

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

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Date of Decision: 01.08.2013

+ W.P.(C) 1840/2012

ASSAN G TAJWANI

..... Petitioner

Through: Mr. Pradeep Dewan, Sr. Adv. with Ms.
Anupam Dhingra, Advs.

versus

LAND & DEVELOPMENT OFFICER & ANR.

..... Respondents

Through: Mr. Jatan Singh, CGSC and Mr. Soayib
Qureshi, Advs.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The father of the petitioner, namely, Shri Gyan Chand was the owner of Property No. 5/37, Old Rajinder Nagar. Shri Gyan Chand died on 19.08.1983. According to the petitioner, in his life time, late Shri Gyan Chand had executed a Will dated 20.03.1976, thereby bequeathing the property in question solely to the petitioner. The petitioner before this Court applied for grant of probate in regard to the estate of late Shri Gyan Chand. The learned District Judge, vide order dated 26.07.1997, granted Letter of Administration with copy of the Will attached to it, in favour of the petitioner. Pursuant to the said Letter of Administration, the petitioner vide application dated 12.02.2010 submitted on 18.03.2010, applied to

the Land and Development Officer for substitution of leasehold rights of the aforesaid property in his name. On 16.04.2010, he submitted another application for conversion of the said property into freehold property and also deposited a sum of Rs 12,400/- towards conversion charges.

2. Vide communication dated 17.10.2011, the Land & Development Officer allowed substitution of the leasehold rights in the aforesaid property in favour of the petitioner. However, it was stated in clause 4 of the said letter, that substitution of leasehold rights being not in the line of direct succession, the case had been treated as a case of first transfer. It was further stated in the said letter that since the petitioner was only an Administrator of the property, the property cannot be converted into freehold. Thus, both the applications of the petitioner, one for substitution of leasehold rights in his name and another for conversion of rights from leasehold to freehold were dealt with by this order. Vide subsequent communication dated 19.12.2011, the Deputy Land and Development Officer, referring to the application of the petitioner dated 28.10.2011, whereby he had raised objection in the matter of substitution in his name as administrator, intimated that the letter dated 17.10.2011 had been issued as per probate order of the Court and the legal opinion received by the office. It was reiterated that the request for grant of conversion into freehold could not be acceded to. The conversion charges paid by the petitioner were refunded vide communication dated 13/05.01.2012.

3. Being aggrieved from the refusal of the respondents to substitute the leasehold rights of the aforesaid property in favour of the petitioner without any rider/condition and to convert the said property into freehold, the petitioner is before this Court seeking the following reliefs:-

“a) that by a writ of certiorari or appropriate writ, order or directions may kindly be issued by this Hon'ble Court quashing the letter LDO/PS-2/875 dated 17.10.2011 (Annexure P-10) refusing to convert the property No. 37, Block No. 5, Old Rajinder Nagar, New Delhi into the freehold property and treating the substitution of lease hold rights as a case of first transfer, being illegal and contrary to law and holding the petitioner as an “Administrator” and the letter dated 5/13.1.12 (Annexures-P-14, 15 and 16) refusing to convert the property into a free hold property)

b) by a writ of mandamus or any other order, direction or writ this Hon'ble Court may kindly be pleased to direct the respondents to covert the property No. 37, Block No. 5, Old Rajinder Nagar, New Delhi into a freehold property upon payment of necessary charges, execute a conveyance deed in respect thereof as a freehold property and to treat the substitution of lease hold rights in favour of the petitioner being in the direct line of succession.

c) issue such writ, order or direction as this Hon'ble Court may in the facts and circumstances of the present case deem just, fit and proper.

d) costs of the petition may also be awarded in favour of the petitioner.”

4. It is not in dispute that the Property No. 5/37, Old Rajinder Nagar was owned by late Shri Gyan Chand, who was the father of the petitioner. This is not

the case of the respondents in the counter-affidavit that the petitioner is not the son of late Shri Gyan Chand. Therefore, the petitioner, being a son, is a direct lineal male descendant of late Shri Gyan Chand. It is also not in dispute that a Letter of Administration with copy of the Will dated 20.03.1976 annexed to it has been granted to the petitioner by the learned District Judge, Delhi. Section 232 of the Indian Succession Act, to the extent it is relevant provides that when a deceased has made a Will, but has not appointed an executor, a universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate or of so much thereof as may be unadministered. The learned counsel for the petitioner submits that as per Law Guide, the universal legatee is a testamentary disposition by which the testator gives, to one or several persons, the whole of the property which he leaves at his decease.

5. A perusal of the Will executed by late Shri Gyan Chand on 20.3.1976 would show that whole of his estate was bequeathed by him to the petitioner and no executor for the Will was appointed. Therefore, the petitioner can be said to be a universal legatee to whom the Letter of Administration could have been issued under Section 232 of Indian Succession Act, with copy of the Will annexed to it. The effect of grant of a Letter of Administration came to be considered by a Division Bench of this Court in *Mrs. Vijaya C. Gursahaney versus Delhi*

Development Authority and others [1994 II AD (Delhi) 770] and the following

view taken by the Court in this regard is relevant:

“9....The administrator, on the grant of Letters of Administration with the Will annexed, is entitled to all rights the deceased had at the time of his death vested in him. The order granting Letters of Administration is a judgment in rem and is conclusive proof, *inter alia*, of the existence and genuineness of the Will and its effect cannot be nullified except by proceedings for revocation of the Letters of Administration. The Letters of Administration with Will annexed are granted when the court is satisfied that the Will has been duly executed and attested. When the law provided as to how the Will is to be proved and Letters of Administration granted, DDA is no authority to start parallel proceedings to find out the genuineness of the Will. The relevant clauses of the lease deed, which we have set out above and on which the respondents rely, do not at all entitle the DDA to charge any unearned increased from the legatee when the lessee in his Will have bequeathed the property to him. It is only the genuineness of the Will unless it is probated or Letters of Administration obtained which would make the DDA to enquire into the same...”

6. Since the petitioner being the son of late Shri Gyan Chand, is a direct male descendant and also holds a Letter of Administration with copy of the Will dated 20.3.1976, executed by late Shri Gyan Chand annexed to it, he succeeded to the property in question which admittedly belonged to late Shri Gyan Chand. Therefore, the Land & Development Officer was not justified in saying that the petitioner was not a direct male descendant of the petitioner and treating it as a case of first transfer. He was not justified in refusing to covert the leasehold rights of the aforesaid property into freehold on the ground that the petitioner was only an

administrator of the property. Being legatee under the Will executed by late Shri Gyan Chand, the petitioner succeeded to the right, title and interest which late Shri Gyan Chand had in the aforesaid property and consequently he is also entitled to seek mutation of the leasehold rights of the said property into freehold.

7. The learned counsel for the respondents pointed out that the Letters of Administration issued to the petitioner required him to submit inventory or accounts and the failure to comply with the said requirement also constitutes an offence punishable under Section 176 of Indian Penal Code. I fail to appreciate what difference the said requirement of law makes to the decision of the writ petition. If the administrator, on being required by the Court to submit an inventory or accounts under Section 317 of Indian Succession Act omits to comply with the requisition of the Court, that will render him liable to such action as is envisaged in law, but that does not come in the case of his obtaining conversion of leasehold rights of the property into freehold.

8. For the reasons stated hereinabove, the impugned Letters to the extent the respondents have refused to convert the property in question into freehold and have treated the substitution of lease hold rights in favour of the petitioner as a case of first transfer are quashed. The respondents are directed to consider the application of the petitioner for conversion of leasehold rights of the aforesaid property into freehold, as per its guidelines, treating the petitioner as the lessee of the aforesaid

property. The appropriate decision in terms of this order shall be taken by the respondents within eight weeks from the date of receipt of copy of this order and communicated within one week thereafter.

The petition stands disposed of in terms of above directions. In the facts and circumstances of the case, there shall be no orders as to costs.

V.K. JAIN, J

AUGUST 01, 2013/ *bg /rd*