
(2013) 11 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65245 of 2013

Smt. Asha Sirohi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2014) 1 ADJ 211 : (2014) 1 ALJ 595

Hon'ble Judges : Arun Tandon, J;Anjani Kumar Mishra, J

Bench : Division Bench

Advocate : H.V. Shastri, for the Appellant; Shivam Yadav, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner before this Court prays for a writ of mandamus directing the respondents to execute a deed for lease hold rights with regards to the entire property of plot No. 226, sector XV-A, New Okhla Industrial Development Authority (NOIDA) with reference to the transfer memorandum dated 10/13.5.1991 (Annexure-6 to the writ petition), as also for a mandamus to cancel the second memorandum of transfer in the name of anyone, if any, and to issue a memorandum of ownership in favour of the petitioner. We may at the very outset record that the petitioner has made an attempt to grab the property of another person with the help of the proceedings under Article 226 of the Constitution of India. Reasons for the same are as follows:

Plot No. 226, Sector XV-A, NOIDA was allotted in favour of N.S. Chaudhary who was none other than the Chairman-cum-Chief Executive Officer, NOIDA. The area of the plot was 450 sq. mtrs. Under the allotment letter it was provided that the said plot was being leased for a period of 99 years and a lease deed be got executed on satisfaction of the conditions mentioned. Surprisingly the possession certificate issued with reference thereto records name of N.S. Chaudhary, his wife Usha Chaudhary and his son Bharat Chaudhary.

From the records of the present petition it is apparent that two release deeds

were executed, first by N.S. Chaudhary in favour of his wife Usha Chaudhary dated 4.2.1983 which was registered on 23.2.1983 and the other by Bharat Chaudhary, son in favour of his mother Usha Chaudhary which was registered on 19.11.1987. As a result of these release deeds, Usha Chaudhary is stated to have become the lease holder of the said plot in her exclusive capacity.

2. On record is a letter of the NOIDA permitting transfer of the said plot in favour of the petitioner (Asha Sirohi) through her power of attorney holder dated 10/13.5.1991. On the strength of such permission, a transfer deed has been executed by Usha Chaudhary, w/o. N.S. Chaudhary in favour of the petitioner Asha Sirohi through her power of attorney on 20.5.1992. A copy of the lease deed is enclosed as Annexure-8 to the present petition.

3. From a simple reading of this lease deed, the Court finds that only 50% of the undivided share in plot No. 226 was transferred in favour of the petitioner through her power of attorney holder. The recital in that regard is contained on page 64 of the paper book as well as under conditions No. 3 of the transfer deed, page 65 of the paper book.

4. It appears that on 29.5.1992, a separate transfer deed for the remaining 50% of the plot No. 226 was executed in favour of Bimla Devi who is none other than the mother of the petitioner herself.

5. The petitioner has deliberately not disclosed the details of the lease deed so executed in favour of her mother in the present petition. This Court could ascertain the said fact from the document which has been enclosed at page 153 of the paper book which mentions the registration of the transfer lease deed in favour of Bimla Devi in the office of Central Registrar, Delhi in Book No. 1, Vol. 939 on Page Nos. 173 to 200 as Document No. 173 dated 2.5.1992.

6. It is writ large on record that only 50% of the undivided lease hold rights over plot No. 226 was transferred in favour of the petitioner by a registered deed, the remaining 50% was transferred in favour of Bimla Devi, mother of the petitioner by a separate transfer lease deed which was duly registered.

7. It appears that since the petitioner and the mother were members of the same family, the petitioner has constructed a residential house over the said plot. She has now turned greedy and wants to get the property recorded exclusively in her name to the exclusion of Bimla Devi and her legal heir in whose favour lease deed was executed for the remaining half of the plot. The attempt of the petitioner is to dislodge her sister-in-law from the property who has succeeded her mother-in-law in respect of the 50% of the property in question.

On the strength of the allegation that certain deed said to have been executed in the State of Uttarakhand by her power of attorney holder which have been cancelled on the complaint of the petitioner, she made an application before the NOIDA on 25.6.2013 for a fresh deed being executed for the entire land holding

covered by plot No. 226, sector XV-A, NOIDA i.e. 450 sq. mtrs. with reference to the memorandum of transfer dated 13.5.1991.

8. How could such an application be made after 22 years of the deed executed in favour of the petitioner through her power of attorney which discloses that only 50% of the land of plot No. 226 was transferred in her name. There is no prayer with regard to cancellation of the transfer deed which was executed in the name of Bimla Devi on 29.5.1992 for the remaining half of the plot.

9. By concealing all these facts, the petitioner seeks to get her name recorded over the plot No. 226 exclusively.

10. This Court will not encourage persons like the petitioner to misuse the proceedings of Article 226 of the Constitution of India and to divert the lawful transfer of her rights over the property based on a registered transfer deed of 1992 and which has never been questioned nor is under challenge in the present petition. We are of the considered opinion that this writ petition is liable to be dismissed with exceptional cost so that such frivolous litigations are not generated. Cost of Rs. 20,000/- in the facts of this case would be more than fair. This writ petition is dismissed with cost of Rs. 20,000/-. The petitioner may deposit the cost of Rs. 20,000/- with the Registrar General of this Court within two months from today failing which the District Magistrate, Gautam Buddha Nagar shall recover the same as arrears of land revenue and transmit the same to the Registrar General of this Court. The money shall be used for purchase of books by the Allahabad High Court Bar Association.