

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

+ **W.P.(C.) No.11093/2009**

% **Date of Decision: 24.08.2009**

Smt.Janak Kumari and Anr Petitioners
Through Mr.M.C. Dhingra, Advocate.

Versus

Delhi Development Authority & Ors Respondents
Through Ms.Sangeeta Chandra, Advocate for the
respondent/DDA.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioners seek direction to carry out correction in the lease deed and also the conveyance deed by executing appropriate correction deeds and for delivery of corrected lease deed and conveyance deed to the petitioners on the ground that the petitioners and respondent no.3 are the purchaser of the property whereas the documents, lease deed and conveyance deed, were executed in 1991 and 1997 in favor of respondents no. 3 & 4.

The plea of the petitioners is that petitioner No.1 & 2 with respondent No.3 had purchased the residential plot bearing No.F-122,

Vikaspuri, New Delhi in an auction from DDA. The payments were allegedly made by the petitioners, however, instead of handing over the possession the DDA had cancelled the auction on the ground of delayed payments.

The petitioners, therefore, filed a writ petition being CW No.528/1988 where the respondents were directed to take the decision within a period of two months from 14th November, 1991 as it was represented on behalf of DDA that the matter was under consideration.

On 19th November, 1991 at the instance of the petitioners, the writ petition CW No.528/1988 was dismissed as withdrawn with the liberty to the petitioners to revive the same in case the petitioners are not given possession and the lease deed is not executed pursuant to the statement given by the petitioners that the matter has been compromised.

The petitioners have contended that they had sought information under the Right to Information Act, 2005 on 26th September, 2008 pursuant to which it has been revealed that the plot No.F-122 was auctioned on 15th April, 1983 in the name of Smt.Janak Kumari, Shri Jag Mohan Sharma, Shri Ravinder Kumar Sharma. However, later on

the writ petition filed in respect of said plot was withdrawn, the matter was pursued by Sh.J.M.Sharma, respondent no.3 and the possession was handed over on 15th May, 1991 and lease deed was also executed in the name of Respondent no.3 & 4 on 16th December, 1991 and the property was converted into free hold on 22nd September, 1997 and a conveyance deed was also executed in their name.

The learned counsel for the petitioners also rely on the information given under Right to Information Act, 2005 dated 17th March, 2009 that on account of an inadvertent error the lease deed and conveyance deed of the property were made in the name of Sh.Jag Mohan Sharma and Smt.Sushma Sharma instead of original purchasers Smt.Janak Kumar, Shri Jag Mohan Sharma and Sh.Ravinder Kumar.

The petitioners in the present writ petition seek cancellation of lease deed 16th December, 1991 and the conveyance deed executed in favour of respondent Nos.3 & 4 on 22nd September, 1997. Correction of lease deed and conveyance deed would require cancellation of these documents and execution of new documents in favor of petitioners and respondent no.3 after 18 years and 12 years. The claims of the petitioners appears to be barred by time and the period of limitation

seeking cancellation of these documents may not be extendable on the ground that the petitioners have got this information, now after they filed an application in 2008 under Rights to Information Act, 2005. The pleas raised by the petitioners in the facts and circumstances, raise disputed question of facts. The alleged admission by the respondent no.1 that the documents were executed in favor of respondent no.3 & 4 on account of an inadvertent error in reply to application under Rights of Information Act, 2005 will also be not binding, prima facie, on respondents no. 3 & 4.

Ordinarily, when disputes between the parties requires adjudication of disputed question of facts, where for the parties are required to lead evidence both oral and documentary which are to be determined by a Civil Court and the High Court may not entertain a writ petition. The question as to when a discretionary jurisdiction is to be exercised or refused to be exercised by the High Court has to be determined having regard to the facts and circumstances of each case where for no hard-and-fast rule can be laid down. But normally, the High Court does not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction, something which would show that it would be a case of palpable injustice to the writ petitioners to force them to adopt the

remedies provided by the statute. To the doctrine of exhaustion of alternative remedy there are two exceptions. One is when the proceedings are under a provision of law which is ultra vires, which will entail quashing of same on the ground that the proceedings are incompetent without a party being obliged to wait until those proceedings run their full course. The other exception is when an order is made in violation of principles of natural justice and the proceedings itself are an abuse of process of law. The case of the petitioners does not come within any of these exceptions. The claim of the petitioners is also, prima facie, barred by time. The limitation for cancellation of registered documents under Chapter V, Section 31 of the Specific Relief Act, is provided under Article 59 of the Limitation Act, 1963. The party claiming discovery of fraud has to prove the date of discovery of fraud and that the claim is within limitation. The petitioners may be entitled for seeking rectification of registered documents, lease deed and conveyance deed under Section 27 of the Specific Relief Act, 1963 but that will also require establishing that either there has been a fraud or mutual mistake which will also involve establishing disputed questions of facts.

The Supreme Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* ((2004) 3 SCC 553 : JT (2003) 10 SC 300

[12]) had observed that the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition and it is the Court that has imposed upon itself certain restrictions in the exercise of this power. The Supreme Court had held on page 572 in para 28 as under:

“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. ***The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power.*** (See *Whirlpool Corpn. v. Registrar of Trade Marks*.) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

For the foregoing reasons, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India in the facts and circumstances of the case. The writ petition is, therefore, dismissed. The petitioner shall be, however, be at liberty to avail his remedy in the civil Court, if any, in accordance with law.

August 24, 2009
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ANIL KUMAR, J.