

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

File No.CIC/DS/A/2013/001968-SA

(Sh.Manish Bansal Vs. Delhi Archives, GNCTD)

Appellant : Shri Manish Bansal

**Respondent : Delhi Archives
GNCTD, Delhi**

Date of hearing : 21-08-2014

Date of decision : 01-09-2014

**Information Commissioner : Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**

**Referred Sections : Sections 3, 19(3) of the RTI
Act**

**Result : Appeal allowed/
Disposed of**

Summary: GPA is a public document because the grantee has to use it to convince any prospective purchaser and it is also in the interest of that prospective purchaser to verify the veracity of the documents including GPA before finalizing the deal. Because the purpose of GPA is to authorize another person to deal with the others i.e., to lease out, sale or mortgage etc, it is an open document and after being registered it is put in public domain, and when transferred to Delhi Archives, it continued to be in public domain.

The RTI Act made it obligatory to disclose any document which is held by public authority unless exemptions as mentioned in Section 8 are attracted. Assuming that Section 57 Registration Act 1908 authorizes them to deny the access to GPA, which the officers from Sub-Registrar office are regularly raising as defence, the Commission would like to reiterate that as per section 22 of Right to Information Act 2005, the 156 year old law has to yield to 2005 law which Parliament wanted to override the other laws. The Commission recommends the Respondent Public Authority to inform all the PIOs and officers registering the transactions on landed property to abide by the RTI Act and not to quote obsolete British relic Registration Act, 1908. As the age-old maxim says ignorance of law is no excuse, the respondent authority cannot plead ignorance of this law any more as nine years passed after RTI Act came into existence. Any effort to quote British law to

deny the copy of GPA or any other document which has to be given under RTI Act will be considered as clever ploy to deny the information and the Commission warns the public authority that this also will amount to violation of RTI Act attracting the penalties under Section 20 RTI Act. The office of PIO should desist from using the archaic law and First Appellate Authority cannot reject first appeals on this ground.

The appellant is not present. The Public Authority is represented by Mr. Sanjay Kumar Garg, Department of Delhi Archives, GNCTD, Delhi

FACTS

2. Through his RTI application dated 25-4-2013, the appellant is seeking copies of documents mentioned at Sl.No.3,4 and 5 of the RTI application regarding the GPAs dated 23-1-1981, 12-6-1981, relating to a property at Laxmi Nagar, executed by Mr. Krishan Lal in favor of Urmila Gupta etc. PIO has given reply by his letter dated 6-5-2013. The appellant made first appeal before the FAA, who, by his order dated 17-7-2013 upheld the information furnished by the PIO and disposed of the appeal, saying that the appellant cannot be issued the documents as the Department of Delhi Archives is only custodian of records whereas the creating agency of records is another office, which is sub-Registrar Office and the information can only be given to a person executing or claiming under the document. Claiming that complete information was not received from the respondent authority, the appellant has filed 2nd appeal before the Commission.

Decision:

3. Heard the submissions made by the respondent officer. The Commission does not accept the stand taken by the respondent authority that they were only custodians and thus they could not give copies of the documents. Once they hold the information, the RTI Act

mandates that they should share it with RTI applicants unless the RTI Act exempts them from disclosure. The contention of the respondents, Department of Delhi Archives in this case, and that of Department of Sub-Registrar or Registrar generally before this Commission was that the Registration Act that the Registration Act does not require them to share a copy of GPA or the Will under Section 57, which says:

57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.—

(1) Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all time open to inspection by **any person** applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

(2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to **any person** applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to **any person executing or claiming under** the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Book Nos. 3. and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

51. Register-books to be kept in the several offices.—

(1) The following books shall be kept in the several offices hereinafter named, namely:— "A —In all registration offices—" Book 1, "Register of non-testamentary documents relating to

immovable property". Book 2, "Record of reasons for refusal to register". Book 3, "Register of wills and authorities to adopt", and Book 4, "Miscellaneous Register". B—In the offices of Registrars— Book 5, "Register of deposits of wills".

(2) In Book I shall be entered or filed all documents or memoranda registered under Sections 17, 18, and 89, which relate to immovable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of Section 18 which do not relate to immovable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

This is the 'right to information' as prescribed under Registration Act, 1908.

4. A **general power of attorney** is an instrument wherein granter confers authority on grantee to act or transact on his behalf. This power continues during the pleasure of granter. GPA does not confer title on the grantee. In spite of GPA, the owner/granter can transfer his property to any other person, other than GPA holder. Thus the GPA based transactions or transfer of property will have serious risk of multiple transactions on same property.

5. As an agent, an attorney-in-fact is a fiduciary for the principal, so the law requires an attorney-in-fact to be completely honest with and loyal to the principal in their dealings with each other. Under the common law, a power of attorney becomes ineffective if its grantor dies or becomes "incapacitated," meaning unable to grant such a power, because of physical injury or mental illness, for example, unless the grantor (or principal) specifies that the power of attorney will continue to be effective even if the grantor becomes incapacitated.

The three-judge bench of Justices R V Raveendran, A K Patnaik and H L Gokhale of Supreme Court in **Suraj Lamps & Industries Pvt Ltd v State of Haryana and another** [Special Leave

Petition No 13917 of 2009]decided on 11.10.2011 with regard to SA/GPA/WILL had observed as follows :

“3. The earlier order dated 15.5.2009, noted the ill-effects of such SA/GPA/WILL transactions (that is generation of black money, growth of land mafia and criminalization of civil disputes) as under:

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.

Whatever be the intention, the consequences 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.

This kind of transactions has disastrous collateral effects also. For example, when the market value increases, many vendors (who effected power of attorney sales without registration) are tempted to resell the property taking advantage of the fact that there is no registered instrument or record in any public office thereby cheating the purchaser.

When the purchaser under such `power of attorney sales' comes to know about the vendor's action, he invariably tries to take the help of musclemen to `sort out' the issue and protect his rights. On the other hand, real estate mafia many a time purchases properties which are already subject to power of attorney sale and then threaten the previous `Power of Attorney Sale' purchasers from asserting their rights. Either way, such power of attorney sales indirectly lead to growth of real estate mafia and criminalization of real estate transactions.

.....

Advantages of Registration

10. In the earlier order dated 15.5.2009, the objects and benefits of registration was explained and we extract them for ready reference:

....

Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. **Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property.** It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.

Registration of documents makes the process of verification and certification of title easier and simpler. It reduces disputes and litigations to a large extent.

.....

Scope of Power of Attorney

13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section [1A](#) and Section [2](#) of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In **State of Rajasthan v. Basant Nehata 2005 (12) SCC 77** this Court held:

A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favor of the agent. The agent

derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

Scope of Will

14. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see Sections [69](#) and [70](#) of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

....

16. We therefore reiterate 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 recognized 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. They cannot be recognized as deeds of title, except to the limited extent of Section [53A](#) of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to

freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.”

6. It is relevant to consider the Circular of Government of Tamilnadu Circular No. 40791/C1/2004 dated 3-11-2004 clarifying certain issues about issuance of certified copy of Power of Attorney:

It has been brought to the notice that certified copy of Power of Attorney involving immovable property is not issued by the registering officer even on request from buyers or subsequent buyers of that immovable property. The buyers of the immovable property are also finding it difficult in getting title changed in revenue records, because the revenue authorities insist on production of link document, i.e., the power of attorney. It has also been brought to the notice that the certified copy of power of attorney involving immovable property is not being made available to the prospective buyers.

This issue was examined in detail. The Power of Attorney is registered in Book IV. Sub-section (3) of Section 57 of the Registration Act restricts the issue of certified copies only to the executants or claimants in that Power of Attorney or to their agents/representatives. When the attorney executes a sale deed in favour of a buyer, all the rights relating to that immovable property are conveyed through the sale deed, which also includes authorization to get any record from any office for effecting change in title. Therefore, any buyer will definitely qualify to be an agent for the purpose of this section i.e., Section 57(3) of the Registration Act. It is also felt essential that the prospective buyer should ensure that the Power of Attorney, is a genuine one and in force. With an authorization, either from the Principal or Attorney, he is entitled to get a copy of the Power of Attorney.

Accordingly, the following clarifications are issued:

1. Before execution of any sale deed by a “power of attorney” holder, a certified copy can be issued to the prospective buyer, provided such prospective buyer obtains authorization from the power of attorney holder or the principal to that effect. The registering officers are requested to advise such prospective buyers on these lines.
2. After registration of a conveyance deed, any buyer or subsequent buyer will be entitled to get a certified copy of that power of attorney as per the right transferred to him through the conveyance deed. The registering officers should ensure that the certified copy is issued to the subsequent buyers only after proper identification. In case of death of the buyer or subsequent buyers, his/her legal heirs will be entitled to get the certified copy of the power of attorney.

In this context it is relevant to refer to certain happenings around in this society:

There was a news report in the Hindu on December 12, 2012, stating that: The police said misusing RTI, accused got the property details and created fraudulent documents, forged the seal and signature of revenue officials to create a general power of attorney (GPA), dating back to 1998, in the name of 70-year-old woman identified as Unnamalai. He also created a declaration and confirmation deed, dating back to 1999, to make it look like he had purchased the property from her for Rs. 30 lakh. Using the forged documents, he even got the property transferred at the Shantinagar Sub-Registrar's Office in the name of himself and his partner, Girish Kumar. Both then started looking for a buyer.

When a prospective client got the documents checked, the fraud was suspected which was confirmed on investigation. The Police said that the scamster is a habitual offender involved in several forgery cases, including two of creating fake ration cards was eyeing the 45 ft by 54 ft property worth Rs. 3 crore in BTM Layout belonging to an NRI who lives in Washington.

In an another case, the officials of Fraud and Misappropriation wing of the Central Crime Branch arrested accused land dealer who, using the Right to Information (RTI) Act, sourced copies of property documents belonging to NRI, and forged them to sell it. The scam was busted when the prospective buyer verified the documents, found them to be bogus and tipped off the police. (<http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/he-misused-rti-to-create-fake-property-deeds/article4190184.ece>)

Verification of GPA and other documents used in transactions over immovable property prevents many property related crimes and thus it is in the interest of prevention of crime of fraud and also provide peace of mind to the property purchasers, there is a huge public interest involved in disclosing the GPA.

7. Even though the Registration Act 1908 limits disclosure of some documents to the executants only, Section 22 of the RTI Act 2005 overrides that law and makes it mandatory for

the respondent public authorities to disclose the copies of GPA in the larger public interest. There is no public interest in withholding it; rather huge public interest is involved in its disclosure.

Hon'ble High Court of Delhi has held in **Union of India v Central Information Commission** [WP (C) 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 and 3607/2007] had observed that:

“49. It was urged by Mr.A.S. Chandhiok, learned Additional Solicitor General of India that Section 8(1) of the RTI Act is not the complete code or the grounds under which information can be refused and public information officers/appellate authorities can deny information for other justifiable reasons and grounds not mentioned. It is not possible to accept the said contention. Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non-obstante clause has to be given full effect to, in compliance with the legislative intent. Wherever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date when the RTI Act was enacted, the provisions of the RTI Act will prevail. It is a different matter in case RTI Act itself protects a third enactment, in which case there is no conflict. Once an applicant seeks information as defined in Section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in Sections 8 or 9 of the RTI Act. The Public Information Officer or the appellate authorities cannot add and introduced new reasons or grounds for rejecting furnishing of information. ...”

8. The Commission thus concludes that GPA is a public document because the grantee has to use it to convince any prospective purchaser and it is also in the interest of that prospective purchaser to verify the veracity of the documents including GPA before finalizing the deal. Because the purpose of GPA is to authorize another person to deal with the others i.e., to lease out, sale or mortgage etc, it is an open document and after being registered it is put in public domain, and when transferred to Delhi Archives, it continued to be in public domain, disclosure of which was permitted by the Registration Act 1908 also in a limited way. Registered GPA is an authenticated documentation of giving power of attorney to deal with

immovable property, which can be accessed by persons interested in purchasing that property to rule out encumbrances if any. It is the duty of Registrar office to give certified copy of such encumbrance or issue 'no encumbrance certificate'. The RTI Act made it obligatory to disclose any document which is held by public authority unless exemptions as mentioned in Section 8 are attracted. Assuming that Section 57 Registration Act 1908 authorizes them to deny the access to GPA, which the officers from Sub-Registrar office are regularly raising as defence, the Commission would like to reiterate that as per section 22 of Right to Information Act 2005, the 156 year old law has to yield to 2005 law which Parliament wanted to override the other laws. The Commission recommends the Respondent Public Authority to inform all the PIOs and officers registering the transactions on landed property to abide by the RTI Act and not to quote obsolete British relic Registration Act, 1908. As the age-old maxim says ignorance of law is no excuse, the respondent authority cannot plead ignorance of this law any more as nine years passed after RTI Act came into existence. Any effort to quote British law to deny the copy of GPA or any other document which has to be given under RTI Act will be considered as clever ploy to deny the information and the Commission warns the public authority that this also will amount to violation of RTI Act attracting the penalties under Section 20 RTI Act. The office of PIO should desist from using the archaic law and First Appellate Authority cannot reject first appeals on this ground.

9. The Commission in view of the above, and directs the respondent/PIO to supply the required information to the appellant within one month from the date of receipt of this order. The appeal is **disposed** of accordingly.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Address of the parties:

1. The CPIO under RTI, Govt. Of NCT of Delhi,
Department of Delhi Archives, 18-A, Satsang Vihar Marg,
Special Institute Area, NEW DELHI-110067

2. Shri Manish Bansal

C/o Sh. Kamal Prakash Gupta, BT-54,

Shalimar Bagh, Delhi-110088