

14.

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

+ W.P.(C) 1642/2008

Date of decision: 28th October, 2009

SEEMA THAKUR Petitioner
Through Mr. Viraj R. Datar, Advocate.

versus

UOI AND ANR Respondents
Through Mr. Neeraj Chaudhary, CGSC & Mr.
Khalid Arshad, Advocate for UOI.
Mr. Sumit Bansal, Advocate for respondent No. 3.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

1. The present writ petition has been filed by Ms. Seema Thakur through her attorney Mr. Vijay Kapoor challenging the action of Land and Development Officer, the respondent No. 2 in granting mutation and executing conveyance deed dated 20th December, 2004 conveying freehold title in property No. 18/50, East Patel Nagar, New Delhi in favour of Mr. Gopi Chand, the respondent No. 3.

2. At the outset, it may be noticed that respondent No. 3 disputes and contests the right of Mr. Vijay Kapoor, who has filed the present writ

petition as the attorney on the ground that the power of attorney dated 25th July, 2007 is forged and fabricated.

3. The leasehold rights in the aforesaid property were earlier granted to Mr. Hans Raj Vig and on his death inherited by Mr. Pran Nath Vig. The property was under the tenancy of father-in-law of Ms. Seema Thakur, late Mr. Bansi Lal Thakur, who was earlier carrying on business in partnership with his father late Mr. Kansi Ram Thakur. Mr. Pran Nath Vig entered into agreement to sell and executed some other documents in favour of Ms. Seema Thakur on 31st May, 2004. It is the case of Ms. Seema Thakur that she paid Rs.6 lacs to Mr. Pran Nath Vig and had also deposited Rs.4,65,000/- with the respondent No. 2 towards penalty for unauthorized construction. It is also her case that she had engaged respondent No. 3, a property dealer, for his services to get the property mutated in her name in the records of the respondent No. 2. The petitioner states that respondent No. 3 in a fraudulent manner got alleged documents executed from Mr. Pran Nath Vig on 31st May, 2004 after stating that the petitioner had agreed to sell the property to him.

4. The respondent No. 3, on the other hand, has relied upon documents allegedly executed by the petitioner herein on 31st May, 2004 in his favour. He has also relied upon the averments made by the petitioner in the written statement filed by her in the civil suit filed by the mother-in-law of the petitioner. The petitioner, on the other hand,

disputes the averments made in the written statement stating, inter alia, that some pages of the written statement were changed behind her back and the petitioner had not made any admission that she had transferred her right in the property in favour of respondent No. 3.

5. It is admitted position that the petitioner and the third respondent are involved in proceedings both civil and criminal relating to the property in question.

6. The aforesaid background has been given to show that there is a dispute with regard to right and interest of the petitioner and the respondent No. 3 in respect of the property in question. These rights have to be adjudicated and decided in the civil suit and not before this Court in writ proceedings.

7. The petitioner, however, submits that mutation and conversion deed executed by the respondent No. 2 should be cancelled or at least kept in abeyance till the question of title or rights in respect of the property are adjudicated by the civil courts. In this connection, it is submitted that there was no occasion and cause for the petitioner to execute documents in favour of the respondent No. 3 on 31st May, 2004, when she herself was purchasing the property and documents in her favour were executed on the same date. Learned counsel has relied upon the stand of Mr. Pran Nath Vig that he had executed documents like agreement to sell, power of attorney, etc. in favour of the petitioner.

8. Learned counsel for the petitioner submits that the original documents of title are with the petitioner and the respondent No. 3 had preferred an advertisement, which was filed before the respondent No. 2 for loss of original papers.

9. The respondent No. 3 had filed with the respondent No. 2 purported advertisement published in the newspaper 'The Statesman' published on 3rd July, 2004 under the heading 'loss and found' stating that Mr. Gopi Chand had lost the original lease deed of the property. The petitioner has filed before this Court the original newspaper 'The Statesman' published on 20th December, 2004 to establish that the said advertisement was published on the said date and not on 3rd July, 2004. It is pointed out that the respondent No. 3 had used the heading of the newspaper 'The Statesman' published on 3rd July, 2004 and had pasted the advertisement published on 20th December, 2004 on a paper and had wrongly claimed that the advertisement was published on 3rd July, 2004 and no objections had been received. It is submitted that the respondent No. 2 had, therefore, carried out mutation and transfer of the conveyance deed by document dated 20th December, 2004 on the basis of the forged and fabricated papers produced by the respondent No. 3.

10. Learned counsel for the respondent No. 3 disputes the contention of the petitioner that the original papers of the property are with the petitioner. He has also laid considerable emphasis on the fact that the

learned counsel for the petitioner has not been able to establish execution of power of attorney by Ms. Seema Thakur in favour of Mr. Vijay Kapoor. It is noticed that Ms. Seema Thakur is presently residing outside India and execution of power of attorney, etc., is a contentious issue, which will require evidence. However, learned counsel is unable to meet the contention as to the manner in which advertisement published on 20th December, 2004 was projected as published on 3rd July, 2004 to secure mutation and conversion deed.

11. Keeping in view the aforesaid facts, it is directed that the respondent No. 2 will keep the mutation and the conversion deed already executed under abeyance/suspension and it will be noted in the file that the property in question is a disputed property. Parties will be at liberty to get their civil disputes decided in a civil court and thereafter apply to L&DO for further action. Liberty is also granted to the petitioner to file copy of this order with the Sub-Registrar's office where the title documents including conveyance deed is registered. The aforesaid observations are tentative and prima facie and will not influence the civil court while deciding and adjudicating inter se rights of the parties. Parties will be entitled to plead all defences including limitation in the civil proceeding.

12. The writ petition is accordingly disposed of. All pending applications are also disposed of. In view of the facts of the case and conduct of the parties, I am not inclined to deal with and pass any other order on CM No.

9878/2009, an application which cannot be decided without recording oral evidence. In the facts and circumstances of the case, there will be no order as to costs.

DASTI.

SANJIV KHANNA, J.

OCTOBER 28, 2009
VKR