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HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 30th July, 2010

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Judgment Pronounced on: 13th August, 2010

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LPA 281/2010

UNION OF INDIA & ANR.

..... Appellants

Through: Mr. A.S. Chandhiok, ASG with
Mr. Jatan Singh, Mr. Ashok Singh,
Advocates

versus

MAJ GEN ANIL SAWHNEY (RETD.)

..... Respondent

Through: None

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers 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?

DIPAK MISRA, CJ

In this intra-Court appeal the challenge is to legal substantiality of the order dated 12th January, 2010 passed by the learned Single Judge in WP(C) No.662/2009 whereby the learned Single Judge has quashed the demand raised by the Land and Development Officer, the second respondent herein, vide order dated 21st/25th October, 2002 with respect to the unearned increase payable by the writ petitioner regarding the property situate at 25 Babar Lane, New Delhi.

2. The father of the writ petitioner late Mr.S.P.R. Sawhny was killed in Lahore on 12th August, 1947 during the India-Pakistan partition riots. He had left several movable and immovable properties in Pakistan. The mother of the petitioner preferred a claim before the Special Claims Officer, Gurgaon for grant of compensation on her behalf and on behalf of the writ petitioner and his brother. On 14th February, 1952, the Special Claims Officer passed an order assessing the share of late Mr.S.P.R. Sawhny at Rs.4,92,750/- and 42 acres of land was allocated in Tehsil Jagadhari, District Ambala to his legal heirs. The aforesaid compensation amount was utilized by the mother for the purchase of property at 25 Babar Lane, New Delhi. It was claimed that in view of Section 19 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 the writ petitioner became an associate owner along with other legal representatives of late Mr.S.P.R. Sawhny.

3. As pleaded, on 18th December, 1976, a family settlement was effected between the writ petitioner and his mother and brother whereby various movable and immovable properties of the HUF were distributed. Dispute arose between them which led to filing of Suit No.309/1998. Eventually a compromise was arrived at in the said suit. The said compromise was taken on record and by order dated 29th March, 2001 the suit was disposed of by the learned Single Judge of this Court in terms of the compromise. The parties agreed that the entire property will fall to the share of the writ petitioner. The remaining legal heirs of late Mr.S.P.R. Sawhny executed relinquishment deed relinquishing their rights in his favour. On 14th July, 2001, the writ petitioner

wrote to the respondent No.2 seeking mutation of the property. Continuous reminders were sent and eventually on 16th January, 2002, the respondent No.2 required the writ petitioner to pay 50% unearned increase on the 2/3rd share of the property. The same was resisted by the petitioner by explaining his stand that the other property that had fallen to his share under the same compromise no unearned increase had been demanded for mutation. Despite the same, the respondent No.2 reiterated the demand. As the order continued, the writ petitioner invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

4. It was contended before the learned Single Judge that when there was relinquishment of rights in favour of the writ petitioner pursuant to a settlement arrived at between the parties to the suit in respect of number of properties, no unearned increase was liable to be levied.

5. The said stand was resisted on the ground that the writ petitioner had paid a sum of Rs.9 lacs each to the other legal heirs, namely, Ms.Usha Vijh and Mr.Satish Sawhney and, hence, the same would tantamount to consideration for the undivided share of the property in respect of which demand was made.

It is worth noting that a counter affidavit was filed by the respondent No.2 which refers to the affidavits submitted by Mr.Satish Sawhny and Ms.Usha Vijh in which they had categorically asseverated that a sum of Rs.9 lacs had been received as an overall settlement of the division of the family's movable assets and sale proceeds of property at Ambala and Nizamuddin and the said

compromise was not in respect of premises situate in Babar Lane, New Delhi alone.

6. The learned single Judge appreciating the factual matrix and analysing the anatomy of the lease deed and distinguishing the decision rendered in LPA No.512/2006 (*Union of India & Ors. v. Raj Kumar Govil & Ors.*) decided on 4.12.2008 came to hold that the demand made in respect of unearned increased on the Appellant is not justified. After so holding, the learned single Judge lanced the orders dated 16.10.2002 and 21/25.10.2002 issued by the 2nd respondent demanding unearned increased and further directed to grant mutation in respect of the property in question.

7. Mr.A.S. Chandhiok, learned Additional Solicitor General assailing the legal propriety of the order submitted that the learned single Judge has fallen into error by not appreciating the import and effect of the lease deed and also failed to take note of the fact that there was a transfer in this case in the guise of a compromise.

8. To appreciate the aforesaid assail and attack, it is appropriate to peruse clause 13 which has been reproduced by the learned single Judge. The relevant part of the same reads as follows:

“Provided also that the Lessor shall be entitled to claim and recover a portion of the unearned increase (i.e., the difference between the premium already paid and current market value) in the value of land and decision of the Lessor in this behalf shall be final at the time of transfer (where such transfer is an entire site or only a part thereof), the amount to be recovered being 50 per cent of the unearned increase.”

9. In the case at hand a suit was filed and in the suit a compromise petition was filed forming the subject matter of I.A. No.3103/2001. On a perusal of the application for compromise in the suit which has been reproduced by the learned single Judge, it is clear as day that there had been relinquishment of the shares in the property in question and in term the others have been given certain property. Clauses (vi) and (vii) being relevant for the present purpose are reproduced below:

“(vi) Major General Anil Sawhney has already adequately compensated Satish Sawhney and his sons, i.e. Defendants 3 and 4 and Smt. Usha Vijh with respect to sale of HUF properties sold in Ambala out of the share of Smt. Sita Sawhney in full and final settlement of all claims of Satish Sawhney and defendants 3 and 4. Further in full and final settlement of all claims of Major General Anil Sawhney having got a larger / unequal share and further in full and final settlement of all claims of Smt. Usha Vijh with respect to said properties at Babar Lane and Nizamuddin, Major General Anil Sawhney will pay a sum of Rs.9 lacs through a pay order in the name of Satish Sawhney for self and on behalf of defendants 3 and 4. Likewise Major General Anil Sawhney will pay a sum of Rs.9 lacs through a pay order in the name of Smt. Usha Vijh.

(vii) Parties have already distributed between themselves the remaining estate of Smt. Sita Sawhney i.e. jewellery, cash and household goods have been distributed between Satish Sawhney, Major General Anil Sawhney and Smt. Usha Vijh and their respective heirs and the parties are left with non-claims against each other.”

10. On a scrutiny of the said paragraphs, it is vivid that the amount was paid not specifically in respect of the property situated at 25 Babar Lane but towards overall settlement which included the properties at Babar Lane and Nizamuddin. It also includes the sale of HUF properties sold in Ambala. Thus, the amount was given in consideration of total settlement. The decision

in *Raj Kumar Govil* (supra) has been distinguished by the learned single Judge and we are disposed to think rightly as there was a transfer by way of sale. In the case at hand, the only thing is to be seen whether there was a transfer of this property in any manner. Had there been a conveyance relating to the property in question alone, possibly the matter would have been different. As is perceptible, it was a complete family settlement wherein certain rights were relinquished by other co-sharers and the respondent abandoned his shares in other properties. It is also apt to note that in the said property, the respondent and his brothers had a share.

12. In view of the aforesaid, we concur with the view expressed by the learned single Judge and, accordingly, the present intra-court appeal, being devoid of merit, stands dismissed in limine.

CHIEF JUSTICE

MANMOHAN, J.

AUGUST 13, 2010
nm/dk