

## **CHAPTER-1**

### **FUNCTIONS OF THE LAND & DEVELOPMENT OFFICE**

The main functions of the Land and Development Office are as follows:-

1. Maintenance of records of all Nazul Lands acquired in 1911 for the formation of Capital at Delhi and the land comprising Rehabilitation Colonies.
2. Allotment of land to various Govt./Semi Govt. Departments and various political, social, cultural, charitable, educational and religious institutions under the direction of the Government of India.
3. Auction of land for Residential/Commercial purposes under the directions of the Government of India.
4. Administration and management of various leases granted direct by the Land & Development Officer and the Regional Settlement commissioner in Delhi/New Delhi in accordance with the terms of the lease thereof and the orders/instructions issued by the Government of India from time to time.
5. Recovery of all Government dues in respect of land under its control.
6. Eviction of Squatters of Government land and recovery of damages from them: administration of Public Premises (Eviction of Unauthorized Occupants) Act. 1971 in respect of areas under its control.
7. Maintenance of accounts of all receipts and refunds of Revenue in respect of land under its control.
8. Granting of conversion into free hold in respect of specified types of leases.
9. All matters incidental to and arising out of (i) to (vii) above.

## Administration Section

The Administration Section of L&DO mainly deals with

- all establishment and administrative matters of staff/officers,
- Budget preparation,
- purchase and issue of furniture, stationery and other items for office use through Government e Market (GEM) process,
- issue of Identity Cards to employees,
- arrangement for preparation of vehicle entry pass in the premises of Nirman Bhawan in respect of all employees,
- to take care of 01 Government vehicle and 03 hired vehicles in L&DO, and
- Maintenance of Annual Performance Appraisal Reports (APARs) of L&DO staff etc.

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## **Vigilance Section**

Vigilance Section of this office deals with all cases involving corruption or allegation of corruption against officials of L&DO, including the complaints received from within the office, Members of Public, Central Bureau of Investigation, Central Vigilance Commission and Ministry of Urban Development are investigated in Vigilance Section. After verification of complaints, where lapses/irregularities are noticed, the disciplinary proceedings are initiated against the delinquent employee. Apart from these, cases of vigilance clearance from staff side and also the clearances/queries replies of files received from the concerned sections are also to be given to the sections. Besides, work relating to Security and Civil Defence is also dealt in this section. Documents if any required by the CBI or Special Police Establishment, etc. are supplied by this section.

## CASH SECTION

1. Preparation of Salary Bills, Contingent Bills etc. through Com-DDO, PFMS and E-payment of all bills.
2. Maintenance of Pay Bill Register and preparation of all related Bills and E-payments thereof
3. Maintaining Cash Books and other Accounts Registers relating to Receipts and payments
4. Receipt of Cheques from other PAO regarding transfer of GPF, various advances and over payments
5. Preparation of LPCs for all groups of employees.
6. Calculation of Interest on various Advances granted
7. Preparation of OTA Bills and TA Bills and Contingent Bills under the various Heads of Accounts.
  - (i) Office Expenses
  - (ii) Other Charges
  - (iii) Information Technology- Office Expenses
  - (iv) Domestic Travel Allowance
  - (v) Medical
  - (vi) Professional Services
  - (vii) Other Administration Expenses
  - (viii) OTA
  - (ix) Wages
  - (x) Salary
8. Preparation of gross sheets of Income Tax and Calculation of Income Tax filing returns and issue of Income Tax Certificates/Form 16 and Form 16/A to all official and non official staff.
9. Sending of License Fees to Directorate of Estates in respect of all groups.
10. Preparation of bills related to Final Payment of GPF, Leave Encashment and CGEGIS and posting the date to related ledger. Bills regarding Gratuity, Commutation, Leave encashment, CGEGIS, Provisional Pension of retired officials
11. Posting of all salary data ledger wise in Abstract and bill register.
12. Preparation of LTC advance, claim 10 days leave encashment and final adjustment bills and also maintained the LTC Register.
13. Maintenance of Cash Book
14. Maintenance and preparation of Bills Register, Undisbursed amount register, recovery register, contingent register etc.
15. Preparation of monthly expenditure statement.
16. Reconciliation of monthly Departmental Expenditure.

17. Correspondence with the P&AO regarding missing credits of GPF audit objections on pay and allowance and advances etc.
18. Mandatory disclosures under Section 4 of RTI Act in r/o the Division

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## **Statement showing main jobs performed in IFC**

1. To attend public/visitor and their query, guide them in proper way.
2. To receive all daks from individual/Govt. Deptt, such as Court summon, General/ordinary dak, speed post, couriers, notice and make entry in the diary registered.
3. To receive applications such as conversion, substitution, mutation, sale-permission, mortgage permission, RTI, RTGS payments receipt.
4. To register and make a computerized entries of all receipts and print out acknowledgement slip in each case.
5. To collect bank realization slip from bank and got them entries in computerized diary register.
6. To make manual entry of the case deposit slip received from bank.
7. To distribute all the daks/receipts/applications to all concerned section.
8. All ordinary dak, speed post, Registered Post, Court Summon, Court Notice, Meeting Notice, office memorandum, RTI, Parliament question all are scanned by scanner and then distributed to concerned section/officers.

## Co-ordination and Policy Section

The Co-ordination and Policy Section is mainly deals with the following subjects:

1. Examination, drafting and issuance of all Policy instructions/ Office orders.
2. Providing clarifications regarding policy issues to all sections.
3. Circulation of copies of important notes/decisions/notifications etc.
4. Co-ordination work relating to Parliament Questions within L&DO and other departments like DDA, MCD, NDMC etc.
5. Upto date compilation of orders/instructions/circulars on all policy matters.
6. Court matters of NRI allotments.
7. Collecting data of all office for compilation of Annual Report and onward submission to the Ministry.
8. Co-ordination work relating to all matters with the Ministry.
9. Co-ordination work relating to Parliament Questions with Ministry.
10. Arranging the Land Allotment Screening Committee's meeting and placing the agendas for consideration of the Committee.
11. Co-ordination work of Land Inventory with all Govt. departments.
12. RTI matters pertaining to this section as well as others which are not specifically pertain to any section.
13. Court matters which are not specifically pertain to any section.
14. Finalization of Land rates from time to time and other work relating thereto.
15. Audit paras.
16. Examination of Cabinet Notes received from other Ministries/departments and offering comments thereon.
17. Submission of various Reports to Ministry monthly/half yearly/yearly.
18. PG cases pertaining to Co-ordination section.
19. Other residual works not specifically pertain to any section or pertain to more than two sections.

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## INTERNAL AUDIT CELL

The main function of Internal Audit Cell is to check the terms of Govt. dues relating to files received from various sections of L&DO like Residential/Non residential (house properties, Hotel, Institutional properties , Hospital, Petrol Pumps, Schools, Colleges, religious places, encroachment on Govt. land etc.

1. Checking the terms and conditions of lease deed i.e. area, rate of ground rent, plot/GBP, type of lease i.e Appendix XI , XII, Perpetual lease etc.
- 2 Checking of record of files as per inspection reports.
- 3 Checking of area of misuse as per inspection reports, rates according to period, permissible coverable area as per bye-laws, ratio of percentage as per period prescribed by the Govt. for checking of misuse.
- 4 Checking of area of unauthorized construction as per inspection reports, rates according to period, rates calculated by technical section as per FAR depend on the size of plots and colonies.
- 5 Checking of terms for sale without permission and penalties as per rates prescribed by the Govt.
- 6 Checking of AGR as per Revised Performa's scrutinized by technical section.
- 7 Checking of terms for temporary/permanent allotments.
- 8 Checking of terms of 50% unearned increase and EGR etc.
- 9 Checking of recovery of penalties such as belated construction, mutation, misuse and withdrawal of re-entry etc.
- 10 Checking of terms of premium and ground rent as per rates prescribed by the Govt. from time to time.
- 11 Checking of terms of ground rent/additional ground rent/revised ground rent as per record of files along with interest.

12 Checking of terms for conversion along with interest from lease hold to free hold.

13 Checking of terms of recovery of payment and interest on demanded amount.

14 Checking the calculation in respect of premium, AGR , Conversion charges in respect of multistoried building.

15 To check whether any damages and misuse charges were earlier demanded and not paid by the lessee.

16 To check any other discrepancies regarding govt. dues left by concerned sections.

## Account Section

1. Received the demand letter and registered in the concerned ledger of the concerned properties.
2. Received the breach notice letter and registered in the concerned ledger of the concerned properties.
3. Received the substitution letter and registered in the concerned ledger of the concerned properties.
4. Received the mutation letter and registered in the concerned ledger of the concerned properties.
5. Produced the ledger in the court as demanded by the Hon'ble courts after receiving the summons. .
6. All type diaries of the files and letters received in the section.
7. All type dispatched of the files and letters of this section.
8. All type RTI cases in respect o Accounts Section.
9. Maintained all type of challans receiving in this section depositing by the lessee into the Government Account.
10. Maintained the ledger.
11. Registering the lease deed in the concerned ledger and issue of lease number to the concerned lease section.
12. Online preparation of Refund Bill of Residential and heads and sent to PAO (Sectt.) for refund.

## ENFORCEMENT SECTION

This section deals with the following items of work-

- Policy in regard to squatters on Government Land
- Cleaning of squatting on Government Land and recovery of damages for unauthorized occupation
- Defending court cases in respect of squatting Government Land
- Preparation and filing of plaints recovery of damages from squatters and also for their eviction in the Court of Estate Officer under the PPE Act.

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## Lease-I Section

This Section deals with the administration of lease and other related matters of property of various localities namely, Jantar Mantar Road, Jain Mandir Road, Curzon Road (Kasturba Gandhi Marg), Ratendon Road/ Amrita Shergil, Tughlak Road, Tolstoy Marg/ Tolstoy Lane, Hailey Road, Connaught Circus/ Connaught Place, Tis January Marg, Barakhamba Road, S.S. Park (North & South), Factory Road, Gopi Bhawan, Hanuman Road, Aurangzeb Road/ Aurangzeb Lane, Sikandra Road, South End Road, Janpath Road/ Janpath Lane, DLF Narindra Place, Bhagwan Das road, Lady Harding Road, Gole Market (Garrage), Man singh Road, Ice Factory/ Mangolpuri, Scindia Potteries, Doctor Lane, Shanti Bhawan, Your Road , Parliament Street/ Ashok Road, MM Road, Rani Jhansi Road, Baird road, Tilak Marg. In this regard, this section receives various applications for conversion, PG cases, VIP references etc. Hence, this section receives a lot of dak receipts which are generally time bound. Section is handling the cases for Substitution, Mutation, Sale permission, Conversion cases, calculation of demands, preparing demand notices regarding government dues in respect of above mentioned properties. Apart from that attending Govt. Counsels to discuss the cases/to get the reply vetted, attending Court Cases hearing & Summons received from various courts including Estate Officer Court, discussing & briefing the Govt. Counsel and public hearing also. More than 70% Office duty hours of the dealing hands are consuming in court case related matters as mentioned above.

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## Lease-II (A) Section

1. De-notified Wakf Properties,
2. Mahila Imdad Committee/ MoSJ&E/ MoMA,
3. National War Memorial,
4. NMNH,
5. States for their Emporiums, Guest Houses and for any other purposes.
6. All Inter National Agencies- WHO, World Bank, UNESCO, UNICEF
7. All Public Undertakings and Institutes- School of Planning and Architecture, Bharat Scouts & Guides, Employee's State Insurance Corporation, Indian Red Cross Society (2), RBI, IIPA, SCOPE, ICAI, Institute of Physically Handicapped, Indian Council for Cultural Relations, Council of Scientific and Industrial Research, Central Wakf Council, Aeronautical Society of India, HPL, Indian Law Institute, Bureau of Indian Standard, AOL to Rajya Sabha, AOL to Lok Sabha, M/o Defence, ISTM & ICMR etc. UII, UIDAI, ITPO, MTNL
8. Air India and M/o Civil Aviation
9. Central Government Ministries, Departments, Statuary Bodies, PSUs for office purpose, Autonomous Bodies of Central /State Governments.
10. Samadhis,
11. Kendriya Bhandar,
12. Land outside Delhi including Salt Pan Land,
13. All issue related to Projects,
14. DMRC,
15. NBCC,
16. HUDCO and
17. Embassies

## L-II(B)

The L-II-B Section deals with allotment of land to:-

- (i) Clubs
- (ii) Government Hospital.
- (iii) Private Hospital
- (iv) Political Parties
- (v) Press/Media organization
- (vi) Socio-Cultural institutions
- (vii) Creche
- (viii) Girls Hostel
- (ix) Cinema/theaters and administration of lease/MoA signed with them.

Further, to calculate charges of premium and ground rent on the premium for allotment of land. To put up draft/fair letters in respect of allotment letters/Memorandum of Agreement/Lease deed etc. To issue breach notices/final show cause notices.

2. To issue NOC to the local bodies. To grant permission for sub-letting. To attend Supreme Court/Delhi Court and Lower Court in connection with the pending courts cases, Parliament questions pertaining to Lok Sabha/Rajya Sabha received in the Section. Replies to various RTI cases in time.
3. To grant Tenure/Regular/LPR/Associate membership of India Habitat Centre and Delhi Golf Club Ltd.

## LEASE-III SECTION

The Lease-III Section is entrusted with the work related to the allotment of land on temporary lease basis and lease administration of Nazul Land in Delhi. This section deals with the following items:

Sl. No.	Items
1.	Hotels
2.	Petrol Pumps
3.	Coal Depots
4.	CNG Stations
5.	Gas Godowns
6.	Mother dairy
7.	Delhi Milk Scheme
8.	Area of Sirifort Road
9.	Site of New Rajinder Nagar
10.	DDA transferred sites
11.	Notified Area Committee Sites files
12.	Temporary allotment of land to various organization/agencies for short period such as for Ram Lila/Circus/Games etc.

2. Lease-III Section prepares the Agenda note in consultation with Tech. Section/ CPWD/CDN Section for Land Allotment Screening Committee (LASC) before allotment of the land to the various Organizations/Agencies.

3. The information regarding various DDA transferred sites /Notified Area Committee files/sites are also being provided to DDA/MCD/NDMC/Govt. of NCTD as required by them from time to time.

4. Apart from this, there are approximately 1200-1400 files maintained in the Lease-III Section pertaining to aforesaid items wherein work regarding sending the files to Technical Section of L&DO for Inspection of the sites, calculation of Damages Charges for unauthorized construction, unauthorized occupation, misuse charge. On the basis of calculation of Tech. Section, issue the Breach Notices to lessees. After receiving of compromise letters from the lessee, this section prepares the terms for all Govt. dues i.e. Ground Rent/License Fee, Damages Charges for unauthorized construction, unauthorized occupation, misuse charge and interest on

Ground Rent/belated payment etc. Thereafter, the files are sent to IAC for vetting the proposed terms before finalizing the terms and issued the demand to the Lessee after approval of the Competent Authority. Further, Show cause notices/final show cause notices are also issued when the lessees not make the Govt. dues/payment

5. In case of failure, to satisfactorily reply to Show Cause Notice within 30 days from the date of receipt of the Notices, the property is re-entered by the Lessor. Plaints are also prepared to file the same in the ESO Court for eviction of the premises. There are approximately 21 cases which are being regularly attended.

6. This section also deals with the RTI matters/PG cases/Audit Para/Court cases related to the above matters. This section is also contesting more than 40 cases in various Hon'ble Courts of Delhi i.e. District Court, High Court, Supreme Court of India which includes discussion with Govt. Counsel, preparation of reply approval of Legal Advisor/Competent Authority, apart from attending the Courts. This section also receives a number of Summon cases whereby the records of the properties/sites are called for by the Courts and the same are produced in the Courts.

## LEASE-IV SECTION

The Lease-IV Section is entrusted with the work related to lease administration of Nazul Land in South Delhi and part of Central Delhi. The properties belonging to Central Delhi Zone fall under Lutyen's Bungalow Zone. The Colonies which are being dealt with Lease-IV Section are as under:

Sl. No.	Colony
1.	Jor Bagh
2.	Sunder Nagar
3.	Golf Links
4.	Panchsheel Marg
5.	Nyaya Marg
6.	Malcha Marg
7.	Sardar Patel Marg
8.	Kautilya Marg
9.	Rajdoot Marg
10.	Diplomatic Enclave
11.	Dharam Marg
12.	Babar Road
13.	Bazar Lane
14.	Fire Brigade Lane
15.	Babar Lane
16.	Abul Fazal Road
17.	School Lane
18.	Central Lane
19.	Todarmal Lane
20.	Todarmal Road
21.	Tansen Marg

2. This Section deals with Substitution, Mutation of the properties as per the policy and guidelines of this office. As per the policy of Conversion from leasehold into freehold, the properties are also being converted into freehold. Apart from above, Mortgage Permission, Sale Permission and Gift Permission are also granted by this Section. As such the Section receives the applications

regarding the above mentioned localities and after scrutinizing the documents and file record considering in the light of the existing policies and Office Orders the cases are processed.

3. Apart from the above applications, the Section also deals with RTI applications and Public Grievances in respect of the properties of these localities.

4. This Section is also contesting more than 50 cases in various courts of Delhi i.e. District Courts, Delhi High Court, and Supreme Court of India which includes discussion, preparation of reply apart from attending the Courts. The Section also receives a number of Summon cases whereby the records of the properties are called for by the Courts.

## L-V-SECTION

The L- V Section deals with the following Work:-

1. Allotment of land to Religious (Gurudwara, Mandir, Church etc.)
2. Allotment of land to Educational (School(Pre Nursery to Sr. Sec. School), Colleges, Hostels etc.)
3. Allotment of land to Local Bodies i.e. NDMC, MCD.
4. Court Cases
5. VIP reference
6. PG cases
7. RTI/Appeal/CIC application
8. Parliament Questions
9. Agenda Note for Land Allotment Screening Committee Meeting

Presently around 828 files are being dealt in the section. Besides, new files opened for RTTs and PG matters. The main issues which are dealt by this section are management of Leases granted to above institutions, recovery of ground rent, periodical revision of ground rent and conduct of inspection, found misuse and unauthorized construction in the premises. Thereafter, Breach Notices are issued. This section also issues 'No Objection Certificate' to Institutions/Societies for expansion of Building etc. Thereafter, Land Allotment Screening Committee Land Allotment Screening Committee Land Allotment Screening Committee Land Allotment Screening Committee completion certificate has been received by the Societies/Institutions from the Local Bodies and after recovery of all Govt. dues, Perpetual Lease deed is executed.

Regarding NDMC/MCD the issues of allotment of land is placed before Land Allotment Screening Committee(LASC) headed by Additional Secretary, Min. of Housing and Urban Affair. After recommendation of LASC, the issue is referred to IFD for their concurrence. After concurrence of IFD is obtained, the matter is placed before Hon'ble Minister for approval of allotment of land. Thereafter, the file is referred to T/Section for handing over the site. In cases of allotment of land to the NDMC/MCD various meetings with the authorities are held before the finalization of the allotment. The section fixes and manages such meetings and also compose/issue the minutes of the meeting.

## PROPERTY SECTION-I

The Property Section is entrusted with the work related to lease administration of Rehabilitation properties to the displaced person during partition. The properties belonging to Central Delhi Zone, West Zone and North Zone The Colonies which are being dealt with Property Section are as under:

Sl. No.	Colony
1.	Double Storey Lajpat Nagar
2.	Nizamuddin East and West
3.	Jangpura Extension
4.	Jangpura "A"
5.	Jangpura "B"
6.	Aliganj
7.	Kalkaji D/S 'A' Block
8.	Moti Nagar D/S
9.	Rameshwari Nehru Nagar
10.	Motia Khan Double Storey
11.	West Patel Nagar D/S
12.	Bharat Nagar
13.	Malka Ganj D/S
14.	BSA Vijay Nagar D/S
15.	Indra Nagar
16.	Andha Mughal
17.	Sarai Rohilla
18.	Gur-ki-Mandia
19.	Tilak Nagar
20.	Ramesh Nagar Double Storey and Single Storey
21.	Industrial Area Kirti Nagar
22.	Nicholson Road

2. This Section deals with Substitution, Mutation of the properties as per the policy and guidelines of this office. As per the policy of Conversion from leasehold into freehold, the properties are also being converted into freehold. Apart from above, Mortgage Permission, Sale Permission and Gift Permission are also granted by this Section. As such the Section receives the applications regarding the above mentioned localities and after scrutinizing the documents and

file record considering in the light of the existing policies and Office Orders the cases are processed.

3. Apart from the above applications, the Section also deals with RTI applications and Public Grievances in respect of the properties of these localities.

4. This Section is also contesting more than 48 cases in various courts of Delhi i.e. District Courts, Delhi High Court, and Supreme Court of India which includes discussion, preparation of reply apart from attending the Courts. The Section also receives a number of Summon cases whereby the record of the properties is called for by the Courts. It is pertinent to mentioned here that almost every day, 1<sup>st</sup> half of the office hour is kept for attending the matter in different courts and thereafter come back to office for regular working of disposal of case pending.

5. The Section has to attend visitors during public hearing on Wednesdays who come to know the status of their cases.

**Note:** The above stated work is looked after by one dealing hand with the help of Super indent of the Section. Due to shortage of staff and load of work, the regular work like inspections of properties, recovery of ground rent, demand of Govt. dues like damage charges for unauthorized construction, unauthorized occupation charges and misuse charges etc. are not possible to claim in timely manner in all properties. The inspection of property, working out and recovery of Govt. dues are only demanded in which the individual lessee/occupants applies for lease hold to free hold/change ownership/mortgage/sale permission etc. Otherwise, the inspection and recovery of Govt. dues are lying pending in other properties in which individual are not applied for any request.

## PROPERTY SECTION-II

The Property Section is entrusted with the work related to lease administration of Rehabilitation properties to the displaced person during partition. The properties belonging to Central Delhi Zone, West Zone, North Zone, and East Delhi Zone. The Colonies which are being dealt with Property Section are as under:

Sl. No.	Colony
1.	Old Rajinder Nagar
2.	New Rajinder Nagar
3.	Chittranjan Park
4.	Lajpat Nagar-I
5.	Lajpat Nagar-II
6.	Lajpat Nagar-III
7.	Dayanand Colony Lajpat Nagar-IV
8.	Amar Colony Lajpat Nagar-IV
9.	Vikram Vihar Lajpat Nagar-IV
10.	Vinobapuri
11.	Moti Nagar
12.	Narela
13.	Jheel Khuranja
14.	Hakikat Nagar
15.	Pusa Road

2. This Section deals with Substitution, Mutation of the properties as per the policy and guidelines of this office. As per the policy of Conversion from leasehold into freehold, the properties are also being converted into freehold. Apart from above, Mortgage Permission, Sale Permission and Gift Permission are also granted by this Section. As such the Section receives the applications regarding the above mentioned localities and after scrutinizing the documents and file record considering in the light of the existing policies and Office Orders the cases are processed.

3. Apart from the above applications, the Section also deals with RTI applications and Public Grievances in respect of the properties of these localities.

4. This Section is also contesting more than 40 cases in various courts of Delhi i.e. District Courts, Delhi High Court, and Supreme Court of India which includes discussion, preparation of reply apart from attending the Courts. The Section also receives a number of Summon cases whereby the record of the properties is called for by the Courts. It is pertinent to mentioned here that almost every day, 1<sup>st</sup> half of the office hour is kept for attending the matter in different courts and thereafter come back to office for regular working of disposal of case pending.

5. The Section has to attend visitors during public hearing on Wednesdays who come to know the status of their cases.

lease hold to free hold/change ownership/mortgage/sale permission etc.  
Otherwise, the inspection and recovery of Govt. dues are lying pending in other  
properties in which individual are not applied for any request.

### Property Section-III

The Property Section is entrusted with the work related to lease administration of Rehabilitation properties to the displaced person during partition. The properties belonging to Central Delhi Zone, West Zone, South Zone and North Zone. The Colonies which are being dealt with Property Section are as under:

Sl. No.	Colony
1.	Kalkaji
2.	West Patel Nagar
3.	Vijay Nagar
4.	Malviya Nagar
5.	East Patel Nagar
6.	South Patel Nagar
7.	Malka Ganj
8.	Tehar-I
9.	Tehar-II
10.	Defence Colony
11.	Shivalik

2. This Section deals with Substitution, Mutation of the properties as per the policy and guidelines of this office. As per the policy of Conversion from leasehold into freehold, the properties are also being converted into freehold. Apart from above, Mortgage Permission, Sale Permission and Gift Permission are also granted by this Section. As such the Section receives the applications regarding the above mentioned localities and after scrutinizing the documents and file record considering in the light of the existing policies and Office Orders the cases are processed.

3. Apart from the above applications, the Section also deals with RTI applications and Public Grievances in respect of the properties of these localities.

4. This Section is also contesting more than 50 cases in various courts of Delhi i.e. District Courts, Delhi High Court, and Supreme Court of India which includes discussion, preparation of reply apart from attending the Courts. The Section also receives a number of Summon cases whereby the record of the

properties is called for by the Courts. Moreover, in 17 cases in re-entered properties this Section has also filed court case in the Court of Estate Officer, Land and Development Office for recovery of Govt. dues and eviction of properties.

5. It is pertinent to mentioned here that almost every day, 1<sup>st</sup> half of the office hour is kept for attending the matter in different courts and thereafter come back to office for regular working of disposal of case pending.

6. The Section has to attend visitors during public hearing on Wednesdays who come to know the status of their cases.

**Note:** The above stated work is look after on one dealing hand with the help of Super indent of the Section. Due to shortage of staff and load of work, the regular work like inspections of properties, recovery of ground rent, demand of Govt. dues like damage charges for unauthorized construction, unauthorized occupation charges and misuse charges etc. are not possible to claim in timely manner in all properties. The inspection of property, working out and recovery of Govt. dues are only demanded in which the individual lessee/occupants apply for lease hold to free hold/change ownership/mortgage/sale permission etc. Otherwise, the inspection and recovery of Govt. dues are lying pending in other properties in which individual are not applied for any request.

## **RESIDUAL PROPERTY CELL (R P CELL)**

R P Cell deals with the entire properties of Rehabilitation Colonies in which Lease Deed has not been executed. Further, property files of the Property Section (PS-I, II, III) are referred back to this Section for preparation of lease in cases where the Lease Deed was executed but not registered. (Around 1000 Files)

Apart from this R P Cell administers the property files of Shops of Mohan Singh Market and Sabji Platform, INA, for substitution/ mutation/execution of Lease Deed and Conveyance Deed. (Around 306)

Following functions are performed by this section in respect of the above-mentioned properties:-

1. Examination and preparation of para-wise comments / draft affidavits in the matter of all High Court and Lower Court. Attending the court proceedings / court summons and also discussing the issues with the Government Counsel that are coming up for hearing in respect of the above-mentioned properties.
2. Providing the calculations of cost of land, examine the case with the help of available records and BPR to decide whether compound interest is liable or not, examine cost of superstructure, premium, rent, ground rent, revised ground rent/charges for unauthorized and misuse charges etc.
3. Examine the documents submitted by the applicant/legal heirs of the all the allottee(s) for substitution of successor-in-interest / Mutation in respect of the above-mentioned properties. Issue of letters for Substitution/substitution of successor-in-interest / mutation of Title in respect of these properties.
4. Execution of Lease Deed in respect of the above-mentioned properties and entry of the same in BPRs and thereafter sending them for entry in ledgers of Accounts Branch.
5. Execution of Conveyance Deed in respect of Shops of Mohan Singh Market and Sabji Platforms, INA.
6. Authorizing regular inspections of these properties, issue of Breach Notices and issue of demands to the above-mentioned properties.
7. Disposal of RTI Applications, VIP references, & Public Grievance petitions pertaining to the above-mentioned properties on priority basis.
8. Communication and coordination with Rehabilitation Division, MHA for tracing records pertaining to the properties for which no records/documents are available with this section/office or the lessee.
9. Recovery of Ground Rent, Damage Charges and other government dues from the above-mentioned properties.
10. Coordinating with MCD / NDMC on telephone or through letters or in person with regards to the records (Property files of Shops) transferred to them and that needs to be transferred to these local bodies.

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## TECHNICAL SECTION

### Functions of Technical Section in L&DO

Brief descriptions of functions in r/o Technical section are:-

**Field Work:** field work is being carried out by the field staff Surveyors, Overseers, Junior Engineers etc as per requirement of site.

#### **For vacant land**

1. Survey of government land for the purpose of allotment.
2. Preparation of site plan.
3. To detect the encroachment on government land and initiate action for removal of the same through local body.
4. Demarcation of land parcels.
5. Calculation of premium of land and AGR.

#### **For Lease Hold Properties**

Lease hold properties like Government Officers, Institutional, Schools, Religious, Hospitals, Emporiums, Hotels Wakf Board are inspected time to time as per terms of lease agreement to update the status.

1. Inspection of property as per sanctioned building plan and terms & conditions of lease agreement.
2. To detect the misuse area, unauthorized constructions, and encroachment on government/public land.
3. Preparation of Inspection Reports.
4. To calculate the damage, misuse and unauthorized occupation charges.
5. Calculation of additional ground rent, additional premises, conversion charges etc.

#### **Miscellaneous Works**

1. Preparation of replies of RTI & PG Cases.
2. Attending Courts, CIC & PGC.
3. Attending meetings with government departments, Delhi Secretariat, DDA, Technical Committee, DUSIB etc.

## **CHAPTER-3**

### **DUTIES & RESPONSIBILITIES OF VARIOUS OFFICERS AND OFFICIALS**

1. LAND AND DEVELOPMENT OFFICER
2. DEPUTY LAND AND DEVELOPMENT OFFICER
3. ENGINEER OFFICER
4. ASSISTANT SETTLEMENT COMMISSIONER
5. VIGILANCE-CUM-LEGAL OFFICER (Jr.)
6. PUBLIC RELATION OFFICER
7. ACCOUNTS OFFICER
8. ADMINISTRATIVE OFFICER
9. ESTATE OFFICER
10. BUILDING OFFICER
11. ASSISTANT ENGINEER
12. HINDI OFFICER
13. SUPERINTENDENT
14. ASSISTANT
15. UPPER DIVISION CLERK
16. LOWER DIVISION CLERK

17. STENOGRAPHER GRADE-I
18. STENOGRAPHER GRADE-II
19. STENOGRAPHER GRADE-III
20. SENIOR SURVEYOR
21. OVERSEER
22. SURVEYOR
23. SENIOR DRAFTSMAN
24. DRAFTSMAN(GRADE-II)
25. DRAFTSMAN(GRADE-III)
26. ACCOUNTANT
27. HINDI TRANSLATOR
28. FERRO PRINTER
29. DAFTRY
30. PEON
31. KHALLASI
32. FARASH
33. CHOWKIDAR
34. SAFAI KARAMCHARI

## 1. LAND AND DEVELOPMENT OFFICER

- (i) Head of the office.
- (ii) Attending to all policy matters; attending meetings in various organizations i.e. Delhi Govt., DDA, NDMC etc.
- (iii) He has also to inspect the various sites which are to be allotted to institutions requesting for allotment of land in the Union Territory of Delhi.
- (iv) To give final decision/orders in the cases submitted by the Branch Officers in respect of cases relating to Property Sections, Lease Sections, Administration, Coordination & Vigilance Sections.
- (v) To act as disciplinary authority in respect of staff of Land & Development Office.
- (vi) Competent authority under the Urban Land (Ceiling & Regulation) Act.
- (vii) To exercise financial & administrative powers delegated as Head of Office.

## 2. DEPUTY LAND AND DEVELOPMENT OFFICER

- (i) Administration of lease of Nazul & Rehabilitation land.
- (ii) Execution of contracts and administration of properties on behalf of the President of India.
- (iii) Execution of contracts/deeds in respect of Nazul land leases.
- (iv) Processing of cases for grant of sale/mortgage permission and carrying out mutation/substitution etc. on behalf of the President of India.

- (v) Consultation with counsels/attending the court of law, wherever necessary.
- (vi) Inspection of properties for finding lease deed assessment and recovery of charges for change of purpose, charges for unauthorised or additional construction; periodical inspection of premises before the issue of notice for recovery of ground rent.
- (vii) Conversion of properties from lease-hold to free-hold.
- (viii) Any work/function assigned by the Land & Development Officer.

### 3. ENGINEER OFFICER

- (i) Initiating proposals for approval by Ministry of Urban Development and allotment of land, recovery of premiums and ground rent, execution of agreement for lease & Perpetual Leases and administration of lease thereof to (a) Social and Cultural Institutions (b) Diplomatic Missions (c) MCD, DESU, Delhi Water Supply & Sewage Disposal Undertaking, Delhi Milk Scheme and similar autonomous bodies (d) Newspapers (e) Hotels (f) Petrol Filling-cum-Service Stations and L.P.G. godowns to various Oil Companies.
- (ii) Handing over vacant land to Central PWD for construction for General Pool Accommodation, after approval by the Ministry.
- (iii) Initiating proposals and after approval by the Ministry of Urban Development, allotment of land to other Ministries and Departments of Govt. of India and Delhi Administration.
- (iv) Temporary allotment of vacant sites etc. for short periods to various parties and recovery of charges thereof.

- (v) Lands placed for care and maintenance with Delhi Development Authority.
- (vi) Assessment and recovery of damages from unauthorised occupants and eviction of the unauthorised occupants after filing complaints in the court of Estate Officer and conducting the cases in his Court leading to ultimate orders of eviction and recovery of damages.
- (vii) Cases in Supreme Court, High Court, District Court and Estate Officer's Court in respect of disputes in leases etc. including preparation of the petitions, counter affidavits, replies etc.
- (viii) Technical Branch work comprising of (a) survey of lands, preparation of site plans/lay-out plans for allotments, agreement for lease and perpetual leases (b) scrutiny and approval of building plans for new construction as well as additions and alterations under the terms of the lease (c) periodical and special inspections of properties to detect misuse and unauthorised constructions and other breaches of the terms of the lease (d) working out damages misuse charges and conversion charges (e) inspection of vacant Govt. lands under the control of Land & Development Office to detect squatting and report to Enforcement Section (f) tracing out copies and safe custody of all zonal Development Plans, lay-out plans, land plans and Development plans and Building plans in respect of properties under the control of Land & Development Officer.
- (ix) Revision of schedule of market rates, for schedule of licence fees, for temporary allotment from time to time, working out reserve price of markets etc.
- (x) Site inspections with senior officers and Chief Architect, CPWD & other Ministries regarding carrying out and allotment of plots and other problems arising thereof.
- (xi) Advice on various technical matters pertaining to administration of leases referred by other Branch Officers.
- (xii) And a number of other types of works pertaining to safe custody, allotment of and administration of leases thereof as required from time to time.

For discharging the above duties, the Engineer Officer is assisted by Enforcement Section headed by a Superintendent with complimentary ministerial staff of assistants etc. [22 numbers (three Assistant Engineers with 17 Overseers/surveyors, one Senior Draftsman with 4 other Draftsman and P.A.-cum-Stenographer)]

#### 4. ASSISTANT SETTLEMENT COMMISSIONER

- (i) Administration of leases relating to Nazul Land/Rehabilitation Lands.
- (ii) Execution of contracts and administration of properties on behalf of the President of India.
- (iii) Execution of contracts/deeds in respect of Nazul land leases.
- (iv) Processing of cases for granting sale/mortgage permission and carrying out mutation/substitution etc. on behalf of the President of India.
- (v) Consultation with counsels/attending the Courts of Law, wherever necessary.
- (vi) Conversion of properties from lease-hold to free-hold.
- (vii) Any work/function assigned by the Land & Development Officer.

## 5. VIGILANCE-CUM-LEGAL OFFICER (Jr.)

- (i) To vet the Agreement for lease, Perpetual Lease, Tripartite Agreement etc.
- (ii) To examine the legal documents etc., referred to by other branch officers.
- (iii) To act as Vigilance Officer in the Land & Development Office.

## 6. PUBLIC RELATION OFFICER

- (i) To attend to the public visiting this office in connection with the leasehold properties and guide them properly and also help them in solving their difficulties.
- (ii) Any work/function assigned by the L&DO.

## 7. ACCOUNTS OFFICER

He is to act as Audit Officer. For that purpose he is required to interpret financial provisions of the Lease Deeds and ensure their enforcement with due regard to the financial aspects involved. He has also to understand technical implications of the Master Plan, Municipal Bye-laws etc. To get the Accounts of the receipts prepared and reconciled with Pay and Accounts Officer; attestation of entries in the Ledger; to advise in the establishment matters wherever necessary. He shall look after Internal Audit Cell, Accounts Section and Audit Paras.

## 8. ADMINISTRATIVE OFFICER

- (i) Administration of Land & Development Office.
- (ii) Record Section.
- (iii) Receipt and Issue Section.
- (iv) To act as Drawing & Disbursing Officer.

## 9. ESTATE OFFICER

To act as Semi-Judicial Officer under the Public Premises (Eviction of Unauthorised Occupants) Act; to start proceedings for eviction and realisation of damages under the above said Act; issue of summons to witnesses; service of notices; pursue the proceedings; passing of orders and other work related to these proceedings. To look after the pursue appeals filed in the higher courts against the orders passed by Estate Officer.

## 10. BUILDING OFFICER

- (i) To supervise all the duties carried out by Overseers/Surveyors/Senior Surveyors/Selection Grade Overseers in Technical Section.
- (ii) To assist Engineer Officer/Land & Development Officer and all other senior officers in technical matters/duties done by technical staff.
- (iii) To carry out inspections at site, wherever necessary.

## 11. ASSISTANT ENGINEER

- (i) To supervise all the duties carried out by Overseers/Surveyors/Senior Surveyors in Technical Section.
- (ii) To assist Engineer Officer/Land & Development Officer and all other senior officers in technical matters/duties done by technical staff.
- (iii) To carry out inspections at site, wherever necessary.

## 12. HINDI OFFICER

- (i) Implementation of Official Language Act.
- (ii) To do complicated translation work.
- (iii) To attend cases of reports and returns regarding Hindi; progressive use of Hindi, Hindi Teaching Scheme etc.
- (iv) To assist the staff in doing their day to day work in Hindi.
- (v) To attend meetings, conference in connection with Hindi.
- (vi) Any other work assigned by the Land & Development Officer.

### 13. SUPERINTENDENT

- (i) Supervision and checking of work relating to Lease, Property Sections, Administration Section, Enforcement Section and Internal Audit Cell.
- (ii) Interpretation of the various conditions/covenants of leases etc.
- (iii) To deal with the public on lease matters.
- (iv) Issuing of first notice to the Lessees regarding the breaches existing in the premises.
- (v) Intimating to the lessee the factual position of the inspection of the premises, if the lessee has given some counter reply.
- (vi) Demanding ground rent where such demand do not prejudice Government interest.
- (vii) Address letters for seeking information/clarification for decision of the case.
- (viii) Routine communication to the Ministry e.g. acknowledgement, reminders, routine enquiries and supply for routine materials.
- (ix) Grant of casual leave to the non-gazetted staff.
- (x) To check the terms for regularisation of breaches involving lakhs of rupees.

Apart from the above, the Superintendent (Admn.) shall deal with the following matters in his own powers:-

- (a) Address letters to the Inspector of Schools/School authorities in connection with the information required regarding the payment of children education allowance or tuition fees to the officials of this office;
- (b) Disposal of requisitions of stationery and other misc. items.
- (c) Entries in stock register of stationery and stores including

furniture, liveries, typewriters and bicycles.

- (d) Entries in Telephone Rent register and trunk call register.
- (e) Entries in register of library books etc.

#### 14. ASSISTANT

- (i) To see whether all the statements and receipts so far as they are open to check, are correct.
- (ii) Point out mistakes, mis-statements, missing data or information, if any,
- (iii) Referencing and the like in accordance with the instructions from time to time.
- (iv) Accurately and objectively summarising the points of view of the applicants/lessees and then dealing with each point specifically.
- (v) Draw attention, where necessary, to the statutory or customary procedure and point out the relevant Law and rules.
- (vi) Draft communications in accordance with the decision on the file.
- (vii) State the questions for consideration and bring out clearly the points requiring decision.
- (viii) Suggest, where possible, alternative courses of action for consideration.
- (ix) A self-contained summary bringing out briefly but clearly relevant facts including view expressed on the subjects by other Departments, if any, consulted in the matter is to be put up with every case submitted to the Hon'ble Minister.
- (x) Examination of plans under terms of lease.

- (xi) Examination of inspection reports submitted by the Technical staff.
- (xii) Calculation and working out terms and conditions for unauthorised construction, change of purpose, re-entry etc.
- (xiii) Encashment of cheques, preparation of challans, Civil Writs.
- (xiv) Preparation of reply of Plaints, Civil Writs etc. filed in the Courts etc.
- (xv) To attend to the Courts of Law, consultation with the Government Counsels.
- (xvi) To attend to the visitors through Public Relations Officer
- (xvii) To deal with cases relating to mutation, substitution, transfer, sale etc. etc.

15. UPPER DIVISION CLERK

Same as those of Assistants.

16. LOWER DIVISION CLERK

- (i) Examination of receipts and putting them with necessary noting, drafting and orders to dispose of the receipts.
- (ii) Collection of material and interpretation of lease conditions etc.
- (iii) Drafting of legal documents such as Agreement for lease, perpetual lease, etc.

## 17. STENOGRAPHER GRADE-I

To taken dictation from L&DO and transcribe the same. Receive letters addressed to the L & D Officer and keep record of the files and appointments etc. To arrange Meetings in the room of L&DO and supervise the staff of L&DO's Personal Section.

## 18. STENOGRAPHER GRADE-II

To take dictation from the officer with whom attached and transcribe the same. Receive letters addressed to the officer by name and keep record of the files and appointments etc.

## 19. STENOGRAPHER GRADE-III

To take dictation from the officer with whom attached and transcribe the same. Receive letters addressed to the officer and keep record of the files and appointments etc.

## 20. SENIOR SURVEYOR

- (i) Scrutiny of building plans for sanction under lease.
- (ii) Inspection of leased premises with respect to sanctioned plans and terms of lease and to establish the date of breaches, if any.
- (iii) Surveying of Govt. lands for making proposals for allotment.

- (iv) Inspection of Govt. lands of detection of unauthorised encroachments.
- (v) Calculation of damages and misuse charges recoverable for the breaches of terms of lease and calculation of damages for unauthorised encroachments of Government lands.
- (vi) Contesting of cases of unauthorised encroachments in the court of Estate Officer/District Judge.
- (vii) To serve letters received undelivered, to serve notice issued by Estate Officer and to do all liaison work i.e. to contact DDA/MCD or any other department or lessees etc.
- (viii) To calculate Additional Premium and Additional Ground Rent for changing the character of leases, multi-storey buildings etc.

## 21. OVERSEER

- (i) Scrutiny of building plans for sanction under lease.
- (ii) Inspection of leased premises with respect to sanctioned plans and terms of lease and to establish the date of breaches if any.
- (iii) Surveying of Government lands for making proposals for allotment.
- (iv) Inspection of Government lands for detection of unauthorised encroachments.
- (v) Calculation of damages and misuse charges recoverable for the breaches of terms of lease and calculation of damages for unauthorised encroachments on Government lands.
- (vi) To serve letter received undelivered, to service notices issued by Estate Officer and to do all liaison work i.e. to contact DDA/MCD or any other department or lessees etc.

- (vii) To calculate Additional Premium and Additional Ground Rent for changing the character of leases/multi-storey building etc.

## 22. SURVEYOR

Same as those of Overseer.

## 23. SENIOR DRAFTSMAN

- (i) Maintenance of record and checking and supervision of work of Draftsman; maintenance of record of plans.
- (ii) Maintenance of record of Nazul land under the jurisdiction of the Land & Development Office.
- (iii) To give proposal of sites according to land use in Master Plan.
- (iv) Working out charges for permanent change of purpose.
- (v) Attestation of plans required by the lessee for court purposes.

## 24. DRAFTSMAN (GRADE-II)

- (i) Calculation of charges for temporary/permanent allotment.
- (ii) Preparation of plans according to Scale, Tracing super imposition in Zonal Plans and calculations of area.
- (iii) Comparing and numbering of plans sanctioned by local bodies; checking of distance in T.A. bills.

- (iv) To give proposals of sites according to land use in Master Plan.
- (v) Preparation of plans for execution of Agreement for lease and perpetual lease and other leases.

## 25. DRAFTSMAN (GRADE-III)

Same as those of Draftsman Grade-II.

## 26. ACCOUNTANT

- (i) Checking the work of Account Section.
- (ii) Maintenance of Ledger in respect of approximately 70,000 leases of Nazul land and Rehabilitation Properties – posting of entries in the Ledger Folios regarding breaches, regularisation of terms: noting down of mutation, substitution and posting of ground rent etc.
- (iii) Reconciliation of Accounts.
- (iv) Maintenance of revenue register for recoveries.

## 27. HINDI TRANSLATOR

Translation of documents; and implementation of various schemes in Hindi, etc.

28. FERRO-PRINTER

To operate Ferro-Printing machine and maintain it in working condition.

29. DAFTRY

- (i) Arranging of files in the Record Room or in Sections.
- (ii) Stitching of files in Record Room and Sections.

30. PEON

To deliver dak and files etc. from one section to another and from officer to another officer. Some peons shall also carry dak to offices located in different parts of Delhi/New Delhi.

31. KHALLASI

They are attached with the Overseers/Surveyors for carrying out the plans etc. to the sites and to help in the measurement of areas and location of properties etc. and also the Overseers in surveying a particular site.

32. FARASH

To clean the tables, chairs etc.

33. CHOWKIDAR

Watch and Ward duty of the office.

34. SAFAI KARAMCHARI

To sweep the office premises.

## CHAPTER - 4

### DELEGATION OF POWERS

The following powers have been delegated to the officers of the Land & Development Office by the Government of India :-

1. ADMINISTRATIVE, FINANCIAL, LEGAL AND AUTHENTICATION OF ORDERS ETC.

(a) The Land & Development Officer has been delegated powers in Administrative and Financial matters as contained in Ministry of works, Housing & Supply's letter:-

i) L-27(10)/59 dt. 16.7.1960

ii) L-II-15(3)/60 dt. 4.1.1961

iii) L-II-15(1)/60 dt. Aug., 1960

(b) Land & Development Officer and Deputy Land & Development Officer/Assistant Settlement Commissioner, have been granted the powers of signing and verification of plaints and written statements in suits, in courts of civil jurisdiction by or against the Central Government, vide Ministry of Law (Deptt. Of Legal Affairs) Notification No. S.R.O. 351, dated 25.11.1958 as amended vide Notification No. F-16(1)/61 dt. 4.2.64.

(c) The Land & Development Officer, Deputy Land & Development Officer, Assistant Settlement Commissioner, Vigilance-cum-Legal Officer and Assistant Engineers have been delegated powers to execute.

i) all contracts and assurances of property relating to matters falling within the jurisdiction of Land & Development Officer;

ii) all contracts, deeds or other instruments relating to or for the purpose of enforcement of the

terms and conditions of the sale/lease deeds of the Government Built Property in Delhi/New Delhi;

iii) auctioneering agreements, bonds of auctioneers and security bonds for the due performance of work by the auctioneers; F. 17(1)/64 dt. 1.2.1966 read with F.17(3)/94-Judicial, dt. 6.1.1995.

(d) Land & Development Officer, Deputy Land & Development Officer and the Assistant Settlement Commissioner/have been authorised to authenticate orders and other instruments made and executed in the name of the President vide Ministry of Home Affairs' Notification No. S.O. 2297 dated 3.11.1958 as amended vide Notification No. 3/5/66-Pub. I dated 2.8.1966.

## 2. ADMINISTRATION OF NAZUL LANDS IN DELHI

(a) Acceptance of bids at auctions for various purposes, temporary allotment of land and approval of construction plans:

The Powers delegated to the Land & Development Officer; Deputy Land & Development Officer/Assistant Settlement Commissioner in this regard are contained in Ministry of Works, Housing and Supply letter No. 27/9/64-L dated 24.2.1966 and 30.8.1966.

(b) Permitted temporary change of purpose from residence to office:

The powers delegated to Land & Development Officer in this behalf are contained in Ministry of Works, Housing and Supply letter No. 27.9.64-L dated 24.2.1966.

(c) Condonation of breaches of misuse and unauthorised constructions:

The powers delegated to Land & Development Officer in this behalf are contained in Ministry of Works, Housing and Supply letters No.

i) L-7/4/61 dated 30.6.1961 as modified vide letter No. L-27(2)/66 dated 31.1.1967 and No. 7/4/61-L dt. 30.5.1967;

ii) L-7(4)/61 dated 7.11.1962; and

iii) U.O. No. 23/3/64-L dated 15.7.1964 (L&D Office Order No. Co-ord. (13) dt. 20.8.1964) as modified vide letter No. 7/7/65-L dt. 1.8.1966.

(d) Final disposal of cases.

Full powers have been delegated to the Land & Development Officer to deal with the cases mentioned in para 2 of Ministry of Works, Housing and Supply letter No. 27/5/64 dated 27.4.65 without referring them to the Ministry of Finance.

(e) Extension of time for completion of construction on leased land.

Powers have been delegated to the Land & Development Officer to grant extension of time for completion of construction for one year at a time, without recovery of any penalty, subject to the conditions mentioned in item 1 of Ministry of Works, Housing and Supply letter No. 12/2/65-L dated 4.2.1966.

(f) Adjustment of excess/deficient area.

Powers have been delegated to the Land & Development Officer to make adjustments in the area allotted to a party provided such adjustment does not involve increase or decrease in the area beyond 5 % of the area mentioned in the allotment letter or half acre, whichever is less. [Office order No. 165, dated 13.10.1965]

3. POWERS DELEGATED TO BRANCH OFFICERS/MANAGING OFFICERS/SUPERINTENDENT

(a) The powers delegated to the Branch Officers are contained in office order No.

- i) Admn. 1(184)/63 dt. 25.2.1964
- ii) Admn. 2(158)/61 dt. 26.7.1965
- iii) Admn. 1(156)/65 dt. 29.12.1965

(b) MANAGING OFFICERS/ SUPERINTENDENTS OF LEASE SECTIONS:

The powers delegated to Managing Officers/ Superintendents are contained in office order No. Admn. 1(184)/63 dt. 16.9.1965.

(c) SUPERINTENDENT ADMINISTRATION SECTION:

The powers delegated to Superintendent, Administration Section are contained in office order No.:

- i) Admn. 1(184)/63 dt. 16.9.1965
- ii) Admn. 1(184)/63 dt. 8.10.1965
- iii) Admn. 1(184)/66 dt. 26.4.1966

(d) SUPERINTENDENT ACCOUNTS SECTION:

In addition to the exercise of relevant powers contained in office order No. Admn. 1(184)/63 dt. 16.9.1965, the Superintendent, Accounts Section shall exercise the powers delegated to him by the office order No. Admn. 1(184)/66 dt. 10.10.66.

## **CHAPTER – 5**

### **TYPES OF LEASES**

There are three types of leases in respect of old Nazul lands namely (i) residential, (ii) commercial, and (iii) institutional. In respect of rehabilitation colonies, leases granted under the Displaced Persons (Compensation & Rehabilitation) Act are for residential, commercial and industrial and are in Appendix-XI, Appendix-XII, Appendix-XIII and Appendix-XXXI.

Nazul leases are perpetual whereas Rehabilitation leases are 99 years. If the case of Nazul leases, Ground Rent is revisable at the option of the lessor at the end of each span of 30 years in accordance with the procedure laid down in the Lease Deed. Ground Rent in Appendix-XI leases is nominal i.e. Rs. 1/- per 100 sq. yds. or as fraction thereof and is revisable @ 2 ½ of the value of the land at the time of 2<sup>nd</sup> sale/assignment shall be completed and thereafter at the end of each successive period of not less than thirty years. In case of leases in Appendix –XII & XIII, for the first 20 years, the ground rent is the sum equivalent to the interest on the cost of land at the Govt. borrowing rate of interest prevailing on the date of lease. For the remaining 76 years of lease, the ground rent is the sum equivalent to the interest on the market value of land calculated at Govt. borrowing rate of interest on the 1st April of 21<sup>st</sup> year of the lease. Appendix-XXXI-A, XXXI-B and XXXI-C leases are also nominal leases granted for 'A' type and 'C' type tenements or three storeyed markets in various Rehabilitation colonies in Delhi. In these nominal leases also, ground rent is revisable, as it the case of Appendix-XI leases, at the time of 2<sup>nd</sup> sale/assignment on the same lines as in the case of Appendix-XI leases.

Ground Rent is payable in two half yearly instalments in advance on the 15<sup>th</sup> January and 15<sup>th</sup> July each year. For appendix-XII and XIII leases, ground rent is payable annually on the 1<sup>st</sup> April of year. For delayed payment of ground rent, interest is charges at the rate of interest fixed by the Govt. from time to time.

Some of the common features of the leases are as under:-

(a) The lessee shall not, without the prior permission of the lessor, make any additional construction, other than the construction/building existing on the date of lease.

(b) The lessee shall also not use the premises for a purpose other than that specified in the lease deed without the prior permission of the lessor.

(c) The lessee shall not sub-divide the premises without the prior permission of the lessor.

(d) In case a lessee commits any breach of the terms and conditions of the lease, the premises can be re-entered for the breaches unless the lessee removes remedies the breaches on a notice served on him by the lessor. These breaches can, however, be compromised on temporary basis on payment of misuse/damages charges as may be claimed by the lessor.

## **CHAPTER – 6**

### **ACQUISITION OF LAND**

In respect of residential properties, no person shall be allowed to acquire more than one residential plot/house in his own name or in the name of his wife or minor children.

The above restriction shall not be imposed in respect of land other than of residential.

Benami Transactions shall not be allowed.

A person owning a residential flat in Commercial Area can acquire a residential plot/flat in residential area.

## **CHAPTER – 7**

### **ALLOTMENT OF LAND**

#### **1. ALLOTMENT OF LAND ON TEMPORARY BASIS FOR SHORT PERIODS**

Temporary allotment of land for short periods is made for the purposes of holding meetings, charity shows, circus shows, Ramlila shows, Religious diwans and for use of building contractor's labour etc. It is not made for business purposes, temporary construction of temples etc. For meetings, charity shows, etc. allotment of land shall either be made by the Land & Development Officer himself if the period does not exceed three months or with the concurrence of the Ministry of Urban Development (Finance Division) for longer periods. Rates for the recovery of charges for temporary allotment of land are prescribed by the Government of India from time to time.

No ground rent is recoverable from contractors belonging to the Central Public Works Department for stacking of materials on Government land and for providing labour huts and labour canteen near the site of construction subject to the following conditions:-

- (i) Prior permission of the Land & Development Officer for utilisation of land shall be obtained by the contractor;
- (ii) The contractor shall be permitted by the Land & Development Officer to use only the minimum area, and
- (iii) The contractor on completion of the construction shall restore the land to its original conditions immediately after vacation.

The Directorate of Horticulture, CPWD under whose charge the colonies have been placed may permit the residents of the localities to use its lawns for social and religious functions without any charges. Any damages done to the lawns shall be repaired at the cost of the user.

#### **2. PROCEDURE FOR PURELY TEMPORARY ALLOTMENT OF LAND**

Application for allotment of land for holding meetings, charity, circus or Ramlila shows, religious diwans and for use by contractor's labour are received in the Lease Section concerned of the Land & Development Office. The Applicant is required to indicate the particulars of land and the period for

which it is required. The concerned section shall examine the request on the file and refer the matter to Technical Section for indicating availability of land. If the land is available for allotment, the Technical Section shall calculate the rent recoverable from the applicant taking into account the area of the land and the locality where the land is situated and return the file to Lease Section through Accounts Section for checking.

The Lease Section shall convey the terms and conditions of allotment to the applicant in the prescribed format with the request to make payment of rent for the whole period of allotment and an equal amount by way of security deposit. For the convenience of applicants who accept the terms of allotment, arrangements have been made for the payment of dues in cash to the Cashier in the Land & Development Office. The file is sent to Cashier to receive payment. He shall issue a receipt to the depositor in the form II-B indicating the amount received and the number and date of receipt on file and return it to the concerned lease section. The amount so received shall be deposited by the Cashier in the Reserve Bank of India.

Copies of all such allotment letters shall be endorsed by the concerned Lease Section to the Accounts Section which shall account for the amount deposited by the allottee and thereafter the concerned lease section shall take action for handing over the possession. The Technical Section shall ensure that the land is restored to its original condition and send a report to the lease section to this effect. The Lease Section concerned shall thereafter take necessary action for preparing the vouchers for refund.

It shall be ensured by the Lease and Accounts Section that the security deposit and the rent for the period are accounted for separately as the security is refundable.

On receipt of an application for refund of security deposit from the allottee, the concerned Lease Section shall obtain confirmation of vacation of site by the allottee on the due date, if such information had not already been received and then obtain orders of the Land & Development Officer for the refund and pass on the file to Accounts Section after sanction is issued for taking action for the refund of the amount of security deposit to the allottee. After the security deposit is refunded, the file shall be closed and kept in record.

### 3 ALLOTMENT OF LAND FOR LONGER PERIOD OF A YEAR OR MORE

Temporary allotment of land may be made for a period of five years at a stretch or till the expiry of the period for which prescribed rates available whichever period is less for petrol pumps, fuel depots, shops, temporary shops, offices, bathing ghats, parks and play-grounds etc.

The rates for the recovery of ground rent for various purposes are fixed by the Government from time to time.

Allotment of sites for parks is invariably made to local bodies. Sites for play grounds are allotted both to local bodies and educational institutions.

The ground rent shall be recoverable in all cases from the date of offer of handing over the site or the date of handing over whichever is earlier. This shall apply both to the allotment at concessional rate and full market rates. Therefore, possession should be handed over as early as possible.

### 4. ALLOTMENT OF LAND TO LOCAL BODIES FOR RECREATION GROUNDS AND CHILDREN'S PARKS ETC.

Land for recreation ground and children's parks etc. shall be allotted on a purely temporary basis and shall be liable to resumption by the Government when required by them. The development and maintenance of these parks etc. shall be the responsibility of the Local Body. The recreation grounds and children's parks shall be open to the general public.

### 5. PROCEDURE: OR TEMPORARY ALLOTMENT ON MONTHLY OR YEARLY BASIS:

All applications for temporary allotment of land on monthly or Yearly basis except for petrol pumps shall be made to Ministry of Urban Development. The Ministry shall decide such allotments in consultation with the concerned agencies, viz.. Finance Division, Chief, Architect and Town Planner, Land & Development Office, Directorate of Education of Delhi and DDA. If any

application is received in Land and Development Office,. The same shall be passed on to the Ministry with appropriate comments. The applicant shall also be advised that he should approach the Ministry in the matter.

On receipt of reference from the Ministry in the Land and Development Office for suggesting a suitable site for allotment to an applicant, the concerned lease section shall refer the matter to the Technical Section who shall suggest a site, if available and also add five copies of site plan, four of which shall be forwarded to the Ministry along with the recommendation of the land and Development Officer and the fifth one shall be kept on file of the lease section as office copy. If no site is available, a reply to that effect shall be furnished to the Ministry through the lease section concerned.

On receipt of a letter sanctioning the allotment of a particular site to an applicant, the Drawing Section shall be asked to calculate the amount of groundrent recoverable in the case and also to add two copies of site plan. On calculation of the amount by the Drawing Branch the concerned Lease Section shall issue an allotment letter to the applicant asking them to pay the prescribed charges including the security deposit by a specified dated which is generally 30 days from the date of receipt of the letter. A copy of the allotment letter shall be sent to the Accounts Section for watching recovery of the dues and for keeping accounts of all revenue receipts. After the amount of ground rent and security deposit is realised. Accounts Section shall inform the same to the concerned Lease through a Memo. On receipt of this Memo the Lease Section shall prepare the temporary lease or licence deed in the prescribed form. Technical Section shall then be asked to fill in the schedule of the lease deed and also add two copies of lease plan. The Lease or licence deed shall be sent to the Assistant Legal Advisor wherever additions or alterations are made in the lease deed. However in cases where the lease deed is to be executed in the prescribed form, the formality of getting it vetted by the Assistant Legal Advisor will be dispensed with. Four fair copies of the deed shall be prepared which alongwith four copies of lease plan shall be sent to the applicant for execution and return. After the copies of the Lease Deed (including the plan) are received from the applicant, the same shall be submitted to the Land & Development Officer or any other authorised officer for execution on behalf of the President. After the lease deed or licence deed is executed, the copies of the same shall be sent to the allottee institution who shall be asked to send one copy to the Land & Development Office after the same are registered with the Sub-Registrar. Thereafter, one copy duly endorsed and attested shall be sent to the allottee institution for

their record. Simultaneously, the Technical Section shall be asked to hand over the possession of the land at site. The other copy shall be retained on the file and then sent to Accounts Section for entering particulars of registration of Lease or License Deed in the ledger. After this, the file shall be kept in suspense till further extension is due or asked for.

Where the allottee does not make payment of the charges within the stipulated time of 30 days, the terms communicated to the allottee shall be treated as cancelled and withdrawn and the land treated as available for allotment elsewhere. If the allottee applies for extension of the period of payment of dues, such request may be granted and ground rent shall be recovered from the date of original allotment.

If at the time of handing over possession, the actual area of land allotted is found to be less or more than what has been allotted the Land & Development Officer under office order No. CDN (165) dt. 13.10.1995 is competent to make necessary adjustments with the approval of the Ministry/Finance Division provided such adjustment does not involve increase or decrease in the area beyond 5 % of the area mentioned in the allotment letter or ½ acre, whichever is less.

In cases of temporary allotment of land security deposit shall be demanded and recovered at the time of allotment of land, at the following rates:-

PURPOSE OF ALLOTMENT  
SECURITY DEPOSIT

AMOUNT OF

(i) Motor Workshop, fuel depot and commercial purposes but not for cycle stands. Equal to 12 months rent other

(ii) Cycle Stands Equal to 3 months rent.

Security Deposit in respect of temporary allotment of land not covered by (i) and (ii) above shall be determined on merits.

**6. PROCEDURE FOR ALLOTMENT OF LAND FOR PETROL PUMPS**

The sites for petrol pumps-cum-service station are being provided in the Master Plan of Delhi which has been prepared by the DDA. This Authority has a Petrol Pump Sub-Committee. On a reference from the land owning authority, some of the new sites shown in the Master Plan are included in the Zonal Plan of the area when prepared.

The applications for allotment of petrol pump or petrol pump service station sites are entertained only from the Oil Companies and not from individual dealers. Fresh allotment of Petrol pump sites is made only to the Indian Oil Corporation. Other companies are allotted new sites for shifting their existing petrol pumps which are declared to be situated on sites which have become or have been declared objectionable from the Master Plan point of view.

The application for allotment of petrol pumps or petrol pumps cum service station sites are generally sent by the parties to the Delhi Administration. In some cases, the applications are received in the Land & Development Office. On receipt of an application in the office of the Land & Development Officer, the concerned Lease Section shall refer the application to Technical Section to find out whether the site applied for is under the administrative control of this office and is suitable and available for allotment. In case of a request for the allotment of a non-Master Plan site the Technical Section shall be asked to suggest a vacant site for allotment. If a site is suggested, a reference shall be made by the Lease Section to the Petrol Pump Sub-Committee for their approval. On receipt of their approval a clearance of the DDA shall be obtained from land use point of view before the site is allotted. This clearance from DDA shall not be necessary where the proposed site is one those already provided for in the approved zonal plan.

On receipt of the clearance from the DDA, the file shall be referred by the Lease Section to the Ministry of Urban Affairs & Employment (Lands Division) for their approval. Thereafter the procedure to be followed shall be the same as for other temporary allotments outlined in para 5 above.

No security deposit is required in respect of land allotted for a petrol pump or petrol pump-cum-service station.

## 7. ALLOTMENT OF LAND ON PERPETUAL LEASE HOLD BASIS TO LOCAL BODIES

Land shall generally be allotted to local bodies on perpetual lease hold basis for:-

- (i) Remunerative purposes, such as offices, shopping centres, water supply, drainage etc.
- (ii) Semi-remunerative purposes, such as staff quarters including those attached to schools and hospitals, power houses, electric sub-stations, cattle byeres etc.
- (iii) Unremunerative purposes, such as Schools, Hospitals, Buildings, Maternity Centres, Community Centres, Libraries and public conveniences such as public hydrants, community bath-rooms, dhobi ghats, public latrines and urinals etc.

Allotment for semi-remunerative purposes except Power Houses & Electric Sub-Stations shall be made on rates as prescribed by the Government from time to time plus annual ground rent. Power Houses and Electric Sub Stations which serve entirely or overwhelmingly the Government colonies shall be allotted land on a nominal ground rent of Rs. 1/- p.a. only. Allotment of sites for these purposes elsewhere shall be made on payment of the rates as

Allotment for unremunerative purposes shall be made on payment of premium as laid by the Government from time to time and annual ground rent shall be recovered @ 5 % of the premium.

[NEXT](#)

## **CHAPTER-8**

### **DEMARCATION AND HANDING OVER POSSESSION OF LAND**

After the agreement for Lease or Licence Deed is executed the concerned Lease Section shall send the file to the Technical Section requesting them to hand over possession of land to the allottee. The Assistant Engineer, in-charge shall fix a date for the purpose in consultation with the purchaser.

On the appointed date the concerned Assistant Engineer or the Overseer deputed by him shall demarcate the plot of land in question in the presence of the purchaser or his approved nominee and obtain a certificate from him that the land in question has been demarcated and vacant possession thereof handed over to him on that date.

The certificate obtained from the purchaser or his nominee shall be added to the correspondence portion of the file. The concerned Assistant Engineer shall record on the file that the possession has been handed over to such and such persons on such and such date and return it to Lease Section concerned.

The Lease Section shall thereafter, send a letter to the Lessee in the form at Annexure--asking him to submit construction plans duly approved by the local body for sanction under the lease by the date specified in the Agreement for Lease.

## CHAPTER – 9

### SUB-DIVISION OF PLOTS

A large number of plots leased in the initial stages of construction of new capital of India of New Delhi, contained an area of an acre or more. Soon after the lease were granted, requests started coming in for permission for sub-dividing the plots for constructing more independent building on one or more separated portions of the leased land. Such sub-division was originally permitted on payment of additional premium equal to half the difference between the auction price of the whole site and the assumed commercial or residential market value on the date of sanction of sub-division having regard to use to which the land was intended to be put when sanction was given. The ground rent was also corresponding enhanced.

In 1951 the matter was re-considered by the Government of India and it was decided to forego Government's claim to a share of the unearned increase where a lessee of a site sought permission to sub-divide it for the purpose of himself erecting more buildings on leased land. It was further decided that the annual ground rent of each sub-divided portion built upon or to be built upon be assessed and charged at the rate of 2 ½ % of the current market value of each plot and in the event of the lessee transferring his interest in one or more sub-divided plots before or after construction, 50 % of unearned increase in the value of land be also recovered by way of additional premium.

In the light of the above policy, sub-division of plots for the purpose of construction of additional building shall be allowed on the following terms and conditions:-

- (i) The area of each sub-divided plot shall not be less than that specified in the zonal plan of the area. Approval of the DDA shall be obtained for the proposed sub-division.
- (ii) Each sub-divided plot shall have a direct access to the main road and service road.
- (iii) Only single storeyed building with one residential unit or a double storeyed building with a barsati on top with one or two residential flats

in all as may be permitted under the Municipal bye-laws, with prescribed set back, shall be constructed on each sub-divided plot.

- (iv) Ground rent shall be payable in the following manner:-
  - (a) In respect of the sub-divided portion(s) of land to be built upon annual ground rent shall be reduced proportionately to the reduction in area.
  - (b) In respect of the remaining portion of the original plot the original annual ground rent shall be reduced proportionately to the reduction in area.
  - (c) Periodical revision of annual ground rent shall be done in accordance with the provisions of the original lease deed.
- (v) Execution of supplemental lease deed providing for the recovery of charges mentioned above as also the recovery of unearned increase and the preemptive right of the lessor to purchase the property in the event of sale/transfer of any of the sub-divided plots to be built upon.

N.B.1: If the lessee applied for permission for sale/transfer of a sub-divided plot to be built upon, simultaneously with sub-division, 50 % of the increase in the value of land of such sub-divided plot shall be recovered in advance by way additional premium and not as unearned increase.

N.B.2: Sale of one of the two or more housing units or plots sold/leased to one person by the Department of Rehabilitation does not amount to sub-division of the property and hence no sub-division charges are recoverable upon such sale.

(3340-L/64 dt. 6.6.1964 Coord., (178)ASC-18 dt. 2.2.1966)

N.B.3: In a case where the lease is unrestricted and the lessee transfers a portion of the plot to another person no sub-division charges can legally be recovered from the lessee upon such transfer. In such a case the conditions application in cases of sub-division i.e. (i) to (v) above shall be imposed while sanctioning plans for the creation of the new building on the sub-divided plot.

N.B.4: Such division and partition are synonymous terms and hence an covenant providing for prior permission of the lessor to any sub-division of the premises is attracted by partition without permission. (M/Law's Advice in Shop No. 54, Moti Nagar, 33466/67, dt. 10.7.1967)

## 2. PROCEDURE FOR GRANT OF PERMISSION FOR SUB-DIVISION OF PLOTS:

On receipt of an application of a lessee seeking permission for sub-dividing a plot, the concerned Lease or Property Section shall check whether there are any breaches of the terms of lease already in knowledge. If so, no action shall be taken on the application till the breaches are removed, paid or where a lessee is unable to remove the breaches, till he makes payment of all dues upto the ensuing 14<sup>th</sup> January or 14<sup>th</sup> July, whichever is earlier and also furnishes an undertaking to get the breaches regularised on payment of charges till they are removed.

If there are no breaches already in the knowledge of the lessor or they have been removed or regularised and the undertaking furnished, Lease Section shall refer the matter to Technical Section for scrutiny of the proposal. The Technical Section shall, in the first instance, carry out an inspection of the premises to find out whether there are any breaches of the terms of lease and also to collect data necessary for considering the proposal of sub-division. If any objectionable breaches of the terms of lease are noticed upon such inspection the file shall be returned to the concerned lease or Property Section for taking action for the removal of breaches.

If the property is free from breaches, the Technical Section shall examine whether the proposed sub-division could be permitted in accordance with the provisions of the Zonal Development Plan of the area and bye-laws of the local body and record their views on the file and return the same to the Lease or Property Section concerned through Engineer Officer. Where, in a case, the Zonal Development Plan of the area has not been finalised and approved, the Technical Section make a note to that effect and also record their views with regard to the proposal of sub-division, on the file and return it to the concerned Lease or Property Section.

If Technical Section certifies that the proposed sub-division could be permitted the concerned Lease or Property Section shall send a reply to the lessee in the form at Annexure.

If the reply to the letter sent to him, the lessee asks for revised terms of lease, the terms and conditions shall be drawn. The amount of additional premium/ground rent, shall as in the case of permission for sale, be calculated by Senior Draftsman and checked by the Accounts Section.

After the terms are drawn and approved by the concerned officer, the file shall be referred to the Finance Division for their concurrence. On receipt of the file from the Ministry, the terms shall be communicated to the lessee. If he accepts the terms and makes payment of all dues, action shall be taken to prepare a supplemental lease in the same manner as in the case of original Perpetual Lease.

In a case where Technical Section indicates that the Zonal Plan of the area had not been finalised, but otherwise there is no objection to allowing sub-division of the plot as proposed by the lessee, clearance of the Delhi Development Authority shall be obtained before processing the case further.

Where sub-divided units cannot be built upon as independent units under the bye-laws of the local body or where Technical Section advises against allowing sub-division, the lessee shall be informed accordingly.

## **CHAPTER – 10**

### **PERMANENT CHANGE OF PURPOSE**

Permanent change of purpose is generally sought for from residential to commercial purposes in business areas. If the Master Plan permits such change according to the land use of the area, the same shall be allowed on the following terms and conditions:-

- (i) Payment of additional premium equal to 50 % of the difference between the commercial value of land at the time of offering the terms for and the residential value thereof at the time of last sale of transfer.
- (ii) Payment of additional ground rent @ 2 ½ of full difference of values as mentioned in item (i) above.
- (iii) If the lease is un-restricted, the lessee agreeing to execute a supplemental lease providing for prior permission of the lessor for sale or transfer of the property.

Additional premium may be recovered in four equal instalments, the first instalment immediately, the second after the completion of two years, and the third and fourth instalments before the completion of fourth and fifth years. Additional ground rent shall be charged only after the completion of the third year or after the completion of construction of the commercial building whichever is earlier.

[7//2/64-L dated 6.7.1965]

N.B.: No additional premium or ground rent shall be recovered for additional construction permissible on the date of grant of permission under the bye-laws for commercial purposes in cases of grant of permanent change of purpose.

[WI-42(476) dated 5.7.1954]

## **CHAPTER-11**

### **SANCTION OF PLANS UNDER THE LEASE**

All plans sanctioned by the Local Bodies in respect of the properties under the administrative control of the Land and Development Office shall be submitted to this office by the lessees for approval under the terms of the Lease. The lessees shall submit the original sanctioned plans alongwith a copy thereof on blue print duly cloth mounted. The concerned Lease Section on receipt of such plans shall send the file to the Technical Section with the scrutiny sheet. The Technical Section shall scrutinise the plans and compare the copy with the original sanctioned plan and complete the additional ground rent, if any, recoverable in the case. They shall also ensure that the plans sanctioned are not in contravention of the Zonal/Master Plan. In case there is any construction in contravention, of the Zonal/Master Plan, such construction shall be treated as un-authorized. The file shall be passed on to the Drawing Branch for stamping and registration of the plans in the register maintained in that Section.

The Drawing Branch shall enter the plans in a Register called the Register of Approved Plans and indicate lease or sheet number on all the sheets in the set of approved plans. They shall compare all the sheets of the plan with the original sanctioned plan and submit to the Engineer Officer through Asstt. Engineer for approval under Lease. After the plans are signed by the Engineer Officer the copies of the plans shall be retained by the Drawing Section and the original sanctioned plans alongwith the file shall be sent to the concerned Lease Section for onward transmission of the original sanctioned plans to the lessees.

#### **2. SANCTION OF PLANS IN CASES WHERE THE A.G.R. IS INVOLVED**

In cases where the Additional Ground Rent is recoverable, the Technical Section shall calculate the A.G.R. and pass on the file to the concerned Lease Section for further necessary action. The Lease Section shall draw the terms and send the file to the I.A.C. for vetting the same. As soon as the terms are checked and approved by the I.A.C., the same shall be offered to the lessee giving him 30 days time to accept the terms. Upon acceptance of the terms by the lessee, the Lease Section shall thereupon adopt the same procedure as indicated above in the case of sanction of plans under the lease.

Certain concessions in respect of additional construction and levy of additional ground rent have been given by the Government from time to time. The Technical Section shall therefore, calculate the ground rent keeping in view such concessions as offered by the Government from time to time, which is as follows:-

No additional ground rent shall be levied in respect of additional construction made within a period of five years from the date of execution of the lease deed if such construction is within the permissible limits under the Municipal bye-laws applicable at the time of lease of land. Where, however, no Municipal bye-laws were in force at the time of execution of the agreement for lease or lease deed, the limits as provided in the Municipal bye-laws as they came into force subsequently shall apply subject to an overall limit of 2 ½% storey residential building.

## CHAPTER – 12

### ADDITIONAL CONSTRUCTION

As per the Ministry of W&H's letter No. G-25017/1/70-L. Vol. III dt. 12.4.1976, the policy regarding additional construction shall be as under:-

- (i) Additional construction shall be permitted free of charges upto 30% of the existing covered accommodation subject to the conveyable permissible under the Municipal bye-laws in force at the time of additional construction. This concession shall be valid for two years from the 10<sup>th</sup> December, 1963.
- (ii) From 5.10.1967 in the case of future leases, no additional ground rent shall be leviable in respect of additional construction made within a period of five years from the date of execution of the lease deed provided it is within the permissible limit under the Municipal bye-laws at the time of lease. In the case of existing lease, no extra ground rent shall be leviable if permissible coverage as on the date of lease is completed within a period of three years.
- (iii) The above concession shall be given on the following conditions:-
  - (a) Where supplementary leases were executed before 5<sup>th</sup> October, 1967.
  - (b) Where the lessee had accepted the terms for additional construction and paid Rs. 5/- for preparation of the Supplementary Lease Deeds and also paid the Ist instalment of additional ground rent before 5.10.1967.
- (iv) Basement not exceeding 200 sq. ft. in area shall be permitted in residential premises without recovery of additional charges provided it is used for installation of air-conditioning plant or for storing house hold materials. If at any time it is found that the basement has been let out either for residential or business purposes, the lessee shall be required to pay additional charges at the usual rates. In order to

safeguard Government's interests in this regard a suitable undertaking shall be obtained from the lessee before the plans are sanctioned by the Land and

Development Officer. Where the area of basement exceeds 200 sq. ft. additional ground rent shall be recovered for the area in excess of 200 sq. ft.

(v) (a) With effect from 15.1.70, additional construction upto the permissible limits under the Municipal bye-laws as on the date of the lease shall be allowed at nay time during the currency of the lease without recovery of additional charges provided that in cases where land had been allotted or sold prior to 1.4.1965 the bye-laws of the local body concerned as obtaining prior to that date only shall be applied for this purpose regardless of the fact whether the leases have been executed or not.

(b) Provided further that in the case of residential leases, the concession shall be limited to construction upto 2 ½ storeyed and that in case where there were no municipal bye-laws in

force at the time of the execution of the lease deeds, the limits as provided in the Municipal bye-laws as and when they came into force subsequently for the first time shall apply.

(c) Additional Ground Rent which is already being recovered on account of additional construction with reference to the orders that have been in force prior to the issue of these orders shall continue to be recovered upto 14.1.1970. This additional ground rent shall reduced w.e.f. 15.1.1970 to the extent as admissible under these orders vide sub para (a) above. However, the additional ground rent fixed in accordance with this Ministry's letter No. 27/6/63-L dated 10<sup>th</sup> December, 1963 shall not be altered to the disadvantage of the Lessee by the application of these orders. The lessee shall, however, be allowed with effect from January 15<sup>th</sup>, 1970 such reduction in the existing additional ground rent as may become admissible vide sub-para (a) above.

(d) No refund of the amount already re-covered on account of additional ground rent shall be allowed in any case.

(v) From 17.4.1976 in respect of residential premises only, no additional ground rent shall be recovered for additional construction upto 33 1/3% over and above the total construction which was permissible at the time of lease provided such construction is permitted under Municipal bye-laws on the date of construction.

In cases on properties built on plots measuring upto 100 sq. yds. where there is a marginal excess construction over and above 33 1/3 % benefit but the additional construction is within the Municipal bye-laws on the date of construction such marginal excess coverage upto 5 sq.ft. shall be condoned and no A.G.R. shall be recovered, provided this is within the permissible coverable allowed by the Municipal Bodies under their bye-laws. [Min. of W&H 40 NO. 4626-LD/79 dated 26.6.1971]

After the ground rent is revised the additional ground rent recovered previously for additional construction already made shall not be recovered in addition to the revised ground rent.

Additional Ground Rent if any, shall be recovered from the date of completion certificate or actual occupation whichever is earlier.

Any Supplementary Lease executed by the lessee for payment of additional ground rent for additional construction shall be cancelled in the event of proposed construction not having been undertaken by the lessee and additional ground rent if any, will be refunded to the lessee.

## **CHAPTER – 13**

### **ADDITIONAL CONSTRUCTION IN OPEN AREAS IN CONNAUGHT PLACE**

Additional construction in the open areas in Connaught Place shall be permitted on payment of:-

- (a) Additional premium equal to 50 % of the difference between the prescribed current market value of land for commercial purpose and the commercial value prevailing (prescribed) at the time of last transaction.
- (b) Additional ground rent @ 2 ½ % per annum of the full difference between the two values aforesaid.

Additional premium may be recovered in four equal instalments, the first instalment immediately, the second after the completion of two years and the third and fourth instalments in the fourth and fifth years. Additional ground rent shall be charged only after the completion of the third year or, after the completion of construction of the building whichever is earlier.

Note:

- (a) No additional ground rent is recovered by convention, from Schools/Hospitals in respect of additions made to School/Hospital buildings for their own bonafide use.
- (b) Additional ground rent for additional construction done by various institutions which have been allotted land at concessional rates prevailing for such concessional allotments on the date of sanction by local body of plans for additional construction [7/19/62-L dated 25.11.1964].

## **CHAPTER –14**

### **GRANT OF COMPLETION CERTIFICATE UNDER THE LEASE AND EXECUTION OF PERPETUAL LEASE:**

After the building on the plot has been completed and the completion certificate obtained from the local body concerned the lessee is required to apply for the grant of completion certificate under the terms of lease.

On receipt of an application for the grant of completion certificate under the terms of lease or on receipt of a copy of the completion certificate issued by the local body, lease section shall check up whether there are any breaches already in the knowledge of this office. If so, no action shall be taken on the application of the lessee or on the copy of the completion certificate received from the New Delhi Municipal Committee, till the breaches are removed and damages paid. Where a lessee pays the damages but is unable to remove a continuing breach, an undertaking to the effect that he shall remove the breaches by a specified date or get them regularised on payment of charges as fixed by the Government of India from time to time, till they are removed, shall be obtained from him and the case for the grant of completion certificate processed further, as detailed hereinafter.

Where there are no breaches already in the knowledge or after the same have been removed or got regularised on payment of damages and necessary undertaking furnished, the concerned Lease Section shall refer the file to Technical Section for examining the case for the issue of completion certificate under the lease. The Technical Section shall inspect the site and compare the construction with the plans. They shall fill in the Scrutiny Sheet and submit the case to Engineer Officer. After the Engineer Officer has seen and approved, the file shall be returned to Lease Section concerned, who shall inform the intended lessee of the completion of construction under the lease and simultaneously the lessee shall be asked to pay the cost of preparations of perpetual lease.

After the completion certificate is granted under the terms of the lease and the lessee has paid the cost of preparation of Perpetual Lease Deed, actual for its preparation and execution shall be taken.

## CHAPTER – 15

### COST OF PREPARATION OF VARIOUS DOCUMENTS

The cost of preparation of various lease documents shall be recovered from the intended lessee or licensee at the following rates:-

(i)	Agreement for Lease	Rs. 30/-
(ii)	Perpetual Lease	Rs. 30/-
(iii)	Temporary Lease	Rs. 30/-
	For grass cutting	Rs. 5/-
(iv)	Licence Deed 'rights' 'other cases'	Rs. 30/-
(v)	Supplemental Lease	Rs. 5/-

Extra Certified true copies of various lease documents shall be supplied to the lessee or licensee on payment of cost of their preparation at the following rates:-

(i)	Agreement for Lease	Rs. 40/-
(ii)	Perpetual Lease	Rs. 40/-
(iii)	Site Plan of a particular locality	Rs. 5/-
(iv)	Supplemental Lease	Rs. 5/-

(per copy)

When a document is prepared and sent to the intended lessee for execution and he misplaces it or he returns the documents with the request that the same may be prepared in the name of some other member of his family and such request is granted or the document already prepared and

sent to him becomes time barred due to lapse on his part, the cost of preparation of the document shall be recovered at the following rates:-

- |      |  |       |          |
|------|--|-------|----------|
| (i)  | Agreement for Lease/Perpetual Lease/<br>Temporary Lease/Licence Deed | ..... | Rs. 50/- |
| (ii) | Supplemental Lease   | ..... | Rs. 10/- |

In a case where a document is sent to the intended lessee or licensee for registration etc., after execution by the Land & Development Officer or any other Competent Officer, and is misplaced or gets time barred due to lapse on the part of the intended lessee or licensee the cost of preparation of the document afresh shall be recovered at the following rates:-

- |      |  |  |
|------|--|--|
| (i)  | Agreement for Lease/Perpetual<br>Lease/Temporary Lease/Licence<br>Deed : | 25 % of the stamp<br>duty payable on the<br>document subject to a<br>minimum of Rs. 50/- |
| (ii) | Supplemental Lease:  | 25 % of the stamp duty<br>payable on the document<br>subject to minimum of Rs. 10/-      |

Blank forms, where available, shall be supplied on payment of a fee of Rs. 6/- (Six only) per copy.

No fee shall be charged for a blank form enclosed with a letter from the Government to a Lessee or intended lessee etc., conveying terms and conditions of the transaction.



## **CHAPTER – 16**

### **SCRUTINISATION OF BUILDING PLAN**

The building plan schemes are referred to the Land & Development Office by the N.D.M.C. for examination under the terms of lease deed and to forward comments of this office. The scheme of the building plans received from N.D.M.C. shall be examined atleast with reference to any important breaches in respect of the property. The concerned Lease Section shall study the property file as soon as the scheme for building plans is received in order to check the following points:-

- (i) Whether the property is re-entered.
- (ii) Whether there are any breaches notified to the lessee but not remedied.
- (iii) Whether any demands were raised on the lessee but remained un-paid.

In case the reply to any of these queries is positive, the office shall immediately send remarks to the building plan committee giving reasons and requesting them not to sanction the building plans. Simultaneously the property section shall send the files alongwith the scheme for the building plans to the Engineer Officer so that he is prepared for attending the building plans committee with complete details.

[No. 5(3)/90/CDN, dated 29.9.93, office order No. 27/93]

## **CHAPTER – 17**

### **INSPECTION OF PROPERTIES**

Inspection of the properties shall be carried out in the following cases:-

- (i) Grant of permission for sub-division of the premises.
- (ii) After the mutation of the premises where the last inspection was carried out more than six months before.
- (iii) Receipt of lessee's application for grant of permission for change of purpose.
- (iv) Receipt of a copy of MCD/NDMC notice to the lessee for unauthorised construction.
- (v) Regularisation of breaches for further periods.
- (vi) Receipts of a protest letter from a lessee disputing the existence of misuse or the area misused.
- (vii) Receipt of a letter from the lessee about the removal of misuse or unauthorised structure.
- (viii) Expiry of the period allowed for construction of building on the land.
- (ix) Annual inspection.

Inspections shall generally be carried out by the overseers. However, where a lessee has challenged the existence of breaches or has disputed the area misused etc. Assistant Engineer (Tech.) of the Engineer Officer shall himself inspect the premises. Assistant Engineer (Tech.) shall also carry out a percentage check of about 5 % of the premises inspected by the overseer.

The Technical Section shall prepare inspection report in triplicate, one copy for the concerned Property or Lease Section and the second copy for

Accounts Section who shall make an entry in their ledgers indicating the date of inspection and the breaches, if any. Where the Accounts Section finds from the file at a later date that this copy was not sent to them immediately after inspection, this fact of omission shall be brought to the notice of the Branch Officer or the Accounts Officer. Since the lessee is entitled to see the inspection report and can even ask for a copy of the same in court of law, the overseer shall restrict himself strictly to the noting of the factual position of the premises. He shall not give in the inspection note his views whether a particular breach is condonable or not. This discussion if necessary may find place in the noting portion of the file which shall be forwarded to the concerned section.

The properties owned by foreign Missions in Embassy Areas shall neither be inspected nor any notice taken of the manner in which such properties are used or built upon. Only ground rent shall be recoverable as and when it falls due and if not received, shall be demanded. However, the properties owned or hired by the Foreign Missions outside the Embassy areas under private leased properties shall be inspected in the manner as individual lessee and action for breaches shall be taken.

## CHAPTER-18

### BREACHES (CHANGE OF PURPOSE OR UNAUTHORISED CONSTRUCTION)

Where a breach of unauthorised construction misuse is noticed a show cause notice shall be sent to the lessee asking him to remove the breach with in 30 days from the date of notice. This period of notice may however, be extended to 60 days if the lessee gives cogent reasons to the satisfaction of the lessor. Where, however, the lessee neither removes the breaches nor sends any communication to the satisfaction of the lessor after the receipt of the notice, action shall be taken to re-enter upon the property whereupon the lease will stand forfeited. The re-entry order shall be communicated to the lessee requesting him to hand over possession of the leased premises to the nominated official of the lessor. If the lessee does not hand over possession to the said officer, action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for the eviction of the ex-lessee shall be initiated in the Court of Estate Officer in addition to the recovery of Govt. dues including damages charges etc.

Any communication from the lessee that the breach will be removed at a future date shall be disregarded. However, on receipt of intimation from the lessee indicating the specific date of removal of the breach, the premises shall be inspected again as soon as reasonably possible and if the breach is found removed at the time of such inspection, charges for the breach shall be recoverable upto one day before the date of receipt of intimation about the removal of the breach.

The formulae for calculation of charges for change of use are as under:-

		Misused		Present		The land
Size		area		commercial		rate on
Of the	X	-----	X	rate of	(-)	the date X 10 ½ %
Plot		Permissible		land for		of last
		covered		the purpose		transaction

area	for which	for which
	the property	land was
	is misused.	Leased

From 1.4.1981 to 31.8.1981, the percentage multiplier in the above formula was 12 ½ & from 1.9.1989 onwards it is 13.9.

In the case of the residential leases in Rehabilitation Colonies, misuse charges recoverable from 5.5.1982 onwards shall be in accordance with the following formula:-

Size	Misused	Present pre-	Present Pre-
Of the	area	determined com-	determined
Plot	X ----- X	mercial value of (-)	value of X 10 ½ %
	Permissible	the land for	land for the
	covered	the purpose	purpose for
	area	for which	which it was
		the property	leased.
		is misused.	

In cases where whole of the premises is under misuse, the misused area shall be taken as the total built up area i.e. plinth area including thickness of all the walls, garages and servant quarters. In cases of misuse of part of the premises, the misused area shall be calculated according to actual measurements of the area under misuse, such area being assessable/verifiable from the building plan as sanctioned by the local municipal body.

The rates of damages charges for different areas/localities shall be fixed by the Government from time to time.

In addition to misuse charges for change of user and damages charges for unauthorised construction, 10 % penalty shall also be recovered as under:-

- (i) Non re-entered cases on misuse charges only;
- (ii) Re-entered cases both on misuse charges as well as on damages charges.

These charges may be paid in lumpsum or in monthly instalments not exceeding 24 for which interest at the rates as fixed by the Government shall be charged.

The facility of payment by instalments shall be further subject to the condition that:-

- (i) in the case of non re-entered premises, the lessee shall be required to execute a bond.
- (ii) in case if re-entered premises, the ex-lessee shall be required to execute a supplementary lease, and
- (iii) in conversion cases, the applicant shall be required to furnish a bank guarantee for the total amount of charges.

Where the lessee/ex-lessee files suit for eviction against defaulting tenants on receipt of the notice from the lessor for misuse and is successful in eviction of such tenants, on percent of the charges shall be recovered as token penalty in consultation with the Ministry of Urban Development and Finance.

## **CHAPTER – 19**

### **LETTING OUT OF PREMISES BY INSTITUTIONS**

There may be instances where the premises constructed by the various institutions are let out to similar institutions and even to public sector undertakings. The Government has, therefore, decided that:-

- (i) The allottee institutions shall put up the building by fully utilising the permissible FAR;
- (ii) The institution may let out a portion of the built up area to institutions of similar nature after obtaining prior permission of the lessor by furnishing a copy of the certificate of registration and a copy of memorandum and articles of association of the licensee institutions;
- (iii) The institution may also be allowed to sublet a portion of the premises not exceeding 15 % of built up space with prior approval of the lessor for service organisations like banks, on payment of 25% of the licence fee received;
- (iv) The institution may also allowed to utilise a portion of the premises for the purpose of residence of the functionaries of the organisation subject to the condition that the area so used does not exceed 15 % of the built up space subject to a maximum of 150 sq. mts.; and
- (v) The total area sublet under the above categories and the area used for residential purpose shall however not exceed 40 % of the built up area.

In cases where institutions have already sublet a portion of the premises, the above documents shall be furnished to the Land & Development Office within a period of six months for regularising each cases. For this purpose, a general notice shall be issued by the Land & Development Office to all the institutions. However, in cases where subletting is without prior permission of the lessor the same shall attract penalty of 10 % of the commercial land rates for the area sublet.

[M/o UD letter No. 344/94-LD dated 21.3.1994]



## **CHAPTER-20**

### **CONSTRUCTION OF THE BUILDING BY ALLOTTEE INSTITUTION**

As regards construction of the building it is provided that :-

- (a) Building plans shall be got sanctioned from the local body within a period of one year from the date of handing over the possession of the land;
- (b) Occupancy certificate shall be obtained within 3 years from the sanction of the building plan and completion certificate and plans shall be furnished to the Land & Development Office within a period of 4 years from the date of sanction of the building plan.
- (c) During the period of construction, namely upto the date of the sanction of the occupancy certificate by the local body, temporary structures for storage and security need not be objected to by the lessor, and
- (d) If the institution puts up temporary construction for running bonafide activities due to lack of funds for construction of the building as long as extension for construction of the building is granted, such temporary construction need not be objected to provided that built up area is within the permissible limits.

[M/o UD letter No. 344/94-LD dated 21.3.1994]

## **CHAPTER – 21**

### **BELATED CONSTRUCTION**

Non-completion of construction of leased land within the stipulated period is a breach of the terms of the lease unless extension of the period is granted under the powers delegated to the Land & Development Office or through general extension granted by the Government. Such a breach shall be regularised on payment of penalty as follows:-

- (i) 5 % of the premium for full year.
- (ii) 4 % of the premium for 9 months.
- (iii) 3 % of the premium for 6 months.
- (iv) 2 % of the premium for 3 months.

Where due to certain circumstances which were beyond the control of the lessee to complete the construction or where the lessee took tangible steps but was prevented from doing so for the reasons beyond his control, the Land & Development Office shall grant extension without levy of penalty on year basis on the merits of each case.

In the Rehabilitation leases where no date has been mentioned in the lease deed for completion of the building two years shall be counted from the date of execution of the lease deed.

## **CHAPTER – 22**

### **BELATED INTIMATION OF CHANGE IN POSSESSION**

In the case of Rehabilitation properties only where the lessee does not intimate the registration of the sale deed in time as per conditions of the sale permission letter or lease deed a penalty not exceeding Rs. 100/- shall be levied on the purchaser.

N.B.:

- (i) In certain leases, the intimation has to be given to the Local Authority. The Local Authority shall mean the Land and Development Office and not the Local Body.
- (ii) No penalty shall be levied in the case of substitution of the property in the name of the legal heirs of the deceased for belated intimation; and
- (iii) Similarly no penalty shall be levied in the case of transfer and belated intimation in the case of co-lessees.

## **CHAPTER – 23**

### **NON-PAYMENT OF GROUND RENT**

Every lessee or licensee is required to pay the ground rent or additional ground rent, if any, specified in the Lease Deed/Supplementary Lease Deed on the specified dates. Non-payment of ground rent on the specified dates shall be treated as a breach of the Agreement for Lease/Lease Deed.

In cases where there is no other breach of the terms of lease and the payment is made before the property is re-entered, whether or not the lease deed contains a clause for the recovery of interest on the arrears of ground rent, the ground rent shall be accepted on payment of interest on the arrears of ground rent a fixed by the Government from time to time unless it is fixed in the terms of the Agreement.

In cases where the property is re-entered for non-payment of ground rent only, re-entry shall be withdrawn only after the recovery of penal interest rate of interest fixed by the Government from time to time or as provided in the lease deed.

In cases where property is re-entered for other breaches and the ground rent has not been accepted on account of the breaches, the normal rate of interest shall be recoverable alongwith damages/additional charges and other penalties for the purpose.

#### **NOTE:**

- (a) No interest shall be charges if the amount of annual ground rent does not exceed Rs. 20/-
- (b) Whether a party other than the lessee sends a cheque for ground rent which is not encashed, pending clearance whether the same had been sent for and on behalf of the lessee, interest shall be levied only upto the date preceding the date of receipt of the cheque in the office. No interest shall be levied for the period of delay in encashment.

## **CHAPTER 24**

### **SALE PERMISSION**

Most of the leased premises administered by the Land and Development Office are restricted i.e. permission of the lessor (the Land & Development Office) is a precondition for assignment or transfer of lease hold rights by the lessee. Hence in restricted leases it shall be obligatory for the lessee to obtain prior permission of the lessor where required, can be granted to the lessee or his duly authorised attorney.

#### **2. PERSONS WHO CAN APPLY FOR SALE PERMISSION:**

- (i) The person or persons whose names appear on the records of the Land & Development Office as lessee(s); and
- (ii) Duly authorised attorney(s) of the lessee(s).

#### **3. PROCEDURE FOR MAKING AN APPLICATION FOR SALE PERMISSION:**

A lessee or his duly authorised attorney can make an application for sale permission of the leased premises administered by the Land & Development Office in the prescribed format. The application complete in all respect and signed by the lessee(s) or duly authorised attorney(s) of the lessee(s) as the case may be can be sent by Registered post or delivered at the Central Receipt Counter of the Land & Development Office.

If the application is made by attorney(s) of the lessee(s), it shall accompany:-

- (i) An attested copy of the Power of Attorney duly executed under the Indian Registration Act;
- (ii) Consent affidavit in the prescribed format of the lessee to the effect that the General Power of Attorney has not been revoked and he/she has no objection to the sale permission being given to the attorney; and

- (iii) Nominee's Affidavit in the prescribed format, where sale permission is to be in favour of the Attorney's/Intending Purchaser's nominee.

#### 4. DOCUMENTS TO BE ENCLOSED TO THE APPLICATION:

Apart from the documents listed above in cases where the Attorney of the lessee(s) applies for sale permission, the following documents shall accompany the application:-

- (i) Certified copy of the Agreement to sell, duly registered under the Indian Registration Act;
- (ii) In case of residential Properties where the intending purchaser is an individual or a HUF, an affidavit in the prescribed form of the intending purchaser/transferee duly sworn before a Magistrate/Sub-Judge with verification clause duly completed to the effect that he or any member of his family do not own any residential plot or house in Delhi. A photograph of the deponent or intending purchaser shall be affixed on this affidavit;
- (iii) Where the intending purchaser is a company, a copy each of :-
  - (a) Memorandum of Association;
  - (b) Articles of Association;
  - (c) Certificate of incorporation;
  - (d) Resolution empowering one or more of the Directors to purchase the property for the company.
  - (e) List of the present Directors;  
  
(All duly attested by the Company Secretary, Director, a Gazetted Officer or a Notary Public)
  - (f) An affidavit (in the prescribed form) to the effect that the property shall be used for residential purposes (applicable in respect of residential leases), duly attested by Magistrate Ist Class.

- (iv) Where the intending purchaser is a Firm, a copy each of:-
- (a) Deed of Partnership duly registered with the Registrar of Firms;
  - (b) Resolution empowering one or more of the partners to purchase the property for the firm;
  - (c) List of present partner;
- (All duly attested by a Gazetted Officer or a Notary Public), and
- (d) An affidavit (in the prescribed by the requisite documents, the same shall be returned at the receipt stage. An acknowledgement slip as shall be given to the applicant or his messenger by the Receipt Clerk in case of complete application as a token of its receipt by the Land & Development Office.

#### 5. PROCEDURE FOR GRANT OF SALE PERMISSION:

An application for grant of sale permission receive in the Land and Development Office shall on the date of its receipt, be date-stamped and diarised by the Central Receipt Cell to indicate the date of its receipt. The same shall, therefore, be passed on to the section concerned which shall in the first instance scrutinise the same in order to ascertain whether it is complete in all respects or not. Incomplete application shall be returned to the applicant within seven days of its receipt.

If the application is complete in all respects, the necessary calculations shall be completed and the terms for sale permission shall be offered on the basis of the available information on record, within one month of the date of receipt of complete application. The applicant or lessee(s) shall be given 30 days time from the date of the letter to comply with the terms officered for grant of sale permission. It shall also be made clear in the terms letter that without compliance of the terms, no correspondence shall be entertained and if the representation is made against the terms, and on consideration of the representation, if there is no change in the original terms, the original application for sale permission shall be treated as disposed of and the crucial date will be shifted to the date of such representation. Such representation shall be disposed of in 30 days, by offering the fresh terms.

If the applicant or lessee does not make the payment within the stipulated 30 days period from the date of offering the terms, the terms, the application for sale permission shall be treated as closed.

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

If the payment is made by the applicant or lessee(s) through a Bank Draft or a Banker's Cheque, the sale permission shall be issued by the Land & Development Office within a week of receipt of the Bank Draft/Banker's Cheque. In case where the payment is received through a personal cheque, the sale permission be issued within a week of realising the amount through the Bank.

#### 6. UNEARNED INCREASE:

The date of receipt of complete application in the Land & Development Office shall be the crucial date for calculation of unearned increase. The unearned increase shall be calculated by taking the date of receipt of complete application as the crucial date and the original premium/last transaction value as the case may be and the notified land rates applicable for the crucial date as the relevant factors.

In the case of first sale of rehabilitation properties, neither any unearned increase is payable nor is the ground rent to be revised. In such a case the formal letter of grant of sale permission shall be issued immediately after the documents are received and found in order. Such files shall not be referred to Internal Audit Cell.

#### 7. FORMULA FOR WORKING OUT UNEARNED INCREASE:

The amount of unearned increase with reference to the crucial date shall be arrived at as under:-

Plot area X (Present day value of the land minus last transaction value) X  $\frac{1}{2}$

N.B.: The terms "Last Transaction Value" means the original premium where the lease premises or any part thereof has not been sold/assigned or the value on the date of last sale/assignment where the leased premises was sold/assigned in full or part.

[M/o UD letter No. 13019/1/93-LD dated 11.03.1994]

## 8. TERMS FOR GRANT OF SALE PERMISSION

After the calculation unearned increase, terms for grant of permission for sale shall be drawn and referred to the Internal Audit Cell for concurrence. The terms shall comprise of the following:-

- (i) amount of unearned increase payable by the lessee;
- (ii) amount of enhanced ground rent payable by the intending purchaser from the date of execution of sale deed;
- (iii) amount of ground rent upto the ensuing 14<sup>th</sup> January or 14<sup>th</sup> July, whichever is earlier, if not already paid;
- (iv) amount of damages for breaches upto ensuing 14<sup>th</sup> January or 14<sup>th</sup> July whichever is earlier, if the breaches are not removed and the intending purchaser furnishes the requisite undertaking;
- (v) amount of penalty recoverable, if any; and
- (vi) amount of interest recoverable, if any,

The rights and responsibilities accruing from sale permission accorded to a lessee on certain terms and conditions which were to be fulfilled by him before his death, are inherited by the heirs of the deceased lessee. It shall not, therefore, be necessary to work out any fresh terms and conditions in such a case. The case shall be processed further on the basis of old terms after carrying out mutation in the name of the heirs.

## 9. INSPECTION OF THE PREMISES:

There shall be no need to conduct fresh inspection of the permission for considering sale permission application. Terms shall be finalised only on the basis of the available information to ensure that there is no undue delay.

#### 10. GRANT OF SALE PERMISSION:

On the terms being complied with in full, sale permission to the lessee or attorney, as the case may be, shall be granted by the Land & Development Office through a letter in the prescribed format. The lessee or attorney shall execute the sale deed within the valid period of sale permission and shall get it registered with the Sub-Registrar having jurisdiction over the area in which the property is situated. One copy of the registered sale deed duly attested by the Sub-Registrar shall then be furnished to the Land & Development Office. If the sale deed is found to be in order, mutation letter in favour of the purchaser shall be issued. In case of delay in getting sale permission terms or mutation letter, the lessee or attorney, as the case may be, may contact the Public Relation Officer with prior appointment.

#### 11. DURATION FOR WHICH SALE PERMISSION SHALL BE VALID:

If the land rates valid as on the crucial date are not in force at the time of issue of the terms or these rates are not likely to be in force for more than 6 months, the sale permission shall be valid for a period of 6 months.

#### 12. EXECUTION OF SALE DEED:

The sale permission letter also contain that if the sale deed is executed after the expiry of the time limit specified in the sale permission letter, the mutation will be carried out only on payment of the difference in the unearned increase either by the lessee(s) or by the purchaser. A copy of the sale permission letter shall also be marked to the intending purchaser.

If the sale deed is executed within the valid period of the sale permission, the mutation shall be carried out on the basis of certified copy of the sale deed.

If the sale deed is executed after the expiry of the time limit, the demand of the difference in the unearned increase due to revision of land rates shall be raised and realised before carrying out the mutation. However, if the sale deed is executed after the expiry of the time limit and the revision

of land rates has become due but the revised land rates have not been notified when the purchaser approaches for mutation, the mutation may be carried out after obtaining an undertaking from the purchaser agreeing to pay the difference in unearned increase.

[M/o UD letter No. J-13019/1/93-LD dated 11.03.1994].

### 13. SALE WITHOUT PERMISSION:

A lessee shall not sell lease-hold without permission of the lessor where such permission is required and sale without the lessor's permission shall be a breach of the terms of the lease for which the lessor may re-enter the property and the lease-hold rights shall stand forfeited to the state. Such breach may be regularised on payment or penalty in addition to the payment of unearned increase, if recoverable.

If the sale deed is executed without prior permission of the lessor and an application is made for mutation of property, the date of intimation of transfer alongwith certified copy of the sale deed shall be the crucial date for purposes of calculating unearned increase. Though in the normal course, the demand of unearned increase shall be on the lessee, in such cases where the sale deed has already been executed and if the purchaser is willing to pay the amounts, there shall be no objection in raising the demand on the purchaser before carrying out the mutation. In all such cases a penalty of Rs. 3,000/- per annum shall be levied.

N.B.: Transfer of his/her rights in the leased premises by one co-lessee to another co-lessee through a sale/gift/release deed, does not require the permission of the lessor even in restricted leases and therefore such a transfer shall not be treated as a breach of the terms of the lease. No unearned increase shall be recovered in such cases.

[M/o UD letter No. J-13019/1/93-LD dated 11.03.1994]

## **CHAPTER-25**

### **GIFT PERMISSION**

Some leases are un-restricted i.e. prior permission of the lessor is not required before any assignment or transfer of lease-hold rights. However, in restricted leases permission of the lessor is a pre-condition for assignment or transfer of lease hold rights by the lessee. Since gift is a mode of transfer of the property, permission of the lessor shall be granted to the lessees or his duly authorised attorney by the Land & Development Office

#### **2. PROCEDURE FOR SEEKING AND GRANT OF GIFT PERMISSION:**

The procedure for seeking gift permission of the property by the lessee or his duly authorised attorney and grant thereof by the Land & Development Office shall be the same as in the case of grant of permission for sale of the property.

#### **3. GIFT WITHOUT PERMISSION:**

A lessee shall not transfer his/her right in the lease-hold without the permission of the lessor where such permission is required. Since gift is a mode of transfer of property, gift without permission shall be breach of terms of the lease. Such breach may be regularised on payment of penalty of unearned increase, if recoverable. The rates of penalty shall be the same as in the case of sale without permission.

#### **4. GIFT WHEN NOT TREATED AS TRASFTER FOR RECOVERING UNEARNED INCREASE:**

The following two instances of gift of property shall not be treated as transfer and neither unearned increase shall be recoverable nor shall the ground rent revised:-

- (i) Gift of properties to the members of one's own family out of natural love and affection;
- (ii) Gift to a charitable institution subject to its furnishing of a certificate that it has no objection in accepting to property in gift.



## **CHAPTER-26**

### **MORTGAGE PERMISSION**

Mortgage is a transfer of an interest in an immovable property for securing loans. Therefore, in restricted leases, i.e. where the lease deed provides for prior permission of the lessor for transfer or assignment of lease hold rights, it shall be obligatory for the lessee to obtain prior permission of the lessor before mortgaging the premises. Failure to do so shall amount to breach of lease terms of which the property can be re-entered.

#### **2. APPLICATION FOR GRANT OF MORTGAGE PERMISSION:**

A lessee may himself apply for mortgage permission. An agent of the lessee can also apply for mortgage permission provided he or she holds a registered Power of Attorney Deed and furnishes an attested copy of the same alongwith the application.

#### **3. PROCEDURE FOR GRANT OF MORTGAGE PERMISSION:**

On receipt of an application for the grant of mortgage permission, the concerned section shall check up whether there are any breaches of the terms of lease deed already in the knowledge and if so no action on the application shall be taken to the breaches are removed. Where the lessee is unable to remove the breaches but pays damages upto ensuing 14<sup>th</sup> January or 14<sup>th</sup> July, whichever is earlier and also furnishes an undertaking to get the breaches regularised on payment of charges till they removed, the application shall be processed further.

#### **4. PURPOSE OF MORTGAGE:**

A lessee or a duly authorised agent can seek mortgage permission for the following purposes:-

- (i) for raising loan for construction of additions and alterations to the building; or
- (ii) for raising loans for some other purposes like business.

## 5. MORTGAGE PERMISSION FOR RAISING LOANS FOR CONSTRUCTION/ ADDITIONS AND ALTERATION OF THE BUILDING:

If the demised premises is proposed to be mortgaged for raising a loan for construction or additions and alterations on the leased land, the applicant shall furnish the original construction plans duly approved by the local body concerned, alongwith one copy thereof duly attested by the local body, In case there are breaches of terms of lease deed already in the knowledge of the office, the plans shall be examined by the Technical Section under the terms of the lease in order to ascertain:-

- (i) Whether any additional ground rent is involved; and
- (ii) If the additional ground rent is involved, upto what period the same has been paid.

In case the premises are free from breaches as per records of the Land & Development Office, the sanctioned plans shall be got examined by the Technical Section after issue of the mortgage permission. The original set of plans shall be returned to the applicant duly sanctioned under the terms of the lease and the other copies shall be retained in the records of the Land & Development Office. \*After the plans are sanctioned under the lease, and the breaches if any removed or regularised, the applicant shall be asked to deposit a sum of Rs. 30/- towards the cost of forms and preparation of a tripartite agreement. This amount can be paid through Indian postal Order or Bank Pay Order drawn in favour of Land & Development Office, payable at New Delhi.

\*This is only for subsequent lessees.

## 6. TRIPARTITE AGREEMENT:

A tripartite agreement shall be required in case of mortgage permission in favour of LIC or Banks etc. The tripartite agreement shall be prepared by the Land & Development Office in quadruplicate and send to the applicant for execution both by himself or herself and the mortgagee. The lessee shall, after execution both by himself and the mortgagee, return all the four copies to the Land & Development Office for execution by the Authorised Officer on behalf of the lessor. Thereafter all the four copies of the agreement shall be sent back to the lessee for getting the same registered with the Sub-Registrar

in whose jurisdiction the leased land is situated. The registration shall be got done within 30 days of the receipt of the documents by the lessee. At the time of registration, the lessee shall apply to the Sub-Registrar for an attested copy of the agreement showing details of registration, to the Land & Development Office within 15 days of the receipt of the copy from the Sub-Registrar. On receipt of this copy a formal letter of grant of mortgage permission shall be issued by the Land & Development Office.

The lessee shall then proceed to executed the mortgage deed with the mortgagee, have it registered with the Sub-Registrar and furnish a copy of the deed to the Land & Development Office within one month of the date of its execution and registration.

It shall not be necessary to execute a Tripartite Agreement in a case of a mortgage with a Department of the Government of India or Delhi Administration or where a property leased by the Regional Settlement Commissioner is still in the hands of the original lessee. In such cases mortgage permission shall be issued in the prescribed format immediately after the plans are sanctioned under the lease.

#### **7. MORTGAGE WITHOUT PERMISSION:**

Mortgage is a transfer of the demised premises and hence where the lease deed provided that permission of the lessor shall be obtained before any assignment or transfer of the property, it shall be incumbent upon the lessee to obtain prior permission of the lessor to mortgage the premises. Mortgage without the lessor's permission in restricted leases shall be a breach of the terms of the lease. Such breach of terms may be regularised by:-

(i) payment of penalty at the following rates:-

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Area of the Plot	Amount of penalty	
	For a delay upto 2 years in intimating the breach.	For a delay over 2 years in intimating The breach.
a) Less than 200 sq. yds.	Rs. 100/-	Rs. 150/-
b) 200 sq. yds. & above but less than 400 sq. yds.	Rs. 150/-	Rs. 200/-
c) 400 sq. yds. and above but less than 800 sq. yds.	Rs. 200/-	Rs. 250/-
d) 800 sq. yds. and above	Rs. 250/-	Rs. 300/-

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(ii) Execution of a tripartite agreement providing for the recovery of unearned increase etc. in the event of fore-closure of the mortgage.

Where a mortgage comes to notice only after the fore closure thereof, penalty for sale without permission shall also be recovered. The period for the purpose of sale without permission shall be counted from the date of sale or fore-closure to the date on which intimation had been sent to the Land & Development Office.



## **CHAPTER-27**

### **MUTATION AFTER TRANSFER**

Mutation is a process of substitution in the place of the previous lessee, the name(s) of new owners. Upon transfer of the leased premises by way of sale or gift etc., the name of transferee is mutated in the records of the lessor.

On receipt of an application for mutation after transfer of a property, it shall be verified by the concerned section whether the transfer has been effected with the permission of the lessor, if such permission was required to be obtained under the terms of lease. If so, the transferee shall be asked to furnish a copy of the transfer deed, duly certified by the Sub-Registrar.

If the Sale Permission/Gift Permission is granted to the lessee and the sale deed/gift deed has been executed by the lessee itself, strictly as per the permission granted, such sale deeds or gift deeds shall not be referred to Branch Officer or Legal Officer for checking. In such cases the sale deeds or gift deeds, as the case may be, shall be checked in the Section itself and mutation letter put up. If the sale deed or gift deed is executed through attorney, such documents shall be referred to Branch Officer or Legal Officer for vetting.

[No. 24(19)/91-CDN dated 20.7.1992 – Office Order No. 10/92]

If the transfer deed is found to be in order, it shall be checked whether the intimation of r change in possession had been given within the specified period of one month (applicable in all cases of rehabilitation properties and certain cases of old un-restricted leases of land granted by the Land and Development Officer only) and whether other conditions, if any, of grant of permission for transfer had been complied with. If these conditions have been complied with to the satisfaction of the office, a letter intimation mutation of the property in the forms at Annexure.... Shall be issued.

If the transfer deed is found to be defective, the transferee shall be intimated of the defects with the request to get them rectified through a registered deed. If the rectification deed is executed and is in order and all other conditions are complied with by the transferee, mutation of the property shall be done.

Where in a case of transfer of a Rehabilitation Property, intimation is not received within a period of one month from the date of registration of transfer deed, a show-cause notice shall be issued to the purchaser in a prescribed format, for the payment of penalty of Rs. 100/-. This amount is indicated in the mutation letter.

Where, it is found that no permission for the transfer of the property had been obtained under the terms of lease, action shall be taken for this breach of the terms of lease in accordance with the procedure. Mutation of the property shall be carried out in the name of the transferee only after all Government dues have been realised and the conditions precedent to carrying out mutation has been fulfilled by him. Mutation in cases of (i) transfer with permission where such permission is required, and (ii) sale/transfer without permission of the lessor where such permission is not required shall not act as a waiver of the breaches in knowledge of the lessor, if any. Mutation shall, therefore, be carried out, even while the breaches remain unremedied. But it shall be made clear in the Mutation Letter that action for the breaches is being taken separately. Ground rent shall not, however, be demanded or accepted till the breaches are removed or regularised.

Mutation may be carried out only with the consent of lessee where the Sale Deed is executed by the G.P.A. even though the sale permission had been obtained by the lessee by independently applying for the same after execution of G.P.A. if the Principal (Lessee) acts himself it amounts to implied revocation. However, an exception can be made in cases of G.P.A. coupled with consideration which should have been clearly mentioned in the G.P.A. itself.

[No. 24(12)/76-Pt./CDN, dated 23.2.1993, Office Order No. 6/93]

## 2. MUTATION ON TRANSFER OF PROPERTY ON THE BASIS OF COLLUSIVE DECREE:

In cases where the lessee does not have any objection and he being a party to the collusive decree and the decree is registered and this office have absolutely no interest in the transaction and Government interest is not affected, there is no need to go into extraneous items which do not concern this office or Government interest. The registered decree may be accepted and mutation shall be carried out by treating it as transfer.

[No. 24(55)90-CDN, dated 9.2.1993 Office Order No. 2/93]

N.B.: All collusive decree obtained after 13.12.1990 should be registered. [Office order 32/90 dated 13.12.1990 read with office order No. 2/93 dated 9.2.1993].

## **CHAPTER – 28**

### **SUBSTITUTION**

Substitution is the process of mutation of the names of legal heirs on the death of lessee. Application for this purpose shall be made on a plain paper signed by all or one of the legal heirs accompanied by the following documents:-

- (i) Attested copy of the death certificate of the lessee issued by the Local Body.
- (ii) Affidavit in the prescribed format of all the legal heirs, duly sworn before a Magistrate/Sub-Judge if the property is to be substituted in favour of all the legal heirs.
- (iii) Certified copy of the relinquishment deed duly registered with the Sub-Registrar in whose jurisdiction the property is situated, in case one or more legal heirs want to release his/her share in favour of the applicant.
- (iv) Copy of the 'Will' if any, left by the lessee.

If the application and the documents furnished are in order and there is no dispute about the genuineness of the 'Will', substitution letter shall be issued to the applicant within three months. Where genuineness of 'Will' is disputed by any of the legal heirs, the following procedure shall apply in respect of registered or unregistered 'Will'.

In cases, where the property is to be substituted in favour of one or more legal heirs on the basis of a Will (Registered/Un-Registered) the beneficiary/beneficiaries shall be asked to submit affidavit in the prescribed format, alongwith the affidavits of all other legal heirs. If it is not possible for the beneficiary to furnish affidavits from all legal heirs then he/she shall be asked to obtain probate of the 'Will' from a competent Court of Law and furnish certified copy of the same before substituting the property.

[No. 7(4)/69-CDN dt. 24.9.1992 – Office order No. 14/92]

Substitution on the basis of court orders or decree shall be carried out on furnishing by the successor of the property, an attested copy of the death certificate of the lessee and a certified copy of the court order or decree declaring the successor to be the lawful heir to the property.

## **2. PROCEDURE FOR PROCESSING SUBSTITUTION CASES:**

If the property is to be substituted in favour of all the legal heirs when there is no 'Will' or Relinquishment or any other legal documents, the affidavits of the legal heirs and the death certificate shall be checked in the Section concerned and substitution letter put up.

Where the substitution is to be carried out on the basis of the Will/Relinquishment deed/court order or any other legal documents like probate, letter of administration etc. all such documents shall be referred to the Branch Officer/Legal Officer for vetting.

In case of any doubt the matter shall be referred to Assistant Legal Advisor by the Branch Officer, with a proper referring note clearly stating the issue of advice.

[No. 24(19)/91-CDN dated 20.7.1992 – Office order No. 10/92]

Unearned increase shall not be demanded in case of transfer of property among members of the same family at the time of succession. "Family" for this purpose shall mean "husband/wife, as the case may be, mother, father, son, daughter, grand son/daughter, as the case may be. [No. 24(61)/90-CDN dated 30.9.1991, Office order No. 13/91 read with office order No. 21/76 dated 31.3.1976]

Substitution of the property in the names(s) of heirs shall not act as a waiver of the breaches in the knowledge of the lessor, if any. Substitution shall, therefore, be carried out even while the breaches remain un-remedied. In such cases it shall be indicated in the substitution letter that such and such breaches exists in the premises and that action therefor is being taken separately. The ground rent shall not be demanded or accepted till the breaches are removed or regularised.

## **3. REVIEW OF SUBSTITUTION ORDER:**

In case a situation arises where it becomes necessary to review an order passed by an officer, it shall be necessary that the approval of superior officer is obtained before any communication is issued. As for instance in a case where order is issued by the Superintendent and it becomes necessary to review it, orders or approval of the Branch Officer shall be obtained. In case where the order issued is that of the Branch Officer, approval of Head of Office shall be obtained.

[No. 24(7)/86-CDN dated 29.8.1988, Office order No. 9/88]

#### **4. SUBSTITUTION ON THE BASIS OF LETTER OF ADMINISTRATION:**

In certain cases the lessee leaves behind a 'Will' bequeathing the property in favour of one of his legal heirs and appoint another person or the beneficiary himself or herself as Executor for the purpose of administration of the property. In such cases the following procedure shall be applied :-

- (i) Where the beneficiary and the Executor/Administrator is one and the same person, the property shall be substituted straightaway in favour of the beneficiary in accordance with the 'Will'.
- (ii) In cases where the Executor/Administrator happens to be another person, but he gives a letter that he has no beneficial interest in the bequeath property and has also handed over the possession of the property to the beneficiary, the property shall be substituted in the name of the beneficiary without insisting upon the assent deed as the assent given by the Administrator is sufficient to the vesting of beneficial interest and legal title to the beneficiary in accordance with the 'Will'.

[No. 24(7)/76-CDN dated 15.2.1989, Office order No. 3/89]

## **CHAPTER-30**

### **MULTI STOREYED COMMERCIAL & GROUP HOUSING BUILDINGS**

The approved Master Plan in Delhi and Zonal Plans earmarked certain area for re-development as commercial and group housing residential buildings. The Ministry of Works & Housing in their letter No. J-15015/1/71/LII dated 12<sup>th</sup> December, 1972 laid down that the applications for the construction of Multi-storeyed buildings shall be dealt with in the following manner:-

- (i) The commercialisation charges may be worked out, after deducting the area for road widening;
- (ii) No compensation shall be payable to the lessee for the area required for road widening;
- (iii) The additional charges may be worked out on the current land values; and
- (iv) If the lessee is not agreeable and proceeds with construction plans, etc. the property may be re-entered upon.

#### **2. PROCEDURE FOR GRANT OF PERMISSION FOR CONSTRUCTION ON MULTI-STOREYED BUILDINGS FOR COMMERCIAL/GROUP HOUSING PURPOSES:**

Lease Deeds executed with the lessees provide for prior permission/approval of the lessor by the lessees before they undertake construction of any building or part of the building in addition to the one existing on the date of demise. The lessees who wish to convert their demised premises into multi-storeyed building for commercial/group housing purposes shall seek prior approval of the lessor viz., the Land & Development Office. Such permission will be granted inter-alia on payment of conversion charges.

Applications in the prescribed form given below duly filled in and signed by the lessee(s) or his/their duly authorised attorney alongwith the documents mentioned therein and earnest money as mentioned below can be sent by

**APPLICATION FORM**

**FOR PERMISSION TO CONVERT LEASE-HOLD PROPERTIES INTO  
GROUP HOUSING/MULTI-STOREYED COMMERCIAL BUILDINGS**

**(Strike out which is not applicable)**

1. Name(s) of the Lessee(s) :
  2. (a) The status of the applicant(s) :
    - (i) Whether Lessee(s) on record :
    - (ii) Legal heirs of Deceased Lessee(s) :
    - (iii) Attorney of the Lessee(s) :
  - (b) Name(s) of the applicant(s) :  
If the applicant(s) is/are not the  
recorded Lessee(s)
  - (c) If the applicant(s) is/are Legal Heirs. :
  - (d) If the applicant is an Attorney  
whether a certified/attested copy  
of General Power of Attorney is enclosed. :
3. Plot No.\_\_\_\_\_ Block No.\_\_\_\_\_ and Property No.\_\_\_\_\_
  4. Area of Plot :

5. Permissible use of the premises as per Lease Deed :
6. Use as prescribed under :
- (a) Master Plan :
- (b) Zonal Plan :
7. Whether construction for Multi-storeyed commercial building/Group Housing (Strike out which is not applicable) has been sanctioned by Local Municipal Authority ? YES/NO  
If yes, give Reso. No. & date of sanction alongwith a certified copy of sanctioned plans :
8. Whether exemption from competent authority under Urban Land (Ceiling & Regulation) Act, 1976 U/S 20(1) of the Act has been obtained ? If so, an attested copy of the same is to be enclosed. YES/NO
9. Amount of earnest money payable :  
(Please attach demand draft for this amount drawn in favour of Land & Development Officer, New Delhi).

Scale of Earnest Money deposit is as follows:-

Area to be Converted	Earnest money for Group Housing	Earnest money for Multi-storeyed Commercial Buildings
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1.	0.50 acre	Rs. 25,000/-	Rs. 50,000/-
2.	1.00 acre	Rs. 50,000/-	Rs. 1,00,000/-
3.	1.50 acre	Rs. 75,000/-	Rs. 1,50,000/-
4.	2.00 acre	Rs. 1,00,000/-	Rs. 2,00,000/-
5.	2.50 acre	Rs. 1,25,000/-	Rs. 2,50,000/-

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**Dated:**

**Signature (s) of the applicant (s)**

**Address:**

( This application should be signed  
by any of the co-lessees/GPA, if  
there are more than one lessee/GPA holder)

**To**

**The Land & Development Officer,  
Land & Development Office,  
Nirman Bhawan,  
New Delhi-110 011.**

Application not accompanied by the requisite documents and earnest money shall not be entertained.

The earnest money shall be refunded at any time on request of the lessee, if he does not wish to pursue his application for conversion. Once the earnest money is refunded, the application shall be treated as withdrawn. Any subsequent application for conversion shall be treated as a fresh application and land rates prevailing on the crucial date determined with reference to the date of submitted the fresh application shall be taken into account for calculation of conversion charges.

In the event of the terms being offered, the earnest money shall be adjusted against the conversion charges recoverable after the lessee accepts the terms offered and complies with the conditions of the same.

Conversion charges in this context shall mean additional premium and new (revised) ground rent which are calculated by applying the land rates prevailing on the crucial date.

In suppression of all previous instructions the Ministry of Urban Development vide letter No. J-20011/2/90-LD dated 11.1.1995 issued revised guidelines in regard to determination Conversion Charges and other terms pertaining to development of group housing and Multi-storeyed construction (both residential as well as commercial in Delhi and New Delhi) the complete text of these guidelines are at Annexure.

In terms of the guidelines *ibid* the following procedure shall be adopted for determining the crucial date additional; premium, revised ground rent and other terms pertaining to development of group housing and multi-storeyed construction (both residential as well as commercial).

#### 4. CRUCIAL DATE:

The crucial date for determining the land rates applicable for calculation of conversion charges shall be the date of receipt of application (complete in all respects) for conversion accompanied by the requisite documents and the earnest money, where applicable.

In cases where application for conversion has been made or where such application is made after sanction of the building plan, date of sanction of such plan by the local body shall be crucial date.

In cases where application has neither been made nor construction executed in accordance with the originally sanctioned plan but is executed as per the revalidated plan, the date of revalidation of such plan shall be the crucial date.

Application or requests shall be signed either by lessee himself or by an authorised person holding General Power of Attorney of the lessee for this purpose. When there are more than one lessee/GPA holder, the application can be signed by any of the lessees/GPA holders. However, in such cases before communication of the terms, a no-objection certificate on non-judicial stamp paper of appropriate value for granting permission for development shall be obtained by the lessee from the Co-lessees/GPA holders who have not signed the original application.

Considering the fact that in some cases un-registered GPAs were furnished and registration of GPA is not compulsory, production of registered shall not be insisted upon in old cases.

#### 5. DETERMINATION OF CHARGES (ADDITIONAL PREMIUM):

The additional premium for conversion shall be determined with reference to the land rates applicable on the crucial date as per the FAR assigned to the plot as per building bye-laws and zonal plan.

In cases where land rates are linked to prescribed FAR, the same shall be increased or reduced proportionately with reference to the actual FAR applicable on the plot as on the crucial date.

In cases where land rates have been prescribed as per existing FAR, while calculation conversion charges land rates need not be proportionately increased or reduced.

For the purpose of calculation of additional premium in all pending cases, single rate as notified by the Ministry from time to time on the crucial date shall be taken into consideration instead of doubling of the land rates as provided earlier in some cases.

The formula for calculation of additional premium shall be as follows:-

50% of the difference between the commercial or residential land value as the case may be, as per the rate prevailing on the crucial date and those prevailing at the time of last transaction.

6. REVISED GROUND RENT (RGR):

Revised ground rent shall be charged of the notional premium i.e. premium arrived upon by multiplying the land area with land rates applicable at the time of crucial date.

Revised ground rent as above shall be applicable immediately upon the completion of 3 years from the date of communication of terms for conversion, sanction of the plan or from the date of completion/occupation of the building whichever is earliest.

Where the lessee is unable to proceed with the construction due to a court case or any stay order from Govt./local authority, the moratorium from RGR shall be given for the period during which such a stay/ban remains operative. However, lessee shall continue to pay ground rent as applicable before revision during this period.

7. MISUSE AND DAMAGES:

Charges for misuse of the land/building constructed thereon for a purpose other than that for which the land/building was allotted shall be levied from the date on which such misuse is established and upto the date of communication of the terms or sanction of the building plan in accordance with which construction has been executed or date of starting construction whichever is earliest.

8. INTEREST:

Interest shall be calculated from the expiry of the period allowed for making payment as contained in the terms letter i.e. 90 days after communication of the terms.

Additional premium may be permitted to be paid in instalments spread over a maximum period of 3 years. Thus payment of additional premium in instalments would carry an interest on 2<sup>nd</sup> and 3<sup>rd</sup> instalments @

14% (Fourteen Percent) p.a. from the date mentioned in the preceding plan.

Any delay in making payment of the prescribed dues exceeding one year will carry penal rate of interest of 2% per year over and above the normal rate of interest mentioned in the preceding para.

A table showing the manner of recovery of additional premium in instalments and interest on such instalment is brought out as under:-

1. Let Addl. Premium recoverable be : Rs. 3,00,000.00
2. Date of grant of permission : 01-01-1995
3. The full amount can be paid in lumpsum  
on or before 31.3.95 without interest :
4. In case the Lessee wants to pay Addl.  
Premium in instalments, then
  - (a) Ist instalment payable on or  
Before 31.3.1995 : Rs. 1,00,000.00
  - (b) 2<sup>nd</sup> instalment due on 1.1.96  
plus interest on the outstanding  
balance of Rs. 2,00,000.00 @ 14%  
for the period 1.1.95 to 31.12.95 : Rs. 1,00,000.00
  - (c) 3<sup>rd</sup> instalment due on 1.1.97  
plus interest on the outstanding  
balance of Rs. 1,00,000.00 @ 14%  
for the period 1.1.96 to 31.12.96 : Rs. 1,00,000.00

Note: In case there is default in payment of the prescribed duty exceeding one year, penal interest of 2% per annum over and above the normal rate shall be levied.

**9. CONSTRUCTION WITHOUT PERMISSION OF LESSOR:**

In cases where construction has been commenced/or executed without prior permission of the lessor or before complying with the terms communicated by the lessor a charge of 5 % per annum of the additional premium shall be payable from the crucial date to the date when RGR becomes payable.

In case where terms have already been communicated by the L&DO but not acted upon fully by the parties, the demands shall be modified keeping in view the above factors, if a request is made by the party.

In such cases, after recasting the demand as above and adjustment of the amount already paid by the party, on the outstanding amount, interest shall be charged at the rate of 14% (Fourteen percent) p.a. from the due date i.e. expiry of the date upto which the party was required to make payment as per terms letter issued earlier and will be levied upto the date of actual payment.

**10. OVERHEAD CHARGES:**

As the multi-storeyed construction envisage upgradation of the existing services and/or laying down new service lines, in areas where intensive re-development is taking place, overhead charges shall be calculated by reckoning the plot area 491 sq. yds. per acre and multiplying the same by the land rates applicable on the crucial date in all cases where the terms have not been complied with or fresh terms are offered.

However, where the lessee is required to make available land for providing utilities, he shall not be required to pay overhead charges at the time of conversion.

**11. RE-ENTRY CASES:**

In all cases where re-entry order has been made by the lessor for violation of the lease terms, re-entry order shall be revoked after recovered of revocation

charges calculated at Rs. 100/- per day or subject to maximum of Rs. 3,000/- per annum from the date of re-entry to the date of revocation thereof i.e. the date of communication of terms, provided other dues i.e. misuse charges/damages etc. have been paid.

The above discussed guidelines issued by the Ministry of Urban Development shall come into force w.e.f. January, 1995. All cases decided and settled otherwise in accordance with the instructions issued upto 31.12.1994 shall not be re-opened. All pending cases shall, however be dealt with, as a special case, in accordance with the provisions contained in these guidelines provided application to this effect is made by the lessees/their authorised signatories within a period of three months from 1.1.1995/

In cases, however, no such request is received, the terms offered earlier, in accordance with the instructions then in vogue, shall be treated as final and charges so calculated and remaining unpaid shall be recovered as arrears of land revenue under the Land Revenue Act. In other words, this shall be treated as a special amnesty scheme for clearance/settlement of old cases and shall be available for a period of three months only.

[M/o UD letter No. J-20011/2/90-LD dated 11.1.1995]

## 12. EXECUTION OF A SUPPLEMENTARY LEASE DEED AND TRIPARTITE AGREEMENTS:

The lessee shall be required to execute a supplementary lease deed providing inter-alia the following:-

- (i) Restricting the sale, transfer, mortgage or assignment of the building, blocks, flats or any part thereof without the prior permission of the lessor and payment of unearned increase in any of these events;
- (ii) Revision of Revised Ground Rent after every span of years as prescribed by the lessor from time to time; and
- (iii) Keeping a running strip of land in front and near the demised premises free from all encumbrances/structure/construction and surrendering the same to the lessor or his authorised agent as and when called upon.

13. NO OBJECTION CERTIFICATE (NOC) FOR EXEMPTION UNDER URBAN LAND (CEILING & REGULATION) ACT, 1976:

The lessees require exemption under Section 20 read with Section 22 of the Urban Land (Ceiling & Regulation) Act, 1976 for undertaking re-development of the leased lands. The Competent Authority under the Act, ibid asks for a 'No Objection Certificate' from the lessor. Such NOC shall be issued by the Land & Development Office subject to the following conditions:-

- (i) The lessee(s) shall apply for the NOC for the purpose of obtaining clearance under the ULCR Act and shall not make use of the NOC for getting building plans cleared from the local authority: and
- (ii) The lessee(s) shall furnish an undertaking as reproduced below to the effect that he/she shall pay the conversion charges as and when demanded by the Land & Development Office:-

UNDERTAKING FOR EXEMPTION UNDER ULCR ACT

(To be furnished on a non-judicial stamp paper of Rs. 10/- duly witnessed by two persons)

I, \_\_\_\_\_  
son/wife/daughter of \_\_\_\_\_ R/O  
\_\_\_\_\_ hereby undertake as under:-

1. That I/We will pay the conversion charges for the construction of the proposed multi-storeyed building for commercial/group housing purpose at \_\_\_\_\_ which may be communicated to me/us by the Land & Development Office after working out the same; and
2. That I/We will not make use of the 'No Objection Certificate' issued by the Land & Development Office for the purpose of clearance under Urban Land (Ceiling & Regulation) Act, 1976, for getting the building plans of the proposed multi-storeyed building sanctioned from the Local Body i.e. MCD/NDMC.

Signed and executed this on the \_\_\_\_\_ day of \_\_\_\_\_, 199 at New Delhi in the presence of the witnesses mentioned below:-

WITNESSES:-

EXECUTANT

1. \_\_\_\_\_

2. \_\_\_\_\_

#### 14. NOC FOR COMMENCING CONSTRUCTION:

The No Objection Certificate for commencing construction shall be sanctioned by the Land & Development Officer on receipt of the first installment and other charges with the condition that the local body shall sanction the completion and occupation certificate only after all dues are received by the Land & Development Office.

# CHAPTER-31

## GROUND RENT

### (1) CATEGORY OF LEASES:

For the purpose of recovery of ground rent the leases administered by the Land and Development Office can be categorised under the following heads:-

#### **(i) LEASES IN WHICH NOMINAL GROUND RENT IS PAYABLE ANNUALLY**

The properties falling under this category are those leased by the Regional Settlement Commissioner in Appendix-XI and which still stands in the name of the original lessees, their successors or have changed hands only by transfer.

#### **(ii) LEASES IN WHICH ANNUAL GROUND RENT IS PAYABLE IN TWO HALF YEARLY INSTALLMENTS IN ADVANCE:**

In leases falling under the category this annual ground rent is recovered in two half-yearly instalments in advance by the due date in January and July every year.

This category includes:-

- (a) Perpetual Leases by the Land & Development Officer,
- (b) 99 Years leases by the Regional Settlement Commissioner in the form 'Appendix - XI' which have changed hands by transfer twice or more; and
- (c) 90 years leases is leased by the Notified Area Committee.

#### **(iii) LEASES IN WHICH ANNUAL GROUND RENT IS PAYABLE IN ONE INSTALMENT IN ADVANCE:**

In leases falling under this category the annual ground rent is payable in one instalment in advance by the date specified in the Lease Deed which is generally the date of commencement of the lease, for the first twenty years of lease and by the 1st of April every year thereafter. This category comprises

the leases executed by the Regional Settlement Commissioner in Appendix – XII and the like.

(iv) TEMPORARY LEASES:

Temporary Leases extended from time to time.

(Generally on year to year basis)

(2) PROCEDURE FOR THE RECOVERY OF GROUND RENT:

Under the terms of lease it is the responsibility of the lessee to pay the ground rent by the due date (as specified in the Lease Deed) and is not obligatory on the part of the Lessor to make a demand of the same. However in order to facilitate timely payment of ground rent by the lessees it is administratively desirable that courtesy demand notices are sent to them in the form at Annexure – I at least one month in advance of the due date in all cases. Where only a nominal ground rent (Rs. 1/- per hundred sq. yds. of plot area) is recoverable or where in any property governed by any kind of lease there are breaches of the terms of lease, no notice shall be issued.

It shall be the responsibility of the respective dealing hands in the lease sections for timely recovery of ground rent in respect of properties leased by the office of the Land and Development Officer (i.e. original side). In respect of properties transferred by the Regional Settlement Commissioner to this office the responsibility shall lie on the respective dealing hands in concerned Property Sections. Each dealing hand shall maintain a separate register of Ground Rent in respect of properties dealt with by him. The register shall be arranged block-wise and plot-wise and shall also record municipal house number, if available for facility of reference. At the same time, the separate sets one each for:-

- (i) Leases on nominal ground rent;
- (ii) Leases executed in Appendix – XI, which have changed hands twice or more;
- (iii) Leases executed in Appendix – XII and the like forms where the Ist twenty years of lease have not been completed;

- (iv) Leases executed in Appendix – XII where revised ground rent has been fixed after 20 years.

The set of Registers for leases mentioned at (i), (ii) and (iv) above shall be maintained property-wise viz., Block No./ House or Municipal House Numbers, as the case may be but the registers for leases mentioned at (iii) above shall be maintained according to due dates of recovery of ground rent in order to facilitate grouping of properties in which the ground rent falls due on the same date irrespective of their numbers etc. After the expiry of 20 years these registers shall be maintained in the same way as prescribed for (i), (ii) and (iv) above.

The next date of revision of ground rent shall be indicated in red ink in the Remarks column against the relevant year on each ledger folio.

In the 1st week of December and June every year each dealing hand in Lease Sections shall take out files of all the Perpetual lease hold properties (issued by Land & Development Officer) dealt with by him, segregate the files of properties having breaches and prepare demand notices in respect of the remaining properties in the prescribed form and submit them to Supdt. For signatures. On receipt back of the files alongwith the office copies of the Courtesy Demand Notices, the date of issue of each notice shall be noted in the Ground Rent Demand Register of each property for which such notice has been issued.

If, in any case, the lessee wants to make payment of annual ground rent in one instalment in advance, such payment shall be accepted provided that if there are no breaches in the knowledge of the Land & Development Officer. In case there are breaches, the ground rent shall be accepted only if it is accompanied by the charges in respect of such breaches for the year in advance.

A copy of each courtesy demand notice issued by Lease Section shall be sent to Revenue and Accounts Section for watching recovery of dues. Similarly, Property Section shall take out files of properties entered in the register included in item number (ii) above, in the 1st week of December and June every year and issue courtesy demand notices to the concerned lessees, in the prescribed form.

The Section shall also take out files of properties entered in register included in item no. (iv) above in February of every year and issue courtesy demand notice. The demand notices shall be prepared and issued at least one month in advance of the date of which ground rent falls due in each case. After a courtesy demand notice is issued by the Property Section, a note of it shall be made in the Ground Rent Register.

“Courtesy Demand Notice” for nominal ground rent shall not be issued. However, if the Ground Rent is tendered by the lessee, such payment shall be accepted if there is no breach as per the records of the lessor on the date of acceptance. The Ground Rent for five years can be accepted in advance if tendered.

Ground rent in respect of temporary leases or licensed properties shall be demanded as and when the period of lease or licence is extended.

### (3) WATCH ON THE PAYMENT OF GROUND RENT BY THE LESSEES:

Accounts Section, on receipt of a copy of a courtesy demand notice from the Lease or Property Section shall enter the demand in the ledger for watching the recovery of the dues. Revenue and Accounts Section shall also verify the correctness of the demand made with regard to the period and amount. In case of any error the same shall be intimated to the concerned Lease or the Property Section for rectification.

A lessee may be ground rent by depositing it in cash in the Reserve Bank of India or by sending a crossed cheque/Bank Draft in favour of Land & Development Officer. The procedure shall be intimated to each lessee in the courtesy demand notice. Intimation of realisation of the amount by the Reserve Bank of India, is sent to the Land & Development Officer through the first copy of the Challan (CCD-63). Receipted Copies of Challans shall be collected by a clerk of this office from the Treasury once a week.

One receipt of the first copies of challans from the Treasury, the Accounts Section shall enter the amount realised, in each case, in Reconciliation Register, as also in individual property ledger. The entry in the ledger shall be countersigned by Accountant incharge of the Section. Accounts Section shall after posting the amount realised in the ledgers, prepare a Memo in the prescribed format and send it to Lease and Property Section concerned for making necessary entries in Rent Demand Register. Discrepancy, if any, in

the amount demanded and the amount realised shall be indicated in the Memo. Accounts Section shall themselves post the entry in the ledger.

On receipt of a Memo of payment from Accounts Section the dealing hand of the concerned section shall add it to the relevant file, tally the amount realised with the amount demanded and then enter the date of payment in the relevant Ground Rent Demand Register.

On expiry of one month after the due date of payment i.e. in the second half of February and August, every year, each dealing hand of the concerned Section shall scrutinise his Ground Rent Register and initiate action against the defaulting lessees in accordance with the terms of lease.

**(4) RECEIPT AND ENCASHMENT OF CHEQUES/BANK DRAFTS:**

The lessee may either pay the ground rent in cash in the Reserve Bank of India or they may send cheque/Bank Drafts in favour of the Land & Development Officer.

On receipt of a communication from a lessee enclosing therewith a cheque/Bank Draft, the Central Receipt Section shall immediately pass on the same to the Valuable Clerk after entering it in Central Diary Register. The Valuable Clerk shall remove the Cheque/Bank Draft, enter it in the Register of Valuables and keep it in safe custody with him after noting on it the serial number allotted to it in the Register of Valuables. The covering letter and/or challan shall be passed on by him to the Section concerned with the following details entered on it:-

Cheque No. \_\_\_\_\_ dated \_\_\_\_\_ for Rs.  
\_\_\_\_\_ drawn on

Bank \_\_\_\_\_ has been detached and entered at serial number \_\_\_\_\_ of the Register of Valuables.

(Name of  
Section)

Signature

Valuable Clerk

On receipt of the covering letter the concerned Section shall acknowledge receipt of the cheque. The section shall thereafter check up whether the cheque has been sent by the lessee/attorney of the lessee/any other person. In case it is sent by an attorney, a copy of Power of Attorney Deed will be obtained and kept on record, if not already on file. Irrespective of whether a Cheque is signed by the lessee or his attorney or a person other than a lessee, it shall be necessary to ensure that the sender of the Cheque is the lessee himself or the cheque has been sent for and on behalf of the lessee. This is because the Land & Development Officer has to act according to the instructions of the sender and is not guided by the signatory to the Cheque without any instructions. After such scrutiny the Section concerned shall:-

(i) Prepare a challan in the form CCD-63 showing correct head of account or if the Cheque is accompanied by a challan, revalidate it and send it to the Valuable Clerk duly scrutinised and signed by the Officer Incharge of the Section, as the case may be, if there are no breaches of the terms of lease in knowledge; or

(ii) Prepare a letter for the return of the Cheque/Draft to the lessee if there are any un-regularised breaches of the terms of lease, and send it to the Valuable Clerk who shall attach the Cheque/Draft to the fair copy of the letter and get it despatched after making necessary entries in the Register of Valuables.

All letter/Challans with which cheques/bank drafts are received shall be dealt with on priority basis. On receipt of a challan from the Section concerned the Valuable Clerk shall check up whether the amount has been correctly shown therein and correct head of account has been filled in. He shall then attach the Cheque/Draft thereto, make an entry in the Register of Valuables under the column 'disposal', enter the challan in Token Register and send it to the Reserve Bank of India for encashment. The Reserve Bank of India returns the third copy of the challan duly receipted. On receipt of the third copy from Reserve Bank of India, the Valuable Clerk shall note down the date of encashment in Token Register, enter the date of Reserve Bank of India receipt in column 12 of Register for Valuables and post the third copy to the addressee as mentioned in that copy for his information and record.

In the case of lessees who are foreign missions in India, this copy shall be sent by the Section concerned with a forwarding letter.

The Reserve Bank of India Passes on the 1<sup>st</sup> and 2<sup>nd</sup> copies of the challans to the Treasury after encashment of the Cheque/Draft. The 2<sup>nd</sup> copy is retained by the Treasury and 1<sup>st</sup> copy of the challan duly receipted by the Reserve Bank of India shall be collected by the office from the Treasury. The 1<sup>st</sup> copy of the Challan shall be received by Accounts Section which shall keep it in record after making entries in the ledgers.

A weekly report of Cheques/Drafts pending with him shall be prepared by Valuable Clerk and submitted to Administrative Officer who shall place them before the Land & Development Officer as and when desired by the latter.

## **CHAPTER – 32**

### **ACCOUNTS**

The account of all receipts and refunds of revenue shall be maintained by Accounts Section. Accounts Section shall maintain accounts of old leases and Rehabilitation properties by maintaining the following forms and registers:-

- (i) Ledgers for all leased properties dealt with by that section, to keep an account of recovery of ground rent, additional charges, damages etc.
- (ii) Register of Miscellaneous Recoveries, to watch recoveries on account of temporary allotment of land and auction of rights for the removal of sand or stone, grazing and grass cutting rights and damages from squatters etc.
- (iii) Register of Transfers, for keeping a consolidated record of all transfer of leases properties dealt with by them.
- (iv) Register of Refund of Revenue.
- (v) Register of Security Deposits.
- (vi) Reconciliation Register.
- (vii) Register of transfers, for keeping consolidated record of all transfers of leased properties under their charge.

#### **2. MAINTENANCE OF REGISTER OF MISCELLANEOUS RECOVERIES:**

Accounts Section shall maintain a Register of miscellaneous Recoveries, to keep an account of recoveries on account of allotment of land for purely temporary basis such as for holding meetings, charity shows, Ramlila etc. and damages for unauthorised occupation of land. A separate register shall be maintained for each financial year.

On receipt of a copy of a letter of allotment of land or a copy of letter of acceptance of bid of an auction by the purchase or Estate Officer's order demanding damages the dealing hand in the Accounts Section shall make

entries in column 1 to 6 of the Register and submit it to Superintendent who shall check the entries and sign in column 7 in token of having checked.

3. POSTING OF DEMAND NOTICES ETC. IN LEDGERS:

All demand notices and terms for various purposes in respect of leased properties in the original side shall be communicated to the lessees by respective lease section. A copy thereof shall be furnished to Accounts Section in each case. On receipt of copy of a demand notice or letter containing terms for various purposes the dealing hand in Accounts Section shall bring it on the relevant ledger, indicate the number and date of the demand notice or letter in column 2, the nature of charges and the period for which claimed in column 3 and the amount claimed in column 4 of the ledger and submit it to Accountant for attestation. The Accountant will check the entries made by the dealing hand and initial the ledger.

4. PAYMENT OF DUES BY LESSEES AND ENCASHMENT OF CHEQUES OR BANK DRAFTS:

Except in cases of allotment of land for short periods where payment of dues is generally made by the allottees in cash in the Land & Development Office, a lessee may make payment of the dues either in cash in the Reserve Bank of India or by sending a Cheque or Bank Draft to the Land & Development Officer. If a lessee wants to make payment of the dues in cash, the concerned lease Section shall prepare a challan in the prescribed form and send it to the lessee advising him to deposit the amount in the Reserve Bank of India. Where, however, a lessee sends a Cheque or a Bank Draft, it shall be encashed by the Computer Cell and a copy of acknowledgement thereto sent to Section concerned for record.

In either case the intimation of receipt of the amount by the Reserve Bank of India shall be given to the Land & Development Officer by the Treasury, by returning first copy of the challan duly receipted (Bank Receipts) by the Reserve Bank of India.

5. POSTING OF BANK DEPOSITS IN RESPECTIVE LEDGER/ACCOUNTS REGISTER:

Bank Receipts shall be collected from the Pay and Accounts by a clerk of the Land & Development Office once in every week. All the Bank receipts

collected from the pay and Accounts on a particular day shall be arranged date-wise (the date of receipt by the Bank) and posted in the Reconciliation Register in the first instance. The receipts shall then be handed over to the respective dealing hands who shall enter the recoveries in the respective ledgers or registers and submit the same to the Superintendent/ Accountant of the Section. The Superintendent or Accountant shall check each entry and append his initials in the appropriate column. The Accounts Section shall also send an intimation of receipt of dues to the concerned Lease Section by sending them a Memo.

6. REFUND OF REVENUE:

On receipt of sanction of the competent authority of the refund of a specified amount to party, Accounts Section shall prepare a bill for refund of revenue in the prescribed form TR-41, make entries in the 'Register of Refund of Revenue', the ledger or the Register of Miscellaneous Recoveries as the case may be and on the back of the original Bank receipt and submit all the documents to the Accounts Officer.

The Accounts Office shall sign the ledger or the Register of Miscellaneous Recoveries as the case may be and return it to the Section. The remaining documents shall be submitted by him to the Land & Development Officer who shall sign the bill in token of having sanctioned the refund and also attest the entries made in the Register of Refund of Revenue and on the back of Bank Receipt and TR-5. On receiving back the papers, the concerned Section shall despatch or hand over the bill to the payee.

7. RECEIPT, ACCOUNTING AND REFUND OF SECURITY DEPOSITS:

Security deposits shall be demanded in all cases of allotment of land on purely temporary basis for holding meeting, diwans, Ramlila shows etc., and auction of land of various purposes.

All security deposits shall be accepted in cash by the Cashier who will issue receipts to the depositors in the form TR-5. On receipt of a security deposit the Cashier shall immediately prepare a challan for such deposit in duplicate in the form TR-6, and deposit the amount in the Reserve Bank of India. The Reserve Bank of India shall return one copy of the challan duly receipted (Bank Receipt) to the Cashier. On receipt of a Bank Receipt from

Reserve Bank of India the Cashier shall prepare a copy thereof and send it to Accounts Section for their record.

8. ACCOUNTING:

Record of all security deposits shall be maintained by Accounts Section by maintaining a Register of Security Deposits for each calendar year.

On receipt of a copy of a letter of allotment of a piece of land to a party on purely temporary basis or of acceptance of a bid from a Lease Section, the dealing hand in Accounts Section shall note down the details of demand or acceptance of the security deposit by filling in columns 1 to 5 of the Register. On receipt of a copy of Bank Receipt from the Cashier its number and date shall be posted under column 6 of the Register against the appropriate entry. In a case of retention of the security deposit of the second highest bidder where no intimation of demand or acceptance of the security deposit is sent by the Lease Section to Accounts Section, the requisite particulars under column 1 to 5 of the register shall be filled in on the basis of details contained in the copy of the Bank Receipt from Cashier

9. REFUND OF SECURITY DEPOSITS:

All applications for refund of security deposits shall be received by the Lease Section. On receipt of an application for the refund of a security deposits, the Lease Section shall obtain approval of the Land & Development Officer and pass on the file to Accounts Section. The Accounts Section shall obtain the original bank receipts from the Cashier and verify correctness of all entries in the Register of security deposits. A letter shall then be addressed to the claimant asking him to surrender the receipt issued to him by the Cashier and also to collect the refund shall prepare a 'Deposit Repayment Order and Voucher' in the form TR-6 in duplicate, record pay order on the original bank receipt, make entry in the Register of Security Deposit (Column-7) against the relevant item and put up all the three documents for a signature of the Land & Development Officer or Deputy Land & Development Officer. After the documents are signed, one copy of TR-61 and the bank receipt duly endorsed, shall be sent or handed over to the claimant. The file shall thereafter be returned to Lease Section.

(All noting and correspondence in connection with the refund of security deposit shall be done on Lease Section file).

## 10. REGISTERING CHANGES ON ACCOUNT OF MUTATION, SUB-DIVISION ETC. TO LEDGERS:

On receipt of a copy of letter of mutation, the dealing hand in Accounts Section shall:-

- (1) make an entry in the Register of Transfers;
- (2) delete the name and address of the previous lessee on the ledger and indicate the name and address of the transferee in his place;
- (3) indicate the amount of revised ground rent in a case of mutation after second or subsequent transfer of a Rehabilitation property, the lease deed for which was executed in prescribed form or similar other forms; and
- (4) indicate the number and date of letter of authority in the Remarks column of the ledger and put up the ledger to Accounts Officer for attestation.

In a case of sub-division a separate ledger account shall be opened for each sub-divided plot in the same manner as is done in a case of fresh allotment of land and an entry shall also be made in the Remarks column of the Ledger account of the original plot about its having been sub-divided. All such entries shall be attested by the Accounts Officer.

## 11. MAKING ENTRY OF BREACHES OR RE-ENTRY IN THE LEDGER ACCOUNTS:

On receipt of a copy of show-cause notice from the Lease or Property Section, the dealing hand in Accounts Section shall make an entry in remarks column of the Ledger Account of the property indicating the number and date of the due notice, to ensure that ground rent is not demanded or accepted till the breaches are removed or got regularised. Such an entry shall be attested by Superintendent or Accountant.

Similarly, when a property is re-entered, an entry shall be made to that effect in red ink in the remarks column of the ledger account of the property, and such an entry shall be attested by the Accounts Officer. Upon withdrawal of order of re-entry, an entry to that effect shall be made in the Ledger and attested by Accounts Officer.

## 12. RECONCILIATION OF ACCOUNTS:

In order to ensure that all amount paid by the lessee are accounted for and credited to the appropriate heads of account, a cross check of accounts shall be carried out by Accounts Section every month vis-à-vis the accounts maintained by the Pay and Accounts Office. The dealing hand in Accounts Section shall visit the office of the Pay and Accounts in the last week of every month to conduct the reconciliation of accounts for the previous month. He shall cross check all the entries made in the Reconciliation Register for the month of review with those made in the accounts maintained in the Office of the Pay and Accounts and note down the discrepancies, if any. If any omission or discrepancy is noticed in the accounts of the Pay and Accounts, it shall be brought to the notice of the appropriate officer of the office of Pay and Accounts after verification with reference to the records of the Land & Development Office. The omissions, if any, in the Reconciliation Register shall be noted in the similar way and necessary entries shall be made in the Register as also other relevant records.

## **CHAPTER-33**

### **SQUATTING OR ENCROACHMENT OF GOVERNMENT LAND**

During late fifties there was large scale squatting on Government land both under the control of Land & Development Office, and various other agencies such as Delhi Development Authority, Municipal Corporation of Delhi etc. The Government have issued following instructions to the Land & Development Office to ensure removal of encroachments upon land under the control of this Office:-

- (i) In no case shall public land be allowed to be enclosed either by a pucca structure or hedge or barbed wire fencing etc.
- (ii) No objection shall be taken to hedges grown immediately outside but adjacent to the boundary walls.
- (iii) Plot holders, who have not erected boundary walls at the limits of their plots shall be served with notices to put up boundary walls according to the plans approved by local bodies. No extra wicket gates, not included in the sanctioned plans, shall be allowed.
- (iv) Local bodies and the Government would welcome if the plot holders grow lawns and even flowers in open areas adjacent to the plots but without enclosing the area in any way. It would be better not to give leases for this purpose but in case the Corporation insists on giving temporary leases for permitting laying of lawns and growing of flowers without any hedges or fencing or barbed wiring etc., no objection need be taken.

#### **2. ENCROACHMENT ON LAND IN GOVERNMENT COLONIES:**

Encroachment on land in Government colonies shall be dealt with as follows:-

- (i) The Directorate of Estates shall be responsible for taking action against the misuse of land appurtenant to the houses or flats allotted to Government servants. No objection may, however be taken for use of these lands for raising poultry or growing vegetables, flowers etc., by the allottees provided such use does not become nuisance to their neighbors.

(ii) All open land in Government colonies shall be under the charge of Director of Horticulture, Central Public Works Department, who is also incharge of maintenance of these open spaces as lawns. He may continue to deal with the requests of the residents of the localities for use of these lawns for social and religious functions without any charges subject to the condition that any damage done to the lawns shall be repaired at the cost of the party concerned.

The Land & Development Officer who administers Nazul lands shall not be responsible for eviction of encroachments and recovery of damages, etc, from Government servants or any other person in respect of vacant lands, in Government colonies covered by items (i) and (ii) above.

3. SURVEY OF SQUATTERS:

A quick survey shall be carried out twice a year (in winter and rainy seasons) by each Overseer, attached to the Enforcement Section, in the areas allotted to him to find out whether any Government land other than that which is under the control of Central Public Works Department, Director of Horticulture and Estate Office, has been squatted upon. When any squatting comes to notice during such a survey, the Overseer concerned shall note down the particulars of each squatter in a Register (arranged area-wise) known as "Squatters Register" to be maintained by him.

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Sl. No.	Name of Squatter	Father's Name	Approximate area occupied	Whether used for residential or commercial purposes
1	2	3	4	5

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Whether old or_____	Year of occupation	Date of inspection and dated initials of overseer	Date of removal with Sl. No: of the Demolition Register
6	7	8	9

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After the survey is over each overseer shall prepare a consolidated statement in the prescribed form and also prepare a rough plan showing disposition of camps of squatters with other necessary details and send it to Enforcement Section for formulating necessary proposals for the eviction of squatter in consultation with other concerned agencies such as Delhi Administration, Delhi Development Authority, Delhi Municipal Corporation and New Delhi Municipal Committee.

Apart from the half yearly survey, squatting on Government land may come to notice either through intimation given by any party or through routine inspection of an area. The Overseer shall then immediately carry out a detailed inspection of the squatted area, fill in the Inspection Report in the specified format and send it to the Enforcement Section.

On receipt of Overseer's Report the Enforcement Section shall obtain orders as to whether the encroachment be removed straight-away with the help of Deputy Superintendent of Police (Mobile Demolition Squad) or proceedings under Public Premises (Eviction of Unauthorised Occupants) Act be initiated. If it is decided to remove the encroachment straight-away the Deputy Superintendent of Police shall be addressed. Where, however, there is squatting also in adjacent land belonging to any one of the agencies

mentioned above, the Delhi Administration shall be requested to arrange a joint demolition operation in the area.

After the issue of the letter to the Deputy Superintendent of Police (D), the Overseer shall contact the former's office and fix the date for carrying out demolition of structures etc., in consultation with other agencies involved, if any. For joint operation the time and date of demolition shall be fixed by Delhi Administration. The Overseer concerned shall attend the operation in both the cases.

After the unauthorised encroachment is removed, the Overseer shall report this fact to the Superintendent of Enforcement Section.

A record of all demolition operations shall be maintained by Enforcement Section separately for joint operations and other operations as in the following forms:-

- (i) Register of Record of Joint Demolition Operation.
- (ii) Register of Other Demolitions.

### **Register of Record of Joint Demolition Operation**

Sl. No.	S.No.in the register of the area	Location	No. of struct	No. of families	Date of Demolition	Place to which Shifted	Purpose for which land was Required
1	2	3	4	5	6	7	8

### **Register of Other Demolitions**

Sl. No.	S.No. in register Squatters	Locality	No. of squatters removed	Date of Demolition	Remarks File No.
1	2	3	4	5	6

#### 4. PROCEDURE FOR EVICTION OF SQUATTERS UNDER P.P.E. ACT:

In a case where it is decided to start proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 the concerned section shall pass on the relevant file to the Estate Officer along with a brief history of the case and the information required for completing the prescribed proforma.

The Estate Officer shall on receipt of file for eviction under P.P.E. Act, issue a show-cause notice to the squatter, in the prescribed format and return the file to the Section concerned with the number and date of the notice issued to the party and date of hearing duly recorded thereon. This notice shall be prepared in quadruplicate. Three copies shall be handed over to the Overseer who shall serve one copy to the party, paste the second one on the premises and return the third copy to Estate Officer with details of service or pasting of copies duly recorded thereon. If the respondent files any reply to the show cause notice by the due date it shall be considered by Estate Officer. The Respondent shall also be permitted to summon witnesses, produce or call for necessary and relevant documents and be offered all other reasonable opportunities to defend his case as admissible under the law.

The Government shall be represented by the Overseer concerned if the Respondent himself defends the case and by Legal Officer if the Respondent is represented by a Pleader.

If, after hearing both the parties and examining the evidence produced, the Estate Officer is satisfied that the Respondent is in unauthorised occupation of Government land, he shall pass orders for his eviction and communicate the same to the Respondent in the prescribed format, giving him thirty days time to vacate the premises. The respondent can file an appeal against such order before the District Judge within 15 days of the service of the order.

If the Respondent neither files an appeal or brings any stay order from a competent court, nor does he vacate the premises within the specified period, the Estate officer shall issue orders, for his forcible eviction with the help of D.S.P., Mobile Demolition Squad. The Overseer concerned shall, on receipt of a copy of such order, arrange for the removal of encroachment in the same manner as outlined above.

#### 5. CLAIMING OF DAMAGES:

In a case where damages are recoverable from the squatter for the period of unauthorised occupation, the overseer shall calculate damages, fill in

a schedule and a brief history of the case, and submit the case to the Estate Officer through Enforcement Section.

If the Estate Officer is satisfied that the damages are recoverable, he shall issue a show-cause notice to the squatter in the prescribed format. If the Respondent files a reply it shall be considered. He shall be granted a hearing to enable him to represent the case in person. He shall also be allowed to produce documentary evidence and summon witness in support of his reply. The Government shall be represented by the Overseer concerned or the Legal Office depending upon whether the other party appears personally or through a counsel.

If after hearing both the parties, the Estate Officer comes to the conclusion that damages or any other charges are recoverable from the Respondent, he shall pass orders to that effect and issue orders to the Respondent, to make payment of the amount found due, in lumpsum or in such monthly instalments as he (Estate Officer) may deem fit to grant on the merits of the case.

If the Respondent fails to make payment of damages as ordered, Estate Officer shall write to the Collector, Delhi to effect recovery of the amount as arrears of Land Revenue and to credit the sum to Government accounts. All such requests to Collector shall be pursued vigorously till the recovery is made in full.

Where a squatter files an appeal in the District Court against the order of Estate Officer and brings a stay order, the recovery of damages shall be stayed till the appeal is decided by the District Judge. The recovery of damages shall be made in accordance with the decision of that court whose order is binding on both the parties.

Where the District Judge remands the case to Estate Office, the latter will re-consider the case as laid down in the remand order and decide those issues again. A fresh order of recovery of damages shall be issued irrespective of whether the amount of damages remains the same or not. Simultaneously the order of recovery of damages issued previously shall be cancelled. Copies of all such orders shall, invariably, be endorsed to Revenue and Accounts Section and Enforcement Section.

6.

#### MODE OF RECOVERY OF DAMAGES:

The amount of damages shall, preferable, be recovered in cash. As and when a person wants to make payment in cash, the clerk attached to Estate

officer shall make an endorsement in the proceedings file and send it to the Cashier who shall accept the amount and issue a receipt to the person. The Cashier shall also record on Estate Officer's file the amount recovered and the number and date of Receipt issued to the payer. After payment is made, the Cashier shall immediately prepare a challan in the appropriate form and deposit the amount in the Reserve Bank of India under distinct head of account.

#### 7. REGISTER OF DAMAGES:

Enforcement Section shall maintain a record of all damages recovered under the P.P.E. Act. Such record shall be maintained in a Register.

As soon as the Overseer prepares the brief history of the case for submission to the Estate Officer for recovery of damages from a squatter, the dealing hand in Enforcement Section shall make an entry of the claim in the Register of Damages by filling in column 1 to 10 thereof.

On receipt of a copy of Estate Officer's order asking the squatter to pay the damages, columns 11 to 13 of the Register shall be completed.

The Clerk attached to Estate Officer shall maintain a record of amounts received from day to day in compliance with Estate Officer's orders and details of such receipts shall be sent to Enforcement Section on every Monday.

On receipt of intimation of recoveries from Estate Officer's Clerk, Enforcement Section shall complete column 14 of the Register. Superintendent of Enforcement Section shall attest all entries made in column 14 by appending his initials in column 15 of the register and inform the Accounts Section also.

This Register shall be maintained separately for each year and orders issued by Estate Officer during one year shall be entered in the same register irrespective of whether the recovery is effected in the same or subsequent year.

#### • 8. TYPES OF SQUATTERS AND MODE OF RECOVERY OF DAMAGES FORM THEM:

Squatters are divided in the following four categories:-

- (a) Residential squatters.
- (b) Squatters who are petty shop-keepers i.e. those who are running petty shops for sale of grocery and sundry articles for meeting the daily

needs of the squatters of the locality. Dairy-Walas having not more than two cattle are included in this category.

- (c) Commercial squatters who are doing substantial business such as shop-keepers, cabinet makers, owners of workshops, fuel depot holders and Dairy-Walas having more than two cattle etc. etc.
- (d) Religious squatters.

The damages are recovered in the following manners:-

- (a) Period upto 14<sup>th</sup> January, 1966.
  - (i) No damages shall be recovered from pre July, 1960 squatters who were covered under the Jhuggis and Jhompries Removal Scheme and whose cases fall, under categories (a) & (b)
  - (ii) Damages from pre July, 1960 commercial squatters whose cases fall under category (c) shall be recovered from 1st January, 1959 or from the date of occupation, whichever is later, at rates comparable to those Adopted by Delhi Development Authority.
  - (iii) Damages from post July, 1960 squatters would be recovered at rates prescribed from time to time.
- (b) Period after the 14<sup>th</sup> January, 1966.
  - (i) Damages from pre July, 1960 squatters (residential or commercial) occupying Government land upto 50 sq. yds. shall be recovered at the rates adopted by the Delhi Development Authority from time to time.
  - (ii) Damages from pre July, 1960 squatters occupying Government land more than 50 sq. yds. in area and from all post July, 1960 squatters shall be recovered at rates not less than the rates laid down by the Government from time to time for temporary allotment or land for the appropriate purpose.

9. SPECIAL INSTRUCTIONS FOR DEALING WITH CASES OF ENCROACHMENT FOR A RELIGIOUS PURPOSES;

As soon as any encroachment for a religious purpose comes to notice, a note shall be submitted to Lt. Governor seeking his approval to the removal of the shrine. After the Lt. Governor has accorded his approval, the file shall be shown to the Ministry of Urban Development Before proceeding further in the matter. After both of them (Lt. Governor and the Ministry) have approved proceedings shall be started under P.P.E. Act for the eviction of encroached as outlined above. After the orders of eviction against unauthorised shrine are passed by the Estate Officer and the party does not file any appeal or does not vacate the site within 30 days from the date of Judgement order, the Estate Officer shall be required to authorise the Deputy Superintendent of Police (D), to provide necessary police protection to the Overseer incharge of the area and also to use such force as may be necessary to secure the compliance of the order. Where the Deputy Superintendent of Police (D) has not ordered removal of such unauthorised shrines in general rounds, and in such a contingency a formal request shall be made to the Deputy Commissioner to make suitable arrangements for the removal of the unauthorised shrines through Illaqua Magistrate. A copy of the letter shall also be sent to Illaqua Magistrate for advance information. After Deputy Commissioner has passed orders in the matter, the Overseer concerned shall contact the Illaqua Magistrate to fix the time and date of removal of the shrine. After the encroachment is removed, the Overseer shall submit a report to Enforcement Section as in other cases.

## **CHAPTER – 34**

### **LEGAL OPINION ON PROPERTY MATTERS AND LEASE ADMINISTRATION**

ISSUE-1 Whether a lessee of self acquired property (lease in his individual name and not as a Karta of HUF) can throw his property in HUF consisting of himself, his wife, sons / daughters by deed of declaration of Affidavit.

ISSUE-2 Whether the sale deed consisting of the name of the confirming vendor can be accepted.

ISSUE-3 Whether substitution of the name may be done on the basis of relinquishment deed or a Partition Deed may be called for.

ISSUE-4 Whether attestation by the witnesses to the documents is necessary.

ISSUE-5 What are the requisites of a valid Will ?

ISSUE-6 Whether a partition deed effecting partition of the property by metes and bounds can be accepted if sub-division is not allowed.

ISSUE-7 Whether the property leased to a Private Limited Company, managed by a family concern can be mutated in the name of an individual on the basis of an arbitration award, made a rule of the Court: if so whether the Court Decree requires registration because none of the parties have opposed the award in the Court.

ISSUE-8 How is succession of property of a female Hindu governed ?

ISSUE-9 Whether a will executed by Shri Nathu Ram on 5.12.1991 can be accepted for the purpose of carrying out substitution or not, as he was not the lessee of the property on the given date.

ISSUE-10 Whether a contract can be made in favour of a minor ?

ISSUE-11 Whether mutation can be made in favour of the beneficiary when the administrator has expired without issuing the consent affidavit.

ISSUE-12 Whether the substitution of the property may be done in favour of beneficiary alongwith the names of the heirs of the other beneficiaries named in the Will.

ISSUE-13 Whether a sale deed executed by the vender himself/herself in presence of a Power of Attorney executed earlier by the vender in favour of a third party, amount to implied revocation of Power of Attorney or not.

ISSUE-14 Whether mutation is to be made on the basis of the Succession certificate issued by the Administrator General of Union Territory of Delhi under Section 29 of Act 45 of 1963, without asking for the necessary affidavits as provided in the departmental procedure for such case.

ISSUE-15 Whether a vested interest created under a 'Will' can be released even though it is subject to a power of appointment of the first taker having a life interest in the property.

ISSUE-16 Whether a person suffering from profound mental retardation is incapable of holding immovable property in his name as legal heir. Whether it is correct on the part of the applicant to omit the name of Shri Chand from the legal heirs of late allottee because of profound mental retardation.

ISSUE-17 Whether the arbitration award which has been made rule of the court by High Court is binding on the department since the department was not a party to the suit.

Whether in terms of the award, the property was required to be sold but the applicants are insisting for mutation on the said award.

Whether the department can request the party to submit affidavits of the legal heirs or not.

ISSUE-18 How does the property inherited by a female Hindu from her father or her mother on her death devolve.

ISSUE-19 Whether the deed of Disclaimer executed before the Notary Public of the Province of Ontario, requires registration.

ISSUE-20 Whether the sister of the deceased lessee's wife is in the line of succession.

- ISSUE-21 Whether consent of co-lessee is necessary.
- ISSUE-22 Whether a registered document can be cancelled only by a registered Deed of Cancellation.
- ISSUE-23 What is a Hindu Joint Family ?
- ISSUE-24 Whether mutation of the property can be carried out in favour of administrator of a Will.
- ISSUE-25 Whether the claim of a widow who is the legal heir on the death of her husband can be overlooked on the ground of her being of unsound mind as declared in the medical certificate issued by the doctors.
- ISSUE-26 Whether a presumption of death of a person can be made.
- ISSUE-27 Whether a valid partnership can be made in the absence of co-ownership.
- ISSUE-28 Whether a registered Sale Deed can be executed by an Attorney on the basis of an un-registered or unauthorised Power of Attorney.
- ISSUE-29 What is the meaning of "release" ?
- ISSUE-30 What is the effect of a probate which is granted by High Court of Punjab.
- ISSUE-31 What is testamentary succession and what happens in case of a Will.
- ISSUE-32 Where can a document relating to land registered.
- ISSUE-33 Whether a Gift validly made can be revoked.
- ISSUE-34 Whether a Sale deed which is executed by the GPA in his own name and not 'for and behalf of the Lessee' is acceptable.
- ISSUE-35 Whether adoption of the daughter's son by father of the daughter was valid prior to the Adoption and Maintenance Act, 1956;

Whether the legality of adoption can be examined only on the basis of an invitation for marriage of the adopted son.

ISSUE-36 Whether correspondence from DIG, CID, Rajasthan and the certificate issued by Superintendent, district Hospital, Mathura who had performed post-mortem examination, can be taken into consideration as sufficient proof of death of a person, in lieu of death certificate issued by the Registrar of Births and Deaths.

ISSUE-37 Whether a co-owner of a leased property can relinquish his share in favour of the other co-owner.

ISSUE-38 Whether a divorced wife has a right in the property of her ex-husband after his death.

ISSUE-39 Whether release of interests on one or more co-lessee in favour of another co-lessee amount to transfer so as to attract the convenient relating to unearned increased.

ISSUE-40 Whether a 'Will' can be witnessed by the sons of the testator of the Will

ISSUE-41 Whether GPA must be registered in case the Sale Deed is to be executed by the Attorney

ISSUE-42 Whether relinquishment deed executed in foreign country and attested by counsellor agent, Embassy of Tokyo may be accepted without its registration in India.

ISSUE-43 Whether a sale by public auction as per court order in which the ultimate purchaser happen to be one of the co-lessee should be treated as transfer or not.

ISSUE-44 Whether the fact of adoption can be accepted on the basis of Matric Certificate and Character Certificate only.

ISSUE-45 Whether a probate granted by a foreign court holding the genuineness of Will can be enforceable in India.

## OPINION 1

The above question was decided by the Law Ministry on the basis of the decision in the case of Mallessappa Vs. Mallappa, AIR 1961 SC, 1268, wherein examining the incidence of throwing self acquired property into the common stock, the Supreme Court observed as under:-

"Property which is separately acquired, has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, than the said property, becomes a part of the joint family estate. In other words, the separate property of a coparcener loses its separate character by reason of the owners conduct and got thrown into the common stock of which it becomes a part. This doctrine, therefore, inevitable, postulates that the owner of the separate property is a coparcener who has interest in the coparcenary property and desires to blend his separate property with the coparcenary property. There should be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. A mere intention to benefit the members of the family by allowing them the use of the income coming from the said property may not necessarily be enough to justify the interference of blending, but the basis of the doctrine is the existence of the separate property of a coparcenary."

The existence of joint family as well as the joint family property is therefore a pre-condition for blending one's self acquired property with that of joint family property. On being thrown into the common stock, the self acquired property becomes one of the items of joint property. If there is no such property of the joint family, then the deed of declaration will not be valid and will not have the effect of changing the character of the property. If on the other hand, there is any evidence to show that the joint family had its own common stock of property, then the deed of declaration may be treated as valid, having the effect of impressing the self acquired property with the character of joint family property.

The acceptance of formulation of HUF by the Income Tax authorities of HUF by the Income Tax authorities is no doubt a relevant evidence in the formulation of HUF. But the Department would not be bound by the rulings of Income Tax.

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### OPINION 2

The question as to whether Smt. Chander Kanta, the confirming vendor had any right to be a party in the sale deed. It appears that by the agreement to sell between Shri Deva Singh and original lessee and Smt. Chander Kanta, the right of specific performance of contract accrued in favour of Smt. Chander Kanta, which she has foregone for consideration. As such, she became a party to the sale deed as a confirming vendor. It has been held in a Madras case [1947 Mad. 335A (361)(DB)] that contracts capable of specific performance are assignable. Therefore, a person who has a right of specific performance can transfer it, with due consideration.

In view of the above view, I do not see any ambiguity in the sale deed which can make it unacceptable.

### OPINION 3

It may also be kept into mind that the lease hold property cannot be divided by metes and bounds. If the department itself will ask for partition deed, it may create estoppel against the department in future to deny the partition of lease hold property by metes and bounds. This has been reflected by Shri Mulla in his book " Principles of Hindu Law" (15<sup>th</sup> Edition), para 322 as under:

" Once the shares are defined whether by an agreement between parties or otherwise, the partition is complete. After the shares are so defined, the parties may divided the properties by metes and bounds or they may continue

to live together and enjoy the property in common as before. But where they do the one or the other, it effects only the mode of enjoyment but the shares are defined and thenceforth the parties hold the property as tenants in common. If there be a conversion of the joint tenancy by an undivided family into a tenancy in common of the members of the undivided family, the undivided family becomes divided family with reference to the property that is the subject matter of that agreement and that is separation in interest and in right. Although, not immediately followed by a de-facto actual division of the subject matter. This may at any time be claimed by virtue of separate right."

Anyhow it is always safe to mutate in the joint name of all the share or if there is a relinquishment deed then in the name of the person in whose name a relinquishment deed has been made. But we should avoid to call for partition deed in view of the above discussion made by Shri Mulla in his above named book.

[M-85-86 WPN]

#### OPINION 4

Attestation by the Witnesses to the documents is an essential ingredient as provided in the Transfer of Property Act. The registration of a document, without attestation, cannot fulfill the requirement of attestation. As such the Sale Deed without the signature of two witnesses, though registered cannot be presumed to be valid.

## OPINION 5

The following are the requisites of a valid will:-

- i. Due execution in accordance with the statute.
- ii. Animus testandi
- iii. Revocability
- iv. Disposition of property

The second thing required to the making of a good testament is that he that both make it have, at the time of making it, animus testandi, i.e. a mind to dispose, a firm resolution and advised determination to make a testament; otherwise the testament will be void. For it is the mind, not the words, of the testator that gives life to the Will; since if a man rashly, unadvisedly, incidentally, jestingly or boastingly, and not seriously writes or says that such a one shall be his executor, or shall have all his goods or that he will give to such a one, such a thing, this is no will; not to be regarded.

From the perusal of the cases-Lister Vs. Smith tr. 282=33 LJ 29; Trevelyan Vs. Trevelyan I Phill, 149; Nicolus Vs. Nicolus, it transpires that a paper, though testamentary on face of it, and duly executed, may be executed by the deceased with no animus testandi or in other words it may be executed as a sham Will. In such a case it may be shown that it is in reality the offspring of a jest or the result of a contrivance to effect some collateral object and never intended seriously as a disposition of property.

From the above it is clear that the animus testandi is the main criteria on the basis of which a document can be treated as a Will, otherwise that will be treated as a sham transaction or sham document. Moreover, if the existence of some consideration is proved, it can be outright rejected.

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## OPINION 6

In Kalyani Vs Narayanan AIR 1980 SC 1173, it was held "a Hindu father joined with his sons and covered by the Mitakshara Law, in contradistinction to other

managers of Hindu Undivided family or an ordinary coparcener, enjoys the larger power to impose a partition of his sons with himself as well as amongst his sons inter se without their consent and that large power to divide the property by metes and bounds and to allocate the shares to each of his son and to himself would certainly comprehend within its sweep the initial step viz., to disrupt the joint family states which must either proceed or be simultaneously taken with the partition of property by metes and bounds". In Hindu Law " partition does not mean simply division of property into specific share. It covers both division of title and division of property.

[LI.9/2(6)/91]

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### OPINION 7

Section 2 Clause 2 of the Companies Act defines the word Company "Company, means a Company formed and registered under the Companies Act or an existing Company". In any law a Company is a "legal entity" separate from, and capable of surviving beyond the lives of its members. In the case of Salomon Vs. Solomon and Company it was held "like any juristic person, a company is legally an entity apart from its members, capable of rights and duties of its own and endowed with the potential of perpetual succession". A company, being a legal person, is capable of owning, enjoying and disposing of property in its own name. The Company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the Company's property. "Company is the real person in which all its property is vested, and by which it is controlled, managed and disposed of" (M/s Bacha F Guzgar Vs. The Commissioner of Income Tax, Bombay, AIR 1955 SC 74). R.T. Perumal Vs. H. John Davin, AIR 1960 Madras, where their lordship observed that "no member can claim himself to be the owner of the Company's property during its existence or in its winding up".

It may further be seen that the certificate of Incorporation brings the Company into existence as a legal person and that all the capital and assets belongs to the company and not to its members/shareholder.

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### OPINION 8

Section 15 of the Hindu Succession Act deals with the succession of property of a female Hindu. Section 15, Clause-I, Sub-clause (a) enumerate the heirs of a female Hindu which includes Sons, Daughter & the Husband. Sub-clause (b) provides "upon the heirs of the husband".

The word upon the heirs of the husband may be seen in context with the heirs of a male Hindu defined in Section 8 of the Hindu Succession Act the first priority is given to class-I heirs which includes son, daughter, mother, widow, son of a pre-deceased son, daughter of a pre-deceased daughter, son of a pre-deceased son of a pre-deceased son, daughter of a pre-deceased son of a pre-deceased son and widow of a ..... (nine) categories. Category-1 includes single heir viz. Father, Category-2 includes son, son's daughter's daughter, brother and sister. The brother-in-law being the brother of the husband of female Hindu will fall at the No.3 Category-2, Class-II heirs. In absence of the heirs enumerate in Class-I and Class-II Category-I and Category-II item-2, a brother can be taken to in direct line.

[19/116-116A, LPN]

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### OPINION 9

It appears from the referring note that the lease deed was executed on 24.3.1992 in the name of the testator, Shri Nathu Ram. It also appear that Shri Nathu Ram died on 4.7.1993.

Section 90 of the Indian Succession Act provides as under:-

" The description contained in a Will or property, the subject of gift, shall, unless a contrary intention appears by the will, be deemed to refer to and comprise the property answering that description at the death of the testator."

It is one of the established principle of law of Wills that a Will speaks from the date of the death of the testator and not from the date of its execution. According to Section 90, the description of property, the subject matter of beques, contained in will shall deemed to refer to and comprise of the property answering that description at the death of the testator, unless any contrary intention is expressed in the Will.

The instant case may be dealt with in accordance with the above provision.

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#### OPINION 10

Section 7 of the Transfer of Property Act provides that " every person competent to contract and entitled to transferable property is competent to transfer such property" but it is not provided any where in the Act that a person not competent to contract is incapable of being a transferee of property. Transfers in favour of a minor stands on a different footing. A duly executed transfer by way of sale or mortgage, or sale in favour of a minor who has paid the consideration is not void, and is enforceable by the minor, or any one on his behalf.

In the instant case it appears that it is not a purchase of a free hold property but a lease hold right in the property only. The ownership of the property still vest with the Department. A lease imposes upon the minor obligations to pay rent and perform covenants. Consequently, it has been held that a lease to a minor is void (Pramila Bali Das Vs. Jagesher, A.I.R./- 1918-PAT-626) the only exception to this proposition is that a dejure guardian may be appointed by the court in respect of such transfers. As such in the instant case it is not advisable to issue Sale Permission in respect of the lease hold right in favour of a minor.

[Stall No.7, Rani Jhansi Mkt.]

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### OPINION 11

In cases where the administrator expired without issuing the consent affidavit, the Department may act as per advise of the Ministry of Law & Justice dated 31.8.90 in file No. L-I-9/80(35-36)/89, Property No. 69-71, Panchkuin Road". The testator in this case has died. She had appointed two executors for the administration of the Will in which her daughter-in-law was the beneficiary. These two executors were her husband and her son. They have also died, of course, before their death, they did not file with the mutation authorities a letter of assent to the effect that they had not objection to the property being mutated in the name of the beneficiary.

Mutation is an administrative act. The mutating authority can mutate the property if it is satisfied that the title in the property had passed to the beneficiary. I do not find that there is any reason to withhold this satisfaction since a probate has been granted in respect of the Will. This suggests that the Will was a genuine one. Hence, the mutating authorities can mutate the property in favour of the beneficiary."

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### OPINION 12

In so far the legal position of a Will is concerned, it is clear that the beneficiaries named in the Will are the real claimants of the property under Will. It appears that in the instant Will the propety was bequeath by the original lessee in the name of his two sins namely Baldev Raj and Dharam Vir, It appears from the office note that Shri Baldev Raj died leaving behind his widow, son and daughter. It also appears from the office note that the wife of

the original lessee had also expired. Under the circumstances after the death of the wife of original lessee, the property devolved only to beneficiaries named in the Will. After the death of Smt. Tehli Bai, the property will devolve to the beneficiaries named in the Will in equal shares, since the Will shall take effect from the date of the death of original lessee and not the date of the limited owners. It also appears from the note of the Department that the other legal heirs of Shri Baldev Raj, the late beneficiary has relinquished their shares in favour of their mother Smt. Kailash Wadhwa by way of Registered Relinquishment Deed, as such she became entitled to the half share of Shri Baldev Raj and the property may be mutated in favour of both the beneficiaries subject to verification from the applicant as regards the compliance of the order of the District Judge dated 9.10.1990, in writing about the proper administration and submission of inventory and payment of credits which was to be submitted in the Court within the time prescribed therein.

### OPINION 13

It is an established principle that a General Power of Attorney is liable to be revoked in toto if the Principal exercises in person any of the functions delegated to the attorney.

### OPINION 14

The said certificate reads as under "the said Shri Ram Kakkar by virtue hereof is entitled to receive, realise and deal with the said assets here-mentioned left by the said deceased and the said Shri Ram Kakkar undertake to administer the estate of the said deceased in accordance with law".

Section 29 of the Administrator General Act lays down "Whenever any person has died leaving assets within any state and the Administrator General of such state is satisfied that such assets, excluding any sum of money deposited in a Govt. Saving Bank or in any Provident Fund to which the provisions of the provided funds act apply, did not at the date of death exceed in the whole (15 thousands rupees) in value, he may grant to any person, claiming otherwise than as a creditor to be interested in such assets or in the due administrator thereof, a certificate under his hand entitling the claimant to receive the assets therein mentioned left by the deceased within the state to a value not exceeding in the whole (Rs. 15,000/-)".

Section 32 of the Administrator General Act lays down the order of certificate granted in accordance with the provision of Section 29 or Section 30 shall here in respect of the assets specified in such certificate the same powers and duties and be subject to the same liabilities as he could have had or being subject to if letters of administration had been granted to him". It is clear from the above Section that the effect of the certificate issued under Section 29 of the Administrator General Act is limited only to the extent of the powers, duties and liabilities in respect of the assets in question. It nowhere speaks about the right, title and interest in respect of the property in question.

In A.I.R. 1929 PAT-356 Kamala Prasad Vs. Murli Manohar and also in Chetty Vs. Chetty 1916 A.C. 603, it was held " that a grant of administration does not decide any question of title. It merely decides the right to administer". While dealing with the topic of letter of administration under the head Section 218 of Indian Succession Act, Dr. Paras Dewan in his book of law of Intestate and Testamentary Succession has emphasised that the object of proceedings under this section is to determine the question of representation of the deceased for the purpose of administration of his estate and not to determine the question of succession". From the above discussion it appears to me that the certificate in question merely entitles the applicant to receive, realise, deal with and administer the said assets and do not confer the right of ownership on him. As such his name can be mutated as administrator. The department is free to get their procedure complied with and may substitute his name on the basis of the present certificate as an Administrator unless they are satisfied that the applicant is the only successor in interest in the natural course of succession.

## OPINION 15

In this case there is a request for mutation of the property in question in the name of Smt. Kamala Jain, having a life interest. By way of Will executed by the original lessee, the property was bequeathed to his wife Mrs. Kamala Jain for her life and thereafter to his daughter Miss. Manju absolutely and for ever. Miss. Manju had released her interest, which she could have got after the death of Mrs. Kamala Jain, a life interest holder, in favour of Smt. Kamala Jain. A perusal of AIR 1956 SC 1395 reveal as under:-

"a release can be usefully employed as form of conveyance by person having some right or interest to another having a limited estate and release then operates as enlargement of limited estate" - A vested interest in a remainder, even though it is subject to a power of appointment of the first takee, i.e., the person taking the life estate, is assignable. A vested remainder as though created under a Will, is transferable. It is immaterial that such a right falls into possession on the termination of an earlier life interest created in the property.

[B-39, AB, Kalkaji]

## OPINION 16

Section 2 of the Hindu Inheritance (Removal of Disabilities) Act, 1928 provides "notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by Hindu Law, other than a person who is and has been from birth a lunatic, idiot shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity, or physical or mental defect."

Prior to the Act of 1928, one who was a lunatic at the time of succession even though the lunacy was not congenital, was disqualified from taking the inheritance. But in order to disqualify a person from inheritance on the ground of lunacy, idiocy, he had to be shown that he was not capable of distinguishing between right and wrong. (Bhagawati Saran Vs. Parameshwari ILR (1992), ALL, 518). Test of lunacy a person who is incapable of protecting his own interest although capable of understanding simple words of command is insane in the sense that he is debarred from participation in the ancestral estate. Under the Hindu Law governed by the Mitakshasra, his right as a co-parcener was not so effected by the qualification to prevent him taking the whole estate by survivors after the death of the co-parceners. (DEV NATH LEKHA, 1946 PAT 419). It was further held in SURTI Vs. NARAIN 12-A530 that where a person is sought to be excluded on the ground of his mental defect, the onus is on the party alleging it to make out his allegation.

Section 28 of the Hindu Succession Act also deal with disease, defect etc. On page 2.168 of the book Law of Intestate and Testamentary Succession by Dr. Paras Dewan, certain diseases have been mentioned as the disqualification prescribed in the Mitakshara Law. It includes congenital, or idiocy.

From the above discussion, it is clear that the only disqualification in inheriting the property is congenital, lunacy or idiocy. The medical report on record mentions "Profound mental retardation". They have further stated that this condition is likely to have been present since early childhood. It means that the Board issuing the medical certificate had no firm view about the disease being present by birth which is required under the Act for disqualifying a person from inheriting such disease.

In my opinion, a judicial pronouncement to this effect will only be a perfect evidence for debarring such persons from inheritance.

[C/77-78, WPN]

OPINION 17

In so far as the point No.1 is concerned, the decree in which the department was not a party, is not binding on the department.

Secondly, as per award, the property was required to be sold and the sale proceed was required to be divided amongst the legal heirs, so the mutation on the basis of this award may not be claimed.

Thirdly, the department is free to call for the necessary document as per their procedure in this regard.

Any how, it appears from the note that the property would have passed on to all the five legal heirs in natural course of succession after the death of the lessee, as their sons and daughters, had there been no decree of the court.

[L-IV/48/103, Diplomatic Enclave]

### OPINION 18

Section 15 Clause (2) of Hindu Succession Act lays down:-

"Notwithstanding anything contained in sub-section 1(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased not upon the other heirs referred to in sub-section (1) in the order specified therein but upon the heirs of the father.

The perusal of clause (2) of Section 15 reveal that the property inherited by a female Hindu from her father or mother shall devolve on her sons and daughters and in absence of sons and daughter, it will devolve on the heirs of the father.

[10/14, East Patel Nagar]

## OPINION 19

Section 17 (1) (b) of Indian Registration Act provided "Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right title, or interest, whether vested or contingent of the value of Rs. 100 and upwards, of immovable property, shall be registered".

The instant Deed of Disclaimer extinguishes the right of Mrs. Nancy Chawla in respect of the property in question after the death of her husband Mr. Anil Chawla. As such, this deed of Disclaimer is required to be registered under Section 17 (1)(b).

Section 23 of Indian Registration Act provides "subject to the provisions contained in Section 24, 25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution".

In view of the above discussion, I am of the opinion that the Deed of Disclaimer must be registered as required under Section 17 (1)(b) of Indian Registration Act.

[R/804, New Rajinder Nagar]

## OPINION 20

Wife's sister do not fall in the direct line of succession. As such it is for the department to decide whether, to realise unearned increase from her under office order No. 1/88 dated 1.2.88.

## OPINION 21

The property stands in the joint names of co-lessees. As such they are the co-owners of the property in question. The position of a co-owner was clarified in Mohesh Narain Vs. Nawbat I.C.L.J. 437; 32-CAL. 837 " each co-owner is in theory interested in every infinitesimal portion of the subject matter and each has the right, irrespective of the quantity of his interest, to be in possession of every part and parcel of the property, jointly with other". From the above precedent it is clear that unless there is a partition both the co-lessee have interest in every part and parcel of the property in question. As such the consent of the other co-lessee appears to be reasonable.

## OPINION 22

Section 50 of the Indian Registration Act lays down: (I) every document of the kinds mentioned in Clause a, b, c and d of Section 17, sub-section 1 and clauses a, b of Section 18, shall, if duly registered take effect as regards the property comprised therein against every unregistered document relating to the same property and not being a decree or orders whether such unregistered document be of the same nature as the registered document or not.

The perusal of the above Section reveal that a document which is required to be registered under Section 17 clause a, b, c and d or had been registered under Section 18 clause a and b, shall take effect against every unregistered document relating to the same property.

In the instant case the Agreement to Sell falls under Clause 'b' of Section 18 and since it is registered it will take effect as regard the property comprised therein, against every unregistered document relating to the same property whether it is a Cancellation Deed or any other document.

As such, a registered deed can be cancelled only by a Registered Cancellation Deed.

### OPINION 23

A Hindu Joint Family has been defined at page 201 of Hindu Law by Professor S. Venkataraman as "A Hindu Joint Family consists of male members descended lineally from a common male ancestor, together with their mothers, wives or widows and unmarried daughters bound together by the fundamental principle of Sapindaship or family relationship which is the essence and distinguishing feature of the institution (Karson Das Vs. Ganga Bai, 32 B-479, Gowli Buddana Vs. Commissioner of Income Tax 1966, 60 I.T.R. 293).

### OPINION 24

Shri Sudershan Dayal Mathur had been granted a letter of administration for proper administration of the Will. As such he can only be mutated as an administrator having no right to transfer the property without previous permission of the court and not as legal heirs.

[25, Abul Fazal Road]

### OPINION 25

The administrative department is not a judicial body to assess the medical certificates and come to a conclusion that the person in question is of unsound mind. It is for the court to assess the question of unsound mind on the basis of necessary medical certificate after cross examining the authorities issuing the same.

[39/11, Tehar-II]

### OPINION 26

Section 107, Indian Evidence Act lays down that when the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirm it.

Section 108, Indian Evidence Act lays down that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of himself he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

These presumptions can be drawn only by the Competent Judicial Courts on the facts made available to them by the party who alleges the presumption of death. It is not for the administrative authority to straightaway presume the death of a person who has not been heard for the last seven years, in absence of any judicial pronouncement.

[4/19, West Patel Nagar]

### OPINION 27

The very material point in regard of partition is that partition can take place between the co-owner only. If a property is possessed by individual who are co-owners, all co-owners have equal rights and coordinate interest in the property. Each co-owner is in theory interested in every infinitesimal portion of the subject and each has the right, irrespective of the quantity of his interest, to be in possession of every part and parcel of the property jointly with the others (Mohan Narain Vs. Naubat, I-CNJ-437: 32 CAL. 837). Each joint owner has the right to the possession of all the property and in common equal to the right of each of his companions in interest and superior to that of all others. He has the same right to use and enjoyment of the common property that he has to his sole property, except in so far as it is limited by the equal right of his co-sharers (Devendra narain Vs. Narendra 23 CWN-900: 29 CLJ-504). Every co-owner is entitled to dispose off his interest in the joint property, unless prevented from doing so under any law, e.g. a co-partner under the Mitakshara law. The test of co-ownership is co-ordinate interest. If the interest of one is subordinate or higher in degree to the other, there is no co-ownership between the two.

#### OPINION 28

Section 32, clause (c) of the Indian Registration Act provides about presenting documents for registration by an agent. It lays down "by the agent of such person, representative, or assign duly authorised by power of Attorney executed and authenticated in the manner herein after mentioned".

Section 33 (1)(a) provides " for the purposes of Section 32, the following Power of Attorney shall alone be recognised (a) if the principal at the time of executing the Power of Attorney resides in any part of India in which the Act is for the time being in force, the Power of Attorney executed before and authenticated by the Registrar or Sub-Registrar within whose District or Sub-district the principal resides".

In view of the above provisions a GPA not duly executed and authenticated as per provisions of Section 33 (1) (a) of Indian Registration Act, i.e. for presentation of any deed for registration.

[2IV/4 Old D/S Lajpat Nagar]

OPINION 29

The word release as defined at page 1101 in the Law Lexicon is "The gift of discharge of a right of action which anyone has against another or his land".

The word release as defined in the Mitra's Legal Dictionary is "To give up or relinquish any right or claim upon another person or against any property".

Article 55 of Indian Stamp Act defines "release that is to say, any instrument (not being such a release as is provided for by Section 25-A) where by a person renounces a claim upon another person or against any specific property.

[Shop No. 40, Khurshid Market]

OPINION 30

The probate granted by the High Court of Punjab is perfectly Legal and conclusive as provided under Section 273 of Indian Succession Act. The instant case is covered under the provision of the said Section, which provides "provided that probate and letters of administration granted [a] by a High Court or [b] by a District Judge, where the deceased at the time of his death had a fixed place of abode situated within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate effected beyond the limit of the estate does not exceed Rs. 10,000/- shall, unless, otherwise directed by the grant, has like effect through-out the other states".

[C/438, Defence Colony]

### OPINION 31

In so far as the testamentary succession is concerned, it is totally governed by the terms of the testament and not under the rule of General Succession. Since in the instant case, there is a 'Will' the property will devolve on the beneficiary of the 'Will' for her use and benefit. The question of devolution of the share to the mother will arrive only in case where there is no 'Will' and the succession took place under the Law of Hindu Succession Act.

(A-317, Defence Colony)

### OPINION 32

Section 28 of the Registration Act provides for the place for Registration of documents relating to land. Under the said provision the said documents shall be presented for registration in the office of the Sub-Registrar within whose Sub-District the whole or the some portion of the property to which such documents relate is situate. The instant relinquishment deed has neither been registered in accordance with Section 28, nor has been registered in any Presidency Town of India. As such, the registration of the deed can only be done as provided under Section 28 of the Registration Act.

(86, SPN)

### OPINION 33

Once a valid gift has been made and registered which had been duly accepted by the donee and the possession had been delivered accordingly, it can not be revoked. The salient feature of a gift under Hindu Law is that it cannot be revoked. A gift once completed is binding upon the donor and it cannot be revoked by him unless it was obtained by fraud or undue influence.

#### OPINION 34

Section 2 of the Power of Attorney Act, 1882 provides as follows:-

The Donee of a Power of Attorney, may, if he thinks fit, execute or do any assurance instrument or thing, in and with his own name and signature, and his own seal, where sealing if required, by the authority of the Doner of the Power; and every assurance, instrument and thing so executed and done shall be as effectual in law as if it had been executed or done by the Donee of the Power in the name, and with the signature and seal of the Donar thereof".

In this case, the deed of Power of Attorney provide as under:-

"I, Mool Raj Malhotra nominate Shri Jaswant Lal Khurana as my General Attorney, to do the following acts, deeds and thing in my name and on my behalf".

The above wording of the Power of Attorney requires that the work should be done only in the name and on behalf of Shri Mool Chand Malhotra. On the other hand the sale deed though has a mention but is not in consonance with the wordings of the Power of Attorney.

Though the instant problem is covered under Section 2 above of the Power of Attorney Act but for precaution, we may ask for an affidavit from Shri Mool Raj Malhotra recognising the sale deed made by attorney in favour of Ravi Kumar Khurana.

## OPINION 35

Prior to the Hindu Adoption and Maintenance Act, 1956, the adoption was to be made under the Hindu Code. The essential ingredients of valid adoption were as under:-

1. The Person adopting is lawfully capable of taking in adoption.
2. The Person giving in adoption is lawfully capable of giving in adoption.
3. The person adopted is lawfully capable of being taken in adoption.
4. The adoption is completed by an actual giving and taking.
5. The ceremony called Datta homam has been performed. It is, however, doubtful whether the Datta homam ceremony is essential in all cases to the validity of adoption.

There was certain prohibition in respect of a person who may be lawfully taken in adoption. One of the restrictions was that "he must not be a boy whose mother the adopting father could not have legally married; but this rule has been restricted in many recent cases to the daughter's son, sister's son, and mother's sister's son.

In view of the above restrictions, it is clear that a father cannot adopt the son of his daughter because he could not have married his mother being his own daughter. In the instant case the father-in-law has adopted the son of his son-in-law. As such, the instant adoption is perfectly invalid.

The second essential ingredient of a valid adoption under the Hindu Code was the physical act of giving and receiving, with intent to transfer the boy from one family into another. This ceremony was the essence of adoption, and the law does not accept any substitute for it. To constitute giving and taking in adoption all that is necessary is that there should be some overt act to signify the delivery of the boy from one family to another. The law required that the natural parent should hand over the adopted boy and the adopting parent should receive him. In the instant case, this essential ingredient is also absent. The mere submission of marriage card showing the parents cannot be taken into consideration as a relevant proof of adoption.

On the basis of above discussion it is clear that two essential ingredients of a valid adoption i.e. the adopting father could have legally married the mother of the son taken into adoption and secondly the ceremony of physical giving and taking, are totally absent.

## OPINION 36

The registration of birth and death had been made compulsory by the Registration of Birth and Death Act, 1969. In so far as the fact of birth and death is concerned, that can be established by way of the certificate issued by the Registrar concerned.

In the instant case, the applicant had submitted certificate correspondence from DIG, CID (Crime), Rajasthan and the Superintendent, District Hospital, Mathura. These evidences are presumptive in nature and can be taken into consideration by any judicial authority while confirming the death of particular person. The Administrative Ministry can not sit on judgement and therefore they can not come to a conclusion regarding the factum of death on the basis of the documentary evidence produced by the applicant.

The applicant may be asked to produce the death certificate issued from the office of the Registrar of Birth and Death or to produce an order confirming death by a judicial authority.

Section 13 (3) lays down "any birth or death which has not been registered within one year of its occurrence shall be registered only on an order made by a Magistrate after verifying the correctness of birth and death and on payment of prescribed fee".

In my opinion, the applicant may be advised to taken recourse of Section 13 (3) of the Registration of Births and Deaths Act. It is also felt that the authorities concerned where the death took place, are required by the said Act the Superintendent of the Hospital where the post-mortem was done and the corpus was kept might have given the information to the Registrar concerned. In case, they have not done it, the applicant may act in accordance with Section 13 (3) of Act and get the certificate. Otherwise, he may seek proper remedy in a Judicial Court and obtain the necessary certificate.

### OPINION 37

This point was earlier considered by the then A.L.A. who opined as under:-

“The lease was granted in the name of two persons (1) Champa Devi and (2) Raj Kumar. The one co-lessee Champa Devi died and on her death Shri Krishan Kumar stepped into her shoes. Hence, Shri Krishan Kumar and Raj Kumar are owners of co-ordinate estates and are not concurrent owners. The owner of one coordinate estate cannot transfer his similar estate to augment the right by executing a Relinquishment Deed. Therefore, the applicant may be advised to execute a duly registered conveyance deed i.e. gift deed or the sale deed”.

It may be seen that where the aggregate of rights, which form the ownership, is held and enjoyed by one person, he is the sole owner of the property. He may enjoy all these rights exclusively or he may assign or part with some of them. If the assignment relates to a portion of the owner's right as for example by way of lease or mortgage, the assignee acquires a limited right and the ownership of the assigner is to that extent limited. But if the assignment is of some interest or share of the ownership itself, both the assigner and the assignee becomes holder of coordinate interest in the property and they hold as co-owners. In the same way, when several persons acquired any property either in equal or in unequal shares, they become co-owners in respect of such property. These are some of the modes in which co-ownership comes into existence.

All co-owners have equal rights and coordinate interest in the property. But their shares may be either fixed or indeterminate. If the shares are known, they need not be equal. But whether the shares are known or indeterminate and whether the shares are equal or unequal every co-owner has a right of enjoyment and possession equal to that of the other co-owners. Each co-owner is in theory interested in every infinitesimal portion of the subject matter and each has the right, irrespective of the quantity of his interest, to be in possession of every part and parcel of the property, jointly with the others. Each joint owner has the right to possession of all the property held in common equal to the right of each of his companions in interest and superior to that of all other persons. He has the same right to the use and enjoyment of the common property that he has to his sole property, except in so far as it is limited by the equal right of his co-sharers. Every co-owner is entitled to dispose of his interest in the joint property, unless prevented from doing so under any law, e.g. a co-parcener under the Mitakshara law.

From the above discussion, it is clear that a co-owner can dispose of his property to another co-owner. The word "dispose of" can not be legally termed 'transfer' as defined in TPA. It may include relinquishment too.  
(Shop No. 15, SPN)

### OPINION 38

Section 21 of Special Marriage Act provides "notwithstanding any restriction contained in the Indian Succession Act, 1925 with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purpose of this Section, that Act shall have effect as if Chapter-III of para-V (special rules for parcy intestate) has been omitted therefrom.

The perusal of page 2,220 of Book on Law of Intestate and Testamentary Succession by Dr. paras Dewan that succession to the persons who marry or whose marriage is registered under the provisions of Special Marriage Act is regulated not by the personal law of the party concerned but by the provisions of the Act. However, if both the parties who have solemnized their marriage under the Special Marriage Act are Hindus, then succession to the property of either party will be governed by the Hindu Law, i.e., the Hindu Succession Act and not by the Act.

It further appears from the facts of the case that the parties were Hindus. As such, the succession will be governed as per provisions of Hindu Succession Act as stated above. In so far as the Hindu Succession Act is concerned, Section 8 provides the persons who will succeed as Class I heirs on the death of an intestate male Hindu. It includes widow, son, daughters, mother etc.

The word 'widow' as explained therein do not include a divorced wife. Anyhow, it is very clear that once a divorce has been granted by the court, the said relation between the wife and husband ceased and the lady cannot be termed as a widow of the said husband. As such, she cannot succeed to the property of her divorced husband.  
[Plot No. 12, NH-IV, Lajpat Nagar]

## OPINION 39

The release of interest of one or more co-lessee in favour of another co-lessee does not amount to transfer so as to attract the covenant relating to unearned increase. This would apply to the following cases:-

1. Where a lease was initially executed by the lessor in favor of joint lessee, and one more co-lessee execute Release Deed in favour of the other co-lessee(s)
2. The original lessee may transfer his lease hold interests in favour of more than one person. Such transfer, of course, would be effected subject to payment of unearned increase. On transfer, such persons would become joint lessee. If one of such joint lessee execute a Release Deed in favour of his co-lessee it will not amount to transfer for the purpose of unearned increase.
3. It is possible that an existing lessee may admit another person or persons to have share in his lease hold interests, by any mode amounting to transfer inter vivos (that is between the parties). This would amount to transfer so as to attract the unearned increase covenant and the transaction should first be regularised as such. Such new person would become joint lessee after regularisation of transfer of the existing joint lessee's interests in his favour to the extent agreed to by the existing lessee. In other words, such transaction would amount to transfer of interests by a existing lessee to a stranger to the lease. Such transfer could be either of whole of the interests of an existing lessee or any specified part thereof. The new lessee, therefore, should not be treated at par with the co-lessee referred to (i) and (ii) above. Therefore a Release by the existing lessee in respect of his remaining share, in favour of a new co-lessee should be treated as transfer and not Release

The above would show that unearned increase becomes payable at the stage of each transfer to the extent the lease hold interests are transferred on each occasion, whereas it remains permissible for the transferee of one transaction of transfer to have nay transactions or arrangement among themselves without any further because in such arrangements the question of payment of an unearned increase, having been already paid, does not arise. But where the transfer at one stage is not of the whole interest, an unearned increase for the remaining interest becomes payable, as and when such remaining interest is transferred.

No un-earned increase will be payable in the case of Release by one co-lessee in favour of the other if such lessee have acquired the lease hold interests, jointly with others by way of succession, intestate or testamentary.

#### OPINION 40

Under the provisions of Indian Succession Act, a Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will in the presence and by the direction of the testator, or has received from the testator, a personal acknowledgement of his signature or mark, or of the signature of such other person and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time and no particular form at attestation shall be necessary. Under the provision of the same Act, no person, even if he or she is a beneficiary in the Will of the bequeathed property, shall be debarred from being a witness of the Will.

It has, therefore, been established by the relevant sections of the said Act that a son is also not debarred to be an attesting witness in a Will. At the same time the beneficiary in the Will can also be a valid witness. [D-213-214, West Patel Nagar]

#### OPINION 41

In case, it is the Attorney who has to execute a registered sale deed on behalf of the original lessee in favour of the vendees, the Power of Attorney must be registered. In case the Power of Attorney is not registered, a registered sale deed cannot be made on the basis of an un-registered Power of Attorney. Section 49 of the Indian Registration Act lays down "No document required by Section 17 (or by any provision of the T.P.A. 1882) to be registered shall:-

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered (provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of part-performance of a contract for the

purposes of Section 53-A of the T.P.A. 1882, or as evidence of any collateral transaction not required to be effected by registered instrument).

In view of the above provision, in case the Sale Deed is to be executed on the basis of the Power of Attorney, the same must be a registered one.

[C-502, Defence Colony]

#### OPINION 42

Section 17 (i)(b) provides as under:-

"Other non-testamentary instruments which purport or operate to create, declare, assign limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent of the value of Rs. 100/- or upward of immovable property shall be registered. The perusal of the above clause reveal that in a non-testamentary instrument extinguish the right of a person is required to be registered under Section 17 (i)(b) of the Indian Registration Act".

In AIR 1969 Orissa page 11 it was held that relinquishment of the immovable property valued over Rs. 100/- can only be by a registered document.

In AIR 1967 SC page 401 it was observed "a deed of relinquishment is in the nature of a gift". A gift deed is required to be registered under Section 17(i)(a) of the Indian Registration Act.

On the above discussion it is clear that Relinquishment Deed in order to be operative in law must be registered under Section 17 of the Registration Act, when the amount of the claim to the interest in the immovable property which is extinguished of the value of Rs. 100/- of upward.

Further, Section 23 of the Indian Registration Act lays down "subject to the provision contained in Section 24, 25 and 26 no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.

Section 26 of the Indian Registration Act provides the procedure for documents executed out of India. It lays down "when a document purporting to have been executed by all or any of the parties out of India is not presented for registration till after the expiration of the time herein before prescribed on that behalf the Registering Officer, if satisfied:-

- (a) that the instrument was so executed.
- (b) that it has been presented for registration within four months after its arrival in India may on payment of the proper registration fee, except such document for registration.

It was held in *Nensukh Vs. Goverdhan Dass* AIR 1948 NAG 110 where a document affects immovable property situated in India, it cannot be valid unless registered, even if it is executed outside India.

With the above discussion it is clear that the relinquishment deed executed outside India cannot be taken into consideration for want of registration.  
[M-11/20, Lajpat Nagar]

#### OPINION 43

In Law Lexicon at page 1293 it is stated " the expression 'transfer' by itself is not all together appropriate to indicate a sale in invitum by the court and therefore, provision regarding Voluntary transfers will not apply to transfer by court sale (AIR-1928-MAD-571)".

The word public auction as defined in the Law Lexicon is "a sale of property on auction, where any and all persons who choose are permitted to attend and offer bids. Though this phrase is frequently used, it is doubtful whether the word public adds any thing to the force of the expression since auction itself imports publicity. If there can be such a thing as a private auction it must be one where the property is sold to the highest bidder, but only certain persons or a certain class of persons are permitted to be present or offer bids, as in the case of an auction sale of property under the Partition Act, where the right to bid is confined to the co-sharers".

"Transfer is a word of wider import than sale. A transfer may be by means of a lease or mortgage or sale or by any other mode. (*Union of India Vs. Maksud Ahmed*, A.I.R. 1963-BOM-1110).

I have seen the decree dated 19.1.1985 passed by Smt. Urmila Rani in suit No. 103/63 & 436/83 Kanhiya Lal Vs. Smt. Jamuna Devi & others. The learned court has ordered "this property shall be sold by public auction and the said proceed thereof shall be distributed amongst the above mentioned persons in the said proportion". This was passed in a suit for partition of joint Hindu family.

In view of the above discussion it is clear that as per definition of the word transfer as given in Law Lexicon, it is not appropriate to indicate a sale in invitum by the court and the provision regarding voluntary transfer will not apply to transfers by court sale.

For argument sale if we term it a transfer, it may make no difference in case where the purchasers are co-lessees because in public auction, the purchaser can be any one. Moreover, in the case of an auction of property under the partition act, the right to bid is confined to the co-sharers. Though it is not clear from the wording of the decree as to whether it was confined to the co-sharers or not but it being a suit for partition and a rendition on account, such presumption is more likely.

#### OPINION 44

Section 5, Chapter-2 of Hindu Adoption and Maintenance Act, 1956 provides:-

- (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this chapter, and any adoption made in contravention of the said provisions shall be void.
- (2) An adoption which is void shall neither create any right in the adoptive family in favour of any person which he or she could not have acquired except by the reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

Section 6 of the Adoption Act lays down the requisites of valid adoption. No adoption shall be valid unless:-

- (i) the person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption;

- (iv) the adoption is made in compliance with the other conditions mentioned in this chapter.

The other conditions have been mentioned in section 11 of the Adoption and Maintenance Act. Clause (VI) of Section 11 lays down that:

“The child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under this authority or under their authority with intent to transfer the child from the family of its birth to the family of its adoption. The performance of the ceremony of giving and taking is a mandatory requirement for a valid adoption”. (Laxman Singh Vs. Roop Kumar AIR 1961 SC 1878, Kasinath Vs. Mahadev AIR 1977 PAT 199, Krishna Chander Sahu Vs. Pradipta Dass AIR 1982 Orissa 114. All that is required is that the natural parent or guardian of the child as the case may be shall hand over the child and the adoptive parents receive the same. (Devi Prasad Vs. Triveni Devi 1970 SC 1286). The very ceremony of giving and taking is in itself symbolic of transplanting the adoptive child from the family of its birth to the adoptive family. (Kartar Singh Vs. Surjan Singh 1974 SC 2161). Where the ceremony of giving and taking is lacking, the adoption is invalid.

In so far as the presumption as to the act of giving and taking is concerned, it is not to be made unless the following conditions are complied with:-

(1) There must be a document.

- (2) It must be registered under law in force.
- (3) It must purport to record an adoption which has taken place.
- (4) The document must be signed by both the giver and taker of the child in adoption and not by of them.
- (5) It must be produced before the Court. (Mohd. Aftabuddin Khan Vs. Chandan Vilasini AIR 1977 Orissa 69).

The presumption under Section 16 of the Hindu Adoption and Maintenance Act arises only if the adoption deed is executed and registered in manner specified. (Gazzan Singh Vs. Bachan Singh 1974 PUN LR 50).

In view of the above discussion, it is clear that the administrative department being not a judicial body can not presume a valid adoption on the basis of School Certificate and Character Certificate.

[205-B/49]

## OPINION 45

Section 228 of the Indian Succession Act provides as under:-

“When a Will has been proved and deposited in a Court of Competent Jurisdiction situated beyond the limits of the state. Whether within or beyond the limits of India, and property authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed”. In *Blockwood & Sons Ltd., Vs. Parasuraman*, AIR 1959, Madras, 410, the Court observed that failure to obtain an ancillary probate under this Section might constitute a bar under Section-218 to the enforcement of a right.

In another case, *Sukumar Vs, Rageswari*, AIR 1939 CAL 237, a Will of a testatrix who belonged to Chander Nagore, then part of French territory, had executed a Will under which she provided for the administration of her assets at 21 paragona in Bengal. An authenticated copy of the Will under the seal and signature of Notaire, the presiding judge of the tribunal and the administrator of Chander Nagore, was annexed with the petition for grant of letters of administration before the District Judge of 21 paragona. The original Will, as required under the French Law, was kept in Notaire’s Office and could not be parted with. It was held that the Will was valid by French Law and therefore, submission of an authenticated copy was sufficient compliance of this Section. The Court observed that the word “proved” is not equivalent to “admitted to probate” but means authoritatively established as valid according to the Law of the place where it was made.

Under this Section, ancillary grant is obtained in order to give effectively to a grant already made in a foreign country. It is not a grant of probate or letter of administration either with or without the copy of the Will annexed within the meaning of the Act, but merely a grant of administration with a copy of the authenticated Will annexed.

In view of the above discussion, it is clear that the instant probate can not be enforced unless an ancillary grant is issued by the Indian Courts.  
[A-300, Defence Colony]