

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

Reserved on: 22nd November, 2013

Pronounced on: 05th December, 2013

+ **W.P.(C) 8095/2012**

SH. SALIM LALVANI

..... Petitioner

Through

Mr. Vijay Kaundal Adv. with

Mr. Rupesh Gupta, Adv.

versus

DELHI DEVELOPMENT AUTHORITY

.... Respondent

Through

Ms. Shobhana Takiar, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

1. The short question falling for determination in the instant writ petition is whether on account of any dispute between the legal heirs of a deceased, who was a lease holder of a DDA plot and a third person, the DDA can withhold mutation in favour of the legal heirs or make it subject to the outcome of any such dispute.
2. Let me recapitulate the facts.
3. Late Shri Parmanand Jhuromal Lalvani (P JL), father of the Petitioner was the highest bidder of Plot No.149, Block A-I, in the layout plan of Safdarjung Development Residential Scheme, situated at Ring Road South Delhi. Said P JL was allotted the earlier said plot and a lease deed was executed in his favour. On his (P JL) demise, his wife Mrs. Mohini P. Lalvani succeeded to the said plot on the basis of a Will executed by him.

Thereafter, the Petitioner and his sister Ms. Anjali Lavani succeeded to the said plot on the basis of a Will executed by their mother Mrs. Mohini P. Lavani, who expired on 12.06.2007. Ms. Anjali Lalvani by a relinquishment deed dated 25.10.2010 relinquished her 50% share in favour of the Petitioner and thus the Petitioner has become the sole lease holder in respect of the plot.

4. The Petitioner filed a testamentary case bearing No.47/2007 and he was granted probate in respect of the Will executed by Mrs. Mohini P. Lalvani by an order dated 21.10.2011 passed by this Court.
5. By an application dated 01.09.2011, the Petitioner applied for substitution of his name as a lessee in respect of the plot in question. The Respondent DDA wrote a letter dated 19.10.2011 to him seeking certain documents including the original relinquishment deed executed by Ms. Anjali Lavani. In pursuance of the letter dated 19.10.2011 written by the DDA, the Petitioner furnished certain documents including the original relinquishment deed executed by Ms. Anjali Lalvani. Despite repeated visits made by the Petitioner's counsel, the Petitioner failed to get any further response which forced him to file a writ petition being W.P.(C) No.4229/2012. The same came to be disposed of by the learned Single Judge of this Court by an order dated 24.07.2012 with directions to the DDA to decide the application for mutation moved by the Petitioner within a period of eight weeks.
6. According to the Petitioner, the application was not decided as per the directions of the court compelling him to move a contempt petition. In any event, ultimately a mutation letter dated 04.12.2012 was issued in favour of the Petitioner, which is extracted hereunder:-

*“As per direction of Hon’ble High Court of Delhi dated 17.10.2012 and 30.11.2012, in supersession of earlier mutation letter dated 15.10.2012 & 25.10.2012, I am to inform you that consequent upon the death of Smt. Mohini P. Lalvani w/o Late Shri Parmanand Jhuromal Lalvani, the lessee/mutate of the plot under reference and on the basis of documents furnished by you and other documents including relinquishment deed registered vide No.13538 in Additional Book No.1 Vol. No.5610 on pages 105 to 118 dated 29.10.10 in the office of Sub-Registrar-IX, Delhi mutation of plot No.149, Block-A-1, Safdarjung Enclave, New Delhi, is allowed in the name of Shri Salim Lalvani being the real son of late Smt. Mohini P. Lalvani w/o late Shri Parmanand Jhuromal Lalvani subject to payment of all outstanding dues against the plot, if any and **subject to outcome of Court Case No. CS(OS) 1995/2008.**”*

7. Admittedly, there is a dispute between the Petitioner and one Vijay Israni (V.I.) who has filed a suit for specific performance of a contract dated 19-29.04.2008 against the Petitioner being CS (OS) No.1995/2008 pending disposal in this Court. According to the Agreement to Sell which has been set up by said V.I., the Petitioner had agreed to sell the plot in question to him on a total monetary consideration of `4 crores. Out of the same, an advance of `5 lacs was given by said V.I. to the Petitioner and out of the remaining, certain amounts were payable on execution of a certain GPA and the balance at the time of execution of the Sale Deed. I need not go into the averments made in the said civil suit. Suffice it to say that a suit for specific performance is pending against the Petitioner. The case of the Petitioner is that the said V.I. had himself committed the breach of the agreement and failed to pay the amount as agreed and thus, the contract stood rescinded. In any case, the Petitioner avers that in spite

of the pending dispute, the DDA could not have effected mutation in favour of the Petitioner, subject to the outcome of the said civil suit.

8. The sole defence taken to the writ petition by the Respondent is that by a letter dated 29.03.2012, the said V.I. had intimated to the DDA that the Petitioner had sold his one-half undivided share in the earlier said plot in favour of V.I. on the basis of the Agreement to Sell dated 19-29.04.2008. Thus, V.I. was required to attend the office of the DDA on 10.05.2008 and in view of the pending litigation between the Petitioner and V.I., the mutation was effected only subject to the outcome of the CS(OS) No.1995/2008.
9. It is contended that the Petitioner's motive in making a request for deletion of the crucial safety clause in the mutation letter smacks of *mala fides* on the part of the Petitioner. It is thus prayed that the writ petition is liable to be dismissed.
10. There is no gain saying that the DDA does not dispute the genuineness/validity of the document on the basis of which the Petitioner became entitled to the lease hold rights in Plot No.149, Block A-I, in the layout plan of Safdarjung Development Residential Scheme, New Delhi and that is why mutation was effected in his favour.
11. Admittedly, there is no existing right in favour of Vijay Israni. The DDA is therefore, neither under any obligation nor is expected to entertain any application by any third party and to either delay mutation or pass an order of mutation subject to any dispute which might be raised by any third party.

12. In the eventuality of Vijay Israni succeeding in the litigation pending before the original side of this Court, nothing prevents the DDA then to take action in accordance with the order passed by the Court.
13. I need not go into the question of *mala fides* and demand of illegal gratification claimed to have been raised by some officers of the DDA to effect mutation in favour of the Petitioner. There is no escape from the conclusion that filing of a civil suit for specific performance on the basis of an agreement to sell ought not to have been taken cognizance by the DDA for effecting the mutation subject only to the outcome of the decision therein. It is also noteworthy that the DDA is not even a party and could not have been a party to the said civil suit filed by Vijay Israni against the Petitioner.
14. Consequently, the writ petition succeeds. This Court hereby issues a writ of *mandamus* directing the Respondent DDA to amend the contents of the mutation letter bearing No.F.4(176)/1963/LAB(R)/DDA/6400 dated 04.12.2012 by deleting the words that mutation/substitution of the subject property shall be “*subject to outcome of Court Case No. CS(OS) 1995/2008*” within a period of six weeks.
15. The writ petition is allowed in above terms.
16. Pending application also stands disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 05, 2013

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