

CASE NO.:
Appeal (civil) 4266 of 2007

PETITIONER:
Kuldeep Singh

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 14/09/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4266 OF 2007
(Arising out of S.L.P. (C) No. 19279 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the Division Bench dismissing the Letters Patent Appeal filed by the appellant. The Division Bench dismissed the Letters Patent Appeal filed against the orders passed by the learned Single Judge in Writ Petition (Civil) No.7990/2002 decided on 3.12.2004. The basic issue was whether sub-division of land was permissible. The prayer in the writ petition was that direction be issued to the Delhi Development Authority (in short 'DDA') to sanction conversion of the appellant's share in the plot from leasehold to freehold. Stand of the appellant was that he was a co-sharer. Since lessee is permitted to assign a part of premises, it was stated that prayer is acceptable. Reliance was placed on Clause 11 of the Indenture dated 22.8.1919 to contend that lessee is permitted to assign even part of the demised premises.

3. Learned Single Judge was of the view that if prayer is granted it would amount to a direction to amend the layout plan. It would also have the effect of upsetting development control and planning norms. With reference to Delhi Development Authority Act, 1957 (in short the 'Act') it was observed that the said Act envisaged preparation of a Master Plan, Zonal Development Plan and at the lowest level of planning the lay out plan. Development Code under the master plan reveals that in the lay out plan as prepared, individual plots stand earmarked. Building control norms apply in the context of an individual plot. Sub-division cannot take place until and unless lay out is amended.

4. Order of learned Single Judge was assailed before the Division Bench. The Division Bench noted that condition no.10 reads as follows:-

"The Lessee shall upon every assignment, sub-lease or transfer of the said premises the lease of which is hereby renewed or any part thereof, within one calendar month thereafter deliver a notice of such assignment, sub-lease or

transfer to the Lessor or to any officer appointed by him in this behalf, setting forth the names and description of the parties thereto and the particulars and effect thereof, and all such assignees, sub-lessees and transferees and the heirs of the lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects therefore."

5. The DDA is the perpetual lessor of the land unless and until it is provided by the lessor, there is no question of dividing the plot. The Division Bench observed that no doubt construction can be carried out by number of persons together and they may be the owners jointly or individually in certain proportions. It does not mean that land is also sub-divided when the layout plan is not amended. The Division Bench observed that it was for the DDA to permit and the record reveals that the DDA was willing to consider conversion from freehold of the plot as a whole and not in part. The appellant was not willing to pay the entire amount and, therefore, he approached the High Court. Therefore, the Division Bench found no merit in the appeal.

6. Learned counsel for the appellant submitted that the High Court's approach is erroneous. In any event the Division Bench consisting of the Chief Justice and Justice S.K. Kaul should not have taken up the matter as at an earlier point of time, Justice Kaul had dealt with the matter.

7. Learned counsel for the respondents submitted that the appellant had not pointed out at any point of time before the Division Bench that Justice Kaul had earlier dealt with the matter and, therefore, it will not be open to the appellant to make a grievance. It was submitted that Justice Kaul had not passed the final order and, therefore, the order does not call for any interference particularly when there is no merit in the appeal.

8. Though the learned counsel for the appellant stated that it was brought to the notice of the Division Bench who heard the matter that Justice Kaul had passed the earlier order as a learned Single Judge, there is no evidence of such plea having been taken. It was urged that a decision of this Court in S.K. Warikoo v. State of J&K and Ors. (1998 (9) SCC 677) was cited to contend that the Division Bench of which Justice Kaul is a member should not hear the appeal. We called for records of the High Court to see if in any of the orders mention was made about such a stand being taken.

9. In S.K. Warikoo case (supra), it was observed that a learned Single Judge who had earlier dealt with the matter should not decide the matter as a member of the Division Bench.

10. We find that Justice Kaul had issued notice and had in fact granted interim protection to the appellant. It is not shown that the appellant had brought to the notice of the Division Bench about Justice Kaul having passed the order of admission.

11. It cannot be laid as a rule of universal application that whenever any learned Single Judge had dealt with a case even for routine purposes like issue of process or rectification of defect or even to pass an order of adjournment, that would

preclude him from hearing the appeal. As contended by the respondents, the appellant has not made out a case to interfere. Though it is factually correct, as contended, learned Single Judge had issued Rule, that factual aspect does not appear to have been brought to notice of Division Bench. But the final view expressed by the learned Single Judge on merit as affirmed by the Division Bench does not suffer from any infirmity to warrant interference.

12. The appeal is dismissed. There will be no order as to costs.

JUDIS