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

% Date of Decision: 30th August, 2011

+ **W.P.(C) 3668/1996**

S.C. GOEL & ANR.

..... Petitioners

Through

Mr. Raman Kapur, Sr. Adv. with Mr. Aviral
Tiwari, Adv.

versus

D.D.A. & ORS.

..... Respondents

Through

Ms. Sangeeta Chandra, Adv. for DDA
Mr. Y.K. Gupta, Attorney & son of Resp.
no. 2 in-person

AND

+ **W.P.(C) 4958/2001**

S.C.GOEL

..... Petitioner

Through

Mr. Raman Kapur, Sr. Adv. with Mr. Aviral
Tiwari, Adv.

versus

LT.GOVERNOR & ORS.

..... Respondents

Through

Ms. Sangeeta Chandra, Adv. for DDA
Mr. Y.K. Gupta, Attorney & son of Resp.
no. 2 in-person

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? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported
in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. Both the writ petitions have been filed by one Shri S.C. Goel through Shri Lalit Mohan Madhan. The said Mr. Lalit Mohan Madhan himself is Petitioner No. 2 in W.P.(C) No. 3668/1996. Shri S.C. Goel is stated to have died. Mr. Lalit Mohan Madhan claims to be his legal heir qua the property to which the petitions pertain and has filed applications for substitution in place of Shri S.C. Goel.

2. It is not in dispute that the said Shri S.C. Goel and Shri Om Prakash Gupta, respondent in both the petitions were brothers and lessees under the respondent/DDA with respect to land underneath the property No. B-1/26, Vasant Vihar, New Delhi. Mr. Lalit Mohan Madhan claims to be the purchaser under an agreement to sell, power of attorney, Will etc. of the share of Shri S.C. Goel which is defined in the said documents as the rear portion of the said property.

3. Mr. Om Prakash Gupta represented before this Court through his attorney and son Shri Y.K. Gupta disputes the rights of Shri Lalit Mohan Madhan in the property. A suit for injunction in this regard is stated to have been earlier filed by Shri Om Prakash Gupta and which suit has been disposed of and the appeal arising wherefrom filed by Shri Om Prakash

Gupta is stated to be pending in the Supreme Court. Shri Om Prakash Gupta is as such opposing the application of Shri Lalit Mohan Madhan for substitution in place of Shri S.C. Goel in these writ petitions.

4. Shri Y.K. Gupta states that the natural heirs of Shri S.C Goel ought to be issued notice and heard in response to the applications of Shri Lalit Mohan Madhan for substitution as legal heir of Shri S.C. Goel. However, in the facts and circumstances hereinafter appearing, the counsel appearing for Shri Lalit Mohan Madhan (and who was earlier appearing for Shri S.C. Goel), . Shri Y.K. Gupta and the counsel for the DDA have been heard in both the writ petitions and no need for issuing notice to the natural heirs of Late Shri S.C. Goel or to formally decide the application for substitution is felt.

5. Writ Petition (C) No. 3668/1996 has been filed seeking directions to DDA to convert leasehold rights in the land underneath the property aforesaid into freehold without insisting upon signatures of Shri Om Prakash Gupta; alternative, direction is sought against Shri Om Prakash Gupta to sign all the necessary documents and comply with the other formalities for having the leasehold rights converted into freehold.

6. Writ Petition (C)No.4958/2001 has been filed impugning the order dated 20th July, 2001 of the Lt. Governor of Delhi determining the lease of the land underneath the property and seeking direction for restoration thereof and for restraining DDA from dispossessing the petitioner from the said property. The counsel for Shri Lalit Mohan Madhan states that Shri Lalit Mohan Madhan as attorney and purchaser in part performance and now also under the Will of Late Shri S.C. Goel is in possession of the rear portion of the property.

7. The senior counsel for the petitioners contends that once the leasehold rights in the land underneath the property are converted into freehold, the necessity for seeking cancellation of the determination of lease and for restoration would not arise inasmuch as the policy for freehold conversion provides for such conversion even in respect of re-entered leases. It is further contended that Shri Lalit Mohan Madhan has already deposited the entire charges for freehold conversion without waiting for Shri Om Prakash Gupta to pay his share and is ready to bear all other expenses/charges for freehold conversion. It is further contended that since freehold conversion is for the benefit of Shri Om Prakash Gupta also, he need not have any objection thereto. It is yet further urged that Shri Om Prakash Gupta as one

of the lessee/owner cannot hold other lessee/owner to ransom in the manner as is being done. On enquiry as to whether the freehold policy of the DDA permits only one of the many lessees and/or persons claiming rights under one lease to apply for freehold conversion even if the other lessees/persons are not willing for the same, the senior counsel for the petitioners contends that there is no prohibition in the regard in the policy and it is only the application form required to be filled up for freehold conversion which instructs the same to be signed by all the lessees and/or their assignees. He further contends that once the DDA is permitting freehold conversion qua flats constructed on common land as in case of DDA flats and group housing, there is no reason not to apply the same principle in the facts of the present case also.

8. The senior counsel for the petitioners has also invited attention to the plaint in the suit for injunction (supra) filed by Shri Om Prakash Gupta in which Shri Om Prakash Gupta has pleaded that his brother Shri S.C. Goel was allowed to take western portion of the plot and Shri Om Prakash Gupta retained the eastern portion of the plot and the two raised construction over their respective portions of the plot; it is thus contended that the facts of the present case are akin to that of two separate flats on common land and

Shri Lalit Mohan Madhan is entitled to have the entire land converted into freehold and/or at least the portion under the western/rear portion of the property in his possession.

9. DDA has opposed the claim of the petitioners for having the entire plot of land converted into freehold under his own signatures when the other lessee Shri Om Prakash Gupta is not willing therefor. It is further the case of the DDA that part of the plot cannot be converted into freehold inasmuch as the same amounts to sub-division of the plot which is not permissible. It is stated that the policy for conversion also requires conversion only at the instance of the all the lessees together and of the entire plot.

10. Mr. Y.K. Gupta (supra) has also categorically stated that Shri Om Prakash Gupta is not willing to have the plot converted into freehold.

11. The petitioner can avail of freehold conversion only in accordance with the policy prescribed therefor. The petitioners are unable to show any clause under which the relief as claimed is permissible. Even if the requirement of the application for freehold conversion to be signed by all the lessees is in the application form only, the same being part of the policy, the said requirement cannot be ignored.

12. As far as the agreement of the petitioners of discrimination qua multistoried flats is concerned, the counsel for DDA has rightly contended that in case of the flats, the allotment/sale thereof is separate/independent and each flat owner has a right for a separate flat while in the present case, there is a joint /one lease in favour of Shri S.C.Goel whose successor Shri Lalit Mohan Madhan claims to be and Shri Om Prakash Gupta aforesaid. No case of discrimination is made out. The two, between whom discrimination is alleged, cannot be said to be similarly situated. Moreover, the policy for freeholder conversion has not been challenged in the present petition. Thus, in the face of the opposition of Shri Om Prakash Gupta, the relief sought in Writ Petition(C) No. 3668/1996 cannot be granted.

13. As far as the other writ petition impugning the re-entry is concerned, upon enquiry from Shri Y.K. Gupta as to why Shri Om Prakash Gupta is not willing to join in that inasmuch as he is equally affected by re-entry, Shri Y.K. Gupta informs that Shri Om Prakash Gupta has instituted Suit No. 1740/2001 in this court impugning the action of the DDA of re-entry and for restoration of the lease and vide interim order in which suit the parties have been directed to maintain status quo as to the property. On enquiry, it is also informed that though Shri S.C. Goel was impleaded as defendant in that

suit but since Shri Om Prakash Gupta does not recognize any rights of Shri Lalit Mohan Madhan in the property, the said Shri Lalit Mohan Madhan has not been impleaded as a party thereto. On further enquiry, it is informed that upon demise of Shri S.C. Goel, his natural heirs are appearing in the said suit.

14. The senior counsel for the petitioner has, on instructions, fairly stated that the claim for restoration of the lease is intertwined to the claim for freehold conversion inasmuch as without freehold conversion being allowed, the question for restoration would not arise.

15. It is not deemed expedient to entertain Writ Petition (C) No. 4958/2001 impugning the cancellation of lease since the same is already the subject matter of the suit aforesaid and in which the legality of the re-entry and claim for restoration would necessarily have to be gone into.

16. Counsel for DDA clarifies that re-entry was effected for the reason of unauthorized sale by Shri S.C. Goel in favour of Shri Lalit Mohan Madhan and on the ground of sub-division of plot by Shri S.C. Goel and Shri Om Prakash Gupta.

17. Shri Y.K. Gupta controverts that re-entry was sub-division also.

18. As far as the argument of senior counsel for the petitioners of one of the co-owners holding up the other to ransom is concerned, I am of the opinion that if a co-owner feels that he has right to compel the other co-owner to join in freehold conversion, such right is to be exercised before a Civil Court and not by way of a writ petition..

19. In the circumstances aforesaid, no need is felt to go into the contentious question of substitution of the legal representatives of Shri S.C.Goel inasmuch as the relief claimed in the petitions is found to be not tenable. It is not deemed expedient to make any observations qua substitution as it may affect the said question in the other proceedings between the parties with respect to the said property.

20. The senior counsel for the petitioners, at this stage states that the petitioners cannot be left remedy-less and seeks leave to challenge the policy of freehold conversion insofar as restricting freehold conversion without the signatures of all the lessees. The said question having not been raised and considered in these writ petition, Shri Lalit Mohan Madhan is entitled to raise the same in appropriate proceedings in accordance with law.

It is further clarified that this court has not gone into the validity of the policy of freehold conversion.

Accordingly, both the petitions are dismissed.

No order as to costs.

RAJIV SAHAI ENDLAW, J

AUGUST 30, 2011
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