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

\+ W.P.(C) 1285/2017

RAVINDER KUMAR ..... Petitioner

Through: Mr. Harish Kumar Gupta, Advocate.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr. Anil Dabas and Mr. Praveen Kumar, Advocates for respondent No.1/ UOI.
Mr. Yeeshu Jain and Ms. Jyoti Tyagi, Advocates.
Ms. Mrinalini Sen Gupta, Advoate for DDA.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% **12.12.2019**

C.M. No. 40684/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. No. 40683/2019

Issue notice. Learned counsels for the respondents accept notice.

We have heard learned counsels. For the reasons stated in the application, the same is allowed. The petition is restored to its original number.

W.P.(C) 1285/2017

The petitioner has preferred the present writ petition to seek the following reliefs:

> *"(a) issue an appropriate writ in the nature of mandamus or any other appropriate writ, direction or order commanding/ directing the respondents to release the plot No. 1104, Khasra NO. 53/21, 283.3 Sq. Yards, Tirathankar Nagar, Jain Colony/ Village Karala, Delhi-110081, as the acquisition has lapsed as per provisions of Section 24(2) of 2013 Act;*
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> *(b) Pass such other and further orders that may be deemed fit and proper in the interest of justice."*

The counter-affidavit of the respondents is on record. It is pointed out by the respondents that the land in question falls in an unauthorized colony; that the same was acquired for the purpose of Rohini Residential Scheme and; that the present petition is barred by delay & laches considering the fact that the acquisition proceedings were initiated way back on 21.03.2003 – when the notification under Section 4 of the Land Acquisition Act was issued, which eventually culminated in the award dated 10.01.2006 vide Award No.22/2005-06/DC (NW). The possession of the land was taken on 23.02.2007 by the Land Demolition Squad. It is also pointed out that the petitioner is a subsequent purchaser.

Learned counsel for the respondents points out that the present petition is squarely covered by several decisions of this Court, including the decisions in ***Raj Singh and Ors. Vs. Union of India and Ors.***, W.P.(C.) No.6258/2015 decided on 31.01.2019; ***Santosh Jain Vs. Union of India & Ors.***, W.P.(C.) No. 10200/2018 decided on 27.02.2019; and ***Sanjay Jain Vs. Union of India & Ors.***, W.P.(C.) No. 10199/2018 decided on 27.02.2019.

All these decisions pertain to the same award passed by the LAC.

On the other hand, learned counsel for the petitioner placed reliance on the earlier decision of this Court in ***Praveen Kumar Jain Vs. Govt of NCT of Delhi & Ors.***, W.P.(C.) No. 3132/2015 decided on 02.05.2016, wherein this Court relied upon Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, to grant relief to the petitioner therein.

Learned counsel for the petitioner submits that the subsequent purchasers are entitled to raise a claim in the light of the decision of the Supreme Court in ***Government (NCT of Delhi) Vs. Manav Dharam Trust & Another***, (2017) 6 SCC 751, taken note of by this Court in ***Phoolwati & Others Vs. Union of India & Others***, W.P. (C.) No. 1543/2018 decided on 30.07.2018.

To counter the above submissions of the petitioner, learned counsel for the respondents has relied upon subsequent decision in ***Shiv Kumar & Another Vs. Union of India & Others***, Civil Appeal No.8003/2019, wherein the Supreme Court has held that the subsequent purchasers have no such right. In this regard, reference has been made specifically to paragraphs 23, 24 & 25, which read as follows:

> *"23. The intendment of Act of 2013 is to benefit farmers etc. Subsequent purchasers cannot be said to be landowners entitled to restoration of land and cannot be termed to be affected persons within the provisions of Act of 2013. It is not open to them to claim that the proceedings have lapsed under Section 24(2).*
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> *24. Apart from that the claims have been made on transactions based on the power of attorneys, agreements, etc.; as such also they are not entitled to any indulgence and cannot invoke*

provisions of section 24(2) of the 2013 Act. The Court has considered the question of the validity of transactions in the form of power of attorney in Suraj Lamp and Industries Pvt. Ltd. through Director v. State of Haryana, (2012) 1 SCC 656, and has held that no rights could be accrued on such transactions as this is not a legal mode of transfer. This Court has observed :

> *"20. A power of attorney is not an instrument of transfer in regard to any right, title, or interest in an immovable property. The Power of Attorney is a creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.*
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> *21. In-State of Rajasthan v. Basant Nehata, (2005) 12 SCC 77 this Court held:*
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> > *"13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favor of the agent. The agent derives a right to use his name and all acts, deeds, and things are done by*

him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the done to act on his behalf. Except in cases where power of attorney is coupled with an interest, it is revocable. The done in exercise of his power under such power of attorney only acts in place of the donor subject, of course, to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the done.

An attorney holder may, however, execute a deed of conveyance in the exercise of the power granted under a power of attorney and convey title on behalf of the grantor.

Scope of Will

14. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing the distribution of his estate upon his death. It is not a transfer *inter vivo. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the lifetime of the testator. It is said that so long as the testator is alive, a will is not be worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see Sections 69 and 70 of the Indian Succession Act, 1925). Registration of a will does not make it any more effective.*

Conclusion

15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain v. Canara Bank, 94 (2001) DLT 841 that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintended misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions *as concluded transfers, as contrasted from an agreement to transfer, are not good law.*

16. We, therefore, reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not

> *legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions, and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship."*

No right can be claimed based on a transfer made by way of execution of Power of Attorney, Will, etc., as it does not create any interest in immovable property.

25. In Manav Dharam Trust (supra), even the provisions of the Act of 2013 have not been taken into consideration, which prohibits such transactions in particular provisions of section 11, including the proviso to section 24(2). Apart from that, it was not legally permissible to a Division Bench to ignore the decisions of the larger Bench comprising of three Judges and of Co-ordinate Bench. They were not per incuriam and were relevant for deciding the issue of taking possession under Act of 1894, at the instance of purchaser. In case it wanted to depart from the view taken earlier, it ought to have referred the matter to a larger bench. It has been ignored that when a purchase is void, then no declaration can be sought on the ground that the land acquisition under the Act of 2013 has lapsed due to illegality/irregularity of proceedings of taking possession under the Act of 1894. No declaration can be sought by a purchaser under Section 24 that acquisition has lapsed, effect of which would be to get back the land. They cannot seek declaration that acquisition made under the Act of 1894 has lapsed by the challenge to the proceedings of taking possession under the Act of 1894. Such right was not available after the purchase in 2000 and no such right has been provided to the purchasers under the Act of 2013 also. Granting a right to question acquisition would be against the public policy and the law which prohibits such transactions; it cannot be given effect to

> *under the guise of subsequent legislation containing similar provisions. Subsequent legislation does not confer any new right to a person based on such void transaction; instead, it includes a provision prohibiting such transactions without permission of the Collector as provided in Section 11(4).”*

Thus, reliance placed by the petitioner on ***Manav Dharam Trust*** (supra) is misplaced.

Having heard learned counsels and perused the record as well as the decisions relied upon by the respective parties, we are inclined to follow the later decisions of this Court, including in the case of ***Raj Singh*** (supra), ***Santosh Jain*** (supra) and ***Sanjay Jain*** (supra) since these decisions have noticed the subsequent decisions of the Supreme Court as well. The objections raised by the respondents, as taken note of hereinabove, have been accepted by this Court in these decisions and their ratio is squarely attracted in the facts o the present case.

In the light of the aforesaid, the present petition is dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

DECEMBER 12, 2019
B.S.Rohella