

(2013) 04 DEL CK 0195

In the Delhi High Court

Case No : Writ Petition (C) 4585 of 2012 and CM No. 9515 of 2012

Pace Developers and Promoters Pvt. Ltd.

APPELLANT

Vs

Govt. of NCT and Others

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226

Citation : (2013) 199 DLT 347 : (2013) 215 TAXMAN 554

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Rajiv Dutta with Kumar Dushyant Singh, for the Appellant; Shariq Mohammad, Advocate with Mr. Sanjiv Kumar, Sub-Registrar, Hauz Khas for the Respondent Nos. 1 and 2, for the Respondent

Judgement

Rajiv Shakdher, J.—In this writ petition the following two prayers have been made:

(a) Issue a writ of certiorari and after calling for the relevant records of the impugned circular quash the illegal circular bearing No. F.1(92)Regn.Br./Div.Com./2012/298 dated 27.4.2012 issued by respondent No. 2 as violative of petitioner's Fundamental Rights guaranteed under Articles 14 and 19(1)(g) of the Constitution and also the said circular is against the judgment of the Supreme Court delivered in Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, and the relevant laws and/or;

(b) Issue a writ of mandamus or an appropriate writ, order or direction in the nature of mandamus and direct the respondent-department to forthwith register the sale deed;...

The brief facts and the background in which the writ petition has been filed are as follows:

1.1. The petitioner company entered into a collaboration agreement dated 11.9.2011 with one Mrs. Rani Puri, owner of the immovable property situate at

A-1/81, Masjid Moth, Panchsheel Enclave, New Delhi (hereinafter referred to as the said property).

1.2. It appears that the said Mrs. Puri, in pursuance to the aforementioned collaboration agreement, executed a General Power of Attorney (GPA) dated 11.11.2011, in favour of the petitioner. The GPA was duly registered and stamped, in accordance with the provisions of the Delhi Stamp Duty Amendment Act, 2001.

1.3. Apparently, Mrs. Puri also executed a Will dated 11.11.2011. To be noted, the Will refers to Mr. Anil Khanna, the Director of the petitioner company. As per the said Will 25% of the undivided, indivisible and impartible ownership rights in the land, on which the said property has been built, is to devolve on Mr. Anil Khanna, on the death of Mrs. Puri. The said Will has, evidently, been registered with the Sub-Registrar-V, Delhi.

1.4. On 27.4.2012, respondent No. 2, i.e., the Divisional Commissioner, Govt. of NCT of Delhi, issued the impugned circular.

2. The petitioner being aggrieved by the contents of the said circular approached this Court by way of the captioned petition under Article 226 of the Constitution of India, to lay challenge to the same.

3. Learned Counsel for the petitioner submits that, the circular dated 27.4.2012 is contrary to the judgment of the Supreme court passed in the case of Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, . Particular emphasis in this regard has been laid on the observations made by the Supreme Court in paragraph 27 of the said judgment. It is further submitted that there is no impediment in the Sub-Registrar registering a genuine GPA and/or an agreement to sell. It is in this regard that, reliance is placed on the observations made in paragraph 27 of the judgment of the Supreme Court in Suraj Lamp and Industries (P) Ltd.

4. On the other hand, learned Counsel for the respondents submits that, the transaction, which has been entered into between the petitioner company and the original owner, i.e., Mrs. Puri, seeks to evade stamp duty and, therefore, there is a resistance by the Sub-Registrar, in registering the document.

4.1. Mr. Mohammad, learned Counsel for the respondents, submits that the transaction between the owner, Mrs. Puri, and the petitioner company, i.e., the builder, is sought to be concluded on payment of stamp duty at the rate of 3%, whereas it ought to be subjected to stamp duty at the rate of 6%, which is the rate applicable to a transaction of sale.

4.2. It is the contention of Mr. Mohammad that the transaction between the owner Mrs. Puri and the petitioner company, i.e., the builder, is in effect a transaction of sale and hence the resistance to registration of the document. Mr. Mohammad says that based on the Power of Attorney, the petitioner company, which is a builder, is obviously going to sell those portions of the superstructure

to prospective buyers, which fall within its share. It is stated that the rate of stamp duty, on these sale(s) will be 6%. It is, therefore, Mr. Mohammad's contention that, the same rate of stamp duty should also apply to the first leg of the transaction, which is, the transaction entered into between the owner Mrs. Puri and the petitioner company, i.e., the builder.

5. Having heard the learned Counsel for the parties, in my view, some of the assertions made by the learned Counsel for the respondents, at this stage, are premature. There is, as a matter of fact, no order passed by the respondents refusing registration of any document. The concern of the respondents, that the transaction is not genuine, is not borne out from any order of the respondents. What the Court is called upon to examine, therefore, at this juncture, in substance, is the validity of the circular dated 27.4.2012, issued by respondent No. 2. The grievance of the petitioner, in particular, is directed towards the following directions contained in the circular dated 27.4.2012 issued by respondent No. 2:

...Therefore, it is again clarified to all the Registrars/Sub-Registrars, that on the basis of a GPA, a Will, and Agreement to Sell, collectively or separately in respect of an immovable property, a conveyance cannot be executed i.e. no transfer of property will take effect until unless a clear sale deed is executed and duly registered by the executants in the office of the Registrar/Sub-Registrar. Therefore, it is advised that all the Registrars/Sub-Registrars shall follow their instructions while discharging their functions under the Registration Act 1908.

5.1. A bare reading of the aforesaid extract would show that the respondents have issued across the board a directive to all Registrars and Sub-Registrars not to register any conveyance vis-?-vis an immovable property which is based on a GPA, Will or Agreement to Sell. In my view, this direction clearly misconstrues the observations of the Supreme Court made in paragraph 27 of the judgment in the case of Suraj Lamp and Industries (P) Ltd. The said observations being relevant are extracted hereinbelow:

...27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreement and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding "SA/GPA/Will transactions" are not intended to apply to such bona fide/genuine transactions....

5.2. Quite clearly, the Supreme Court has not said that in no case a conveyance can be registered by taking recourse to a GPA. As long as the transaction is genuine, the same will have to be registered by the Sub-Registrar. There is distinctly a specific reference to the fact that, a person may enter into a development agreement with a land developer or builder for development of a parcel of land or for construction of apartments in a building, and for this purpose a power of attorney empowering the developer to execute sale agreements, can be executed.

6. Therefore, in my view, the directions contained in the impugned circular dated 27.04.2012, are quite contrary to the observations made by the Supreme Court in Suraj Lamp and Industries (P) Ltd. Accordingly, the same are set aside.

7. It will, however, be open to the respondents to examine the genuineness of the transactions which are reflected in the document(s) filed, at the time of registration of conveyance. In case the Sub-Registrar comes to a conclusion that the transaction is not genuine, as would be expected, he would call upon the persons/entity presenting the document(s) to explain their case and thereafter, if not convinced, pass a speaking order as to why the documents is/are not liable to be registered. The writ petition is disposed of in terms of the aforesaid directions.

Dasti.