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

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Date of decision: 11 October, 2022+ **W.P.(C) 9140/2022****SMT SHASHI JAI KRISHNA**

..... Petitioner

Through: Mr. Sanyat Lodha and Ms. Hima
Bhardwaj, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ANR. RespondentsThrough: Mr. Pramod Kumar, Adv. for R-1.
Mr. Jai Sahai Endlaw and Mr. Karan
Kumar, Advs. for R-2.**CORAM:****HON'BLE MR. JUSTICE YASHWANT VARMA****YASHWANT VARMA, J. (ORAL)****CM APPL. 43934/2022 (early hearing)**

Bearing in mind the disclosures made, the application for early hearing is allowed.

The writ petition is put down for final disposal today itself.

W.P.(C) 9140/2022

1. The instant writ petition assails the validity of a Refusal Memo dated 13 April 2022 passed by the Sub Registrar refusing to register a Gift Deed which had been executed by the petitioner in favour of the second respondent who is stated to be her son. For the purposes of the disposal of the instant writ petition, the following salient facts may be noticed.

2. The petitioner claims to be the sole and absolute owner of land



admeasuring 20 bighas and 6 biswas comprised in Khasra Nos. 74/24/2 (0 16), 76/10 (0-10), 77/3/2 (0-11), 77/4 (4-16), 77/6 (4-19), 77/7 (4-00), 77/8/1 (0-11), 77/13/2 (1-12), 77/14 (1-07), 77/17 (1-04) situate in Village Mehrauli, Tehsil Mehrauli, New Delhi. She claims rights over the aforesaid parcel of land in terms of a Sale Deed dated 10 February 1966 which came to be executed in her favor. On 19 November 2020, the daughter of the petitioner instituted a suit numbered as CS(OS) No. 393/2020 seeking partition, mandatory injunction and rendition of accounts before this Court. That suit remains pending on the board of the Court presently. However, in the aforesaid suit proceedings, the petitioner moved I.A. No. 14230/2021 seeking permission of the Court to execute conveyance documents of the subject property in favor of respondent No. 2. That permission was accorded by the Court on 28 March 2022. It is thereafter that the petitioner executed the instant Gift Deed on 01 April 2022.

3. The Sub Registrar in terms of the Refusal Memo which has been drawn has recorded that the executants had failed to submit the requisite document/information. It becomes pertinent to note that the Refusal Memo does not specify the document or information which had been sought and which the petitioner may have failed to produce before the Sub Registrar. However, from the status report which has been filed in these proceedings on his behalf, it transpires that the objection now stems from an order dated 04 February 2020 which is described to be a Circular issued by the Sub Divisional Magistrate. That Circular reads thus:-

“The rural areas of NCT of Delhi are declared urbanized when a notification under Section 507 of the Delhi Municipal Corporation Act



1957 (66 of 1957) is issued. Once the rural areas of Villages are declared urbanized, the provisions of the Delhi Land Reforms Act, 1954 do not apply to such areas.

Accordingly, attention of all concerned is drawn that once the notification under 507 has been issued, the restrictions under Section 33 of Delhi Reforms Act, 1954 would not be applicable in such areas for the purpose of obtaining Status Report/NOC. However, in respect of cases where the lands have been allotted under Section 74 of Delhi Reforms Act, 1954, it has to be ensured that no sale/transactions, in violation of terms and conditions of allotment and of applicable legal provisions, is allowed. In respect of lands where proceedings/cases under Section 81 of the Act, have been initiated before the issuance of Notification under Section 507 of MCD Act, 1957 and are still pending for adjudication before the Revenue/Appellate Authorities, such proceedings would continue unless withdrawn by competent authority and hence, the land Status Report/NOC would be required to check this aspect as per existing instructions.

Further, previous permission of competent authority is also required under Section 8 of Delhi Land (Restrictions on Transfer) Act 1972 with the objective to check that the land which has been notified or declared for acquisition or has been acquired by the Government is not transferred by sale, mortgage, gift or lease or otherwise, without such permission. It is therefore, reiterated that obtaining the Status Report/NOC regarding land acquisition status from ADM/LAC by the concerned Sub-Registrars shall also continue before registration of any document of transfer of sale, mortgage, gift or lease or otherwise of land so as to ensure that no person transfers or purports to transfer any land which has been acquired or in respect of which acquisition proceedings have been initiated.

It shall be personal responsibility of the Sub-Registrar to ensure compliance of all applicable instructions/legal provisions before registration of a document.

This issues with the approval of Pr. Secretary (Revenue)-cum-Divisional Commissioner.”

4. For the purposes of the present case, it may be noted that the respondents firstly assert that the land in question formed subject matter of acquisition and therefore in terms of the provisions made in the **Delhi**



Lands (Restriction on Transfer) Act, 1972¹, the executants of the Gift Deed is obliged to obtain a No Objection Certificate [NOC] from the competent authority before the Gift Deed can be registered.

5. It becomes relevant to observe that the issue of acquisition need not detain this Court at all since undisputedly, the proceedings came to lapse in terms of the provisions made in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The declaration to the aforesaid effect which came to be rendered in favour of the petitioner was assailed by the Delhi Development Authority before the Supreme Court by way of Civil Appeal No. 8512/2016. That Civil Appeal came to be dismissed on 31 August 2016 with the observation that it would be open for the appellant there to exercise the rights conferred by Section 24(2) within a period of one year. It is not the case of the respondents that such a choice has been exercised by the appellant before the Supreme Court.

6. That only leaves the Court to deal with the objection which is taken based on the circular of 04 February 2020 and which in turn alludes to the provisions of Section 8 of the 1972 Act. It becomes pertinent to note that the 1972 Act essentially puts in place a prohibition on transfer of land acquired either by Union Government or land which may form subject matter of a proposal for acquisition. It is in the aforesaid context that Section 5 lays down the procedure for an application for permission being made and obtained for transfer. Construing the provisions of the aforesaid

¹ the 1972 Act



enactment, this Court in a recent decision in **Manjesh Kumar Vohra versus Government of NCT of Delhi & Ors²** held thus:

“5. The restrictions which are placed on transfer of land and the consequent registration of instruments that may be executed in respect thereof is undisputedly governed by the provisions contained in the Delhi Lands (Restrictions on Transfer) Act, 1972 [“the Act”]. For the purposes of the present matter, it would be pertinent to advert to Sections 3 and 4 of the Act which read thus:

“3. Prohibition on transfer of lands acquired by Central Government. —No person shall purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi, which has been acquired by the Central Government under the Land Acquisition Act, 1984 (1 of 1984), or under any other law providing for acquisition of land for a public purpose.

4. Regulation on transfer of lands in relation to which acquisition proceedings have been initiated.—No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi, which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the Central Government under section 6 of the Land Acquisition Act, 1894 (1 of 1894), the Central Government has not withdrawn from the acquisition under section 48 of that Act.”

6. The Act thereafter in Section 5 lays in place the procedure which is to be followed for a person to obtain permission in respect of land which may be covered under Section 4. It becomes pertinent to note that both Sections 3 and 4 put in place restraints on persons entering into transactions relating to land which may form part of acquisition proceedings under the 1894 Act. It is thus manifest that the restrictions that are placed stand restricted to such category of land only. However, the aforesaid issue pales into insignificance in the facts of the present case bearing in mind the declaration which had come to be entered by the Court which while taking note of the provisions of Section 24(2) had held in categorical terms that the acquisition would be deemed to have lapsed.

² W.P.(C) 11318/2022



7. The Court notes that dealing with an identical question this Court in **Manzoor-Ul-Haq vs. Government of NCT of Delhi and Others [2021 SCC OnLine Del 4874]** made the following pertinent observations:

“7. The Court bears in mind the fact that the judgment in **Dinesh Kumar Himatsingka** is a clear authority for the proposition that once the provisions of Section 24(2) of the 2013 Act are found to be applicable and the acquisition proceedings initiated under the erstwhile 1894 Act are deemed to have lapsed, the restrictions as carried in the 1972 Act would not apply and that in any case the Registering Authority would not be justified in refusing to register an instrument which is presented before it. Before the Court, it is not disputed that on the earlier writ petitions preferred by the petitioner here, the Division Bench had categorically come to record an unambiguous finding that neither physical possession of the subject land had been taken by the land acquiring authority nor had any compensation been paid to the petitioner. In fact, the Division Bench had referred to the aforesaid as being the “*admitted position*”.

9. From a reading of the aforesaid extract of the decision in *Indore Development Authority* it is evident that once the provisions of Section 24(2) of the 2013 come into play and are established to apply, it “obliterates” the steps that may have been taken under the 1894 Act. More fundamentally, as this Court reads the provisions of Sections 4 and 5 of the Delhi Land (Restrictions on Transfer) Act, 1972 it is clear that the injunctions embodied therein are to apply provided the land forming subject matter of the instrument is subject to acquisition. The apparent intent of those provisions is to restrain the transfer of property while it forms part of an acquisition and to not affect registration of instruments executed in respect of property that may form part of an acquisition exercise. Here on the other hand and as the recordal of facts would undoubtedly establish, no proceedings for acquisition subsist and any proceedings that may have been initiated earlier would be deemed to have lapsed and resultantly stand effaced. Once the specter of acquisition stands erased, there appears to be no justification for the Registering Authority to not proceed further in accordance with law. The fact that the acquisition proceedings no longer encumber the property or impede the right of the petitioner is indubitably established in light of the declaration entered by this Court on the judgment rendered *inter partes*.”

7. On a consideration of the principles which would apply and stand duly enunciated in **Manjesh Kumar Vohra**, it is manifest that the provisions of the 1972 Act would have no application since the land in



question cannot possibly be construed as being subject matter of acquisition and thus fall within the ambit of Sections 3 and 4 of the 1972 Act.

8. In that view of the matter the Court is of the considered opinion that the impugned Refusal Memo [(Illegible)/SR-VA/HK/2022/1511-14] would not sustain.

9. Accordingly, the writ petition is allowed. The impugned Refusal Memo dated 13 April 2022 is hereby quashed and set aside. The Sub Registrar is, consequently, directed to attend to the prayer for registration of the Gift Deed bearing in mind the observations made hereinabove.

10. The Court may only additionally observe that the fact of whether the land forms part of a notification issued under Section 4 of the Indian Forest Act, 1927 and which is additionally noticed in the circular of 04 February 2020, is an issue which has neither been noticed nor referred to in the Status Report which has been filed and tendered in these proceedings. However, the Court leaves it open to the Sub Registrar to duly verify and examine the aforesaid aspect independently. It is additionally directed that the Sub Registrar shall, bearing in mind the fact that the petitioner is a senior citizen and of advanced age, dispose of the application for registration of the Gift Deed with expedition.

11. The date of 21.11.2022 shall stand cancelled.

YASHWANT VARMA, J.

OCTOBER 11, 2022
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