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

+ W.P.(C) 10275/2015

M/S RAJIV ASSOCIATES PRIVATE LIMITED AND ANR

..... Petitioners

Through Mr. Jai Sahai Endlaw, Adv.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through Mr. Sri Varsha Peechara, standing
counsel with Mr. Ashish Tiwari, Adv.
for R-1.

Ms. Sonali Chopra, Adv. for R-2 &
R-3.

Mr. Sanjiv Kakra and Mr. Irfan
Ahmed, Advs for R-4 to R-6.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **21.07.2016**

Prayer made in the present petition seeks a mutation of the first floor of property bearing No. S-106, Panchsheel Park, New Delhi. This property was originally owned by J.N. Bhardwaj. J.N. Bhardwaj had died on 02.09.1999. His two legal heirs were respondents No. 2 & 3. The property stood mutated in the names of respondents No. 2 & 3 on 14.09.2007. Contention of the petitioner before this Court is that respondents No. 2 & 3 had entered into a collaboration agreement with the petitioner (stated to be a builder) to reconstruct the property and in terms of this collaboration agreement, basement, ground floor, first floor, second floor and the third floor of the property were to be constructed; the petitioner was to retain the first floor for himself.

In the course of these proceedings, a civil suit i.e. CS (OS) No.297/2009 came to be filed by respondents No. 4 to 6 against respondents No. 2 & 3. This was a suit for specific performance. Contention of respondents No. 4 to 6 was that an agreement to sell, special power of attorney, GPA and Will dated 11.06.1996 purported to have been executed by J.N. Bhardwaj (during his lifetime) qua the terrace rights of the property which would now be the second floor and the third floor.

Admittedly, this suit for specific performance does not relate to the first floor of the property which is the subject matter of the present petition.

The contention of the petitioner is that pursuant to the collaboration agreement, a sale deed dated 10.02.2012 had been executed by respondents No. 2 & 3 in his favour. Submission being that this sale deed has attained a finality as it has not been challenged in any Court of law. This document being a registered document, the presumption of its authenticity and validity also arises in his favour and accordingly, in terms of the aforementioned registered sale deed (dated 10.02.2012), the petitioner on 01.06.2012 had applied to the competent body for getting the property mutated in his name. The competent body (SDMC) had however rejected his application noting that the original mutation granted in favour of respondents No. 2 & 3 (on 14.09.2002) already stood revoked in view of the fact that there was a Court case i.e. CS (OS) No.297/2009 pending inter-se respondents No. 4 to 6 on the one hand and respondents No. 2 & 3 on

the other hand.

Vehement submission of the learned counsel for the petitioner is that CS (OS) No.297/2009 admittedly is a suit not concerning the first floor and as such the right of the petitioner which is pending in terms of the sale deed dated 10.02.2012 is not in any manner effected by the inter-se dispute between respondents No. 4 to 6 on the one hand and respondents No. 2 & 3 on the other hand.

A counter affidavit had been filed by respondents No. 2 & 3. They have supported the stand of the petitioner. They stick to the stand that collaboration agreement had been entered into between the petitioner and respondents No. 2 & 3 and they had agreed to allow the petitioner to retain the first floor of the aforementioned property and pursuant to which the sale deed dated 10.02.2012 had been executed between them.

A counter affidavit has also been filed by respondents No. 4 to 6. His submission is that since the mutation order in favour of respondents No. 2 & 3 (which had been granted in the year 2007) now stands revoked by the competent body and the suit for specific performance is also pending inter-se the parties, the order now sought for by the petitioner should not be granted till the fate of his suit is decided. Learned counsel appearing for respondents No. 4 to 6 has also drawn attention of this Court to various documents. Submission being that stand of respondents No. 2 & 3 is not clear; he is blowing hot and cold. It has been pointed out that respondents No. 2 & 3 on the one hand has relied upon a Will of late J.N. Bhardwaj which is

purported to be dated 27.04.1994 and thereafter they have gone on to state in a separate document that they had not entered into the collaboration agreement with the petitioner. Attention has also been drawn to a declaration purported to have been signed by J.N. Bhardwaj on 27.06.2005. Submission being that it is the case of the petitioner that J.N. Bhardwaj had expired in 1999 and how he had signed this document in 2005 again has not been answered. These forged and fabricated documents create a doubt on the authenticity of the sale deed which had allegedly been executed by respondents No. 2 & 3 in favour of the petitioner. For all the aforementioned reasons, till his suit is decided, the prayer sought for by the petitioner should not be allowed.

Learned counsel for respondents No. 2 & 3 has highlighted the contents of her affidavit denying all these submissions and particularly para 6 (a) to 6 (v) and para 9 of the affidavit in support of her submissions.

This Court is not in agreement with the submission of the learned counsel for respondents No. 4 to 6. The inter-se dispute between respondents No. 4 to 6 on the one hand and respondents No. 2 & 3 does not in any manner concern the case of the petitioner. The petitioner admittedly has a registered sale deed dated 10.02.2012 executed by respondents No. 2 & 3 in his favour. Apart from the fact that this registered sale deed (which has been entered into by the rightful legal heirs of J.N. Bhardwaj being his natural heirs and they

have stuck to their stand that they have executed the sale deed pursuant to the collaboration agreement arrived at between the parties); the fact that the collaboration agreement had been implemented and which is also a document inter-se the petitioner and respondents No. 2 & 3 is also not in dispute. Pursuant to this collaboration agreement, not only the basement but the ground floor, first floor, second floor and third floor of the property were constructed. It is also relevant to point out that CS (OS) No.297/2009 is a suit for specific performance filed by respondents No. 4 to 6 qua the second and third floors of this aforementioned property (bearing No. S-106, Panchsheel Park, New Delhi); this suit does not in any manner concern the rights of the petitioner who has confined himself to the first floor alone. That apart, another relevant fact which this Court notes is that the agreement to sell and other relevant documents relied upon by respondents No. 4 to 6 (in his suit for specific performance) are of the year 1996. Respondents No. 4 to 6 had admittedly approached the Court of law sometime in the year 2009; his suit for specific performance had in fact been dismissed on the ground of limitation. This Court has been informed that in appeal, the suit has been remanded back (where it is stated to be pending) but the question of limitation is yet open. The petitioner cannot be allowed to await the outcome of the fate of this case because of the dispute pending between respondents No. 4 to 6 and respondents No. 2 & 3 in which admittedly the share of the petitioner has no concern as that suit does not relate to the first floor of this property. Additional

submission of the learned counsel for the petitioner that the petitioner is a builder and he had entered into this collaboration agreement for a commercial purpose and he cannot be expected to wait for years to await the outcome of the litigation between respondents No. 4 to 6 and respondents No. 2 & 3 in which he has no concern whatsoever is also an argument worthy of merit. The law on the aspect of mutation is well settled. The order passed by the revenue authority recording mutation is only for fiscal purpose and does not confer title or ownership.

The prayer made in the petition is accordingly allowed. Respondent No.1 is directed to get the mutation of the property qua the first floor of property bearing No. S-106, Panchsheel Park, New Delhi effected in favour of the petitioner forthwith. This order be implemented within a period of four weeks from the date of this order.

Petition disposed of.

INDERMEET KAUR, J

JULY 21, 2016

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