



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 24<sup>th</sup> January, 2025*

*Pronounced on: 21<sup>st</sup> April, 2025*

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**CRL.M.C. 3859/2017**

**RAJAT PANDHI**

.....Petitioner

S/o Late Wing Commander (Retired)

Ranbir Pandhi,

R/o 38, Manu Apartment,

Mayur Vihar, Phase-I,

New Delhi - 110091

Through: Mr. Randhir Kumar & Mr. Keshav  
Pandey, Advocates

Versus

1. **THE STATE**

.....Respondent No. 1

2. **SH. VIRENDRA KAWLRA**

.....Respondent No. 2

S/o Late Sh. H.R. Kawlra

R/o Hans Niwas, 1606, Madarsa Road,

Kashmere Gate, Delhi – 110006

3. **SH. RAKESH VERMA**

.....Respondent No. 3

R/o Flat No. 365, SFS Flats, Type III,

Pocket E, Mayur Vihar, Phase II,

Delhi.

4. **DELHI DEVELOPMENT AUTHORITY** .....Respondent No. 4

Through its Deputy Director SFS (H)

D-Block, 3<sup>rd</sup> Floor

Vikas Sadan, INA,

New Delhi - 110023

Through: Ms. Swati Bansal & Mr. R.  
Rangarajan, Advocate for Respondent  
No.2



Mr. Shaju Francis, Advocate for  
Respondent No.3  
Ms. Manika Tripathi, Standing  
Counsel for Respondent No.4

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. The present Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'CrPC'*) has been filed on behalf of the Petitioner, Mr. Rajat Pandhi, to challenge the impugned Order dated 07.09.2015 dismissing the Application of the Petitioner under Section 156(3) CrPC of learned the CMM, Delhi which has been upheld by the learned ASJ, Delhi on 06.09.2016 in Complaint Case No. 119/2014.
2. ***Briefly stated***, Ms. Sumitra Kawlra (now deceased in 2009) was allotted Flat bearing No. 365, SFS, Cat-III, BLK/PKT-E, Mayur Vihar, Phase-II, Delhi under Self Financing Housing Scheme for retired Government Servant under *Disabled Category* on the basis of draw of plots held by the DDA on 11.08.1989. She deposited the entire cost of Rs. 2,74,914/- in DDA and completed all other formalities by 12.12.1989.
3. The Allottee/Ms. Sumitra Kawlra sought to exchange the allotted Flat with one in Vasant Kunj, but her request was declined. Her Writ Petition filed in the High Court of Delhi to seek the exchange of Flat also got listed on 09.05.1996.



4. Thereafter, she appointed Mr. Mohinder Nath Kawlra, her brother (who was PIO residing in the USA) as her attorney *vide* GPA and a Will dated 19.08.1996, bequeathing the flat to him.
5. In terms of the GPA, Mr. Mohinder Nath Kawlra appointed his brother, Late Air Vice Marshal S. N. Kawlra as his attorney to do the needful for getting possession of the subject Flat for and on behalf of Ms. Sumitra Kawlra, the original allottee. According to the Petitioner, thereafter on 28.05.1997, Mr. S.N. Kawlra, as GPA Holder of Mr. Mohinder Nath Kawlra, got a Conveyance Deed executed in the name of Mr. Mohinder Nath Kawlra, after depositing the requisite stamp duty on 28.05.1997.
6. Mr. S.N. Kawlra died in the year 2000 and left the documents of the property with a common friend.
7. Sh. Mohinder Nath Kawlra asserted that he having turned 80 years, returned back to India with intent to spend his last days amongst his people/relatives. To his utter shock, he was denied access to his father's house at 1606, Kashmere Gate, Delhi, by his brother, Mr. Virender Kawlra, who claimed that their father had disinherited him from the property. The Complainant then filed a Suit before this Court and *ad Interim Injunction* was granted on 26.03.2012 restraining Mr. Virender Kawlra, from creating third party rights in the said property.
8. The Complainant's father Sh. Sh. Mohinder Nath Kawlra then started looking for a Flat for his accommodation. He also took out his documents pertaining to the subject Flat. He then came to know that some unknown persons, namely Mr. Rakesh Verma and Ms. Sunita Verma, were residing in the Flat in question, who refused to answer the queries convincingly.



9. The Complainant went to DDA Office, to ascertain the status of the Flat and to inspect the DDA records. During the inspection, he found that the entire communications/documents/approvals/official Notings including the Conveyance Deed after 1994 between DDA and Allottee, were not on record and had been removed.

10. He also found a new set of documents from the year 2006 onwards, which had forged signatures of Ms. Sumitra Kawlra, for creating title in favour of Mr. Virender Kawlra, her brother.

11. The Complainant/Sh. Mohinder Nath Kawlra lodged a Complaint dated 08.05.2013 with DCP East, in regard to the removal of records from the DDA file and of placing forged and fabricated documents including the Conveyance Deed on record, by forging signatures of Ms. Sumitra Kawlra, in conspiracy and connivance with the officials of the DDA. It was asserted that the intent of Mr. Virender Kawlra to misappropriate the subject Flat is clear from the fact that he sold it to third party, Mr. Rakesh Verma and Ms. Sunita Verma, who are now residing in the flat.

12. The Police, however, failed to take any action on his Complaint and DDA also failed to file Reply. He then approached DDA for a public hearing in which he detailed the entire facts, but Mr. Virender Kawlra despite several Notices, failed to appear in the *public hearing*. He also did not give any Reply to the Show Cause Notices.

13. DDA after making enquiry came to the conclusion that Mr. Virender Kawlra while approaching DDA for execution of Conveyance Deed, concealed material facts and documents. Consequently, Deputy Director (SFS) H cancelled Conveyance and Mutation of Flat in question *vide* Order



dated 12.06.2014, copy of which was forwarded to the Office of Collector of Stamps.

14. The Complainant then filed a Supplementary Complaint dated 09.12.2014 to SHO, Police Station Pandav Nagar, for lodging the FIR, but to no avail. Hence, the Complaint under S. 200 and an Application under Section 156(3) Cr.P.C. was filed by the Complainant, before the learned Metropolitan Magistrate.

15. *Learned Metropolitan Magistrate* while noting all the aforesaid contentions, observed that all the documents executed in favour of Mr. Virender Kawlra in the year 2006-2007, were registered documents raising a presumption of genuineness in their favour. There appeared to be no *prima facie* case of connivance between Mr. Virender Kawlra and DDA officials. It was further noted that though the partial file of DDA was not traceable, but non-traceability does not appear to be on account of the documents being forged. Moreover, no presumption in regard to the transfer of Conveyance Deed in favour of blood relation or execution of Conveyance Deed can be presumed merely because stamped and signed Conveyance Deed was submitted by the allottee in DDA, as no finally signed and stamped Conveyance Deed in favour of Allottee, had been placed on record.

16. *Learned M.M.* further noted that the alleged documents in favour of Mr. Virender Kawlra, had different signatures while the documents executed in favour of Mr. Mohinder Nath Kawlra, had her full signatures. It was observed that the two sets of documents are separated by number of years and in the absence of any pre 2000 specimen signatures of Ms. Sumitra Kawlra, it cannot *ipso facto* lead to any inference of the signatures that the



signatures of Allottee on the documents executed in favour of Mr. Virender Kawlra, were forged and fabricated.

17. Further, the Mutation and Conveyance Deedin favour of Mr. Virender Kawlra may have been cancelled by DDA on account of his non-appearance in public hearing after issuance of Show Cause Notice, but that in itself is not sufficient to hold that the documents executed in favour of Mr. Virender Kawlra, were forged and fabricated. Furthermore, Mr. Virender Kawlra has already filed a Writ Petition to challenge the cancellation of Conveyance Deed and Mutation, in his favour.

18. It was thus, concluded by the Ld. M.M. that there was no *prima facie* ground established for direction to register the FIR. The Application under Section 156(3) CrPC was dismissed and the matter was listed for recording of evidence of the Complainant under Section 200 CrPC.

19. The Petitioner, Mr. Rajat Pandhi (son of Mr. Mohinder Nath Kawlra) then preferred a **Revision Petition** before the Court of Sessions, but the same was also dismissed and the Order of the learned M.M., was upheld.

20. Aggrieved by the two Orders, the present Petition has been filed by the Petitioner, to challenge the dismissal of the Application under Section 156(3) Cr.P.C.

21. **The Respondent No. 4/DDA in its Reply to the Petition** has admitted that Ms. Sumitra Kawlra was allotted Flat no. 365, vide Allotment Letter dated 9.10.1989 and asked to deposit the cost of flat within 60 days. However, she failed to comply with the Notice and make payment of demanded cost of Flat; a Show Cause Notice was issued to her on 06.04.1990. Ms. Sumitra Kawlra deposited Rs. 2,74,914.00 *vide* Bank



Challan dated 12.12.1989 and also some documents *vide* Letter dated 12.02.2007.

22. Subsequently, in response to the Letter dated 13.03.2007, Ms. Sumitra Kawlra appeared in the office of DDA on 02.04.2007 along with relevant documents wherein the genuineness was verified in Office File bearing no. F.134 (115)89/SFS/TP/III. The *Possession Letter* was issued to Ms. Sumitra Kawlra/Allottee on 09.01.2008 and she took the physical possession of the Flat on 15.1.2008.

23. Thereafter, on the request of Ms. Sumitra Kawlra *vide her* Letter dated 05.02.2008 for transfer of Flat in favour of her real Brother Respondent No.2/Sh. Virendra Kawla, the Flat was transferred in the name of Respondent No.2/Sh. Virendra Kawla *vide* Letter dated 19.02.2008.

24. Respondent No.2/Sh. Virendra Kawla *vide* Application No. 84657 dated 25.2.2008 applied for Conversion of the Flat from leasehold to freehold by depositing the fee and the requisite documents. The conversion was allowed by the Competent Authority *vide* Letter dated 11.04.2008. The Conveyance Deed was duly executed on 24.04.2008.

25. Thereafter, Sh. Mohinder Nath Kawlra complained in DDA that his sister/Ms. Sumitra Kawlra before her death in 2009 had executed a registered WILL dated 19.08.1996 and a registered GPA dated 19.08.1996 for the Flat in question, in his favour. He also lodged a Complaint at P.S. Pandav Nagar about alleged fraudulent transfer of the Flat by suppression of important documents.

26. DDA also was served with a Notice under Section 91 Cr.P.C. dated 05.08.2013. Thereafter, the case was examined and a Show Cause Notice



dated 27.11.2013 was issued to Respondent No. 2 to *Show cause* why the mutation and Conveyance Deed should not be cancelled on the ground of concealment of facts. Though Show Cause Notice was returned undelivered with a remark "left", however, an e-mail was received on 22.01.2014 wherein he stated that Ms. Sumitra Kawlra had made her last WILL and had registered the same on 29.01.2007 in his presence along with witnesses. In response, he was called to appear before appropriate Authority of DDA.

27. Respondent no. 2 neither replied to the Notice nor appeared before the Competent Authority; consequently the mutation and Conveyance Deed of the Flat was cancelled by the Competent Authority and Letter dated 12.06.2014 was issued to Respondent No. 2 and copies were endorsed to Sh. Mohinder Nath Kawlra and other Authorities for information and necessary action.

28. It is further submitted that since the action taken by DDA was rightful and justifiable as Respondent No. 2 already had Notice at the time of transfer, DDA did not owe any liability towards Mr. Rakesh Verma and Ms. Sunita Verma in whose favour a third party interest was created by Respondent no. 2.

29. ***The Respondent No.2*** has submitted that the Ld. CMM and Sessions Judge have rightly dismissed the Application of the Appellant under Section 156 (3) Cr.P.C. by observing that no case for investigations was made out against the Respondents as the genuineness of documents had not been questioned by the Court.

30. Furthermore, as observed by the Ld. Trial Court only because draft stamped and Conveyance Deed signed by Allottee, were submitted in the



office of DDA, cannot lead to any presumption of execution of the Conveyance Deed in her favour as no finally signed and stamped Conveyance Deed was ever placed on record by the Petitioner herein. Further, with regard to cancellation of Conveyance Deed in question, Virender Kawlra/Respondent no. 2 had filed a Writ Petition before this Court wherein he had prayed for quashing the Order Cancelling the Mutation and Conveyance Deed of the flat in question and for providing him with the opportunity of being heard and he has also undertaken to indemnify *bona fide* purchasers Rakesh Verma and Sunita Verma.

31. The Ld. Sessions Judge *vide* order dated 06.09.2016 had rightly held that the ratio of *Lalita Kumari vs. State of U.P.* with regard to Application under Section 156(3) Cr.P.C., would not apply to the facts of the present case.

32. It is thus, prayed that the Petition is not sustainable in law and is liable to be dismissed.

**Submissions heard and record perused.**

33. It is admitted that the original Allottee of the flat was Ms. Sumitra Kawlra *vide* Allotment Letter dated 09.10.1989. She during her lifetime, executed a GPA dated 19.08.1996 for execution of Conveyance Deed and taking possession in favour of her brother, Mohinder Nath Kawlra and she also executed a Will on the same day i.e. 19.08.1996, whereby bequeathing her flat to Mohinder Nath Kawlra.

34. Further, Mohinder Nath Kawlra in turn, executed a Power of Attorney dated 31.12.1996 in favour of his brother Air Vice Marshal, S.N. Kawlra on 31.12.1996, since he was a PIO residing in USA.



35. In response to the letter dated 09.04.1997 addressed to Ms. Sumitra Kawlra by DDA, late S.N. Kawlra submitted three copies of Conveyance Deed and paid the stamp duty on 28.05.1997 which was duly acknowledged by DDA. Eventually, an NOC after completion of all formalities of possession was issued to Sumitra Kawlra on 03.02.1998.

36. *Prima facie* what emerges is that while late Sh. S.N. Kawlra on behalf of Ms. Sumitra Kawlra, completed all the formalities and submitted draft Conveyance Deed, but apparently neither the possession was taken nor Conveyance Deed was finally executed in favour of Ms. Sumitra Kawlra. The possession of the flat came to be taken for and on behalf of Ms. Sumitra Kawlra, on 15.01.2008, i.e. after about 10 years and that too by Respondent No.2, her other brother Sh. Virender Kawlra/Respondent No.2, in whose favour she allegedly executed a registered Will, GPA and SPA dated 01.02.2007. On her request, for transfer of Flat in the name of Sh. Virender Kawlra/Respondent No.2, Conveyance Deed was finally executed in his favour on 24.04.2008.

37. Sh. Virender Kawlra/Respondent No.2, thereafter executed a Sale Deed dated 24.12.2008 in favour of subsequent purchasers i.e. Rakesh Verma and Sumitra Verma and handed over the possession of the flat to them, who are admittedly in possession as on date.

38. It is quite evident from the above narration that though Ms. Sumitra Kawlra had executed a Will in favour of Sh. Mohinder Nath Kawlra on 19.09.1996 but on perusal, it shows that it was executed in favour of Sh. Mohinder Nath Kawlra essentially for getting the Conveyance Deed executed and to take the possession on her behalf.



39. During her lifetime, Ms. Sumitra Kawlra executed a subsequent Will dated 01.02.2007 in favour of Sh. Virender Kawlra/Respondent No.2.

40. While the question of authenticity of Will has been raised in view of the signatures of Ms. Sumitra Kawlra being different on the subsequent Will as compared to the earlier Will, but from the sequence of events there can be no conclusion that the subsequent Will is forged and fabricated for there being no evidence in this regard. This is more so as the subsequent Will is not only registered, but the same has Computerised pictures of the parties wherein Ms. Sumitra Kawlra is clearly visible.

41. It is essentially a case which requires interpretation of the two Wills in order to ascertain the right and entitlement of the parties and does not require any police investigation. Furthermore, it cannot be overlooked that the dispute *inter-se* between the branches of two brothers i.e. Sh. Mohinder Nath Kawlra and Sh. Virender Kawlra, are essentially civil in nature requiring interpretation of documents to ascertain who has a better title.

42. *The second aspect* which has been agitated by the Petitioner herein is that the documents from the period 1996 to 2004 are not available on the DDA records. A response was called from the DDA who submitted the Letter dated 09.09.2024 addressed by them to the SHO, reporting that the documents were missing and that FIR be registered against the erring unknown persons.

43. It is an admitted fact that the documents are not available and no purpose would be served in directing the Police investigations for tracing the documents which are admittedly not available on the record. The best evidence would be to summon the DDA officials who alone can trace or



explain the missing documents. No police assistance essentially is required for tracing the missing documents.

44. It also requires mention that as per the Complainant himself, though draft Conveyance Deed also with stamp paper was submitted in 1997-98 and DDA had told Ms. Sumitra Kawlra to take possession, but neither there was any Conveyance Deed executed in her favour nor possession was taken on her behalf in 1998 pursuant to Letter dated 09.04.1997 of DDA. The Conveyance Deed got executed and possession taken only on 24.04.2008 and that too by Respondent No.2, for and on behalf of Ms. Sumitra Kawlra.

45. Moreover, even if the original documents are not traceable, the parties can adduce secondary evidence in support of their assertions, which has in fact, already been done as copy of the Will and GPA executed by Ms. Sumitra Kawlra in 1996, have already been placed on record.

46. The Petitioner herein i.e. Rajat Pandhi had asserted his rights as the owner of the subject Flat on the basis of executed Agreement dated 20.11.2012 and SPA dated 04.04.2013. He had made a complaint in DDA in which Sh. Virender Kawlra was called for a *Public Hearing* but he failed to appear. Consequently, an *ex parte* Order was passed whereby Mutation already effected in the name of Sh. Virender Kawlra, was cancelled. Pertinently, the Cancellation Order was merely because Respondent No.2 Sh. Virender Kawlra failed to appear in Public Hearing but he has already challenged the cancellation of Mutation by way of a Writ Petition in this Court. Further, a representation has also been made, by Mr. Rakesh Verma and Ms. Sunita Verma, the subsequent purchasers before DDA, which is pending consideration.



2025:DHC:2754



47. These facts also reveal that it is essentially a dispute to establish the right, title, interest in the subject property on the basis of independent sets of documents. There is no police investigations warranted in this regard and Application under Section 156(3) Cr.P.C has been rightly rejected by Ld. MM and upheld by Ld. ASJ.

48. There is no merit in the present Petition which is hereby dismissed along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**APRIL 21, 2025  
RS**