



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

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Judgment reserved on : 04 July 2024
Judgment pronounced on: 20 August 2024

+ **W.P.(C) 6222/2021 & CM APPL. 19715/2021, CM APPL. 33296/2023**

KANWAL KISHORE MANCHANDAPetitioner
Through: **Mr. Sajal Manchanda, Adv.**
along with petitioner present-in-person.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.

.....Respondents
Through: **Mr. Sumit Chander, Mr. Gurdeep Chauhan & Mr. Amit Agarwal, Advs. for R1/DDA**
Mr. Kunal Vajani, Mr. Shubhang Tandon & Mr. Aman Brar, Advs. for R2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The Petitioner invokes the extra-ordinary jurisdiction of this Court by instituting the present writ petition under Article 226 of the Constitution of India, and seeking the following reliefs:

“(i) CERTIORARI for quashing Order dated 04.03.2021(Annexure P/1 at page No. 39), passed by Director (LSB)-I, DDA whereby petitioner's representation against letter dated 23.10.2017 has been rejected.

(ii) CERTIORARI for quashing letter dated 23.10.2017 (Annexure P/2 at page No. 43) bearing No.F6A (19) 651LSB (I)I4207, issued by Assistant Director LSB (I) of Respondent I DDA cancelling/Revoking Mutation carried out earlier in favour of Petitioner, his sister Smt. Sneh Avlash and Legal Heirs of



Deceased Sister Smt. Raksha Arora in respect of Plot No. B-87, Mayapuri Industrial Area, Phase-I, New Delhi.

(iii) MANDAMUS directing, commanding and requiring the Respondent 1 DDA for restoring mutation dated 29.12.2008 in favour of Petitioner, his sister Smt. Sneh Avlash and Legal Heirs of Deceased Sister Smt. Raksha Arora in respect of Plot No.B-87, Mayapuri Industrial Area, Phase-I, New Delhi as per Preliminary Decree dated 8.2.1996 and Final Decree dated 27.4.2006 passed by this Hon'ble Court in Suit bearing CS (OS) No. 687 of 1993.”

FACTUAL BACKGROUND:

2. Before probing into the facts leading to the filing of the present petition, it is necessary to first establish the genealogy of the parties involved. Sh. Ram Parkash Arora (now deceased), who is central to the case at hand, got married to Smt. Phoolvati @ Janak Dulari. From the wedlock, two sons and two daughters namely, Sh. Kanwal Kishore Manchanda (petitioner herein), Shri Chand Kiran, Smt. Sneh Avlash/Sneh Prabha and Smt. Raksha Arora, were born to the couple. Unfortunately, Shri Chand Kiran predeceased Sh. Ram Parkash Arora on 03.01.1974, leaving behind his wife Smt. Kiran Arora, a son namely Sh. Gagan Khanna (Respondent No.2 herein at whose instance the DDA has proceeded to pass the impugned directions) and a daughter namely Smt. Monica Arora/Monica Hurt. Smt. Raksha Arora married and then got divorced from her husband Shri Prem Kumar. Thereafter, Smt. Raksha Arora (now deceased) and her daughter Ms. Smita Arora started residing with and being maintained by her father i.e., Shri Ram Parkash. Thus, the petitioner herein is the son of late Sh. Ram Parkash, brother of Sh. Chand Kiran and the paternal uncle of Respondent No.2.



3. It is the case of the petitioner herein that the property bearing Plot No. B-87, Mayapuri Industrial Area, Phase-1, New Delhi (hereinafter, “subject property”) was originally allotted by the Respondent No.1/DDA to **M/s Ram Parkash Kanwal Kishore**, a “**proprietorship firm**” through its sole proprietor i.e., Sh. Ram Parkash Arora (father of the petitioner herein) *vide* registered perpetual lease deed 25.09.1967. However, this averment has been challenged by the Respondent No.2 (grandson of Sh. Ram Parkash and nephew of petitioner herein) who has contended that the constitution of the said firm was changed to that of a partnership w.e.f. 01.04.1964 under a Deed of Partition dated 01.04.1964, consisting of three partners namely, Sh. Ram Parkash Arora (father of petitioner and grandfather of respondent no.2), Sh. Kanwal Kishore (petitioner herein) and Sh. Chand Kiran (father of Respondent No.2). *Per contra*, it is strongly urged by the Respondent No.2, while relying upon some documents placed on the record including but not limited to Deed of Partnership dated 01.04.1971, that the allotment letter dated 02.09.1966 of the subject property was issued by Respondent No.1/DDA in favour of the “partnership firm” and the same was signed by Sh. Ram Parkash Arora in his capacity of partner in the said partnership firm. Thus, it is contended that the subject property is an asset of the partnership firm M/s Ram Parkash Kanwal Kishore of which the father of the respondent No.2 was a partner.

4. Fuelling the controversy even further, the Respondent No.1/DDA in its initial counter affidavit, deposed admitting that the subject property was allotted to M/s Ram Parkash Kanwal Kishore, a



sole proprietorship firm, through its proprietor Sh. Ram Parkash Arora *vide* letter dated 27.07.1966 and registered lease deed dated 25.09.1967. However, subsequently an amended counter-affidavit was filed by the Respondent No.1/DDA stating that the subject property was in fact allotted to M/s Ram Parkash Kanwal Kishore, a partnership firm, through its partner Sh. Ram Parkash Arora *vide* letter dated 29.07.1966 and registered lease deed dated 25.09.1967.

5. Anyhow, it is apparent from the record that *inter se* disputes have arisen among the legal heirs of late Sh. Ram Parkash Arora. Furthermore, several rounds of litigations have also been initiated at the behest of Sh. Ram Parkash against his Daughter-in-law Smt. Kiran Arora (widow of Sh. Chand Kiran) and mother of the present respondent no. 2. Interestingly, it is a matter of record that late Sh. Ram Parkash during his life time sought to propound a will dated 26.12.1973 alleged to have been executed by Sh. Chand Kiran (brother of the petitioner and father of Respondent No.2) before his death on 03.01.1974 whereby it was propounded that he had bequeathed all his movable and immovable property to his father Sh. Ram Parkash Arora and also appointed him as the guardian of his minor children to the exclusion of his wife Smt. Kiran Arora. However, in every round of litigation, wherein its genuineness was challenged, the said will dated 26.12.1973 has been consistently held to be a forged document by the Courts presiding over the matter. This Court *vide* judgment dated 09.03.1979 passed in Crl. Misc. (Main) 29/1978 even ordered lodging of a complaint for commission of offences under Sections 193, 196, 467, and 471 of the IPC to be made



before the Magistrate concerned, by the Registrar, Delhi High Court against Sh. Ram Parkash Arora in this regard.

6. Be that as it may, it is further brought out from the record that upon the death of Shri Chand Kiran in 1974, his wife Smt. Kiran Arora and their minor children, Monica Arora and Gagan Khanna (Respondent No.2 herein), filed a Suit bearing No.759/1979 before this Court seeking dissolution and rendition of accounts of the partnership firm M/s Ram Parkash Kanwal Kishore and its branch M/s Prakash Steel Industries. However, it is alleged that the parties ultimately arrived at a compromise and accordingly, a sum of Rs.1,95,000/- was allegedly paid by Shri Ram Parkash Arora to Smt. Kiran Arora and her minor children *in lieu* of their purported share in the said partnership firm and as full and final satisfaction of her claims in the estate of Sh. Chand Kiran as well as marriage and maintenance expenses of his two grandchildren. It is stated that in view of the settlement arrived at between the parties and the death of Sh. Ram Parkash in 1990, the criminal proceedings initiated against him stood abated too.

7. It is pertinent to note that this Court while deciding IA Nos 2431 and 2563 of 1979 in Suit No. 759/1979 had opined *vide* Order dated 27.09.1979 that the compromise between Sh. Ram Parkash and Smt. Kiran Arora cannot be recorded and a decree cannot be passed in view of the fact that the compromise was hit by S.23 of the Indian Contract Act, 1872. However, *vide* a subsequent order dated 07.03.1980, this Court finally disposed of the Civil Suit No. no.



1235/1979 filed by Sh. Ram Parkash Arora in the light of 759/1979 while observing as under:

“In view of the statement of the counsel for Plaintiffs [Smt. Kiran Arora and her minor children] and the fact that Defendant No.1[Sh. Ram Parkash] has already paid Rupees one lac and ninety five thousand to the Plaintiffs, out of which a sum of Rupees Seventy five thousand has been paid to each of the minor Plaintiffs, I consider that the compromise arrived at between the parties is for the benefit of the minor Plaintiffs. So permission is accorded to their next friend viz., Plaintiff No.1 to effect the same as prayed in I.A. 2430 of 1979.

In view of the statements of counsel for both the parties, there is no subsisting dispute or claim *inter se* them. Hence, no further proceeding of any kind is called for. The suit is, therefore, disposed of in terms of compromise which shall be binding on the parties.”

8. Another twist in the tale occurred when the petitioner and his two sisters sought to propound ‘Will dated 23.02.1990’ left behind by their father Sh. Ram Parkash Arora as per which he bequeathed the subject property to Smt. Raksha Arora, Sh. Kanwal Kishore (petitioner herein) and Smt. Sneha Avlash/Sneh Prabha in the following manner:

“5. ...(B) I am running a Partnership Firm styled as Ram Prakash Kanwal Kishore and Prakash Steel Industries in partnership with Smt. Raksha in factory building No. B-87, Mayapuri Industrial Area, New Delhi under a Deed of Partnership dated January 5, 1975. Other portions of that property are in possession of M/s S.D. Technical Works, 8, Bhagat Singh Market, New Delhi who are manufacturing engineering goods under my supervision and charge and I am being paid supervision charges by them on the basis of manufactured goods. M/s S.D. Technical Works are using the premises as my licensees. The portion in which M/s Ram Prakash Kanwal Kishore and Prakash Steel Industries are presently run shall stand absolutely bequeath in favour of my daughter Raksha while the other portion presently in use of M/s S.D. Technical Works shall stand bequeathed to my son Kanwal Kishore and my daughter Sneha Prabha in equal shares. All my investment in the partnership concern M/s Ram Prakash Kanwal Kishore and Prakash Steel Industries shall stand bequeathed to Smt. Raksha



who shall become the sole owner of this business and the premises with all quota rights, raw-materials, finished and semi-finished products and all other assets of the firm to the total exclusion of Shri Kanwal Kishore and Smt. Sneh Prabha.”

9. So, it emerges that upon the death of Sh. Ram Parkash, Smt. Raksha Arora, Sh. Kanwal Kishore (petitioner herein) and Smt. Sneh Avlash as well as the licensee M/s S.D. Technical Works got embroiled in several suits/counter-blast suits claiming rights over the subject property. Smt. Raksha Arora contested the claim that Sh. Ram Parkash was the absolute owner of the subject property on the ground that she and Mr. Ram Parkash were both partners in the partnership firm to which the subject property had been allotted. The suit for injunction bearing CS No. 3726/1990 and suit for partition bearing CS No. 687/1993 both filed before this Court by Smt. Raksha Arora came to be heard together as the issues involved in both suits were common i.e., whether the subject property fell exclusively into the share of Smt. Raksha Arora or exclusively into the shares of Smt. Raksha Arora, Sh. Kanwal Kishore (petitioner herein) and Smt. Sneh Avlash.

10. Resultantly, this Court *vide* a common judgment dated 08.02.1996 dismissed the other suit for injunction filed by Smt. Raksha Arora and passed a preliminary decree in the partition suit to the effect that in terms of the will dated 23.02.1990, the subject property would be divided between the three parties namely, Smt. Raksha Arora, Sh. Kanwal Kishore (petitioner herein) and Smt. Sneh Avlash. The said judgment dated 08.02.1996 attained finality when the appeals filed against it (RFA (OS) Nos.13/1996 and 14/1996) were dismissed. Accordingly, this Court passed a final decree dated



27.04.2006 dividing the subject property between the petitioner and his two sisters as per the mode of division suggested by the court appointed Local Commissioner. It was further ordered that the rights in the subject property, being a lease hold property, would remain joint but only different portions of the said property would be enjoyed by the each of the three parties. The said decree dated 27.04.2006 also attained finality when the appeal filed against it (RFA No. 132/2006) was dismissed.

11. It is stated that on the basis of the said final decree of partition dated 27.04.2006, the petitioner, along with Smt. Sneha Avlash and the legal heirs of Late Smt. Raksha Arora applied to the Respondent No.1/DDA for mutation of the subject property in their favour. Accordingly, *vide* letter dated 29.12.2008 issued by the Respondent No.1/DDA, it was communicated to them that the subject property has been successfully mutated in the favour of the petitioner herein, Smt. Sneha Avlash and the legal heirs of Late Smt. Raksha Arora.

12. But then Respondent No.2 got into action making several representations dated 01.10.2015, 21.01.2016 and 13.05.2016 before the Respondent No.1/DDA alleging that such mutation was obtained by the abovenamed mutates by way of misrepresentation and concealment of facts. The case set up by the Respondent No.2 before the Respondent No.1/DDA was that the subject property has been allotted to the registered partnership firm M/s Ram Parkash Kanwal Kishore in which Sh. Ram Parkash (grandfather of Respondent No.2) and Sh. Chand Kiran (father of Respondent no.2) were the only two partners having a respective share of 60% and 40% in the business of



the said firm. The Respondent No.2 also relied upon a Relinquishment Deed dated 15.03.2016 purported to be executed by Smt. Kiran Arora (mother of Respondent No.2 and widow of Sh. Chand Kiran) in favour of her son Sh. Gagan Khanna i.e. Respondent No.2. As per the said Deed of Relinquishment, Sh. Ram Parkash and Sh. Chand Kiran became the two partners in M/s Ram Parkash Kanwal Kishore vide Partnership Deed dated 01.04.1971, to the extent of 60% and 40% shares respectively. Thus, it is the case of the Respondent No.2 that the four legal heirs/children of Sh. Ram Parkash are only entitled to shares in 60% of the business of the partnership firm (i.e., 15% share each) as the remaining 40% of the share exclusively rests with Sh. Chand Kiran and his legal heirs. Thus, in view of the fact that Sh. Chand Kiran has passed away and two of his three legal heirs i.e., Ms. Kiran Arora and Ms. Monica Hurt have relinquished their shares in favour of the third legal heir i.e. Sh. Gagan Khanna, Sh. Gagan Khanna is entitled to 55% undivided share in M/s Ram Parkash Kanwal Kishore.

13. What precipitated the filing of the present writ petition is that upon being convinced by the representations made by respondent no. 2 i.e., Sh. Gagan Khanna, the Respondent No.1/DDA issued a notice to the petitioner herein requiring him to show cause as to why the mutation carried out in his favour *vide* letter dated 29.12.2008, be not cancelled. The petitioner has claimed to have made representations in response to the show cause notice, however, *vide* letter dated 23.10.2017 the Respondent No.1/DDA has proceeded with its decision to cancel the mutation immediate effect that was allowed in



favour of the petitioner *vide* letter dated 29.12.2008 on the ground that “...DDA is not the forum to decide such issues and the parties may approach competent court of law for deciding ownership of property No. B-87, Rewari Line Industrial Area, Ph-I, New Delhi.”. It has also come out that thereafter, the Respondent No.2 and his sister preferred several legal proceedings before the Courts up till the Supreme Court, for recalling of the partition decrees dated 08.02.1996 and 27.04.2006, however, no the relief sought was granted to them.

14. Upon the issuance of the impugned letter dated 23.10.2017, the petitioner made several representations in his defence before the Respondent No.1/DDA, however upon failing to receive a satisfactory response from the DDA, the petitioner herein was constrained to prefer a writ petition bearing WP(C) 9091/2020 before this Court seeking quashing of the impugned letter dated 23.10.2017. Accordingly, in compliance of the directions of this Court, the Respondent No.1/DDA treated the said writ petition as a representation on behalf of the petitioner, and accordingly, passed an order dated 04.03.2021 upholding its decision to cancel the mutation done in favour of the petitioner on the same ground as taken in impugned letter dated 23.10.2017. The grievance of the petitioner is that the impugned letter dated 23.10.2017 and impugned order dated 04.03.2021 issued by the Respondent No.1/DDA upon the petitioner herein are arbitrary, illegal, whimsical, contrary to law and facts of the case and have resulted in serious miscarriage of justice. Hence, the present petition seeking quashing of the same and restoration of the mutation dated 29.12.2008.



LEGAL SUBMISSIONS ADVANCED AT THE BAR

15. The learned Counsel appearing for the petitioner has vehemently argued that the subject property was leased out to a sole proprietorship firm, namely M/s Ram Parkash Kanwal Kishore by the DDA, and continued to remain the same in the books of Respondent No.1/DDA till the mutation dated 29.12.2008, as evidenced by the Lease Deed dated 25.09.1967 as well as internal notings in the concerned record of Respondent No.1/DDA dated 29.06.1978. It is urged that the relinquishment deed dated 15.03.2016 purported to be executed by Smt. Kiran Arora (mother of Respondent No.2 and widow of Sh. Chand Kiran) allegedly executed by Sh. Chand Kiran, on the basis of which the Respondent No.1/DDA has cancelled the mutation of the petitioner, cannot be accorded any weight over the legality and executability of the decrees of partition dated 08.02.1996 and 27.04.2006 on the strength of which the mutation was allowed in the favour of the petitioner. It is contended that the will of Sh. Chand Kiran or forgery thereof has no bearing upon the title of the subject property as the rights over the subject property flow from another will i.e., of Sh. Ram Parkash (father of Sh. Chand Kiran). It is further contended that the issues among the family of Sh. Ram Parkash stood settled much before the mutation got effected. Heavy reliance has also been placed on Compromise decree dated 07.03.1980 by way of which the legal heirs of Sh. Chand Kiran were paid a settlement amount in lieu of their purported share in the partnership firm M/s Ram Parkash Kanwal Kishore and neither Respondent No.2 nor his sister or mother have any right, title or interest left in the subject



property or the partnership firm. It is further urged that the position taken by the Respondent No.1/DDA is erroneous because the DDA was impleaded as a party to the partition suit between the parties herein, in which the decrees of partition dated 08.02.1996 and 27.04.2006 were passed by this Court.

16. The learned counsel appearing for the Respondent No.2 vociferously controverted the aforesaid submissions by stating that the petitioner is misleading this Court in as much as the subject property has been allotted by the Respondent No.1/DDA in favour of the partnership firm M/s Ram Parkash Kanwal Kishore and the petitioner has maintained the said position throughout the course of litigations, as evidenced by Application for allotment dated 25.08.1965; Allotment Letter dated 02.09.1966; Letter dated 24.01.1978 addressed by Directorate of Industries, Delhi Administration to the partnership firm; and Letter dated 24.07.1975 issued by the Respondent No.1/DDA upon M/s Ram Parkash Kanwal Kishore. It is contended that the mutation dated 29.12.2008 was obtained from Respondent No.1/DDA by the petitioner herein on the basis of fraudulent proceedings and a will alleged to be executed by Sh. Chand Kiran which was found to be forged at the behest of Sh. Ram Parkash. It is further contended that the compromise decree over which much mileage has been sought by the petitioner is unlawful for not having been signed by all interested parties. It is further contended that no compromise was ever arrived at between Sh. Ram Parkash and the legal heirs of Sh. Chand Kiran. It is also urged that the subject property has been fraudulently partitioned by decrees dated



08.02.1996 and 27.04.2006 without impleading the legal heirs of Sh. Chand Kiran who is claimed to be one of the co-owners of the subject property. Lastly, the learned counsel has challenged the maintainability of the present petition on the ground that the dispute with respect to the ownership of the subject property is *sub judice* as the Respondent No.2 has filed a CS(OS) 300/2020 before this Court *inter alia* seeking a decree of declaration that the Respondent No.2 is the owner of one-third of 55% share in the subject property that the legal heirs of Sh. Chand Kiran are exclusively entitled to.

17. Ld. Counsel appearing for the Respondent No.1/DDA has reiterated the position taken by it by way of the impugned letter and order, while contended that the DDA does not have the jurisdiction to decide the dispute between the parties over the ownership of the subject property. It is submitted that due to the fact that the Petitioner herein while obtaining mutation of the subject property, had concealed material facts pertaining to forgery of a will alleged to be executed by Sh. Chand Kiran, the respondent department has no reason to continue with the mutation of the subject property in favour of the petitioner and his sisters.

ANALYSIS AND DECISION:

18. I have bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the relevant record of the present case.

19. First things first, this Court is only concerned with the impugned action of the respondent/DDA in proceeding to cancel the mutation of the subject property in favour of the petitioners and his



sisters. The scope of jurisdiction under section 226 and 227 of the Constitution are well ordained in law. The power has to be exercised sparingly in appropriate cases, where for instance a finding is based on no evidence, or it is so perverse that no reasonable person can possibly come to such conclusion. In other words, it can only be exercised to prevent the arbitrary exercise of powers resulting in the miscarriage of justice. The jurisdiction exercised is in the nature of a correctional jurisdiction, so as to set right any grave dereliction of duty or flagrant abuse and violation of fundamental principles of law or justice. Reference can be invited to decision in the case of **Garment Craft vs Prakash Chand Goel**¹.

20. Keeping the above said contours of the jurisdiction of this Court at the back of our mind, the whole dispute hinges on the fact as to whether the subject property had been allotted to the sole proprietorship concern, namely M/s. Ram Parkash Kanwal Kishore headed by deceased late Shri Ram Parkash Arora as its sole proprietor, or whether it was allotted to the aforesaid firm through Shri Ram Parkash Arora as a partner in the said firm with his predeceased son late Shri Chand Kiran who died on 03.01.1974.

21. Unhesitatingly, the answer is that the subject property was allotted to Shri Ram Parkash Arora as the sole proprietor of M/s Ram Parkash Kanwal Kishore *vide* lease deed dated 25.09.1967 and the same was evidently registered in his name on 28.09.1967² as per the copy of the registered sale deed placed on the record. A bare perusal

¹ (2022) 4SCC 181

² Forming Annexure P-10 at pages 108 to 116



of the aforesaid lease deed dated 25.09.1967 also reveals that it was the petitioner Shri Kanwal Kishore Arora, who identified his father and signed the lease deed as a witness thereof. However, before we have a final word that it was allotted to the father as the sole proprietor in his name alone, the aforesaid recital in the registered sale deed dated 28.09.1967 has to be appreciated in the light of the fact that evidently, the partnership firm M/s Ram Parkash Kanwal Kishore had been constituted *vide* deed dated 01.04.1964, in which the deceased Shri Ram Parkash Arora and his two sons, namely petitioner Kanwal Kishore Arora and predeceased son Chand Kiran were partners.

22. A bare reading of the recitals of the aforesaid partnership dated 01.04.1964 would show that the first party i.e., Shri Ram Parkash was carrying on Iron Merchants business under the name and style of M/s Ram Parkash Kanwal Kishore at 10239, Loha Mandi, Motia Khan, New Delhi with its branch office styled as M/s Prakash Steel Industries, Motia Khan, New Delhi, as sole proprietorship upto 31.03.1964 and the first party agreed to take parties of the second part and third part as partners *viz.*, Kanwal Kishore Arora and Chand Kiran Arora, as partners in the said firm *inter alia* observing that second and third parties who were hitherto the employees of the said business, were being inducted as partners. It may be underscored here that the subject property is located at B-87, Mayapuri Industrial Area, Phase-I, New Delhi, and therefore, as on the date when the partnership deed dated 01.04.1964 was constituted, the said property was not a property for the business of the partnership firm.



23. It is also evident from the record that the said partnership was dissolved w.e.f. 31.03.1971 and the dissolution deed³ in its recital is only referring to the property at 10239, Loha Mandi, Motia Khan, New Delhi. In other words, the dissolution did not provide for any agreement or disposition by the parties with regard to the subject property. That is not the end of the story since another partnership was executed *vide* deed dated 01.04.1971⁴ but this time between Ram Parkash Arora and his son Chand Kiran, however the said deed as well makes no mention of the disposition of the parties with regard to the subject property, but only makes mention with regard to carrying on business from the property at 10239, Loha Mandi, Motia Khan, New Delhi, while also recording that Shri Kanwal Kishore (petitioner herein) retired from the said business w.e.f. 31.03.1971.

24. In the said backdrop, what can be deciphered is that till the execution of the partnership deed dated 01.04.1971, which documents have been relied upon by the respondent No.2, there was no mention of the subject property as being part and parcel of the partnership firm M/s. Ram Parkash Kanwar Kishore. It would be relevant at this stage to refer to Section 14 and 15 of the Indian Partnership Act, 1932⁵, which provide as under:-

Section 14. THE PROPERTY OF THE FIRM.- Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm, and includes also the goodwill of the business. Unless the

³ Forming Annexure R-8 at pages 36 and 37

⁴ Forming Annexure R-9 at pages 43 and 44

⁵ Partnership Act



contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Section 15. APPLICATION OF THE PROPERTY OF THE FIRM.- Subject to the contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

25. The aforesaid provisions were explained by the Supreme Court in the case of **Arjun Kanoji Tankar v. Santaram Kanoji Tankar**⁶ wherein the plaintiff, who had been running a business with certain machinery, equipment, and goodwill, inducted his younger brother as a partner. Thereafter, at the time of dissolution, a claim was raised by the younger brother that the machinery, equipment, and goodwill belong to the firm. The Supreme Court held as under:

“12. We are unable to agree that the defendant did not object to the plaintiff alone representing the business when he obtained leases of the premises in which the business was carried on, in opening the Bank accounts, purchasing properties in his name, in proceedings for assessment of income tax, obtaining fire insurance policies, maintaining the muster rolls of employees and making the declaration under Section 4 of the Press Act, because the plaintiff was the elder brother and the defendant out of respect allowed him to pose as the owner of the business, even though he had an equal right. These circumstances and others are formidable evidence of conduct in favour of the plaintiff, and there is not a single circumstance in favour of the defendant's case which may throw doubt on the truth of the plaintiff's story. We are accordingly of the view that the courts below were right in holding that the business of the Hindmata Printing Press since the commencement in the year 1937 was the exclusive business of the plaintiff till he admitted the defendant as a partner in the year 1953. It must inevitably follow that all the assets of the business belonged to the plaintiff and the defendant had no interest therein.

13. Counsel for the defendant contends that in any event by virtue of Section 14 of the Partnership Act, 1932, all the assets with aid of which the business was carried on by the plaintiff must be deemed

⁶ (1969) 3 SCC 555



in law to have become partnership assets, under the deed of partnership, dated March 16, 1953. Section 14 of the Partnership Act, 1932, provides:

“Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.”

Property belonging to a person, in the absence of an agreement to the contrary, does not, on the person entering into a partnership with others, become the property of the partnership merely because it is used for the business of the partnership. It will become property of the partnership only if there is an — agreement express or implied — at the property was, under the agreement of partnership, to be treated as the property of the partnership.

In *Lindley on Partnership*, 12th Edn., it is stated at p. 365:

“Again, it by no means follows that property used by all the partners for partnership purposes is partnership property. For example, the house and land in and upon which the partnership business is carried on often belongs to one of the partners only, either subject to lease to the firm, or without any lease at all.... If, however, a partner brings such property into the common stock as part of his capital it becomes partnership property, and any increase in its value will belong to the firm.

... the only true method of determining as between the partners themselves what belongs to the firm, and what not, is to ascertain what agreement has been come to upon the subject. But this is by no means always an easy matter.”

We are unable to agree with counsel for the defendant that whenever there is a partnership and the assets which originally belonged to one of the partners are used for the purposes of the partnership, they must be presumed to have become partnership assets. In *Miles v. Clarke*¹ the defendant started the business of a photographer and then admitted the plaintiff — a successful free lance photographer — as a partner. The leasehold premises, furniture and studio equipment belonged to the defendant. It was intended to record the terms of partnership into a formal agreement, but no terms were ever settled, except that the partners were to share the profits equally. On dissolution of the partnership it was held that no terms ought to be implied except such as were



essential to business efficacy and that only the consumable items of stock-in-trade were to be regarded as assets of the partnership, and the lease of the property, equipment and personal goodwill were to be treated as being the property of the partners who brought them into the business.

14. There is no evidence in the present case that the plaintiff had, when entering into a partnership with the defendant, surrendered his individual interest in the assets brought by him into business, or had admitted that the defendant was to be the owner in equal share with him in all the assets brought into the partnership. The right of the defendant to a share in the assets brought into the business depended upon the terms of the agreement of partnership. There is no rule that whatever is brought by a partner in the partnership and is continued to be used by the members is presumed to have become the property of the partnership.”

26. A bare perusal of the aforesaid partnership agreement before and after acquiring the subject property *vis-a-vis* the aforesaid provisions under the Partnership Act would show that there was no agreement between the deceased Ram Parkash Arora and his son Chand Kiran with regard to carrying on business from the subject premises, rather it was with regard to the business that was being carried on at the other premises bearing No. 10239, Loha Mandi, Motia Khan, New Delhi, and thus, it is evident that the subject property was never part and parcel of the partnership firm as between father and two sons. Indeed, it appears that the deceased Ram Parkash Arora sought to propound a Will dated 26.12.1973 executed by his predeceased son Chand Kiran Arora, which was held to be a forged and fabricated Will so much so inviting criminal action at the behest of Chand Kiran’s wife by this Court *vide* order dated 09.03.1979. However, that cannot displace the position that the subject property was not part and parcel of the partnership business that was being carried out by deceased Ram Parkash Arora along with his two sons



prior to and after the purchase of the subject property when he had entered into a partnership with son Chand Kiran Arora.

27. It is also brought to the fore that Civil Suit (OS) 759/1979 was filed by Smt. Kiran i.e. mother of respondent No.2 and wife of deceased Chand Kiran and indeed IA No. 2431/1979 filed by late Ram Parkash Arora and IA 2430/1979 filed by Smt. Kiran were not accorded approval by the Court *vide* order dated 27.09.1979 holding the compromise to be hit by Section 23 of the Indian Contract Act, 1872. However, subsequently a settlement appeared to have been entered between the parties, which was accorded approval by the Court in Suit No. 1235/1979 filed by Ram Parkash Arora, in which the following order came to be passed⁷:

“ORDER (As amended vide order dated 22nd October, 1980)

The Plaintiff, Ram Prakash Arora and his daughter Smt. RRaksha instituted a suit for declaration that they were owners of the business entitled M/s. Ram Prakash Kanwal Kishore and its branch styled as M/s Prakash Steel Industries carried on at B-87, Mayapuri Industrial Area, Phase-I, New Delhi and that Plaintiff No.1 was the owner of the factory building constructed on B-87, Mayapuri Industrial Area and was also the sole owner of the lease hold right on the said plot. Besides that he claimed to be the owner of house no. BF-27, Tagore Garden, New Delhi along with its super-structure.

There were as many as many as six defendants of whom Smt. Kiran Arora, defendant No.1 is the widow of late shri Chand Kiran Arora, deceased son of plaintiff No.1, master Gagan and Miss Ruby@ Monika, defendants 2 and 3 are minor children of late Shri Chand Kiran Arora and Kanwal Kishore Arora, defendant No. 4 is another son of Plaintiff No. 1.Smt. Phoolwati, defendant No. 5 is wife of Shri Ram Prakash Arora, Plaintiff No. 1 and Smt. Madhu Manchanda, defendant No. 5, is the wife of Shri Kanwal Kishore, defendant No. 4, Shri Kanwal Kishore Arora, defendant No. 4 and Smt. Madhu Manchanda, defendant No. 6 made statements on

⁷ Corrected as per order dated 22.10.1980



29.1.1980 admitting that I. A. 356/80 was signed by them and that the compromise contained therein was acceptable to them. So they had no objection to the decree being passed in terms of the said compromise. Defendant No. 5 did not turn up to contest the suit despite service. Defendants 1 to 3 contested the suit.

The parties have settled all the disputes as per statements of Shri M.L. Khanna, counsel for defendants 1 to 3 and Ram Prakash Arora, plaintiff No. 1 and his counsel Bawa Shiv Charan Singh. It is admitted that a sum of Rs. 1,95,000/- (Rupees one lakh ninety-five thousand only) has been paid by plaintiff No. 1 to defendants 1 to 3 as per statements recorded today in the suit bearing No. 759/79. Hence, defendants 1 to 3 do not claim any right or interest in the properties in dispute. In view of the admission made by the parties, I decree the suit and grant declaration to the effect that plaintiff No. 1 is the sole owner of the business and properties in dispute as per compromise recorded today in the other Suit No. 759/79. The statement made by the parties in relation to the compromise in Suit No. 759/79 shall form part of the decree in this suit also. The parties are left to bear their own costs.

Sd/-

March 7, 1980

(As amended on October 22, 1980)”

28. Although, learned counsel for the respondent No.2 vehemently assailed the genuineness of the aforesaid order/decreed, the fact remains that the said compromise has never been assailed and the long and short of the position that would emerge is that the deceased Ram Parkash Arora was *inter alia* held be the sole owner of the subject property. As regards the respondent no.1/DDA is concerned, in its earlier version it rather accepted the position that the subject property had been allotted to deceased Ram Parkash Arora, which is reflected in the office noting/order dated 29.06.1978 placed on the record, which read as under:-

“From the lease deed it is clear that the plot was leased out to Ram Prakash as sole proprietor of M/s. Ram Prakash Kanwal Kishore. Thus according to the document, the lessee was Ram Prakash s/o Shri Hari Kishan Lal.



As stated above, the partnership deed came into existence on 1.4.64. The assessment orders made by the Income Tax Officer for the assessment year 1965-66 and 1966-67 also show that this firm was a partnership firm. There is nothing on the file to show that the partnership was dissolved at any time before execution of the lease deed. In other words, according to the documents on the file, the firm M/s Ram Prakash Kanwal Kishore was a partnership concern, consisting of 3 partners, namely, Ram Prakash, Kanwal Kishore and Chand Kiran and not a sole proprietorship firm belonging to Ram Prakash alone, on the date the lease deed was executed.

The question to be considered is whether in these circumstances Ram Prakash was guilty of mis-representation or fraud and the lease was liable to be forfeited. The perusal of the notes 3/N of the D.D.A. file and the agenda note prepared by the Secretary, Land Allotment. Advisory Committee at pages 7 to 9 of the said file reveals that the Land Allotment Advisory Committee had decided to allot the land to those units which were running on Govt. land unauthorisedly since before so units which were running on louse land unauthorisedly since before 1.9.62. The lease in favour of the firm Ram Prakash Kanwal Kishore was, therefore, granted because it was in unauthorised occupation of land bearing No. 15/10239, Loha Mandi, Motia Khan, New Delhi. The partnership firm, as observed above came into existence only w.e.f. 1.4.64. Thus it was sole proprietorship firm M/s Ram Prakash Kanwal Kishore, which was in unauthorised occupation of this land prior to 1.9.62 and consequently the sole proprietorship firm, according to the policy of the D. D. A. was entitled to the lease. In these circumstances, in my view, there was no fraud or mis-representation.

The fact regarding the constitution of the firm Ram Prakash Kanwal Kishore - whether it was a partnership firm or sole proprietorship firm, was not at all material for the D.D.A. for the purpose of granting the lease. The alleged fraud or mis-representation did not cause the consent of the D.D.A. to the grant of the lease and, therefore, this alleged fraud or mis-representation was not actionable. The D.D.A. was not entitled to forfeit the lease. The question of execution of a supple-mentary lease, in favour of partnership firm or partners S/Shri Ram Prakash, Kanwal Kishore and Chand Kiran does not arise.

In my opinion:

- i) D.D.A. was not entitled to forfeit the lease.
- ii) D. D. A. was not competent to execute any Supplementary Deed in favour of the partnership firm or the partners of that firm.



It would be advisable if the parties concerned are asked to get their right determined by a competent court.

(GIAN CHAND JAIN)
SECRETARY(LAW & JUDL.)
29.6.78

Commissioner(lands)

The case may please be examined in the light of the above opinion of the Secretary (Law & Judicial) and then the file put up.

(K.L.Bhatia)
Commissioner(Lands)
5.7.78"

29. The aforesaid office noting/order *ex facie* shows the backdrop in which the subject property was allotted to Shri Ram Parkash Arora. This brings us to the impugned order dated 04.03.2021 whereby the respondent no.1/DDA has elected to cancel/revoke the mutation of the subject property in favour of the petitioner, his sister Sneha Avlash and legal heirs of deceased sister Ms. Raksha Arora, which reads as under:-

**“DELHI DEVELOPMENT AUTHORITY
LAND SALES BRANCH (INDUSTRIAL)
A-BLOCK, INA, NEW DELHI**

No.F6A(19)65/LSB(I)/DDA/2053

Dated: 04/3/21

Sub: Order dated 18/11/2020 of the Hon'ble High Court in WP(C) No.9091/2020 titled Kanwal Kishore Manchanda [F6A(19)65/LSB(I)/DDA).

ORDER

The Hon'ble High Court while disposing of WP(C) No.-9091/2020 titled Kanwal Kishore Manchanda vs DDA & Anr vide its order dated 18.11.2020, passed the following order as "Let the respondent/DDA treat this writ petition as a representation of the petitioner. The said representation shall be decided by the DDA by



a speaking order within six weeks from today. A copy of the order be duly communicated to the petitioner."

1. Through this Writ, the petitioner Sh. Kamal Kishore Manchanda prayed before Hon'ble High Court to issue a writ, order or direction in the nature of:

(i) Certiorari for quashing the letter dated 23.10.2017 bearing No.F6A(19)65/LSB(I)/4207, issued by Assistant Director, LSB(I) of Respondent/DDA cancelling/Revoking Mutation carried out earlier in favour of Petitioner, his sister Smt. Sneha Avlash and Legal Heirs of Deceased Sister Smt. Raksha Arora in respect of Plot No.8-87, Mayapuri Industrial Area, phase-I, New Delhi.

(ii) Mandamus directing, commanding and requiring the Respondent/DDA for restoring mutation dated 29.12.2008 in favour of Petitioner, his sister Smt. Sneha Avlash and Legal Heirs of Deceased Sister Smt. Raksha Arora in respect of abovementioned property, and as per preliminary decree dated 08.02.96 and final decree dated 27.04.96 by this Hon'ble Court in suit No.CS(OS) No.637/1993.

(iii) Other relief.

2. Complying with the orders of dated 18.11.2020 of the Hon'ble High Court, the case, was represented by Advocate Pawanjit S.Bindra who submitted a representation dated 25.11.2020 alongwith copy of writ petition and other accompanying documents and further representation dated 07.01.2021 alongwith copy of Hon'ble Court order dated 18.11.2020 and 23.12.2020.

3. Sh.Gagan Khanna S/o Late Sh.Chand Kiran has also intimated the Civil Suit proceedings before Hon'ble High Court of Delhi regarding property bearing No.B- 87, Mayapuri Industrial Area, Phase-I, New Delhi, wherein the Hon'ble High Court on 12.11.2020 issued notice to defendants in the suit and the stay application returnable on 27.01.2021 against the defendants including Mrs.Kanwal Kishore Manchanda, Ms.Sneha Prabha Avlash and Ms.Smita Arora and other defendants and requested to deal with the subject keeping in mind the pendency of the above said civil suit file by him. He has also submitted copy of plaint.

4. Briefly, it is gathered as per record, that Plot No.B-87, Rewari Line Industrial Area, New Delhi was allotted to M/s Ram Parkash Kanwal Kishore. Sh.Ram Parkash Arora was the sole Proprietor. The lease deed of the plot was registered on 28.09.1967 in favour of M/s Ram Parkash Kanwal Kishore with Shri Ram Parkash Arora



sole prop. Subsequently, Smt. Raksha Arora was included as working partner.

Sh.Ram Parkash Arora, sole prop. Of M/s Ram Parkash Kanwal Kishore had executed a WILL dated 23.02.1990. After death of Sh.Ram Parkash Arora, his legal heirs applied for mutation of the plot in question in their favour on the basis of WILL. Accordingly, the change in constitution was allowed jointly without any specific share as under:

1. Shri Kanwal Kishore Manchanda S/o Late Sh.Ram Parkash Arora
2. Smt. Sneha Avlash D/o Late Sh.Ram Parkash Arora
3. Legal Heirs of late Raksha Arora D/o Late Shri Ram Parkash Arora

On the basis of WILL dated 23.02.1990 executed by Sh.Ram Parkash Arora, the mutation was carried out in their favour (above mentioned names) vide letter dated 29.12.2008.

5. Sh. Gagan Khanna S/o Late Sh. Chand Kiran and Grandson of Sh.Ram Parkash made various complaints/representations to the department for cancellation of the mutation letter dated 29.12.2008 of the said plot in the name of above mutates and further to allow the mutation of 55% share in the said plot in their name alleging that mutation dt.29.12.2008 has been obtained by misrepresentation/concealment of facts.

6. It appears that there have been several round of litigation among legal heirs of the Ram Parkash Arora and even by the allottee, Sh. Ram Parkash Arora against his daughter in law Smt. Kiran Arora (widow of Chand Kiran) and minor grandson and granddaughter. Edifice of litigation start with forging of WILL dated 26.12.73 which was alleged to have been executed by Chand Kiran (father of complainant/Gagan Khanna) whereby he had bequeathed all his movable and immovable property to Sh. Ram Parkash Arora and also appointed him as guardian of his minor children to the exclusion of his wife Smt. Kiran Arora.

7. Ram Parkash Arora father-in-law of Smt. Kiran Arora made an application to the District Judge for the grant of Letters of Administration on the basis of WILL dated 26.12.73. Smt. Kiran Arora Mother of Gagan Khanna opposed the application both on behalf of herself and her children. The Ld. District Judge dismissed the application seeking the letter of administration as he failed to prove that WILL was executed by Sh.Chand Kiran.In Appeal the Hon'ble High Court found the WILL as forged and the said finding was maintained by the Supreme Court. The judgment was reported as citation No.ILR (1980)I Delhi.



The Hon'ble Court also ordered the Registrar to make a complaint for offences under IPC. This information was not submitted by the mutatees at the time of Mutation.

8. The WILL dated 23.02.1990 does not disclose the order of High Court dated 27.09.1979.

9. As per mutation letter dated 29.12.2008 issued to Sh. Kanwal Kishore Manchanda &Ors, it is clearly mentioned that:

"In case the documents submitted by you to the DDA are found to be false or any misrepresentation is made during the course of applying for mutation then it will deemed to be a case of concealment of facts and mutation so allowed shall automatically stand withdrawn and allotment/lease hold rights of the abovementioned plot shall vests with the lessor."

10. After issuing show cause notice the case was examination and after due deliberations, the mutation allowed vide letter dated 29.12.2008 was duly withdrawn vide letter dated 23.10.2017 informing the claimants that DDA is not forum to settle the dispute and the parties may approach Competent Court of law for deciding ownership of the property under reference.

11. The Mutation was withdrawn due to suppression/concealment of facts as per clause 3 of letter dated 29.12.2008. Further, a suit is sub-judice for declaration of his share between them, before Hon'ble High Court in respect of property in question, as intimated by Sh. Gagan Khanna.

12. The petitioner has failed to produce new facts/ground to consider the case for withdrawl of letter dated 23.10.2017. The representation of the petitioner is disposed of accordingly.

13. The legal heir of Late Sh. Chand Kiran i.e. his son Sh. Gagan Khanna has apprised this office of the Civil Suit with no. CS(OS) 300/2020, GAGAN KHANNA VS KANWAL KISHORE MANCHANDA And ORS. in the High Court of New Delhi regarding property no. B-87, Mayapuri Indl. Area, Ph-I, Delhi.

14. As per extant policy of DDA, DDA is not forum to settle the dispute and the parties may approach Competent Court of law for deciding ownership of the property under reference and further necessary action will be taken after the verdict of the Hon'ble Court.

This issues with the approval of the Competent Authority.

Director-(LSB)-I,DDA

Copy to:

1. Sr.L.O.(LD) with request to apprise the outcome/compliance of order dated 18.11.2020 to DDA counsel Sh. Dhanesh Relan, Standing counsel



2. Sh. Pawan Jit Singh Bindra, Advocate, A-428, FF, Defence Colony, New Delhi.
3. Sh. Kanwal Kishore Manchanda S/o Late Sh.Ram Prakash Arora, R/o B-112, Regal Garden, Sector-90, DLF Garden City, Gurugram-122505
4. Sh.Gagan Khanna S/o Late Sh.Chand Kiran R/o L-4/21, 2nd Floor, DLF Ph-I, Gurugram-1220002

Director-(LSB)-I, DDA”

30. The aforesaid order has been passed in view of the decision in terms of minutes of the High-Powered Committee meeting held on 27.11.2017. Without further ado, the order dated 04.03.2021 cannot be sustained in law. The petitioner and his two sisters got the subject property mutated in their names in terms of final decree of Civil Court dated 27.04.2006 which has attained finality, and merely because the respondent No.2 had chosen to represent against the mutation in their favour on 01.10.2015, 21.02.2016 and 13.05.2016, the respondent no.1/DDA was on the wrong foot by entertaining such requests. Instead, the respondent no.1 department should have called upon respondent No.2 to seek an appropriate remedy before the Court of law. The action of the respondent No.1/DDA in overlooking the legal purport of the final judgment & decree 27.04.2006 passed by this Court in suit bearing CS (OS) 687/1993 is patently arbitrary, unjust, and unconscionable in law.

31. In view of the foregoing discussion, the present writ petition is allowed. The impugned order *vide* reference No. F6A(19)65/LSB(I)/DDA/2053 dated 04.03.2021 passed by the Director-(LSB)-I, DDA is hereby set aside, thereby quashing the letter dated 23.10.2017 followed by order dated 04.03.2021. The cancellation/revocation of the mutation carried out in favour of the petitioner, his sister Sneha



Avlash and legal heirs of deceased sister Ms. Raksha Arora in respect of plot No. B-87, Mayapuri Industrial Area, Phase-I, New Delhi is held to be void *ab initio*.

32. The respondent/DDA is directed to restore the mutation dated 29.12.2008 in favour of petitioner and his sister Sneha Avlash and legal heirs of deceased sister Ms. Raksha Arora in terms of the aforesaid plot in terms of preliminary decree dated 08.02.1996 and final decree dated 27.04.2006 passed by this Court in suit bearing CS (OS) No. 687/1993.

33. The pending applications also stand disposed of.

34. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs.

DHARMESH SHARMA, J.

AUGUST 20, 2024

Sadiq