and Others, 2022 SCC OnLine Del 1491***, this Court while holding that mere writing of letters or representations cannot furnish an adequate explanation for delay, held as follows:

"xxx xxx xxx

35. *Although in view of the above finding, the issue of delay on behalf of the Petitioner in approaching the Court does not require any adjudication, however, even on that score, the petition must fail. Petitioner admittedly took no steps to challenge the registration of the trademark between 2005 to 2008 or at least from 2006, when according to the Petitioner, he learnt of the registration. The only explanation rendered is that the Petitioner was writing letters to the Registrar, followed by a legal notice, for redressal of his grievance.* ***It is a settled principle of law that in a writ jurisdiction, which is an extraordinary jurisdiction of the High Court, Court would not ordinarily assist those who are lethargic and indolent. If there is a delay on the part of the Petitioner, which is not satisfactorily explained, the High Court may decline to exercise the writ jurisdiction****. This principle applies with a greater rigour, when the Petitioner on account of its lethargy permits time to lapse and in the meantime, third party* *rights are created.* ***<u>It is equally well-settled that mere writing of letters or representations cannot furnish an adequate explanation for delay</u>****. This principle was settled way-back in KV Rajalakshmiah Setty v. State of Mysore, AIR 1967 SC 993, and was reiterated in Rabindranath Bose v. Union of India, (1970) 1 SCC 84 : AIR 1970 SC 470. The judgments, in my view, squarely apply to the present case, where the Petitioner took no action, except to correspond with the Registrar and admittedly in the meantime, statutory rights have accrued in favour of Respondent No. 3. Court is thus not persuaded to exercise the writ jurisdiction in favour of the Petitioner.*

xxx xxx xxx"

(Emphasis Supplied)

91. Accordingly, on this score also, the present petition is liable to be dismissed.

<u>NO PRAYER MADE FOR RESTORATION OF THE EXPIRED LEASE:</u>

92. Furthermore, pertinently the petitioner has not even prayed for restoration of the expired lease, nor has it prayed that a fresh lease be executed in its favour. The petitioner has merely sought conversion of a term lease into a perpetual lease, and has proceeded on the basis that there is a lease in its favour, although there is none. Thus, in the absence of any relief for restoration of the lease, and in the absence of any subsisting lease, no relief can be granted for conversion of the lease from term lease to perpetual lease. This Court while considering the prayer of the petitioner for conversion to perpetual lease, cannot grant the relief of restoration/renewal of the lease, when such relief has not even been prayed for.

93. In this regard reference may be made to the judgment of the Supreme Court in case of ***Bharat Amratlal Kothari and Another Versus Dosukhan Samadkhan Sindhi and Others, (2010) 1 SCC 234***, wherein, it was held as follows:

"xxx xxx xxx

29. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.

30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed for by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.

xxx xxx xxx

33. Though a High Court has power to mould reliefs to meet the requirements of each case, that does not mean that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the court.

xxx xxx xxx"

(Emphasis Supplied)

94. Furthermore, this Court in the case of ***Dilkhus Meena and Others Versus Union of India and Others, 2023 SCC OnLine Del 5541***, while holding that no relief can be granted which has not been prayed by the petitioners, concluded as follows:

"xxx xxx xxx

21. On perusal of the aforesaid judgments, it is evident that even though the scope of mandamus is very wide, Courts cannot ignore the principles governing grant of relief. It is a well settled

principle of law that the Courts should not delve into the aspects which are related to reliefs not prayed by the petitioner and it is fundamental that a relief can be granted in a case when it is prayed by the petitioner. Therefore, any relief, not prayed by the petitioners, cannot be granted by this Court under Article 226 of the Constitution.

xxx xxx xxx"

(Emphasis Supplied)

INTERNAL DISPUTE BETWEEN PETITIONER AND APPLICANT IN CM APPL. 20053/2025, NOT TO BE DECIDED IN PRESENT PROCEEDINGS:

95. As regards *CM APPL. 20053/2025*, this Court is of the considered view that the internal dispute of the petitioner company as to who validly represents the petitioner firm cannot be resolved by this Court in the present proceedings. The succession/authority dispute between the applicant in *CM APPL. 20053/2025* and Shri Harish Bhasin are disputed questions of facts, which would essentially have to be decided in independent appropriate proceedings. Even otherwise, said dispute as raised in the present application, has no concern with the reliefs actually claimed in the present petitions.

CONCLUSION:

96. For the reasons as set out above, no merit is found in the prayer of the petitioner in *W.P.(C) 2217/2013* for conversion of the term lease into a perpetual lease. In view of the findings in *W.P.(C) 2217/2013*, the reliefs as claimed in *W.P.(C) 12275/2004,* are rendered infructuous.

97. In case, any amount deposited by the petitioner towards lease rent is lying with DDA, the same shall be returned forthwith.

98. The present writ petitions, along with the pending applications, are dismissed, in the aforesaid terms.

MINI PUSHKARNA
(JUDGE)

AUGUST 31, 2026/SK/KR