SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEĆE KAI

GSK-KPA-A-188/13

Prishtinë/Priština,
15 April 2014

In the proceedings of:

P.P. U. K. /"RAJ" Holding Corporation
Mitrovicë/Mitrovica
Represented by **M. R.**

Appellant

vs.

Public Housing enterprise Pristina

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/175/2012 dated 22 October 2012 (case file registered at the KPA under No. KPA 13397), after deliberation held on 15 April 2014, issues the following

JUDGMENT:

1. **The appeal is rejected as unfounded;**
2. **The decision of the KPCC no. KPCC/D/R/175/2012 dated 22 October 2012 is confirmed as far as it regards KPA 13397.**

Procedural and factual background:

1. On 7 September 2006 U. K. DOO, by power of attorney represented by M. R. filed several claims at the Kosovo Property Agency (KPA), seeking confirmation of his property right over (part of the) the B.C. settlement. These claims were registered with the numbers: 13397, 13399, 13400 and 13401.
2. The KPA Executive Secretariat, on 7 November 2008 in its decision no. ES/1/2008 decided all four claims to be dismissed, on basis of Section 4.3 of annex II of the UNMIK administrative direction 2007/5 and Law 03/L-079.
3. The decision of the KPA Executive Secretariat no. ES/1/2008 was appealed by M. R. on 18 November 2008. This appeal regarded all four claims although the KPCC apparently decided to process them separately.
4. In cover decision KPCC/D/R/175/2012 dated 22 October 2012, the KPCC decided on the claim registered with the KPA number 13397. This claim regards 47 apartments with a surface of 4.141,71 m2 in the B.C. settlement in Pristina.
5. The KPCC decided the claim to be refused with the reasoning that the claimant had not proven his property right on the apartments. The claimant, being the contractor of the building project, was merely entitled on payment for the construction works and never acquired any property rights on (parts of the) the building project. The KPCC decision refers to article 630 of the law on contracts and Torts as well as article 6 of the Law on Construction of Investing Objects.
6. The decision was served upon the appellant on 16 May 2013.
7. The appeal therefore had to be filed within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 (hereafter to be referred to as: the UNMIK regulation) on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property. This period ended on Saturday 15 June 2013. Appellant

filed an appeal against the KPCC decision at the KPA on Monday 17 June 2013. Since the period ended on an Saturday, the appeal is considered to be filed timely.

8. With the appeal the appellant filed the following (copies of) documents as evidence:
    - A contract (hereafter referred to as: the building contract) completed on 11 April 1997 between the Public Housing Enterprise Pristina (the investor) and RAJ Holding Corporation Peć/Peja (hereafter referred to as both: the contractor, as well as the appellant). This contract regarded the construction of the housing-business complex B. C. in Pristina (hereafter referred to as: the building project);
    - Memo 02-1624/1 dated on 28 august 1998, regarding the fulfilment of the building contract (hereafter referred to as: the memo);
    - An invoice numbered 1/98 and dated 28 August 1998 regarding housing space, stores, warehouses and garages up to an amount of 51.599.710,80 Dinars (hereafter referred to as: the Invoice).
9. The building project contained, according to the building contract:

12 apartments-house	2072.24 m2	9.325.080 din
105 shops	3821.42 m2	21.017.810 din
11 warehouses	715.51 m2	2.551.509 din
120 garages	715.51 m2	4.953.050 din
47 apartments	4141.73 m2	16.152.747 din
Total investment		54.000.196 din

10. The contractor performed construction works until 10 June 1999 and then stopped due to the extra-ordinary circumstances in Kosovo. On that date one third of the construction works were finished.
11. As from October 1999 the investor contracted a different contractor and the latter finalized the construction works in 2002.
12. The contractor did neither receive (a full) payment for the performed services until June 1999 nor for the delivered materials.

Allegation of the parties

13. The appellant seeks confirmation of his ownership over the 47 apartments of 4141.73 m2 in the building project.

14. The appellant states that he acquired the property right over the 47 apartments as a payment for the construction works he has performed and due to the fact that he did not receive a payment in money.
15. The appellant alleges that the payment by the exchange of the rights on the real estate was, and still is quite common in the pre-war and post-war practice and that the parties have agreed upon it. In fact the article 16 in the building contract would be, according to the appellant, the provision to this matter.
16. The appellant further challenges the KPCC's decision where it refers to article 630 of the Law on Contracts and Torts.

Legal reasoning:

Admissibility

17. The appeal is admissible.

Jurisdiction

18. The Supreme Court has jurisdiction.

Merits

19. According to Section 3.1 of Regulation 2006/50 as amended by Law No. 03/L-079 (hereafter; the Regulation), a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
20. The appellant has not proven his ownership of the claimed part of the building project.
21. The Appeals panel hereby takes into account that the appellant was bound to the investor as a contractor. There was a signed contract between them in which the appellant became obliged to perform building activities regarding the building project and the appellee became obliged to pay the appellant for his performance.
22. The building contract as such was in compliance with article 630 of the Law of Contracts and Torts ,(the law of 1 October 1978, official Gazette of the FPRY nr. 29/1978 amendments published in 39/1985, 45/1989, and finally in the Official Gazette of the FR nr. 31/1993) as applicable in 1999. Article 630 says:

"1 A contract of construction shall be a contract for services by which a contractor assumes the obligation to construct, according to a specific plan and within a stipulated time limit, a specific building on an agreed building

site, or to perform on such a site, or on an already existing facility. Some other civil engineering works, while the purchaser assumes the obligation to pay in return an agreed price.

2 A contract of construction must be concluded in written form."

23. A contract like that however does not imply the transfer of the build real estate from the investor to the contractor, even not when parties have agreed on a special provision in the contract as in this case the investor and the contractor did in article 16 of the building contract.
24. This article 16 of the building contract provides the following: *"Should the payment of the parts of the performed construction be conducted through compensation based on square meters, in accordance with the Bid of Construction Performer, the structure of the price and the mutual debts would be established with a special contract".*
25. In 1998-1999 however the procedure for the transfer of real property was ruled by the SRS Law on Trade of Immovable Property (official Gazette of Socialist Republic of Serbia, 43/81 of 31 August 1981, p.3050 hereafter referred to as the LTIP).

    Self-management agreements and contracts on the transfer of immovable property are ruled by Article 4 of the LTIP:

    "Self-management agreements and contracts concluded between social legal persons on the transfer of immovable property or the exchange of socially-owned immovable property shall be concluded in writing.

    Contracts on the transfer of rights to immovable property between ownership right holders as well as contracts on the alienation of socially-owned immovable property, on the exchange of socially-owned immovable property which can be subject to the right of ownership and contracts on the procurement of socially-owned immovable property shall be concluded in writing; the signatures of the contracting parties shall be certified by the courts.

    Self-management agreements or contracts which do not comply with paragraphs 1 or 2 of this Article are null and void."
26. The building contract, in particular article 16 of this contract, is to be considered as an agreement between parties that, under circumstances may lead to another contract on the transfer of immovable property. As such, this article does not whatsoever lead to the transfer of immovable property. In fact the article prescribes that a separate, special contract has to be concluded.
27. The filed Memo in combination with the Invoice cannot be considered as such a contract. And even if it was meant to be it lacks the certification by the court as demanded in the second paragraph of Article 4 of the LTIP and is to be considered null and void.

Conclusion

28. This leads the Supreme Court to the conclusion that the appellant has not acquired any property right on the apartments. The appeal, accordance to Section 13.3 of the UNMIK

Regulating 2006/50, therefore is rejected as unfounded and the appealed decision KPCC/D/R/175/2012 dated 22 October 2012 as far as it regards the case file registered at the KPA under No. KPA 13397 therefore is confirmed.

Legal Advice

29. Pursuant to Section 13.6 of UNMIK Regulation, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Willem Brouwer, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar