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

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DECIDED ON: 07.05.2013

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LPA 2474/2005

VIJAY DIXIT, SENIOR BUILDER AND ANR. Appellants
Through: None.

versus

D.D.A. AND ANR. Respondents
Through: Mr. Rajeev Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. There was no appearance when the matter which was listed in the final hearing list, was called up.
2. The present appeal by the unsuccessful writ petitioners challenges the judgment and order of the learned Single Judge dated 9.9.2005 in W.P.(C)7255/2002.
3. The brief factual matrix of the case are that the writ petitioners who are purchasers and the original vendor (Mrs. Sushila Gurbachan Singh) of property being no.1/1, Shanti Niketan, New Delhi were aggrieved by an order dated 16.10.2001 preferred by one of the contesting respondent Lt. Col. Dr. (Mrs.) Manjit Rai. The impugned

order issued by the DDA had cancelled the mutation in respect of the said property and also the conveyance deed executed in favour of the second and third petitioners who are vendees/purchasers. The vendor of the suit property was the first petitioner Smt. Sushila Gurbachan Singh. The impugned order dated 16.10.2001 was premised upon a complaint lodged by Lt. Col. Dr. (Mrs.) Manjit Rai - who was the daughter of Smt. Sushila Gurbachan Singh. The said order dated 16.10.2001 *inter alia* stated as follows: -

“Madam,

On the basis of the complaint lodged by Lt. Col. Mrs. M.Rai, D/o Late Shri Gurbachan Singh and in continuation of this office letter of even number dated 28.5.2001, the mutation as well conveyance deed of freehold in respect of the above noted property plot is hereby cancelled i.e. as under: -

- (1) The mutation of the above noted plot/property allowed vide this office letter No.F-2(3)/IV/CS/DDA dated 20.4.70, is hereby cancelled.*
- (2) The conveyance deed of freehold executed on 20.10.2000 is also hereby cancelled.*

The above cancellations of mutation and conveyance deed of freehold of the above noted plot/property till further orders subject to the verdict of the Court Case in Suit No.292/2001 pending in the High Court of Delhi in the matter of Lt. Col. Dr. (Mrs.) M. Rai (Manjit Rai) versus Smt. Sushila Gurbachan Singh and others.

This has been issued with the concurrence of the Competent Authority”

During the writ proceedings, the respondent/DDA as well as Lt. Col. Dr. (Mrs.) Manjit Rai had relied upon the fact that a civil dispute was pending on the file of this Court being Civil Suit No.292/2001 (*Lt. Col. Dr. (Mrs.) Manjit Rai v. Smt. Sushila Gurbachan Singh and Others*). The DDA too was party in those proceedings. The relief claimed in that suit was *inter alia* pertained to the rights of the respective parties which included Smt. Sushila Gurbachan Singh as well as Lt. Col. Dr. (Mrs.) Manjit Rai. The plaintiff, i.e., the daughter had asserted that she had property rights and that her mother, the first petitioner in the case could not have alienated or transferred the entire property. That appears to have been the sum and substance of the grievance in the complaint which ultimately led into the impugned order dated 16.10.2001. The learned Single Judge in the impugned order noticed that an interim order dated 15.06.2001 restraining the writ petitioners (appellants here) from selling, transferring, assigning or creating any third party rights or parting with possession of the suit property, had been made. It was also asserted that Smt. Sushila Gurbachan Singh had passed away as on the date when the writ petition was filed. The learned Single Judge after considering the nature of the dispute and also after recording the contentions of the parties held as follows: -

“8. The impugned Order dated 16.10.2001 merely recalls the mutation order and the execution of the Conveyance Deed of Freehold, even though the word ‘cancel’ has been employed therein. This is clear from the next paragraph which refers to the pendency of the suit between the parties and fixes the duration of the cancellation to the verdict in the suit. There can be no

gainsaying that the dispute can be raised by Lt. Col. Dr. (Mrs.) M. Rai since she is an heir and/or legal representative of her deceased father Shri Gurbachan Singh. Prudence would have dictated the obtainment by Shri Vijay Dixit of a No-objection or any other affirmation for extinguishment of Lt. Col. Dr. (Mrs.) Manjit Rai's rights in the property. The impugned decision of the DDA cannot, therefore, be faulted in these writ proceedings.

9. The writ petition is dismissed, without prejudice whatsoever to the decision of the Civil Court in S. No.292/2001 of any other civil proceedings. The parties shall bear their respective costs."

4. In the present appeal, it is urged that the impugned judgment suffers from various legal infirmities. The appellants argued that the learned Single Judge failed to appreciate that the second and third petitioners are *bona fide* purchasers and that sufficient materials existed on the records in the writ proceedings for a finding in that regard. It was also argued that the impugned order of cancellation - of the mutation and the conveyance deed dated 16.10.2001 was without jurisdiction and also contrary to principles of natural justice. The appellants further argued that the Single Judge fell into error in relying upon certain documents allegedly creating rights. In this context, it is submitted that those documents are not registered and could not have been taken into consideration by the Court. In the light of these submissions, it is argued that the right of the vendees/appellants to peacefully enjoy the property in their possession and for which title was conferred upon them through conveyance deed which was further recognised in the mutation, could not have

summarily cancelled as was done by the DDA through its order dated 16.10.2001.

5. A facial reading of the impugned order would disclose that the learned Single Judge was cautious of what he characterised as the ‘convoluted’ nature of the civil disputes which had arisen between the parties. Having regard to the rival claims and counter claims with regard to the genuineness or otherwise of the transaction which resulted in the title in favour of the appellants, the learned Single Judge took a cautious and circumspect decision to leave the resolution of the *inter se* disputes which would be dependent on appreciation of evidence and findings of fact to the appropriate forum, i.e., Civil Court. To that, the learned Single Judge relegated the parties and ultimately even the final decision as to the entitlement to restoration of the mutation and conveyance deed to be dependent on the final outcome of the suit. This is evident from the concluding operative portion of the order which is extracted above.

6. So far as the grounds made out in support of the present appeal go, this Court is of the opinion that the same reasons which impelled the learned Single Judge not to return findings of fact, also ought to persuade us, when the vendees - appellants here - were in fact *bona fide* purchasers without notice and whether the documents they relied upon or for that matter the documents and materials that the respondent Lt. Col. Dr. (Mrs.) Manjit Rai relied upon are relevant and their legal effects cannot be investigated in the writ proceedings.

7. Consequently, this Court is of the opinion that there is no infirmity in the judgment and order of the learned Single Judge. It is

clarified - in order to put the matter beyond any controversy that the appellant's right to restoration of the mutation and the conveyance deed in respect of the suit land would be entirely dependent on the outcome of the suit between the parties in which concededly the DDA too has been impleaded as a party. In the event of a favourable decision, the DDA will take appropriate consequent action within eight weeks of the final decision of the Civil Court.

8. The appeal has to fail; it is accordingly dismissed but subject to the directions made above.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

MAY 07, 2013
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