

23 February 2016

DELHI DEVELOPMENT AUTHORITY ('APPELLANTS') VS GAURAV KUKREJA ('RESPONDENT')

Recently, Hon'ble Supreme Court ("SC") in **Delhi Development Authority ('Appellants') Vs Gaurav Kukreja ('Respondent')** reiterated that that immovable property can be legally and lawfully transferred/ conveyed only by a registered deed of conveyance and transactions of the nature of "GPA sales" or "SA/GPA/WILL transfers" do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The case was decided on 24.03 2015.

BRIEF FACTS OF THE CASE:-

DDA executed perpetual sub-lease deed dated 16.08.1967 in respect of the property bearing Plot No. N-73, Panchsheel Cooperative House Building Society Ltd., New Delhi in favour of one Mr. Jan Talwar. Later in years, Mr. Jan Talwar by an agreement to sell dated 10.6.1986, agreed to sell the suit property to Mrs. Raymen Kukreja for a sale consideration of Rs. 20,50,000/-. Mr. Jan Talwar also executed a General Power of Attorney dated 10.06.1986 in favour of Lekh Raj Kukreja-husband of Mrs. Raymen Kukreja. In the year 1989, when Mr. Jan Talwar refused to execute the sale deed, even after receiving the complete sale consideration, a civil suit was filed by Sh. Gaurav Kukreja for a decree of specific performance. The suit was filed by Mr. Gaurav Kukreja as the GPA holder, that is, Mr. Lekh Raj Kukreja and Mrs. Raymen Kukreja had surrendered their rights in favour of Mr. Gaurav Kukreja and they had no objection if the property was transferred in the name of Gaurav Kukreja.

Mr. Jan Talwar having remained ex-parte, the suit was decreed by Single Judge held the entire transaction to be valid and observed that Respondent and his father and mother were ready and willing to complete the sale transaction dated 10.06.1986 but Mr. Jan Talwar failed to perform his part of obligation. Based on the compromise decree in the original suit, Mr. Gaurav Kukreja applied to DDA for the conversion of suit property from leasehold to freehold. However, the DDA refused the conversion on the ground that as per the scheme, Mr. Gaurav Kukreja did not possess a good title. Aggrieved by the order, Mr. Gaurav Kukreja filed a petition before the High Court of Delhi ("HC"), seeking the conversion of suit property from leasehold to freehold, on the strength of a policy decision taken by DDA and based on the compromise decree in the civil suit.

Learned single judge of HC allowed the civil petition. Against the decision of single judge of HC appeal was filed in Division bench of HC by the DDA also came to be dismissed vide order dated 15.07.2010 wherein the HC also held that Respondent was entitled to be taken as a Power of Attorney holder and was thereby entitled to get the suit property converted from leasehold to freehold. Aggrieved by the dismissal of Letters Patent Appeal, DDA preferred an appeal to the Hon'ble SC.

APPELLANT'S CONTENTIONS:-

Contention of DDA was that the suit property was a leasehold property and any attempt to dispose of the same should have been proceeded only after an approval from DDA. It was submitted that the suit for specific performance filed by the respondent and his father-Lekh Raj Kukreja against Jan Talwar and Raymen Kukreja, was a collusive suit and was an attempt to escape the payment of stamp duty and registration charges, which would otherwise be payable on the part of the respondent on account of registration of a sale deed. Further, contention of DDA was that the Respondent did not satisfy the terms of Clause 13 of the Conversion Scheme as he was neither a power of attorney holder nor a holder of sale deed in respect of the suit property.

RESPONDENT'S CONTENTIONS:-

Respondent submitted that even after obtaining a decree of specific performance and having paid the conversion charges alongwith surcharge of 331/3%, the conversion of the suit property was being wrongly denied to him. It was contended that the Respondent was having physical possession of the suit property and therefore all the pre-requisites of Clause 13 of Conversion Scheme were satisfied and thus he was entitled to conversion of suit property from leasehold to freehold.

OBSERVATIONS OF THE COURT:-

As per the decree for specific performance, sale deed was to be executed by Mr. Jan Talwar and Mrs. Raymen Kukreja within the period of 30 days from the date of the decree and further directed to pay requisite stamp duty and registration charges. Instead of complying with the above order of the HC and getting the sale deed executed, after making payment of registration charges and stamp duty, the

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Respondent applied for conversion of the property through Lekh Raj Kukreja (father of the respondent and power of attorney holder) and the same was rejected. The conversion cannot be sought for by a person who is not the owner of the property but is only residing in the premises.

The property cannot be converted from leasehold to freehold directly in the name of the respondent as he is neither a general power of attorney holder nor a holder of agreement to sell. The HC appears to have issued direction for conversion mainly on the ground that the respondent has got decree for specific performance for sale. The HC failed to appreciate that the decree for specific performance was based on the alleged compromise arrived at between the family members.

The Hon'ble SC referred to the Suraj Lamp & Industries (P) Ltd. vs. State of Haryana & Anr., (2009) 7 SCC 363, regarding the ill-effects of what is known as General Power of Attorney Sales (for short 'GPA Sales') or Sale Agreement/General Power of Attorney/Will transfers (for short 'SA/GPA/WILL' transfers) where it was held that:

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"19. Recourse to "SA/GPA/WILL" transactions is taken in regard to freehold properties, even when there is no bar or prohibition regarding transfer or conveyance of such property by the following categories of persons:

(a) Vendors with imperfect title who cannot or do not want to execute registered deeds of conveyance.

(b) Purchasers who want to invest undisclosed wealth/income in immovable properties without any public record of the transactions. The process enables them to hold any number of properties without disclosing them as assets held.

(c) Purchasers who want to avoid the payment of stamp duty and registration charges either deliberately or on wrong advice. Persons who deal in real estate resort to these methods to avoid multiple stamp duties/registration fees so as to increase their profit margin.

20. Whatever be the intention, the consequences of SA/GPA/WILL transactions are disturbing and far-reaching, adversely affecting the economy, civil society and law and order. Firstly, it enables large-scale evasion of income tax, wealth tax, stamp duty and registration fees thereby denying the benefit of such revenue to the Government and the public. Secondly, such transactions enable persons with undisclosed wealth/income to invest their black money and also earn profit/income, thereby encouraging circulation of black money and corruption.

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DECISION OF THE COURT:-

It was reiterated that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/WILL transfers" do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. It was also held that such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records and that is applicable not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property.

As on the date of filing of the writ petition, the Respondent was neither a holder of a power of attorney nor had any subsisting right in the suit property, it was held that HC was not right in holding that the Respondent is entitled to apply for conversion of the property. The impugned order of the HC was set aside and the appeal was allowed.

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