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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3777/2008

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Judgment Delivered on: 28.05.2010

MRS.RAJNI MANAN

..... Petitioner

Through: Mr.J.R. Bajaj, Adv. for the petitioner.

versus

D.D.A.

..... Respondent

Through: Mr.Dinesh Kumar, Advocate for
the respondent-HSBC
Ms.Amita Pandey, Advocate for
the respondent-DDA
Mr.Saleem Ahmed, Advocate for the
respondent-Delhi Police along with
Inspector, Narender and Inspector Akash
and S.I. Sudhir Kumar and S.I. Vishal

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. Rule. With the consent of counsel for the parties, present petition is set down for final hearing and disposal.
2. The facts which have led to filing of the present petition are that in the year 1987 a flat bearing No.3270, Pocket-III, Sector-D, Vasant Kunj, New Delhi, under the Self-Financing Scheme, was allotted by the DDA to one Smt.Suyash Midha vide allotment letter No.F.125 (6528) 83/ SFS/VK/II dated 07.12.1987. As per the writ petition the allottee Mrs.Suyash Midha sold the said flat to Mrs.Tripat Chaudhry by means of general power of attorney and

agreement to sell which were executed on 03.05.1989. Mrs.Tripat Chaudhry further sold this flat to one Mr.Rajeev Kumar Chhabra through a duly registered general power of attorney and agreement to sell. Mr.Rajeev Kumar Chhabra, sold the same very flat to the petitioner on 17.08.2002 and executed various documents including general power of attorney and agreement to sell in her favour. The said documents were duly registered with Sub-Registrar, Janakpuri, New Delhi. Mr.Rajeev Kumar Chhabra handed over the physical, vacant and peaceful possession of the flat to the petitioner, who is stated to be in possession and has also paid up to date property tax to the MCD. In order to take benefit of the Scheme of the DDA of conversion of flat from leasehold to free-hold, petitioner made an application on 05.01.2006 to the DDA and also deposited Rs.77,270/- towards conversion charges and processing fee and also furnished all necessary documents to the DDA. While acknowledging receipt of the application of the petitioner, DDA vide its letter dated 27.04.2006 asked the petitioner to furnish additional documents/ information which was complied with through letter dated 20.09.2006. The DDA also called upon the petitioner to inform them with regard to status of the case FIR No.77/2002 under sections 409/420/468/471/477 A IPC P.S. Connaught Place, Delhi. Since the petitioner was neither involved nor concerned with the case bearing FIR No.77/2002, she accordingly informed the DDA about the same. However, on enquiry, the petitioner learnt that on a complaint filed by the HSBC, FIR No.77/2002 was registered

against one of their employees Mrs.Tripat Chaudhry, who had duped the bank of approximately Rs.1.40 crore; and that despite efforts of the police, Mrs.Tripat Chaudhry could not be arrested and was declared Proclaimed Offender on 09.09.2003. The petitioner is stated to have made various visits to the office of the DDA and also made various representations for conversion of the flat, but to no effect. Petitioner received a communication dated 14.01.2008 from the DDA, informing that due to court case, conversion issue cannot be decided and clearance from crime branch is also required.

3. By present petition, petitioner seeks quashing of this communication dated 14.01.2008. Petitioner also seeks a direction for conversion of the flat bearing No.3270, Pocket-III, Sector-D, Vasant Kunj, New Delhi, from lease-hold to free-hold. Counsel for petitioner submits that flat in question was initially allotted by the DDA to one Smt.Suyash Midha in the year 1987, who in turn sold the said flat to Mrs.Tripat Chaudhry against whom HSBC had filed an FIR in the year 2002. Counsel for petitioner also submits that Mrs.Tripat Chaudhry had sold the said flat to one Mr.Rajeev Kumar Chhabra, through registered agreement to sell and general power of attorney. Mr.Rajeev Kumar Chhabra in turn sold the flat to the petitioner on 17.08.2002 by executing necessary documents, including registered general power of attorney and agreement to sell. Copies of the registered documents executed by Mrs.Tripat Chaudhry in favour of Mr.Rajeev Kumar Chhabra and registered documents executed by

Mr.Rajeev Kumar Chhabra in favour of the petitioner have been placed on record. Counsel for petitioner submits that transaction entered into between the petitioner and Mr.Rajeev Kumar Chhabra was a genuine transaction for which sale consideration has been paid to Mr. Rajeev Kumar Chhabra and possession has been handed over to the petitioner by the seller. He also submits that neither the petitioner nor the flat in question has any connection whatsoever with the FIR No.77/2002, which has been filed by the HSBC.

4. Counsel for petitioner relies on the statement made by Mr.Piyush Tiwari, Associate Vice-President (Legal), HSBC in Court on 21.05.2010 and the subsequent affidavit dated 28.05.2010 that the bank has no concern with the flat in question. Counsel for petitioner also relies on the second status report filed by the Assistant Commissioner of Police, Economic Offences Wing Crime Branch dated 26.05.2010, which was handed over in the court wherein crime branch has clarified that due to clerical error in the earlier status report it was inadvertently mentioned that flat No.D-III, 3270, Vasant Kunj, New Delhi was subject matter of a court case and a receiver had been appointed.
5. While referring to the conversion policy of the DDA wherein as per clause 8 in case of any legal dispute relating to the title of the property, conversion is not to be allowed, counsel for petitioner contended that there is no dispute pending in any court with regard to the title of the flat bearing No.3270, Pocket-III, Sector-D, Vasant Kunj, New Delhi, thus the communication dated

14.01.2008, is bad in law, has been issued without any application of mind, is against the terms of the policy and thus liable to be quashed.

6. Counter affidavit has been filed by the DDA. In the counter affidavit the chain of events with regard to the purchase and sale of the flat from Smt.Suyash Midha to Mrs.Tripat Chaudhry and from Mrs.Tripat Chaudhry to Mr.Rajeev Kumar Chhabra and from Mr.Rajeev Kumar Chhabra to the present petitioner has not been disputed.
7. Counsel for DDA submits that the case of the petitioner for conversion of the flat could not be considered by the DDA only in view of the communication received from the crime branch that no further transaction regarding the said flat be made without clearance from the crime branch. It is contended by counsel for the DDA that in view of the communication received from the crime branch, the DDA did not deem fit to consider the application of the petitioner for conversion. The first status report on behalf of Delhi Police was filed on 12.10.2009 while giving a brief history of the case pending against Mrs.Tripat Chaudhry, it was stated in para 7 of the status report that the complainant bank had filed a suit for recovery and a receiver has been appointed with regard to property bearing No.D-3, 3270, Vasant Kunj, New Delhi, subject matter of the writ petition.
8. During the course of hearing counsel for the petitioner had made a submission that to the knowledge of the petitioner no receiver had been appointed by any court with respect to flat bearing

No.3270, Pocket-III, Sector-D, Vasant Kunj, New Delhi. This court had directed that a notice be issued to HSBC to explain their stand. On 21.05.2010 Mr.Piyush Tiwari, Associate Vice-President (Legal), HSBC, appeared in the court and he made a statement on instructions and on the basis of the record maintained by the bank that SFS flat bearing No.D-III/3270, Vasant Kunj, New Delhi, had not been mortgaged to the bank; and that bank has no lien against the said flat and that bank would have no objection if the DDA considers the application of the petitioner for conversion of the flat. On 21.05.2010, counsel for Delhi Police sought time to take instructions in the matter.

9. Today, a fresh status report has been handed over in court today, which is taken on record. In the status report it has been categorically stated that a receiver has been appointed on 11.10.2004 with direction to take possession of mortgaged property i.e. flat D-II/2295, Vasant Kunj, Delhi, which belongs to the accused Mrs.Tripat Chaudhry. It was clarified that due to clerical error the wrong flat number was given in the earlier status report.
10. Taking into consideration the statement made by the Associate Vice-President (Legal), HSBC, as also the affidavit dated 28.05.2010 wherein the bank has clearly stated that the flat, subject matter of the present writ petition, has not been mortgaged to the bank neither the bank has any lien against this property and further categorical statement that the bank would have no objection if the DDA considers the application of the

petitioner for conversion, as also the clarification rendered by the crime branch that a receiver had in fact been appointed with respect to the flat bearing No.D-II/2295, Vasant Kunj, Delhi, it can safely be said that there is no dispute with regard to the flat bearing No.3270, Pocket-III, Sector-D, Vasant Kunj, New Delhi. The photocopies of the registered agreement to sell and general power of attorney executed by Mr.Rajeev Kumar Chhabra, in favour of the petitioner, show that petitioner had purchased this flat from Mr.Rajeev Kumar Chhabra after paying the sale consideration and the petitioner is in settled possession of the aforesaid flat. Photocopies of the house tax receipt also shows that the current property tax has been paid by the petitioner. Accordingly, present petition is allowed and communication dated 14.01.2008 is quashed. DDA is directed to consider the application of the petitioner for conversion from lease-hold to free-hold, as per its policy. No order as to costs.

May 28, 2010
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G.S. SISTANI, J.