

Mr. Nathi Mal Gupta vs Delhi Development Authority & Anr. on 26 March, 2025

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Delivered

+ W.P.(C) 8183/2023

MR. NATHI MAL GUPTA

Through:

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Mr. Sameer Vashisht,
Tripathi and Mr. Vans
Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.....Respondents

Through: Ms. Shahana Farah, Mr. Abhigyan
and Ms. Sanna Harta, Advs. for
R-1/DDA.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J (ORAL)

1. The present petition has been filed seeking following reliefs:

"I. Issue a Writ in the nature of Certiorari or any other Writ or direction or order as deemed appropriate thereby declaring that the Notice dated 22.05.2023 issued by the Respondent No.1 to the Petitioner as non-est, void ab initio, illegal and issued contrary to law;

II. Issue a Writ in the nature of Certiorari or any other Writ or direction or order as deemed appropriate thereby quashing! setting aside the Notice dated 22.05.2023 issued by the Respondent No.1 to the Petitioner;

III. Issue a Writ in the nature of Mandamus or any other Writ or direction or order as deemed appropriate directing the Respondent No.1 to execute Perpetual Lease Deed in favour of the Petitioner in respect of the property situated at 1260, Pocket C 5, Sector- 34, Rohini, New Delhi."

2. The case of the petitioner as set out in the writ petition is that the petitioner applied for a plot under the „Rohini MIG Scheme" [hereinafter referred to as „the Scheme] introduced by the

respondent no.1/DDA through Application No.13565.

3. The property no.1260, Pocket C-5, Sector-34, Rohini, New Delhi [hereinafter referred to as „subject property] was allotted to the petitioner on 12.06.2012 through computerized draw conducted by the respondent no.1/DDA, however, the original letter of allotment was not provided to him. In any case, the petitioner deposited Rs.10,65,000/- and further amount of Rs.5,74,000/- with the respondent no.1 on 07.08.2018 and 20.08.2018, respectively so that the execution of requisite documents and possession formalities could be completed.

4. In the meanwhile, the petitioner executed an Agreement to Sell dated 24.05.2018 in favour of one M/s R.R. Builders through its promoter Sh. R.K. Sharma in respect of the subject property. However, the petitioner terminated the said agreement on 01.11.2018 on account of Sh. R.K. Sharma's failure to pay the agreed sale consideration within reasonable time as well as failing to procure the original documents in respect of the subject property as per the agreement.

5. It is further the pleaded case of the petitioner that he received a legal notice dated 13.07.2021 from Mr. Rajesh Kumar Kaushik, demanding performance of an agreement to which the petitioner was not a party. It was discovered later by the petitioner that Sh. R.K. Sharma had executed the alleged Agreement to Sell dated 03.07.2018 in favour of Mr. Rajesh Kumar Kaushik with regard to the subject property. Subsequently, Mr. Rajesh Kumar Kaushik also filed FIR No.38/2023 with PS Shahbad Dairy against the petitioner and his son under Sections 34/420 IPC on 08.01.2023.

6. Later, a suit for specific performance of Agreement to Sell dated 03.07.2018 came to be filed by Mr. Rajesh Kumar Kaushik against the present petitioner in which the respondent no.1/DDA has also been impleaded as one of the defendants.

7. It is also asserted in the writ petition that, in the meanwhile, the respondent no.1/DDA issued a Revalidation of Possession Letter dated 23.12.2021 to the petitioner requesting him to contact the concerned officials of DDA within a month thereof for taking over the physical possession of the subject property. Upon petitioner visiting the office of respondent no.1 in compliance with the aforesaid letter, it is stated that the respondent no.1 refused to hand over possession to the petitioner due to non- production of documents like the original Letter of Allotment-cum-Demand Letter and Possession Letter both dated 27.01.2021. It is the case of the petitioner that the said letters were never provided to him.

8. In view of the aforesaid circumstances, the petitioner issued a Notice dated 07.06.2022 to respondent no.1/DDA as well as a Grievance Petition dated 10.08.2022 to the Hon'ble Prime Minister requesting consideration of the petitioner's plea for providing the original documents with regard to the subject property. Thereafter, the Respondent no.1/DDA issued letter dated 23.09.2022 requesting the petitioner to come to the office of DDA and collect the original documents.

9. Notwithstanding the aforesaid controversy, the DDA not only provided the aforesaid original documents, but also handed over possession of the property in question to the petitioner on 24.02.2023. After completion of all the formalities, the date was also fixed for execution of perpetual

lease deed. However, in the meanwhile, the Respondent no.2/SHO, P.S. Shahbad Dairy, issued a notice under Section 91 CrPC directing the respondent no.1/DDA to produce relevant documents related to the subject property. Premised on this legal notice, the respondent no.1/DDA vide its notice dated 22.05.2023 kept the execution of perpetual lease deed in abeyance.

10. Mr. Sameer Vashisht, the learned counsel appearing on behalf of the petitioner submits that it is not in controversy that the petitioner has been allotted the subject property and he had complied with all the terms and conditions of the allotment. Further, the entire payment in respect of the subject property has also been made by the petitioner.

11. As regards the suit which has been instituted by Mr. Rajesh Kumar Kaushik, the submission of Mr. Vashisht is that the said dispute is inter se between the petitioner and the third party and there is no privity of contract between the petitioner and Mr. Rajesh Kumar Kaushik.

12. He submits that only on the basis of a notice sent by the police to the respondent no.1/DDA, the DDA has stayed the execution of the perpetual lease deed in favour of the present petitioner. He submits that insofar as the title of the present petitioner is concerned, there is no dispute in respect of the same.

13. Per contra, Mr. Shahana Farah, the learned counsel appearing on behalf of the respondent no.1/DDA has invited attention of the court to the stand of the DDA in its counter-affidavit, more particularly to paras 8 and 9 thereof which read as under:

"8. In the meantime, a notice u/s 91 Cr.P.C. in connection of FIR No.38/2023 for offences u/s 420/34 IPC, PS SB Dairy, Delhi was received by the Respondent requiring the detail of aforesaid plot. Therefore, execution of perpetual lease deed which was fixed for 30.05.2023 was cancelled and intimated to the allottee vide letter dated 22.05.2023. The final outcome of the aforesaid FIR is not available.

9. I state that the allottee required to submit the final outcome of FIR to enable this office to process the case for execution of lease deed. I state that DDA is not at fault and therefore the present writ petition must be dismissed."

14. She further submits that in the suit instituted by Mr. Rajesh Kumar Kaushik, the petitioner herein has made a statement to the effect that he will not create any third party interest in the suit property.

15. In rejoinder, Mr. Vashisht submits that the execution of the perpetual lease deed in favour of the present petitioner does not tantamount to creation of any third party rights, therefore, the statement given by the petitioner in the suit instituted by Mr. Rajesh Kumar Kaushik cannot come in the way of execution of perpetual lease deed by the DDA.

16. I have heard Mr. Sameer Vashisht, the learned counsel for the petitioner, as well as, Ms. Shahana Farah, the learned counsel for the respondent no.1/DDA.

17. It is not in dispute that the subject property was allotted to the petitioner and subsequently there has been a revalidation of possession letter in favour of the petitioner. The physical possession was also handed over to the present petitioner. It is also an admitted position that the petitioner has paid all the dues towards the property in question.

18. A reading of the counter-affidavit shows that the only reason why the execution of perpetual lease deed was kept in abeyance by the respondent no.1/DDA was that a notice was received under Section 91 CrPC by the DDA from the police in connection with above-mentioned FIR registered at the instance of Mr. Rajesh Kumar Kaushik.

19. Section 91 CrPC of the Code of Criminal Procedure empowers a court or police officer to issue summons or written order to compel the production of documents or other things deemed necessary or desirable for an investigation, inquiry, trial or other legal proceedings. As in the present case, the entitlement or the title of the petitioner is not in dispute, this court is of the view that the receipt of notice by the DDA under Section 91 CrPC does not create any legal impediment for execution of the perpetual lease deed by the DDA in favour of the petitioner.

20. Insofar as the statement given by the petitioner in the suit instituted by Mr. Rajesh Kumar Kaushik to the effect that no third party right will be created, is concerned, suffice it to say that execution of perpetual lease deed by the DDA in favour of the present petitioner does not tantamount to creation of any third party right by the petitioner in the subject property.

21. In view of the above discussion, the petition is allowed and the impugned notice dated 22.05.2023 issued by the respondent no.1/DDA is quashed and set aside. Consequently, the respondent no.1/DDA is directed to execute the perpetual lease deed in favour of the petitioner in respect of the subject property within a period of 12 weeks from today, subject to completion of all other formalities by the petitioner.

22. The petition is disposed of in the above terms.

VIKAS MAHAJAN, J MARCH 26, 2025/aj