

35

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2536/2005

%

Judgment Delivered on: 26.04.2010

M.AGARWAL PROCESSING INDUSTRIE Petitioner
Through: Mr.Jayant Bhushan, Sr. Advocate with
Mr.Sumit Pushkar, Advocate

versus

UOI & ANR. Respondent
Through: Mr.S.K. Chachara, Advocate for
the respondent no.3
Ms.Sobhna Takiar, Adv for DDA

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. With the consent of counsel for the parties, present petition is set down for final hearing and disposal.
2. Petitioner no.1 is stated to be a partnership firm registered under the Indian Partnership Act, 1939. The erstwhile partner of the petitioner firm, late Sh.Mukhram Agarwal was the lessee in respect of the property known by No.A-57/2, Okhla Industrial Area, Phase-II, Delhi, vide a lease deed dated 2nd November, 1979. According to the petition, property was transferred by Sh. Mukhram Agarwal w.e.f. 1st March, 1992 towards his capital contribution to the petitioner firm, namely, M. Agarwal Processing Industries which consisted of Sh.Mukhram Agarwal his son and four daughters. It is stated that the partnership deed was also

executed on 03.03.1992 which *inter alia* recorded the aforesaid transfer. Immediately upon execution of the partnership deed, the said Sh.Mukhram Agarwal by letter dated 03.03.1992 applied to the DDA for mutation of the property in the name of the firm in view of transfer of the property to the firm. Petitioners are stated to have made enquiries from the office of the DDA in May, 1993 when they learnt that further formalities are required to be completed which are stated to have been completed in May, 1993 and various documents were also filed with respondent no.2.

3. Learned senior counsel for the petitioner submits that aforesaid transfer of the property to the partnership was also reflected in the Income-tax assessment of Sh. Mukhram Agarwal and he was not shown as the owner of the property for his income-tax assessment. The respondent no.2 in the year 1994 requested the said Sh.Mukhram Agarwal to furnish a copy of the registered Conveyance Deed/ Gift Deed in favour of all the incoming partners. Sh.Mukhram Agarwal by letter dated 10.01.1995 informed the DDA that by demanding the registered Conveyance Deed/ Gift deed they were committed an error in law since it was settled law that no written or registered document is necessary when immovable property is contributed by a partner as his share towards capital contribution in a partnership firm. The judgments of the Supreme Court relied upon were also brought to the notice of the DDA and it was again requested to do the needful at the earliest. It is stated that during the period 1994 to 1996, no action was taken by the DDA on the representation of Sh.Mukhram Agarwal. Sh.Mukhram Agarwal is stated to have died

on 09.01.1997. Subsequent to his death Sh.Ajay Kumar Gupta, who was appointed as an executor by Sh.Mukhram Agarwal in his Wills dated 15.10.1994 and 17.04.1996, applied to the Calcutta High Court for grant of probate in respect of the aforesaid two Wills. On 27.04.1998 the Hon'ble High Court of Calcutta vide its orders dated 27.04.1998 granted probate in respect of the aforesaid two Wills 15.10.1994 and 17.04.1996.

4. Counsel for petitioner also submits that perusal of the statement of assets annexed to the aforesaid Wills would show the said subject property was not shown as part of the estate of late Sh.Mukhram Agarwal and the last Will was executed by Sh.Mukhram Agarwal on 17.04.1996, as per which entire balance standing to his credit in the petitioner firm on the date of his death would go to the surviving partners of the firm in their profit sharing ratio absolutely and forever. Again no mention of the subject property was made in the Will. On the death of Shl.Mukhram Agarwal, the partnership firm was re-constituted by a deed of partnership dated 22.01.1997 by remaining partners (one son and four daughters of late Sh.Mukhram Agarwal). The shares of Mukhram Agarwal were allocated amongst the remaining partners as per his wishes and in terms of his Will dated 17.10.1996 probated by the High Court and the said firm is continuing till date with the said five partners. It is only in the year 1998 after probate was granted of the aforesaid Wills, the petitioner came to know about a claim having been made with regard to the subject property by Mr.Atmaram Agarwal [father and natural guardian of one Ms.Sonia Agarwal (who was a minor at

that time)] on her behalf placing reliance on a registered Will dated 03.01.1996 purportedly executed by Sh.Mukhram Agarwal bequeathing the subject property absolutely and solely to Ms.Sonia Aggarwal. Correspondence between the partners of the firm and Sh.Atmaram Aggarwal on behalf of his minor daughter were exchanged. Meanwhile the petitioner received a communication dated 22.02.2000 from the DDA stating that the request for mutation cannot be acceded to and that the petitioner firm should approach the court of law to get their claims settled. No reasons whatsoever for not mutating this property in favour of the partnership firm were disclosed.

5. Subsequently by another communication dated 21.03.2002 DDA again informed the petitioner firm that the request for mutation has been examined by the Legal Branch and the same cannot be acceded to and the parties were requested to get their claims settled by the court of law of the competent jurisdiction.
6. By present petition, petitioners seek a direction to the DDA to carry court mutation with regard to property bearing No.A-57/2, Okhla Industrial Area, Phase-II, Delhi (subject property). Counsel for the petitioners submits that petitioner is in settled possession of the aforesaid property since 01.03.1992 based on the steps taken by late Sh.Mukhram Agarwal, by virtue of which he transferred the property in favour of the partnership firm. He further submits that from the year 1992 till date it is the partnership firm which is carrying out business from the aforesaid property and paying all the taxes, etc.
7. Mr.Jayant Bhushan, learned senior counsel for the petitioner

submits that respondent No.3 (Ms.Sonia Aggarwal) has not taken any serious steps to enforce her rights arising out of the Will dated 3.1.1996 alleged to be in her favour. Even otherwise, respondent no.3 cannot be allowed to hold the petitioner at ransom on the basis of a Will, neither the DDA can without any application of mind or justification, stall mutation proceedings merely on the objection of Ms.Sonia Aggarwal, in the absence of any order passed by a court of competent jurisdiction restraining DDA from considering the application for mutation. The DDA on its own cannot grant relief to respondent no.3 which has been declined by the Court.

8. Counsel for petitioners has handed over in court a photocopy of the certified copy of the order dated 29.05.2007 passed by the Additional District Judge, Delhi, wherein the probate petition filed by respondent no.3, Sonia Aggarwal, through her father was rejected on the ground that an earlier will stands probated. The Court refers to illustration VI of Section 263 of the Indian Succession Act which provides that an earlier probate granted can be revoked if a later Will is discovered after grant of probate. Admittedly, respondent no.3 did not take any steps under section 263 of the Indian Succession Act, but subsequently approached the High Court of Delhi in November, 2007 by filing CS(OS)No.2206/2007 for declaration, damages and injunction. A photocopy of the order passed by a Single Judge of this Court had been handed over in the Court today to show that the suit was dismissed as not maintainable. The Single Judge of this Court has also considered the effect of illustration VI of Section 263 of the

Indian Succession Act. Admittedly, till date respondent no.3 has neither assailed the order passed in the suit nor taken steps to revoke the probate granted in favour of the petitioner. Petitioner has filed an independent probate petition in the District Courts at Calcuta and the matter is pending adjudication.

9. Counsel for the petitioner submits that the claim of respondent no.3 over the property is bogus and the DDA has stalled the mutation on account of mala fide intention and in collusion with respondent no.3.
10. Counsel for respondent no.3 has opposed the petition. The basic objections which has been raised by counsel appearing for respondent no.3 is that a lease-hold property could not have been transferred by Sh.Mukhram Agarwal in favour of the partnership firm. Thus the transfer if any is a nullity in the eyes of law. It is also submitted that share in the partnership of each partner also does not find mention in the schedule attached to the list of assets which fact is disputed by counsel for the petitioner.
11. Counsel for respondent-DDA submits that DDA does not want to be entangled into the *inter se* litigation between the petitioner and respondent no.3. It is further submitted that DDA has left it to the parties to obtain necessary directions from the Civil Court and the DDA would follow the same. He further submits that there is a bar under the terms of the Lease for transfer of the property and therefore, the transfer in case has been made will be null and void. The stand taken by the DDA in its counter affidavit in paragraphs 17 and 18 are reproduced below:

“17. That it is submitted that even if it is taken that Late

Shri Mukh Ram was not entitled to execute a Will dated 3-1-1996, since the same has been executed and the same is a registered one, these are disputed questions of fact with each party claiming ownership of the plot in question.

18. That the rival contentions raised by the parties have been examined in detail by the Respondent DDA and in view of the contentions, documents etc. of the parties, the DDA was unable to grant mutation in favour of any particular claimant as there were disputed questions of fact and it was therefore, decided that the petitioner should get their claims settled through a legal proceedings and get it decided on merits and that accordingly the ownership would be mutated as decided in the said proceedings. The action of the Respondent to suspend the mutation is not mala fide and respondent DDA is fully justified in view of the rival claims of the parties etc.”

12. I have heard learned counsel for the parties, perused the documents filed on record and given my thoughtful consideration to the matter. DDA has not considered the application filed by the petitioner for mutation on account of a dispute raised by Sh.Atmaram Aggarwal on behalf of his minor daughter the basis of a Will executed by late Sh.Mukhram Agarwal. No doubt in cases where an objection is raised either by a legal representative or an interested party the DDA must act with care and caution, but I may add that DDA must act in a fair and just manner and with due application of mind to ensure that their act of not considering any application for mutation on the basis of mere remote objection does not cause prejudice to the rights of one party. DDA must consider each case on the basis of *prima facie* documents produced or else it would encourage both the corrupt and the mischief makers to stall the proceeding forcing the genuine party to incur litigation expenses and go to court.

13. Counsel for petitioner in support of his submission submits that the objections filed by Ms.Sonia Aggarwal are completely bogus

and has drawn attention of the Court to copy of the partnership deed dated 03.03.1992 of which Sh.Mukhram Agarwal was the partner. As per this partnership, Sh.Mukhram Agarwal, being the party No.1, contributed by way of his share towards capital, plot No.A-57/2, Okhla Industrial Area, Phase-II, Delhi, in the year 1992. His share in the partnership was 80%. He addressed a communication to the Deputy Director, Industrial dated 03.03.1992 enclosing copy of the partnership deed to show that the property had been transferred to the firm. During his life-time, Sh.Mukhram Agarwal, made an application to the DDA for transferring the property in the name of partnership firm. By a subsequent letter dated 11.05.1993 while referring to the application for transferring the property in the name of partnership various documents including indemnity bond, affidavit etc. and an affidavit of Sh.Mukhram Agarwal to the effect that on 01.03.1992 he contributed his property plot No.A-57/2, Okhla Industrial Area, Phase-II, Delhi to a firm known as M/s.M. Aggarwal Processing Industries and since then the property vests in the firm, were submitted to the DDA and DDA was requested to transfer the said plot in the name of the partnership. DDA from time to time called upon Sh.Mukhram Agarwal to submit various documents to enable DDA to transfer the property in favour of the firm. No transfer took place during the life-time of Sh.Mukhram Agarwal. It may be noticed that the partners of the firm are not outsiders but four sons and one daughter of Sh. Mukhram Agarwal.

14. Mr.Jayant Bhushan, learned senior counsel also contended that as

per the income tax records the subject property was not shown as part of the assets of Sh.Mukhram Agarwal, neither any of his Wills duly probated shows the subject property as part of his property/assets.

15. On the other hand, except a Will sought to be relied upon by Ms.Sonia Aggarwal, nothing has been placed on record to show that her claim is genuine. Ms.Sonia Aggarwal filed a probate in Delhi which was dismissed on 29.05.2007 and thereafter a suit [CS(OS)No.2206/2007] which was filed for declaration, damages and injunction, was also dismissed as not maintainable. Both the orders have not been assailed. She has not bothered to initiate any proceedings to safeguard her interest in the property except a probate in Calcuta, yet she has been successful in having the mutation proceedings suspended before the DDA.
16. Petitioner is admittedly in settled possession of the property bearing No.A-57/2, Okhla Industrial Area, Phase-II, Delhi, since the year 1992 and the partnership is carrying on its business. Petitioners have also obtained probate with regard to two Wills dated 15.10.1994 and 17.04.1996 of late Sh.Mukhram Agarwal. It is really for the respondent no.3 to approach Civil Court and establish its title in the aforesaid property which the respondent no.3 for reasons best known has not been able and could not produce any order of injunction or otherwise restraining DDA for carrying out the mutation in favour of the petitioner. The order passed in CS(OS)No.2206/2007 arises out of a suit for declaration, damages and injunction, copy of which has been produced in the court today. Prayer made in the suit [CS(OS)No.2206/2007] reads

as under:

“(a) pass a decree of declaration in favour of the plaintiff and against the defendants, declaring that the plaintiff is the owner of the property bearing Industrial Plot No.57/2 in Block ‘A’, Okhla Industrial Area, Phase-II, Delhi-110 029, measuring about 1067.4 sq. yds. along with the super-structure built thereon;

(b) pass a decree of damages in favour of the plaintiff and against the defendant Nos.1, 3, 4, 5, 6, 7, 8, 9 and 10 @ Rs.2,00,000/- from the date of filing of the suit till the date of handing over possession of property being Industrial Plot No.57/2 in Block ‘A’, Okhla Industrial Area, Phase-II, Delhi-110 029, measuring about 1067.4 sq. yds.”

17. Once the suit having been dismissed, copy of which has been placed on record, no appeal has been filed against the order of dismissal, the order passed has attained finality. In these circumstances for DDA to direct the petitioner to approach the Civil Court, in my view is not the correct approach. In case the DDA is satisfied that genuine dispute does exist between the two rival parties, DDA must consider in the facts of each case that as to which party must establish the title in the Civil Court before passing orders on application for mutation or conversion etc. In this case petitioner is in settled possession and all taxes are being paid by the petitioner. On the other hand, respondent no.3 having been unsuccessful in filing a probate, filed a suit for declaration, where the declaration had been sought with regard to declaring her to be the owner of property bearing No.A-57/2, Okhla Industrial Area, Phase-II, Delhi, which suit was also dismissed. The original owner late Sh. Mukhram Agarwal during his life time in the year 1992 had informed DDA that he has transferred the subject property to the partnership firm towards his capital contribution

and requested DDA to carry out the transfer in their records. At best, the DDA should have granted reasonable time of 6 – 8 weeks to respondent no.3 to obtain orders from the Civil Court restraining DDA from taking further action for mutation of the property. Counsel for respondent no.3 submits that DDA should be directed to await the final orders which may be passed in the probate Court at Calcutta. The prayer cannot be acceded to in the facts of the present case. DDA is directed to consider the application of the petitioner for mutation within eight weeks from the receipt of the order. In case within this period no restrain orders are passed by any Civil Court at the instance of respondent no.3, DDA shall be free to consider the application for mutation of the property in favour of the petitioner, provided all other formalities are completed.

18. With these directions, writ petition stands disposed of.

April 26, 2010
'ssn'

G.S. SISTANI, J.