

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

Date of decision: 15th December, 2010.

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W.P.(C) No.9988/2009

SH. K.C. BANSAL & ORS.

..... PETITIONERS

Through: Mr. B.K. Sood & Mr. Vipul Sharda,
Advocates.

Versus

THE COMMISSIONER, MCD & ORS.

.... RESPONDENTS

Through: Ms. Suparna Srivastava with Mr.
Anshum Jain, Advocates for MCD.
Mr. Samar Bansal, Advocate for R-3.
Ms. Shikha Tandon & Ms. Kanika
Agnihotri, Advocate for R-4.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 14th May, 2007 of the respondent MCD mutating property bearing No.27, Sunder Nagar Market, New Delhi in the name of the respondent no.3. The petitioners also seek mandamus to the respondent MCD to mutate the said property in the name of the petitioners. The petitioners seek cancellation of the mutation in favour of the respondent no.3 on the plea that the respondent no.3 has obtained the mutation on the basis of forged and fabricated documents.

2. Notice of the petition was issued. Counter affidavits have been filed by the respondent MCD and the respondent no.3 . The petitioners have filed rejoinder to the counter affidavit of the respondent no.3.

3. The petitioners claim that one Shri Sri Krishan Dass Aggarwal being the father of the petitioner no.1 and the grandfather of the petitioners no.2&3 was the perpetual lessee of the land underneath the aforesaid property and the owner of the superstructure comprising of shop on the ground floor and first floor constructed thereon; that the ground floor as well as the first floor were let out with the first floor being let out to the respondent no.3 and his brother. The petitioners admit that the said Shri Sri Krishan Dass Aggarwal had vide an agreement to sell dated 29th September, 1993 agreed to sell the said entire property to one Sh. Vijay Kumar Gupta brother of the respondent no.3 and had also executed a registered Power of Attorney and Will with respect to the said property in favour of the said Sh. Vijay Kumar Gupta. They however claim that the purchaser Sh. Vijay Kumar Gupta did not comply with the obligations under the said Agreement to Sell and resultantly Shri Sri Krishan Dass Aggarwal in or about the year 1999 cancelled/determined the Agreement to Sell as well as the Will and the General Power of Attorney by executing registered cancellation deeds of the Power of Attorney and the Will. Upon the demise of Shri Sri Krishan Dass Aggarwal on 23rd January, 2002, the petitioners claim to have applied to the super lessor of the land underneath the property (respondent no.4 L&DO)

for mutation from the name of Shri Sri Krishan Dass Aggarwal to the name of the petitioners on the basis of a Will dated 1st January, 2002 of Shri Sri Krishan Dass Aggarwal. The said application remained pending. In the meanwhile in the year 2006 the management of the property was transferred from L&DO to MCD and according to the petitioners on transfer of records from L&DO to MCD, the MCD became aware of the application of the petitioners for mutation of leasehold rights in their name. The petitioners contend that the respondent MCD however surreptitiously on 14th May, 2007 without notice to the petitioners mutated the property for the purpose of House Tax only from the name of Shri Sri Krishan Dass Aggarwal to the name of the respondent no.3 on the basis of a registered Agreement to Sell dated 29th May, 2004 executed by Sh. Vijay Kumar Gupta aforesaid as the attorney of Shri Sri Krishan Dass Aggarwal in favour of the respondent no.3. The petitioners upon learning of the same represented to the respondent MCD and upon the said representation not meeting with any success filed the present petition.

4. The mutation impugned in this petition being only for the purpose of payment of Property Tax and which is not a record of rights and the mutation letter itself providing that the same does not confer any title to the respondent no.3, it was at the outset enquired from the counsel for the petitioners as to why the petitioners have pursued this remedy and whether the petitioners had instituted any substantive proceedings against Sh. Vijay

Kumar Gupta and the respondent no.3. The counsel for the petitioners contends that there is no need for the petitioners to institute any proceedings in as much as the petitioners continue to be the owners in possession of the property through the tenants and are only aggrieved from the mutation effected by the respondent MCD. On the contrary the counsel for the respondent no.3 contends that it is the respondent no.3 who is in possession and in control and management of the property, not as a tenant but as an agreement purchaser in possession in part performance of agreement to sell. The counsel for the respondent no.3 also states that there is no need for respondent no.3 to institute any proceeding.

5. The counsel for the petitioners has at the outset argued that the *malafidies* of the officials of the respondent MCD are writ large in as much as the application for mutation was prepared, signed, submitted and allowed on one single day only i.e. on 14th May, 2007 itself. It is contended that the mutation is liable to be set aside on this ground alone.

6. Though the respondent MCD is generally not known to act so expeditiously but no penalty can be placed on efficiency and I am unable to accept the said ground.

7. The counsel for the petitioners has next contended that the registered Agreement to Sell dated 29th May, 2004 on the basis whereof mutation has been effected in favour of the respondent no.3 apparently wrongly records that the principal i.e. Shri Sri Krishan Dass Aggarwal was alive on that date.

He on the basis of the Death Certificate of Shri Sri Krishan Dass Aggarwal contends that Shri Sri Krishan Dass Aggarwal having died before the date, exercising powers under whose attorney the Agreement to Sell was executed, the Power of Attorney would in any case have come to an end on death and the respondent MCD inspite of said fact being pointed out has erred in not revoking the mutation.

8. The Division Bench of this Court in *Asha M. Jain v. Canara Bank* MANU/DE/1304/2001 has held that judicial notice has to be taken by the Courts of the practice prevalent in the city of Delhi of properties changing hands on the basis of said Agreement to Sell, Power of Attorney etc. Ordinarily, the Power of Attorney and Will are executed and registered only when the entire sale consideration has been paid and the possession of the property has been handed over. The Power of Attorney admittedly executed by Shri Sri Krishan Dass Aggarwal in favour of Sh. Vijay Kumar Gupta empowered Sh. Vijay Kumar Gupta to do all acts, deeds and things with respect to the property including sale thereof. It was thus felt that the present transaction between Shri Sri Krishan Dass Aggarwal and Sh. Vijay Kumar Gupta was a transaction of the kind as noticed and with respect whereto observations aforesaid were made by the Division Bench.

9. The counsel for the petitioners however from the Agreement to Sell has shown that only part payment of sale consideration was made and the balance sale consideration remained.

10. The counsel for the respondent no.3 on the basis of documents filed contends that the entire sale consideration has been paid.

11. All these are disputed questions of facts which cannot be decided in writ jurisdiction.

12. The counsel for the respondent no.3 has also contended that the power of attorney given by Shri Sri Krishan Dass Aggarwal being for consideration could not be cancelled under Section 202 of the Contract Act, 1872.

Reliance in this regard is placed on:-

(i) ***Shikha Properties (P) Ltd. Vs. S. Bhagwant Singh*** 74 (1998) DLT 113.

(ii) ***Veer Bala Gulati Vs. MCD*** 104 (2003) DLT 787.

(iii) ***Prem Raj Vs. Babu Ram*** 1991 Rajdhani Law Reporter 458.

(iv) ***Shri Harbans Singh Vs. Smt. Shanti Devi*** ILR (1977) II Delhi 649.

(v) ***Kuldip Singh Suri Vs. Surinder Singh Kalra*** 76 (1998) DLT 232.

There is *prima facie* merit in the said contention also of the respondent no.3. However, nothing beyond the same ought to be observed in these proceedings inasmuch as all these questions entail a factual

controversy and it is deemed expedient that the same are adjudicated in a proceeding where evidence can be recorded.

13. The counsel for the respondent MCD has drawn attention to the Departmental Instructions No.14 of 1990 dated 3rd January, 1991 qua mutation under Section 128 of the Delhi Municipal Corporation Act, 1957. It is stated that the mutation in favour of the respondent no.3 has been done in compliance of the procedure therefor prescribed under the head “Transfers through GPAs or Unregistered Instruments” which clarifies that mutation in such cases is not in recognition of the title but only for the purposes of effecting the levy and recovery of property tax.

14. In view of all the aforesaid, I am of the considered view that no error can be found in the order of the MCD mutating the property in the name of the respondent no.3 for the purposes of effecting the levy and recovery of property tax and no interference therewith is called for in these proceedings. If the mutation effected is cancelled, the consequent direction to the MCD to refund the transfer duty and the property tax received from the respondent no.3, will also have to be made. The same is not called for, especially when the disputes are required to be adjudicated before appropriate fora.

15. Insofar as the claim of the petitioners of mutation in their own favour is concerned, the petitioners have not even submitted the ‘No Objection’ of the other natural heirs of Shri Sri Krishan Dass Aggarwal and the petitioners are not entitled to the said relief for that reason alone.

16. The writ petition is therefore dismissed with no order as to costs. It is however clarified that none of the observations contained herein shall come in the way of adjudication before the appropriate fora of the rights *inter se* petitioners and the respondent no.3.

**RAJIV SAHAI ENDLAW
(JUDGE)**

15th December, 2010

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(Corrected and released on 17th January, 2011)