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

\+ **W.P.(C) 7452/2019**

DR. VIKRAM HINGORANI AND ORS. ..... Petitioners

Through: Dr. Aman Hingorani and Ms. Meghna Sharma, Advocates. (M:9810006829)

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Anil Soni, CGSC for R-1. (M:9312224805)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% 21.04.2022

1. This hearing has been done through hybrid mode.

2. This is an application filed by the Petitioners seeking correction of typographical error in the previous order dated 11th April, 2022. It is submitted that the words "legal heir" has been incorrectly placed in paragraph 14 of the said order, instead of paragraph 13 thereof. Accordingly, the order dated 11th April, 2022 stands corrected as follows: The said paragraphs now read as under:

<u>Existing Paras 13 & 14</u>

> *13……the Petitioners and the Respondent No. 6 shall be the undivided owners of their respective share in the subject property…*
>
> *14. In respect of any disputes that may exist between the Petitioners and the Respondent 3 & 4* ***or their legal heirs****, the same is not the subject matter of the present writ petition or the contempt petition."*

<u>Corrections in Paras 13 & 14</u>

> *"13……the Petitioners and the Respondent No. 6/**his legal heir** shall be the undivided owners of their respective share in the subject property…*
>
> *14. In respect of any disputes that may exist between the Petitioners and the Respondent 3 & 4, the same is not the subject matter of the present writ petition or the contempt petition."*

3. Let the order dated 11th April, 2022 reflecting the above corrections, be printed and uploaded as a corrigendum. ***CM APPL. 19357/2022*** is disposed of.

PRATHIBA M. SINGH, J.

APRIL 21, 2022
dj/ad

$~1(SB) & 2 (SB)

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

[Corrigendum as per order dated 21st April, 2022]

Date of Decision: 11th April, 2022

\+ **CONT.CAS(C) 341/2021 & CM APPLs. 28784/2021, 34193/2021 & 37083/2021**

DR VIKRAM HINGORANI & ORS. ..... Petitioners

Through: Dr. Aman Hingorani and Ms. Meghna Sharma, Advocates. (M:9810006829)

versus

MR. DURGA SHANKER MISHRA & ORS. ..... Respondents

Through: Mr. Anil Soni, CGSC with Mr. Devesh Dubey, Advocate for L&DO.

2(SB) WITH

\+ **W.P.(C) 7452/2019& CM APPL. 2355/2022, 10675/2022, 12783/2022, REVIEW PET.49/2022, REVIEW PET. 66/2022**

DR. VIKRAM HINGORANI AND ORS. ..... Petitioners

Through: Dr. Aman Hingorani and Ms. Meghna Sharma, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Anil Soni, CGSC with Mr. Devesh Dubey, Advocate for R-1 & 2. (M:9312224805)
Mr. Vikram Saini, Advocate for Review Applicants/R-3 & 4. (M:9999021461)
Mr. Subhash Chand, Advocate for applicant in REVIEW PET.66/2022. (M:9868426305)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. The present review petitions being ***Review Pet.66/2022*** and ***Review Pet.49/2022***, as also the contempt petition, have been filed seeking implementation of the order dated 27th January, 2021 and recall of the corrigendum order dated 16th December, 2021 to order dated 14th December, 2021. The same have been filed by the Land & Development Office (*hereinafter, "L&DO"*) and other Respondents/their successors-in-interest.

3. The dispute arose out of the Property bearing No.13, Main Road, West Patel Nagar, New Delhi (*hereinafter, "suit property"*). The case of the Petitioners is that they, jointly along with the Respondent No.6-Mohan Hingorani, are owners to the extent of 50% in respect of the the said property. The other 50% is owned by the Respondent No.3- Mr. Gautam Tahilramani & Respondent No.4 –Mr. Gul @ George R Tahilramani.

4. The prayers, which were sought in the present writ petition, were as under:

> "*(a) issue appropriate Writ, Direction and Order setting aside/quashing the Rejection Letter for Mutation No. L&DO/PS3/62952/389 dated 03.05.2019 issued by Deputy Land &Development Officer rejecting the mutation application of the Petitioners in respect of their share in Property No. 13, Main Road, West Patel Nagar, New Delhi;*
>
> *(b) issue an appropriate Writ, Direction and Order setting aside/quashing the Mutation-cum-Substitution letter No. L&DO/PS-III/195 dated 02.02.2005 pertaining the lease hold rights in respect of Property No. 13, Main Road, West Patel Nagar, New Delhi in the names of the Respondent Nos. 3 and 4;*
>
> *(c) issue a Writ of Mandamus directing the Respondent Nos. 1 to 2 to mutate/substitute such lease hold rights in respect of Property No.13, Main Road,*

West Patel Nagar, New Delhi in favour of the Petitioners in terms of the final decree of partition dated 24.04.2008 with Exhibit C 1 passed by the Court of Shri N K Sharma, A.D.J., Tis Hazari Courts, Delhi in Suit No. 364/2004;

(d) issue a Writ of Prohibition restraining the Respondent Nos. 3 and 4 and all persons claiming under them from acting on the Mutation-cum-Substitution letter No. L&DO/PS-III/195 dated 02.02.2005;

(e) issue a Direction to the Respondent No. 5 to pay the misuse or other charges for breach of lease deed terms, if any, levied by the Respondent No, 1 and 2;

(f) award costs of this Petition to the Petitioners;"

5. Vide order dated 27th January, 2021, after hearing all the parties including the L&DO, the following order was passed by this Court:

"*9. Mr. Manish Mohan, ld. CGSC appears for Respondent Nos.1 and 2. Counter affidavit has been filed on behalf of Respondent Nos.1 and 2. The stand taken by Respondent Nos.1 and 2 i.e., the L&DO is that the mutation would be effected insofar as Respondent Nos.3 and 4 are concerned, only once the outstanding Government dues are paid by them. The relevant portions of the affidavit of the L&DO is set out below:*

"9. That a letter dated 04.06.2012 was received from Sh. G.T. Ramani wherein they have stated that no space is occupied by any company for commercial use, only ING Vysya Bank is operating on the ground floor and also stated that all the construction has been made as per plan approved by MCD. They have also requested to inspect the premises and ready to pay the charges for withdrawal of re-entry. However, no

Sanctioned Building Plan/ any other documents were furnished by the Respondent No. 3 & 4. Therefore, terms for withdrawal of re-entry could not be offered to them, and withdrawal of re-entry order to Respondent No. 3 & 4 could be issued only on the recovery of all outstanding Government dues from Respondent No. 3 & 4 and Respondent No. 5. Thereafter, no communication was received from Respondent No. 3 & 4.

xxx

11. That thereafter, inspection notice was issued on 14.01.2019 for inspection of the premises on 21.01.2019. In response, Respondent No. 3 requested for another date. Another notice was issued on 24.01.2019 for inspection of the premises on 04.02.2019. Technical team of this office visited the site on 04.02.2019 and found the breaches of unauthorized construction. Breach notice was issued on 12.03.2019 to the Respondent No. 3 & 4. However, as per procedure of this Office, conversion / mutation / substitution or any request of the Respondent No. 3 & 4 can be taken up / considered only after the withdrawal of re-entry qua them and withdrawal of re-entry can be done only on the recovery of all outstanding Government dues from Respondent No. 3, 4 & 5. Thereafter, mutation application of the Petitioners was rejected on 03.05.2019.

12. That as per policy and procedure of the Answering Respondent, until the re-entry is withdrawn qua Respondent No. 3 & 4, no action for conversion / mutation at their request can be taken up, and re-entry can be withdrawn only after recovery of all outstanding Government dues from Respondent No. 3 to 5. As per High Court order dated 03.03.2006, the Hon'ble Court directed the Respondent No. 5 to appear before Sh. A. Bhattacharya on 08.03.2006 who would *proceed after that at his convenience. Hearing was provided and the Bank stated that they would submit documents including Sanctioned Building Plan. But the documents have never been submitted in the office of Answering Respondent. Further, although the Respondent No. 3 & 4 submitted their compromise to pay the charges but no Sanctioned Building Plan / documents have ever been submitted by them.*

13. That the re-entry order dated 06.02.2006 was issued to the Respondent No. 3 & 4 and not to the Bank as the Bank was not a recorded lessee. The bank filed the writ petition and the Hon'ble Court disposed of the writ vide order dated 03.03.2006 directing the Land and Development Office (Mr. A.R. Bhattacharya, Deputy Land and Development Officer) to give a personal hearing to the Bank on 08.03.2006 and proceed thereafter at his convenience and also stated in the order that re-entry order stood withdrawn. It is understood that the re-entry order stands withdrawn against the Bank who filed the writ for the relief regarding re-entry order but re-entry order was issued to the Respondent No. 3 & 4 only and not, to the Bank by the Answering Respondent. Hence, no action of withdrawal of re-entry was taken by the Answering Respondent qua the Respondent No. 3 & 4 with respect to their portion of the property. Therefore, the re-entry order issued to the Respondent No. 3 & 4 still stand qua their portion of the property still stands and can be withdrawn only on recovery of all the outstanding Government dues from Respondent No. 3 to 5.
xxx
V. That in this regard, the reply as stated in paras 8, 13 and 14 of the Preliminary Objections may be referred for reply to this para. It is also stated

that the property stands re-entered which means the rights and title of the Respondent No. 3 & 4 in the property, have been suspended."

10. A perusal of the above affidavit shows, therefore, that there are no charges which are being imposed upon the Petitioners or Respondent No.6. Ld. counsel appearing for Respondent Nos.3 and 4 - Mr. Santosh Kumar takes the position that since, under the deed of partition, the ground floor falls in the share of the Petitioners, the conversion/misuser charges should be paid by them. He further relies upon the letter of the MCD dated 21st October, 1999, as per which misuser charges to the tune of Rs.2,24,784/- would be liable to be paid. It is his submission, therefore, that since the ground floor falls in the share of the Petitioners, they should bear the misuser/conversion charges. Dr. Aman Hingorani, ld. counsel, however, submits that the stand of the bank is that it has paid the conversion/ misuser charges.

11. Insofar as the present petition is concerned, the decree of partition and consequent possession of the Petitioners, has attained finality in view of the order of the Supreme Court. The shares of the various parties have also been determined. Clauses (i) and (j) of the Settlement make it clear that the parties are free to seek mutation/substitution in their names as also conversion from leasehold to freehold, without any further NOC from the other parties. As per the affidavit of the L&DO, the only claim of the L&DO is in respect of the Government dues from Respondent Nos. 3 to 5. As per Dr. Aman Hingorani, ld. counsel, there are no dues being claimed qua the Petitioners in the counter affidavit. The stand of Respondent Nos.3 and 4 in respect of their own charges for mutation in their name is not the subject matter of the present writ petition. Respondent Nos.3 and 4, if they wish to get any mutation done, would have to take steps in accordance with law with the L&DO. Needless to add, the long *drawn litigation due to the collaboration agreement and the bank being put in possession has caused sufficient frustration and difficulties to the Petitioners and Respondent No.6. The Petitioners cannot be made to bear the brunt of the conduct of Respondent Nos.3 and 4 or their predecessor/s in any manner whatsoever.*

12. The stand of the L&DO being quite clear, there is no impediment in directing the mutation to be carried out in favour of Petitioners No.1 to 6 and Respondent No.6 in terms of the final partition decree dated 24th April, 2008. Admittedly, the Petitioners have been put in possession only on 8th December, 2018, following the judgment of the Supreme Court pursuant to which the Local Commissioner ultimately took possession of the suit property. Thus, the Petitioners cannot be made to pay any misuser charges for which they are not responsible. Insofar as conversion charges from leasehold to freehold are concerned, if any of the said charges fall in the share of the Petitioners, they would be liable to pay the same, in terms of the settlement.

13. In view of the above, Respondent Nos.1 and 2 are directed to mutate/ substitute the lease hold rights in the suit property bearing No.13, Main Road, West Patel Nagar, New Delhi, in favour of the Petitioners in terms of the final decree of partition dated 24th April, 2008 (with Exhibit C1).

14. Respondent Nos.3 and 4 shall not create any impediment whatsoever in the mutation and substitution taking place in favour of the Petitioners. If there are any misuser charges which are liable to be paid, in terms of the counter affidavit filed by the L&DO, it is free to proceed as per its counter affidavit, in accordance with law. In terms of clause (j) of the Settlement, parties are free to alienate or sell their respective shares in the suit property/portions of the suit property so partitioned by metes or bounds. All

> *parties shall be bound by the terms of the Settlement and shall adhere to the same."*

6. Thereafter, on an application filed by the Respondent Nos.3 & 4 informing the Court that, though the mutation has been carried out, the L&DO is not executing the lease deed in favour of the Petitioners, the corrigendum order dated 16th December, 2021 to order dated 14th December, 2021, was passed. The relevant portion of the said order is extracted below:

> *"7. The apprehension on behalf of the Petitioners is that the L&DO has taken the position in an application seeking recall of the said order that the parties can jointly apply once the dues are paid. It has been clarified by this Court in paragraph 12 of the judgment dated 27th January, 2021 that the Petitioners cannot be made to pay any misuser charges which they are not liable to pay.*
>
> *8. **In view thereof, nothing can hold back the execution of the lease deed in favour of the Petitioners. If the Review Applicants i.e., Respondent Nos.3 & 4 have any disputes with the L&DO, they are free to avail their legal remedies, in accordance with law**."*

7. Now, further applications have been filed seeking recall of the order dated 16th December, 2021. The stand of the L&DO is that the sub-division of the plot is not permissible. It has already carried out the mutation in favour of the Petitioners. However, the lease deed cannot be directed to be executed as the same has to be executed as a composite whole for the entire property.

8. The stand of the other Respondents is that the Petitioners are not entitled to 50% share in the suit property and in any event, since the policy of the government is not to sub-divide, the lease deeds cannot be executed.

9. The stand of the Petitioners is that the directions of this Court, vide

orders dated 27th January, 2021 and corrigendum order dated 16th December, 2021, are clear to the effect that the mutation/substitution of the lease hold rights has to take place in favour of the Petitioners, in terms of the final decree of partition dated 24th April, 2008.

10. Heard ld. Counsels for the parties. It is clear that there are disputes in respect of charges which are allegedly payable by Respondent Nos.3 & 4 in respect of the suit property to the L&DO. It is this issue that is causing the dispute between the parties and the L&DO is refusing to execute the lease deeds in favour of the Petitioners and Respondent No.6 due to the same.

11. In the opinion of this Court, the order dated 27th January, 2021 is quite clear and so is the stand of the L&DO in the affidavit filed before this Court. The right of the Petitioners and the Respondent No.6 in respect of the final partition decree dated 24th April, 2008 is not in dispute. A Local Commissioner was also appointed to take possession of the said share of the Petitioners and the Respondent No.6 in the suit property.

12. Vide letter dated 24th August, 2021 and corrigendum thereto dated 7th September, 2021, the L&DO has issued a memorandum to the following effect:

> "*MEMORANDUM*
>
> *In superannuation of this office substitution letter No. L&DO/P-II95 dated 02.02.2005 and Court Order dated 27.01.2021 passed by the Hon'ble Court on decree of Partition dated 24.04.2008 in respect of above said* ***property the mutation of the property has been carried out.*** *On the same terms and conditions laid down in the lease deed executed on 06.09.1956 by the original lessee as follows:-*
>
> 1. *Dr. Vikaram Hingorani, Ms Anita Bhawnani and Late 1/6th Jointly undivided share. Sabhawal*

2. *Dr. Aman Hingorani, Dr. Shweta Hingorani, and Priya 1/6th Jointly Undivided share Hingorani.*
3. *Sh. Mohan Hingorani.*
4. *Mr. Gul @ George R. Tahillramani and Sh. Gautam 1/2th Undivided share Tahilramani.*

*2. **The property now stand in the books of this office in the names of Dr. Vikaram Hingorani Ms. Anita Bhawnani, Ms. Lata Sabhawal, Dr. Aman Hingorani, Dr. Shweta Hingorani. Ms. Priya Hingorani, Sh. Mohan Hingorani, Mr. Gui @· George R, Tahilramani and Sh. Gautam Tahilraman Jointly**.*

3. Sub-division of the Property will not be allowed at any stage.

4. You are also liable to pay government dues i.e. misuse/damages charges etc, which is being intimated to you vide letter No.L&DO/PSIII/319 dated 24/08/2021

5. However, if it is found subsequently that certain facts have not been brought to the notice of govt. or the facts have been misrepresented, the Government reserves the rights to review the matter suo-moto."

Corrigendum Dated 7th September, 2021

"*Sub: Corrigendum of mutation of lease hold rights in respect of property No. BP-13, West Patel Nagar, New Delhi.*

CORRIGENDUM

In partial modification of this office letter NO.L&DO/PS-III/ dated 24.08.2021 the names of Co-lessees and Para 4 may be read as under:-

"Dr. Vikram Hingorani, Ms. Lata Sabharwal and Priya Hingorani instead of Dr. Vikaram Hingorani, Ms. Lata Sabhawal and Priyah Hingorani".

"As per Hon'ble Delhi High Court order dated

27.01.2021 Mr. Gul @ George R. Tahilramani and Sh. Gautam Tahilramani are liable to pay government dues i.e. misuse/damages charges etc. which is being intimated to them vide letter No.L&DO/PS-III/362 dated 07.09.2021.
The other names of co-lessee, terms and conditions of mutation letter dated 24.8.2021 will remain the same.""

13. In the above memorandum, the L&DO notes that the sub-division of the suit property is not to be permitted at any stage. However, considering the fact that the memorandum had already been issued in terms of the lease deed executed on 6th September, 1956 in favour of the Petitioners and the Respondent No.6, as set out above in the memorandum, read along with the corrigendum, there cannot be any impediment in issuing the lease deed in favour of the said parties, so long as the lease deed clearly mentions that the Petitioners and the Respondent No.6/his legal heir shall be the undivided owners of their respective share in the subject property. It is now directed that the L&DO shall execute the lease deed without any further objections, in terms of the memorandum dated 24th August, 2021 along with the Corrigendum dated 7th September, 2021, within eight weeks.

14. In respect of any disputes that may exist between the Petitioners and the Respondent Nos.3 & 4, the same is not the subject matter of the present writ petition or the contempt petition.

15. The parties are free to avail of their remedies, in accordance with law.

16. Accordingly, all pending applications, review petitions and the contempt petition, are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

APRIL 11, 2022/*dk/ad*