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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17th December, 2018

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W.P.(C) 13353/2018

KIRAN VALVES PRIVATE LIMITED Petitioner

Through: Mr. Hitendra Kr. Nahata, Adv.

versus

DLEHI DEVELOPMENT AUTHORITY & ORS

..... Respondents

Through: Mr. Arjun Pant, Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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17.12.2018

CM No.51942/2018(exemption)

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 13353/2018 & CM No.51941/2018(for stay)

3. The prayers in this writ petition read as under:-
“(i) directing the Respondents to set aside the cancellation dated 22.10.2018; and

(ii) directing the respondents to restore the conversion / mutation dated 13.05.1988 in favour of Petitioner with continuity; and

(iii) pass order to respondent no. 1 and 2 to initiate departmental inquiry / action against the Respondent No. 3; and

(iv) allow this writ petition with exemplary costs against Respondents for taking law in their hands without any authority, statute implied or express, to cancel conversion/mutation through letter dated 22.10.2018.”

4. Learned counsel for the petitioner submitted that his grievance was principally directed against the following communication, issued to the petitioner on 22nd October, 2018 :

“DELHI DEVELOPMENT AUTHORITY
LAND SALES BRANCH (INDUSTRIAL)
A-BLOCK, VIKAS SADAN, INA,
NEW DELHI-110002.

No.F.6A(13)74/LSB(I)/Part/DDA/1616

To

1. Shri Narinder Kumar Jain S/o Shri R.S.jain,
R/O, 112-A, Ahinsa Vihar, Sector-9,
Rohini, Delhi-110085.
M-9899125035.
2. Shri Man Mohan Sharma S/O Shri D.P.Sharma,
R/O, WZ-1903, Multani Dhanda, Rani Bagh,
Delhi-1100034. M-9313073836.
3. M/S.Kiran Valves Pvt. Ltd.
Z-24, Okhla Indl. Area, Phase-II,
New Delhi-110020.

Sub: Cancellation of mutation dated 13/5/1988 in respect of Plot No.Z-24, Okhla Indl. Area, Phase-II, New Delhi.

Ref: PMO[G/D/201/0331538 dated 07/09/2018

Sir(s),

WHEREAS by virtue of lease deed dated 3.4.1982 made and executed between you and the President of India, you are the Lessee of the plot of land referred to above. Thereafter the change in constitution was allowed on 13.5.1988 in favour of M/s. Kiran Valves Pvt. Ltd. with Shri Narinder Kumar Jain and Shri Man Mohan Sharma as Directors/shareholders.

AND WHEREAS one Shri Rajeev Kumar S/o Late Shri Kartar Chand vide his complaint dated 01.3.2016 followed by several reminders from Sh. Rajinder Kumar S/o Lt. Sh. Kartar Chand enclosing therein the copy of GPA/Agreement to Sell dated 23.7.1986 executed by both of you in favour of Shri Rajeev Kumar and his five brothers.

AND WHEREAS show cause notices dated 1.6.2016 and 15.7.2016 were served to you for getting the mutation done in violation of clause-II(5) and 5(a) of lease deed dated 3.4.1982 but not reply has been received from you. The only reply received from Sh. Krishan Kumar the so-called Director of M/s. Kiran Valves Pvt. Ltd. on 28.7.2016 was examined but was not found satisfactory.

AND WHEREAS the change in constitution so allowed on 13.5.1988 in favour of M/s. Kiran Pvt. Ltd. through its Directors/Shareholder Shri Narinder Kumar Jain S/o Shri R.S.Jain and Shri Man Mohan Sharma S/o Shri D.P.Sharma has been examined and found to have been got done by concealments of facts as you have already executed Regd. GPA in favour of Sh. Ashok Kumar S/o Sh. Kartar Singh and ATS dt. 23.7.1986 in

favour of Sh. Ashok Kumar, Rakesh Kumar, Rajinder Kumar, Rajiv Kumar, Pawan Kumar and sh. Kishan Kumar all sons of Sh. Kartar Chand i.e. before applying for change in constitution.

THEREFORE, the mutation dt. 13.5.1988 accorded in favour M/s. Kiran Valves Pvt. Ltd. through its Directors Sh. Narinder Kumar Jain and Sh. Man Mohan Sharma is hereby cancelled as withdrawn.

Dy.Director (Indl.)”

5. The case sought to be made out against the petitioner, by the DDA, in the aforementioned communication is clear and categorical. The allegation against the petitioner is that it had engineered, by surreptitious concealment of fact, to have the property being Plot No.- Z-24, Okhla Industrial Area, Phase-II, New Delhi mutated in its favour. It is alleged that in violation of Clause II (5) and 5(a) of a lease deed dated 3rd April, 1983, whereby the plot of land was originally leased to Narinder Kumar Jain and Man Mohan Sharma, change in constitution was allowed on 13th May, 1988 in favour of M/s Kiran Valves Pvt. Ltd., i.e. the petitioner company. The fact that all was not in order, appears to have come to the notice of the DDA pursuant to a complaint dated 1st March, 2016 of one Rajiv Kumar, which enclosed a GPA/agreement to sell dated 23rd July, 1986 executed by Narinder Kumar Jain and Man Mohan Sharma in favour of Rajiv Kumar and his five brothers. This resulted in issuance of show cause notices, dated 1st June, 2016 and 15th July, 2016, to Narinder Kumar Jain and Manmohan Sharma as well as the present petitioner i.e. M/s Kiran Valves Pvt. Ltd.

6. Apparently, the petitioner responded to the said show cause notice.

7. The impugned order notes that the said response had been considered and that, on an examination of all the facts, it was found that the change in constitution, allowed on 13th May, 1988 in favour of the petitioner, had been done by concealment of facts as a registered GPA already stood issued in favour of Ashok Kumar followed by agreement to sell dated 23rd July, 1986 in favour of Ashok Kumar, Rakesh Kumar, Rajinder Kumar, Rajiv Kumar, Pawan Kumar and Kishan Kumar before applying for change in constitution. As such the impugned order holds that mutation dated 13th May, 1988 in favour of the petitioner, was cancelled as withdrawn.

8. I had, on the last date of hearing, drawn attention of the learned counsel to the recent judgment of the Supreme Court in ***Roshina T. vs. Abdul Aziz K T, (2018) SCC Online 2654***, which proscribes exercise of writ jurisdiction in cases which are appropriately amenable to adjudication in original civil proceedings.

9. Learned counsel, nevertheless, chose to argue the writ petition. His submission is that agreement to sell dated 23rd July, 1986, on which the impugned order dated 22nd April, 2018 relies, was never acted upon. He further submits that possession of the plot in question continues to remain with the petitioner and that there is no litigation against the petitioner on that ground.

10. Learned counsel also submits that his representations dated 28th July, 2016 and 20th December, 2016 have not been considered at all while issuing the impugned order, which was passed without hearing him.

11. In my view, the issues that arise for consideration are clearly disputed questions of fact. It is not possible for this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, to examine the genuineness of the agreement dated 23rd July, 1986 or the GPA executed prior thereto, or whether the said documents were acted upon or not, which would require evidence to be led thereon.

12. The recent decision of the Supreme Court in *Roshina T. (Supra)* clearly holds that “the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law whether civil or criminal are available” and that the writ jurisdiction of the Court “is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person”. The proposition is emphasised by the subsequent sentence which states that the decision of the writ court under Article 226 of the Constitution of India being special and extraordinary, should not be exercised casually or lightly or merely on the asking of the litigant.

13. Paras 13 to 15 of the said judgment, as reported in *2018 SCC Online 2654*, read thus :

“13. The question as to who is the owner of the flat in question, whether respondent no.1 was/is in possession of the flat and, if so, from which date, how and in what circumstances, he claimed to be in its possession, whether his possession could be regarded as legal or not qua its real owner etc. were some of the material questions which arose for consideration in the writ petition.

14. These questions, in our view, were pure questions of fact and could be answered one way or the other only by the Civil court in a properly constituted civil suit and on the basis of the evidence adduced by the parties but not in a writ petition filed under Article 226 of the constitution by the High Court.

15. It has been consistently held by this court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant.”

14. In view of the above, I am of the view that the issues arising in this case are not amenable to adjudication in writ proceedings under Article 226 of the Constitution of India.

15. The writ petition is accordingly dismissed.

C.HARI SHANKAR, J

DECEMBER 17, 2018/ak

