

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

% Judgment reserved on : 06.05.2013
Judgment pronounced on : 09.05.2013

+ **W.P.(C) 5025/2007**

KANAL GUPTA THR. NATURAL GUARDIAN P.K.GUPTA

..... Petitioner

Through: Mr.Rajesh Banati, Advocate

versus

D.D.A. & ORS.

..... Respondents

Through: Mr.Rajiv Bansal, Advocate for
respondent/DDA.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. Plot No. B-542, New Friends Colony, New Delhi was sub-leased by the respondent-DDA to Mr Sudhir Khanna and Mr Raman Khanna. They entered into an agreement for construction of a building comprising basement, ground floor, first floor, second floor and third floor on the above-referred plot. The said agreement stipulated that if the cost of construction along with interest, etc. and refund of security deposit was not paid to the builder Suresh Goyal, he shall be deemed to be the owner of the said property. An agreement to sell was also stated to have been

executed by the sub-lessees of the above-referred plot in favour of the builder Shri Suresh Goyal. The construction agreement also empowered the builder to assign the said agreement and/or to sell the said property or any part thereof to any person. The aforesaid agreement was assigned by the builder Suresh Goyal in favour of M/s Moolchand Builders, a partnership firm, in which Shri Suresh Goyal himself was a partner. Vide an agreement to sell dated 05.8.1988, executed between M/s Moolchand Builders as the sellers, Shri Sudhir Khanna and Shri Raman Khanna as the owners through their attorney Shri Tulsi Dass Goyal, Shri Suresh Goyal as the confirming party and the petitioner Kanal Gupta and his sister Neha Gupta, both minor acting through their father and natural guardian Pramod Kumar Gupta, the vendees agreed to purchase the front portion of the second floor of the aforesaid building for a consideration of Rs 8,25,000/-. The portion subject matter of the above-referred agreement to sell was got assessed by the vendees in their name in the property tax record of MCD and they also obtained separate water and electricity connection.

2. Vide another agreement to sell dated 23.10.1996 executed between Ms Suman Thakur, described therein as the vendor, petitioner No. 2 Ms

Meera Anand, described therein as the vendee and Mr Sudhir Khanna and Mr Raman Khanna through their attorney Shri Tulsi Dass Goyal, the aforesaid vendee agreed to purchase the first floor flat in the aforesaid property for a consideration of Rs 34,00,000/-.

3. WP(C) No. 1833/1994 was filed in this Court by New Friends Colony Cooperative House Building Society Limited complaining misuse of the properties in New Friends Colony. On filing of the said writ petition, a survey was conducted by DDA and it was found that property No. B-542, New Friends Colony was being misused by Rajnish Parthi & Co. for office purposes. It was also noticed that a number of apartments had been constructed in the building which had been sold out to different persons, without taking written permission. A show-cause notice dated 24.08.2000 was then issued to the sub lessees Sudhir Khanna and Mr Raman Khanna. Since no reply was received by them, a final show cause notice dated 03.10.2000 was issued to them. Despite service of both the notices, no reply was received and, therefore, it was assumed that noticees had nothing to say in the matter. The lease deed was determined by the Lieutenant Governor of Delhi and the determination of the lease

deed was communicated to the sub-lessees Shri Sudhir Khanna and Shri Raman Khanna vide letter dated 27.11.2000.

4. Vide letter dated 18.01.2001, DDA referred the matter to the Estate Officer for taking eviction proceedings in respect of the aforesaid plot. The Estate Officer issued a notice dated 02.02.2005 to Shri P.K. Gupta, father of petitioner No. 1 under Section 4(1) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971, requiring him to produce evidence in support of his objections to the notice and appear before him on 25.02.2005. The said notice was responded by Shri P.K. Gupta vide letter dated 16.02.2006. The petitioners thereafter filed this petition impugning the show cause notice dated 02.02.2005, issued by the Estate Officer.

5. Clause (II) 15 of the sub-lease deed executed in favour of Sudhir Khanna and Raman Khanna reads as under:-

(15) The Sub-Lessee shall not without the written consent of the Lessor carry on, or permit to be carried on, on the residential plot or in any building there on any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of private dwelling or do or suffer to be done therein any act or thing whatsoever which in the opinion of the Lessor may be a nuisance, annoyance or disturbance to the

Lessor, the Lessee and other Sub-Lessees and persons living in the neighbourhood:

Provided that, if the Sub-Lessee is desirous of using the said residential plot or the building thereon for a purpose other than that of private dwelling the Lessor may allow such change of user on such terms and conditions, including payment of additional premium and additional rent, as the Lessor may in his absolute discretion determine.”

It would thus be seen that the sub-lessees could not have, without written consent of the lessor, carried on any trade or business nor could they have permitted to be carried on, any trade or business on the building constructed by them on plot No. B-542, New Friends Colony which had been sub-leased to them. In fact, the said property could not have been used for any purpose other than that of a private dwelling unit, without prior consent of the lessor. It is not in dispute that a part of the building constructed on the aforesaid plot was being used for a purpose other than that of a private dwelling. There is nothing on record to show that use of that portion for a purpose other than that of a private dwelling was commenced and continued without permission of the sub-lessees Mr Sudhir Khanna and Mr Raman Khanna. Neither of them responded to the show cause notices issued to them by DDA, alleging therein that they had violated clause II (15) of the sub-lease deed by using or permitting the said property to be used for a purpose other than that of a private

dwelling. There is nothing on record to indicate that on receipt of the said show-cause notice, the sub lessees Mr Sudhir Khanna and Mr Raman Khanna took such steps as were open to them in law to stop the misuse of the aforesaid property.

6. In case the portion where misuse was detected by DDA had been let out by the sub-lessees to M/s Rajnish Parthi & Co., they, on receipt of the said notice, were duty bound to take legal action such as a suit restraining the said firm M/s Moolchand Builders from using the portion occupied by them, for a non residential purpose. Therefore, there was a breach of clause II (15) of the sub lease deed the moment any part of the building constructed on plot No. B-542, New Friends Colony was put to a non-residential use and no action was taken by the sub lessees to prevent such misuse of the building. Clause III of the sub-lease deed, to the extent it is relevant, provided that in the event of any breach by the sub-lessee or by any person claiming through or under him, of any of the covenants or conditions contained in the lease and to be observed or performed on the part of the sub-lessee, it shall be lawful for the lessor or the lessee with the prior consent in writing of the lessor, to re-enter upon and take possession of the residential plot and the buildings and fixtures

thereon and thereupon the sub-lease and everything therein contained shall cease and determine in respect of the residential plot so re-entered upon and the sub-lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him. Therefore, the lessor was entitled to determine the sub-lease on account of use of a part of the building for non-residential purpose. Clause IV of the sub-lease provides that no forfeiture or re-entry shall be effected until the lessor/lessee has served upon the lessee, a notice in writing specifying the particular breach complained of and if the breach is capable of remedy, requiring the sub-lessee to remedy the breach and the sub lessee falls within reasonable time as may be mentioned in the notice, to remedy the breach if it is capable of remedy. Since even on receipt of show cause notices from the DDA, the sub lessees Mr Sudhir Khanna and Mr Raman Khanna did not take steps to stop the misuse, the determination of the lease was absolutely in accordance with the terms contained in the sub lease.

7. It was contended by the learned counsel for the petitioners that the petitioners having purchased only the front portion of the second floor and the first floor and there being no misuse in the aforesaid portions, the

sublease of the whole of the building could not have been determined. I, however, find no merit in this contention. Firstly, there is one sub lease in respect of the whole of the plot No. B-542, New Friends Colony and there are no separate sub-leases for each floors in the building constructed on the plot. Therefore, if a cause has arisen for determination of the sub-lease, it is the whole of the sub lease which can be determined by the lessor. Since the plot, on determination of the sub-lease vests in the lessor, there can be no question of determining the sub-lease qua only that portion which has been subjected to the misuse. The second reason for rejecting this contention is that the petitioners have not purchased any part of the building constructed on plot No. B-542, New Friends Colony, they having only entered into an agreement to purchase certain portions of the building. The sale can be made only by executing a proper sale deed or transfer deed which also needs to be duly registered.

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 immovable 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.”

8. There is yet another reason why challenge to the determination of the sub-lease at the instance of the petitioners cannot be entertained. The show-cause notice was issued by DDA only to the sub-lessees Mr Sudhir Khanna and Mr Raman Khanna. They being the sub-lessees of plots in question and the transaction with the petitioners having been entered into without prior permission from the lessor, the petitioners have no legal right to challenge the determination of the sub-lease granted to Mr Sudhir Khanna and Mr Raman Khanna. The petitioners have no legal right to challenge the determination of lease merely because they happen to be

one of the occupants of certain portions of the building, pursuant to an agreement to sell executed in their favour.

9. It is true that the Estate Officer has issued notice under Section 4 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to Shri P.K. Gupta, father of petitioner No. 1, but, the cause for issuing the said show cause notice is determination of the sub-lease by the lessor. No fault can be found with the notice issued by the Estate Officer, without challenging the determination of the sub-lease and since no such challenge can be entertained at the instance of the petitioners, the challenge to the notice issued by the Estate Officer must necessarily fail. In any case, on merits also, no exception can be taken to the order determining the sub-lease on account of misuse of a portion of the building constructed on the plot subject matter of the sub-lease.

10. During the course of arguments, it was contended by the learned counsel for the petitioners that under the policy framed by the Government, they are entitled to conversion of leasehold rights in respect of the portions purchased by them, into freehold and that they have already applied to DDA for this purpose. The learned counsel for the respondents, on the other hand, submitted that even under the policy

notified by the Government in this regard, the petitioners are not entitled to conversion of the portion occupied by them into freehold.

11. A perusal of the letter dated 12.06.2006, written by Government of India, Ministry of Urban Development and Poverty Alleviation, New Delhi to the Chief Secretary, Government of NCT of Delhi, Vice-Chairman of DDA, the Chairman of NDMC and the Commissioner of MCD would show that the Government decided to further modify the scheme which it had earlier modified vide its letter dated 24.06.2003. The modified scheme, to the extent it is relevant, reads as under:

I. Conversion of Property sold through regular sale deeds:-

In respect of cases where properties are transferred through regular sale deed, conversion into freehold shall now be allowed on payment of conversion fee plus surcharge of 33 1/3% as available to the GPA holders if the cases are otherwise eligible for conversion into freehold as per the scheme and other Govt. dues are paid.

II. Conversion in respect of multi-storeyed buildings:-

Individual flats/floors/shops in multi-storeyed residential complexes and multi-storeyed commercial complexes shall be considered for conversion from leasehold to freehold in cases where the owners have complied with following conditions:-

(a) Permission had been obtained from the lessor for construction of multi-storeyed group

housing complexes and multi-storeyed commercial complexes;

X X X

(f) When the property is re-entered/lease is cancelled, any such properties will not be eligible for the conversion unless the re-entry is withdrawn after payment of all dues including all misuse charges and damages charges for unauthorized construction.

The Formula for calculation of the conversion fee in respect of such flats/floors/shops from leasehold to freehold will be notified separately. A centralized list of such properties when conversion to freehold is done shall be maintained in Land Development Office/DDA to avoid future litigation.”

Since no regular sale deed has been executed in favour of the petitioners, their case is not governed by Clause I of the aforesaid scheme. It would also be seen from a perusal of the scheme that conversion from leasehold to freehold in respect of the multi-storeyed residential complexes and multi-storeyed commercial complexes can be granted only where permission had been obtained from the lessor for construction of multi-storeyed group housing complexes and multi-storeyed commercial complexes. It would be further seen that the properties, lease of which stands cancelled/re-entered are not eligible for conversion unless re-entry is withdrawn after payment of all dues, including misuse charges. There is nothing on record to show that the

sub-lessees Mr Sudhir Khanna and Mr Raman Khanna had obtained permission from the lessor for construction of multi-storeyed group housing complex or multi-storeyed commercial complex on the plot in question. Therefore, the individual flats in building in question are not eligible for conversion into freehold. Moreover, since sub-lease already stands determined/cancelled and admittedly, has not been restored so far, conversion of individual flats/floors into freehold is not permissible under the scheme. Therefore, no benefit of the modified conversion scheme dated 12.06.2006 accrues to the petitioners.

12. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed.

MAY 09, 2013
BG

V.K.JAIN, J