

Lily Thomas Vs. Dda and Others

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Court : Delhi

Decided On : Mar-15-2012

Judge : The Honourable Ms. Justice Hima Kohli

Appeal No. : W.P.(C) 7032 of 2011

Appellant : Lily Thomas

Respondent : Dda and Others

Judgement :

W.P.(C) 7032 of 2011

HIMA KOHLI, J (Oral)

1. This petition is filed by the petitioner, who is a practicing advocate by profession and appears in person, praying *inter alia* for quashing of the conversion/conveyance deed dated 23.07.1993 and for restoration of the sublease deed of Plot No. C-50, Niti Bagh, New Delhi in her favour. In the alternate, the petitioner has sought cancellation of the conversion made by respondent/DDA in favour of respondent No.4.

2. When the present petition was listed for admission on 23.09.2011, the following order had been passed:-

“1. The petition impugns the Conveyance Deed dated 23.07.1993 of freehold rights in land underneath property No.C-50, Neeti Bagh, New Delhi executed by the respondent No.1 DDA in favour of the respondent No.4 Ms. Chinky Davis. 2. It is not in dispute that the petitioner is the sub-lessee of the said plot of land. The petitioner claims to have entered into certain Agreement, Power of Attorney and Will etc. with the respondent No.3 Mr. Davis John and on the basis of which the said respondent No.3 Mr. Davis John is stated to have fraudulently and contrary to the Agreement got the Conveyance Deed aforesaid in favour of his wife respondent No.4 Ms. Chinky Davis aforesaid. 3. Though it appears that disputed questions of fact arise and the dispute is between the petitioner and the respondents No.3 and 4 but it is found that the respondent No.1 DDA had issued a notice to show cause to the said respondent No.4 Ms. Chinky Davis, as to why the Conveyance Deed should not be cancelled. It further appears that no decision in pursuance to the said show cause notice has been taken till now. The counsel for the respondent No.1 DDA appearing on advance notice states that probably no decision has been taken till now in pursuance to the show cause. 4. Since notice to show cause has already been issued to the respondent No.4 Ms. Chinky Davis, need is not felt to hear the respondent No.4 Ms. Chinky Davis before directing the respondent No.1 DDA to take a decision in pursuance to the show cause notice issued, but after hearing both petitioner as well as the respondents No.3 and 4. The needful be done before the next date of hearing and the decision be communicated and placed before this Court. List on 15th December, 2011.”

3. On 15.12.2011, counsel for respondent No.1/DDA had stated that though the petitioner and respondents No.3 and 4 were called upon to appear before Director (R.L.), DDA on 22.11.2011, none had appeared on the said date. She stated that when the matter was placed before the Vice Chairman, DDA for taking a decision, it transpired that the petitioner had appeared before the Vice Chairman, DDA instead of appearing before the aforesaid officer. She further stated that the Director (R.L.), DDA had been directed to issue a fresh notice to show cause to the petitioner and the respondents No.3 and 4 to appear on 05.12.2011, on which date, the parties had duly appeared.

4. On his part, counsel for respondent No.4 had stated on 15.12.2011 that respondent No.3 had expired and, therefore, his name was sought to be deleted from the array of respondents. At that stage, the petitioner had submitted that a copy of the decision taken by respondent No.1/DDA had not been received by her. Resultantly, respondent No.1/DDA was directed to communicate its decision to the petitioner and respondent No.3 with a copy placed on record before the next date of hearing.

5. In the meantime, respondent No.4 filed a review application registered as Review Application No.786/2011 wherein review of order dated 23.09.2011 was prayed for on the ground that the petitioner had sought to subvert the process of law and had tried to mislead the Court while filing the present petition. The conduct of the petitioner was highlighted in detail in para-4 of the application wherein, it was stated that in the year 1986, the petitioner had sold the subject premises to respondent No.4 by executing a set of documents including agreement to sell, registered GPA, affidavit, registered Will etc. Thereafter, she had first filed a civil suit bearing No.265/1995 against respondents No.3 and 4 before the Civil Judge, Delhi for declaration seeking to cancel the aforesaid set of documents by virtue of which she had sold the subject premises to respondents No.3 and 4. During the pendency of the said suit proceedings, the petitioner had approached the Supreme Court by filing an SLP No.25150/1996 seeking identical relief as sought in the suit proceedings. On 09.12.1997, the petitioner withdrew the aforesaid SLP unconditionally. On 04.01.2002, the civil suit instituted by the petitioner was dismissed by the Civil Judge with costs.

6. During the pendency of the aforesaid suit, the petitioner had also filed a writ petition in this Court registered as W.P.(C) No.1247/1997 seeking the same relief as sought in the civil suit. The said writ petition was dismissed on 15.11.1999 on the ground that the petition raised disputed questions of fact. The subsequent application filed by the petitioner for seeking restoration of the petition was also dismissed. Thereafter, the petitioner had filed a second civil suit before the District Judge, Delhi registered as Suit No.10/2002 substantially praying for the same reliefs as claimed in W.P.(C) No.1247/1997. Vide judgment dated 20.11.2004, the said suit was also dismissed. During the pendency of the aforesaid suit

proceedings, the petitioner had filed a second writ petition registered as W.P.(C) No.5826/2004 praying *inter alia* for quashing of the Conveyance Deed executed in favour of respondent No.4. The said writ petition was dismissed with costs vide order dated 16.09.2004. The petitioner preferred an appeal against the aforesaid order dated 16.09.2004, registered as LPA No.323/2005. The said appeal was also dismissed by the Division bench vide order dated 04.02.2005.

7. In the meantime, the petitioner challenged the judgment dated 20.11.2004 passed by the learned ADJ in Suit No.10/2002 by preferring a C.M.(Main) No.531/2005. The said petition was dismissed on 25.05.2005.

8. Unfazed by all the adverse orders passed against her, a third writ petition was filed by the petitioner in the year 2005 registered as W.P.(C) No.1874/2005 wherein she had again sought cancellation of the Conveyance Deed dated 23.07.1993 executed in favour of respondent No.4. The aforesaid writ petition came to be dismissed vide order dated 26.09.2005. Counsel for respondent No.4 states that without revealing any of the aforesaid litigations filed by her, the petitioner has filed the present writ petition seeking identical relief as sought in the earlier writ petitions and civil suits. The detail of the reliefs sought by the petitioner in each one of the earlier proceedings have been set out in para-5 of the review application. It was averred by respondent No.4 that the aforesaid conduct of the petitioner in concealing and suppressing material facts and documents is inexcusable particularly in view of the fact that she is herself a practicing advocate.

10. In view of the aforesaid facts, respondent No.4 had sought recall of order dated 23.09.2011 as it was stated that the petitioner had deliberately concealed the true and correct facts which had resulted in notice being issued in the present writ petition on 23.09.2011.

11. Notice was issued on the aforesaid review application to the non-applicants vide order dated 23.09.2011. Despite service being effected on the petitioner, neither did she appear nor did a counsel appear on her behalf on the next date of hearing, i.e., on 27.01.2012. On the aforesaid date, after taking into consideration the submissions made by respondent No.4 in the review application and having regard to the apprehension expressed by counsel for respondent No.4 that an

order dated 25.01.2012 had been passed by respondent No.1/DDA which may result in another round of litigation, it was held that respondent No.4 had made out a case for review and the review application was duly allowed. It was also observed on 27.01.2012 that a perusal of the writ petition and the annexures enclosed therewith undoubtedly revealed that the petitioner had not disclosed the earlier proceedings and instead had made a categorical averment that no other proceedings had been filed by her.

12. When confronted by the aforesaid observations today, the petitioner first sought to seek an adjournment on the ground that she had engaged a counsel only last evening and he is not present today. It is pointed out to her that till date, she had been appearing in person throughout the proceedings and, if she was inclined to engage a counsel in the present case, it was for her to have done so well in time and not on the eve of the date of hearing. As a result, her request for an adjournment was declined. Thereafter, the petitioner submits that she was not required to refer to or reveal any of the previous proceedings between her and respondent No.4 as the relief sought by her in the present petition is entirely different.

13. The aforesaid submission is completely devoid of merits. Merely because the petitioner has reworded the prayer clause in the present writ petition cannot mean that the petitioner is seeking a different relief from that she had sought in the earlier rounds of litigation, particularly when, a perusal of para-5 of the review petition filed by respondent No.4 reveals that the petitioner had sought similar reliefs even earlier but with slight difference in the wording here and there as also in the suits instituted by her against respondents No.3 and 4. The present case is clearly a case of misrepresentation, a gross abuse of the process of Court and a deliberate attempt on the part of the petitioner to withhold material information from the Court which in itself disqualifies the petitioner from seeking any relief by invoking the extraordinary powers of this Court under Article 226 of the Constitution of India.

14. Though an order dated 25.01.2012 has been passed by the respondent/DDA rejecting the case of the petitioner, that in itself can also not give her a fresh cause

of action to assail the same when the aforesaid issue had already been adjudicated upon not only in the two suits instituted by the petitioner but also in the three writ petitions preferred by her wherein she had suffered adverse orders. Therefore, any attempt on the part of the petitioner to initiate any litigation based on the order dated 25.01.2012 passed by the respondent/DDA would be a mockery of justice.

15. Undoubtedly, notice to show cause would not have been issued in the present petition, had all the previous history of litigation between the petitioner and respondents No.3 and 4 been revealed to the Court at the time when the writ petition was filed by the petitioner. Failure on her part to place on record all the material facts can only be treated as deliberate concealment on the part of the petitioner and an attempt to subvert the process of law. It was incumbent on the part of the petitioner to have approached the Court with clean hands and fairly place on record all the previous history of litigation between her and the respondents and the decisions taken by the Courts from time to time, and then leave it for the Court to decide if the present petition could have been entertained at all.

16. In view of the aforesaid facts and circumstances, the Court declines to entertain the present petition which is dismissed with exemplary costs of `50,000/- imposed on the petitioner. The costs imposed shall be paid in equal shares to respondent No.1 and respondent No.4 within four weeks from today, with proof of deposit placed on record within the same time. If the petitioner fails to file the proof of payment of costs within time granted, Registry shall place the matter in Court.

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