

Jagjit Singh and anr Vs. Delhi Development Authority

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Court : Delhi

Decided On : Nov-26-2012

Judge : Sunil Gaur

Appellant : Jagjit Singh and anr

Respondent : Delhi Development Authority

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: November 22, 2012 Pronounced on: November 26, 2012 + W.P.(C) 1531/2012 JAGJIT SINGH AND ANR. Through: Petitioners Mr.Sanjeev Sachdeva, Senior Advocate with Mr.Preet Pal Singh, Ms.Priyam Mehta, Mr.Abhimanyu Chopra, Advocates versus DELHI DEVELOPMENT AUTHORITY Respondent Through: Ms.Manika Tripathy Pandey and Mr.Ashutosh Kaushik, Advocates CORAM: HON'BLE MR. JUSTICE SUNIL GAUR JUDGMENT 1 Vide Communication of 5th January, 2012 (Annexure P-24) respondent has deferred the conversion of Plot No.26, Pocket 5A, Sector 25, Rohini, Delhi (henceforth referred to as subject premises) from leasehold to freehold while requiring petitioner to first obtain permission of sale from competent court in respect of sale of subject premises by or on behalf of mentally ill person.

2. Challenge to aforesaid impugned Communication (Annexure P-

24) is on the basis of medical certificate of 13 th August, 1999 (Annexure P-1) declaring that one of the sellers of subject premises i.e. Mukesh son of Late Narain Singh is suffering from severe degree of mental retardation i.e. 75%, which

excludes applicability of The Mental Health Act, 1987 as the definition of 'mentally ill person', specifically takes out of its purview 'mental retardation'.

3. Learned senior counsel for petitioners invites the attention of this Court to the definition of 'mental retardation' as provided in The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (hereinafter referred to as The Multiple Disabilities Act, 1999) which is as under:Section 2(g) - "Mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterized by sub-normality of intelligence;"

4. Mental illness, as defined in Section 2(l) of The Mental Health Act, 1987 reads as under:- 5. "Mentally ill person" means a person who is in need of treatment by reason of any mental disorder other than mental retardation; The precise submission of learned senior counsel for petitioners is that a bare reading of the afore-reproduced definition of mental illness and mental retardation makes it clear that these are two different ailments of same species but are governed by two different enactments. That is to say, that cases of mental illness are covered by The Mental Health Act, 1987 and matters of persons suffering from mental retardation are exclusively governed by The Multiple Disabilities Act, 1999. Impugned order (Annexure P-20) which requires petitioner to approach the District Court concerned to obtain permission for sale of subject premises under The Mental Health Act, 1987 is thus assailed in this writ petition.

6. It is the case of petitioner that the requisite permission under The Multiple Disabilities Act, 1999 giving no objection to sell the share of 'mentally retarded person' i.e. Mukesh through his legal guardian of subject premises has been already obtained as per Certificate of 20th October, 2007 (Annexure P-10) by the Local Level Committee, i.e. the competent authority under The Multiple Disabilities Act, 1999.

7. Respondent in its counter affidavit maintains as under:"Thereafter, on the death of Smt.Dhanno Devi, the mutation of her unspecified share was allowed vide letter dated 23.3.2007 in favour of Shri Sri Bhagwan and Shri Mukesh (under the guardianship of Shri Sri Bhagwan) being the sons of deceased. The possession of

the plot was handed over to Shri Sri Bhagwan on 8.6.2007 and the lease deed was executed on 23.7.2007 in favour of Shri Sri Bhagwan and Smt. Ishwanti and Shri Mukesh (under the legal guardianship of Shri Sri Bhagwan)."

8. The reason disclosed in the counter affidavit by respondent for not accepting petitioners' application for conversion of subject premises from leasehold to freehold is that there is no provision in The Multiple Disabilities Act, 1999 which authorizes Local Level Committee or Board for recommending/tendering no objection for sale of the property of mentally retarded person.

9. In support of the afore-noted stand taken in the counter affidavit by respondent, learned counsel for respondent asserts that as per Section 59 of The Mental Health Act, 1987 petitioners have to approach the concerned District Court for obtaining permission for sale of subject premises and submit it to respondent who shall thereafter process petitioners' application for conversion of subject premises from leasehold to freehold.

10. After having heard learned counsel for the parties and on perusal of the material on record and the decisions cited, this Court finds that the conflict between The Multiple Disabilities Act, 1999 and The Mental Health Act, 1987 was raised in W.P.(C) No. 5271/2008 Sushma Sharma vs. State Bank of India & Ors., rendered on 8th April 2009 [2009 (2) JCC 1562. wherein Reserve Bank of India initially had some reservation about the procedure adopted under The Multiple Disabilities Act, 1999 and as to whether the certificate issued by the Local Level Committee under The Multiple Disabilities Act, 1999 could be used for the purpose of opening a bank account. However, in the above decision, Reserve Bank of India had agreed to act upon certificate of Local Level Committee issued under The Multiple Disabilities Act, 1999 and had accorded permission for opening of bank account by guardian of the mentally retarded person. However, this Court in Sushma Sharma (supra), had observed that the Reserve Bank of India should issue appropriate guidelines to the effect that the certificates issued under The Multiple Disabilities Act, 1999 are acceptable and that the concerned parties can approach Local Level Committees for the purpose of issuance of certificate and adequate publicity should be given to these guidelines for information of the

general public.

11. High Court of Kerala in Narayankutty Menon vs. State of Kerala and Anr. 2009 (1) KLT 910.had acknowledged the applicability of The Multiple Disabilities Act, 1999 in respect of the guardian of the person and property of such person suffering with mental retardation while noting the provisions of The Mental Health Act, 1987 as well, while concluding as under:"It seems that a Local Level Committee has also been constituted under Section 13 of the Act and such Local Level Committee is headed by the District Magistrate. In the present case, I had issued a direction to the petitioner to file periodical accounts before the District Collector. In these circumstances, it will be appropriate that the petitioner, who has now been appointed as the guardian of the person and property of the disabled person, to file an application before the Local Committee under Section 14 of the enactment. Unless the said Local Level Committee, with reference to any specific material, finds that the petitioner is incompetent to be appointed as the guardian of the disabled person, the petitioner shall be appointed as the guardian by the Local Level Committee also. For this purpose, the petitioner shall file an application under Section 14 of the Act before the Local Level Committee within three months from today and such Local Level Committee shall take a decision within six months thereafter. The petitioner shall continue as the guardian of the person and property of the person with disability, Sri. Sunilkumar unless and until a contra view is taken by the Local Level Committee."

12. In Amit Toppo vs. None, 113 (2012) CLT 1033.High Court of Orissa had also acknowledged the applicability of The Multiple Disabilities Act, 1999 to cases pertaining to mentally retarded persons and had ruled that applications on behalf of mentally retarded persons have to be made to Local Level Committee by the guardian appointed under the aforesaid enactment.

13. Infact, sub-section 4 of Section 14 in Chapter VII of The Multiple Disabilities Act, 1999 specifically provides that the Local Level Committee comprising of officer not below the rank of District Magistrate, a representative of registered organization and a person with disability, as defined in The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,

1995 shall receive, process and decide applications received under this provision and decide them in the manner as determined by the Regulations i.e., The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000.

14. Apart from the aforesaid, this Court is of the considered opinion that a bare reading of The Mental Health Act, 1987 and The Multiple Disabilities Act, 1999 makes it clear that persons suffering from mental retardation are covered by The Multiple Disabilities Act, 1999 and not by The Mental Health Act, 1987 and so, petitioners cannot be called upon to obtain permission for sale from the concerned District Court by invoking The Mental Health Act, 1987 as petitioners have already obtained the requisite permission for sale of subject premises under the applicable The Multiple Disabilities Act, 1999. Such a view is being taken because The Multiple Disabilities Act, 1999 is a special Act which has come into being later in point of time than The Mental Health Act, 1987 and thus, it prevails over the earlier enactment.

15. The rule stipulating that specific provision prevails over the general provision was noticed by the Apex Court way back in the year 1961 in J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. State of Uttar Pradesh and other, AIR 196.SC 1170. which reads as under: The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

16. Applying this rule of construction, it was said by Apex Court in J.K. Cotton (supra) that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision.

17. Pertinently, there is no savings or repeal clause in The Multiple Disabilities Act, 1999 to any way make it dependent upon the earlier enactment, i.e., The Mental Health Act, 1987, which cannot be said to be parent legislation. Infact, The

Multiple Disabilities Act, 1999 is a comprehensive subsequent enactment, which deals with multiple disabilities including mental retardation in question. Therefore, the subsequent Act, i.e. The Multiple Disabilities Act, 1999 prevails and the certificate issued by the competent authority under this enactment holds good in view of wide powers of Local Level Committee, i.e. competent authority under this enactment being acknowledged in Handbook on Legal Guardianship issued by Ministry of Social Justice and Empowerment, Government of India, whose relevant extract is as under:"The Local Level Committee has to ensure that the legal guardian appointed by it xxx xxx must not mortgage, sell, lease, exchange or transfer the immovable property of the person with disability without the prior permission of the Local Level Committee obtained in this behalf." (emphasis supplied).

18. The afore-acknowledged legal position is the correct interpretation of this enactment. Thus, it becomes amply clear that when mentally retarded persons are expressly excluded from the applicability of The Mental Health Act, 1987 as per Section 2(l) of aforesaid enactment. So there remains no justification for the respondent to refuse to deal with petitioners' application for conversion of subject premises from leasehold to freehold by directing petitioners to obtain permission for sale from concerned District Court by making a resort to Section 59 of The Mental Health Act, 1987. A cumulative reading of Sections 13 to 15 of The Multiple Disabilities Act, 1999 makes it abundantly clear that the Competent Authority, i.e. Local Level Committee under this enactment has all the powers to deal with mentally retarded persons and their properties.

19. Aforesaid legal position stands acknowledged in the Government Publication i.e., in Handbook on Legal Guardianship, as referred to above. So, impugned Communication (Annexure P-24) based upon legal opinion obtained by respondent from its Law Department that there is no provision which authorizes Local Level Committee for permitting guardian of mentally retarded person to sell the property is contrary to the sound legal position, i.e. The Multiple Disabilities Act, 1999 is a complete enactment in itself and the certificate issued by Competent Authority under this enactment is binding and that inspite of having obtained certificate under this enactment, any mentally retarded person cannot be called

upon to specifically obtain any permission under The Mental Health Act, 1987 which specifically excludes its applicability to persons suffering from mental retardation.

20. In the face of above explained legal position, impugned Communication (Annexure P-24) is rendered unsustainable and is hereby quashed with a mandamus to respondent to consider petitioners' application for conversion of subject premises from leasehold to freehold by accepting the Sale Permission (Annexure P-10) already granted by the Competent Authority under the applicable enactment i.e. The Multiple Disabilities Act, 1999. Let it be so done with promptitude, i.e. within a period of four weeks or so.

21. With aforesaid directions, this petition is allowed while leaving the parties to bear their own costs. (SUNIL GAUR) Judge NOVEMBER 26 2012 pkb

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