

Impugned in present revision is order dated 10.11.2012 (Annexure-P-7), passed by learned Civil Judge (Junior Division), Gurgaon, in which while executing judgment and decree dated 2.12.2008 (Annexure-P-2), passed by learned Additional District Judge, Gurgaon, present petitioners were directed to reconsider the restoration of plot in question to decreeholder represented through his GPA A.P. Jain and further in second order dated 17.10.2013 (Annexure-P-10), passed by learned Civil Judge (Junior Division), Gurgaon, application filed by JDs for directing A.P. Jain, GPA holder of decreeholder to provide details of Ashok Kumar Shah, decreeholder was declined.

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The background of case is that Ashok Kumar Shah filed a suit i.e. Civil Suit No. 17 of 1984/2008 on 7.4.1984 for declaration to the effect that resumption of plot No. 7398 dated 16.3.1983 and other proceedings of defendants Haryana State Industrial Development Corporation Limited regarding resumption of plot are illegal and consequently permanent injunction was also sought for restraining defendants from interfering or disturbing and dispossessing plaintiff from said disputed plot. The learned Additional Civil Judge (Senior Division), Gurgaon, vide judgment and decree dated 13.10.2008, decided the suit by passing the following decree :-

'21. In view of my findings on issues No. 1 and 2, suit of plaintiff fails and the same is dismissed. Decree sheet be prepared accordingly and file be consigned to record room after necessary compliance.'

The decreeholder filed execution before the Executing Court complaining that decree has not been executed. He further claimed that he has received letter dated 4.1.2010 from respondents whereby an order dated 9.11.2009 is stated to have been passed. The said order is illegal and not in conformity with directions issued by appellate Court. The suit was dismissed by learned Additional Civil Judge (Senior Division), vide judgment and decree dated 13.10.2008 (Annexure-P-1). However, in appeal, the learned Additional District Judge, Gurgaon, vide judgment and decree dated 2.12.2008, passed the following decree :-

'14. In view of my above discussion and findings, the appeal stands accepted to this extent. The judgment and decree of learned lower Court is hereby set aside. The respondents-defendants are directed to reconsider the case of the restoration of the plot in question to the plaintiff-appellant and pass an appropriate order after giving due hearing to the plaintiff. Decree sheet be prepared. File of the lower Court alongwith copy of judgment be sent back. ....'

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The Executing Court, vide order dated 10.11.2012, took view that JDs have not fully complied with order of Court and passed the following order :-

' Now, in view of above discussion, it appears that the JDs have not fully complied with the order of the Ld. ADJ Court considering the case of reallocation of plot in question to the decreeholder/plaintiff as per the order dated 2.12.2008. Hence, the pleas of judgment debtors that the original allottee failed to appear and the GPA holder could not tell about the current address of plaintiff are not maintainable when his status was not questioned by the Appellate Court also. Hence, it appears that JDs should reconsider the restoration of the plot in question to the Decree Holder represented through his GPA Sh. A.P. Jain.

This Court hereby directs the JDs to reconsider the restoration of the plot in question to the decree holder represented through his GPA A.P. Jain. Notice be issued to the JDs to reconsider allotment and restoration of plot in question to the DH through his GPA and give him due hearing within two months of passing of this order. Now, to come up on 1.1.2013, for compliance report in this regard.'

Subsequently, JDs moved an application for directing A.P. Jain, GPA holder of decreeholder to provide details of decreeholder/allottee. Same was also dismissed, vide order dated 17.10.2013 (Annexure-P-10), passed by learned Civil Judge (Junior Division), Gurgaon.

I have heard the learned counsels for parties and have also carefully gone through file.

On behalf of petitioners, it is vehemently argued that Ashok Kumar Shah, original decreeholder is represented through his GPA A.P. Jain. The case of original allottee was to be reconsidered. However, JDs failed to reconsider the case of original allottee in terms of decree and passed

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order dated 9.11.2009, declining representation of power of attorney of erstwhile allottee for re-allotment of plot at the rate applicable on the date of re-allotment.

On behalf of respondent-decreeholder, it has been vehemently argued that only representation of A.P. Jain, GPA of decreeholder, has been rejected and that case of re-allotment of plot to decreeholder has not been considered.

Now, this Court is to see as to whether decree is complied with or not as claimed by present petitioners-JDs?

Copy of decree reproduced above shows that defendants-JDs were directed to reconsider the case for reallocation. Admittedly, in the main suit, plaintiff was represented through his GPA A.P. Jain, who was pursuing the civil suit, appeal and also other proceedings. Therefore, apparently, it was A.P. Jain GPA of decreeholder who filed an application apparently on behalf of original allottee for reconsideration of case for restoration of plot. The matter was considered. While reconsidering the case, committee of petitioner-corporation took view that power of attorney is not aware even whereabouts of original allottee to confirm the validity of power of attorney. It also took a view that it is a case of unauthorized transfer by erstwhile allottee. The Corporation is only to consider the request of erstwhile allottee for reallocation of plot at the rate application on the date of reallocation i.e. Rs. 20,000/- per sq. mtr. As such, committee did not find any merit in reallocating the said plot at the rate application on 7.8.2007. After going through the order dated 9.11.2009 (Annexure-P-4), passed by committee of Corporation, I am of the view that committee had in fact reconsidered the case for reallocation of plot on the application filed by

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power of attorney of original plaintiff, which is apparently on behalf of plaintiff-DH. Thereafter, may be for any reasoning, committee declined to reconsider the case for one or the other reason. Therefore, the case of decreeholder has been deemed to be reconsidered and declined, vide order dated 9.11.2009. As such, decree dated 2.12.2008, passed by learned Additional District Judge, Gurgaon, has been complied with. Decreeholder, if so advised, can always challenge said order before the appropriate forum to seek redressal of his grievance.

In view of above, impugned order dated 10.11.2012 (Annexure-P-7), is set aside and consequently, order dated 17.10.2013 (Annexure-P-10), becomes infructuous and is disposed of as such. As a result of foregoing discussion, present revision is allowed. Since main case has been allowed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)  
JUDGE

16.5.2018  
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No