



\$~52

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

%

Date of Decision: 26th November, 2024

+

W.P.(C) 8846/2024 and CM APPL. 35917/2024

CHANDAN SAWHNEY AND OTHERS

....Petitioners

Through: Mr. Rajesh Yadav, Senior Advocate
with Ms. Ruchira V. Arora and Mr. Dhananjay
Mehlawat, Advocates

versus

GOVERNMENT OF NCT OF DELHI AND
OTHERS

.....Respondents

Through: Mr. Tushar Sannu, Advocate for R-1
and R-3.

Mr. S.S. Dalal, Advocate for R-2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioners under Articles 226 and 227 of the Constitution of India seeking the following reliefs:

“(a) issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof thereby quashing the rejection of the Land Status Report by the Respondent No.2, bearing Application No. 90580000013230, applied on 23.04.2024, as uploaded on the website ediscript.delhigovt.nic.in” and downloaded by the Petitioners on 27.05.2024 (Annexure P-2);

(b) issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondent No.3 to register the sale deed dated 17.05.2024, presented for registration by the Petitioners being the vendees and the vendors of the sale deed on 17.05.2024, vide Slip No. 6847, which was thereafter, executed by the



Transferors/Vendors and Transferees/Vendees (Petitioners) on 17.05.2024 before the Respondent No.3, without insisting on any Land Status Report and to immediately return the duly registered sale deed to the Petitioners and in the alternative if this Hon'ble Court comes to the conclusion that Land Status Report is a mandatory requirement to be obtained as a pre-condition for registration of the sale deed then direct the Respondent No.2 to immediately issue/grant the Land Status Report and forward it to the Respondent No.3."

2. Factual matrix to the extent necessary is that Petitioner No.3 is a Company incorporated under the Indian Companies Act, 1956 and Petitioner No.1 is the Director/Authorized Representative of the Company and Petitioner No.2 is the wife of Petitioner No.1. Case of the Petitioners as set out in the writ petition is that late Sh. Ameer Chand Kapoor, was the owner of land measuring 18 Bighas 06 Biswas, comprised in Mustatil No.11, Khasra Nos. 13 (2-17), 17 (4-11), 18 (4-16), 23/1 (2-5), 27 (0-9), 28 (1-1), 29 (0-6), 30 (1-18) and 32 (0-3), situated in the Revenue Estate of Village Jonapur, Tehsil-Mehrauli, New Delhi. Sh. Ameer Chand expired on 12.11.2005 allegedly leaving behind his last and final Will and Testament dated 01.12.2004, bequeathing life interest in respect of land measuring 16 Bighas 16 Biswas out of the aforesaid land in favour of his wife Smt. Pushp Lata Kapoor and upon her demise, the said portion of the land was to devolve on the sons of his pre-deceased daughter Mrs. Asha Vedhara, namely, Rohit Vedhara and Amit Vedhara absolutely and forever.

3. Smt. Pushp Lata executed her last Will and Testament dated 01.12.2005, whereby she bequeathed all her rights, title and interest in 16 Bighas 16 Biswas of the land in favour of Rohit Vedhara and Amit Vedhara in equal shares, absolutely and forever. Petitioners aver that the said land was mutated in favour of Rohit Vedhara and Amit Vedhara in equal shares, who thereafter sold the land to the Petitioners and together as vendors and



vendees an application was made for No Objection Certificate ('NOC') under Delhi Lands (Restrictions on Transfer) Act, 1972 ('1972 Act'), which was erroneously treated by the Respondents as an application for Land Status Report under the provisions of Delhi Land Reforms Act, 1954 ('DLR Act') and Delhi Land Revenue Act, 1954 ('1954 Act'). Petitioners furnished complete details of the land under transfer being 14 Bighas 08 Biswas being part of the undivided share of 16 Bighas 16 Biswas and also submitted a statement in the prescribed form of non-contravention of Section 8 of 1972 Act along with necessary documents on 23.04.2024.

4. It is averred that *albeit* Land Status Report is not a statutory requirement either under 1972 Act or under DLR Act yet the application was illegally rejected by Respondent No.2, though there is no ambiguity in the title of the vendors and the mutation/revenue entries in their favour in the revenue records maintained under 1954 Act were duly recorded and intact. In the said application, Ms. Gieta Khosla filed an objection on 18.03.2024 with SDM, Mehrauli stating that the Will dated 01.12.2004 of Sh. Ameer Chand was only in respect of 16 Bighas 16 Biswas in favour of Rohit Vedhara and Amit Vedhara and therefore, land measuring 18 Bighas 06 Biswas could not be mutated in their favour. It was also mentioned that Smt. Pushp Lata had also bequeathed only 16 Bighas 16 Biswas in their favour while the remaining land i.e. 01 Bigha 10 Biswas was bequeathed to her daughters namely Ms. Gieta Khosla and Ms. Bharti Chanana and therefore, Rohit Vedhara and Amit Vedhara had no right to sell land more than 16 Bighas 16 Biswas. It is averred that thereafter, Rohit Vedhara and Amit Vedhara made fresh application under Section 8 of 1972 Act seeking NOC with respect to undivided 14 Bighas 08 Biswas of land.



5. Petitioners aver that Rohit Vedhara and Amit Vedhara agreed to sell land measuring 14 Bighas 08 Biswas to the Petitioners and a sale deed was executed between them on 17.05.2024. However, after the vendors and the vendees presented the sale deed to Respondent No.3 on 17.05.2024 for registration upon payment of stamp duty and requisite registration fee and completing all other formalities and Petitioner No.1 went to collect the original registered sale deed, he was informed that sale deed was not registered in view of rejection of Land Status Report by Respondent No.2, whereafter Petitioners searched and discovered the rejection order on the website on 27.05.2024, wherein the reason for rejection was “*not recommended based on Tehsildar report which mentions mutation not executed according to Will*”. On account of non-registration of the sale deed, Petitioners have approached this Court.

6. Mr. Rajesh Yadav, learned Senior Counsel appearing on behalf of the Petitioners submits that it is undisputed that Sh. Ameer Chand was the recorded owner and *Bhoomidar* of land measuring 18 Bighas 06 Biswas, as evident from the Khatoni for the year 1993-1994, photocopy of which has been placed on record. It is equally undisputed that he executed a Will dated 01.12.2004 bequeathing life interest in respect of 16 Bighas 16 Biswas out of land measuring 18 Bighas 06 Biswas in favour of his wife Smt. Pushp Lata and on her demise, to the sons of his pre-deceased daughter Ms. Asha Vedhara. Smt. Pushp Lata bequeathed her right, title and interest in 16 Bighas 16 Biswas in favour of Rohit Vedhara and Amit Vedhara, sons of Ms. Asha Vedhara.

7. Petitioners and Rohit Vedhara and Amit Vedhara executed a sale deed dated 17.05.2024 in respect of undivided share in land 16 Bighas 16 Biswas



and presented the Sale Deed for registration before Sub-Registrar/ Respondent No.3 but the Sale Deed was not registered on two grounds i.e. lack of NOC and objections raised by one Subhash Kapoor, allegedly claiming to be in possession of a built-up house of 1000 Sq. Yards out of 18 Bighas 06 Biswas in the Khasra number in question, both of which are untenable in law to deny registration of the Sale Deed. It is argued that Respondent No.3 cannot insist on Land Status Report for registering the Sale Deed in view of the judgment of this Court in ***Vinod Kumar Rajoria v. Government of NCT of Delhi and Others, 2023 SCC OnLine Del 5446***, wherein the Court has held that a plain reading of Sections 4 and 8 of 1972 Act makes it clear that once a parcel of land is free of acquisition proceedings, there is no requirement of obtaining NOC under the said provisions before effecting any transfer and the Circular dated 04.02.2020 may have been issued by the Divisional Commissioner with the purported aim of conducting additional due diligence in relation to transfer of agricultural lands and requiring the registering authority to insist on an NOC, however, regardless of how well intended it may be, the Circular cannot impose an additional statutory compulsion on the parties and therefore, the Sub-Registrar cannot insist on production of such a certificate or decline registration of a document unless the certificate is produced. In the present case, the subject land is not under acquisition and a statement to this effect has been made while making an application for grant of NOC and therefore, Respondent No.3 is duty bound to register the Sale Deed in favour of the Petitioners without insisting on the Land Status Report.

8. Insofar as the second objection raised by Respondent No.3 in the Deficiency Memo dated 04.06.2024 is concerned, Mr. Yadav argues that



while these objections are not relevant for the purpose of registration of the Sale Deed as the vendors are the lawful owners of the undivided share in 14 Bighas 08 Biswas, in respect of which the Sale Deed has been executed, be that as it may, from the objection it is evident that Sh. Subhash Kapoor, the objector, has admitted the ownership of Sh. Ameer Chand in land measuring 18 Bighas 06 Biswas as also that he had executed a Will dated 01.12.2004 bequeathing 16 Bighas 16 Biswas in favour of his wife, who in turn bequeathed 16 Bighas 16 Biswas in favour of the vendors. His only objection is to the mutation of 18 Bighas 06 Biswas in favour of the vendors, with which Petitioners have no concern as what is sold to them is only undivided share in 16 Bighas 16 Biswas, the ownership of which is not in dispute. It is further urged that though the objection preferred by Ms. Gieta Khosla was not before the Sub-Registrar and was filed when the application was made for Land Status Report but even if the objection is taken on its face value, it is clear that she has admitted that Rohit Vedhara and Amit Vedhara are the owners of undivided share in 16 Bighas 16 Biswas and has only objected to their right to sell beyond the said share. It is also argued that Respondent No.3 has no jurisdiction or power to decide or even question the issue of title of the property for which a Sale Deed is sought to be registered and in this context, reliance is placed on the judgment of the Division Bench of the Bombay High Court in ***Gopal s/o Dwarkaprasad Pandey v. District Collector, Bhandara and Another, 2003(3) Mh. L.J. 883.***

9. Mr. Tushar Sannu, learned counsel appearing on behalf of Respondents No.1 and 3 *per contra* submits that Respondent No.3 has rightly declined registration of the Sale Deed dated 17.05.2024 in light of



the objection raised by Sh. Subhash Kapoor claiming title to a part of the land measuring 18 Bighas 06 Biswas *albeit* he candidly submits that the second objection with respect to furnishing the NOC/Land Status Report cannot be sustained in light of the judgment of this Court in ***Vinod Kumar Rajoria (supra)***. It is vehemently submitted that while the Petitioners aver and argue that the Sale Deed is only in respect of land measuring 14 Bighas 08 Biswas out of 18 Bighas 06 Biswas, however, in recitals 'F', 'G' and 'I' in the Sale Deed as well as in the Schedule thereto, it is stated that the vendors are the absolute, exclusive and undisputed owners in possession of 18 Bighas 06 Biswas, which cannot be accepted in view of the Will of Sh. Ameer Chand and Smt. Pushp Lata as also the objections from Ms. Gieta Khosla and Sh. Subhash Kapoor. It is, therefore, submitted that till the deficiency flagged by Respondent No.3 is cured, the Sale Deed cannot proceed for registration.

10. Heard learned Senior counsel for the Petitioners and counsel for Respondents No.1 and 3.

11. Insofar as the factual narrative is concerned, as rightly flagged by the learned Senior counsel for the Petitioners, it is not in dispute that Rohit Vedhara and Amit Vedhara are the owners of the undivided share in land measuring 16 Bighas 16 Biswas as this was bequeathed to them by Smt. Pushp Lata, who in turn inherited the land from her husband Sh. Ameer Chand. Sale Deed dated 17.05.2024 in respect of which registration is sought by the Petitioners is with regard to undivided share in 14 Bighas 08 Biswas out of 16 Bighas 16 Biswas. To this extent, even the objectors namely Ms. Gieta Khosla and Sh. Subhash Kapoor do not join issues.



12. Registration of the Sale Deed has been declined by Respondent No.3 on two-fold grounds, i.e. (a) non-furnishing of NOC/Land Status Report; and (b) objections by Sh. Subhash Kapoor. Insofar as the first objection is concerned, this Court need not detain itself as a Co-ordinate Bench of this Court in ***Vinod Kumar Rajoria (supra)*** has held as follows:-

“10.6 A plain reading of sections 4 and 8 of the 1972 Act, as also interpreted in the afore-cited precedents, makes it abundantly clear that once a parcel of land is free of acquisition proceedings, there is no requirement of obtaining an NoC under section 8 read with Section 4 before effecting any transfer;

10.7. Furthermore, though circular dated 04.02.2020 may have been Issued by the Divisional Commissioner with the purported aim and intent of conducting additional due diligence in relation to transfer of agricultural lands, and requires the Registering Authority to insist on an NoC under section 8 of the 1972 Act to protect unsuspecting buyers from fraudulent sellers, but regardless of how well intentioned it may be, this circular cannot Impose an additional statutory compulsion upon parties. Accordingly, in the opinion of this court, the Sub-Registrar of Assurances cannot insist on production of such certificate; or decline registration of a document unless such certificate is produced. This is especially so, in view of the legal position as enunciated in the verdicts of the Delhi High Court, as cited above, in which the court has rejected the imposition of any such requirement, holding that there is no justification for it. On this point, a brief reference may also be made to the verdict of a Constitution Bench of the Supreme Court in CCE v. Ratan Melting & Wire Industries, the relevant portion whereof reads as follows:

*"7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, **it would not be appropriate** for the court to direct that the circular should be given effect to **and not the view expressed in a decision of this Court or the High Court**. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are **not binding** upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, **a circular which is contrary to the statutory provisions has really no existence in law.**"*

(emphasis supplied)



Though the validity of circular dated 04.02.2020 has not been challenged in the present proceedings, this court is of the view that there can be no cavil with the proposition that the circular cannot create a binding requirement for production of an NoC, when section 8 of the 1972 Act, as interpreted in the decisions of this court, does not mandate such requirement.”

13. Therefore, Respondent No.3 cannot insist on furnishing of NOC/ Land Status Report for registration of the Sale Deed in question. Insofar as the second deficiency flagged by Respondent No.3 is concerned, the same cannot, in my view, be an impediment in the registration of the Sale Deed. The objector has not disputed that Rohit Vedhara and Amit Vedhara are co-owners of the undivided share in 16 Bighas 16 Biswas and admittedly the sale under the Sale Deed only pertains to an undivided share in 14 Bighas 08 Biswas out of the larger share. As for the objection of Mr. Sannu that there are recitals in the Sale Deed wherein vendors have stated that they are absolute, exclusive and undisputed owners in possession of 18 Bighas 06 Biswas which is contrary to the Wills is concerned, Petitioners have filed an affidavit under Index No.5378499, wherein it is stated and undertaken that changes will be carried out in the existing recitals ‘F’, ‘G’ and ‘I’ in the Sale Deed as well as the schedule thereto, by way of Rectification Deed and proposed changes have been spelt out in Annexure-A to the affidavit. The proposed changes wherein vendors have claimed to be absolute and exclusive owners of 16 Bighas 16 Biswas are acceptable to Respondent No.3. Petitioners have also placed on record several Sale Deeds where undivided shares were sold and the Sale Deeds have been registered and Mr. Sannu candidly submits that there will be no objection with regard to execution of the Sale Deed whereby undivided share of the vendors in 14



2024:DHC:9211



Bighas 08 Biswas has been sold and transferred.

14. In view of the aforesaid, the writ petition is allowed. Direction is issued to Respondent No.3 to register the Sale Deed dated 17.05.2024. Petitioners will file a Rectification Deed incorporating the proposed changes in the recitals in the Sale Deed and the schedule thereto, as undertaken in the affidavit dated 20.11.2024 filed under Index No.5378499, within three weeks from today. Till the Rectification Deed is not filed and considered, the registered Sale Deed will not be released by Respondent No.3 to the Petitioners. After the Rectification Deed is filed and verified by Respondent No.3, the Sale Deed shall be released with an endorsement on the Sale Deed that the same shall be read along with the Rectification Deed.

15. Pending application also stands disposed of.

JYOTI SINGH, J

NOVEMBER 26, 2024/jg