

Aditya Goyal Vs. D.D.a

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Court : Delhi

Decided On : Dec-17-2012

Judge : Valmiki J. Mehta

Appellant : Aditya Goyal

Respondent : D.D.a

Advocate for Def. : Mr. Rajiv Bansal, Mr. Rahul Bhandari

Advocate for Pet/Ap. : Mr. Atul Nigam

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) No. 2222/2001 17th December, 2012 % ADITYA GOYAL Through: Plaintiff Mr. Atul Nigam, Advocate. VERSUS D.D.A Through:Defendant Mr. Rajiv Bansal and Mr. Rahul Bhandari, Adv. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not? VALMIKI J.

MEHTA, J (ORAL) 1. This suit is listed for final arguments. Counsel for both the parties have been heard with respect to overall perspectives qua the different issues which arise in this case. I am stating the different issues as also certain legal aspects in the present order inasmuch as, I am of the firm belief that in the present case, instead of litigation, the defendant/DDA must take a holistic view.

2. The disputes in the present case pertain to the property bearing no. 4, Lajpat Nagar-IV, New Delhi. With respect to subject property, a perpetual lease deed was

executed by the defendant in favour of the plaintiff on 1.3.1996. I may note that what was sold as perpetual lessee rights to the plaintiff was pursuant to an open auction, and the price received by the DDA by means of an open auction was the market price i.e the price is not a concessional price.

3. The perpetual lease deed was thereafter applied for being converted into freehold by getting a conveyance deed in favour of the plaintiff. Effectively, by the conveyance deed, the leasehold rights get extinguished and a person becomes a complete owner of the land as freehold land. Pursuant to an application filed by the plaintiff, the defendant executed a conveyance deed dated 16.12.1996 in favour of the plaintiff. It is at the stage subsequent to the execution of the conveyance deed that the disputes have arisen between the parties. Whereas the defendant alleged misrepresentation on behalf of the plaintiff of the property having been constructed on the date of execution of the conveyance deed, the plaintiff countered to say that there was no misrepresentation inasmuch as the application for conversion does not even talk of the property being a constructed property.

4. During the course of hearing, the following important issues have come up for consideration: (i) Taking the case of the defendant at the very best i.e assuming the conveyance deed dated 16.12.1996 could be cancelled, whether the cancellation of a conveyance deed can lead to even extinguishing of the perpetual leasehold rights, although the complete price in an open auction for the subject plot was received by the defendant. Also, as per Section 17(1)(b) of the Registration Act, 1908, a registered document conveying the immovable property, can be cancelled only by a registered instrument because it would amount to extinguishment of all rights in an immovable property i.e the conveyance deed on the perpetual lease deed could only be cancelled by a registered instrument. (ii) The aforesaid issue assumes more significance in view of the fact that the documents being the perpetual lease deed and the conveyance deed executed in favour of the plaintiff are not under the Government Grants Act, 1985. A grant takes place when some sort of special concession or concessions in different forms is/are shown to the grantee. In the present case, as already stated above, the purchase by the plaintiff is an open auction, and the defendant has received the complete market price as per the open auction. Therefore, the ratio of the

judgment of the Supreme Court in the case of State of U.P. Vs. Zahoor Ahmad & Anr. AIR 197.SC 252.will come into play i.e the provisions of the Transfer of the Property Act (particularly Section

11) , Registration Act, Contract Act etc will come into play. (iii) The further issue which arises is that even for the sake of argument if the conveyance deed can be cancelled under a particular law (of course, I do not know what can be such law), however, the position which will then emerge would be that the plaintiff will again become a perpetual lessee inasmuch as, if the action of seeking a conveyance deed of the property from leasehold to freehold, is blemished, then, only to that extent, the transaction will fail, but the earlier transaction of perpetual lease deed would stand because it is not the case of the DDA that the perpetual lease deed was obtained by any misrepresentation, fraud etc. Not only that, the issue of fraud, misrepresentation etc could come into play only if on account of such fraud or misrepresentation prejudice or harm or loss is caused to the DDA, however, there is no such prejudice or loss to the DDA in the present case by the misrepresentation or fraud.

5. Dehors the legal issues, a statutory authority like the defendant/DDA, subject to of course applying the law, must take a fair, upright and justified stand i.e if the law states that a particular thing ought not to and cannot stand, such legal position must be accepted by the defendant-statutory authority.

6. It may be relevant to note that the defendant has relied upon a clause in its policy whereby conversion of a lease hold property into freehold property was permissible after the property was built up, however, the facts of the present case show that the subject plot was not even a part of a lay out plan of a colony on which construction could have been made. However, the necessary consequences which would flow would be that a specific notice is required to have been shown as given to the plaintiff on this aspect or the plaintiff himself represented that the conversion is applied for without having made the construction.

7. In view of the above, it is incumbent on the DDA to examine the issues in the present case considering the fact of non-applicability of the Government Grants

Act, effect of applicability of Section 17(1)(b) of the Registration Act, Transfer of Property Act and the Contract Act taken with the fact that the defendant has not been caused any monetary loss whatsoever because complete price of the property had been paid to it in a public auction.

8. I may note that counsel for the plaintiff agrees that if any registration charges are required to be paid to the defendant/DDA, so that the property is restored to the plaintiff, the plaintiff will pay the same.

9. The defendant is therefore directed to look into the aspects of this case also considering the fact that now for a long period of time, the building stands validly constructed as per a sanctioned plan on the subject plot.

10. Therefore, there is a limited agreement between the parties as of today that the records of the present suit can be taken as a representation to the Vice Chairman DDA who will appoint a high ranking officer as his nominee so as to examine the facts of the present case in view of the legal & factual position as stated above. Both the parties can file copies of the relevant record of this case before the nominee of the Vice Chairman who will look into the matter and take a decision. The nominee of the Vice Chairman should also before proceeding take a legal opinion of its chief Legal Officer and the advocates of this case with respect to all the issues in this case, some of which have been set out hereinabove.

11. Let the copy of this order be placed before the Vice Chairman of the DDA who shall within a period of four weeks from today will appoint an appropriate nominee as stated above to take a holistic view, as also the correct legal and moral approach, as regards the facts of the present case and the law as applicable. The concerned authority of the defendant/DDA being the nominee of the Vice Chairman is requested to give a personal hearing to the plaintiff or his nominee and thereafter give his necessary report and decision to the plaintiff and to the Vice Chairman within a period of four months from today.

12. The suit is accordingly disposed of with liberty to the plaintiff to revive this very suit, in case the representation before the defendant in terms of today's order is not successful.

13. Interim protections passed by this Court will continue for a period of one month after communication by the defendant to the plaintiff of the decision which would be passed by the appropriate officer of the DDA in terms of today's order. Dasti to counsel for the parties. DECEMBER 17 2012 ib CS(OS) No. 2222/2001 VALMIKI J.

MEHTA, J.

Page 6 of 6

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