* **HIGH COURT OF DELHI : NEW DELHI**

RFA No. 96 of 2009 & CM No.4119 of 2009

% Judgment reserved on:14th May, 2009

Judgment delivered on:30th May, 2009

Delhi Development Authority
Through its Vice Chairman
Vikar Sadan, INA Colony,
New Delhi. ….Appellants

Through: Mr.Manoj Kumar Singh, Adv.

Versus

1. Mrs.Joginder Kaur
W/o Sardar Sohan Singh
R/o Flat No.435, Ground Floor,
Pocket C-8, Sector-8,
Rohini, Delhi-110085.

2. Shri S.P.Papneja
S/o Late Gyan Chand Papneja
R/o A-23, Mohan Park.
Naveen Shahdara, Delhi.

3.Shri Jugal Kishore
S/o Shri Om Prakash
R/o UU 33, Pitampura, Delhi.

4.Shri Vijay Kumar
S/o Shri Suraj Bhan
R/o 5/42, Punjabi Bagh,
New Delhi. …Respondents.

Through: Nemo.

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

V.B.Gupta, J.

This appeal has been filed by the appellant against the judgment and decree dated 15th October, 2008 passed by Addl. District Judge, Delhi, vide which suit filed by respondent No.1 Smt. Joginder Kaur, was decreed for declaration as well as injunction.

2. Brief facts of this case are that, respondent No.1 filed a suit alleging that originally, flat No.435, Pocket C-8, Sector-VIII, Rohini, Delhi was allotted to respondent No.2 on 23rd November, 1987 at total cost of Rs.1,29,135.32p. Possession letter was issued in favour of respondent No.2 on 24th March, 1988 and actual possession was taken by him on 18th April, 1988.

3. Respondent No.2, sold the aforesaid flat to respondent No.3, on 22nd April, 1988 and executed the documents in his favour. Total sale consideration was Rs.1,36,000/- and possession of the flat was also transferred to respondent No.3.

4. Respondent No.3, sold the aforesaid flat to respondent No.4 on 31st May, 1988 for a consideration of Rs.1,45,000/- and executed necessary documents.

5. Respondent No.4, thereafter, sold the aforesaid flat to respondent No.1, on 20th November, 1989 for total consideration of Rs.1,50,000/-. Respondent No.4 executed Agreement to Sell, General Power of Attorney in favour of Sh. Onkar Singh, son of respondent No.1. Possession of the flat was also given to respondent No.1 on 20th November, 1989.

6. After taking possession, on 20th November, 1989, respondent No.1 has, consistently been in a peaceful and uninterrupted manner, living at the aforesaid premises.

7. Appellant, in year 1992-93, advertised a scheme for conversion of lease-hold properties including lease hold flats into free hold. As per said scheme, persons who had purchased flats on the basis of Power of Attorney etc. were also permitted to get the flat converted from lease hold into free hold in their own names subject to their paying 33.5% extra which was over and above the conversion fee to be paid normally by a person.

8. Respondent No.1, applied for conversion of the aforesaid lease hold flat to free hold flat with appellant on 12th December, 1994. On said date, first instalment of Rs.4,411/- was also deposited by respondent No.1, towards the payment of conversion fee and balance amount of Rs.12,750/- had been deposited by respondent No.1, on 5th August, 1995.

9. Respondent No.1 wrote two reminders on 30th June, 1995 as well as on 14th July, 1995, to the appellant, requesting them that the aforesaid flat may

be transferred in her name, after conversion into free hold at the earliest. However, the same has not been done till date.

10. On 16th June, 1995, some official of appellant pasted a letter purporting to be a show cause notice having been issued to the original allottee, respondent No.2.

11. Respondent No.1, wrote a letter to the appellant intimating them that the flat in question has been sold by respondent No.2 and thereafter, it has been purchased by respondent No.1 on 22nd November, 1999 and she is the bonafide purchaser of the flat in question and, therefore, the allotment cannot be cancelled. It was also pointed out by respondent No.1 that, she had already applied for conversion. Respondent No.1 learnt that, appellant is intending to cancel the allotment of respondent No.2 and intend to dispossess her from the flat in question. Hence, she

filed present suit for declaration, mandatory and permanent injunction against appellant.

12. Appellant alone contested the suit. No one was present on behalf of respondent Nos. 2 & 4 despite service and as such, vide order dated 30th October, 1995, they were proceeded ex parte. Thereafter vide order dated 12th January, 1996, respondent No.3 was also proceeded ex-parte.

13. In its written statement, appellant took preliminary objections stating that respondent No.1, being not the allottee of the flat in dispute, therefore, she has no locus standi to file the present suit. There is absolutely no privity of contract between appellant and respondent No.1 and no statutory notice has been served on the appellant under Section 53-B of the Delhi Development Act, 1957.

14. Initial allotment as well as subsequent sale and purchase of flat in question being in utter violation of the provisions of Delhi Development Act (Management

and Disposal of Housing Scheme) Regulations, 1968, the terms and conditions of allotment are not binding on the appellant.

15. On merits, it is stated that a show cause notice dated 16th June, 1995 issued to respondent No.2, regarding cancellation of the flat in question for filing false affidavit, as allotment was procured by respondent no.2 by practicing fraud and concealment. Since the original allotment to respondent No.2 being void, ab-initio, therefore, the subsequent purchaser cannot claim any better right in the flat and accordingly, possession of respondent No.1 in the flat is totally illegal and unauthorized. The case of respondent No.1 is not covered under the conversion scheme referred to therein. The allotment of the flat was cancelled on 11th August, 1995 and as such respondent No.1 has no cause of action.

16. Trial court, vide impugned judgment, decreed the suit of respondent No.1, declaring her to be a bonafide

purchaser of the suit property. It further directed, appellant to convert the flat in question to free hold in favour of respondent No.1. Appellant was further, restrained permanently from dispossessing respondent No.1, from the flat in question.

17. It is contended by learned counsel for the appellant that mere acceptance of conversion charges does not create any legal right in favour of respondent No.1. Appellant cancelled the allotment of the flat on 11th August, 1995, on the ground that the original allottee had committed fraud upon the appellant at the time of taking possession. In the absence of conversion, respondent No.1 cannot claim any legal right over this flat and as such respondent No.1 has no locus standi to file the present suit.

18. The next contention is that a purchaser cannot claim a better right than that of a seller. In the instance case, the right of the original allottee over the said flat was cancelled and he never challenged that

cancellation before any forum, thus, he accepted the cancellation. The subsequent transfer of the flat was done without approval of the appellant. So, the subsequent purchaser cannot claim any right over the said flat. There was no privity of contract between the appellant and respondent No.1.

19. It is contended that respondent No.2 Sh.S.P.Papneja, committed fraud since he being the original allottee, transferred the flat without permission and knowledge of the appellant. Appellant has already initiated action against him.

20. Next contention is that, the deposit of conversion charges does not create any right in favour of respondent No.1. At the time of verifying of the documents for conversion, it was found that original allottee had committed a fraud, at the time of taking possession of the flat therefore, show cause notice was issued to him. Since he did not reply, his allotment was cancelled. The original allottee never challenged

the cancellation order and as such impugned judgment is liable to be set aside.

21. Learned counsel for the appellant in support of his contentions has cited ***Sandeep Gupta v. Ramesh Chand Aggarwal & Ors. 2000 VII AD (Delhi) 1141*** and ***Sri Gangu Singh v. Union of India 2004 V AD (Delhi) 497***.

22. Respondent No.1's case is that, appellant launched a scheme of conversion of flats from lease hold to free hold, in the year 1992-93, for which applications were invited from the persons who are allotted flats by the appellant. As per scheme those persons who had purchased the flats on the basis of power of attorney etc. were also permitted to get their flats converted into free hold from lease hold, subject to their paying 35.5% extra as a conversion charges. Respondent No.1, vide her application Ex.Pw-1/21 dated 12th December, 1994, applied for conversion of the flat in question into free hold. She also paid first

instalment of Rs.4,411/- as conversion charges vide challan Ex.PW-1/22. The said payment was duly accepted by the appellant and appropriated to their account. Balance payment of Rs.12,750/- was made by respondent No.1 on 5th August, 1995 vide copy of challan Ex.PW-1/23. Appellant accepted the same also and appropriated in their account.

23. Now, the question is, if scheme of conversion was meant only for original allottees, then why did appellant, accept the application of respondent No.1 for conversion, as well as conversion charges.

24. Appellant never rejected the application of respondent No.1. During last 15 years and till date, appellant never informed respondent No.1, about rejection of her application nor did it refund the conversion amount deposited by her in 1994-95. In written statement, appellant did not deny the receipt of application for conversion, as well as payment received towards conversion charges. Since, appellant

accepted application for conversion and payment towards conversion charges, it amounts to ratification of the act, by the appellant.

25. Supreme Court in ***Maharashtra State Mining Corporation*** **v.** ***Sunil s/o Pundikaro Pathak,*** **AIR 2006 SC 1923 held**;

> "Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *'Ratihabitio priori mandate aequiparatur'* namely 'a subsequent ratification of an act is equivalent to a prior authority to perform such act'. Therefore, ratification assumes an invalid act which is retrospectively validated."

26. Now, it does not lie in the mouth of appellant that, respondent No.1 is not the lawful owner and is not entitled for conversion.

27. Respondent No.1, moved an application under Order 11 Rules 12 and 14 read with Section 151 CPC in the trial court and sought from appellant, production of original documents pertaining to conversion from

lease hold to free hold of the said flat, along with original application and challan dated 5th August, 1995 in the sum of Rs.12,750/- and challan dated 12th December, 1994 for Rs.4,411/- and its acknowledgement.

28. In reply, appellant stated that documents sought for by respondent No.1, have already been placed on record.

29. Vide order dated 7th October, 2005, trial court directed appellant to file the original of these documents.

30. On 7th March, 2006, counsel for the appellant stated before trial court, that documents which are required to be filed, are not traceable.

31. Thereafter, appellant filed application under Order 11 Rule 21 read with Section 151 CPC, praying that since appellant has not complied with the order dated 7th October, 2005, defence of appellant be struck off.

32. In reply, appellant stated that documents mentioned in the application, were not in possession of appellant. Despite best endevour of the appellant, documents mentioned in the application are not traceable. Photocopies of the documents are on record and the same be read in evidence.

33. Vide order dated 23rd May, 2008, of the trial court, application under Order 11 Rule 21 CPC was allowed and defence of appellant was struck off.

34. Respondent no.1, herself appeared as PW-1 and also examined her son Onkar Singh, who is her attorney. No evidence was led by appellant as its defence was struck off.

35. Appellant never disputed the fact that the sale was bad in the eyes of law. It did not challenge the agreement to sell, power of attorney, will, etc. Since sale has taken place by executing proper documents in favour of the respondent no.1 and she became bonafide owner of the property, hence section 41 of

Transfer of Property Act, 1882 (for short as 'Act') will come into play, which read as under;

> **"Section 41. Transfer by ostensible owner.-** Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

36. Calcutta High Court in ***Gholam Sidhique Khan and Ors.*** **v.** ***Jogendra Nath Mitra and Anr.,*** **AIR 1926 Cal 916** while dealing with Section 41 of the Act, held;

> "Section 41 is not limited to the purchaser from the ostensible owner but it extends to subsequent purchasers; and it may safely be maintained that even if one of such purchasers had some sort of constructive notice, the defendant who is the last purchaser cannot be dislodged from his position as a bona fide purchaser for value without notice

> without proof of circumstances bringing such notice home to him."

37. Privy Council in ***Macqueen and anr.*** **v.** ***Rameoomar Koondoo and ors.,*****(1872) L.R.I.A. Supp. 40 held**;

> "It is a principle of natural equity, which must be universally applicable, that where one man allows another to hold himself out as the owner of an estate, and a third person purchases it for value from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title unless he can overthrow that of the purchaser by showing, either that he had direct notice, or something which amounts to constructive notice, of the real title, or that there existed circumstances which ought to have put him upon an inquiry that, if prosecuted, would have led to a discovery of it."

38. In the present case, as respondent no.2 was an ostensible owner, who transferred the suit premises by executing agreement to sell, to respondent no.1 who

thus obtained a right in the suit property, and as such, transfer cannot be invalidated.

39. As per appellant, it had cancelled the allotment of the flat made in the name of respondent No.2, since he had obtained the allotment by committing fraud. Appellant has not placed any evidence on record to show as to how appellant came to know about the fraud committed by respondent No.2 and what action has been taken by the appellant against respondent No.2. The plea taken by the appellant with regard to the fraud, committed by respondent No.2 is not sustainable.

40. Since, respondent No.1 has proved that she is the bona-fide purchaser for value, in respect of flat in question, appellant is obliged to convert the flat in question into free hold in her name.

41. On this point, I agree with the findings of the trial court, which read as under;

> "Defendant No.1 is obliged to convert the flat in question into free hold in the name of plaintiff. Particularly once the scheme has been launched by defendant No.1 himself for conversion the leasehold property into freehold property and accepted the conversion charges, therefore, nothing is left by which the defendant No.1 can say that he is not obliged to convert the flat in question into free hold in the name of plaintiff. According to him, he had cancelled the flat in question on 11.8.95 but he had accepted the conversion charges thereafter in respect of the file and even did not sent a reply in spite of receiving the notice to this effect from the plaintiff in regard to his application for converting the flat into free hold. Therefore, defendant No.1 is obliged to convert the flat into free hold in favour of the plaintiff as it is also in consonance with the public policy."

42. None of the judgments, cited by learned counsel for the appellant, are applicable to the facts of the present case.

43. Before concluding, it must be pointed out that there is scope for improving the functioning of appellant-Delhi Development Authority, which is a statutory body.

44. Appellant, as early as in the year 1994-95, accepted from respondent No.1, her application for conversion of flat in question into free hold, along with conversion charges. Even after 15 years, appellant neither accepted nor rejected her application. Now, the question which arises, is as to when appellant neither accepted nor rejected the conversion application of respondent No.1 till date, then where the conversion charges i.e. Rs.4,411/- deposited on 12th December, 1994 and Rs.12,750/- deposited on 5th August, 1995 vide challan Ex. PW 1/22 and Ex. PW 1/23 have vanished. There is nothing on record to show that these conversion charges have been accounted by the appellant till date. It appears that officials of appellant have misappropriated the same.

45. Under these circumstances, Vice-Chairman of appellant, is directed to get an inquiry conducted in the entire episode, through its Director (Vigilence). This inquiry be completed within three months from

today and report, along with action taken in the matter, be submitted to this Court.

46. Hence, I do not find any ambiguity or infirmity, in the impugned judgment. The present appeal is not maintainable and same is hereby dismissed with costs of Rs.50,000/- (Fifty Thousand Only).

47. Costs be deposited by the appellant, with the Registrar General of this Court, within three months from today. Thereafter, appellant shall recover the same from the salaries of the delinquent officials, wherever they are posted.

48. List for compliance on 9th October, 2009.

May 30, 2009 **V.B.GUPTA, J.**
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