

CASE NO.:

Appeal (civil) 34 of 1995

Appeal (civil) 5424 of 1999

PETITIONER:

Delhi Development Authority

Delhi Development Authority

RESPONDENT:

Vs.

Mrs. Vijaya C. Gurshaney & Anr.

Nanak Chand

DATE OF JUDGMENT: 26/08/2003

BENCH:

S.N. VARIAVA & H.K. SEMA.

JUDGMENT:

J U D G M E N T

SEMA, J.

These two appeals are being disposed of by a common judgment. Civil Appeal No. 34 of 1995 has been preferred against the judgment dated 10.5.1994 passed by the High Court in C.W.P.No. 3696 of 1992 and Civil Appeal No. 5424 of 1999 is preferred against the order of the National Consumer Disputes Redressal Commission, New Delhi, dated 1.4.1998 passed in Revision Petition No. 933 of 1997. Since the facts of both the appeals are identical, we are taking the facts from Civil Appeal No. 34 of 1995.

Shorn of unnecessary details, the facts leading to the filing of the present appeal arises under the following circumstances: -

One Ram Dhan (since deceased) had purchased a plot No. D-3, Community Centre, Narayana, in the public auction held by the Delhi Development Authority (hereinafter the 'DDA') on 25.5.1969. The perpetual lease deed of the plot was executed between Ram Dhan and the President of India on 17.2.1972. On 18.9.1978, Ram Dhan died without any construction on the plot. The respondent herein - Mrs. Vijaya C. Gurshaney, seems to have applied for grant of Letters of Administration to the District Judge, Delhi, on the strength of a Will, said to have been executed by Ram Dhan on 26.10.1977 in her favour. It appears that the District Judge granted Letters of Administration on 7.5.1980. Thereafter, the respondent had applied to DDA for substitution of her name in place of deceased Ram Dhan. DDA issued show cause notice for non-construction on plot within the specified time, which was replied by the respondent by her letter dated 11.12.1982 requesting DDA for mutation of her name in place of Ram Dhan on the strength of the alleged Will, whereupon DDA asked the respondent to produce the relevant documents for further consideration. DDA by its letter dated 12.8.1985 asked the respondent to pay 50% of unearned increase as per terms and conditions stipulated in the perpetual lease deed as the transfer was not in favour of blood relation of Ram Dhan, whereupon the respondent seems to have agreed to pay 50% of unearned increase to DDA. DDA, thereafter, by its letter dated 19.6.1992 asked the respondent to pay Rs.6,51,020/- towards 50% of unearned increase in the value of property. By another letter dated 17.9.1992, DDA demanded payment of the aforesaid amount failing which would result in cancellation of the lease. Aggrieved by the aforesaid two letters, the respondent filed a Writ Petition, inter-alia, for quashing of the aforesaid letters. The respondent further sought a direction that the plot be transferred in her name without payment of any unearned increase and that the mutation be made in the records of DDA. Alternatively, the respondent prayed that in case the respondent is liable to

pay 50% of unearned increase it should be calculated on the basis of the value or the rate of land prevalent as on 13.5.1980 when the respondent applied for transfer of the leasehold rights of the plot in her favour. The High Court, on hearing the parties, came to the conclusion that since the petitioner (respondent herein) had obtained the Letters of Administration in accordance with the procedure prescribed under the Indian Succession Act, 1925, the question as to what considerations prevailed upon the deceased Ram Dhan to bequeath his plot to the respondent herein is irrelevant. The High Court was of the view that the moment the Administrator grants Letters of Administration on the basis of a Will the respondent is entitled to all the rights the deceased had vested in him at the time of his death. The High Court further held that the grant of Letters of Administration is a judgment in-rem and a conclusive proof of the existence and genuineness of the Will and its effect cannot be nullified except by proceedings for revocation of the Letters of Administration.

Parties are heard at length. Mr. Mukul Rohtagi, learned ASG appeared on behalf of the appellant. Mr. Nikhil Nayyar, learned counsel appeared on behalf of the respondent No. 1 in C.A. No. 34 of 1995 and Mr.P.N. Ramalingam, learned counsel appeared on behalf of the respondent in C.A. 5424 of 1999.

The High Court has not at all adverted to the terms and conditions stipulated in the perpetual lease deed executed between DDA and the deceased - Ram Dhan, on the basis of which two impugned letters in Writ Petition have been issued. This is where the High Court had side tracked the main issue and decided an issue, which was not at all relevant in the facts and circumstances of the case. It was the specific case of the appellant (respondent before the High Court) that the Will was actuated by monetary consideration and was in fact a sale. It was also the specific case of the appellant that it was actually a transfer of land to non-blood relation of the deceased - Ram Dhan and was in violation of the terms and conditions stipulated in the lease deed and therefore, the respondent was liable to pay 50% of unearned increase in the value of the property. The High Court although extracted the relevant clauses of terms and conditions of lease and referred to the policy decision of DDA but the same were not at all adverted to while reaching the conclusion. In our view, the High Court, in its impugned order has not at all adverted to the relevant issues and decided the case totally based on unfounded grounds. To appreciate the present controversy in proper perspective Clauses 4, 5 and 8 of the lease deed, which are relevant for the present purpose are extracted:

"4(a) The Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the commercial plot except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion.

PROVIDED that such consent shall not be given for a period of ten years from the commencement of this Lease unless, in the opinion of the Lessor, exceptional circumstances exist for the grant of such consent.

PROVIDED FURTHER 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 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 pre-emptive right to purchase the property after deducting fifty per cent of the unearned increase as aforesaid.

(b) Notwithstanding anything contained in sub-clause (a) above, the Lessee may, with the previous consent in writing of the Chief Commissioner of Delhi (hereinafter called "the Chief Commissioner"), mortgage or charge the plot to such person as may be approved by the Chief Commissioner in his absolute discretion.

PROVIDED that, in the event of the sale or fore-closure of the mortgaged or charged property, the Lessor shall be entitled to claim and recover the fifty percent of the unearned increase in the value of the plot as aforesaid and the amount of the Lessor's share of the said unearned increase shall be a first charge, having priority over the said mortgage or charge. The decision of the Lessor in respect of the market value of the said plot shall be final and binding on all parties concerned.

PROVIDED FURTHER that the Lessor shall have the pre-emptive right to purchase the mortgaged or charged property after deducting fifty percent of the unearned increase as aforesaid.

(5) The Lessor's right to the recovery of fifty per cent of the unearned increase and the pre-emptive right to purchase the property as mentioned hereinbefore shall apply equally to an involuntary sale or transfer whether it be by or through an executing or insolvency Court.

(8) Whenever the title of Lessee in the plot is transferred in any manner whatsoever the transferor and the transferee shall, within three months of the transfer, give notice of such transfer in writing to the Lessor.

In the event of the death of the Lessee the person on whom the title of the deceased devolves shall, within three months of the devolution, give notice of such devolution to the Lessor.

The transferee or the person on whom the title devolves, as the case may be, shall supply the Lessor certified copies of the document(s) evidencing the transfer or devolution."

Further, DDA on 26.7.1988 with the approval of the Lt. Governor of Delhi formulated a policy and issued guidelines to be followed with regard to payment of 50% of the unearned increase in the value of the land inter alia on the basis of the Will left by the deceased allottee. The guidelines are:-

I. In cases where a request is received for transfer of property on the basis of 'WILL' to a person outside blood relation who is not within the definition of 'family member' under the guidelines issued earlier, the following documents should necessarily be obtained from the applicant/legatee for the purpose of mutation:

- 1) Certified copy of will left by the allottee;
- 2) Death certificate of the allottee;
- 3) Affidavit disclosing the particulars of the legal heirs whom the allottee had survived;
- 4) No objection of the legal heirs regarding mutation of the interest of the deceased in favour of the legatee(s);
- 5) Affidavit from the legatee declaring that the property in question had not passed on to him during the lifetime of the Testator and no sale

agreement/agreement for construction etc. had been executed by the Testator in his/her favour, nor any GPA/SPA had been executed in his favour or in favour of a person nominated by him;

6) Legatee may be asked to produce certified copy of assessment order of income-tax and house tax receipt showing the name of the person in whose name the property is being assessed;

7) An undertaking from the applicant/legatee to the effect that if at any stage it is found out that the property had passed on to the legatee during the lifetime of the Testator then it will be deemed to be a case of misstatement of facts, misrepresentation or fraud and the mutation in his/her favour shall stand terminated and the property shall automatically vest in the Lessor;

8) Indemnity Bond from the legatee duly registered;

9) In case the plot/flat was allotted through Co-operative society, the NOC from the Society;

10) Original registration Certificate, Fixed Deposit receipt, Challan form, wherever necessary; and

11) Such other documents as required to be obtained as per instruction issued from time to time or procedure laid down therefor.

In this case the alleged will is executed on 26th October, 1977. Ram Dhan died on 18th September, 1978. Letters of Administration were granted on 7th May, 1980. Admittedly, the respondent is not related to the deceased - Ram Dhan. The High Court clearly erred in holding that merely because Letters of Administration are granted the appellants cannot inquire into the true nature of the transaction. It is settled law that a Testamentary Court, whilst granting Probate or Letters of Administration does not even consider particularly in uncontested matters, the motive behind execution of a testamentary instrument. A Testamentary court is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will. It is settled law that the grant of a Probate or Letters of Administration does not confer title to property. They merely enable administration of the estate of the deceased. Thus, it is always open to a person to dispute title even though probate or Letters of Administration have been granted.

DDA is a creature of the Statute. The aims and objects of Delhi Development Act, 1975 are contained in Section 6 of the Act. It reads:

"6. The objects of the Authority shall be to promote and secure the development of Delhi according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute work in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purpose incidental thereto:

Provided that save as provided in this Act, nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force."

The rationale behind the formulation of its policies and guidelines issued by DDA is to curb illegal transactions in favour of persons not of

blood relations of the allottee, being practiced rampantly and the property being transferred by an under hand sale in the garb of Will and power of attorney etc. DDA has formulated a policy that in such cases the department would ask for 50% of unearned increase in the value of property. It is always open to appellants to inquire whether an alleged Will is in actuality a sale in the garb of Will in total disregard of the policy decision of the authority. Merely because Probate/Letters of Administration are granted would not preclude DDA from so inquiring. It must be grasped that DDA has been given no notice of the testamentary proceedings. Therefore, it would have no right to appear or oppose such proceedings. As already said, DDA is a creature of the Statute and any policy decision or guidelines formulated by such authority will have a binding effect on the parties, in absence of rules to the contrary.

Furthermore, clauses 4, 5 and 8 of the lease deed, as extracted, envisage that the lessee cannot sell, transfer or part with the possession of the whole or any part of the commercial plot except with the previous consent of the lessor in writing, with a rider that the lessor can refuse the transfer. It is also provided in proviso to clause 4(b) that in the event of sale or foreclosure of the mortgaged or charged property, the lessor shall be entitled to claim and recover the 50% of unearned increase in the value of the plot. It is further provided in clause 8 that in the event title of lessee in the plot is transferred in any manner whatsoever the transferor and the transferee shall within three months of the transfer give notice of such transfer in writing to the lessor. The respondent herein has not complied with any of the conditions stipulated in the lease agreement and, therefore, it was within the competence of DDA to invoke the terms and conditions stipulated in the lease agreement by charging 50% of unearned increase in the value of the plot. The letters dated 19.6.1992 and 17.9.1992, impugned in the Writ Petition before the High Court, were in the terms of invoking of clauses 4, 5 and 8 of the lease agreement and policy decision and guidelines of DDA as noticed above. The impugned judgment and order of the High Court runs contrary to the terms and conditions stipulated in the lease agreement and the same is unsustainable. It is accordingly set aside.

Regarding the quantum of 50% unearned increase to be paid, counsel on both sides arrived at a consensus that in the facts and circumstances of this case, the respondent â\200\223 Mrs. Vijaya C.Gurshaney shall pay a sum of Rs.3,73,745/- to DDA towards the 50% of unearned increase in value of the plot in question. Respondent's counsel, on instructions, agreed to pay the entire amount by 31st December, 2003. We order accordingly. Till the entire amount is paid to DDA, the possession of the plot shall not be delivered to the respondent.

Civil Appeal No. 34 of 1995 is accordingly allowed in the above terms. The parties are asked to bear their own costs.
CIVIL APPEAL NO. 5424 OF 1999

In this appeal the respondent had already paid the unearned increase. However, as a result of the judgment impugned in C.A. No. 34 of 1995 he claimed a refund, which was allowed by the District Forum. On appeal by DDA, State Commission affirmed the order of the District Forum and the Revision preferred by DDA, before the National Consumer Disputes Redressal Commission, was also dismissed by the impugned order. As we have set aside the judgment impugned in C.A. No. 34 of 1995, it follows that the respondent is not entitled to a refund.

This appeal is accordingly allowed with no order as to costs.