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

+ W.P.(C) 3544/2014

RITA BHATIA & ORS.

..... Petitioners

Through : Mr. Neeraj Yadav and Mr. Deepak
Yadav, Advs.

versus

NORTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respondents

Through : Ms. Mini Pushkarna, Standing
Counsel for NDMC/R-1 & 2.
Mr. Surendra Yadav, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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01.02.2016

Petitioners have alleged in the petition that plot no. AG-364, Sanjay

Gandhi Transport Nagar admeasuring 110 sq. yards has been allotted by the respondent nos.1 and 2 to Shri Kaka Ranivas Kumar, who unfortunately has since died. Petitioners are the widow and sons of Late Shri Kaka Ranivas Kumar. The grievance of the petitioners is that respondent nos. 1 and 2 are neither mutating the said plot in the name of the petitioners nor handing over the possession thereof to them. Petitioners further allege that respondent no.3 is a land grabber and wants to grab the plot in question on the basis of a forged and fabricated agreement to sell. Respondent no. 3 has filed a suit for specific performance against the petitioners which is pending in the court of Senior Civil Judge, Delhi. Petitioners have prayed that respondent nos. 1

and 2 be directed to handover the possession of the plot in question and also mutate the same in their name.

Respondent nos. 1 and 2 have filed a short affidavit, in response to the writ petition. It has not been denied that plot no. AG-364, Sanjay Gandhi Transport Nagar was allotted to Shri Kaka Ranivas Kumar on 3rd July, 2007. It is also not in dispute that original allottee has died. In para 6 of the affidavit, it is alleged that respondent no. 3 has staked claim over the said plot, on the basis of agreement to sell executed by the original allottee on the basis of original registration papers for allotment of plot. Since respondent no.3 had filed a suit for enforcing the agreement, which was pending, thus, possession was not handed over to petitioners. In para 7 of the affidavit, it is alleged that in the identity card furnished by the petitioner no. 1 name of her husband has been mentioned as 'Shri Ram Nivas Bhatia' instead of 'Shri Kaka Ranivas Kumar'. There was discrepancy in the documents with regard to identity of the petitioner no.1, therefore, possession cannot be handed over.

Learned counsel for the petitioners has contended that Late Shri Kaka Ranivas Kumar was also known as Ram Nivas Bhatia. Petitioners will provide sufficient proof before the respondent nos. 1 and 2 regarding their

identity, being legal heirs of original allottee. As regards suit for specific performance between the respondent no. 3 and petitioners, it is contended that same cannot be made a ground to deny possession and record mutation. It is further submitted that plot has to be mutated in the name of the petitioners being legal heirs of original allottee subject to, however, establishing their identity.

A perusal of letter dated 3rd December, 2010, written by respondent no.1 to petitioner no.1 (Annexure P-6) makes it clear that respondent no.1 has not taken the ground of pendency of suit for specific performance for not effecting the mutation and handing over the possession to the petitioner no.1. It is alleged in the letter that title was not clear.

Be that as it may, in my view, pendency of the suit for specific performance will not come in the way of respondent nos. 1 and 2 in considering the request of the petitioners for effecting the mutation and handing over the possession, subject to their establishing identity being legal heirs of the original allottee. Accordingly, it would be open for the respondent nos. 1 and 2 to mutate the plot in question in the name of the petitioners and handover the possession thereof irrespective of pendency of suit for specific performance between the respondent no. 3 and petitioners,

subject to, however, petitioners establishing their identity to the satisfaction of respondent nos. 1 and 2.

Writ petition is disposed of in the above terms.

A.K. PATHAK, J.

FEBRUARY 01, 2016

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