

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

+ **W.P.(C) 15897/2006**

BANWARI LAL CHARITABLE TRUST Petitioner
Through Mr. Ajay Kumar Tandon, Advocate.

versus

UOI Respondent
Through Mr. Neeraj Chaudhari, CGSC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
18.09.2009

1. The petitioner is a trust, which was created on 11th August, 1953. Late Mr. Banwari Lal was one of the founder trustees.
2. Mr. Banwari Lal had expired on 28th April, 1969. As per his Will dated 11th August, 1953, which was registered in the office of the Registrar on 21st August, 1953, the property No. 3E, Plot No.88, Shop No. 1 to 8, Gole Market, New Delhi (property, for short) was bequeathed to the petitioner trust.
3. The petitioner had an office, which was operating in the property even when Mr. Banwari Lal was alive. The petitioner trust has continued to be in occupation and possession of the property since then and has been paying lease amount as well as property tax.

4. On 17th September, 2003, the petitioner trust through its chairman, applied for conversion of the property from lease hold to free hold and deposited the conversion charges of Rs.12,61,000/- with the respondent lessor, Land and Development Office (L& DO). Some correspondence was exchanged between the petitioner and L&DO, but the conversion application was not allowed and by letter dated 28th April, 2006, the conversion application was rejected relying upon clause 16 of the conversion brochure, which reads as under:-

“Applications can be given by the person/persons on whose name the substitution/mutation will have to be carried out. However these applications will be considered only on disposal of pending substitution/mutation case. On disposal of substitution/mutation case, if it is found that the substitution/mutation is carried out on the name of the same person/persons who applied for conversion, the same application will be taken into account. Otherwise the conversion application will be rejected.”

5. In the counter affidavit, now filed by the respondent L&DO, it is stated that the mutation/substitution on the basis of the registered Will, can be made if the petitioner procures “no objection certificates” in the form of affidavits from all the legal heirs of the original lessee, late Mr. Banwari Lal. In alternative, it is stated in the

Court that the petitioner should obtain probate of the Will. The respondent L&DO, however, does not dispute the fact that the petitioner trust has been making payment of lease rent since 1969. It is not disputed that the petitioner trust is in occupation and possession of the property. The respondent L&DO has also not disputed the contents of the registered Will executed by late Mr. Banwari Lal dated 11th August, 1953 and registered on 21st August, 1953. It is not the case of the respondent L&DO that any of the legal heirs of late Mr. Banwari Lal have raised objection or are contesting the claim of the petitioner trust.

6. Section 90 of the Evidence Act, 1872 states that a document purporting to be or is proved to be 30 years old, when produced from proper custody, may be presumed to be duly executed and attested (refer ***Munnalal & Others Vs. Kashibai & Others***, AIR (34) 1946 Privy Council 15 followed in ***Rameshwar Prasad Vs. Krishna Mohanath Raina & Others*** AIR 1969 Madhya Pradesh 4). The Supreme Court in ***Lakhi Baruah Vs. Padma Kanta Kalita & Others Vs. Sri. Padma Kanta Kalita & Others***, AIR 1996 Supreme Court 1253 has observed that the Section 90 of the Evidence Act is founded on necessity and convenience because after lapse of 30 years, it is extremely difficult, if not impossible to lead evidence and prove handwriting, signature or execution of

old documents. It is further observed that Section 90 in the Evidence Act has been incorporated in order to obviate such difficulties or improbabilities to prove execution of an old document. The object and purpose behind obtaining probate is to prove authenticity and validity of the Will. In these circumstances, the respondent-L&DO's stand that the petitioner should obtain probate is not justified and correct. It is also well settled that in view of the Indian Succession Act, probate of a Will in Delhi is not mandatory and necessary.

7. The petitioner trust has original Will with them. A similar controversy had arisen with regard to the property located at block 60, 1 M.M. Road, New Delhi (now Rani Jhansi Road, New Delhi). Counsel for the petitioner has drawn my attention to letter dated 23rd November, 1966, copy of which has been filed today and placed on record, whereby property known as 1 M.M. Road, New Delhi was mutated jointly in the name of eight persons including the petitioner trust on the basis of the same Will without requiring probate.

8. In the facts and circumstances of the present case and as the Will in question is 30 years old, the writ petition is allowed with the direction that the respondents will consider the application of the petitioner trust for conversion without insisting on probate of the Will

dated 11th August, 1953 registered on 21st August, 1953. The petitioner trust, will however file/furnish indemnity bond in favour of the respondents to protect them from any third party claims/liabilities. Indemnity bond as per prescribed proforma will be provided by the respondents. The draft of the indemnity bond will be handed over to the petitioner trust within four weeks from today. In the facts and circumstances of the present case, there will be no order as to cost.

Dasti to the counsel for the respondents.

SANJIV KHANNA, J.

SEPTEMBER 18, 2009
NA/VKR