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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Delivered on: 06.09.2012

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WP(C) No. 8840/2009

MOHD. NASIR KHAN

..... Petitioner

Vs

DELHI STATE INDUSTRIAL DEVELOPMENT
CORPORATION

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. S.D. Ansari & Mr I. Ahmed, Advocates.

For the Respondent: Ms Renuka Arora, Adv.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. By this writ petition, a direction is sought in the nature of a mandamus against the respondent to do the following :-

- (i). mutate industrial plot no.179, Pocket G, Sector-3, Bawana Industrial complex, Delhi (hereinafter referred to as the plot) admeasuring 100 sq. meters in the name of the petitioner; and
- (ii). deliver physical possession of the said plot.

2. The writ petition is filed in the background of the following broad facts :-

2.1 One Sh. Abdul Qadir was the proprietor of a concern by the name of M/s. A.R Iron Works. Under the scheme of relocation formulated by the Govt. of NCT of Delhi allotments were made to persons whose industrial

units had been closed down and consequently were required to be relocated.

2.2 Abdul Qadir resultantly was allotted the aforementioned plot vide a draw of lots held on 12.10.2000. It appears that Abdul Qadir had executed a will dated 08.08.2005, by which a bequest was created in respect of his assets in favour of his three sons and the petitioner herein. While a bequest was created in respect of other assets in favour of his three sons, in so far as, the aforementioned plot was concerned, it was bequeathed in favour of the petitioner.

2.3 The said Abdul Qadir passed away on 26.01.2006, whereupon proceedings for grant of probate were taken out by the petitioner. Vide judgment dated 08.05.2008, in Probate Case No.323/2006, the Additional District Judge, Tis Hazari Court, Delhi granted probate and letters of administration in favour of the petitioner.

2.4 Having obtained a probate and letters of administration in his favour, the petitioner approached the respondent for handing over possession qua the aforementioned plot. An application in this regard was made to the respondent on 22.12.2008.

2.5 It is a stand of the petitioner that certain documents were sought for by the respondent which were not required in his case as, it was a case of bequest. The petitioner proceeded to persuade the respondent to do the needful, on the ground that, he was the owner of the aforementioned plot by virtue of Will dated 08.08.2005. In this connection, an indemnity bond was also furnished to the respondent alongwith the death certificate of Abdul Qadir, and an affidavit, accompanied by attested copy of the probate granted in his favour.

2.6 Since the respondent did not move in the matter, the petitioner approached this court by way of the present petition. In the meanwhile by an communication dated 17.04.2009, the respondent informed the petitioner that

his request for change in constitution had not been acceded to as it was "*outside the family*" which was not permissible as per the Land Management Guidelines of the Commissioner of Industries, Govt. of NCT of Delhi (hereinafter referred to as the Guidelines). It appears that this communication was received after the institution of the writ petition, which is why, there is no reference to this communication in the writ petition.

3. Before me, learned counsel for the petitioner has submitted that since he acquired ownership of the plot in issue, the respondent ought to have mutated the plot in his name and delivered possession to him. The learned counsel for the petitioner further submitted that this is not a case of transfer but one of bequest and therefore, the guidelines relied upon by the respondent were not applicable.

4. On the other hand, Ms. Renuka who appeared for the respondent drew my attention to the guidelines, based on which, she submitted that since there was a change in the constitution of the firm, the petitioner, not being a family member was not entitled to the reliefs prayed for in the writ petition. Ms. Renuka submitted that these guidelines have been put in place to benefit those who were relocated on closure of their industrial units and to avoid "clandestine transfer".

5. Having heard the learned counsels for parties and perused the record, the following facts have emerged:-

5.1 The original allottee Abdul Qadir was entitled to take possession of the plot in issue. This is notwithstanding the fact that in the affidavit-in-reply a bald averment has been made that he was required to complete formalities which he did not complete and therefore, the possession of the plot in issue was not handed over to him. This averment is made in paragraph 3 of the affidavit-in-reply of the respondent under the head "preliminary submissions". Noticeably there is no reference to any communication sent to

Abdul Qadir in that regard.

5.2 The petitioner has secured a judgment from a competent civil court; whereby letters of administration have been issued in his favour on the Will dated 08.08.2005, having been probated. This is the Will of late Sh. Abdul Qadir, whereby the plot in issue has been bequeathed to the petitioner;

5.3 On the death of Abdul Qadir, which took place on 26.01.2006, the petitioner approached the respondent and made a request for delivery of possession of the plot in issue vide letter dated 22.12.2008, on the ground that, the proprietorship concern M/s. A.R. Iron Works had devolved on him based on Abdul Qadir's Will dated 08.08.2005.

5.4 The respondent, however, vide communication dated 17.04.2009 rejected the request of the petitioner on the ground that there has been a change in the constitution (I would assume of the proprietorship concern) outside the family, which was not permissible as per the prevalent guidelines.

6. Therefore, in the background of these facts, one has to examine as to whether the guidelines to which reference has been made in the affidavit-in-reply, would apply to the facts of the instant case. The relevant parts of the guidelines on which reliance is placed by the respondent, are extracted hereinbelow for the sake of convenience :-

“..1. Substitution / addition/deletion of names of family members in the lease deed shall be allowed without any charge.

2. Deletion of one or more partner (s) from partnership firm shall be allowed on payment of 50% of unearned increase in the market value of the plot calculated on the basis of proportionate share in profit of outgoing partner(s), however, the levy of charges shall not be applicable in case of leaving / retiring partner is a family member of the remaining partner(s). However, addition/inclusion of outsiders shall not be allowed in the partnership firm (s).

3. Conversion of Proprietorship / Partnership firm into Pvt. Ltd. Or Public Ltd. Co. is not permitted as well as Pvt. Ltd. Co. to

Public Ltd. Co. or vice versa is also not permitted.

The substitution / addition or deletion in the names of Directors of a Ltd. Or Pvt. Ltd. Co. may be allowed only from among the family members without the levy of any charge...”

6.1 Clause 1 extracted hereinabove would clearly show that substitution, addition and deletion of the names of family members in the lease deed is allowed without imposition of any charge. Clause (2) and (3) on which, particular emphasis was laid, are not applicable, in my opinion, in the facts of the present case. Clause 2 applies to a "partnership firm". Admittedly, M/s. AR Iron Works is a proprietorship concern which devolved on the petitioner on the death of the erstwhile partner Abdul Qadir. Clause 3 speaks about conversion of a proprietorship concern / partnership firm into a private limited company or a public limited company or, the conversion of a private limited company to public limited company or vice versa. As is obvious, even clause 3 is clearly not applicable since, no conversion is attempted to be made of a proprietorship concern, i.e., M/s. A.R. Iron Works, into either a private limited company or a public limited company. Consequently, the guidelines on which reliance was placed by the respondent to deny the petitioner's request for mutation and delivery of possession, is without basis.

7. I must also point out that Ms. Renuka relied upon a fresh set of guidelines, which I am told the respondent has issued recently, to contend that now transfer of industrial plots is permitted vis-a-vis such plots which were acquired under the Scheme of Relocation of Industries. She submitted that the petitioner could apply under the new scheme and obtain a transfer in his favour.

7.1 Apropos this, the learned counsel for the petitioner rightly contended that, the said scheme applies where there is a transfer of an industrial plot and not to a case such as the present one, in which plot devolved on the

beneficiary based on a bequest.

7.2 In my opinion, such like devolutions are in the nature of a transmission and not transfer.

8. Having come to the aforesaid conclusion, in my view, the writ petition have to be allowed. It is ordered accordingly. Consequently, the respondent is directed to mutate the aforementioned plot in favour of the petitioner and deliver possession to the petitioner as prayed on fulfillment of requisite formalities. Since the issue has been at large for nearly three years and eight months, the respondent is directed to do the needful as expeditiously as possible and not later than eight weeks from today. Accordingly, the petition is disposed of with costs quantified at Rs.10,000/-. The respondent shall pay costs to the petitioner within two weeks from today. The proof of costs shall be placed on record by the respondent.

RAJIV SHAKDHER, J

SEPTEMBER 06, 2012

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