

# **SUPREME COURT OF INDIA**

Delhi Development Authority

Vs.

Gaurav Kukreja

C.A.No.3124 of 2015

(V.Gopala Gowda and R.Banumathi JJ.)

24.03.2015

## **JUDGMENT**

### **R. BANUMATHI, J.**

1. Leave granted.

2. This appeal arises out of the order dated 15.07.2010 passed by a Division Bench of the High Court of Delhi, dismissing the Letters Patent Appeal No.466 of 2010, holding that respondent is entitled to be taken as a Power of Attorney holder and is thereby entitled to get the suit property converted from leasehold to freehold.

3. Brief facts of the case which led to the filing of this appeal are as follows:- The property which is sought to be converted is comprised in Plot No.N-73, Panchsheel Cooperative House Building Society Ltd, New Delhi. DDA executed perpetual sub-lease deed dated 16.08.1967 in respect of the suit property in favour of one Sh. Jan Talwar (Defendant No.1 in the original suit). Jan Talwar by an agreement to sell dated 10.6.1986, agreed to sell the suit property to Mrs. Raymen Kukreja for a sale consideration of Rs.20,50,000/-. Jan Talwar, in respect of the same suit property, also executed a General Power of Attorney dated 10.06.1986 in favour of Lekh Raj Kukreja-husband of vendee i.e. Mrs. Raymen Kukreja. The cause of action arose in the year 1989, when Jan Talwar refused to execute the sale deed, even after receiving the complete sale consideration. This led to the filing of civil suit being CS (OS) No.2777/1989 for a decree of specific performance of the aforesaid agreement to sell. Though the agreement to sell was made in favour of Raymen Kukreja, the suit for specific performance was filed by the respondent-Gaurav Kukreja and Lekh Raj Kukreja (father of Gaurav Kukreja) against Jan

Talwar and Raymen Kukreja (mother of Gaurav Kukreja). The civil suit was filed on the premise that both, the GPA holder (father of Gaurav Kukreja) and vendee (mother of Gaurav Kukreja) had surrendered their rights in favour of Gaurav Kukreja and that they had no objection if the property is transferred in the name of respondent. Jan Talwar having remained ex parte, the suit was decreed by Single Judge in terms of a compromise arrived at between the parties therein. Learned Single Judge of the High Court while deciding the CS (OS) No.2777/1989 held the entire transaction to be valid and observed that respondent and his father and mother were ready and willing to complete the sale transaction dated 10.06.1986 but Jan Talwar failed to perform his part of obligation. In the civil suit, Jan Talwar though entered appearance subsequently remained exparte. Based on the compromise decree in the original suit, Gaurav Kukreja applied to DDA for the conversion of suit property from leasehold to freehold. However, the DDA refused the conversion on the ground that as per the scheme, Gaurav Kukreja did not possess a good title.

4. Aggrieved, respondent-Gaurav Kukreja filed W.P.(C) No.7608/2009 before the High Court of Delhi, seeking the conversion of suit property from leasehold to freehold, on the strength of a policy decision taken by DDA and based on the compromise decree in the civil suit. Respondent contended that DDA wrongfully denied him the benefit of Conversion Scheme even when respondent has complied with the conditions therein. Respondent is stated to have deposited an amount of Rs.18,55,347/- with DDA towards conversion charges.

5. Learned Single Judge of High Court of Delhi, after considering material on record allowed the writ petition by holding that the decree passed in the civil suit stands on a higher footing than any General Power of Attorney as per Clause 13(a) of the Conversion Policy. The possession of suit property by the respondent has been substantiated by the correspondence between the respondent and DDA which have been exchanged at the same address as that of suit property in respect of which conversion has been sought. Learned Single Judge observed that respondent is a son of an agreement holder and as well as holder of general Power of Attorney and therefore the respondent is not a stranger to the transaction and that the condition of Clause 13 of the Conversion Scheme stands satisfied in the facts of the case.

6. Against the decision of the learned Single Judge of High Court of Delhi, Letters Patent Appeal filed by the DDA also came to be dismissed. The Division Bench, while dismissing the Letters Patent Appeal, held that the respondent could certainly be taken to be a power of attorney holder and thus fully entitled to apply

for conversion. Being aggrieved by the dismissal of Letters Patent Appeal, respondent-DDA has preferred this appeal.

7. Contention of DDA is that the suit property is a leasehold property and any attempt to dispose of the same should have been proceeded only after an approval from DDA. It was submitted that the suit for specific performance filed by the respondent and his father-Lekh Raj Kukreja against Jan Talwar and Raymen Kukreja, was a collusive suit and was an attempt to escape the payment of stamp duty and registration charges, which would otherwise be payable on the part of the respondent on account of registration of a sale deed. Further contention of DDA is that the respondent does not satisfy the terms of Clause 13 of the Conversion Scheme as he is neither a power of attorney holder nor a holder of sale deed in respect of the suit property.

8. Per contra, learned counsel for respondent has submitted that even after obtaining a decree of specific performance and having paid the conversion charges alongwith surcharge of 331/3%, the conversion of the suit property is being wrongly denied to him. It is submitted that long back on 29.4.2004, an amount of Rs.18,55,347/- has already been deposited with DDA alongwith an application for conversion. It is contended that the respondent is having physical possession of the suit property and therefore all the pre-requisites of Clause 13 of Conversion Scheme stands satisfied and thus he is entitled to conversion of suit property from leasehold to freehold.

9. We have carefully considered the rival submissions and perused the impugned order and material on record.

10. In the suit for specific performance filed by respondent-Gaurav Kukreja and his father-Lekh Raj Kukreja, DDA was not made a party to the suit despite the fact that it was within their knowledge that the property is a leasehold property under the control of DDA and cannot be disposed of without obtaining a prior permission from the DDA. In terms of Section 15(a) of the Specific Performance Act 1963, the suit for specific performance can be filed by "any party" to the contract. In the instant case, suit for specific performance was filed by the respondent and his father who admittedly were not the parties to the agreement to sell. Jan Talwar (vendor), during the pendency of suit, remained exparte and the suit was decreed in terms of a compromise arrived between the parties, all of whom were family members. In our considered view, suit for specific performance is a collusive suit, where the respondent and his father used the process of the court to get rid of the stamp duty, registration charges and unearned increase payable to DDA.

11. Be that as it may, as per the decree for specific performance, sale deed to be executed by the defendant namely Jan Talwar (holder of leasehold right) and Mrs. Raymen Kukreja (holder of agreement to sell) within the period of 30 days from the date of the decree and further directed to pay requisite stamp duty and registration charges. The relevant direction in the decree is extracted below: "There will be a decree for specific performance of the agreement dated 10th June, 1986 in favour of Plaintiff No.2 and against Defendant No.1 in respect of property No.N-73, Panchsheel Park, New Delhi. Defendant No.1 shall arrange to have sale deed executed within a period of 30 days from today. In case he fails to do so the Registrar of this Court shall nominate or appoint some official of this Court to execute the sale deed for and on behalf of Defendant No.1 and in favour of Plaintiff No.2 on payment of requisite stamp duty and registration charges. The official nominated by the Registrar will be paid a fee of Rs.10,000/-." (Annx.-P 3)

12. Instead of complying with the above order of the High Court and getting the sale deed executed, after making payment of registration charges and stamp duty, the respondent applied for conversion of the property through Lekh Raj Kukreja (father of the respondent and power of attorney holder) and the same was rejected. The conversion cannot be sought for by a person who is not the owner of the property but is only residing in the premises. On behalf of the appellant, it was submitted that the DDA had even granted N.O.C. way back in the year 2006 (Annx. P8) without receiving un-earned increase charges as per the terms of the lease- deed which is always charged by DDA when the property exchanges hands. According to DDA, it was granted only because a local commissioner was appointed by the High Court. It is further stated that the respondent deliberately did not get the sale deed executed till today and the respondent is trying to evade the stamp duty and registration charges thereby causing a loss to the state exchequer.

13. A scheme of conversion from leasehold system of land tenure into freehold was brought into force and noticed by the Government. The relevant clause of the Scheme of Conversion i.e. Clause 13 reads as under:-

"13. The conversion shall also be allowed in the cases where lessee/sub-lessee/allottee has parted with the possession of the property provided that:

a) Application for conversion is made by a person holding power of attorney from lessee/sub-lessee/allottee to alienate (sell/transfer) the property.

b) Proof is given of the possession of the property in favour of the person in whose name conversion is being sought.

c) Where there are successive power of attorneys, conversion will be allowed after verifying the factum of possession provided that the linkage of original lessee/sub-lessee/allottee with the last power of attorney is established and attested copies of power of attorneys are submitted.

In such cases, a surcharge of 33 1/3% on the conversion fee would be payable over and above the normal conversion charges (no unearned increase will be recoverable)."

In terms of Clause 13 of the Scheme, it is thus mandatory for a person to file a conversion application to have a power of attorney from the lessee/sub-lessee/allottee. Further in case of successive power of attorney, Clause 13 requires for the proof of possession alongwith the linkages of original lessee/sub-lessee/allottee with the last power of attorney is established and attested copies of power of attorney be submitted. In the light of Clause 13 of the Conversion Scheme, DDA rejected the conversion application on the ground that the respondent is not a power of attorney holder in respect of the suit property. The property cannot be converted from leasehold to freehold directly in the name of the respondent as he is neither a general power of attorney holder nor a holder of agreement to sell. The High Court appears to have issued direction for conversion mainly on the ground that the respondent has got decree for specific performance for sale. The High Court failed to appreciate that the decree for specific performance was based on the alleged compromise arrived at between the family members.

14. In *Suraj Lamp & Industries (P) Ltd. vs. State of Haryana & Anr.*, (2009) 7 SCC 363, this Court referred to the ill-effects of what is known as General Power of Attorney Sales (for short 'GPA Sales') or Sale Agreement/General Power of Attorney/Will transfers (for short 'SA/GPA/WILL' transfers), and it was held as under:

"19. 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.

20. Whatever be the intention, the consequences of SA/GPA/WILL transactions 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.

21. These kinds of transactions have 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 vendor's 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" [pic]purchasers from asserting their rights. Either way, such power of attorney sales indirectly lead to growth of real estate mafia and criminalisation of real estate transactions."

15. Further a three Judge Bench of this Court in *Suraj Lamp & Industries Pvt. Ltd.(2) vs. State of Haryana & Anr.*, (2012) 1 SCC 656, considered the validity of such SA/GPA/WILL transaction and observed thus:

"23. Therefore, an SA/GPA/WILL transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in *Asha M. Jain v. Canara Bank*, (2001) 94 DLT 841, that the "concept of power-of-attorney sales has been recognised as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are

unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/WILL transfers" do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales."

16. According to respondent, on 29.4.2004 his father Lekh Raj Kukreja, who was the then Power of Attorney holder has submitted an application for conversion of the said property from leasehold to freehold and deposited the conversion charges of Rs.18,55,347/- and also deposited further sum of Rs.27,222/- towards enhanced ground rent as demanded by the DDA. It was submitted that alongwith the application all necessary documents i.e. an Agreement to Sell, General Power of Attorney and copy of the judgment in CS (OS) No. 2777/1989 dated 30.03.2001 were submitted to the DDA. Even though the said application was filed way back in 2004, it is not known as to why the respondent and his father Lekh Raj Kukreja did not follow up the matter within a reasonable time and they have approached the High Court only in the year 2009.

17. Main contention of the respondent is that he is a decree holder for specific performance and even going by the ratio of Suraj Lamp & Industries (P) Ltd.'s case, the respondent is at a higher footing than a holder of Power of Attorney and therefore the respondent is entitled to have conversion of the land. As pointed out earlier, the suit for specific performance, in our view, is a collusive one and therefore cannot confer any right upon the respondent to claim conversion.

18. In *Director of Settlements, Andhra Pradesh and Ors. vs. M.R. Apparao and Anr.*, (2002) 4 SCC 638, while considering the scope of the power of High Court to issue a writ of mandamus under Article 226 of the Constitution, this Court has held as under:

"17. ....It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-[pic]fundamental or ordinary legal rights, which may come within the expression "for any other purpose". The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression "for any other purpose" in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed..."

On the date of filing of the writ petition, the respondent was neither a holder of a power of attorney nor had any subsisting right in the suit property and while so, the High Court was not right in holding that the respondent is entitled to apply for conversion of the property. Dehors the scheme of conversion, the respondent is not entitled to apply for conversion of the property. In our considered view, the respondent does not fall within the ambit of Clause 13 of the Conversion Scheme and therefore the impugned order of the High Court cannot be sustained and is liable to be set aside and the appeal deserves to be allowed.

19. In the result, the impugned order is set aside and the appeal is allowed. The respondent is at liberty to pursue the matter with DDA in accordance with law. Respondent is also at liberty to seek for return of money deposited by him/his father-Lekhraj Kukreja and when such application is made for return of money, the appellant/DDA is directed to return the same with 10% interest. No order as to costs.