

(2022) 11 DEL CK 0140

In the Delhi High Court

Case No : Civil Writ Petition No. 4194 Of 2022

Mahavir Singh & Ors.

APPELLANT

Vs

GNCT Of Delhi & Ors

RESPONDENT

Date of Decision : 24-11-2022

Acts Referred:

Registration Act, 1908 — Section 17(1A), 19, 20, 21, 22, 23, 24, 25, 28, 32, 33, 34, 35, 58, 69, 72, 77

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 14(1), 21, 30

Delhi Municipal Corporation Act, 1957 — Section 147

Citation : (2022) 11 DEL CK 0140

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : V.P. Dabas, Shadan Farasat, Aman Naqvi

Final Decision : Disposed Of

Judgement

Anu Malhotra, J

1. The petitioner Nos.1 to 4 i.e., petitioner No.1 Sh. Mahavir Singh, petitioner No.2 Smt. Urmila, petitioner No.3 Smt. Reena Rani and petitioner No.4 Sh. Sandeep Kumar, vide the present petition seeks directions to the respondent No.5, the Sub-Registrar IX (A) (Najafgarh) to register the Sale Agreement and the General Power of Attorney both dated 01.05.2018 duly executed and presented by the petitioners before the respondent No.5 vide document Nos. 320 and 321, after setting aside the impugned refusal order dated 17.05.2018 of the respondent No.5 as well as the order of the respondent No.3, i.e., the Deputy Commissioner, South-West, Kapashera in Appeal No.1/7/18 dated 07.10.2020, whereby the said appeal filed by the petitioners under Section 72 of the Indian Registration Act, 1908 was dismissed, with it having been submitted by the petitioners that the said orders are arbitrary, unwarranted, perverse, beyond jurisdiction and in violation of law resulting in manifest injustice to the petitioners.

2. The petitioners also seek exemplary cost against the respondent No. 2, the Inspector General of Registrars, Department of Revenue, Government of NCT of Delhi, submitting to the effect that the said authority is vicariously responsible for non-discharge of duty by the subordinate authorities.

3. The consolidation proceedings in village Mundhela Khurd in the year 1971-72 were initiated and the consolidation record was prepared but repartition proceedings under Section 21 of the EPH Act, 1948 could not be carried out and the consolidation proceedings were initiated again in 1996, and as per averments made in the petition, are pending before the Financial Commissioner.

4. It is submitted on behalf of the petitioners that the petitioner No.1 is a native of village Mundhela Khurd and was the recorded co-owner of un-partitioned agriculture land having 1/15th share (61.56 Biswa) out of Khata No. 106/99 bearing pre-consolidation Khasra nos. 1//105(5- 09), 1/161 (0-09), 1/389(19-03), 1//349 (4-15), 1//348 ((7-14), 1//516 (3-14) & 1/634 (5-01) total land admeasuring 46 Bigha 5 Biswa or post consolidation Khasra Nos. 38//4/2 (1-02), 54//8 (4-16) and 54//9/1 (2-16) total land admeasuring 8 Bigha 14 Biswa (2 Bigha 18 Biswa) of land situated in revenue estate of village Mundhela Khurd, Delhi-110073. Copy of the Fard has been submitted by the petitioners as Annexure P-1.

5. Inter alia, the petitioners further submit that the petitioner No.1, the seller, and the petitioner Nos. 2 to 3, the purchasers, entered into an oral sale agreement of agriculture un-partitioned land dated 22/10/2013 for total sale consideration amount to the extent of Rs.28,90,625/- of the entire 1/15th share (61.66 Biswa) out of Khata No. 106/99 bearing pre-consolidation Khasra nos. 1//105(5- 09), 1//161 (0-09), 1/389(19-03), 1//349 (4-15), 1//348 ((7-14), 1//516 (3-14) & 1/634 (5-01) total land admeasuring 46 Bigha 5 Biswa or 1/3rd share out of Post consolidation Khasra No. 38//4/2 (1-02), 54//8 (4-16) and 54//9/1 (2-16) total land admeasuring 8 Bigha 14 Biswa (2 Bigha 18 Biswa) of land situated in revenue estate of village Mundhela Khurd for his bona-fide needs.

6. The petitioners further submit that vide a circular No. F.1(92)/Regn Br./DivComm./HQ/2012, which is dated 12.11.2014 (and bears the full number F.1(92)/RB/DivComm./HQ/2012/311-320), in terms of Para 18 Sub Para II of the verdict of the Hon'ble Supreme Court in Suraj Lamp Industries Vs State of Haryana, the respondent no. 2, the Inspector General of Registrar, from the office of Inspector General of Registration, Department of Revenue, Government of Delhi, 5, Sham Nath Marg, Delhi, in terms of Section 69 of the Indian Registration Act 1908, clarified that after amendment in the Registration Act, 1908, under section 17 (1-A) of Indian Registration Act, 1908, an agreement to sell in respect of immovable property is covered under section 17 (1-A) of Registration Act, 1908 and is a valid document to be registered if so desired by the parties and as such all these documents cannot be refused to be registered by the Sub Registrar. Copy of the said circular has been submitted by the petitioners as Annexure P-3.

7. Inter alia, the petitioners submit that the recorded owner, i.e., petitioner No.1, Sh. Mahavir S/o Sh. Ram Kishan, on 25.07.2016 applied for the NOC/status report for transfer of his entire agriculture holding to the extent of his share before the Competent Authority, i.e., the respondent No. 4 herein, vide slip No. ADM/South West/Land Status Report/10510 as required under Section 30 of the EPH Act, 1948 but the same was declined on 19.08.2016 by the Competent Authority on the ground that village Mundhela Khurd is under consolidation and permission of CO under Section 30 of EPH Act, 1948 having not been granted and the land status report being not conveyed. The copy of the NOC/status report as well as copy of the NOC declined by respondent No. 4 have been annexed by the petitioners as annexure P-4.

8. Inter alia, it has been submitted that the petitioner No.1 received a full consideration amount to the extent of Rs.28,90,625/- to execute the sale deed but for want of sanction from the respondent No. 4, and for registration of the sale deed the petitioners decided to execute the registered sale agreement along with transfer of possession of those Khasra numbers, of which the petitioner no.1 was earlier in possession, and whenever the NOC would be granted, the title would be transferred and for the said purpose the petitioners also decided to execute the General power of attorney for the purpose of transfer of title, whereafter, the petitioner No. 1 as well as petitioner Nos. 2 and 3 presented the duly executed Sale Agreement as well as the General Power of Attorney for transferring the title complete in all respects on 01.05.2018 after complying all the provisions of Indian Registration Act, 1908, Delhi Registration Rules, 1976 & Indian Stamp Act, 1899 with the same duly acknowledged by the Sub-Registrar i.e., the respondent No. 5 vide acknowledgement slip bearing Nos. 320 and 321 respectively.

9. It has been further submitted by the petitioners that the sale agreement was duly engrossed on a proper stamp paper with 4% stamp duty under the Indian Stamp Act, 1899 along with Rs.1100/- registration fee for sale agreement and without 1% of circle rate registration fee as per section 147 of the Delhi Municipal Corporation Laws. The petitioners submit that both these documents were presented before the respondent No.5 along with all necessary documents, parties and witnesses after complying with the due procedure specified in the Indian Registration Act, 1908 and Delhi Registration Rules, 1976. The copy of the sale agreement as well as of the general power of attorney, both dated 1.05.2018, presented before the respondent No. 5 vide slip No. 320 and 321 are annexed as Annexure P-5.

10. Inter alia, the petitioners submit that the sale agreement as well as general power of attorney were denied registration by the respondent No. 5 for want of NOC from the respondent No. 4 on the ground that the purchaser had already paid full and final consideration amount to the seller and the possession of the said land had already been handed over to the vendees by the vendor.

11. Inter alia, the petitioners submit that no sale/agreement to sell can be

considered without an NOC from the Competent Authority. The respondent No.5 is thus indicated to have refused to register the document Nos. 320 and 321 as per the provisions of the Registration Act, 1908 in view the consolidation case of the Revenue Village Mundhela Khurd being pending before the Financial Commissioner, Delhi.

12. The petitioners submit that the appeal filed against the said order dated 17.05.2018 was also dismissed vide a non-speaking order dated 17.10.2020.

13. The circular No. F.1(92)/Regn.Br./DivComm/HQ/2012 dated 26.07.2021 is alleged by the petitioners to have been issued by exercising illegal powers by the Inspector General of Registrar from the office of the Inspector General of Registration, Department of Revenue, Government of Delhi. The petitioners submit that their valid documents have not been registered and the provisions of the Indian Registration Act, 1908 have been violated, despite the mandatory duty cast on the respondent No.5 to register their claim in terms of Section 58 of the Indian Registration Act, 1908. As per the website of the revenue department the circular number F.1(92)/Regn.Br./DivComm/HQ/2012/6112 dated 26.07.2021 has been issued in suppression of guidelines dated 12.11.2014 relied upon the behalf of the petitioner as mentioned in para 6 herein above. As per the circular dated 26.07.2021 vide clause 16 thereof it has been prescribed as under:

"16. ON REFUSAL TO REGISTER THE DOCUMENT:

If the Sub-Registrar is of the opinion that the document presented for registration is against any of the provisions of law(emphasis supplied) or administrative instructions/ order, the Sub Registrar may refuse to register the document after hearing the parties concerned.

The refusal order should be a speaking order recording the reason for refusal and duly recorded in relevant Book Number. A copy of the refusal order be also sent to the Deputy Commissioner of the District, SDM (HQ), Spl. IGR apart from delivering a copy to the parties concerned.

....."

14. The petitioners submit that the Registration Act 1908 is a complete code in itself and all reasons for refusal have been enumerated therein under Sections 19, 20, 21, 22, 23, 24, 25, 28, 32, 33, 34 and 35 of the said Act and the act of the respondent No. 5 in refusing the registration is beyond the scope of the said enactment; and that the respondent No.5 and the respondent No. 3 have failed to distinguish between a sale deed and sale agreement; that the State Government cannot instruct a Sub-Registrar not to register a document.

15. On behalf of the respondents, a submission was made on 14.03.2022 by the learned ASC for the respondents that the impugned orders merit no interference since they are clearly passed on the express provisions contained in Section 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, and that it is incumbent on the petitioners to obtain the appropriate

permission as statutorily contemplated therein.

16. It is essential to observe that undisputedly the consolidation proceedings of the Village Mundhela Khurd are pending before the Financial Commissioner, in terms of Section 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, which provides as under:-

"The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948

.....

30. Transfer of property during Consolidation Proceedings.-

After a notification under sub-section (1) of section 14 has issued and during the pendency of the consolidation proceedings no land-owner or tenant having a right of occupancy upon whom the scheme will be binding shall have power without the sanction of the Consolidation Officer to transfer or otherwise deal with any portion of his original holding or other tenancy so as to affect the rights of any other land-owner or tenant having a right of occupancy therein under the scheme of consolidation.",

it is apparent thus as rightly contended on behalf of the respondent Nos.1 to 5, till pendency of such consolidation proceedings, in view of the notification under Section 14(1) of the enactment (East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948), there cannot be any registration of the documents as sought by the petitioners.

17. Another aspect that cannot be overlooked is that on the appeal of the petitioners having been dismissed under Section 72 of the Registration Act, 1908, the remedy that was available to the petitioners was in terms of Section 77 of the Registration Act, 1908.

18. The petition is thus rejected as being premature, in as much as, the consolidation proceedings of the Village Mundhela Khurd, where the property forming subject matter of the present petition is situated are still pending. However, in as much as the consolidation proceedings are pending since the year 1971-72, as averred by the petitioners, in as much as, though a consolidation record, as submitted by the petitioners, was prepared, the repartition proceedings could not be carried out and the consolidation proceedings have thereafter been initiated again in the year 1996, which are pending, and though the respondents inform that they would be concluded soon, they are nevertheless pending,- thus it is expected of the respondents that the consolidation proceeding pending in relation to the Village Mundhela Khurd are completed within a period of six months of the date of the disposal of this petition.

19. The petition is thus disposed of accordingly.