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HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C). No.5072/2013

Decided on : 29th June, 2015

ANURADHA KALRA

..... Appellant

Through: Mr. Arun Malik & Mr. A.B. Pandey,
Advocates.

Versus

THE DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Manika Tripathy Pandey, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a writ petition filed by the petitioner under Article 226 of the Constitution of India. The petitioner has sought the following three reliefs :-

- a. Issue a Writ of Certiorari or any other appropriate Writ and/or order quashing the letter, bearing No.F125(359) 97/SFS/VK II and dated nil, vide which the respondent has rejected the request of the petitioner for delivery of possession of the flat bearing no.6001/1, Sector-D, Pocket-6B, Vasant Kunj, New Delhi.
- b. Issue a Writ of Certiorari or any other appropriate Writ and/or order directing the

Respondent to transfer the flat bearing no.6001/1, Sector-D, Pocket-6B, Vasant Kunj, New Delhi to the name of the petitioner;

- c. Issue a Writ of Mandamus or any other appropriate Writ order and/or direction thereby directing the Respondent to deliver the possession of flat bearing no.6001/1, Sector-D, Pocket-6B, Vasant Kunj, New Delhi to the petitioner as payment of entire demand has been made by the Petitioner in terms of Demand Letter dated 20.02.1997 in accordance with conversion policy;
- d. Issue a Writ of Mandamus or any other appropriate Writ order and/or direction restraining the Respondent from transferring, and/or creating any right, title and interest in the flat bearing no.6001/1, Sector-D, Pocket-6B, Vasant Kunj, New Delhi in favour of any other person/party; and
- e. Pass any other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. Briefly stated the facts leading to filing of the present writ petition are that one Dhanpati had registered under the 9th SFS category 2 flat. She was allocated a flat on the ground floor in Sector D, Pocket 6B, Vasant Kunj, New Delhi vide demand-cum-allocation letter dated 20.02.1997. At the time of allocation, the specific flat number was not

given in the allocation letter; however, the floor is given and the specific flat is allotted by a draw of lots after the allottee has made the entire payment in pursuance to the said allocation letter. On 15.7.1997, the allottee Dhanpati is purported to have sold the said allocation to the present petitioner Anuradha Kalra by executing an agreement to sell, will, power of attorney, etc. Anuradha Kalra, in pursuance to the allocation letter continued to deposit various amounts from time to time under the aforesaid scheme. It is further alleged in the petition that on 21.12.2001 a letter was addressed to Dhanpati allotting her the said specific flat bearing No.6001/1, in the aforesaid Sector D, Pocket 6B, Vasant Kunj, New Delhi and she was further called upon to make payment of Rs.2,230/- towards the various charges. The aforesaid payment was deposited by the present petitioner on 12.2.2002. On 10.12.2003, the petitioner intimated to the respondent/DDA for issuance of possession letter to her on the basis of general power of attorney, agreement to sell, receipt, etc. It is alleged that the possession of the said flat was not handed over to her; however, in a meeting held on 24.4.2008, the respondent/DDA had agreed to transfer the possession to the petitioner after charging a token penalty amount of Rs.5,000/-.

Further in terms of the letter No.J-20011/12/L dated 21.12.1989 issued by the Government of India, which laid down guidelines to confer the clear title of the flat to the allottee after realizing the conversion charges, surcharge and processing fee. It was alleged that the respondent was under an obligation to convey the freehold title in respect of the flat in question to the present petitioner. The petitioner had submitted all the requisite documents in this regard to the respondent; however, on 2.9.2009, the petitioner received an intimation that her request for handing over the possession of the flat in question was examined by the competent authority and she was required to deposit maintenance charges to the tune of Rs.27,080/-. The aforesaid charges are purported to have been deposited by the petitioner on 27.10.2009. It is further alleged that after keeping the claim/request of the petitioner for issuance of possession letter pending for more than a decade, the respondent vide their letter bearing No.125 (359) 97 SFS, VK 2 dated nil and in supersession of letter dated 31.12.2001 demanded an exorbitant amount of current cost from the petitioner. The current cost of the flat in question was stated to be approximately Rs.55 lacs and since the appellant had deposited an amount of Rs.8 lacs or so, she was required

to deposit the balance amount of Rs.42,66,157 with the respondent failing which on 14.7.2013, the flat was to be treated as automatically cancelled.

3. It is contended that the petitioner being the purchaser of the flat in question could not have been asked to deposit an additional amount at the current cost of Rs.42,66,157/- as it was against the law laid down by this court in W.P. (C) No.4598/2005 titled *Shri T.P. Oberoi vs. DDA* decided on 7.8.2006. Since neither the possession was handed over to the petitioner nor the demand letter for payment of additional cost on the basis of current cost of the flat in question was withdrawn, the petitioner was constrained to file the present petition.

4. The respondent filed its counter affidavit on 22.10.2013. It did not dispute the facts as alleged in the petition; however, it stated that although the original allottee is purported to have died on 1.5.1998 according to the petitioner but the intimation regarding her death was given for the first time vide letter dated 10.12.2003 at the time of seeking possession of the letter. It has also been stated that as Dhanpati had purportedly executed general power of attorney in favour of the present petitioner, Anuradha Kalra, on 15.7.1997 and she had died

before taking the possession of the flat in question, therefore, the present sale was, as a matter of fact, a pre-possession transaction between the parties. It is also admitted by the respondent that the present petitioner had applied for conversion of the said flat from leasehold to freehold on 25.5.2009 and furnished requisite documents, namely, agreement to sell, power of attorney, etc. But it is contended that the question of handing over the possession to the petitioner was considered by the competent authority at the highest level and the question arose that there were only two ways of regularizing the request of the petitioner either by charging her unearned increase on the flat in question or alternatively to demand the current cost of the flat from the purchaser, namely, the petitioner. It is stated that the competent authority, namely, the Vice-Chairman, DDA vide its order dated 30.7.2012 decided to charge the current cost from the petitioner which was worked out to be in consultation with the finance wing of the respondent/DDA to be Rs.51,45,600/- and after giving her an adjustment of an amount of Rs.8,79,443/-, the present petitioner was asked to deposit an amount of Rs.42,66,157/-. It is stated that as this was the last and final installment, it was to be deposited by 14.7.2013 failing which the flat was deemed to have been automatically

cancelled. The aforesaid averments made in the counter affidavit were refuted by the petitioner in rejoinder and its case in the petition was reaffirmed.

5. I have heard the learned counsel for the petitioner as well as Ms. Manika Tripathy Pandey, the learned counsel on behalf of the respondent/DDA. The main contention made by the learned counsel for the petitioner is that the petitioner being a purchaser of the flat in question from the erstwhile allottee Dhanpati (since deceased) and after having made the entire payment of the flat in question to the tune of Rs.8,79,000/-, she was entitled to get the possession of the flat in question. It was not only the possession of the flat in question but also the conversion of the said flat to the freehold as she had also deposited the conversion charges in terms of the directions passed by the respondent/DDA. It has been contended by the learned counsel for the petitioner that this court in *T.P. Oberoi's case (supra)* involved somewhat the similar facts where the court had directed the handing over of the possession of the flat in question to the purchaser by giving suitable direction to the respondent after protecting the interest of the DDA by directing the purchaser of the flat in question to furnish an

undertaking to the DDA to indemnify the DDA of any loss in the event of the original allottee resurfacing/claiming the possession or allotment of the flat in question. It has also been stated in the said case the flat was converted into the freehold and thereafter the possession was handed over to the purchaser who had also deposited the necessary charges in this regard.

6. Ms. Manika Tripathy, the learned counsel has vehemently contested the claim of the petitioner to get the possession or have the letter with regard to the payment of additional cost based on the current cost to be charged from the petitioner as valid exercise on the part of the respondent. It has been contended by her as a matter of fact the writ petition of the petitioner as such is not maintainable because there was no privity of contract between the petitioner and the respondent. Moreover, the petitioner herself was guilty of concealment of material fact inasmuch as according to her. She has purported to have purchased the allocation and not a specific flat way back on 15.7.1997 and disclosed about the same only in 2003 when the vendor, that is, Dhanpati, the original allottee, had died in the year 1998 itself. This

concealment of material facts from the court in itself is something serious which disentitles the petitioner from getting any relief.

7. I have carefully considered the submissions made by the respective sides and have also gone through the judgment passed by the learned single judge of this court in *T.P. Oberoi's case (supra)*. No doubt in the said case, the facts were somewhat similar to the facts of the present case except that in *T.P. Oberoi's case (supra)*, the petitioner was not the immediate purchaser of the flat in question from the original allottee but in between there were 2-3 more persons but what is important to be noticed and which makes the facts of *T.P. Oberoi's case (supra)* distinguishable from the facts of the present case are that in the said case, the original allottee had not perhaps died and therefore, he stood by the transaction and certainly the power of attorney purported to have been executed by his vendee in favour of the petitioner was still subsisting and was not challenged by anybody while as in the present case, there is no dispute about the fact that the petitioner is purported to have purchased the allocation on 15.7.1997. The first question which would arise is what can be sold or purchased by a person is a property, where an allocation letter which does not have even the specific number

of the flat reflected in the said allocation letter cannot be the subject-matter of purchase. Even the agreement to sell which is executed between Dhanpati and the present petitioner leaves the space with regard to the number of flat as blank, clearly showing that what was purchased by the present petitioner was only an allocation letter that, in my view, does not constitute a property because the word 'property' has been defined under the Transfer of Property Act meaning as under :-

"Section 3 lays down that the "immovable property" does not include standing timber, growing crops or grass;

Section 5 defines the "Transfer of Property as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

Section 6 states that Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

... ..

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.

(e) A mere right to sue cannot be transferred."

8. Keeping in view the aforesaid provisions of law pertaining to transfer of property, there is no specific allocation of a flat in favour of

the deceased allottee, therefore, she or her legal successors had only a right to sue which could not be transferred in favour of the present petitioner. Similarly, under the self-financing scheme, a restriction was placed on the allottee that the flat would be allotted to allottee for the purpose of his residence which of course he or she would finance themselves during the course of construction.

9. If that be so, the deceased petitioner could not have transferred the flat to any person except by paying the unearned increase of 50% as had been approved by the competent authority on the basis of current cost as it was fresh allotment. The present petitioner has not placed the brochure in this regard on record and, therefore, nothing can be said in favour of the petitioner which would be of any help to her.

10. The allocation letter in the light of the aforesaid definition of the word 'property' cannot be deemed to be a property which can be transacted. This is the first disability with which the present case suffers.

11. The next disability which makes the facts of the present case totally distinguishable from the facts of *T.P. Oberoi's* case (*supra*) are that Dhanpati, who was the original allottee, had admittedly died on

1.5.1998. The transaction between Dhanpati and the present petitioner, Anuradha Kalra, had taken place on 15.7.1997. It was the incumbent duty of the petitioner to have intimated about the purchase of the allocation by her to the DDA *de hors* the fact as to whether the allocation could be transaction or not. She was also required to have intimated about the factum of the death of the original allottee in the month of May, 1998. Instead of disclosing of these facts to the respondent/DDA, the present petitioner surreptitiously kept on depositing the money for and on behalf of a dead person and inviting the respondent to make a specific allocation of a flat. It is only after a specific flat is allotted to the dead person that in the year 2003, the present petitioner for the first time intimates the respondent that she is purported to have purchased the rights or the flat allocated to Dhanpati, the original allottee on the basis of an agreement to sell, power of attorney, receipt, etc. and it is on the strength of power of attorney that she has approached the DDA claiming the possession of the property in question.

12. Curiously, the language of the power of attorney does not mention that it is a power of attorney executed for consideration and it is

irrevocable, therefore, for all practical purposes, the power of attorney which is made as a basis of claiming the possession in the year 2003 has ceased to have any effect on account of death of the executants of that power of attorney on 1.5.1998 itself. Therefore, all these facts clearly show two important things. Firstly, that there was no privity of contract between the present petitioner and the respondent to maintain the present petition itself inasmuch as she had no locus to file the petition itself. Secondly, even if it is assumed that on account of purported purchase of that allocation letter, she had a locus to maintain the writ petition even then, she is not entitled to any relief from the court because she was guilty of concealment of material facts.

13. It is now well settled that the grant of writ is a discretionary relief by the court and it cannot be claimed as a matter of right. One of the fundamentals of asking the court to exercise this discretionary power in favour of the petitioner is that the petitioner must come to the court with clean hands. While as in the instant case, it can, by no stretch of imagination be said that the petitioner has come to the court with clean hands and therefore, she is disentitled to any such relief.

14. There is another aspect. Even if it is assumed that the petitioner had an agreement to sell coupled with the power of attorney, will, receipt, etc. in her favour, the *T.P. Oberoi's* case (*supra*) judgment would not be of any help to the present petitioner for the simple reason that after *T.P. Oberoi's* case (*supra*) much water had flown down and the Supreme Court in *Suraj Lamp & Industries (P) Ltd. vs. State of Haryana*; (2012) 1 SCC 656 has held that a person does not get any right, title or interest in the immoveable property on the basis of power of attorney as well as coupled with agreement to sell etc. The proper course of remedy open to such a person is to perfect their title by filing a suit for specific performance. This judgment, on the face of it, neutralizes the judgment of *T.P. Oberoi's* case (*supra*) for the simple reason if at all the petitioner on the strength of the set of documents which she is claiming to be the purchaser and consequently, possession and conversion of the flat in question in his favour, it cannot be done as these documents at best entitled her to get the decree of specific performance by filing a suit in this regard against Dhanpati (since deceased) rather than suing the present respondent.

15. For the reasons mentioned above, I am of the considered opinion that the present writ petition of the petitioner is without any merit and accordingly, the same is dismissed.

V.K. SHALI, J.

JUNE 29, 2015
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