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

+ **W.P.(C) 1579/2016 & CM. No. 6834/2016**

SHARMILA JAIN

..... Petitioner

Through: Ms. Sangeeta Chandra and
Mr. Mukesh Gupta, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Sanjeev Sagar, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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11.05.2018

1. The present petition has been filed by the petitioner challenging the letter dated December 02, 2015 issued by the respondent DDA whereby the DDA has cancelled the Conveyance Deed in favour of the petitioner dated October 28, 2014 in respect of Plot No. 65 in Vardhman Cooperative House Building Society Limited at Arihant Nagar, New Rohtak Road, New Delhi.
2. It is the case of the petitioner and also contended by Ms. Sangeeta Chandra that the said letter is illegal as the ground for cancellation of the Conveyance Deed is that the same was obtained by concealing material facts and on the basis of the forged documents. According to her, the said allegation has been made for the first time in the impugned cancellation

letter. In other words, the purported reason for cancellation was not mentioned in the show cause notice issued to the petitioner on October 01, 2015. She states, in fact the show cause notice does not give the details of the specific nature of misrepresentation and as such, is vague. On the reasons for cancellation of the Conveyance Deed that the petitioner has submitted forged documents is concerned, it is her submission that the petitioner being a widow, had taken the assistance and help in submitting all the relevant papers to the respondent DDA for the purpose of conversion to freehold, as it required numerous visits to be made to the office of the DDA. Once conversion was granted and Conveyance Deed issued, she was under the impression that the relevant papers, so submitted, were found to be correct.

3. Ms. Chandra would submit until receiving the impugned cancellation letter, the petitioner was not even aware that the documents, which have been submitted have any lacunae. Ms. Chandra would also submit that the only document, which is purported to be fabricated is the electricity bill. The same was submitted to the DDA only to show proof of possession of the premises, which could also be shown by way of various other documents mentioned. According to Ms. Chandra, assuming there has been a

tampering with the electricity bill, the same would not mean that the petitioner is not the owner and in possession of the property in question. The electricity bill submitted was without any malafide intention by a person, who was engaged by her and is not a material document affecting the Conveyance Deed.

4. On the other hand, Mr. Sanjeev Sagar, learned counsel for the respondent DDA would submit that on the complaints made by the Office bearers of the erstwhile Society that the Conveyance Deed of the petitioner was executed on the basis of fabricated documents, upon checking it was found by the respondent that the electricity bill submitted on behalf of petitioner as proof of possession was not genuine, but fake and fabricated. Similar was the status of the NOC issued by the Society as a cloud was also cast upon the same. He would submit that keeping in mind the fraudulent conduct of the petitioner, coupled with the fact that the Society was taken over by the office of the Administrator on January 21, 2015, for unlawful activities, cancelled the Conveyance Deed vide letter dated December 02, 2015.

5. Mr. Sagar, on the basis of the original record submits that from the perusal of the same, it appears that there are other reasons, which would

suggest that the impugned action of the respondent is justified. He had also taken a plea that in terms of the policy of the DDA, conversion cannot be effected if the built up area is less than 1/3rd of the area required to be constructed. He seeks the dismissal of the writ petition.

6. Having heard the learned counsel for the parties, there is no dispute that the petitioner had applied for conversion from leasehold to freehold on September 02, 2014 in respect of Plot No. 65 in Vardhman Cooperative House Building Society Limited at Arihant Nagar, New Rohtak Road, New Delhi. On October 28, 2014, a Conveyance Deed was executed. Against a show cause notice dated October 01, 2015, a reply was submitted by the petitioner. Ms. Chandra is justified in stating that the show cause notice issued to the petitioner was bereft of any material particulars except stating that the Conveyance Deed was got executed by fraudulent means, misstatement, misrepresentation and suppression of material facts. Suffice to state the show cause notice does not give the material facts as to what fraud/misstatement/misrepresentation/suppression has been made/committed by the petitioner. In any case, the impugned letter dated December 02, 2015 only reveals that the petitioner has submitted a fabricated electricity bill as a collateral proof of property, under reference. In other words, the NOC

issued by the Society, which is stated to be another ground by the DDA in its counter affidavit is not found mentioned in the impugned letter.

7. The justification given by Ms. Chandra on the fabricated electricity bill is, the petitioner has not submitted the same but the person who was engaged by her had submitted it. According to her, the petitioner subsequently had submitted a genuine bill of a later date showing the electricity connection with regard to the property in question. Mr. Sagar who had placed both the bills i.e fabricated bill and a bill with the connection number in the name of the petitioner with regard to the said property submitted later have been perused by me. Mr. Sagar agrees the electricity bill submitted later by the petitioner, is a genuine bill, which depicts the electricity connection number at the property in question.

8. Insofar as the plea of Mr. Sanjeev Sagar that as per the policy, if the construction is less than $1/3^{\text{rd}}$ of the permissible limit then the petitioner is not entitled to conversion as freehold, is an afterthought. No objection was raised/taken when the Conveyance Deed was executed in 2014. In fact, as per Form "D", the building department of DDA has certified that the construction work has been inspected and approved. Further, it is not the ground on which the DDA has cancelled the Conveyance Deed.

9. The submission of Ms. Chandra that, had the genuine electricity bill been on record, the petitioner would have proved that the petitioner is in possession of the property in question, is appealing. But the fact remains that the DDA has not considered the electricity bill submitted by the petitioner subsequently. The DDA is required to consider the same and decide its relevance. That is possible if the matter is remanded back to the DDA for the consideration of the electricity bill later submitted by the petitioner. Accordingly, the impugned letter dated December 02, 2015 is set aside and the matter is remanded back to the DDA, who shall intimate the petitioner within four weeks, the date and time for her appearance before the concerned Officer when the petitioner shall submit the electricity bill on which she wants to place reliance in support of her plea of possession of the property in question. On such submission, the respondent DDA shall pass a speaking order within four weeks thereafter. If the petitioner is still aggrieved, the petitioner shall be at liberty to challenge the order in accordance with law.

CM. No. 6834/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

MAY 11, 2018/ak