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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7398/2008

Judgment dated 02.02.2010

RAMESH GROVER Petitioner

Through: Mr.L.K. Garg, Advocate

versus

DDA Respondent

Through: Mr.Ajay Verma, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may 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?

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. Brief facts of the case as set out in the writ petition are that respondent as a lessor allotted an industrial plot bearing No.4, Block X, in the layout plan of Naraina Ware Housing Scheme, New Delhi, measuring about 400 sq. yds. to M/s. Grover Steel Corporation. M/s.Grover Steel Corporation had three partners : (i) Smt.Usha Grover (mother of the petitioner) 30% share in the partnership; (ii) petitioner 30% share; and (iii) Sh.Amar Nath (since deceased) 40% share in the partnership. A perpetual lease in respect of aforesaid plot was duly registered as document no.6117 in additional book no.1, volume 2913 on pages 15 to 20 registered on 5.9.1997 in the office of Sub-Registrar, New Delhi. It is contended by counsel for the petitioner that in accordance with the sanctioned plan, a building was

constructed over the said plot of land jointly, out of the funds, by the partnership. The mother of the petitioner is stated to have died on 18.02.2003 leaving behind a registered Will dated 28.7.1993 whereby she bequeathed her entire 30% share in the partnership firm and other properties including industrial plot in the name of the petitioner herein. Sh.Amar Nath died on 13.12.1992 at the age of 86 years leaving behind a Will dated 8.7.1990 whereby he bequeathed his entire 40% share in the partnership firm including property in the name of the petitioner herein. It is contended that Chanan Devi wife of Amar Nath also died on 30.4.1994 at the age of 85 years.

2. It is submitted by counsel for the petitioner that Smt. Chanan Devi was real sister of Smt.Usha Grover (mother of the petitioner) and Sh.Amar Nath was husband of Smt.Usha Grover. Counsel for petitioner submits that Chanan Devi and her husband (Sh.Amar Nath) during their lifetime lived with petitioner's family as family member in one house and they (both Amar Nath and Smt. Chanan Devi) were taken care of by the petitioner.
3. It is contended that Sh.Amar Nath and Smt.Chanan Devi died issueless and all rituals and ceremonies at the time of their death were performed by the petitioner and also that cremation was done by petitioner like their son. On 10.12.2003 petitioner applied to respondent for mutation of their share in his name vide application dated 9.12.2003. The petitioner also sent a reminder to the DDA on 12.12.2004. The petitioner was asked by the Assistant Director (Industrial) (Land Sales Branch), to submit attested copies of form D or occupancy certificate which was supplied by the petitioner vide

letter dated 30.11.2005. Petitioner was informed vide letter dated 6.12.2005 that the documents submitted by him were not in order and he was asked to submit documents duly attested by a notary public.

4. Counsel for petitioner submits that all documents as demanded by the DDA duly attested by the Notary Public were submitted on 3.1.2006. Petitioner thereafter made several representations to the DDA and also sent reminders, however, he was informed by letter dated 12.3.2008 by which DDA made a demand of Rs.27,20,415/- as unearned increase.
5. Counsel for petitioner submits that the communication dated 12.3.2008 was issued without any application of mind and the communication is devoid of any reasons. It is submitted that the DDA has failed to consider the documents placed on record to show that the Will was made in favour of the petitioner without any consideration and that Sh.Amar Nath was the petitioner's mothers' brother-in-law (*MAUSA*); and Sh.Amar Nath and his wife resided along with the petitioner and his family as also the fact that they died issueless. It is submitted that the DDA has failed to consider the application for mutation as per the policy formulated by the DDA. The representation made after receipt of demand of unearned increase dated 12.3.2008 did not receive any favourable response from DDA, except communication dated 23.4.2008 by which the petitioner was informed that unearned increase has been levied because of 40% share which was of the deceased (Sh.Amar Nath), who was not a blood relation of the petitioner, petitioner has knocked the doors of this court for justice.

6. Counsel for respondent submits that the unearned increase has been levied on account of the reasons that the petitioner did not submit all the necessary documents, neither the Will relied upon by the petitioner is a registered Will nor any probate or letter of administration has been obtained. It is further submitted that documents supplied by the petitioner are not in terms of the policy formulated by the DDA besides the fact that Sh.Amar Nath was not a blood relation of the petitioner. The policy of the DDA was subject matter of a decision rendered by the Supreme Court in the case of **DDA Vs. Vijay C. Gurshaney & Anr.** (2003) 7 SCC 301; and in para 7 of the judgment the relevant portion of the policy has been extracted, which reads as under:

“7. Further, ... The guidelines are:

- I. In case where a request is received for transfer of property on the basis of “WILL” to a person outside blood relation who is not within the definition of “family member” under the guidelines issued earlier, the following documents should necessarily be obtained from the applicant/ legatee for the purpose of mutation:
 - (1) certified copy of will left by the allottee;
 - (2) Death certificate of the allottee;
 - (3) affidavit disclosing the particulars of the legal heirs whom the allottee had survived;
 - (4) no-objection of the legal heirs regarding mutation of the interest of the deceased in favour of the legatee(s);
 - (5) affidavit from the legatee declaring that the property in question had not passed on to him during the lifetime of the testator and no sale agreement/ agreement for construction etc. had been executed by the testator in his /her favour, nor any GPA/ SPA had been executed in his favour or in favour of a person nominated by him.
 - (6) the legatee may be asked to produce the certified copy of the assessment order of income tax and house tax receipt showing the name of

- the person in whose name the property is being assessed;
- (7) an undertaking from the applicant/ legatee to the effect that if at any stage it is found out that the property had passed on to the legatee during the lifetime to the testator then it will be deemed to be a case of misstatement of facts, misrepresentation or fraud and the mutation in his/ her favour shall stand terminated and the property shall automatically vest in the lessor;
 - (8) indemnity bond from the legatee duly registered;
 - (9) in case the plot/ flat was allotted through cooperative society in the NOC from the society;
 - (10) original registration certificate, fixed-deposit receipt, challan form, wherever necessary; and
 - (11) such other documents as required to be obtained as per instructions issued from time to time or procedure laid down therefor."

7. Counsel for DDA while relying on para 10 of this judgment further submits that purpose of formulating the aforesaid policy is to curb illegal transaction in favour of persons who are not blood relations of the allottee and who on the basis of consideration get the Will executed. Thus such kind of persons cannot be allowed to do indirectly what is not permitted to be done directly in terms of the lease. Para 10 of the judgment reads as under:

"10. The rationale behind the formulation of its policies and guidelines issued by DDA is to curb illegal transactions in favour of persons not of blood relation of the allottee, being practiced rampantly and the property being transferred by an underhand sale in the garb of will and power of attorney etc. DDA has formulated a policy that in such cases the Department would ask for 50% of unearned increase in the value of property. It is always open to the appellants to inquire whether an alleged will is in actuality a sale in the garb of will in total disregard of the policy decision of the authority. Merely because probate/ letters of administration are granted, would not preclude DDA from so inquiring. It must be grasped that DDA has been given no notice of the testamentary proceedings. Therefore, it would have no right to appear or oppose such proceedings. As already said, DDA is a creature of the statute and any policy decision or guidelines formulated by such Authority will have a binding effect on the parties, in absence of rules to

the contrary.”

8. I have heard counsel for the parties who have taken me through the documents filed along with the pleadings. The short question which arises for consideration before this Court is whether the petitioner has complied with the terms of the policy dated 26.7.1988 and more particularly relevant portion which has been extracted hereinabove.

9. Counsel for petitioner has drawn attention of the Court to a communication dated 9.12.2003 along with which the petitioner is stated to have submitted the following documents with the DDA:

- “i) Death Certificate of Sh.Amar Nath (in original)
- ii) Death Certificate of Smt. Chanan Devi (in original)
- iii) Photostat copy of ‘WILL’ dated 1.7.1990, duly attested.
- iv) An affidavit from the Legatee, duly attested.
- v) An Indemnity Bond from the Legatee, duly attested.
- vi) An undertaking from the Legatee, duly attested.
- vii) Three specimen signatures along with photograph of the Legatee– Sh. Ramesh Grover, duly attested.
- viii) Photostat copy of Election Id. Card of the Legatee – Sh. Ramesh Grover/ Applicant, duly attested.”

10. Subsequently the petitioner is stated to have also filed documents duly attested by a notary public. Counsel for petitioner had also relied upon a similar case pertaining to plot No.21, Wazirpur, Phase-IV, where no earned increase was charged by the DDA. In the counter affidavit in response to this averment, DDA in para 9 of the counter affidavit has stated as under:

“ix. Petitioner’s reliance on and reference to the case of Plot No.21, Ph.IV, Wazirpur is baseless and misconceived. It is submitted that Plot No.21, Ph-IV, Wazirpur was allotted in the name of Smt.Kasturi Devi vide allotment letter dt. 23.6.1995. However, Smt.Kasturi Devi expired before allotment, i.e., on 12.1.1995, without leaving any legal heir. Smt.Kasturi Devi bequeathed all her rights in Plot No.21, Ph.IV, Wazirpur through a registered Will dated 15.3.1994 in favour of her nephew, Sh.Bhudev S. Prasad

S/o.Sh.Prahalad, out of love and affection and without any force and compulsion. The said transfer was not for any monetary consideration and also the possession of the property was not passed to the beneficiary during the life time of the allottee. The beneficiary had also submitted the affidavit to the effect that no money consideration took place between testator and legatee. Therefore, mutation outside the blood was duly approved by the competent authority without levy of any unearned increase. Accordingly, plot was mutated in the name of Sh.Bhudev Prasad S/o.Sh.Prahlad vide mutation letter dt. 4.10.2001.”

11. Counsel for respondent submits that prior to the present policy, DDA had also issued guidelines, according to which firstly there should be no monetary consideration for executing the Will and secondly that possession should not have been passed during the life time of the testator and in case of unregistered Will, probate and letter of administration should have been obtained.
12. The facts of this case are extremely material. The initial allotment of the plot was made by the DDA in favour of three persons, i.e. petitioner, mother of petitioner (Smt.Usha Grover) and Sh.Amar Nath. All three were running a partnership firm i.e. M/s. Grover Steel Corporation with petitioner and his mother having 60% share. Thus petitioner is not a stranger to the allotment of the Industrial plot by the DDA. Late Sh.Amar Nath was the real *mausa* of the petitioner. Wife of Amar Nath was the real sister of petitioner's mother. Sh.Amar Nath and his wife all along stayed with the petitioner. Sh.Amar Nath and his wife died issueless and both executed a Will in favour of the petitioner. During his lifetime Sh.Amar Nath did not sell his share to the petitioner and continued to participate in the partnership business which is borne out of the Will dated 01.07.1990 of Sh.Amar Nath, copy of which has been placed on record. Sh.Amar Nath has revealed in the Will that petitioner was not a stranger to the entire transaction.
13. The guidelines sought to be relied upon by the DDA were admittedly issued prior to the policy dated 26.7.1988. Reading of the policy dated 26.7.1988 clearly shows that no such conditions were incorporated in the policy formulated subsequently and the policy overrides the earlier guidelines. In case DDA considered the

terms of the guidelines to be important or necessary, surely the same would have been incorporated in the subsequent policy.

14. The main aim and object for formulation of the policy by the DDA is to curb the illegal transactions in favour of persons who are not blood relations of the allottee and who on the basis of consideration get the Will executed. Taking into consideration the facts of this case, I am satisfied that the Will executed by late Sh.Amar Nath in favour of the petitioner herein was not for any consideration for the reasons that Sh.Amar Nath was a close relation of the petitioner, he died issueless, he and his wife stayed with the petitioner during their lifetime, all of which is evident from the Will, copy of which has been filed along with the writ petition. In the Will the testator has stated that petitioner is like his own son and he has got great love and affection for their family. The petitioner has complied with all the conditions laid down as per the policy. Accordingly, letters dated 12.3.2008, 7.4.2008 and 23.4.2008 are quashed. DDA is directed to mutate the property i.e. industrial plot bearing No.4, Block X, in the layout plan of Naraina Ware Housing Scheme, New Delhi, in the name of the petitioner, without any demand of any unearned increase within six weeks after receipt of this order. Petition stands disposed of.

CM.No.13789/1009

Dismissed.

G.S. SISTANI, J.

February 02, 2010

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