

SUPREME COURT OF INDIA

Suraj Lamp & Industries (P) Ld.Tr.Dir.

Vs.

State of Haryana

Jurisdiction S.L.P.(C) No.of 2009 CC 5804 of 2009

(R.V.Raveendran and J. M. Panchal JJ.)

15.05.2009

ORDER

1. Delay condoned. Issue notice. Petitioner to file copies of correspondence with State Information Commissioner as also its title deeds to the disputed property. As this case is a typical example of an irregular process spreading across the country, we propose to refer to some aspects of the case at this preliminary stage itself.

2. The petitioner, a company incorporated under the Companies Act, claims that one Ramnath and his family members sold two and half acres of land in Wazirabad village, Gurgoan to them by means of an agreement of sale, General Power of Attorney (for short 'GPA') and a will in the year 1991 for a consideration of Rs.716,695/-. It is further alleged that the petitioner verbally agreed to sell a part of the said property measuring one acre to one Dharamvir Yadav for Rs.60 lakhs in December 1996. It is stated that the said Dharamvir Yadav, and his son Mohit Yadav (an ex MLA and Minister), instead of proceeding with the transaction with the petitioner, directly got in touch with Ramanath and his family members and in 1997 got a GPA in favour of Dharamvir Yadav in regard to the entire two and half acres executed and registered and illegally cancelled the earlier GPA in favour of petitioner. The petitioner claims that when its Director, S.K. Chandak, confronted Dharamvir Yadav in the year 1999 this behalf, the said Yadav apologized and issued a cheque for Rs.10 lakhs towards part payment and agreed to pay the balance of Rs.50 lakhs shortly but that the said cheque was dishonoured necessitating a complaint under section 138 of the Negotiable Instrument Act, being filed against Dharamvir Yadav which is pending in a criminal court at Patiala House, New Delhi. It is further alleged that in the year 2001, petitioner lodged a criminal complaint against Ramanath and members of his family who executed the sale agreement/ GPA/will in favour of the petitioner and another complaint against Dharamvir Yadav and his son in the District Court, Gurgoan, for offences punishable under sections 406, 420, 467, 468, 471 and 120B of IPC. The petitioner claims that in December 2005 it lodged an FIR in respect of offences under Sec. 406,467,468,471 and 120B of IPC against all of them.

3. The petitioner claims that as no action was taken on its FIR by the Station House Officer/Investigation Officer ('SHO/IO' for short), petitioner filed an application under *Right to Information Act, 2004* ('RTI Act' for short) seeking the status, in response to which the SHO/IO gave contradictory and misleading versions about the status of the investigation and about the seizure and custody of the agreement and power of attorney from the accused. An appeal filed by the petitioner was disposed of by the Chief Information Commissioner, Haryana, by an order dated 27.12.2007 merely directing that Police should re-investigate the FIR as per the order of the court and the Department should give a specific proper reply about the status of the documents, to the appellant by 25.1.2008. According to the petitioner, the Commissioner ought to have initiated action against the police for giving false and misleading information under section 20 of the RTI Act.

“Petitioner therefore filed a writ petition challenging the order of the Chief Information Commissioner and seeking initiation of proceedings under section 20 of the RTI Act and imposition of penalty. The said writ petition was disposed of by the High Court by the impugned order holding that section 20 was directory and not mandatory.

This SLP seeks leave to file an appeal against the said order.”

4. We are of the view that matter involves an issue whose seriousness is underestimated. The issue to be addressed is avoidance of execution and registration of deeds of conveyance as the mode of transfer of freehold immovable property by increasing tendency to adopt 'Power of Attorney Sales', that is execution of sale agreement/ general power of attorney/will (for short 'SA-GPA-Will transactions') instead of execution and registration of regular deeds of conveyance, on receiving full consideration. This method adopted has the following variants:

“(i)Execution of an agreement of sale, one or two powers of attorney, with or without a will, all unregistered.

(ii)Execution of an agreement of sale, power/s of attorney and will, registering either all of them, or any two of them, or any one of them.”

5. The 'Power of Attorney Sales' as a method of 'transfer' was evolved by lawyers and document writers in Delhi, to overcome certain restrictions on transfer of flats by the Delhi Development Authority (for short 'DDA'). DDA had undertaken large scale development by constructing of flats. It is stated that when DDA allotted a flat to an allottee, any transfer of the assignment by the allottee required the permission of DDA and such permission was granted only on payment to DDA of the 'unearned increase', that is the difference between the market value/sale price and the original cost of allotment. To avoid the cumbersome procedure in obtaining permission and to avoid payment of the huge part of the price to the DDA as unearned increase, a hybrid system was evolved whereby the allottee/holder of the flat, on receiving the agreed consideration would deliver the possession of the flat to the purchaser and execute the following documents:

“(a)An Agreement of sale confirming the terms of the sale, delivery of possession and payment of full consideration and undertaking to execute any document when required in future.

(b)An Irrevocable General Power of Attorney in favour of the purchaser or his nominee authorizing him to manage, deal with and dispose of the property without reference to the vendor.

(c)A will bequeathing the property to the purchaser as safeguard against the consequences of death of the vendor before transfer.”

6. The 'Power of Attorney Sales', as noticed above was adopted to overcome the restrictions/prohibitions in terms of allotment and the rules of allotment of DDA governing the allotment of flats. Such transactions were obviously irregular and illegal being contrary to the rules and terms of allotment. Further, in the absence of a registered deed of conveyance, no right, title or interest in an immovable property could be transferred to the purchaser. However, the Delhi High Court in a few cases accepted such 'Power of Attorney Sales' as creating an 'interest' in the DDA flat which was so 'transferred' and consequently, protected such interest of the purchaser by issuing injunctions or decrees preventing the vendor from further dealing with the property. This led to a general impression the 'Power of Attorney Sales' were valid recognized modes of transfer and the very purpose DDA prohibiting transfers and requiring permission on payment of certain difference in price was defeated by this process.

“We are not presently concerned with the validity, propriety or wisdom of such judgments which virtually put the seal of approval of the court on transactions which were irregular and illegal. In fact, it is stated that DDA itself ultimately recognizes 'Power of Attorney Sales' by accepting applications from purchasers under 'Power of Attorney Sales' for conversion from leasehold to freehold and conveyance of the flats. We will therefore presently exclude the 'power of attorney sales' of DDA flats from the purview of the present exercise.”

7. What we are concerned is extension of the concept of such 'Power of Attorney Sales' by execution of SA/GPA/Will with reference to freehold properties.

8. The *Registration Act, 1908*, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration. Section 17 of the *Registration Act* clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs.100 and upwards to or in immovable property.

“Section 49 of the said Act provides that no document required by section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affected such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.”

9. Recourse to `SA/GPA/WILL' transactions is taken in regard to freehold properties, even when there is no bar or prohibition regarding transfer or conveyance of such property, by the following categories of persons:-

“(a)Vendors with imperfect title who cannot or do not want to execute registered deeds of conveyance.

(b)Purchasers who want to invest undisclosed wealth/income in immovable properties without any public record of the transactions. The process enables them to hold any number of properties without disclosing them as assets held.

(c)Purchasers who want to avoid the payment of stamp duty and registration charges either deliberately or on wrong advice. Persons who deal in real estate resort to these methods to avoid multiple stamp duties/registration fees so as to increase their profit margin.”

10. Whatever be the intention, the consequences are disturbing and far reaching, adversely affecting the economy, civil society and law and order. Firstly, it enables large scale evasion of income tax, wealth tax, stamp duty and registration fees thereby denying the benefit of such revenue to the government and the public.

“Secondly, such transactions enable persons with undisclosed wealth/income to invest their black money and also earn profit/income, thereby encouraging circulation of black money and corruption. This kind of transactions has disastrous collateral effects

also. For example, when the market value increases, many vendors (who effected power of attorney sales without registration) are tempted to resell the property taking advantage of the fact that there is no registered instrument or record in any public office thereby cheating the purchaser. When the purchaser under such 'power of attorney sales' comes to know about the vendors action, he invariably tries to take the help of musclemen to 'sort out' the issue and protect his rights. On the other hand, real estate mafia many a time purchase properties which are already subject to power of attorney sale and then threaten the previous 'Power of Attorney Sale' purchasers from asserting their rights.

Either way, such power of attorney sales indirectly lead to growth of real estate mafia and criminalization of real estate transactions.”

11. Some states have made some efforts to control such 'Power of Attorney Sales' by subjecting agreements of sale involving delivery of possession and irrevocable powers of attorney for consideration, to the same stamp duty as deeds of conveyance or by making such documents compulsorily registrable. But the steps taken are neither adequate nor properly implemented resulting in multiple transactions in regard to the same property by greedy and unscrupulous vendors and/or purchasers giving nightmares to bonafide purchasers intending to buy a property with certainty regarding title. It also makes it difficult for lawyers in tracing and certifying title. Any process which interferes with regular transfers under deeds of conveyance properly stamped, registered and recorded in the registers of the Registration Department, is to be discouraged and deprecated.

12. The present case is a typical example of the consequences of not obtaining a registered sale deed.

“There is apparently no reason as to why a company registered under the Companies Act should resort to such a transaction. Execution of a will by an individual bequeathing an immovable property to a company, is also incongruous and absurd. If there was a bar and the process was adopted to overcome such bar regarding sale of lands, then courts should not go to their assistance, as that would amount to perpetuating illegalities. If there was no bar, then the questions that arise are: why should a company hold a property in a state of suspended animation from 1991? How can a company 'verbally' agree to sell a property to someone? What is the reason for the delay in lodging the complaints? If petitioner had purchased the property under a registered sale deed, numerous disputes, litigations and criminal proceedings could have been avoided. The illegal and irregular process of 'Power of Attorney Sales' spawns several disputes relating to possession and title, and also results in criminal complaints and cross complaints and extra-legal enforcement and forced settlements by land mafia.”

13. We are therefore of the view that the situation warrants special measures. We are informed that sometime back in 2008, there was a proposal to amend section 147 of *Delhi Municipal Corporation Act, 1957* to check and discourage 'power of attorney sales'. There

was also a proposal to have special enactment relating to registration and recording of title in Delhi. But so far nothing appears to have fructified. It is the dream of every citizen to own a house or a plot of land. The citizens must be enabled by the government to do so with safety, security and without fear of litigation or defects in title.

14. We therefore request the Solicitor General to appear in the matter and give suggestions on behalf of Union of India. We also direct notice to the States of Punjab, Haryana, Delhi, Uttar Pradesh and Maharashtra (represented by their respective Chief Secretary/Revenue Secretary) to consider the following issues:

“(a)Whether ‘power of attorney sales’ (that is transactions involving execution of Sale Agreement/GPA/Will) instead of regular sales is prevalent in their respective states? (b)What are the views of the respective state government in respect of such transactions? (c)What steps have been taken and/or proposed to be taken by the respective states to deal with the chaotic situation and confusion arising from such transactions? List the matter in the last week of August, 2009.”