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

% *Date of decision:* 11.03.2020

+ W.P.(C) 11032/2015 & CM APPL. 28460/2015

JANAK M.B. SINGH

..... Petitioner

Through

Mr.Rajat Aneja and Ms.Rajula Gaur,
Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through

Mr.Pawan Mathur, Standing Counsel

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This writ petition is filed seeking following relief:

“It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to issue a Writ in the nature of MANDAMUS and/ or any other appropriate Writ, Order or Direction of like nature directing the Respondent/DDA (to carry out substitution/mutation in favour of the Petitioner in respect of the immovable property bearing Plot No. 63, Sarai Julliana Cooperative House Building Society Ltd. Sukhdev Vihar, New Delhi((in view of the orders dated 10.04.2012 and 04.10.2013 passed in the Writ Petition bearing W.P.(C) No.1993/2012 read with the judgment dated 16.10.2014 passed in the Appeal bearing R.F.A. No. 231/2012 in the light of the detailed facts and circumstances explained hereinabove.”

2. The matter has a long chequered history. The petitioner is one of the class- I legal heirs of Late Sh.Mahabir Singh who was the original allottee of the immoveable property being plot No.63, Sarai Julaina, Sukhdev Vihar, New Delhi on the strength of his membership of the society, namely, Sarai

Julaina Co-operative House Building Society Ltd.(*hereinafter referred to as the 'society'*). After allotment of the plot by the society, a perpetual lease was executed in favour of Sh.Mahabir Singh by the Land and Building Department of Delhi Administration, which was duly registered.

3. Subsequently, the secretary of the society submitted a complaint to the Delhi Administration to cancel the allotment of sub-lease of Sh.Mahabir Singh on the ground that he had furnished a wrong affidavit about the ownership of another house by him. A show cause notice was issued to Sh.Mahabir Singh. On 25.02.1981, the perpetual lease was cancelled and an order was passed for resumption of the plot.

4. In the mean time, as the allegations pertained to a house in Lajpat Nagar which belonged to one Sh.Tej Pal Singh, i.e. cousin brother of Sh.Mahabir Singh, said Sh.Tej Pal Singh filed a suit for declaration and permanent injunction. A decree was passed on 08.11.1979 by the concerned civil court declaring Sh.Tej Pal Singh as the exclusive and absolute owner of the property situated at Lajpat Nagar, New Delhi.

5. Sh.Mahabir Singh filed a writ petition before this court against the abovementioned order of resumption. The said writ petition was disposed of noting that there are disputed questions of fact involved, it would be for Sh.Mahabir Singh to approach appropriate civil court.

6. Thereafter, a suit was filed by Sh.Mahabir Singh seeking to *set aside* the order of cancellation of the sub-lease, as aforesaid. However, the suit was dismissed on 12.12.1984. A first appeal was preferred before the learned Additional District Judge (*in short 'ADJ'*). Sh.Mahabir Singh expired on 26.03.1997. The learned ADJ allowed the appeal filed by Sh.Mahabir Singh since deceased vide judgment and decree dated

23.04.1998. Against the said judgment and decree of the appellate court, no appeal was filed by the respondent/DDA. However, an appeal was filed by the society, which was dismissed as withdrawn on 19.04.1999.

7. Subsequently, the respondent/DDA in September, 2000 chose to file a suit seeking declarations that the orders dated 25.02.1981/07.03.1981 cancelling the perpetual sub-lease and resumption of plot as legal, valid and binding; a declaration that the decree dated 08.11.1979 passed in the suit filed by Sh.Tej Pal Singh is fraudulent, collusive and illegal and is of no legal consequences and effect; and also a declaration that judgment dated 23.04.1998 passed in RCA 116/1990 which had been filed by Late Sh.Mahabir Singh is contrary to law and the facts on record and is of no legal consequences. The aforesaid suit was dismissed on 14.12.2009. Against the said order, a Regular First Appeal (RFA) was filed by the respondent/DDA which was also dismissed on 16.10.2014. Against the said dismissal belatedly a Special Leave Petition was filed before the Supreme Court which was also dismissed on 09.10.2017 on the ground of limitation as also on merits.

8. In the meantime, the petitioner filed another writ petition being W.P.(C) 1993/2012 before this court. The said writ petition was disposed of on 10.04.2012. The submission of the learned counsel for the respondent/DDA was noted that an appeal is being preferred against the order in the suit dated 14.12.2009 passed by the learned ADJ. A direction was however passed that there is no impediment for the respondent/DDA to carry out mutation of the subject plot in favour of the petitioner. A direction was issued to take necessary steps by the respondent/DDA in this regard within four weeks.

9. As the matter did not progress, the petitioner filed a contempt petition being Cont. Cas(C) No.304/2012. A review petition was also filed by the respondent/DDA against the order of the writ court dated 10.04.2012. The review petition was disposed of on 04.10.2013 with the direction that the petitioner will file an affidavit of undertaking that in the event of the respondent/DDA complying with the order dated 10.04.2012 and mutating the plot, the petitioner will not sell, transfer, alienate or part with possession of the subject plot till a decision is rendered in appeal to be filed by the respondent/DDA. It is the contention of the petitioner that despite filing an affidavit of undertaking, necessary mutation has not been carried out. On 09.10.2013 in view of the subsequent order passed in the review petition on 04.10.2013, the contempt petition was dismissed as withdrawn reserving the right to take such further remedies available as per law.

10. I have heard learned counsel for the parties.

11. Learned counsel for the respondent/DDA has opposed the present petition stating that what is actually being sought by the petitioner is in the nature of an execution of the decree that was passed in favour of the petitioner in appeal being RCA No.116/1990 dated 23.04.1998. He also states that the contempt petition was also withdrawn by the petitioner. It is also claimed that a writ petition cannot be filed to get the orders of a Civil Court executed.

12. I may note that in RCA No.116/1990 (i.e. appeal filed by the father of the petitioner), the appellate court passed a decree dated 23.4.1998 stating as follows:

“15. Consequently the appeal is accepted, and the suit of the plaintiff before the trial is hereby decreed. The order of

cancellation of the plot/flat is declared as inoperative and illegal. The possession of the plot/flat is already with the appellant/plaintiff, so the defendants cannot take possession of the same under the above said order of cancellation. The decree in appeal be prepared. Appeal file be consigned to Record Room and the trial court file be sent back with one copy of this Judgment placed thereon.”

13. Similarly, this court on 10.04.2012 in W.P.(C) 1993/2012 filed by the petitioner, passed the following orders:

“4. The aforesaid suit filed by the respondent/DDA came to be dismissed by the learned ADJ vide order dated 14.12.2009. Admittedly, as on 10.4.2012, the respondent/DDA had not instituted any appeal against the aforesaid decision. Similar submissions were made by the counsel for the respondent/DDA who had clarified that the Department had taken a decision to prefer an appeal against the order dated 14.12.2009, but the said appeal had yet to be instituted. As a result, the writ petition had been disposed of on 10.4.2012 with directions issued to the DDA to mutate the subject plot in favour of the petitioner.”

14. I also cannot help noticing that the respondent/DDA had filed a suit with the reliefs as already noted above. The said suit was dismissed; a regular first appeal filed was dismissed; and the special leave petition was also dismissed. It is not clear that for what reasons the respondent/DDA has not mutated the property in favour of the petitioner. The matter is languishing for long without any rhyme or reason.

15. The defence raised by learned counsel for the respondent/DDA is entirely misplaced. A perusal of the decree passed in favour of the father of the petitioners dated 23.4.1998 shows that the order of cancellation of the plot has been declared as inoperative and illegal. No consequential direction has been passed in the decree to DDA to mutate the plot back in the name of

the petitioners. Hence, this relief may not necessarily be available to the petitioner in case an execution was filed. Be that as it may, even if for some reason an execution to implement the decree dated 23.4.1998 did lie, in my opinion, that itself would not be a sufficient ground to deny relief to the petitioner in this present writ petition.

16. In this context reference may be had to the judgment of the Supreme Court in *Maharashtra Chess Association vs. Union of India, 2019 SCC OnLine SC 932* wherein the Court held as follows:-

“22. This argument of the second Respondent is misconceived. The existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court’s writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case.”

Hence, it can be seen from the above that the mere existence of an alternative remedy would not bar the High Court from exercising its writ jurisdiction and granting relief under the same. It would depend on the facts and circumstances of each case.

17. The petitioner is running from pillar to post since 1998 when a decree was passed in his favour for getting the property mutated in his name but with no success. Instead of complying with the decree DDA decided to file a suit in September 2000 seeking a declaration that the cancellation of the perpetual sub-lease is legal and valid and a declaration that a judgment dated 23.4.1998 passed in RCA 116/90 is of no legal consequence. Even after this suit and the appeals have been dismissed, DDA has refused to carry out the

mutation. This is so despite orders passed by a Writ Court in W.P.(C)1993/2012 dated 10.4.2012. There are no reasons whatsoever as to why respondent DDA has not carried out necessary mutation.

18. Accordingly, the Writ petition is allowed. DDA/Respondent is directed to carry out necessary mutation in favour of the LR's of the petitioner in respect of the immovable property within eight weeks from today. For the needless delay the petitioner shall also be entitled to costs of Rs.50,000/- from the respondent/DDA. However, in case necessary mutation is carried out within the stipulated period of eight weeks from today the costs against respondent/DDA shall stand waived of. The petition and all pending applications stand disposed of, as above.

MARCH 11, 2020/v

JAYANT NATH, J.

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