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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 7806/2009 and CM 4093/2009**

Date of decision : 27.03.2009

IN THE MATTER OF :

LT. COL. B.M.K. KHOSLA

..... Petitioner

Through: Mr. Surinder Anand, Adv.
with petitioner in person.

versus

LT. GOVERNOR OF DELHI AND ORS.

..... Respondent

Through: Ms. Sangeeta Chandra, Advocate
for DDA.
Mr. Najim Wazari, Adv. for R-2 & 3.
Mr. Rajiv Garg, Adv. for R-4.
Mr. B.K. Sood, Adv. for R-5 & 6.

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*** HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

HIMA KOHLI, J. (ORAL)

The present writ petition is filed by the petitioner praying inter alia for conversion of freehold rights of the property bearing No.33, Poorvi Marg, Vasant Vihar New Delhi, of the four co-sub-lessees,(i.e. the petitioner and his brothers, respondents No. 4 to 6) into leasehold rights and cancellation of the papers submitted before the respondent No.2, regarding the ordering of converting the property from leasehold to freehold as null

and void on the ground that the same are based on forged and fabricated documents for conversion of leasehold rights of co-sub-lessees into freehold rights. The petitioner also seeks recall of the order passed by the respondent No.2/DDA regarding conversion of the aforesaid property from leasehold to freehold, and a declaration to the effect that the documents prepared for converting the aforesaid property to freehold are not binding on him and have no validity in the eyes of law.

The matter has a chequered history and a brief narration of the relevant facts, necessary for consideration are as follows:

1. The father of the petitioner and the respondents No.4, 5, and 6, Shri N.D. Khosla, who expired on 5.8.1984, left behind several properties including the property, subject matter of the present writ petition and other properties situated in Punjab. A suit for partition was filed by the respondent No.5 herein in the year 1996, being CS(OS) No.2520/1996, on the original side of this Court. On 20.5.1998, a preliminary decree was passed as the petitioner and the respondents No.4-6 admitted that each one of the parties was entitled to 1/4th share in the properties. The parties were given liberty to mutually decide as to how the properties were to be divided by means of partition.

2. On 12.10.1999, it was agreed between the parties that the property at Vasant Vihar be sold and sale proceeds be distributed. A final decree came to be passed in the aforesaid suit on 29.5.2003. The petitioner

herein challenged the aforesaid decree by preferring an appeal, registered as FAO(OS) No.218/2007 which was dismissed on 18.9.2007. The aforesaid dismissal order passed by the Division Bench was taken in appeal by the petitioner before the Supreme Court, but was dismissed there as well. Thus, the decree dated 29.5.2003 attained finality between the parties.

3. After passing of the final decree, the petitioner claimed that the property in question belonged to Hindu Undivided Family. The said plea was considered and rejected by the learned Single Judge in the order dated 12.5.2006 passed in IA No.5497/2006 and it was observed by the Division Bench in the order dated 18.9.2007 passed in FAO(OS)No.218/2007 that the aforesaid plea was also taken in appellate proceedings against the final decree, but did not find favour. Subsequent applications raising the same grounds were filed by the petitioner in the suit proceedings. The said applications were disposed of, vide order dated 14.3.2007, wherein the learned Single Judge noticed that the preliminary and final decree had become final and the contention that the Vasant Vihar property was owned by the Hindu Undivided Family, was not accepted.

4. Aggrieved by the aforesaid order of the learned Single Judge dated 14.3.2007, the petitioner had preferred the aforesaid appeal registered as FAO(OS)No.218/2007, which was held to be devoid of merits and dismissed on 18.9.2007.

5. Counsel for the petitioner concedes that the order of the Division Bench has not been taken in appeal by the petitioner till date. The same has, therefore, attained finality.

6. In the present case, the petitioner has sought to assail the action of the Court Commissioner appointed in the pending suit proceedings registered as CS(OS) No.2520/1996, who vide order dated 6.3.2003, was authorized by the Court to take all necessary steps to sell the suit property and execute the sale deed in accordance with law, as being illegal, a nullity and *void ab initio*. The petitioner has challenged the aforesaid action of the Court Commissioner on the ground that he was not authorized to execute the aforesaid documents. It is pertinent to note that the same relief for cancellation of the documents executed by the Court Commissioner appointed in the suit proceeding was sought by the petitioner by filing an application registered as IA No.9315/2005 in CS(OS) No.2520/1996, which was dismissed, vide order dated 14.3.2007. As already noted above, the order dated 14.3.2007 was assailed by the petitioner by preferring an intra court appeal, being FAO(OS) No.218/2007, which was also dismissed at the stage of admission itself, vide order dated 18.9.2007.

7. Having exhausted the aforesaid rounds of litigation, the petitioner now seeks to approach this Court for seeking virtually the same relief , which is not permissible. It is particularly relevant to note that the petitioner has failed to make any averment in the writ petition with regard to

the appeal preferred by him against the order dated 14.3.2007, passed by the learned Single Judge in IA No.10371-72/2006 in CS(OS) No.2520/1996. It is only in the course of arguments that the certified copy of order dated 18.9.2007 has been handed over by the learned counsel for the respondents No.5 & 6, who states that he has appeared in the present proceedings by seeing the cause list, as no advance copy of the petition has been served by the petitioner on him. The said order is taken on record.

8. Fact remains that having exhausted his remedies by approaching the learned Single Judge in the pending suit proceedings and thereafter assailing the order of the learned Single Judge in appeal, which order has attained finality, the petitioner cannot be permitted to re-agitate the same issue by way of the present mis-conceived writ petition, when his claim stands rejected by virtue of two previous orders passed in the suit proceedings and in the intra court appeal. The relief sought by the petitioner for directions to the respondent No.2/DDA is nothing but a circuitous mode adopted by the petitioner to achieve indirectly, what he could not achieve directly. That the relief sought in the present writ petition, is couched differently, by seeking a mandamus to the respondent DDA, cannot help the petitioner. It is nothing but old wine in a new bottle. The present writ petition can therefore only be treated as forum hunting on the part of the petitioner, which is impermissible.

9. It is also a fit case where costs should be imposed on the petitioner for concealing material facts from the Court, particularly, the factum of filing an appeal against the order of the learned Single Judge and the order dated 18.09.2007 passed by the Division Bench thereon. Accordingly, the writ petition is dismissed along with the pending application, as devoid of merits, with costs of Rs.10,000/- to be paid to the Delhi High Court Legal Services Committee within four weeks.

10. List before the Joint Registrar on 18th May, 2009 for confirming payment of costs.

MARCH 27, 2009
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HIMA KOHLI,J