(2010) 10 DEL CK 0051

In the Delhi High Court

Case No : Writ Petition (C) 6962 of 2010

Bahia Properties (P) Ltd. APPELLANT

Vs

NDMC and Others RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 128
New Delhi Municipal Council Act, 1994 — Section 74, 74(1)
Stamp Act, 1899 — Section 33
Transfer of Property Act, 1882 — Section 128(1), 128(2)

Citation : (2010) 174 DLT 46

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Subhash C. Jindal, for the Appellant; P.C. Sen, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner claiming to have purchased the Flat No. G-3, 1 Hailey Road, Upasana Building, New Delhi from Sh. Rajender Singhal and Sh. Narender Singhal has filed this writ petition seeking direction to the respondent NDMC to mutate/transfer the said flat in its records in the name of the petitioner. It is the case of the petitioner that inspite of the application of the petitioner and payment of transfer charges by the petitioner to the respondent NDMC, the NDMC has wrongfully and illegally not mutated the flat in the name of the petitioner till now.

2. The emphasis of the counsel for the petitioner is on Section 74(1) of the New Delhi Municipal Council Act, 1994 which is as under:

74. Notice of transfers-

1) Whenever the title of any person primarily liable for the payment of property tax on any land or building is transferred, the person whose title is transferred and the person to whom the same is transferred shall within three months after the execution of the instrument of transfer or after registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such

transfer in writing to the Chairperson.

3. The counsel for the petitioner has urged that under the aforesaid provision, even if no instrument of transfer is executed, the transferee is required to give notice of transfer and upon such notice having been given, respondent NDMC is obliged to transfer/mutate property in its record in the name of the applicant.

4. The counsel for the petitioner has also drawn attention to the communication dated 28th January, 2010 of the respondent NDMC to the petitioner asking the petitioner to furnish the following information before its application for mutation could be processed:

1. To furnish any document which shows that the above said flat has come in the share of Sh. Rajender Singhal and Sh. Narender Singhal from whom you have purchased the flat as per Flat Buyer Agreement dated 11-07-2006.

2. To deposit Rs. 3,35,244/- as arrears of property tax up to 31-03-2009, in the municipal treasury.

3. To intimate present status of the flat i.e. it is vacant/rented/self occupied.

5. The counsel for the respondent NDMC appearing on advance notice states that the present writ petition is a guise to avoid payment of the house tax arrears due till now with respect to the said flat and which were as aforesaid, demanded from the petitioner. It is stated that without the petitioner clearing the house tax arrears, the flat cannot be mutated/transferred in his favour.

6. The counsel for the petitioner states that the petitioner is willing to pay the said house tax arrears and respondent NDMC should be directed to transfer/ mutate the flat in the name of the petitioner on payment of the house tax arrears.

7. The petitioner in proof of purchase of the aforesaid flat has filed before this Court a Flat Buyer Agreement dated 11th July, 2006. The said Flat Buyer Agreement is unregistered. The petitioner has in pursuance to the said Flat Buyer Agreement and as expressly recorded therein has also taken possession of the flat. Such an agreement, pursuant to the Registration and Other Related Laws (Amendment) Act, 2001 in force w.e.f. 24th September, 2001, is required to be compulsorily registered. In the absence of the said Flat Buyer Agreement being registered, it cannot be said that the title to the flat has been transferred.

8. The argument of the counsel for petitioner that the Agreement may be ignored and the case may be treated as falling under the category of Section 74(1) of "if no instrument is executed" cannot be accepted. The primary requirement of Section 74(1) is of transfer of title to the property. If under the law there can be no transfer of title of the property without a registered document, then Section 74(1) would not come into play. The category of "if no instrument is executed" is intended to apply to cases where the title is transferred by devolution or operation of law and which is not the case over here.

9. The counsel for the petitioner has argued that the practice followed by the NDMC is of transferring the title on the basis of such Flat Buyer Agreement and on receipt of transfer/mutation duty only and without insisting upon the said document being registered. Even if that be the practice of NDMC, that cannot prevail over the law. The NDMC before transfer/mutation is required to satisfy itself that there is a transfer of title in accordance with law. Without transfer of title, NDMC cannot on mere asking mutate/transfer the property.

10. There is another aspect of the matter. The Indian Stamp Act, 1899 was also amended w.e.f. 24th September, 2001. A stamp duty of 90% of the stamp duty payable on a conveyance has been provided on conveyance in the nature of part performance, as the Flat Buyer Agreement dated 11th July, 2006 relied upon by the petitioner is. The prescribed stamp duty has not been paid by the petitioner. u/s 33 of the Stamp Act, every person in charge of public office, as the Officer of NDMC responsible to effect mutation/transfer is, before whom any instrument chargeable with duty and not duly stamped is produced, is required to impound the same. The NDMC cannot accept the plea of petitioner of transfer of title of flat in its favour on the basis of Flat Buyer Agreement aforesaid, for this reason also. Moreover, if the mutation/transfer is effected by NDMC that would result in loss to the exchequer. In the present case, the Govt. of NCT of Delhi likely to be affected by non-payment of stamp duty has not been impleaded as a party. The counsel for the petitioner of course states that since that was not the issue, the Govt. of NCT of Delhi was not made a party.

11. I find that the Supreme Court in Municipal Corporation of Delhi Vs. M/s. Trigon Investment and Trading Private Limited and another, of the judgment has, in relation to Section 128 of the Delhi Municipal Corporation Act, 1957 and which provision is in pari materia to Section 74 of the NDMC Act has observed:

The expression ''transfer'' is not defined in the Act. If so, it has to be understood in its normal sense, i.e., in the sense it is understood in the Transfer of Property Act, 1882 but with the rider that Section 128(1) recognizes a transfer, even where the instrument of transfer is not registered. The fact that possession of the flats was delivered to the respondent, that the respondent has paid the full consideration for the said flats and the further fact that the respondent has let out the flats and is in exclusive receipt of the rent clearly establishes that he is a transferee within the meaning of Section 128. Indeed he would be the ''owner'' as defined by Clause 37 in Section 2 of the Act. He would be the ''owner'' within the meaning of and for the purposes of the Act--whatever may be the position in general law. In that sense the respondent is equally liable to pay the said taxes.

However, the aforesaid observations were made when law i.e. the Registration Act and the Stamp Act did not require such Agreements to be registered or stamped as aforesaid. However, in view of the amendments to the said Acts w.e.f. 24th September, 2001 the aforesaid observations would no longer apply.

12. The counsel for the petitioner has also argued that the petitioner in response

to the queries aforesaid of the respondent NDMC, had drawn attention of the NDMC to the Flat Buyer Agreement where, in the recitals it has been stated as to how the vendors of the petitioner acquired title of the flat. However, for the reason of the said Flat Buyer Agreement being unregistered, no cognizance thereof can be taken. Moreover, it is felt that the Sub-Registrar before registering the document is required to satisfy himself whether the vendor has title to the property or not and NDMC strictly speaking is not competent to make an enquiry in this respect.

13. The petitioner is thus held not entitled to the relief of mutation/transfer claimed, without having a registered document with respect to the flat in its favour. Upon the petitioner presenting a registered document of transfer of the flat in its favour and complying with other conditions for transfer/mutation, the petitioner shall be entitled to transfer/mutation of the flat. The counsel for petitioner expresses apprehension that even after the petitioner produces the registered document, mutation/transfer may not be carried out in its favour. However, since the counsel for respondent NDMC is appearing on advance notice and has no instructions and states that there may be other reasons for not granting the mutation, no directions can be given in the present writ petition. However, NDMC is expected to deal with the application, if any so made by the petitioner in accordance with law and in accordance with the observations made hereinabove.

The writ petition is disposed of. No order as to costs.

