

DELHI DEVELOPMENT AUTHORITY

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v.

GAURAV KUKREJA

(Civil Appeal No. 3124 of 2015)

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MARCH 24, 2015

[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]

Urban Development: Conversion of property from leasehold to freehold – Permissibility – Owner-vendor agreed to sell his suit property and executed a General Power of Attorney in favour of husband of the vendee – Thereafter, vendor refused to execute the sale deed which led to filing of suit for specific performance by the son and husband of the vendee – Compromise decree passed – Based on compromise decree, respondent-son applied to DDA for conversion of suit property from leasehold to freehold – DDA refused conversion on the ground that respondent did not possess good title – Writ petition – High Court allowed the writ petition on the ground that respondent is son of an agreement holder and as well as of holder of general Power of Attorney and, therefore, he was not a stranger to the transaction and that the condition of clause 13 of the Conversion Scheme stood satisfied in the facts of the case – Held: Respondent was neither a holder of a power of attorney nor had any subsisting right in the suit property – High Court issued direction for conversion mainly on the ground that the respondent has got decree for specific performance of sale – High Court failed to appreciate that the decree was based on alleged compromise arrived at between the family members – High

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A *Court erred in holding that respondent was entitled to apply for conversion of the property.*

Allowing the appeal, the Court

B HELD: 1. In the suit for specific performance filed
by respondent and his father, DDA was not made a
party to the suit despite the fact that it was within their
knowledge that the property is a leasehold property
under the control of DDA and cannot be disposed of
without obtaining a prior permission from the DDA. In
C terms of Section 15(a) of the Specific Relief Act 1963,
the suit for specific performance can be filed by “any
party” to the contract. In the instant case, suit for
specific performance was filed by the respondent and
his father who admittedly were not the parties to the
D agreement to sell. Vendor, during the pendency of suit,
remained *ex parte* and the suit was decreed in terms
of a compromise arrived between the parties, all of
whom were family members. The suit for specific
E performance was a collusive suit, where the
respondent and his father used the process of the
court to get rid of the stamp duty, registration charges
and unearned increase payable to DDA. [Para 10] [428-
A-E]

F 2. As per the decree for specific performance, sale
deed to be executed by the defendant namely holder
of leasehold right and holder of agreement to sell
within the period of 30 days from the date of the
decree and further directed to pay requisite stamp duty
and registration charges. Instead of complying with
G the order of the High Court and getting the sale deed
executed, after making payment of registration charges
and stamp duty, the respondent applied for conversion
of the property through father of the respondent and
H power of attorney holder and the same was rejected.

The conversion cannot be sought for by a person who is not the owner of the property but is only residing in the premises. [Paras 11, 12] [428-F-G; 429-D,E] A

3. A scheme of conversion from leasehold system of land tenure into freehold was brought into force by the Government. In terms of Clause 13 of the Scheme, it is thus mandatory for a person to file a conversion application to have a power of attorney from the lessee/sub-lessee/allottee. Further in case of successive power of attorney, Clause 13 requires for the proof of possession alongwith the linkages of original lessee/sub-lessee/allottee with the last power of attorney is established and attested copies of power of attorney be submitted. In the light of Conversion Scheme, DDA rejected the conversion application on the ground that the respondent is not a power of attorney holder in respect of the suit property. The property cannot be converted from leasehold to freehold directly in the name of the respondent as he is neither a general power of attorney holder nor a holder of agreement to sell. The High Court appears to have issued direction for conversion mainly on the ground that the respondent has got decree for specific performance for sale. [Paras 13, 15] [430-A, B, H; 431-A-D] B
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Suraj Lamp & Industries (P) Ltd. vs. State of Haryana & Anr. (2009) 7 SCC 363; Suraj Lamp & Industries (P) Ltd. (2) vs. State of Haryana & Anr. (2012) 1 SCC 656:2011 (11) SCR 848; Director of Settlements, Andhra Pradesh and Ors. vs. M.R. Apparao and Anr. (2002) 4 SCC 638:2002 (2) SCR 661 – relied on. G

Case Law Reference

(2009) 7 SCC 363 Relied on. Para 14 H

A **2011 (11) SCR 848** **Relied on.** **Para 15**

2002 (2) SCR 661 **Relied on.** **Para 18**

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3124 of 2015.

From the Judgment and Order dated 15.07.2010 in LPA NO. 466 of 2010 of the High Court of Delhi at New Delhi.

C Dhruv Tamta Binu Tamta for the Appellant.

Navin Chawla for the Respondent.

The Judgment of the Court was delivered by

D **R. BANUMATHI, J.** 1. Leave granted.

E 2. This appeal arises out of the order dated 15.07.2010 passed by a Division Bench of the High Court of Delhi, dismissing the Letters Patent Appeal No.466 of 2010, holding that respondent is entitled to be taken as a Power of Attorney holder and is thereby entitled to get the suit property converted from leasehold to freehold.

F 3. Brief facts of the case which led to the filing of this appeal are as follows:- The property which is sought to be converted is comprised in Plot No.N-73, Panchsheel Cooperative House Building Society Ltd, New Delhi. DDA executed perpetual sub-lease deed dated 16.08.1967 in respect of the suit property in favdur of one Sh. Jan Talwar (Defendant No.1 in the original suit). Jan Talwar by an agreement to sell dated 10.6.1986, agreed to sell the suit property to Mrs. Raymen Kukreja for a sale consideration of Rs.20,50,000/-. Jan Talwar, in respect of the same suit G H property, also executed a General Power of Attorney dated

10.06.1986 in favour of Lekh Raj Kukreja-husband of vendee A
i.e. Mrs. Raymen Kukreja. The cause of action arose in the
year 1989, when Jan Talwar refused to execute the sale
deed, even after receiving the complete sale consideration.
This led to the filing of civil suit being CS (OS) No.2777/ B
1989 for a decree of specific performance of the aforesaid
agreement to sell. Though the agreement to sell was made
in favour of Raymen Kukreja, the suit for specific
performance was filed by the respondent-Gaurav Kukreja C
and Lekh Raj Kukreja (father of Gaurav Kukreja) against Jan
Talwar and Raymen Kukreja (mother of Gaurav Kukreja). The
civil suit was filed on the premise that both, the GPA holder D
(father of Gaurav Kukreja) and vendee (mother of Gaurav
Kukreja) had surrendered their rights in favour of Gaurav
Kukreja and that they had no objection if the property is
transferred in the name of respondent. Jan Talwar having
remained ex parte, the suit was decreed by Single Judge
in terms of a compromise arrived at between the parties E
therein. Learned Single Judge of the High Court while
deciding the CS (OS) No.2777/1989 held the entire
transaction to be valid and observed that respondent and his
father and mother were ready and willing to complete the
sale transaction dated 10.06.1986 but Jan Talwar failed to F
perform his part of obligation. In the civil suit, Jan Talwar
though entered appearance subsequently remained exparte.
Based on the compromise decree in the original suit, Gaurav G
Kukreja applied to DDA for the conversion of suit property
from leasehold to freehold. However, the DDA refused the
conversion on the ground that as per the scheme, Gaurav
Kukreja did not possess a good title.

A 4. Aggrieved, respondent-Gaurav Kukreja filed W.P.(C)
No.7608/2009 before the High Court of Delhi, seeking the
conversion of suit property from leasehold to freehold, on the
strength of a policy decision taken by DDA and based on
B the compromise decree in the civil suit. Respondent
contended that DDA wrongfully denied him the benefit of
Conversion Scheme even when respondent has complied
with the conditions therein. Respondent is stated to have
deposited an amount of Rs.18,55,347/- with DDA towards
C conversion charges.

5. Learned Single Judge of High Court of Delhi, after
considering material on record allowed the writ petition by
D holding that the decree passed in the civil suit stands on a
higher footing than any General Power of Attorney as per
Clause 13(a) of the Conversion Policy. The possession of
suit property by the respondent has been substantiated by
the correspondence between the respondent and DDA which
E have been exchanged at the same address as that of suit
property in respect of which conversion has been sought.
Learned Single Judge observed that respondent is a son of
an agreement holder and as well as holder of general Power
F of Attorney and therefore the respondent is not a stranger
to the transaction and that the condition of Clause 13 of the
Conversion Scheme stands satisfied in the facts of the
case.

G 6. Against the decision of the learned Single Judge of
High Court of Delhi, Letters Patent Appeal filed by the DDA
also came to be dismissed. The Division Bench, while
dismissing the Letters Patent Appeal, held that the
respondent could certainly be taken to be a power of
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attorney holder and thus fully entitled to apply for conversion. A
Being aggrieved by the dismissal of Letters Patent Appeal,
respondent-DDA has preferred this appeal.

7. Contention of DDA is that the suit property is a B
leasehold property and any attempt to dispose of the same
should have been proceeded only after an approval from
DDA. It was submitted that the suit for specific performance
filed by the respondent and his father-Lekh Raj Kukreja C
against Jan Talwar and Raymen Kukreja, was a collusive suit
and was an attempt to escape the payment of stamp duty
and registration charges, which would otherwise be payable
on the part of the respondent on account of registration of
a sale deed. Further contention of DDA is that the D
respondent does not satisfy the terms of Clause 13 of the
Conversion Scheme as he is neither a power of attorney
holder nor a holder of sale deed in respect of the suit
property.

8. Per contra, learned counsel for respondent has E
submitted that even after obtaining a decree of specific
performance and having paid the conversion charges
alongwith surcharge of 331/3%, the conversion of the suit
property is being wrongly denied to him. It is submitted that F
long back on 29.4.2004, an amount of Rs.18,55,347/- has
already been deposited with DDA alongwith an application
for conversion. It is contended that the respondent is having
physical possession of the suit property and therefore all the G
pre-requisites of Clause 13 of Conversion Scheme stands
satisfied and thus he is entitled to conversion of suit property
from leasehold to freehold.

9. We have carefully considered the rival submissions H

A and perused the impugned order and material on record.

10. In the suit for specific performance filed by respondent-Gaurav Kukreja and his father-Lekh Raj Kukreja, DDA was not made a party to the suit despite the fact that it was within their knowledge that the property is a leasehold property under the control of DDA and cannot be disposed of without obtaining a prior permission from the DDA. In terms of Section 15(a) of the Specific Performance Act 1963, the suit for specific performance can be filed by "any party" to the contract. In the instant case, suit for specific performance was filed by the respondent and his father who admittedly were not the parties to the agreement to sell. Jan Talwar (vendor), during the pendency of suit, remained *exparte* and the suit was decreed in terms of a compromise arrived between the parties, all of whom were family members. In our considered view, suit for specific performance is a collusive suit, where the respondent and his father used the process of the court to get rid of the stamp duty, registration charges and unearned increase payable to DDA.

11. Be that as it may, as per the decree for specific performance, sale deed to be executed by the defendant namely Jan Talwar (holder of leasehold right) and Mrs. Raymen Kukreja (holder of agreement to sell) within the period of 30 days from the date of the decree and further directed to pay requisite stamp duty and registration charges. The relevant direction in the decree is extracted below:

"There will be a decree for specific performance of the agreement dated 10th June, 1986 in favour of Plaintiff

No.2 and against Defendant No.1 in respect of A
property No.N-73, Panchsheel Park, New Delhi.
Defendant No.1 shall arrange to have sale deed
executed within a period of 30 days from today. In B
case he fails to do so the Registrar of this Court shall
nominate or appoint some official of this Court to
execute the sale deed for and on behalf of Defendant
No.1 and in favour of Plaintiff No.2 on payment of
requisite stamp duty and registration charges. The C
official nominated by the Registrar will be paid a fee
of Rs.10,000/-."

(Annx.-P 3)

12. Instead of complying with the above order of the D
High Court and getting the sale deed executed, after making
payment of registration charges and stamp duty, the
respondent applied for conversion of the property through
Lekh Raj Kukreja (father of the respondent and power of E
attorney holder) and the same was rejected. The conversion
cannot be sought for by a person who is not the owner of
the property but is only residing in the premises. Onbehalf
of the appellant, it was submitted that the DDA had even F
granted N.O.C. way back in the year 2006 (Annx. P8) without
receiving un-earned increase charges as per the terms of
the lease-deed which is always charged by DDA when the
property exchanges hands. According to DDA, it was granted G
only because a local commissioner was appointed by the
High Court. It is further stated that the respondent
deliberately did not get the sale deed executed till today and
the respondent is trying to evade the stamp duty and
registration charges thereby causing a loss to the state H

A exchequer.

13. A scheme of conversion from leasehold system of land tenure into freehold was brought into force and noticed by the Government. The relevant clause of the Scheme of Conversion i.e. Clause 13 reads as under:-

C "13. The conversion shall also be allowed in the cases where lessee/sub-lessee/allottee has parted with the possession of the property provided that:

a) Application for conversion is made by a person holding power of attorney from lessee/sub-lessee/allottee to alienate (sell/transfer) the property.

D b) Proof is given of the possession of the property in favour of the person in whose name conversion is being sought.

E c) Where there are successive power of attorneys, conversion will be allowed after verifying the factum of possession provided that the linkage of original lessee/sub-lessee/allottee with the last power of attorney is established and attested copies of power of attorneys are submitted.

F In such cases, a surcharge of 33 1/3% on the conversion fee would be payable over and above the normal conversion charges (no unearned increase will be recoverable)."

G In terms of Clause 13 of the Scheme, it is thus mandatory for a person to file a conversion application to have a power of attorney from the lessee/sub-lessee/allottee.

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Further in case of successive power of attorney, Clause 13 A
requires for the proof of possession alongwith the linkages
of original lessee/sub-lessee/allottee with the last power of
attorney is established and attested copies of power of
attorney be submitted. In the light of Clause 13 of the B
Conversion Scheme, DDA rejected the conversion
application on the ground that the respondent is not a
power of attorney holder in respect of the suit property. The
property cannot be converted from leasehold to freehold C
directly in the name of the respondent as he is neither a
general power of attorney holder nor a holder of agreement
to sell. The High Court appears to have issued direction for
conversion mainly on the ground that the respondent has got D
decree for specific performance for sale. The High Court
failed to appreciate that the decree for specific performance
was based on the alleged compromise arrived at between
the family members.

14. In Suraj Lamp & Industries (P) Ltd. vs. State of E
Haryana & Anr., (2009) 7 SCC 363, this Court referred to
the ill-effects of what is known as General Power of Attorney
Sales (for short 'GPA Sales') or Sale Agreement/General
Power of Attorney/Will transfers (for short 'SA/GPA/WILL' F
transfers), and it was held as under:

"19. Recourse to "SA/GPA/WILL" transactions is taken
in regard to freehold properties, even when there is no
bar or prohibition regarding transfer or conveyance of G
such property by the following categories of persons:

(a) Vendors with imperfect title who cannot or do not
want to execute registered deeds of conveyance.

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A (b) Purchasers who want to invest undisclosed wealth/
income in immovable properties without any public
record of the transactions. The process enables them
to hold any number of properties without disclosing
B them as assets held.

(c) Purchasers who want to avoid the payment of stamp
duty and registration charges either deliberately or on
wrong advice. Persons who deal in real estate resort
C to these methods to avoid multiple stamp duties/
registration fees so as to increase their profit margin.

20. Whatever be the intention, the consequences of
SA/GPA/WILL transactions are disturbing and far-
reaching, adversely affecting the economy, civil society
D and law and order. Firstly, it enables large-scale
evasion of income tax, wealth tax, stamp duty and
registration fees thereby denying the benefit of such
revenue to the Government and the public. Secondly,
E such transactions enable persons with undisclosed
wealth/income to invest their black money and also
earn profit/income, thereby encouraging circulation of
black money and corruption.

F 21. These kinds of transactions have disastrous
collateral effects also. For example, when the market
value increases, many vendors (who effected power of
attorney sales without registration) are tempted to resell
G the property taking advantage of the fact that there is
no registered instrument or record in any public office
thereby cheating the purchaser. When the purchaser
under such "power of attorney sales" comes to know
H about the vendor's action, he invariably tries to take the

help of musclemen to “sort out” the issue and protect A
his rights. On the other hand, real estate mafia many
a time purchase properties which are already subject
to power of attorney sale and then threaten the
previous “power of attorney sale” [pic]purchasers from B
asserting their rights. Either way, such power of attorney
sales indirectly lead to growth of real estate mafia and
criminalisation of real estate transactions.”

15. Further a three Judge Bench of this Court in Suraj C
Lamp & Industries Pvt. Ltd.(2) vs. State of Haryana & Anr.,
(2012) 1 SCC 656, considered the validity of such SA/GPA/
WILL transaction and observed thus:

“23. Therefore, an SA/GPA/WILL transaction does not D
convey any title nor creates any interest in an
immovable property. The observations by the Delhi
High Court in Asha M. Jain v. Canara Bank, (2001) 94
DLT 841, that the “concept of power-of-attorney sales E
has been recognised as a mode of transaction” when
dealing with transactions by way of SA/GPA/WILL are
unwarranted and not justified, unintendedly misleading
the general public into thinking that SA/GPA/WILL F
transactions are some kind of a recognized or
accepted mode of transfer and that it can be a valid
substitute for a sale deed. Such decisions to the extent
they recognise or accept SA/GPA/WILL transactions G
as concluded transfers, as contrasted from an
agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can H
be legally and lawfully transferred/conveyed only by a
registered deed of conveyance. Transactions of the

A nature of "GPA sales" or "SA/GPA/WILL transfers" do
not convey title and do not amount to transfer, nor can
they be recognised or valid mode of transfer of
immovable property. The courts will not treat such
B transactions as completed or concluded transfers or as
conveyances as they neither convey title nor create any
interest in an immovable property. They cannot be
recognised as deeds of title, except to the limited
C extent of Section 53-A of the TP Act. Such
transactions cannot be relied upon or made the basis
for mutations in municipal or revenue records. What is
stated above will apply not only to deeds of
conveyance in regard to freehold property but also to
D transfer of leasehold property. A lease can be validly
transferred only under a registered assignment of
lease. It is time that an end is put to the pernicious
practice of SA/GPA/WILL transactions known as GPA
E sales."

16. According to respondent, on 29.4.2004 his father
Lekh Raj Kukreja, who was the then Power of Attorney holder
has submitted an application for conversion of the said
F property from leasehold to freehold and deposited the
conversion charges of Rs.18,55,347/- and also deposited
further sum of Rs.27,222/- towards enhanced ground rent as
demanded by the DDA. It was submitted that alongwith the
application all necessary documents i.e. an Agreement to
G Sell, General Power of Attorney and copy of the judgment
in CS (OS) No. 2777/1989 dated 30.03.2001 were
submitted to the DDA. Even though the said application was
filed way back in 2004, it is not known as to why the
H respondent and his father Lekh Raj Kukreja did not follow

up the matter within a reasonable time and they have A
approached the High Court only in the year 2009.

17. Main contention of the respondent is that he is a
decree holder for specific performance and even going by
the ratio of Suraj Lamp & Industries (P) Ltd.'s case, the B
respondent is at a higher footing than a holder of Power of
Attorney and therefore the respondent is entitled to have
conversion of the land. As pointed out earlier, the suit for
specific performance, in our view, is a collusive one and C
therefore cannot confer any right upon the respondent to
claim conversion.

18. In Director of Settlements, Andhra Pradesh and
Ors. vs. M.R. Apparao and Anr., (2002) 4 SCC 638, while D
considering the scope of the power of High Court to issue
a writ of mandamus under Article 226 of the Constitution, this
Court has held as under:

"17.It is, therefore essentially, a power upon the High E
Court for issuance of high prerogative writs for
enforcement of fundamental rights as well as non-
[pic]fundamental or ordinary legal rights, which may
come within the expression "for any other purpose". F
The powers of the High Courts under Article 226
though are discretionary and no limits can be placed
upon their discretion, they must be exercised along the
recognized lines and subject to certain self-imposed G
limitations. The expression "for any other purpose" in
Article 226, makes the jurisdiction of the High Courts
more extensive but yet the Courts must exercise the
same with certain restraints and within some
parameters. One of the conditions for exercising power H

A under Article 226 for issuance of a mandamus is that
the Court must come to the conclusion that the
aggrieved person has a legal right, which entitles him
to any of the rights and that such right has been
B infringed..”

On the date of filing of the writ petition, the respondent
was neither a holder of a power of attorney nor had any
subsisting right in the suit property and while so, the High
C Court was not right in holding that the respondent is entitled
to apply for conversion of the property. Dehors the scheme
of conversion, the respondent is not entitled to apply for
conversion of the property. In our considered view, the
D respondent does not fall within the ambit of Clause 13 of the
Conversion Scheme and therefore the impugned order of the
High Court cannot be sustained and is liable to be set aside
and the appeal deserves to be allowed.

E 19. In the result, the impugned order is set aside and
the appeal is allowed. The respondent is at liberty to pursue
the matter with DDA in accordance with law. Respondent is
also at liberty to seek for return of money deposited by him/
his father-Lekhraj Kukreja and when such application is
F made for return of money, the appellant/DDA is directed to
return the same with 10% interest. No order as to costs.

Devika Gujral

Appeal allowed.