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legal win for DDA due to narrow scope of Section 5 of Transfer of Property Act, The Supreme Court while hearing an appeal ordered the Delhi Development Authority (respondent) to withdraw the principal amount of Rs.2,13,59,511.20 along with interest from the appellant on the lease matter. Section 5 of the Transfer of Property Act has a narrow scope unable to inculcate the wider scope of representation made by the appellant in the case The President of India executed four separate perpetual lease deed dated 12th August 1983 in favour of M/SJaiprakash Associates Pvt Ltd. The High Court of Allahabad approved the joint application for amalgamation made by M/s. Jaiprakash Associates Pvt Ltd and M/s.Jaypee Rewa Cement Ltd in 1986. The name of M/s. Jaypee Rewa Cement Ltd was changed to M/s. Jaiprakash Industries Ltd. In brief, the appellant is a transferee company .M/s. Jaiprakash Associates Private Ltd (the erstwhile company) was the transferor company who had transferred the concerned plots of land to the transferee I.e M/s. Jaypee Rewa Cement Ltd. The transfer was made out of free will without any coercion or fraud .The application was made by the appellant to the respondent(Delhi Development Authority) for seeking permission for grant of mortgage the concerned property where the respondent (DDA) demanded the unearned increase value of Rs.2,13,59,511.20. The unearned income is the money that is given to a person or body without performing any service or work. It is more common in lease agreement where the lessee has to pay additional fees in return of occurrence of certain circumstances. Single Judge dismissed the said petition filed by the appellant by relying upon a decision a Division Bench of the same High Court in the previous case . The appeal was made before the Supreme Court of India , it was observed that Clause 6(a) in the lease subject matter of the said case was identical to clause II(4)(a) of the perpetual lease and irrelevant clause II(4)(a) of the leases covers involuntary transfers as well. The subject matter of Clause II(4)(a) of perpetual lease covers not only Transfer but parting of possession and property is transferred to or by thr company due to which it can not come under narrow scope of Section 5 of the Transfer of Property Act which states : “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more living person or to himself and “to transfer property” is to perform such act. In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing should effect any law in relation to transfer of property to companies, body of individuals

etc. The learned Court held that the amount towards the unearned increase is calculated on the basis of the difference between the premium paid and the market value of the commercial plot. The reliefs claimed by the respondent was limited in the writ petition for demanding unearned increase; and to direct the appellant to convert the said property from leasehold to freehold in favour of Respondent 2, without charging any unearned increase. The reliefs are founded on the assertion that the transfer was not to any outsider, much less for any consideration .In this case private or public limited company establishes a new company with the same directors and without changing the name of the old company, 50% unearned increase will be applicable. The Supreme Court ruled that Clause 6(a) of the lease deed applied to the case involving property transfer in Shaving Products Limited v. Delhi Development Authority & Anr is similar to the present case. Additionally, Clause 2(d) of the policy determining unearned income applied in transfer cases due to demerger. Therefore, Delhi Development Authority was entitled to withdraw the increased earned income along with interest.

Sources

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Section 5 in The Transfer Of Property Act, 1882 - Indian Kanoon

<https://indiankanoon.org/doc/1272508/#:~:text=In%20the%20following%20sections%20%E2%80%9Ctransfer,in%20this%20section%20%E2%80%9Cliving%20person%E2%80%9D>



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