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

+ WP (C) 344/2019 & CM APPL. 1606/2019

MUKESH GUPTA AND ORS. Petitioners

Through: Mr. C. Mohan Rao and
Mr. Lokesh Kr. Sharma, Advs.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Rajiv Bansal, Sr. Adv. with
Mr. Dhanesh Relan, Ms. Parul
Panthi and Ms. Vaishali Rawat,
Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

06.01.2020

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1. The petitioners, who have come into possession of certain plots of land, in New Kondli, Delhi, by virtue of General Powers of Attorney (hereinafter referred to as “GPAs”) executed by the persons to whom the said plots had been originally allotted, seek, by means of this writ petition, a mandamus, to the Delhi Development Authority (hereinafter referred to as “the DDA”), not to transfer, or auction, the said plots to any other buyer, or create any third party rights in respect thereof.

Facts

2. The twenty-three plots, forming subject matter of the present proceedings, all of which are located in New Kondli, were originally

allotted to persons other than the petitioners, *vide* individual allotment letters, all of which were issued on 28th June, 1991. The allotments were under a resettlement scheme, titled the “site and service scheme”, whereunder the DDA allotted plots to persons belonging to the weaker classes, such as slum dwellers, who had to be evicted from the places upon which they had illegally encroached. The allotments were on perpetual leasehold basis, and the allottees were required to deposit ₹ 3,000/- as initial payment towards premium.

3. Clause 2 of the allotment letters deemed the allottees to have assented to all the terms and conditions of the allotment. Clauses 3 to 6 of the allotment letter – with all their grammatical and syntactical quirks – read thus:

“3. That overall control and superintendence of the plot shall remain vested in the DDA, who official shall at responsible hours to be entitled to inspect the said plot about its bona fide use.

4. That the residential plot shall be exclusively used by yourself and shall not be allowed to give the residential plot on rental basis to any body.

5. That you will not be entitled to transfer/sell the said residential plot without the permission of the DDA/Government.

6. That the residential plot shall be constructed within six months from the delivery of the possession of the plot in accordance with design approved by the DDA.”

Clause 11 made the allottee responsible to get the lease deed executed within three months from the date of final payment of premium, ground rent and other outstanding dues.

4. The allottees, of the aforesaid plots, were slum dwellers, belonging to the poorer sections of the society, who had to be evicted from the areas in their occupation. The allotments were made, to such persons, on residential basis, to ensure their rehabilitation.

5. The DDA points out, in its counter-affidavit, that the covenant, in the letters of allotment, proscribing sale or transfer of the plots to any other person, was specifically intended to further the purpose for which the allotments were made, i.e., rehabilitation of the allottee slum dwellers. Accordingly, contends the DDA, transfer of the plots, by the allottees thereof, by way of GPAs or any other instrument, would completely defeat the purpose for which the allotments had been effected and would, *ex facie*, be illegal.

6. The petitioners have sought to contend, *per contra*, that such covenants, proscribing sale, of the allotted plots, were part of the standard format of allotment letters issued by the DDA and that, therefore, the transfer of the plots under GPAs, despite being in violation of the said covenants, deserved to be accorded legal sanctity, resulting in vesting of rights in the GPA holders.

7. It is not in dispute that no lease deeds were ever executed, by the DDA, in respect of the aforesaid plots. The petitioners aver that this was owing to inaction, on the part of the DDA, in finalizing the total amount of premium payable by the allottees.

8. As already noted hereinabove, the petitioners came into possession of the subject plots on the basis of GPAs, executed by the original allottees, and have been enjoying possession of the plots ever since. The petitioners have, candidly, placed all the GPAs on record. A perusal thereof, reveals that the GPAs were for “management/control/supervision and look after of affairs of the above said plots”, for which the attorneys – i.e. the petitioners herein – were authorised and empowered to do the following acts:

- “1. To deal with all matters regarding the said property in all offices and departments i.e. electricity/MCD/DJB or any other appropriate authority.
2. To manage, control lookafter and supervise the said property in any manner as my said attorney deems fit and proper.
3. To deposit and pay necessary dues and taxes regarding the said property/terrace of rooms to the concerned authorities on my behalf.
4. To appear and act on my behalf in offices concern land revenue offices/local bodies in allied offices in respect of, the said property, to affidavit or statement, to reply to any letter or notifies issued by the concerned authority and to do all deeds and things which are necessary for the same.
5. To construct, renovate and rebuilt the said property.
6. To sell, transfer the said property in any manner to any person to enter into an agreement to execute and consideration amount thereof and earnest money to hand over the possession of the said purchaser and to mutate the same in the relevant records and to do all acts, deeds and things which are necessary for the same.
7. To apply and get the sale permission from the concerned authorities to receive the same under his own signatures.
8. To appoint further attorney as well as general or special.

9. To apply and get the necessary connections for the above said property from the concerned authorities.

10. To appoint any arbitrators in respect of any dispute, regarding the said property and to accept the award to the same arbitrators.”

9. It is nobody’s case that, before executing the GPAs, permission of the DDA or Government was even sought, much less obtained. It is obvious, therefore, that the execution, of the aforesaid GPAs, by the original allottees, was in stark violation of the their allotment letters, as issued by the DDA, which specifically required the allottees to exclusively use the plots allotted to them, and injuncted the allottees from transferring or selling the plot, without the permission of the DDA/Government.

10. The writ petition refers to a decision, taken in a meeting dated 27th November, 2012, which specifically discussed the issue pertaining to the New Kondli Resettlement Colony, as recorded in a letter dated 14th December, 2012. Clause (ii) in para 3 of the said letter, reads thus:

“(ii) The Execution of lease – deed and conversion of lease hold plot in to free hold even in cases where plots have been sold out on GPA basis may be dealt with in accordance with the present policies on the subject.”

11. While admitting that no lease deeds were executed, with the DDA, in respect of the aforesaid twenty-three plots, the petitioners seek to place reliance on an order, dated 14th February, 1992, issued by the Lands Division, Ministry of Urban Development (MoUD), Government of India, which, according to them, represented the “policy on the subject” –

to which the communication dated 27th November, 2012 *supra* referred – and allowed conversion from leasehold to freehold even where no lease deed was executed. The petitioners rely on Clauses 1.12 and 1.17 of the said order, dated 14th February, 1992, which read thus:

“1.12 In cases where lease have not been signed, freehold will be allowed to the allottees provided the non-execution of the lease deed has been on account of administrative reasons and not because of certain defaults on the part of the allottees.

1.17 The conversion shall also be allowed in cases when lessee/sub lessee/allottee has parted with the possession of the property provided that

- a) Application for conversion is made by a person holding power of attorney from the lessee/sub lessee to alienate sell/transfer the property
- b) Proof is given of possession of the property in favour of the person in whose name conversion is being sought.

In such cases a surcharge of 33-1/3% on the conversion free would be payable over and above the one time conversion charges applicable for a regular lessee (no unearned increase will be recoverable).”

12. Incidentally, the writ petition also refers to an order, dated 20th June, 2013, issued by the Department of Urban Development, Govt. of NCT of Delhi (GNCTD), which conveys the approval, of the MoUD, to the proposal of the GNCTD, for conversion of the rights of the original occupants of forty-five JJ Resettlement Colonies to freehold. However, as the New Kondli Resettlement Colony is not one among the said forty-five colonies, the reliance, by the petitioners, on the said order dated 20th June, 2013, is *ex facie* misconceived.

13. In respect of the New Kondli Resettlement Colony, however, another meeting was held by the Deputy Director (Land Management), DDA, on 21st October, 2013. The decisions taken in the said meeting are relevant, if at all, only to the extent that, with respect to the non-execution of the lease deed, with the allottees, it was suggested that the lease deeds could be executed at any time and that a public notice be issued in the Newspaper for execution of the lease deeds.

14. In the backdrop of the above facts, the petitioners claim that they are purchasers of the aforesaid twenty-three plots, under the GPAs executed in their favour, by the original allottees, and on that premise, seek issuance of mandamus, to the DDA, not to transfer or auction the said plots, and to allow the conversion of the plots, in favour of the petitioners, from leasehold to freehold.

15. As the DDA had proposed to auction some of the aforesaid plots, the petitioners have also pleaded violation of the principles of natural justice, contending that, before any such auction, they ought to have been put on notice. Reliance has been placed, by the petitioners, apart from *J.K. Bhartiya (supra)*, on the following decisions:

- (i) *SP Kureel v. Delhi Development Authority*¹
- (ii) *State of U.P. v. Maharaja Dharmander Prasad Singh*²
- (iii) *Olga Tellis v. Bombay Municipal Corporation*³
- (iv) *Express Newspaper (Pvt.) Ltd. v. U.O.I*⁴

¹ 2013 SCC OnLine Del 4504

² (1989) 2 SCC 505

³ (1985) 3 SCC 545

⁴ AIR 1958 SC 578

- (v) *Meghmala v. G. Narasimha Reddy*⁵
- (vi) *Neelima Misra v. Harinder Kaur Paintal*⁶, and
- (vii) *State of W.B. v. Vishnunarayan & Associates (P) Ltd*⁷.

16. Contesting the claim of the petitioners, the DDA asserts that the petitioners have no *locus standi*, whatsoever, to maintain the writ petition, being in illegal possession of the plots, which had been transferred to them, under the GPAs, in clear violation of the terms and conditions whereunder the allotment of the plots had been made to the original allottees.

17. It is pointed out that the New Kondli Resettlement Colony Scheme was intended to resettle slum dwellers and other such persons, living on the fringes of the society, who had to be evicted from the areas in their occupation. It was precisely in order to avoid abuse of the scheme, that the allottees were, in express terms, proscribed from transferring or selling, or allowing usage, by any other person, of the plots allotted to them. The GPAs, executed by the original allottees, were, therefore, it is sought to be contended, illegal on their very face, and having come into possession of the plots, under such illegally executed documents, the petitioners could not be allowed to invoke the equitable jurisdiction vested in this Court by Article 226 of the Constitution of India. Besides, it is pointed out, GPAs do not transfer title, and having no title to the aforesaid twenty-three properties, the petitioners cannot seek any

⁵ (2010) 8 SCC 383

⁶ (1990) 2 SCC 746

⁷ (2002) 4 SCC 134

injunction, against the DDA in respect thereof, much less a mandamus to direct their conversion to freehold.

18. Without prejudice to these submissions, it is further averred that the petitioners had, in any event, never approached the DDA either for execution of lease hold or for extension of time for raising construction on the aforesaid plots.

19. Resultantly, pleads the DDA, the present writ petition deserves to be dismissed.

20. Apart from the *Olga Tellis*³ and *Express Newspaper (Pvt.) Ltd.*⁴, on which the petitioners also placed reliance, learned counsel for the DDA has placed reliance on the following decisions:

- (i) *Chandni Chowk Sarv Vyapar Mandal (Regd.) v. Municipal Corporation of Delhi*⁸,
- (ii) *Arunima Baruah v. U.O.I*⁹,
- (iii) *B.R. Anand v. DDA*¹⁰, and
- (iv) *Rajinder Kakkar v. Delhi Development Authority*¹¹.

21. Mr. Rajiv Bansal, learned Senior Counsel appearing for the DDA, has questioned the maintainability of the writ petition, on the ground that the petitioners were canvassing civil personal rights, for which a writ petition, under Article 226 of the Constitution of India, was not an appropriate remedy. On merits, Mr. Bansal has contended that the subject

⁸ (2005) 124 DLT 51

⁹ (2007) 6 SCC 120

¹⁰ (2005) 125 DLT 116

¹¹ (1994) 54 DLT 484

plots had specifically been allotted for resettlement of persons who had been evicted from the spots occupied by them and who, therefore, required to be rehabilitated and that it was for this reason that the allotment letters incorporated a specific clause, prohibiting further transfer of the plots. Insofar as the order, dated 20th June, 2013 *supra*, of the GNCTD, was concerned, Mr. Bansal submitted that this was a Cabinet decision, but that, as persons did not opt in response thereto, the matter was still pending in the Cabinet, and no lease deeds had been actually executed, pursuant to the decision. Mr. Bansal also laid specific emphasis on Clause 11 of the Allotment letters, which required the allottees to get the lease deed executed within 3 months from the date of final payment of premium/ground rent and other outstanding dues, and pointed out that the allottees had made no efforts in this direction. Insofar as the plea, of the petitioners, regarding infraction of the principles of natural justice, was concerned, Mr. Bansal submitted that rank encroachers, such as the petitioners, who had come into possession of public lands in violation of the law, were not entitled to the luxury of a show cause notice, before being dispossessed. He emphasised the fact that the DDA was the custodian of public property, and was entirely empowered to dispossess those who had come into possession of public property illegally. *Olga Tellis*³, in Mr. Bansal's submission, supported this legal position. *Express Newspapers (Pvt.) Ltd.*⁴, too, submitted Mr. Bansal, held that, where construction had been effected with the permission of the Government, the persons in possession thereof could not be dispossessed, under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Mr. Bansal emphasised that non-lessees had no right to see conversion of the property to freehold. Mr. Bansal drew my

attention to Rule 43 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter referred to as “the Nazul Land Rules”), which reads thus:

“43. Lease to be executed by the allottee. – Every allottee of Nazul land execute a lease-deed in accordance with Form C appended to these rules. In addition, a lease-deed may contain such other covenants, clauses or conditions not inconsistent with the provisions of Form C as may be considered necessary in the circumstances of each case.”

Clause II (6)(a) of Form C, as appended to the Nazul Land Rules, *sans* the provisos thereto, reads thus:

“(6)(a) The Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential plot except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion.”

Mr. Bansal also submitted that the plots, forming subject matter of the writ petition, were actually vacant, and that the petitioners were residing at various other locations.

22. As such, submits Mr. Bansal, the petitioners, who have no case either on facts or in law, deserve to be non-suited.

23. I am not inclined to dismiss the present writ petitions on the ground of maintainability as, in my view, no such disputed issues of fact arise, which would necessarily require leading of evidence and a protracted civil trial. There is no absolute legal proposition, in my view, which disentitles persons, ventilating “civil personal rights”, from invoking Article 226 of the Constitution of India. The preliminary submission of,

Mr. Bansal, to the effect that the writ petitions are not maintainable is, therefore, rejected.

24. On merits, the submission, of the DDA, that the petitioners have not placed, on record, any document, whereunder title, in respect of the subject plots, has passed to them is, legally speaking, unexceptionable. This Court had, in earlier decisions, notably in *J.K. Bhartiya v. U.O.I.*¹² (authored by a learned Single Judge, and on which the petitioners place reliance), and *Asha M. Jain v. Canara Bank*¹³, opined that, as the ground situation prevailed in Delhi, sale of properties, by way of powers of attorney, was a known phenomenon and that, though, on their very face, the documents under which possession was transferred were merely powers of attorney, effectively they amounted to sale. This view was, however, specifically disapproved by the Supreme Court in two orders, passed by it in the same proceedings, relating to SLP (C) 13917/2009, reported as *Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana*¹⁴ and *Suraj Lamp and Industries Pvt. Ltd. (2) v. State of Haryana*¹⁵, the first by a Bench of two Hon'ble Judges and the second by a Bench of three Hon'ble Judges, headed, in each case, by R.V. Raveendran, J. Both these decisions held, unequivocally, that "power of attorney sales" were legally unacceptable, as a mode of transfer of property. It was emphasized, in these decisions, that title could not transfer under powers of attorney, whether they were special powers of attorneys or general powers of attorneys. Title in property, it was emphasized in these decisions, would transfer only under deeds of conveyance properly

¹² (2006) 126 DLT 302

¹³ ILR (2001) 2 Del 544

¹⁴ (2009) 7 SCC 363

¹⁵ (2012) 1 SCC 656

stamped, registered and recorded in accordance with law. The illegal and irregular process of “power of attorney sales”, it was noted, had spawned several disputes, relating to possession and title, and also resulted in criminal complaints and cross complaints, as well as extra-legal enforcement and enforced settlement by land mafia. It was also observed that these pseudo-sales were resorted to, normally, in order to avoid execution of registered deeds of conveyance, which would involve payment, to the DDA, of unearned increase, diversion of undisclosed wealth/income and avoiding of payment of stamp duty and registration charges. The Supreme Court, therefore, held thus (in paras 23 and 24 of *Suraj Lamp and Industries Pvt. Ltd. (2)*¹⁵):

23. Therefore, an SA/GPA/will transactions does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in *Asha M. Jain v. Canara Bank*, that the “concept of power-of-attorney sales has been recognised as a mode of transaction” when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised 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.

24. 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 recognised or valid mode of transfer of immovable property. The courts will not treat such transaction as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP 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 agreement of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.”

25. While so holding, however, the Supreme Court clarified, in *Suraj Lamp and Industries Pvt. Ltd.*¹⁴ as well as *Suraj Lamp and Industries Pvt. Ltd. (2)*¹⁵, that these decisions were not examining situations in which “power of attorney sales” were recognized, by the DDA itself, as a justifiable basis for claiming conversion of the property, from leasehold to freehold. In fact, para 14 of *Suraj Lamp and Industries Pvt. Ltd.*¹⁴ emphasized this point, and read thus :

“14. We are not presently concerned with the validity, propriety or wisdom of such judgments which virtually put the seal of approval of the court on transactions which were irregular and illegal. *In fact, it is stated that DDA itself ultimately recognises “power of attorney sales” by accepting applications from purchasers under the “power of attorney sales” for conversion from leasehold to freehold and conveyance of the flats. We will therefore presently exclude the “power of attorney sales” of DDA flats from the purview of the present exercise.* What we are concerned with is extension of the concept of such “power of attorney sales” by execution of SA/GPA/will with reference to freehold properties.”

(Emphasis supplied)

A similar caveat is to be found in para 26 of *Suraj Lamp and Industries Pvt. Ltd. (2)*¹⁵ which reads thus :

“26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not “transfers” or “sales” and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the

affected parties from getting registered deeds of conveyance to complete their title. The said “SA/GPA/will transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. *We make it clear that if the documents relating to “SA/GPA/will transactions” have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision.”*

(Emphasis supplied)

26. The Supreme Court, therefore, took stock of the ground reality that the DDA was itself recognizing “power of attorney sales” as a valid basis for the attorney holder to seek conversion of the land from leasehold to freehold. This recognition relates back to para 1.17 of the order, dated 14th February, 1992 *supra*, issued by the Lands Division, MoUD, the relevant portion of which, may, at the cost of repetition, be reproduced, once again, thus:

“1.17 The conversion shall also be allowed in cases when lessee/sub lessee/allottee has parted with the possession of the property provided that

- a) Application for conversion is made by a person holding power of attorney from the lessee/sub lessee to alienate sell/transfer the property
- b) Proof is given of possession of the property in favour of the person in whose name conversion is being sought.”

27. A reading of clause 1.17 of the letter dated 14th February, 1992, as reproduced hereinabove, discloses that, though, in sub-clause (a) of the said clause the expression “lessee/sub lessee” is used, the main clause

1.17 uses the expression “lessee/sub lessee/allottee”. The sub-clause of clause 1.17, plainly read, cannot limit the applicability of the clause itself. Sub-clause (a) of clause 1.17 too, therefore, has to be read as covering lessees, sub-lessees and allottees. The specific use of the expression “allottee”, distinctly from “lessee” and “sub-lessee”, indicates that the clause was intended to apply even to allottees who were not lessees or sub-lessees, i.e. in whose favour no lease deed had been executed. The specific inclusion of “non-lessee” allottees also appears to harmonise with clause 1.12 of the order, (reproduced in para 11 *supra*), in which conversion was also allowed to allottees, provided non-execution of the lease deed was on account of administrative reasons and not because of defaults on the part of the allottees. In the present case, it is specifically averred by the petitioners, that non-execution of the lease deed, in favour of the allottees to whom the subject plots had been allotted, was owing to administrative reasons, i.e. inability, on the part of the DDA, in finalizing the premium to be paid by the allottee. This averment has not been denied by the DDA, in its counter affidavit or elsewhere. This fact, when seen in the backdrop of clauses 1.12 and 1.17 of the order dated 14th February, 1992 *supra*, would seem to support the submission, of the petitioners, that their requests for conversion of the subject plots from leasehold to freehold, was maintainable, despite the fact that no lease deed, in respect of the subject plots, had been executed with the DDA and that possession had passed on to them, from the allottee by way of GPAs. The general principle, as enunciated in *Suraj Lamp and Industries Pvt. Ltd.*¹⁴ and *Suraj Lamp and Industries Pvt. Ltd. (2)*¹⁵ – which has been followed in subsequent decisions in *Greater Bombay Cooperative Bank*

*Ltd. v. Nagraj Ganeshmal Jain*¹⁶ and *Shiv Kumar v. U.O.I.*¹⁷ – that title cannot pass under GPA or a special power of attorney, which has been sought to be invoked by the DDA in its counter affidavit, cannot, therefore, in my view, apply in the facts of this case, especially in view of the caveat specifically entered by the Supreme Court in para 14 of *Suraj Lamp and Industries Pvt. Ltd.*¹⁴ and in para 26 of *Suraj Lamp and Industries Pvt. Ltd. (2)*¹⁵.

28. Had matters stood thus, the petitioners may have been entitled to relief, on the basis of the clauses 1.12 and 1.17 of the order dated 14th February, 1992. In this context, one may also refer to clause (2) in para 3 of the letter dated 14th December, 2012, which documented the decision taken in the meeting, dated 27th November, 2012 and which stands reproduced in para 10 *supra*. The said clause documents the decision, of the DDA, to deal with cases of execution of lease deed and conversion of leasehold plots to freehold even in cases where plots had been sold out on GPA basis, “in accordance with the present policies on the subject”. The “present policies on the subject” stand reflected in the aforementioned clauses 1.12 and 1.17 of the order dated 14th February, 1992 *supra*. In fact, it appears that transfer of possession in property, by and under general powers of attorneys, even if they do not *stricto sensu*, amount to transfer of property in law, have been regarded by the DDA, as sufficient to vest various rights, in the attorneys, including the right to claim conversion of the property from leasehold to freehold. This being the policy of the DDA itself, the DDA is needless to say, bound thereby, and it cannot lie in the mouth of the DDA, therefore, to contend that, in law,

¹⁶ (2017) 15 SCC 316

¹⁷ (2019) 10 SCC 229

title could not transferred under documents of general or special powers of attorney.

29. The issue was again taken up by the DDA, in its meeting held on 21st October, 2013, and the observations/suggestions, made in respect of plots allotted the New Kondli Resettlement Colony, as documented in the letter dated 22nd October, 2013, merit reproduction :

“(ii) It has been observed that the plots in the resettlement colony, New Kondly has been allotted on lease basis but lease deeds have not been executed and balance amount of cost of plot has not been calculated and intimated to the allottees so far. Policy for execution of the lease deed is to be discussed/formed and formula for calculation of land cost is to be finalized.

It was suggested that the lease can be executed at any time and a public notice be issued in the newspaper for execution of the lease deed as per the policy and procedure adopted by the Residential Lands Wing of Land Disposal Deptt.”

30. The claim for conversion, from leasehold to freehold, of plots allotted under the New Kondli resettlement scheme, by “GPA transferees” of the said plots, appears, therefore, to be tenable in law, despite the fact that such GPA transferees possessed no title to the properties, of which they were seeking conversion.

31. I find myself, however, handicapped in providing any relief to the petitioners, despite the above position, emanating from the order dated 14th February, 1992, read with letter dated 14th December, 2012 and minutes dated 21st October, 2013, of the DDA, for the reason that the essential pre-requisite, for the petitioners to be able to seek benefit, under the GPAs, executed in their favour by the original allottees, *would be that*

the GPAs themselves were legal and valid. Had the petitioners, come into possession of the properties under legal and valid GPAs, they may have been able to claim the benefit of conversion of the plots, or even seek execution of lease deeds, in the light of the decisions taken by the DDA in that regard, especially with respect to the New Kondli Resettlement Colony, and reflected in the orders/letters/minutes referred to hereinabove.

32. Significantly, the letters of allotment, allotting plots in the New Kondli Resettlement Colony, did not contain any absolute embargo on transfer or sale of the plots, by the original allottees. Any such transfer or sale, however, was permissible only with the permission of the DDA. Mr. Bansal is also correct in his submission that, had lease deeds actually been executed, by the original allottees of the subject plots, as required by Clause 11 of the letters of allotment, as well as by Rule 43 of the Nazul Land Rules, the lease deeds would, invariably, have had to include a covenant, proscribing sale, transfer, assignment or parting, in any other manner, of possession, of the whole or any part of the residential plot in question, as expressly engrafted in Clause II (6)(a) of the format of lease deed, as contained in Form C, annexed to the Nazul Land Rules. Had the allottees, from whom the petitioners obtained possession of the subject plots, executed GPAs, in favour of the petitioners, *after obtaining the permission of the DDA*, as contemplated by the letters of allotment issued to them, the transfer of possession of the property, under the GPAs, would have been valid. In that event, the petitioners may have been able to capitalize on the policy of the DDA, as reflected in the order dated 14th February, 1992 *supra* read with the letter dated 14th December, 2012

supra and the minutes of the meeting held on 21st October, 2013, as documented on 22nd October, 2013 *supra*. Persons, who had come into possession of plots, allotted under the New Kondli Resettlement Scheme, under general power of attorneys, executed by the allottees *in accordance with the terms and conditions of allotment*, would, despite not being title holders in respect of the subject plots, have been able to seek conversion of the plots from leasehold to freehold. This latitude cannot, however, be extended to persons, who had come into possession of the plots, as attorney holders, under GPAs *issued in violation of the terms and conditions of allotment*. Sale or transfer of the allotted properties, by the allottees, under the New Kondli Resettlement Scheme, was permissible only with the prior permission of the DDA. It is nobody's case that any such prior permission was taken, in the present case, before GPAs, in respect of the subject plots, were executed by the DDA in favour of the petitioners. It is fossilized in law, from the time of ***Taylor v. Taylor***¹⁸ and ***Nazir Ahmed v. King Emperor***¹⁹, both of which have been followed by Supreme Court in a veritable catena of pronouncements thereafter, that "if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all and all other methods of performance are necessarily forbidden"²⁰. Where, therefore, the letters, allotting plots under the New Kondli Resettlement Scheme, as also Rule 43 of the Nazul Land Rules, specifically required permission of the DDA to be obtained before sale/transfer of the plots by the allottees, such sale/transfer could be effected only after obtaining such permission, and,

¹⁸ (1875) LR 1 Ch D 426

¹⁹ 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372

²⁰ Tahsildar, Taluk Office, Thanjore v. G. Thambidurai, (2017) 12 SCC 642

if effected without such permission, were, on the face of it, illegal. Such illegal transfers cannot confer rights.

33. At the cost of repetition, it may be noted that there has been no submission, by the petitioners, at any point of time, that permission of the DDA was obtained before the original allottees of the subject plots issued GPAs in their favour. The counter-affidavit, on the part of the DDA, specifically alleges violation, in the transfer of the properties by GPAs, of the covenant, in the letters of allotment, proscribing such transfers, save and except with the prior permission of the DDA. To this, the response of the petitioners, in para 9 of their rejoinder, reads thus :

“9. The respondent also contended that the allotment letter specifically provided that the allottees are not entitled to sell the plots. *It is submitted that similar restriction on sale can be found in every lease executed by the DDA prior to coming into force the conversion policy. After coming into force of conversion policy a person who has purchased leasehold property under GPA has a right for conversion uniformly without discrimination. After coming into force of the conversion policy, it is simply not open to DDA to take any adverse action on the ground of purported unauthorized sale.* It is not open to DDA to take the plea of unauthorized sale in support of its patently malafide and illegal action.”

(Emphasis supplied)

34. The contention of the petitioners, as reflected in the afore-extracted paragraph of their rejoinder – which was also articulated by Mr. C. Mohan Rao, learned Counsel appearing for the petitioners during hearing – obviously merits rejection outright. The submission in effect, amounts to a request to the Court to lend its imprimatur to the perpetuation of an illegality, merely because the illegality has repeatedly

been perpetrated over a period of time. Frankly, I am unable to even appreciate, far less accept, the submission, of Mr. Rao, that “the non-transfer covenant” is a standard clause, contained in all such allotments in similar documents, whereby plots were allotted by the DDA over the years, and may, therefore, safely be ignored. Clause 2 of the allotment letter, issued to the allottees in the present case specifically notes that the allottees are deemed to have agreed to all terms and conditions of allotment. Clause 5, thereunder, absolutely prohibits transfer or sale of the residential plot allotted to the allottees without permission of the DDA/Government. Having accepted this condition of allotment, the allottees were bound thereby. Any transfer, or sale, of the plots allotted to the allottees, without obtaining prior permission of the DDA/Government was therefore, illegal on the face of it. The submission, as articulated in the afore extracted para 9 of the rejoinder, filed by the petitioners, that “after coming into force of conversion policy a person *who has purchased leasehold property* under GPA has a right for conversion uniformly without discrimination” effectively misses the wood for the trees, by glossing over the fact that the “purchase” of leasehold property has, in the first place, to be in accordance with law, and not in violation of the terms of allotment of the plots themselves. Illegal transfer of property, under GPAs, cannot arm the transferee with any right whatsoever, either before, or after, the “policy of conversion”. Indeed, if the conversion policy were to be so interpreted as to allow an illegal transferee of property under a GPA, which has been executed in violation of the express covenant contained in the letter of allotment, whereunder the plot was allotted in the first place, the policy might itself be perilously liable to be struck down as arbitrary and unconstitutional. Such an

interpretation, of the “conversion policy” of the DDA has, therefore, necessarily to be eschewed, at all times.

35. I am, therefore, of the firm view that the benefit, of the policy, of the DDA, to permit conversion of plots from leasehold to freehold, at the request of persons, to whom the plots have been transferred by the original allottees under the New Kondli Resettlement Scheme, under GPAs, could be countenanced *only if the GPAs themselves were executed after obtaining the permission of the DDA/Government, and not otherwise*. The GPAs, under which the petitioners, in the present case, obtained possession of the subject plots, having apparently been executed without prior permission of the DDA/Government, these GPAs as well as the transfer of possession of the plots thereunder, were, *ab initio*, illegal, and cannot clothe the petitioners with any rights whatsoever.

36. It is necessary to note at this juncture, that the counter-affidavit of the DDA contains a specific averment, to the effect that the order dated 14th February, 1992, did not apply to allotment of plots under the New Kondli Resettlement Scheme. The petitioners, have, in their rejoinder, criticized this averment as having been made without any documentary basis in support thereof. It is a fact that the DDA has not provided any material, in support of its submission that the letter dated 14th February, 1992, did not apply to the New Kondli Resettlement Scheme. I need not labour further on this aspect, as for the reasons already elucidated hereinabove, I am of the opinion that the petitioners, cannot, in any event, obtain any benefit under the dispensation contained in the letter dated 14th February, 1992.

37. The petitioners have also alleged that the decision to auction the plots, of which they are in possession, has been taken without issuance of show cause notice to them. This aspect, too, pales into insignificance, as the petitioners have been heard at length, and there is no disputed issue of fact involved. The issue is purely one of law. The petitioners are claiming their rights, to seek conversion of the plots to freehold, under the “conversion policy” of the DDA. There is no dispute about the fact that the GPAs, whereunder possession of the properties were transferred to the petitioners, were executed in violation of the covenant, to the contrary, contained in the letters of allotment, issued by the DDA. In my opinion, persons, who have come into possession of the property under such GPAs, cannot claim the benefit of the conversion policy of the DDA. There is not a whisper of an averment, either in the writ petition or in the rejoinder, to the effect that the transfer of possession in the subject plots, in their favour, by the original allottees, was effected after obtaining permission of the DDA. In that view of the matter, it is obvious that the transfers were in derogation of the specific terms and conditions of allotment of the plots to the original allottees and that, therefore, no rights can enure in favour of the petitioners, consequent on the said transfers. I do not think that, in the facts of the present case, therefore, any prejudice has resulted, to the petitioners, on account of the violation of the principles of natural justice, or that any purpose would be served, by remitting the matter to the DDA for a re-consideration.

38. The petitioners have relied on various decisions, in support of the submissions that the principles of natural justice have been violated in the

present case, but I am of the opinion, on a reading thereof, that none of the decisions can really come to the petitioners' aid.

39. *Maharaja Dharmander Prasad Singh*² was a challenge, *by lessees* of Nazul land, to cancellation of the lease. The litigation dealt with 9885 sq. m. of Nazul land, comprised in a lease in favour of a certain Mr. Edwards, granted in 1901 for 30 years. The lease was renewed, on 6th November, 1936, for the first time, for 30 more years, effective 1st April, 1931, in favour of a certain Sir Syed Ali Zaheer, a transferee from Mr. Edwards. Sir Syed Ali Zaheer assigned his interest, under the lease, in favour of Maharaja Pateshwari Prasad Singh of Balrampur. The lease was renewed, a second time, in favour of the heirs of the said Maharaja Pateshwari Prasad Singh, who were the respondents before the Supreme Court. These respondent-lessees, in collaboration with M/s Ambar Builders private limited, applied to the Lucknow Development Authority, on 11th August, 1981, for permission to put up a multi-storey building on the devised property. Permission, as sought, being refused, the lessees appealed, unsuccessfully, but succeeded, partly, in further revision, preferred thereagainst, wherein the Government, *vide* order dated 15th October, 1984, remitted the matter to the appropriate authority under the concerned statute for a fresh consideration. On 31st March, 1984, during the pendency of the revision petition, the respondents before the Supreme Court submitted a modified plan, styling the construction as consisting of “residential Flats”. It was also averred that, after remand, the Nazul officer had given his “No Objection Certificate”, on 2nd December, 1984, for the grant of permission. At this stage, a power of attorney holder of the respondents (before the Supreme Court) filed an affidavit, on 28th

December, 1984, before the appropriate authority of the Lucknow Development Authority, alleging that there was an impediment, under the Urban Ceiling Laws, to grant of the relief claimed by the respondent-lessees before the Supreme Court. Even so, the Lucknow Development Authority sanctioned permission on 23rd January, 1985, on the basis whereof ₹ 53,440/- was deposited, by the respondent-lessees, with the Lucknow Development Authority towards “malba” charges. Later, on 24th July, 1985, directions were issued by the Government, interdicting the progress of construction, on the ground that the lessees had violated the conditions of the lease. It was in these circumstances that the matter was carried, to the High Court, in writ proceedings. Even during the pendency of the said writ proceedings, further developments took place, leading, ultimately, to issuance of a show cause notice, contemplating cancellation of the lease, and a decision, to the said effect, taken on 19th November, 1985. The case, clearly, therefore, involved disputed and involved issues of fact. The Supreme Court, in para 24 of the report, noted this position thus:

“We do not propose to go into the merits of these grounds and their sufficiency in law to support the purported forfeiture as, in our view, this exercise, having regard to the disputed questions of fact that are required to be gone into in that behalf, or extraneous to proceedings under Article 226 of the Constitution.”

In fact, immediately after expressing the afore extracted opinion, the Supreme Court goes on, in the said decision, to hold that the very invocation, by the respondent-lessees, of Article 226 of the Constitution of India, was misconceived, in view of the disputed issues of fact involved. In the present case, by invoking Article 226 of the Constitution of India, the petitioners have themselves proceeded on the premise that

the present dispute is amenable to adjudication under Article 226 of the Constitution of India. In view thereof, I am of the opinion that the decision in *Maharaja Dharmander Prasad Singh*² can be of no assistance to the petitioners.

40. *Olga Tellis*³, if anything, militates against the submission, of the petitioners, as is apparent from the following passage from the said decision:

“Normally, we would have directed the Municipal Commissioner to afford an opportunity to the petitioners to show why the encroachments committed by them on pavements or footpaths should not be removed. But, *the opportunity which was denied by the Commissioner was granted by us in an ample measure, both sides having made their contentions elaborately on facts as well as on law. Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads.* As observed in *S.L. Kapoor [(1980) 4 SCC 379, 395 : (1981) 1 SCR 746, 766]*, “... *where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs*”. Indeed, in that case, the court did not set aside the order of supersession in view of the factual position stated by it. But, though we do not see any justification for asking the Commissioner to hear the petitioners, we propose to pass an order which, we believe, he would or should have passed, had he granted a hearing to them and heard what we did.”

(Emphasis supplied)

41. In my opinion, as already observed hereinabove, the entire issue in controversy being limited to a point of law, and no dispute, on fact, been discernible from the rival pleadings, or from arguments advanced at the Bar before me, the interests of justice would not justify this Court

forbearing from deciding the issue, and merely relegating the petitioners to the discretion of the administrative authorities.

42. *Meghmala*⁵ involved the forcible dispossession of a person, in favour of whom registered sale deed, existed, without any application ever having been filed, before any competent court, to declare the sale deed as null and void. The persons, seeking to dispossess the purchaser of the property, under the said sale deed, were found to have no right or interest in the suit property. A finding of fact was also found to have been entered, in the proceedings leading up to the appeal before the Supreme Court, to the effect that the person, who was being sought to be dispossessed (the appellant before the Supreme Court) was in actual physical possession of the land and was illegally/forcibly dispossessed by the respondents. It was in this scenario that the Supreme Court held, that due procedure, prescribed by law, was required to be followed before dispossessing a person in illegal occupation of land. It is quite obvious that the facts of that case are completely different from those of the case before this Court.

43. *Neelima Misra*⁶ dealt with observance of the principles of natural justice in the matter of appointment of a Reader in a University, and, in the opinion of this Court, has no bearing to the facts of the present case. Para 22 of the report, in the said case, holds that an administrative order, involving civil consequences, must be made consistently with the principal of *audi alteram partem*. This proposition, quite obviously, brooks no cavil. For the reasons stated hereinabove – especially in view of the passage from *Olga Tellis*³ extracted in para 40 *supra* – it cannot be

said that, in holding as it does, this Court is approving violation of the *audi alteram partem* doctrine, in the present case.

44. *S. P. Kureel*¹, a decision by a learned Single Judge of this Court, dealt with cancellation of allotment of a flat, on the ground that the allottee was already in possession of another flat. There is no parallel, whatsoever, with the said case, and the present. Before coming to a conclusion that the person, to whom a flat had been allotted, was already in possession of another flat, it was obvious that the allottee had to be put on notice, so that he could, if he so chose, establish to the contrary. An obvious dispute, on facts, could arise in the said situation, which cannot be analogised, in any manner, to the situation in the present case. This judgment, too, in my view, therefore, does not advance the case of the petitioners to any appreciable extent.

45. Being illegal transferees of the subject plots, therefore, I am of the opinion that the petitioners cannot maintain the prayers in the writ petition.

46. In view of the principles enunciated hereinabove, it is clear that the respondents cannot, in the present case, be said to have acted in violation of the principles of natural justice. Even so, in the interests of ensuring that full and complete justice is done, however, I deem it appropriate to close this judgment with a caveat that, if any of the petitioners, despite the present judgment, is of the opinion that she, or he, has any enforceable right, in respect of the plot of which she, or he, claims to be in possession, the concerned petitioner is at liberty to make a

representation, to the DDA, in that regard, within a period of two weeks from the date of pronouncement of this judgment, and the DDA is directed, in that event, to take a decision on the representation, within a period of two weeks thereof.

Conclusion

47. In view of the aforesaid, it is clear that the petitioners are not entitled to the prayers contained in the writ petition, in exercise of the equitable jurisdiction, vested in this Court by Article 226 of the Constitution of India.

48. Subject to the caveat entered in para 46 *supra*, the writ petition is therefore dismissed with no orders as to costs.

49. In view of the disposal of the writ petition, CM Appl. 1606/2019 does not survive for consideration and is accordingly disposed of.

C. HARI SHANKAR, J.

JANUARY 06, 2020

dsm