

Dda Vs. Kiran Kohli

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Court : Delhi

Decided On : Apr-15-2013

Judge : V. K. Jain

Appellant : Dda

Respondent : Kiran Kohli

Advocate for Pet/Ap. : Mr. Rajiv Bansal, Mr. Parambir Ms. Swati

Judgement :

\$~R-10 * IN THE HIGH COURT OF DELHI AT NEW DELHI + LPA No. 539/2008
DDA Through: Appellant Mr Rajiv Bansal, Mr Parambir Ms. Swati, Advocates
Singh and VERSUS KIRAN KOHLI Respondent Through: None CORAM:
HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE V.K. JAIN ORDER 15
04.2013 % Plot No. D-945, New Friends Colony was allotted to one Mr Amrik
Singh and a sub-lease deed in his favour was executed on 18.01.1973. Vide
registered Will dated 14.10.1997, he bequeathed the aforesaid property of the
respondent Kiran Kohli. On the demise of Shri Amrik Singh, the aforesaid property
was mutated in the name of the respondent on the basis of the Will executed in
her favour. Vide letter dated 14.04.1986, the appellant DDA suspended the letter
dated 02.09.1982, whereby the aforesaid property was mutated by it in the name
of the respondent, alleging contravention of clause ii.6(a) and (b) of LPA No.
539/2008 page 1 of 8 the sub lease deed. The plea taken by DDA, in nutshell, was
that the respondent had purchased the aforesaid property from Mr Amrik Singh
and, therefore, the Will executed in her favour was for consideration and not out of

natural love and affection.

2. In the meanwhile, DDA also notified a scheme for conversion of leasehold properties into freehold properties, DDA also decided to grant freehold rights also in respect of those properties which had already changed hands from the original allottee, provide the purchasers paid 1/3 of the prescribed conversion charges as penalty or additional conversion fee. The documents required by DDA for conversion of leasehold rights into freehold rights in such cases comprised agreement to sell and power of attorney in favour of the purchaser. In the absence of these two vital documents, conversion of leasehold property into freehold property was not envisaged under the scheme notified by DDA. The respondent applied for conversion of the aforesaid property into freehold on 30.08.1996 and also agreed to pay the prescribed conversion charges. DDA, however, did not allow the conversion sought by her.

3. Being aggrieved from the act of the appellant in suspending the mutation and refusing conversion of the aforesaid property into freehold, the respondent filed a writ petition, seeking direction to the appellant to convert the aforesaid property into freehold. The respondent also assailed the demand of 50% of the earned increase by DDA vide its letter dated 08.05.1986. LPA No. 539/2008 page 2 of 8 Vide subsequent letter dated 08.05.1986, DDA agreed to restore the mutation subject to payment of 50% of the earned increase.

4. The learned Single Judge vide impugned order dated 30.01.2008 held that the appellant DDA was not entitled only to recover 50% of the earned increase and that the respondent would be entitled to conversion of the aforesaid property into freehold on payment of prescribed conversion charges along with prescribed penalty or additional conversion charges. The learned Single Judge was of the view that there was no distinction between the cases of transfer on the basis of documents such as agreement to sell and power of attorney and transfer on the basis of Will in favour of the transferee. Being aggrieved from the said order, the appellant DDA is before us by way of this appeal.

5. Clause II.6 (a) and (b) of the sub-lease executed by DDA in favour of Shri Amrik Singh reads as under:

11. 6 (a) The Sub-Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential plot in any form or manner, benami or otherwise, to a person who is not a member of the Lessee. (b) The Sub-Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential plot to any other member of the Lessee except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion. LPA No. 539/2008 page 3 of 8 PROVIDED that, in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the residential plot at the time of sale, transfer, assignment, or parting with the possession, the amount to be recovered being fifty per cent of the unearned increase and the decision of the Lessor in respect of the market value shall be final and binding. PROVIDED FURTHER that the Lessor shall have the preemptive right to purchase the property after deducting fifty per cent of the unearned increase as aforesaid. It would thus be seen that that the sub lessee Shri Amrik Singh could not have sold, transferred or assigned or otherwise parted with possession of the property sub-leased to him in any form or manner, without prior permission of the lessor. It further shows that the lessor was entitled to refuse such permission, if sought, in its absolute discretion and in the event of permission being granted, the lessor could impose such conditions as it deemed appropriate and was also entitled to recover 50% of the earned increase in the value of the property. The expression earned increase has also been defined in the sub-lease to mean the difference between the land premium paid by the sub-lessee and the LPA No. 539/2008 page 4 of 8 market value of the plot at the time it was sold, transferred, assigned or parted with.

6. The learned counsel for the appellant has drawn our attention to the general power of attorney executed by Shri Amrik Singh in favour of the father of the respondent namely Sh. Mullakh Raj Bhasin. The preamble to the power of attorney shows that Shri Amreek Singh had entered into an agreement for raising construction on Plot No. D-945, New Friends Colony and had appointed Sh. Mullakh Raj Bhasin as his attorney, authorizing him inter alia to execute the deed of conveyance in respect of the lease hold rights of the aforesaid plot in favour of

the respondent Mrs. Kiran Kohli, the Contractor named in the agreement or in the name of her nominee, and to admit the execution of the said conveyance deed and to present the same for registration before the Registrar. He was further authorized to represent Sh. Amreek Singh in all offices in connection with property no. D945, New Friends Colony. Yet another power given to him was to sign and submit the building plans for raising construction on the aforesaid property, to hold possession of the said property, let out its various portions, receive rent from tenants, to sign and verify pleadings, to apply for permission to transfer the aforesaid property, to apply for the mutation of the said property in favour of the prospective purchaser and to do each and everything for completion of the building on the aforesaid plan and to deal with Smt. Kiran Kohli who was to start construction on the said plot. LPA No. 539/2008 page 5 o

7. It can hardly be disputed from the aforesaid document coupled with Will executed in favour of the respondent that Shri Amreek Singh had entered into a transaction for unauthorized sale/transfer of the aforesaid property to the respondent Smt. Kiran Kohli and had also parted with possession of the said property to her. The terms of the General Power of Attorney executed in favour of the responded leaves no reasonable doubt has regards the true nature of the transaction between Shri Amreek Singh and the respondent. Though there was no sale deed or transfer deed executed in favour of the respondent, the possession of the aforesaid property was certainly parted with and delivered to Smt. Kiran Kohli. By parting with possession of the aforesaid property to Smt. Kiran Kohli, the sublessee Sh. Amreek Singh contravened the terms of the sub-lease and therefore in our opinion DDA was very much entitled in law to determine the sub-lease executed by it in favour of Sh. Amreek Singh on account of contravention of the aforesaid term contained in the sub-lease. Consequently, DDA could insist upon payment of earned increase by the responded in favour of the provisions of the sub-lease deed, as a pre-requisite condition for mutation of the aforesaid property in the name of the respondent Smt. Kiran Kohli. We, therefore, find no fault with the letter dtd. 08/05/1986 written by DDA to Smt. Kiran Kohli, requiring her to pay earned increase as a condition for mutation of the aforesaid property in her name. If she does not pay the aforesaid charges, the lessor would be very much entitled in law to LPA No. 539/2008 page 6 of 8 determine the sub-lease

deed in accordance with law and then take appropriate measures to resume possession of the said property.

8. The only reason given by the learned Single Judge for quashing the demand of earned increase made by DDA is that no unearned increase is being recovered by DDA from those who have entered into such unlawful transactions with the lessees/sub-lessees and have parted with possession of the land lease/sub-lease to them, where such transaction is evidence by way of documents such as agreement to sell and power of attorney in favour of the purchaser and/or his/her nominee. The learned Single Judge found no real distinction between persons who entered into such transactions on the basis of documents such as power of attorney and agreement to sell and those who entered into such agreements on the basis of documents such as Will. Admittedly, the policy formulated by the respondents for conversion of the lease deed properties into free hold properties does not provide for conversion of the property from lease hold to free hold where the transaction between the lessee/sub-lessee and the purchaser is not evidenced by way of documents such as agreement to sell and power of attorney. Since no such documents were submitted by the respondent to DDA, she was not eligible for conversion of lease hold rights of property no. D-945 into free hold rights, in terms of the scheme/policy of the respondent. Therefore, it cannot be said that the appellant was acting LPA No. 539/2008 page 7 of 8 contrary to its own policy/scheme by not converting the lease hold rights in respect of the aforesaid property into free hold rights. We also find from a perusal of the writ petition that the policy framed by the appellant for conversion of lease hold properties into free hold properties was not challenged by the respondent. In the absence of any challenge to the said scheme/policy, the learned Single Judge could not have gone into the validity or otherwise the said scheme and could not have ignored the distinction between the cases of transfer on the basis of documents such as agreement to sell and power of attorney and the case of transfer on the basis of a Will. Considering the view taken by us in this regard, we need not examine the contention of Sh. Rajiv Bansal, counsel for the appellant, that the aforesaid scheme is neither arbitrary nor unreasonable since the person who enters into an agreement to purchase a lease hold property is entitled to seek enforcement of such an agreement through the process of the court by filing a suit for specific

performance of the agreement between him and the lessee/sub-lessee, whereas no such legal right vests in the beneficiary of a Will which can be revoked by the Testator, at any point of time before his death.

9. For the reasons stated herein above, the appeal is allowed and the impugned order dated 30.1.2008 is hereby set aside. There shall be no order as to costs.
CHIEF JUSTICE APRIL 15 2013/bg V.K. JAIN, J.

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