
(2014) 09 DEL CK 0420
In the Delhi High Court
Case No : W.P.(C) No. 6258/2013

Vasudha Gupta

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Registration Act, 1908 — Section 23, 47

Citation : (2014) 09 DEL CK 0420

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Babanjeet Singh, Advocates for the Appellant; Ajay Verma, Advocates for the Respondent

Judgement

V.K. Shali, J.—This is a writ petition filed by the petitioner against the respondent for quashing of order dated 19.07.2013 by virtue of which the request of the petitioner for conversion of leasehold right in respect of the flat No. D-1/04, Rajasthali CGHS, Pitampura, Delhi - 110034 was rejected.

2. Briefly stated, the facts of the case are that the petitioner had purchased the flat in question from one Sh. Ramesh Kumar Mahajan for a total consideration of Rs. 25 lakhs on the basis of GPA & Agreement to Sell. The e-stamp papers amounting to Rs. 1 lakh for execution of these documents are purported to have been purchased by the petitioner on 29.09.2011 and thereafter the GPA and the Agreement to Sell were executed on 03.10.2011. Simultaneously possession of the flat in question was also handed over to the petitioner and the consideration exchanged. The petitioner applied for registration of these documents to the respondent No. 2 on 03.10.2011 itself and after completion of the formalities, the documents of sale by way of registration of GPA & Agreement to Sell were actually registered by the respondent No. 2 on 13.10.2011. On 28.12.2011, the petitioner submitted the application for conversion of rights in the property in question from leasehold to freehold and as she did not hear anything from respondent No. 1, she became apprehensive that her application would be

rejected in view of the judgment of the Supreme Court in Suraj Lamp & Industries Pvt. Ltd v. State of Haryana in SLP(C) No. 13917/2009 decided on 11.10.2011. Accordingly, on 10.04.2013, she wrote to the respondent No. 1 bringing to their knowledge the fact that her case is not covered by the judgment in Suraj Lamp & Industries Pvt. Ltd's case (supra) although the transaction of sale in question was registered on 13.10.2011. But once the transaction is registered, then it relates back to the date when the GPA and the Agreement to Sell were executed. For this purpose, the petitioner drew the attention of the respondent No. 1 to Section 47 of the Registration Act, 1908. The respondent No. 1 instead of considering the case of the petitioner favourably on the basis of her written representation dated 10.04.2013, passed an order on 19.07.2013, which is impugned in the present writ petition, rejecting the request of the petitioner for conversion of rights in respect of the property in question from leasehold to freehold on the ground that the GPA and the Agreement to Sell were registered by the Sub Registrar on 13.10.2011.

3. The petitioner feeling aggrieved, filed the present writ petition. On notice having been issued to the respondents, the respondent No. 1 filed its affidavit contesting the claim of the petitioner for such conversion. The respondent No. 2, who is the ex officio registering authority, also filed a separate affidavit. The respondent No. 2 took the plea that as they do not maintain a record, therefore, he is not able to state as to why the documents submitted by the petitioner being GPA and the Agreement to Sell, though received on 03.10.2011, were registered on 13.10.2011 and deficiencies in the documents were found which were reported to the petitioner. Even otherwise, it is contended by the respondent No. 2 that Suraj Lamp & Industries Pvt. Ltd's case (supra) did not recognize the transaction of SA/GPA/Will etc. as valid documents of sale after 11.10.2011.

4. So far as the respondent No. 1 is concerned, it also took the plea that after the judgment of the Supreme Court in Suraj Lamp & Industries Pvt. Ltd's case (supra), the transaction which is entered into between the petitioner and the seller on 03.10.2011 cannot be taken cognizance of because they were registered on 13.10.2011 while as the judgment in Suraj Lamp & Industries Pvt. Ltd's case (supra) was delivered on 11.10.2011.

5. I have carefully considered the submission and also gone through the record. I do not agree with the contention of the learned counsel for the respondents that the documents in the instant case cannot be relied upon by the court for the purpose of conversion of rights in the property in question from leasehold to freehold. The reason for this is that Section 23 of the Registration Act, 1908, clearly lays down that a document which is required to be registered must be done so within a period of four months. Similarly, Section 47 of the Registration Act, 1908, lays down that once the registration of a document takes place, it relates back to the date when the document was executed meaning thereby that in the instant case, although the document was registered on 13.10.2011, but it

could not be said that the document became operative only on 03.10.2011. On the contrary, a combined reading of the aforesaid two sections will clearly show that not only the executants of a document is given four months time to get the document registered with the Sub Registrar but also that once the said document is registered, it relates back to the date when the same was executed.

6. Having said so, in the instant case, the documents in question being Agreement to Sell and GPA were executed on 03.10.2011 and were applied for registration on that day itself though the same were registered on 13.10.2011.

7. The explanation, which has been given by the respondent No. 2 is that the proof of identification may not have been with the petitioner, does not cut any ice for the reason that to hold that the documents become operative only on registration of the same i.e. on 13.10.2011 would be interpreting the law, as envisaged under Section 47 of the Registration Act, 1908, incongruent to the said Section. Moreover, the law itself prescribes four months time to get the documents registered which cannot be taken away. So far as the judgment in Suraj Lamp & Industries Pvt. Ltd's case (supra) is concerned, the same judgment also observes that it will not affect the validity of sale agreements and powers of attorney executed in genuine transactions which may have taken place before the pronouncement of judgment dated 11.10.2011. The court has made it abundantly clear that the purpose is not to make all transactions as illegal, but to ensure that the parties are not able to circumvent the law so as to cause loss to the exchequer by depriving it of payment of stamp duty or registration charges. This note of caution has been struck by the judgment in Suraj Lamp & Industries Pvt. Ltd's case (supra) wherein it has been observed that the purpose of making the transactions inadmissible on account of non registration is not to deprive genuine parties of their rights qua local bodies.

8. Accordingly, in the instant case also, I feel that the transaction whereby the petitioner has purchased the flat in question from one Sh. Ramesh Kumar Mahajan on the basis of a GPA and the Agreement to Sell is a genuine transaction, which cannot be faulted so as to deprive the petitioner the benefit of seeking conversion of the property in question from leasehold to freehold. The documents in question i.e. GPA and the Agreement to Sell though registered on 13.10.2011 relate back to 03.10.2011 when the same were executed and presented for registration, which is prior to 11.10.2011 when the judgment in Suraj Lamp & Industries Pvt. Ltd's case (supra) was pronounced. Even if the judgment Suraj Lamp & Industries Pvt. Ltd's case (supra) is taken in proper perspective, it cannot be deemed to have nullified all the genuine transactions which have been entered into between the two parties; that was neither the purpose of law nor of the court. I, therefore, feel that the respondent No. 2 has not been truthful & correct in his affidavit by stating that there was some deficiency in the documents of the petitioner submitted for registration as there is no contemporaneous record maintained by them and it is only on the basis of an oral submission that this defence is taken. The respondent No. 1 also cannot

deprive the petitioner of being treated as a genuine purchaser of the flat in question merely on the basis that the judgment in Suraj Lamp & Industries Pvt. Ltd's case (supra) was delivered on 11.10.2011 and the documents were registered on 13.10.2011 since the documents i.e. GPA and the Agreement to Sell had been executed on 03.10.2011 and submitted for registration that day itself. Thus, in terms of Section 47 of the Registration Act, 1908, purchase of the flat in question made through GPA and the Agreement to Sell executed on 03.10.2011, though registered on 13.10.2011, has to be treated as a genuine & valid transaction. The decision of the respondent No. 1 communicated vide letter dated 19.07.2013 rejecting the prayer of the petitioner seeking conversion of the rights in the property in question from leasehold to freehold, is totally unreasonable, arbitrary and capricious and, therefore, deserves to be set aside. The respondents are under an obligation to process the request of the petitioner seeking to convert the rights in the property in question from leasehold to freehold in accordance with law after realizing the charges in terms of their policy. Accordingly, the writ petition is allowed with the direction to the respondents to process the case of the petitioner, ignoring the letter dated 19.07.2013 which stands quashed, and decide the request of the petitioner to convert the rights in the property in question from leasehold to freehold within a period of eight weeks from today. No order as to costs.