

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

**Date of decision: 15<sup>th</sup> March, 2012**

+ **LPA 541/2010**

% **MRS. YOGITA BAXLA** **....Appellant**  
Through: Mr. Pawanjit S. Bindra, Adv.

Versus

**DELHI DEVELOPMENT AUTHORITY & ORS..... Respondents**

Through: Mr. P.K. Mittal, Adv. for DDA.  
Mr. Anurag Kumar Agarwal with Mr.  
Umesh Mishra & Ms. Chetna  
Chhikara, Advs. for R-2&3.

**CORAM :-**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**JUDGMENT**

**A.K. SIKRI, ACTING CHIEF JUSTICE (ORAL)**

1. This Letters Patent Appeal is preferred by one Mrs. Yogita Baxla questioning the validity of order dated 02.07.2010 passed by learned Single Judge in W.P.(C) No.4345/2010 filed by respondent No.2 M/s Solomon Engineers Pvt. Ltd. Before we point out the nature of order passed and the basis on which the said order is challenged, it would be necessary to go through some of the relevant facts.

2. The appellant herein had filed a complaint dated 01.10.2009 with the DDA alleging therein that the property viz. industrial plot bearing No.B-65/2, Wazirpur Industrial Area, Delhi-110 052 was got converted from leasehold to freehold by the respondent No.2 M/s Solomon Engineers Pvt.

Ltd. on the basis of certain documents which were forged and / or false. We may record that the respondent No.2 had *inter alia* submitted one Special Power of Attorney (SPA) purportedly executed by Mrs. Raj Rani Chawla in favour of respondent No.3 Mr. Raj Kumar Harjai (there is a dispute about the date of this SPA i.e. whether it is dated 02.04.2007 and 22.05.2007). According to the appellant, the SPA dated 22.05.2007 could not have been executed on that date as Mrs. Raj Rani Chawla had died on 19.04.2007. Another document which was submitted to the DDA is affidavit dated 27.06.2007 sworn by respondent No.3 in which he made a statement to the effect that Mrs. Raj Rani Chawla was the owner of the property in question who had executed Power of Attorney in his favour and she was still alive.

3. W.P.(C) No.14091/2009 was also filed by the appellant impugning the said conversion by DDA. The said writ petition was however disposed off (without hearing the respondent No.2) vide order dated 22.12.2009 directing DDA to consider the complaint of the appellant after hearing the appellant as well as respondent No.2.

4. The DDA examined the complaint and after hearing respondent No.2 found that as Mrs. Raj Rani Chawla had died on 19.04.2007, the property could not have been converted from leasehold to freehold on the basis of aforesaid documents and thus passed order dated 29.04.2010 cancelling the Conveyance Deed dated 27.06.2007 which was executed in favour of the respondent No.2 Company by converting the property into freehold. Challenging that order, respondent No.2 Company filed the aforesaid W.P.(C) No.4345/2010. In this writ petition, respondent No.2 did not implead the appellant even when the action was taken by the DDA on the complaint of the appellant.

5. We would also like to record at this stage that the appellant is projecting the Will purportedly executed by Mrs. Raj Rani Chawla and as per which the aforesaid property has been bequeathed by Mrs. Raj Rani Chawla in her favour. The appellant claims herself to be the niece of Mr. Krishan Lal Chawla husband of Mrs. Raj Rani Chawla.

6. Since advance notice of W.P.(C) No.4345/2010 was served upon the counsel for DDA arrayed as sole respondent in the said writ petition, the matter was heard and disposed of on the very first date with the consent of counsels for both the parties. A statement was made by learned counsel for respondent No.2, on instructions from the respondent No.2, that respondent No.2 was willing to pay all legitimate charges including unearned increase, penalty etc., if any, admissible under the rules and policies of the DDA, in case DDA agrees to restore the Conveyance Deed of the property in question in favour of the respondent No.2. On this concession made by the respondent No.2, statement was made by the learned counsel for the DDA that DDA would give a fresh hearing to the respondent No.2 with regard to the charges payable by respondent No.2 including penalty, unearned increase, etc. under the rules and policies of the DDA as a condition precedent for transfer of industrial plot in question in favour of respondent No.2. On these statements, the learned Single Judge disposed of the writ petition permitting the respondent No.2 Company to make a representation within four weeks for restoration of the industrial plot in question along with its Conveyance Deed and till such time said decision was taken the order dated 29.04.2010 cancelling the Conveyance Deed dated 27.06.2007 was kept in abeyance.

7. The appellant after coming to know of the aforesaid order preferred

review application which was dismissed by the learned Single Judge on 21.07.2010. In these circumstances, the present appeal is preferred.

8. It is the contention of Mr. Pawanjit S. Bindra, learned counsel for the appellant that there was no reason and / or occasion to dispose of the said writ petition on the basis of aforesaid statements made by counsel for the respondent No.2 and the counsel for the DDA without the appellant herein being impleaded as a party. It is submitted that since the cancellation order was passed by the DDA on the complaint of the appellant, the appellant had vital interest in the matter and as such the order is clearly in violation of principles of natural justice.

9. It is also submitted by the learned counsel for the appellant that the impugned order dated 29.04.2010 cancelling the Conveyance Deed was passed by the DDA after appreciating the contentions of the appellant herein made in the complaint and the learned Single Judge has not even dealt with the same in the said order. It is argued that had the appellant been impleaded as a party and given hearing, she would have pointed out the aforesaid material including execution of Power of Attorney as well as affidavit containing false averments therein.

10. Mr. Anurag Kumar Agarwal, learned counsel for the respondents No.2&3, on the other hand submits that the appellant has no *locus standi* to file the present appeal. His contention is that the appellant is backing her claim on the basis of the purported Will executed in her favour by Mrs. Raj Rani Chawla. He though disputes the validity of any such Will but submits that even if the Will is executed in favour of the appellant, Mrs. Raj Rani Chawla could have bequeathed the property which belonged to her and could not have included the subject property which was and / is in the name

of respondent No.2 Company. He points out that respondent No.2 is a private limited company incorporated under the provisions of Companies Act having a separate legal entity. Mr. Agarwal, learned counsel has narrated the history of this property and the manner in which respondent No.2 became the owner thereof. In this behalf, he has stated that this property was originally allotted by DDA on 18.08.1974 in favour of M/s Nice Metal Works, a partnership firm, with Mr. K.L. Chawla and Mrs. Raj Rani Chawla as its only partners. These two persons incorporated respondent No.2 Company in 16.12.1991 and thereafter sold the aforesaid property to the respondent No.2 Company for construction vide Conveyance Deed dated 29.01.1992. Thus from this date, it is the respondent No.2 which became owner of the said property which was duly mutated in the name of the respondent No.2 Company by DDA on 06.03.1992. Thereafter Mrs. Raj Rani Chawla & Mr. K.L. Chawla resigned from the Board of Directors of the respondent No.2 Company on 01.08.1994 and 06.03.1997. Entire equity of this Company which was held by Mrs. Raj Rani Chawla & Mr. K.L. Chawla was sold by them on 11.03.1997. It is thus stated that after 11.03.1997, Mrs. Raj Rani Chawla and Mr. K.L. Chawla did not have any interest of any nature whatsoever even in respondent No.2. It is further pointed out that Mr. K.L. Chawla died on 12.10.2004; thereafter on 18.10.2006 Mrs. Raj Rani Chawla was appointed as Honorary Director in respondent No.2 Company. In that capacity she submitted application for freehold with various documents required for this purpose on 22.03.2007. All these documents are dated 09.11.2006. He also submitted that on 06.04.2007, Board of Directors of the respondent No.2 Company even passed resolution authorizing respondent No.3 to get the Conveyance Deed

registered. Since documents were filed and signed by Mrs. Raj Rani Chawla, she also executed SPA (disputed document) in favour of the respondent No.3. From the aforesaid facts, the submission of Mr. Anurag Kumar Agarwal, learned counsel is that it is the respondent No.2 Company which was / and the owner of the property in question and the respondent No.2 Company had filed the documents for converting the property from leasehold into freehold. It is also submitted that the respondent No.3 in any case had authority to represent before the DDA on the strength of Board Resolution dated 06.04.2007.

11. The aforesaid submissions of Mr. Anurag Kumar Agarwal, learned counsel may have bearing only on the issue as to whether the respondent No.2 Company was the owner / lessee of the property or not. It may also have effect on the claim of the appellant over the property. However, we are not dealing with this issue in the present case. It is to be kept in mind that in the writ petition filed by the respondent No.2 challenge was laid to order dated 29.04.2010 passed by the DDA vide which Conveyance Deed dated 27.06.2007 executed in favour of the respondent No.2 was cancelled. This was done on the ground that the two documents viz. SPA and affidavit dated 27.06.2007 on the basis whereof property was allowed to be converted into freehold were not genuine documents.

12. Clause 4 of the Conveyance Deed dated 27.06.2007 reads as under:

*“4. If it is discovered any stage that this deed has been obtained by suppression of any fact or by any mis statement, mis representation or fraud then this deed shall become void at the option of the Vendor, which shall have the right to cancel this deed and forfeit the consideration paid by the Purchaser. The decision of the Vendor in this regard shall be final and binding*

*upon the Purchaser and shall not be called in question in any proceedings.”*

13. Though there is a dispute as to whether the SPA is dated 02.04.2007 or 22.05.2007, Mr. Anurag Kumar Agarwal, learned counsel for the respondents No.2&3 could not dispute the averments made in the affidavit dated 27.06.2007 sworn in by respondent No.3 are palpably false. This affidavit reads as under:

*“AFFIDAVIT*

*I, Raj Kumar S/o Sh. Phyraya Lal, R/o 37/77, West Patel Nagar, New Delhi, do hereby solemnly affirm and declare as under:-*

- 1. That Smt Raj Rani Chawla W/o Sh. Krishan Lal Chawla, is the owner of Property bearing No.B-65/2, Wazir Pur Industrial Area, Delhi.*
- 2. That she has executed a power of attorney in my favour.*
- 3. That she is alive and she has not REVOKED THE POWER OF ATTORNEY.*
- 4. That it is my true and correct statement.*

*DEPONENT*

*VERIFICATION:-*

*Verified at New Delhi on this 27<sup>th</sup> day of June, 2007 that the contents of above affidavit are true and correct to the best of my knowledge and belief.*

*DEPONENT”*

14. Following statements are made in the aforesaid affidavit:

- (i) that Mrs. Raj Rani Chawla is the owner of the property;
- (ii) that she is still alive and has not revoked the Power of Attorney;

The case now set up is that Mrs. Raj Rani Chawla was not the owner but it is the respondent No.2 Company which is the owner of the property. It

was also wrong to say on 27.06.2007 that Mrs. Raj Rani Chawla was still alive when she had admittedly expired on 19.04.2007.

15. Mr. Anurag Kumar Agarwal, learned counsel submits that there were valid and justifiable reasons for making this statement in the affidavit. We cannot go into the circumstances under which this affidavit was sworn in. If the contention of Mr. Anurag Kumar Agarwal, learned counsel in respect of the property in question is accepted, it is possible that these documents were filed to avoid payment of unearned increase and it is for this reason that statement was made by the respondent No.2 before the learned Single Judge that respondent No.2 was ready to pay the unearned increase as well as the penalty. Therefore when the averments made in the affidavit are found to be incorrect (for whatsoever reasons these were made), the DDA was right in cancelling the Conveyance Deed.
16. We also take exception to the conduct of the respondent No.2 of attempting to steal a march by obtaining impugned order dated 02.07.2010 without impleading the appellant in the writ petition when the order of DDA challenged in the writ petition was on complaint of appellant. Such sharp practices constitute abuse of process of Court.
17. In such circumstances, there was no question of allowing the respondent No.2 Company to make any representation keeping the cancellation order in abeyance. According to us, the proper course of action for the respondent No.2 Company if entitled to and desirous of obtaining freehold conversion is to make a fresh application for conversion of the property from leasehold to freehold claiming itself to be the owner / lessee of the property. Whether unearned increase is

payable as per the Scheme of Conversion from leasehold to freehold would be the matter to be decided by the DDA as and when such application is moved.

18. Since we have found the cancellation order justified, the impugned order dated 02.07.2010 passed by the learned Single Judge cannot be allowed to stand. We accordingly allow this appeal and set aside the said order giving liberty to the respondent No.2 as mentioned above.  
No order as to costs.

**ACTING CHIEF JUSTICE**

**RAJIV SAHAI ENDLAW, J**

**MARCH 15, 2012**

‘gsr’