
(2010) 11 DEL CK 0138

In the Delhi High Court

Case No : Writ Petition (C) 12421 of 2009 and CM 12856 of 2009

Raj Kumar Bhutani and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Citation : (2010) 11 DEL CK 0138

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Rahul Gupta, Ira Gupta and Rajnish Mishra, for the Appellant; Atul Nanda and Sugandha, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The challenge in this petition is to a communication dated 24th June 2009 issued by the Land and Development Office (L&DO), Ministry of Urban Development, Government of India informing the Petitioner No. 1 that the agreement to sell dated 10th July 2007 executed by the General Power of Attorney (GPA) on behalf of the lessee of property No. C-73, Lajpat Nagar-I, New Delhi (hereafter 'the property in question') in favour of both purchasers, i.e., Petitioner Nos. 3 Shri Ankit Bhutani and Mr. Arpit Bhutani, was not acceptable as it was unregistered.

2. The property in question was originally allotted to Mr. Dewan Chand by a lease deed dated 29th April 1967 executed by the President of India. A deed of conveyance of the building constructed on the leasehold site was also executed on the same date. Mr. Dewan Chand sold the property to Captain Jaginder Singh Sobti on 8th August 1967. On 24th October 1967 a mutation order was passed in favour of Capt. Sobti by the L&DO. The MCD also passed a mutation order in his favour on 22nd March 1973.

3. On 1st September 2001 a separate agreement to sell was entered into by Jagjinder Singh Sobti agreeing to sell the first floor of the suit property to

Petitioner No. 4, Arpit Bhutani, for a sum of Rs. 23 lakhs. Brigadier Sobti also executed the GPA dated 1st October 2001 in favour of the Petitioner No. 1 Raj Kumar Bhutani the father of Petitioner No. 3 Ankit Bhutani and Petitioner No. 2 Ashok Kumar Bhutani father of Petitioner No. 4 Arpit Bhutani jointly in respect of the property in question. A Will was also executed on 1st October 2001 by Brigadier Sobti declaring Petitioners 3 and 4 as absolute owners of property in question.

4. A single application dated 30th January 2003 was filed by Raj Kumar Bhutani for conversion of the property in question from leasehold to freehold in the joint names of Ankit Bhutani and Arpit Bhutani and conveyance fee was also deposited.

5. On 18th September 2003 the L&DO wrote to Petitioner No. 1 stating that in terms of the lease deed the property in question could not be sub-divided.

6. On 10th July 2007 the Petitioners 1 and 2 as GPA holders on behalf of Brigadier Sobti executed a modified agreement in favour of Ankit Bhutani and Arpit Bhutani. It is stated that the modified agreement was executed on the basis of the earlier agreements executed in 2001 when the possession had been delivered to the Petitioners and sale consideration amount was paid to the seller.

7. On 12th November 2007 the L&DO rejected the conversion application on the ground that the modified agreement dated 10th July 2007 was not registered. The conversion charges in the sum of Rs. 1,13,625/- was also refunded.

8. Petitioner No. 1 made a representation against the rejection of the application for conversion. On 12th February 2008, Petitioner No. 1 again deposited the conversion charges. On 2nd January 2009 the L&DO again informed Petitioner No. 1 that the conversion process could not be completed since the agreement to sell dated 10th July 2007 was not registered and further that an attested copy of the agreement had not been filed. A further representation was made on 16th March 2009 by the Petitioner No. 1 to the L&DO. Reference was also made to the judgment in S.R. Bhutani and Others Vs. D.D.A., where, in similar circumstances, such prayer for conversion was allowed.

9. On 24th June 2009 the impugned letter was issued stating as under:

I am to refer to your letter dated 16.2.2009 on the subject cited above and to regret to say that the Agreement to Sell dated 10.7.2007 which is executed by GPA on behalf of the lessee in favour of both the purchasers for entire property is not acceptable as it is un-registered one. Also the Agreement to Sell dated 23.8.2001 and 1.9.2001 were executed in respect of floor-wise sale which amounts sub-division.

As per lease terms, sub-division is not permissible and hence are not acceptable.

Action for revalidation of cheque for refund of conversion fee is being taken separately.

10. Mr. Rahul Gupta, the learned Counsel appearing for the Petitioner submits

that at the time when the original agreements to sell were executed the Registration and Other Related Laws (Amendment) Act, 2001 (hereafter 'the Amendment Act of 2001') had not been enacted whereby registration of an agreement to sell in respect of Immovable property became mandatory with 90% of the stamp duty having to be paid. Consequently, the amended provisions did not apply to the agreements to sell in the present case. It is submitted that the present case would stand covered by the judgment of this Court in S.R. Bhutani v. DDA. It is submitted that the above judgment was affirmed by the impugned order dated 2nd December 2003 passed by the Division Bench of this Court dismissing LPA No. 352 of 2003 in DDA v. S.R. Bhutani. It is submitted that the supplementary agreement dated 10th July 2007 was really not required but was executed by way of abundant caution to reinforce the fact that the prayer for conversion was being made in the joint names of Petitioners 3 and 4 with there being no basis for the apprehension of any sub-division of the property in question.

11. Ms. Sugandha, counsel appearing for the Respondents submits that the subsequent agreement dated 10th July 2007 whereby the property in question was agreed to be sold to Petitioners 3 and 4, was required to be registered in terms of the Amendment Act of 2001 and therefore the conversion application was rightly rejected.

12. The above submissions have been considered.

13. This Court finds that the basis for the conversion application is in fact the two agreements executed in 2001 itself and the application was for conversion of the property in question jointly in the names of Petitioners 3 and 4. It appears that the intention was always that the property should always be held jointly in the names of Petitioners 3 and 4 and not that the floors should be separately held by Petitioners 3 or 4.

14. The subsequent agreement dated 10th July 2007 no doubt has been executed after the Amendment Act of 2001 was enacted. Nevertheless, it was obviously executed out of abundant caution in view of the objection raised by the Respondents. Even de hors such agreement, the request for conversion was only in the joint names of Petitioners 3 and 4 and therefore, there was no basis for apprehension of any subdivision of the property in question. As far as the agreements of 2001 are concerned, they were not required to be registered because they were executed prior to the coming into force of the Amendment Act of 2001. This Court finds that the present case is more or less covered by the decision of this Court in S.R. Bhutani v. DDA which decision has been affirmed by the Division Bench of this Court.

15. In the circumstances, the writ petition is allowed. The impugned order dated 24th June 2009 is set aside. A direction is issued to the Respondents to grant conversion of the property in question in the joint names of Petitioners 3 and 4 within a period of eight weeks from today subject of course to the Petitioners

complying with all the necessary formalities. 16. The petition stands allowed in the above terms. Application also stands disposed of.