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Manmohan Singh and anr. Vs. the Director of Estates,

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jul-13-1998

Judge : L Swaminathan, M A K.

Appellant : Manmohan Singh and anr.

Respondent : The Director of Estates,

Advocate for Def. : Shri. S.M. Arif

Advocate for Pet/Ap. : Shri. B. Krishan

Judgement :

1. The applicants are aggrieved by the letter issued by the respondents dated 14.3,1997 rejecting their request for regularisation of allotment of Government Quarter No. C-101, Hanuman Road, New Delhi, in the name of Applicant 1 on retirement of Applicant 2 from Government service.

They have also challenged the eviction order dated 17.7.1997 passed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the PP Act) and the office memo dated 25.3.1996.

2. The brief facts of the case are that Applicant while in service was allotted Government Quarter No. C-101, Hanuman Road, New Delhi. He retired on 31.1.1997. The first applicant who is the son of Applicant 2 is also employed in the Central Government. According to him, he has been sharing the accommodation with his father and he has not been drawing any House Rent Allowance since his

appointment on 1.10.1994.

They have submitted that they are not owning any house. Shri B.Krishan, learned counsel, has submitted that after this O.A. has been filed, this quarter has been declared as Type 'B' accommodation to which Applicant 1 is entitled. Applicant 1 had applied for allotment of this quarter in his name which has been rejected by the impugned order dated 14.3.1997, on the ground that his father owns a house as per their records. The applicants contend that they were neither house owners on the date of retirement of second applicant nor they are house owners now as per their affidavits dated 10.2.1997. They have submitted that a plot of land bearing No. 900, Dr. Mukherjee Nagar was allotted in the joint name of second applicant and his brother on which they had tried to raise a construction but could not succeed. Finally, they have submitted that this property has been sold to one Shri R.K. Mehta by accepting the entire amount of consideration and by executing an irrevocable General Power of Attorney (GPA) dated 11.9.1995 i.e. much prior to the retirement of Applicant 2. Shri B. Krishan, learned counsel, therefore, contends that after the execution of the GPA by Applicant 2, the respondents cannot hold that Applicant 1 or his family is the owner of the property and hence he fulfills all the conditions necessary for ad hoc allotment and regularisation of the said quarter in his name. The learned counsel has also submitted that Shri R.K.Mehta has since paid the conversion fee to the concerned authority for conversion of the property from lease hold into free hold. He submits that this is in accordance with Para 14 of the DDA Scheme and the Brochure issued by the Government of India, Ministry of Urban Development of such conversions. According to the learned counsel as per the Scheme since such conversion has been recognised by the Government, there is no deviation from the provisions of law i. e. The Transfer of Property Act, 1882, The Registration Act, 1908, Income Tax Act, 1961 and the Indian Stamp Act, 1899. The learned counsel has submitted that under Section 4(2)(a) of the PP Act, the Estate Officer should have given a specific finding that the applicants are in unauthorised occupation of the public premises before passing the eviction order which has not been done in this case. He relies on Ashoka Marketing Ltd. v. Punjab National Bank, AIR 1991 SC 855, Bharat Cooking Coal Ltd. v. Estate Officer and Ors., AIR 1991 NOC 3 (Patna) and Minoo Framroze Balsara v. Union of India, AIR 1992 Bombay 375. He submits that

the impugned order of eviction dated 17.7.1997 does not show that the Estate Officer has any reasons for passing the order of vacation/eviction under Section 5 of the PP Act. The applicant has also challenged the vires of the order issued by the respondents dated 25.3.1996 wherein it has been provided that House owners who transfer their property on General Power of Attorney will continue to be treated as house owners for the purpose of regularisation of accommodation in the name of wards of retiring/deceased Government employee, till the title of the ownership is formally transferred in the name of the buyer of such property. The respondents have submitted that the regularisation of the quarter in the name of the wards cannot be done in the facts and circumstances of the case having regard to the order passed by the respondents dated 25.3.1996. The learned counsel for the applicant has also submitted by now Shri R.K. Mehta, would have probably got Conveyance Deed/Sale Deed in pursuance of the Agreement to Sell of the property in his name but he has been unable to get the copies of these documents to prove that Applicant 2 no longer owns any house in Delhi. He submits that in any case because of the Power of Attorney executed by Applicant 2 in favour of Shri R.K. Mehta, the applicants are no more owners of the house. The learned counsel for the applicants had undertaken to file the copies of the documents he had relied upon at the time of hearing but he has failed to do so.

3. The respondents in their reply have submitted that the allotment of the quarter in the name of Applicant 2 has been cancelled w.e.f.

1.6.1997 as per the rules. They have stated that although the applicant has stated that he has sold his own house, he has not submitted the copy of the Sale Deed. His request for regularisation of the quarter in the name of Applicant 1, on the ground that he was not house owner was rejected. The Estate Officer has passed cancellation order on 14.3,1997 followed by the eviction order on 17.7.1997 which they claim are in accordance with the rules.,They have also submitted that the father owns House No. 900, Dr. Mukherjee Nagar, N. Delhi and they have denied that they have sold this by way of Power of Attorney dated 27.3.1997 i.e. after retirement on 31.1.1997. They have submitted that the house owners who transfer their property under General Power of Attorney continue to be the house owners for the purpose of regularisation of Government accommodation in the name of

wards of retiring or deceased Government servants till the title is formally transferred in the name of the buyer of, such property in accordance with the order dated 25.3.1996.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. Both the parties rely on the Government of India, Ministry of Works and Housing O.M. dated 1.5.1981 which provides for ad hoc allotment of General Pool Accommodation to the wards of retired Government servants subject to the conditions mentioned therein. One of the conditions provided in the O.M. is that the above concession will not be available in cases where the retiring officer or the member of his family owns a house in the place of his/her posting. Shri B. Krishan, learned counsel, has submitted very lengthy arguments to show that the General Power of Attorney executed by the applicant has the effect of divesting ownership of the House at 900, Dr. Mukherjee Nagar, Delhi. He has also very vehemently relied on the affidavits given by the applicants sworn before the Magistrate on 10.2.1997 that they did not own or possess any house at the place of posting. On perusal of the Power of Attorney, we are, however, unable to agree with the contentions of the learned counsel for the applicant that this has the effect of transferring ownership of the property to the holder of the Power of Attorney.

Reference to the Brochure of the Government and the Policy of the Delhi Development Authority from which the learned counsel had read out, although copies of these were not submitted as undertaken, cannot in any way abridge or deviate from the law laid down under the Transfer of Property Act, 1882, the Indian Stamp Act, 1899 and the Indian Registration Act, 1908. The fact that Shri R.K. Mehta to whom the applicant had given the Power of Attorney had paid certain amounts for conversion of the lease hold to freehold, does not show that he has become the owner of the property. In any case at the time when applicant 2 retired from Government service on 31.1.1997, the applicants have failed to produce any Sale Deed or other Instrument showing that the House No. 900, Mukherjee Nagar has been sold to Shri Mehta or any other person. Shri B. Krishan, learned Counsel, had to a querry raised by us at the time of hearing submitted that in any

case Shri R.K. Mehta, the hoider of the Power of Attorney, could not sell the concerned property to himself. He had, however, submitted that perhaps by now, the Sale Deed had been executed by Applicant No. 2 and Shri Mehta, although none was produced even after one and a half years of the retirement of Applicant No. 2. The Tribunal by interim order dated 29.8.1997 had granted a status quo order which has been continued till now.

6. The contention of the learned counsel for the applicant that the clarification letter dated 25.3.1996 is contrary to the Policy of the Government contained in the Brochure he has relied upon is baseless and untenable. The relevant policy of impugned clarification issued by the respondents dated 25.3.1996 reads as follows : "The matter relating to regularisation of Govt. accommodation in the name of wards/dependents of a retired/deceased Govt. servants who is/was a house owner but the house had been sold on General Power of Attorney has been under consideration. The benefit of regularisation was being claimed on the ground that the property has been sold on power of Attorney and as such the retired/deceased Government servant or a member of his family was not a house owner. It has now been decided that power of Attorney is only an authority by the owner of the house to a particular person to exercise the authority on behalf of the owner and the title of such property, as such, is not transferred and remains in the name of the owner till the property is converted as a free-hold property. The house owners who transfer their property on general power of Attorney will continue to be treated as house owners for the purpose of regularisation of accommodation in the name of wards of retiring/ deceased Govt.

allottee, till the title of the ownership is formally transferred in the name of buyer of such property," 7. Para 4 of the O.M. dated 1.5.1981 provides that the concession of ad hoc allotment of General Pool Accommodation admissible to eligible dependents of Government employees on their retirement is not available in cases where the retiring officer or the member of his family owns a house. The impugned order makes it clear that this is a concession given to the eligible dependents of the retiring Government servant for regularisation of the accommodation in their name and accordingly the person claiming such a concession has to prove that the retiring officer or the member of his family does not own a house at the place

of his posting. Another document relied upon by the applicant is the Government of India, Directorate of Estates O.M, dated 9.11.1987 where it has been stated that a decision has been taken that the date of regularisation should be from the date of cancellation in case the eligible dependent is already in Government service and is entitled for regularisation and not from the date of issue of the orders which was the earlier practice. The O.M. of 1987 will apply in case the applicant succeeds in this O.A. and not otherwise.

8. As regards the impugned clarification letter dated 25.3.1996, we find that the same is in accordance with the general law on the subject of sale of immovable property and consistent with the provisions of the Transfer of Property Act, 1882, the Registration Act, 1908 and the Indian Stamp Act, 1899. The contention of Shri B. Krishan, learned counsel for the applicants, that this contravenes the Ministry of Urban Development Brochure for conversion of lease hold property to freehold cannot be accepted. If such a contention accepted, it would mean that his contention that the ownership of the property No 900. Dr. Mukherji Nagar, Delhi has been transferred to Shri R.K. Mehta, the holder of the General Power of Attorney who is not the buyer will be legalised without a Sale Deed and in contravention of the statutory provisions relating to transfer and sale of immoveable property, including the Registration Act and the Stamp Act, which is, therefore, illegal. In the circumstances, the declarations in the affidavits of 10.2.1997 being contrary to law are untenable.

9. In view of the above discussion, it cannot be held that the title of the ownership of the house in question, is formally transferred by way of the Power of Attorney, even if it is irrevocable, in the name of the buyer of such property unless there is a Sale Deed executed in accordance with law. In the circumstances, the impugned clarification letter dated 25.3.1996 explaining the position to the concerned officers of the Directorate of Estates who are dealing with the house owners who attempt to transfer their property by way of General Power of Attorney as in the presentcase, is neither improper or illegal. The learned counsel for the applicants has also submitted that he has not been able to get a copy of the Sale Deed, which if at all entered into between the buyer and Applicant 2, would be well after the date of his retirement and would not assist the applicants in this case. His

further contention that because of some contemplated legislation which will perhaps legalise transfer of property in Delhi by way of General Power of Attorney which is a common practice, cannot be appreciated as it is not legal at present.

10. In this view of the matter, it cannot be held that Applicant 1 is entitled for the concession of ad hoc allotment of the Government Quarter Flat No. 101, Hanuman Road, which was allotted to his father during his service with the Government as he does not fulfil the conditions laid down in Para 4 of the O.M. dated 1.5.1981. We, therefore, find no illegality in the impugned order dated 14.3.1997 as the same has been passed in accordance with the relevant rules and instructions.

11. The learned counsel for the applicant had also submitted that the impugned order dated 17.7.1997 has not been passed by the authorised Estate Officer. His contention is that Shri P.M. Mishra has not been appointed as Estate Officer u/s 3(a) of the P.P. Act, 1971. The respondents have relied upon the Gazette notifications dated 13.11.1968 and 17.10.1989 and have stated in their reply that the Estate Officer has been validly appointed. Shri S.M. Arif, learned Counsel for the respondents, had also undertaken to file the relevant Notification under the P.P. Act of 1971 appointing Shri Mishra as Estate Officer which has not been done. However, it is seen from the Notification dated 17.10.1989 that Shri P.M. Mishra, Superintendent (Legal) in the Ministry of Law and Justice has been appointed as Assistant Director of Estates (Litigation) and as per theearlier Notification dated 13.11.1968 as Assistant Director of Estates (Litigation) has been authorised to deal with Public Premises on behalf of the Central Government within the Union Territory of Delhi. In the impugned order, Shri P.M. Mishra has signed and affixed the Seal of the Estate Officer in the Directorate of Estates and in the facts and circumstances of the case and having regard to the provisions of Sections 18 and 20 of the General Clauses Act, 1897. There is no reason to doubt that the eviction order dated 17.7.1997 has been passed by the Estate Officer in the Director of Estates. It is also relevant to note that it is not the contention of the learned counsel for the applicants that the impugned order dated 17.7.1997 has not been passed by Shri P.M. Mishra who has been notified as Assistant Director of Estates (Litigation). The observations of the Delhi High Court in M.L. Joshi v. Director of Estates, Government of India, New Delhi and Anr., AIR 1967 Delhi 86,

are applicable to the facts of this case, where the Deputy Director of Estates (Litigation) has been held to be 'the Estate Officer' within the provisions of Section 3 of the PP Act, 1958. Therefore, in the circumstances of the case, the objection raised by the learned counsel for the applicants on this account appears to be baseless and is also rejected.

12. In the impugned order, reasons have also been indicated for exercise of the powers by the Estate Officer under Section 5(1) of the P.P. Act. It has been indicated that the public premises, namely, the Government quarter in question stands cancelled w.e.f. 1.6.1997 and the officer is, therefore, satisfied that the applicant is an unauthorised occupant of Quarter No. 101, Hanuman Road, New Delhi. Therefore, the provisions of Sections 4 and 5 of the P.P. Act are also satisfied. The contentions of the learned counsel for the applicants that the impugned cancellation and evication orders are in contravention of the provisions of the PP Act are unconvicing and the cases relied upon by him also as do not in any way assist them in the present case.

13. Having regard to what has been discussed above, we find no infirmity or illegality in the rejection of the request of the applicants to regularise the Government quarter in the name of Applicant 1 as the condition that he or any member of his family does not own a house has not been fulfilled. The impugned eviction order also being valid, we find no good ground justifying any interfeitnce in the matter. We have so considered the other submissions made by the learned counsel for the applicant but find no merit in the same.

14. In the result as we find no merit in this application, the same is accordingly dismissed. Interim order stands vacated.

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