

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

+ W.P.(C) 14910/2006

RAJINDER SINGH Petitioner
Through Ms. Jyoti Singh, Advocate.

versus

UOI & ORS Respondent
Through Ms.Sangeeta Chandra, Advocate for
counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
10.04.2008

1. Case of the petitioner is that he is a nephew of late Mr.Mam Chand, a bachelor who expired on 8th August, 1999. The petitioner has also obtained probate of the last Will executed by late Mr.Mam Chand.

2. DDA has refused to transfer the allotment of plot no.103, Block-D, Bagdola (Dwarka) measuring 175 sq.mts. on the ground that the petitioner himself had filed documents like affidavit handing over physical possession, receipt agreement and General Power of Attorney executed by late Mr.Mam Chand in favour of the petitioner. It is stated that late Mr. Mam Chand had transferred the property to the petitioner during his life time. I

have examined these documents. These documents do not mention that any consideration was paid by the petitioner to the deceased for execution of the said documents. The so-called agreement to sell in fact is an arbitration agreement which also refers to some other understanding/agreement between the petitioner and late Mr.Mam Chand.

3. I feel that the matter requires deeper scrutiny and examination as the petitioner is nephew of the deceased-late Mr. Mam Chand, who died without any Class I legal heirs. It will be open to the petitioner to establish and satisfy DDA that no sale consideration was paid for execution of the aforesaid documents by producing copy of bank accounts and other details, etc. It will be also open to the petitioner to explain why the deceased-Mr.Mam Chand had executed the said documents in favour of the petitioner.

4. Unearned increase is certainly payable in cases where transfer is made for consideration and Will is also one of the documents executed by the allottee as a part of the said transaction. However, in case there was no transaction or transfer between the allottee and the beneficiary under the Will and the Will is executed out of natural love and affection, different consequences will flow.

5. In these circumstances, I feel that the respondent-DDA should re-examine the matter and pass a speaking order dealing with the contentions raised by the petitioner. Petitioner will also be given an opportunity of personal hearing and right to produce documents and affidavits in support of his claim . Petitioner will appear before the Deputy Director (L&A) on 5th May, 2008 at 3.00 p.m. A speaking order will be passed by the DDA. It will be open to the petitioner to challenge the said order, if required.

Writ Petition is accordingly disposed of.

SANJIV KHANNA, J.

APRIL 10, 2008.
P/VKR