

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RSA 64/2015**

Reserved on: 13.05.2016

Date of decision: 24.05.2016

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Ms.Ruhi Chopra, Advocate for
Ms.Mrinalini Sen Gupta,
Advocate.

versus

CHETAN SWAROOP & ORS Respondents

Through: Mr.Himal Akhtar, Mr.Molvi
Aijaz Hussain, Advocates.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. The appellant, Delhi Development Authority, has challenged the concurrent judgments of the Courts below namely judgment and decree dated 06.02.2013 passed in Suit No.8/2013 (Dalpat Rai deceased through LRs vs. DDA) whereby the suit for permanent and mandatory injunction filed by the respondent/plaintiff was decreed and the appellant DDA was directed to allot a plot to the respondent/plaintiff in return for the acquired land and demolition of his house on the same terms and conditions including liabilities as in case of similarly situated persons and till such allotment is made, plot No.29 in Block B-3, Yamuna Vihar, Delhi be retained. The judgment and decree further clarifies that if the respondent/plaintiff failed to

comply with the terms and conditions of the allotment he would not be entitled to any such allotment by virtue of the judgment and decree as well. The challenge is also against the judgment dated 12.12.2014 passed by the Additional District Judge-02 (NE), Karkardooma Courts, Delhi in RCA No.14/2014 whereby the judgment of the Trial Court referred to above was upheld and affirmed and the first appeal of the appellant was dismissed.

2. The respondents are the legal heirs of the original plaintiff, Dalpat Rai, who was the owner of a plot measuring 200 sq.yards in Khasra No.483-485 in Village Ghonda, Gujran Khader, Subhash Park, Illaqa Shahdara, Delhi which was claimed to have been purchased by him on 10.05.1974. A house was constructed over the said plot of land which was numbered as D-7/A, Bhajanpura Extension, Yamuna Vihar, Delhi.

3. The land in question was acquired vide award No.9/73-74 by the Government of Delhi under the Land Acquisition Act and appellant/DDA took physical possession of the said land on 16.04.1993. The houses of the original plaintiff and others were demolished and the land was acquired. At that time, the land losers were promised alternative plots of land in return for the demolished houses. As promised, various land losers were allotted plots of land in Yamuna Vihar.

4. While acquiring the land in question, a survey was carried out by the DDA in 1994 and in the survey report (Exh.DW-1/4) the name of the original plaintiff found mention at serial No.26. As such, a letter

was issued to the plaintiff on 07.02.1996 asking him to furnish documents relating to his occupancy/possession of the land or the demolished house. The documents, as desired, for some reason or the other, could not be furnished by the plaintiff and he was not allotted any alternative plot whereas others whose houses were demolished and land acquired, were allotted alternative plots. The survey list prepared by the appellant/DDA contained 31 names and 26 out of the aforesaid 31 persons were allotted alternative plots.

5. A writ petition bearing No.2472/2001 was filed by the plaintiff before the Delhi High Court but the same was withdrawn as it was based on certain disputed questions of fact but a liberty was granted to the plaintiff to agitate his claim at the appropriate forum, namely civil Courts, by way of a civil suit.

6. Hence the suit No.8/2013 was filed seeking allotment of an alternative plot in Yamuna Vihar in favour of the plaintiff. A permanent injunction was also sought against the appellant/DDA, restraining it or its agents from allotting one of the vacant plots in Block 3, Yamuna Vihar to any other person till the plaintiff was allotted a plot.

7. The suit was contested by the appellant/DDA on the ground that though the plaintiff was in possession of the said land before its acquisition but his name did not appear in the second survey which was conducted by the Land Acquisition Collector regarding the displaced persons. The stand of the DDA was that only those persons were allotted alternative plots whose names found mention in both the

lists i.e. the one prepared by the DDA and the other by the Land Acquisition Collector. Since the name of the original plaintiff was not there in the second survey list, no plot was allotted to him.

8. Based on the pleadings of the parties, the Trial Court framed the following issues on 04.06.2004:-

- (i) *Whether the plaintiff has no locus standi to file the present suit? OPD*
- (ii) *Whether the suit of the plaintiff is liable to be dismissed u/o 7 Rule 11 CPC? OPD*
- (iii) *Whether the plaintiff has not come before this Court with clean hands? OPD*
- (iv) *Whether the plaintiff is entitled for a decree of permanent and mandatory injunction as prayed for? OPP*
- (v) *Relief.*

9. Naresh Kumar, one of the LRs of the deceased original plaintiff appeared in the witness box as PW-1 and proved PW-1/1 which is the General Power of Attorney in favour of deceased plaintiff, executed by one Salak Ram. The other documents which were proved by him were the progress reports of the daughters of the deceased plaintiff in which the address of the plaintiff was given as D-7, Yamuna Vihar, Delhi. In his cross examination, he deposed that the plaintiff was his father who died in the month of January of year 2005. He denied the suggestion that at the time of survey by the Land Acquisition Collector, Smt.Manglo Devi, wife of Gulab Singh was found in possession of plot D-7/A.

10. Ram Pal Singh, an Assistant from the Land Sale Branch of the DDA was examined as PW-2 who testified to the fact that one Om Prakash was allotted a plot in lieu of the acquisition of his land in Yamuna Vihar measuring 70 sq.yards.

11. R.S.Chauhan, Patwari from L.M.East Zone, Vikas Minar, ITO, Delhi (PW-3) also deposed before the Court regarding allotment of plots of land to other persons.

12. PWs.2 & 3 were never cross examined by the appellant herein.

13. On behalf of the appellant, Ram Mahesh, Patwari, Land Management East Zone, DDA, Vikas Kutir, Delhi was offered as DW-1 who deposed that the name of the original plaintiff did not appear in the list prepared by the staff of Land Acquisition Collector but his name appeared in the list prepared by the DDA. He further testified to the fact that alternative plots were given to only those persons whose names appeared in both the lists. He, too was not cross examined by the plaintiff.

14. The Trial Court, on finding that the appellant/defendant admitted that the plaintiff was in possession of the plot and after the acquisition, he was dispossessed and his name appeared at serial No.26 in the list prepared by the staff of the appellant (Exh.DW-1/4) as well as the letter dated 07.02.1996 seeking certain documents regarding occupancy and possession from the defendant, decided the issues no.(i) & (ii) in favour of the plaintiff. It was noticed by the Trial Court that in the written statement the appellant/defendant had not taken the stand that because of the plaintiff not having proved his

ownership, alternative plot was not allotted to him. Thus what was required for allotment of plot was to prove the occupancy and not the title over the plot of land. The survey list conducted by the DDA contained the name of one Om Prakash at serial No.6A who, according to PW-2 was allotted an alternative plot in lieu of demolition of unauthorized structure as he was found to be in possession of the acquired land. Thus the Trial Court found that if other similarly situated persons were granted alternative plots on the basis of possession, there was no reason why the respondents (LRs of original plaintiff) would be kept high and dry. Merely because the name of the original plaintiff did not find mention in the second list prepared by the staff of the Land Acquisition Collector, the benefits which accrued to other land owners/land losers could not be denied to the respondents.

15. The Trial Court noted that as per the list prepared by the DDA (Ex.DW-1/4), the name of the original plaintiff was at serial No.26 whereas his address was described as D-7, Bhajanpura. At serial No.7, the name of one Mohan Lal was inscribed and his address also was shown as D-7, Bhajanpura. Name of one Manglo Devi was found at serial No.8 and against whom the address was mentioned as D-7/A, Bhajanpura. It was in this context that a suggestion was given to PW-1 that at the time of survey, plot No.D-7/A was in possession of Manglo Devi. Based on the admission of PW-1 that there was dispute with regard to plot No.D-7/A, it was urged by the appellant/defendant that either the original plaintiff was not in possession of the so called plot of land at D-7/A or his possession was illegal. The aforesaid argument

of the appellant/defendant was repelled by the Trial Court on the sole ground that the dispute with respect to the ownership of plot No.D-7 and D-7/A did not improve the case of the appellant/defendant as in the survey list of DDA, against the name of the original plaintiff at serial No.26, the address described is D-7, Bhajanpura.

16. The First Appellate Court also, while agreeing with the findings of the Trial Court, did not give any credence to the stand of the appellant/defendant regarding the dispute over the possession of the two plots namely D-7 and D-7/A on the additional ground that if at all, the plot belonged to Manglo Devi as suggested by the appellant/defendant, there should have been evidence of giving of an alternative plot to Manglo Devi in lieu of acquisition of her land. The First Appellate Court also, therefore, completely rejected the contention of the appellant/defendant that the alternative plot cannot be allotted to the original plaintiff or his LRs because the name of the original plaintiff did not find mention in the second list prepared by the Land Acquisition Collector. The Appellate Court was also of the view that the list of the Land Acquisition Collector was not even proved in accordance with the law and, therefore, such objections were absolutely untenable.

17. The appellant has sought to assail the aforesaid findings of the Courts below on the ground that the respondents could not establish possession by way of ownership; no documents were furnished by the plaintiff displaying either title or possession of the house which was demolished after acquisition and that in the documentary evidence

furnished by the respondent/plaintiffs namely Exh.PW-1/2, PW-1/3 and PW-1/4, the address of the original plaintiff was shown as D-7 whereas in the letter to the Lieutenant Governor, the address has been shown as D-7/A.

18. Ms.Ruhi Chopra, learned advocate appearing for the DDA further assailed the judgments of the Courts below on the ground that even if alternative plots were given to other persons, that by itself could not be a ground to allot alternative plot to the respondent/plaintiffs, especially in the absence of any proof of the fact that alternative plots were also allotted to persons who could not produce necessary documents regarding ownership/title/possession.

19. Apart from that, it was submitted that even if some of the persons were wrongly allotted alternative plots to which they were not entitled , that would not give a right to the respondents to have a plot of land allotted in their name. Reliance was placed on the observations of the Supreme Court in *Chandigarh Administration and Anr vs. Jagjit Singh and Anr, (1995) 1 SCC 745* wherein the Supreme Court, while dealing with a writ petition, held that any order in favour of other person if found to be contrary to law or not warranted in the facts and circumstances of the case, cannot be made the basis of passing the same order granting the same relief in favour of the seeker as it would only amount to repeating the illegality or passing another unwarranted order. At para 8 of the aforesaid judgment, the Supreme Court elucidated as follows:-

8. *We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a*

legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course barring exceptional situations would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we

express no opinion. That can be dealt with when a proper case arises.)

20. Ms.Ruhi Chopra further argued that since the original plaintiff, in the absence of any documents regarding his title or possession, was only a trespasser, therefore, no injunction could have been granted on his asking as injunctions are discretionary and equitable relief which cannot be issued in favour of a trespasser or a person who has gained unlawful possession.

21. It was further submitted on behalf of the appellant that in the event of the respondents choosing not to cross examine PWs.2 & 3 their evidence remained unrebutted.

22. Lastly it was urged that transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed) and in the absence of the deed of conveyance, duly stamped and registered as required under law, no right, title or interest in an immovable property can be transferred. Immovable property cannot at all be transferred by way of a Power of Attorney. The Power of Attorney is not an instrument of transfer but is only a creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of the grantor, which when will be binding on the grantor as if done by him (refer to Section 1A and Section 2 of the Powers of Attorney Act, 1882). The appellant relies on the judgment of the Supreme Court in *Suraj Lamps and Industries Pvt. Ltd (2) through Director vs. State of Haryana and Anr, (2012) 1 SCC 656*.

23. A look at the conclusion of the Supreme Court in the judgment delivered in Suraj Lamps (Supra) would be necessary to appreciate the contention of the parties. In the aforesaid judgment, the Supreme Court has held as hereunder:-

“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, unintentionally 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.

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 TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will

apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions."

(Emphasis provided)

24. The contentions of the appellant are not tenable in as much as the ownership of the land acquired and the house demolished of the original plaintiff was claimed through the General Power of Attorney executed on 10.05.1974, i.e. much prior to judgment in Suraj Lamps (supra) as well as the list of displaced persons prepared by the DDA (appellant) itself. In this view of the matter, the plaintiff could not have been treated as a trespasser to the said property. Both the Courts below have rightly rejected the stand of the appellant that because of the difference in the addresses shown in the two lists, the plaintiff could not be stated to be the person in possession of the land which

was acquired and the house which was demolished. If at all the address of D-7/A, was shown against the name of one Manglo Devi, she ought to have been allotted an alternative plot. There is no evidence on record to suggest that any alternative plot was allotted to Manglo Devi.

25. In case of a dispute over possession of property based on title, if a person creates a high degree of probability of his title to ownership, instead of proving his title beyond any reasonable doubts, it shifts the onus on the other person. If the other person fails to shift back the onus, the burden of proof by the person seeking possession stands discharged.

26. In the present case the respondent/plaintiff could not have been expected to prove his title beyond reasonable doubt. The GPA executed on 10.05.1974 clearly established a high degree of probability of the original plaintiff being in possession of the suit property at the time of its acquisition/demolition.

27. The relevant extract of the policy decision of the DDA with respect to allotment of alternative plots to eligible evictees, which has been brought on record by the appellant, reflects that in the absence of any scheme to offer alternative plots to the evictees, a suggestion was floated on humanitarian grounds, taking into consideration that the evictees have been residing for the last several years and the land was not placed at the disposal of the DDA due to the built up area, that small sized plots be made available in the same area or nearby area which could be offered at the last prevailing auction rates of plots of

DDA of the said area and subject to the conditions that the evictee will immediately leave the site after taking over of the possession of the allotted site. (Quoted from the relevant extracts brought on record by the appellant)

28. Thus the contradictory stand of the appellant, namely, at the initial stage, that no alternative plot can be allotted to the respondents as the name of the original plaintiff does not find mention in the second survey list prepared by the LAC and, later, that the original plaintiff was a trespasser in the absence of any document furnished by him on the asking of the DDA, cannot be countenanced. A Government body has to treat all the persons equally. There is no evidence on record to suggest that the persons who were granted alternative plots were asked to prove their title to the property. The alternative plots were handed over to persons who were found to be in possession of the acquired land/demolished house de-hors any consideration of valid title. The plaintiff had been in possession of the land acquired/house demolished since 1974 and the same could not have been discarded or overlooked and he cannot be permitted to be kept out of the benefits which has accrued to other similarly situated persons.

29. Thus, this Court finds it difficult to overturn the findings returned by both the Courts below.

30. No substantial question of law arises in the aforesaid second appeal.

31. Hence this second appeal is dismissed.

CM Appln.2572/2015

1. In view of the petition having been dismissed, the application has become infructuous.
2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

MAY 24, 2016

k