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

% Judgment reserved on : 17.05.2013
Judgment pronounced on : 20.05.2013

\+ W.P.(C) 16305/2004

S.K. BAHL ..... Petitioner

Through: Mr. R.M. Sinha, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ORS..... Respondents

Through: Mr. Arun Birbal, Advocate

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. The respondents 2 and 3 in this petition, namely, Shishir Kumar De and Smt. Jyotsana De were allotted a residential plot bearing No. 135, Block K-I , Chittranjan Park, New Delhi, and a perpetual lease deed dated 01.10.1990 was executed in their favour. The case of the petitioner is that vide Agreement to Sell dated 23.10.1990, coupled with a registered Power of Attorney of the same date, ownership of room No. 2 on the ground floor, measuring 142 square feet was transferred to him for a consideration of Rs 60,000/- and he is in physical possession of the same. The lease of the aforesaid property was cancelled by the Lieutenant Governor of Delhi vide order dated 10.11.1992. Pursuant to cancellation

of the lease deed, an eviction order dated 16.06.2000 came to be passed by the Estate Officer against the petitioner and other occupants of the building. The appeal preferred against the order of the Estate Officer was dismissed by the learned Additional District Judge vide his order dated 07.12.2002. During pendency of the appeal before the Estate Officer, the said property was sealed by DDA on 16.09.2002. An application is alleged to have been submitted to DDA for converting the aforesaid property from leasehold to freehold and on refusal of DDA to convert the aforesaid property into freehold a writ petition being W.P.(C) No. 4693 of 2003 was filed by the petitioner, challenging the aforesaid decision of DDA. The said petition came to be disposed of vide order dated 18.11.2003. A demand letter dated 08.12.2003 was then issued by DDA, requiring him to deposit a sum of Rs1,17,87,223/-, comprising Rs 73,89,895/- towards misuse charges for the period from 31.11.1990 to 16.09.2002, Rs 31,350/- towards restoration charges, Rs 15,000/- towards de-sealing charges, Rs 75,000/- towards maintenance charges, Rs 42,35,222/- towards unearned increase, Rs 22,695/- towards ground rent and Rs 18,061/- towards interest on ground rent.

2. Aggrieved from the sealing, the petitioner preferred the present writ petition, seeking the following reliefs:-

> "issue a writ of mandamus, certiorari or any other writ or order of the like nature thereby directing the respondent to deseal the premises with immediate effect as the respondent failed to raise the demand pursuant to order dated 18.11.2003 passed by this Hon'ble Court in Writ Petition (Civil) No. 2647 of 2004, however, subject to the undertaking to pay the legitimate demand of misuse charges as and when raised."

3. The writ petition was amended with the permission with the permission of the Court and the following is the prayer made in the amended writ petition:

> "issue a writ of mandamus, certiorari or any other writ or order of the like nature thereby directing the respondent to deseal the premises with immediate effect as the respondent failed to raise the demand pursuant to order dated 18.11.2003 passed by this Hon'ble Court in Writ Petition (Civil) No. 2647 of 2004, however, subject to the undertaking to pay the legitimate demand of misuse charges as and when raised in the light of the notifications detailed in para 8 of the writ petition."

4. During pendency of this writ petition, the learned counsel for the petitioner stated before this Court on 23.04.2009 that 50% of the amount of Rs 1,17,87,223/-, demanded by DDA towards misuse charges,

restoration charges, de-sealing charges and unearned increase etc., would be deposited on or before 31.07.2009 and the balance amount will be deposited on or before 31.12.2009. He also requested that on deposit of 50% of the amount DDA should be asked to de-seal the property and the petitioner would give an undertaking that in case of failure to deposit the balance amount, DDA would be at liberty to re-seal the property. After recording the aforesaid statement, the counsel for DDA was directed to obtain instruction as to whether as per conversion scheme and circulars issued by DDA, 50% unearned increase could be waived and the petitioner could be asked to pay surcharge. However, the petitioner did not make deposit in terms of statement made on 23.04.2009. When the writ petition came up for hearing on 30.08.2010, pay orders for a total sum of Rs 58,93,612/- were handed over to the counsel for DDA towards 50% of the impugned demand and a direction was sought to de-seal the property. This request was, however, rejected by this Court, noticing that the petitioner had on 23.04.2009 agreed to pay the entire amount of Rs 1,17,87,223/-, in two instalments and, therefore, de-sealing could not be ordered on payment only on 50% of the impugned demand. The

petitioner preferred an appeal against the order dated 30.08.2010 and the said appeal was disposed of with the following order:

> "The writ court, on 23rd April, 2009, had directed the petitioner to deposit 50% of the demanded dues of the DDA and, thereafter, the question of de- sealing was to be considered. When the matter was listed on 30th August, 2010, the learned Single Judge came to hold as follows:
>
> "Mr.R.M.Sinha, learned counsel appearing on behalf of the petitioner, submits that in terms of order dated 23.04.2009, the impugned demand to the extent of 50% can even be waived and, therefore, he requests that directions may be given to the respondent No.1/DDA for de-sealing of premises in question as 50% of the impugned demand stands paid.
>
> This submission is of no consequence because whether the impugned demand can be waived to the extent of 50% or not shall be seen at the time of final hearing of the case. In the facts and circumstances of the case, the request of the petitioner for de-sealing of premises in question is rejected. However, the payment of 50% of the impugned demand made by the petitioner shall be without prejudice to rights and contentions of the parties on merit of the case."
>
> Having heard the learned counsel for the parties, we are only inclined to modify the order that if the appellant would deposit a

> further sum of Rs.10 lakhs by 18th October, 2010, the premises shall be de-sealed by 25th October, 2010 positively."

The learned counsel for the respondent-DDA submits that the petitioner did not place correct facts before the Division Bench since he did not inform the Court that on 23.04.2009, he had agreed to pay not only 50%, but the whole of the demanded amount of Rs 1,17,87,223/-, though he had sought time till 31.07.2009 to deposit the initial 50% amount and time till 31.12.2009 to deposit the balance 50% amount.

5. In its counter-affidavit, the respondent-DDA has stated that the lease deed of property in question was cancelled on account of unauthorized construction, misuse of the property and unauthorized sale of various portions of the said property in contravention of the terms of the lease deed. According to DDA, the aforesaid plot was supposedly sold to the petitioner and one Mr Barar, who were misusing the building as a commercial complex. An application was received from respondents 2 and 3, allottees of the said plot, for conversion of the property from leasehold to freehold after its alleged sale. The signatures, bearing on the said application, seemed to be forged, since they were different from the signatures of the allottees on the perpetual lease deed. The petitioner did

not produce any document, evidencing the alleged sale and did not file even the copies of Power of Attorney and Agreement to Sell relied upon by him. It is further stated in the counter-affidavit of DDA that a demand letter for payment of restoration of charges, misuse charges, etc. can be issued to the petitioner only on furnishing of the above said document by him and for this purpose he has to submit an application as per the circular issued in this regard by DDA. It is also stated in the counter-affidavit that DDA converts property from leasehold into freehold subject to payment of misuse charges, etc. as per the conversion policy and circulars pertaining to cases where lease was cancelled. According to DDA, the petitioner does not have any right in the property in question. According to DDA, the petitioner is liable to pay charges for a) misusing the premises; b) de-sealing charges; c) restoration charges; d) unearned increase; e) ground rent; f) maintenance charges.

6. The first question which arises for consideration in this case is as to whether the petitioner has any locus standi to maintain this writ petition. Admittedly, the land underneath building in question was allotted by DDA to respondents 2 and 3 and not to the petitioner. Though the petitioner claims to have purchased a portion of the property subject

matter of the writ petition, admittedly, no sale deed has been executed in his favour. The petitioner has neither submitted to DDA nor filed in this Court the Power of Attorney and Agreement to Sell alleged to have been executed by respondents 2 and 3 in his favour. In the absence of such documents, it is not possible to accept the case set out by the petitioner in this regard. Assuming, however, that there was an Agreement to Sell, coupled with a Power of Attorney executed by respondents 2 and 3 in favour of the petitioner in respect of a portion of the property subject matter of this writ petition, he does not become owner of the portion occupied by him merely on the strength of the Agreement to Sell and Power of Attorney, alleged to have been executed in his favour, nor does such a transaction constitute 'sale'.

7. The following view taken by Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Anr*** *(2012) 1 SCC 656* is pertinent in this regard:-

> "11. Section 54 of Transfer of Property Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property.
> X X X
>
> 13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an

immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

X X X

14. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivo.

X X X

15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain v. Canara Bank: 94 (2001) DLT 841 that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintended misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

> 16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act."

Since the petitioner is not the owner/lessee/allottee of the property subject matter of this writ petition, he has absolutely no locus standi to file a writ petition, challenging the sealing of the aforesaid property by DDA. It is only the owner/lessee/allottee of the property who can maintain such a petition. It would be pertinent to note here that the petition has been filed in the individual capacity of the petitioner and not as attorney of the lessees/allottees who have been impleaded as respondents 2 and 3 in the writ petition. For this reason alone, the writ petition is liable to be dismissed.

8. It was contended by the learned counsel for the petitioner that since this Court had, vide order dated 18.11.2003 passed in W.P.(C) No. 4693/2003, directed conversion of the aforesaid property into freehold in

the joint names of all the occupants, subject to deposit of various charges and further subject to confirmation by DDA of the stoppage of misuse, it is not open to DDA to dispute the locus standi of the petitioner. I, however, find no merit in the contention. The order dated 18.11.2003 was passed by the Court on the representation of the petitioner that respondents 2 and 3 had sold various portions of the property to different persons and the successors-in-interest had applied for conversion of the said property into freehold. Since it transpires that there was no 'sale' of any portion of the suit property to the petitioner as execution of Agreement to Sell, coupled with Power of Attorney does not amount to sale of the property as held by Supreme Court in ***Suraj Lamp*** (supra), it would be difficult to accept the contention, advanced by the learned counsel for the petitioner. In any case, the only prayer made in this writ petition is for de-sealing of the property and conversion of the property from leasehold to freehold is not the subject matter of the writ petition. When this was pointed out to the learned counsel for the petitioner, during the course of arguments, he drew my attention to the order dated 06.09.2011 passed by this Court, noticing the contention of the petitioner that in accordance with the policy of the DDA, the petitioner was willing

to have the leasehold rights converted into freehold upon payment of 33% extra, he being the transferee from the original lessee and not liable to pay unearned increase demanded by DDA. After noticing the submission made by the learned counsel for the petitioner, the Court directed the counsel for DDA to state the stand of DDA on eligibility of the petitioner to pay 33% extra conversion charges in lieu of unearned increase. In compliance of the said order, DDA filed an additional affidavit dated 18.01.2012, stating therein that the petitioner before this Court had not sought any permission from DDA for transfer of property in question to him and that in the event of a permission being granted by the lessor for transfer of the property, 50% of the unearned increase payable to DDA in terms of clause 5(a) of the lease deed. As regards conversion policy, it was pointed out in the additional affidavit of DDA that the petitioner is not eligible to pay conversion charges in lieu of unearned increase since he never applied for conversion of the leasehold rights into freehold in his favour. During the course of arguments, my attention was drawn to the conversion policy of DDA which *inter alia* provides that in cases where the lessee/sub-lessee/allottee has parted with possession of the property, conversion is allowed provided:

> "a) application for conversion is made by a person holding power of attorney from lessee/sub-lessee/allottee to alienate (self/transfer) the property.
>
> b) proof is given of possession of the property in favour the person in whose name the conversion is being sought;
>
> c) where there are successive power of attorneys, conversion is allowed after verifying the factum of possession provided that the linkage of original lessee/sub-lessee/allottee with the last power of attorney is established and attested copies of power of attorneys are submitted."

9. It was pointed out by the learned counsel for the respondent that since the petitioner did not apply for conversion of property in question into freehold and did not submit documents such as Power of Attorney and Agreement to Sell, alleged to have been executed by respondents 2 and 3 in his favour, he is not eligible for conversion of the said property into freehold. Thus, neither the conversion of property in question into freehold is a subject matter of this writ petition nor is petitioner otherwise eligible for conversion of the said property into freehold unless he complies with the requirements stipulated in the conversion policy notified by DDA in this regard.

10. Even if I proceed on the assumption that the petitioner has the locus standi to maintain a writ petition against sealing of the property, no ground for de-sealing the property has been made by him. As stated in the counter-affidavit of DDA, the property came to be sealed *inter alia* on account of unauthorized construction and misuse of the property in contravention of the terms of the lease deed. This is not the case of the petitioner that there was no unauthorized construction in the property. Admittedly, the property in question was leased out for residential purpose and could not have been used for a non-residential purpose, without prior permission of the lessor. This is not the case of the petitioner that the said property is being used only for residence and no portion of the property is being used for a non-residential purpose. In fact, during the course of arguments the learned counsel for the petitioner did not even dispute the liability of the petitioner to pay misuse charges till the date the property in question came to be sealed by DDA. This is also not the case of the petitioner that the misuse in the property has since been stopped altogether and the unauthorized construction has since been demolished. Therefore, there is no ground, on merits, for de-sealing the property subject matter of the writ petition.

11. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. The property in question was de-sealed by DDA pursuant to an interim order passed by this Court. Since the writ petition is being dismissed, on merits, it would be open to DDA to re-seal the property in accordance with law.

In the facts and circumstances of the case, there shall be no order as to costs.

V.K.JAIN, J

MAY 20, 2013
bg