

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

Date of decision: 27th July, 2011

+

W.P.(C) No.8422/2009

% GURMEET SINGH & ANR

..... Petitioners

Through: Mr. Abhinav Vasisht, Sr. Adv. with
Mr. Rajat Navet & Mr. Raman
Kumar, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR..... Respondents

Through: Ms. Sangeeta Chandra, Adv. DDA

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|---------------|
| 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. The challenge in this petition is to the letter dated 2nd April, 2009 of the respondent DDA addressed to the petitioner no.2 M/s New India Rubber Works (NIRW) and effecting cancellation of the perpetual Lease Deed in respect of Plot No.C-11 (New Number A-11) Rewari Line (Maya Puri)

Industrial Area, Phase-II, New Delhi-110 054. The petitioner no.2 was vide the said letter also called upon to hand over vacant peaceful physical possession of the plot on 14th April, 2009. This Court vide order dated 22nd April, 2009, while issuing notice of the petition restrained the respondent DDA from taking any coercive steps to disturb the possession of the petitioners and/or from disturbing the enjoyment of the subject property by the petitioners. The said order was confirmed on 12th January, 2010. Pleadings have been completed and counsels for the parties heard.

2. The position which emerges is as under:-

- (a). The petitioner no.2 M/s NIRW was constituted as a partnership firm vide partnership deed dated 2nd April, 1963 between Shri Lochan Singh and Shri Mohinder Singh, both sons of Sh. Saran Singh;
- (b). The said partnership firm applied for and was allotted, under the Policy of the Government of Re-location, the aforesaid plot of land on 24th April, 1967 and put into possession thereof;

- (c). That between July, 1975 and October, 1975 two other brothers of Shri Lochan Singh and Shri Mohinder Singh namely Shri Jagmohan Singh and Shri Gurinder Singh were also inducted as partners of petitioner no.2 M/s NIRW;
- (d). That in or about the year 1981 the Perpetual Lead Deed of the aforesaid plot of land allotted in 1967 to petitioner no.2 M/s NIRW with Shri Lochan Singh and Shri Mohinder Singh as partners was to be executed. It appears that Shri Lochan Singh and Shri Mohinder Singh did not inform the respondent DDA of the induction of their brothers Shri Jagmohan Singh and Shri Gurinder Singh as partners in the firm M/s NIRW and obtained the Perpetual Lease dated 13th May, 1981 of the aforesaid plot of land in the name of the petitioner no.2 M/s NIRW with Shri Lochan Singh and Shri Mohinder Singh only as partners. One of the terms of the said Perpetual Lease was as under:-

“This lease shall stand automatically terminated if there is any change in the constitution of the firm as on the date of execution of this deed without prior approval of the Lessor.”

- (e). Vide Deed of Dissolution dated 31st March, 1985 the partnership firm M/s NIRW was dissolved and the property constructed on the aforesaid land, in the said dissolution vested exclusively in Shri Lochan Singh;
- (f). The respondent DDA also vide its letter dated 30th July, 1988 upon intimation of change in constitution mutated the property in its records in the name of petitioner no.2 M/s NIRW with the proprietorship of Shri Lochan Singh;
- (g). Shri Lochan Singh died on 26th August, 2006 leaving a registered Will under which the property aforesaid is claimed to have devolved upon his son, the petitioner no.1 herein only;
- (h). On application of the petitioners, the respondent DDA vide letter dated 6th March, 2007 mutated the property in the name of the petitioner no.1 as proprietor of petitioner no.2 M/s NIRW;

- (i). That on 10th September, 2007 Shri Jagmohan Singh (supra) complained to the respondent DDA that at the time of execution of the Perpetual Lease Deed it had been misrepresented to the respondent DDA that Shri Lochan Singh and Shri Mohinder Singh only were the partners of petitioner no.2 M/s NIRW when in fact Shri Jagmohan Singh and Shri Gurinder Singh were also then partners of the said firm;
- (j). On the basis of the aforesaid complaint of Shri Jagmohan Singh, respondent DDA issued a notice dated 1st April, 2008 to the petitioners to show cause as to why the Perpetual Lease of the plot aforesaid should not be cancelled for the reason of breach/violation of the clause aforesaid of the Lease Deed and has now, vide communication dated 2nd April, 2009 impugned in this petition, effected the said cancellation.

3. The senior counsel for the petitioners has contended that the complaint of Shri Jagmohan Singh in pursuance whereof the cancellation has been effected was motivated and intended to coerce the petitioners; that Shri

Jagmohan Singh has since arrived at a settlement with the petitioners and has withdrawn his complaint. The senior counsel has further fairly stated that though admittedly there was a default in non-disclosure to the respondent DDA at the time of obtaining the Perpetual Lease in the year 1981; that there was a change in the constitution of the firm and thus a violation of the clause aforesaid of the Perpetual Lease Deed but the said violation was of a technical nature and it was not as if Shri Lochan Singh and Shri Mohinder Singh to whom the allotment had been made had transferred the property for consideration to any outsider. It is contended that Shri Jagmohan Singh and Shri Gurinder Singh who in the interregnum between the date of allotment and the execution of the Perpetual Lease Deed were admitted to the partnership, were the brothers and had not brought in any fresh capital or investment and not paid any consideration to Shri Lochan Singh and Shri Mohinder Singh.

4. It is yet further contended that in fact, immediately prior to the execution of the Perpetual Lease Deed an oral settlement had been arrived at between the four brothers that the property would belong to Shri Lochan

Singh only and in pursuance to which oral settlement only, in 1985 the Dissolution Deed was executed and the property got mutated in the name of Shri Lochan Singh only. It is urged that it was for this reason that need was not felt to, in the year 1981, intimate to the respondent DDA of the change in constitution of the firm. It is yet further contended that even till today the property is in the hands of the son of one of the original allottees and thus a lenient view should be taken.

5. Per contra, the counsel for the respondent DDA has contended that there was admittedly a misrepresentation at the time of obtaining Perpetual Lease in the year 1981 and violation of the clause aforesaid and thus no error requiring judicial interference is called for with action impugned in this petition. It was however fairly stated that since admittedly there is ultimately no outsider in possession of the property till date, the petitioners can apply to the respondent DDA for restoration of the Lease. It is yet further contended that Shri Jagmohan Singh while withdrawing his complaint has not stated that the same was false or erroneous and thus no change in the decision on that account is called for.

6. I have considered the matter. Neither party has placed before this Court the Letter of Allotment. Thus the terms & conditions of allotment are not known. The Perpetual Lease Deed dated 13th May, 1981 also prohibits the Lessee from in future selling, transferring, assigning or otherwise parting with possession of the property save with the consent of the respondent DDA. The Clause 5(aa) aforesaid on the basis of which the cancellation has been effected also does not specify that the change in the constitution of the firm on account whereof the Lease Deed is to stand automatically terminated is to be with reference to which date, the same only refers to the change from “as on the date of execution” of the Deed. The Lease Deed expressly refers to Shri Lochan Singh and Shri Mohinder Singh as the partners of the firm. The rights which are thus created under the Lease Deed are in favour of Shri Lochan Singh and Shri Mohinder Singh only and it is a matter of debate whether in the face of such Lease Deed it could be said that any rights were created in favour of Shri Jagmohan Singh and Shri Gurinder Singh also who by then had been inducted as partners without intimation to the respondent DDA. However need is not felt to delve deeper into the said

issues since I am of the view that the matter ought not to be permitted to linger any further. It is felt that relegating the petitioners to the respondent DDA with an application for restoration of the Lease Deed may lead to further disputes only. The powers of this Court while exercising jurisdiction under Article 226 are wide. This Court, to do substantial justice between the parties, can decline relief even where entitlement in law is made out (see ***Chandra Singh Vs. State of Rajasthan*** (2003) 6 SCC 545 and ***ONGC Ltd. Vs. Sendhabhai Vastram Patel*** (2005) 6 SCC 454) and similarly grant relief inspite technical violation as aforesaid. In the facts of the present case when petitioner no.1 is but an heir of the persons who had indulged in the aberration, he ought not to be made to suffer therefor. Admittedly there is a restoration Policy and the terms of restoration can be but fiscal. It is therefore deemed expedient to impose a condition of payment on the petitioners of an amount of Rs.5 lacs, which has been proposed in the Court and to which the senior counsel for the petitioners under instructions has agreed.

7. Accordingly, subject to the petitioners depositing a sum of Rs.5 lacs with the respondent DDA on or before 10th August, 2011, the cancellation effected of the Lease Deed shall stand quashed/set aside and the Perpetual Lease Deed shall stand restored in the name of the petitioners. The instant litigation having been forced on the respondent DDA for the default of the petitioners/their predecessor, the petitioners are also burdened with legal costs of Rs.50,000/- payable to the respondent DDA along with the sum of Rs.5 lacs aforesaid. This order / judgment having been made in exercise of extraordinary powers of this Court and in the peculiar facts, to be not treated as a precedent.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 27, 2011
pp..