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

**% Judgment dated on: 19.05.2010**

**+ W.P.(C) 14143/2009**

**JAYSHREE BAGLEY AND ANR ..... Petitioners**

**Through : Mr. D.S. Narula, Ms. Vandana Miglani  
Bebarta and Mr. Rajesh Kumar, Advs.**

**versus**

**DELHI DEVELOPMENT AUTHORITY AND ORS ..... Respondents**

**Through : Mr. Arjun Pant, Adv. for the DDA.  
Mr. Asad Alvi and Mr. Faiz Hyder Rizvi, Advs.  
for the Union of India.**

**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, writ petition is set down for final hearing and disposal.
2. Brief facts of the case, which have led to the filing of the present petition, are that the land belonging to one Sh. Bharat Singh was acquired in the year 1959. Consequent to this acquisition and as per the Scheme of the respondent DDA an alternate plot measuring 250 sq. yards in Friends Colony, New Delhi, was allotted in favour of Smt. Rambati, daughter of late Bharat Singh, on 22.12.1978. possession of this plot was handed over to Smt. Rambati on 18.3.1980. A perpetual lease deed was executed in favour of Smt. Rambati on 24.4.1980. Smt. Rambati sold the plot to Sh. Vijay Taluja, ex-husband of petitioner no.1 and father of petitioner no.2. On 3.2.1987 Sh. R.L. Taluja, attorney of Smt. Rambati and Sh. Vijay Taluja, entered into an Agreement to Sell with respect to the said

property in favour of petitioners no.1 and 2. Subsequently on 20.12.1999, petitioner applied to respondent DDA for conversion of the said property from lease hold to free hold and also deposited the necessary charges. Thereafter the petitioner made repeated visits to the office of respondent no.2 to find out the status of the application for conversion of the property from lease hold to free hold. Petitioner was informed that the conversion of the property was held back as the plot allotted to Sh. Kesari, brother of Smt. Rambati, in Safdarjung Development Area, New Delhi, had been cancelled by the Lieutenant Governor, Delhi, on 3.12.1983 and a dispute is pending. Petitioner was also informed that the Lieutenant Governor, Delhi, has held that the allotment of plot No.B-35, Friends Colony, New Delhi, in favour of Smt. Rambati was a valid allotment and was made in accordance with the recommendations of the L&B Office. Despite the assurance given that the conversion would be carried out, the application for conversion has not been considered by the DDA. Petitioner was, however, informed by a communication dated 2.11.2009 that the conversion of the plot from lease hold to free hold would be processed only after a decision of the competent authority.

3. Aggrieved by the communication dated 2.11.2009 the present petition has been filed by the petitioner.
4. Counsel for the petitioner submits that upon the demise of Sh. Bharat Singh two plots were allotted by the respondents one to Sh. Kesri and the other to Smt. Rambati. Smt. Rambati had sold her plot to the ex-husband of petitioner no.1 while Sh. Kesri had sold his plot as well. When the purchaser of the plot sold by Sh. Kesri applied for conversion of the plot, the DDA found that in fact the legal heirs of Sh. Bharat Singh were entitled to only one plot of land. Accordingly the lease of the plot allotted to Sh. Kesri stood cancelled. Counsel further submits that admittedly the purchaser of the plot from Sh. Kesri has filed a suit, which is pending. Counsel also submits that there is no dispute pending in any court with respect to the plot,

subject matter of the writ petition and in the absence of any dispute regarding plot No.B-35, Friends Colony, New Delhi, DDA cannot withhold the conversion.

5. Counter affidavit has been filed by the respondent DDA, as per which, the land of Sh. Bharat Singh was acquired vide notification dated 13.11.1959. Sh. Bharat Singh died on 26.6.1967 leaving behind a son and two daughters. The Land & Building Department, Delhi Administration, made three separate recommendations for allotment of alternate plots in favour of all the three legal heirs. Consequent thereto Sh. Kesri (son) and Smt. Rambati (daughter) were allotted residential plots, however, Smt. Atri (daughter) was not allotted any plot. As per the counter affidavit Shri Kesri sold his plot. Further, in the case of Shri Kesri, the Lieutenant Governor was pleased to determine the lease deed vide order dated 21.12.1983. Aggrieved by the decision a civil suit has been filed wherein a stay of dispossession has been granted. The said, Shri Kesri, had sold the plot on the basis of a General Power of Attorney dated 18.6.1979 and an Agreement to Sell dated 21.6.1979 in favour of Sh. S.S. Sundram and Smt. Lalita, wife of Sh. S.S. Sundram. Sh. S.S. Sundram, being the General Power of Attorney Holder, made an application to the DDA on 30.6.1994 for conversion of the property into free hold in favour of Smt. Lalita, which application is pending on account of determination of lease. Meanwhile, an application for conversion of the plot has also been filed by the present petitioner on the basis of documents executed in his favour.
6. Learned counsel for the respondent while relying on the counter affidavit submits that the allotment made in favour of Shri Kesri stands cancelled on 3.12.1983, which was conveyed to him on 11.1.1984 while the allotment made in favour of Smt. Rambati has not been cancelled.
7. It would be useful to reproduce para 10 of the counter counter affidavit, which reads as under:

“10. The case of Smt. Rambati was submitted to Hon’ble Lt. Governor for determination of lease of plot No.B-35, Friends Colony but the then Hon’ble Lt. Governor was of the view that at present only one plot measuring 250 sq. yds. remains allotted in the name of Smt. Rambati and other two legal heirs are entitled to equal rights on this plot. The proposal for cancellation of plot No.B-35, Friends Colony does not hold ground as the allotment was made in accordance with the recommendations of the L&B Department. Further, plot allotted to Shri Kesri in SDA cannot be restored as it was cancelled in pursuance of the directions of the L&B Department”

8. It would also be useful to reproduce para 5 of the counter counter affidavit, which reads as under:

“5. In the case of Smt. Kesri, the Hon’ble LG was pleased to determine the lease deed vide order dated 31.12.93. Aggrieved the decision of the collection, Sh. Kesri filed a Civil Suit No.114/2006 (54 of 1987) in the Trial Court and obtained a stay order against dispossession. The matter is now fixed for 26.03.2010. Shri Kesri had further sold out the plot on GPA on 18.06.1979 and Agreement to Sell on 21.06.1979 in favour of Shri S.S. Sundram and Mrs. S. Lalita w/o Shri S.S. Sundram respectively. Shri Sundram, GPA vide application dated 30.6.1994 had applied for conversion into free hold in favour of Mrs. Lalita, the Agreement to Sell holder. The conversion of the lease deed and the matter being sub-judice in the High Court.”

9. Learned counsel for the respondent DDA further submits that in view of the pendency of the suit filed by Sh. S.S. Sundram, DDA has considered it appropriate not to process the application of the petitioner for conversion of the plot from lease hold to free hold.
10. I have heard counsel for the parties and given my thoughtful consideration to the matter. The basic facts in this case are not disputed that late Sh. Bharat Singh was the owner of agricultural land, which was acquired. Sh. Bharat Singh died in the year 1961 leaving behind one son and two daughters. All the three legal heirs applied for alternate plots. While Sh. Kesri (son) and Smt. Rambati (daughter) allotted separate plots Smt. Atri (daughter) was not allotted any plot. Both the son and daughter sold their respective

plots to different purchasers. The plot sold by Sh. Kesri was determined by the order of the Lieutenant Governor against which the purchaser has filed a suit wherein stay of dispossession has been granted. As per the counter affidavit, Lieutenant Governor did not determine the lease of the plot granted to Smt. Rambati, who had sold her plot to the petitioner herein. A careful reading of the counter affidavit as well as the communications dated 28.10.2009 and 11.11.2009 addressed by the respondent to the petitioner would show that the application made by the petitioner for conversion is not being considered "as the subject matter is sub judice". It would be useful to reproduce the communications addressed by the DDA to the petitioner dated 28.10.2009 and 11.11.2009:

" DELHI DEVELOPMENT AUTHORITY  
LAND SALES BRANCH (RESDL.)

NO.F.27(07)1979/LSB(Resdl.)/5839 Dated 28.10.09

From : B.M. SAREEN  
DY. DIRECTOR (LA)

To  
Smt. Jay Shree  
R/o B-35, Friends Colony,  
New Delhi.

Sub:- Your conversion case from leasehold to  
freehold in respect of B-35, Friends Colony,  
New Delhi.

Madam,

I am directed to draw your kind attention to the above cited subject and to say that your conversion application is under process and you are fully aware that the above cited property was allotted to the legal heirs of late Shri. Bharat Singh. The matter is subjudiced and your conversion can only be processed after the decision of the competent court.

Yours faithfully,

(B.M. SAREEN)  
DY. DIRECTOR (LA)"

“  
DELHI DEVELOPMENT AUTHORITY  
LAND SALES BRANCH (RESDL.)

NO.F.27(07)/79/LAB[R]/dda/6121

Dated 11.11.09

From : B.M. SAREEN  
DY. DIRECTOR (LA)

To

Mrs. Jayshree Bagley,  
R/o B-35, Friends Colony (West),  
New Delhi 110065.

Sub:- Conversion case from leasehold to freehold in  
respect of property No.B-35, Friends Colony, New  
Delhi.

Madam,

I have already informed to you that the matter is  
sub judice in respect of this property and your Conversion  
case will be processed after the decision of Hon'ble Court.

This plot was allotted as alternative plot not a  
Auction plot to the first owner. An owner can not transfer a  
better title then he himself has. As in this case matter is  
pending in the Court.

Yours faithfully,

[B.M. SAREEN]  
Dy. Director [LA] DDA”

11. As per the conversion policy of the DDA, more particularly, para 9  
*“in case of any dispute, relating to title of property, conversion is  
not to be allowed until the legal dispute is settled”*. The short  
question which arises for consideration before this Court is whether  
the DDA can withhold the processing of the application of the  
petitioner for conversion of the plot to free hold on account of a  
dispute pending with regard to the plot allotted to Sh. Kesri and till  
when.
12. Counsel for the DDA has been unable to point out whether any  
dispute with regard to the property, subject matter of the writ  
petition is pending in any court of law. Para 10 of the preliminary  
submissions in the counter affidavit would show that although the

question of determining of the lease with regard to the plot of Smt. Rambati was considered by the Lieutenant Governor, but the Lieutenant Governor did not determine the same. The other legal heirs of late Sh. Bharat Singh have neither challenged the allotment made in favour of Smt. Rambati nor any proceedings are pending in any Court of law, nor any share has been claimed by them. In the absence of any dispute with regard to title of the subject property the conversion of the same cannot be withheld as per the conversion policy. Moreover, in either of the two communications dated 28.10.2009 and 11.11.2009, DDA has failed to point out as to how the matter is sub judice. The allotment made in favour of Sh. Kesri was cancelled as far back as in the year 1983. Even otherwise the petitioner herein is not a party to any of the proceedings pending. The petitioner cannot be asked to wait endlessly and in anticipation of some order which may be passed, when neither any objections are pending with the DDA from any third party restraining the DDA from carrying out the conversion nor any relief is claimed against the petitioner herein. Accordingly, present petition is allowed. The impugned communication dated 2.11.2009 is set aside. DDA is directed to process the application of the petitioner for conversion of the plot, in question, in accordance with law in case the same is in the order within a period of ten weeks from the receipt of the order of this Court. No order as to costs.

**G.S. SISTANI, J.**

**May 19, 2010**

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