



\$~3

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

% **Date of decision: 26th September, 2024**

+ **W.P.(C) 4194/2016**

ARTI GHOSH @ AROTI GHOSH Petitioner

Through: **Mr. Gautam Narayan and Mr. Ayush Gupta, Advs.**

versus

GOVT OF NCT OF DELHI AND ANR Respondents

Through: **Ms. Akshita Goyal and Ms. Apurva Gaur, Advs. for DDA**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J. (ORAL)

1. The petitioner invokes the writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking directions to the respondent No.2/DDA¹ to carry out mutation and convert the property bearing No. 224, Tagore Park, Delhi-110009 (*hereinafter referred as the 'subject property'*) in the name/favour of the petitioner on the basis of registered Will dated 05.05.2004 executed by the erstwhile lessee/allottee, namely late Shri Bishwanath Das (*hereinafter referred as the 'allottee/testator'*).

2. Shorn of unnecessary details, evidently the subject property was allotted to the allottee/testator, who executed a registered Will dated



05.05.2004 in favour of the petitioner, thereby bequeathing to the petitioner all of his movable and immovable assets including the subject property upon his death. During the lifetime of the allottee/testator, he also applied for conversion of the subject property from leasehold to freehold, upon which the respondent No.2/DDA sought deficient documents i.e. Form 'C' and 'D' with regard to the sanction plan of the subject property. The same was replied by the allottee/testator to the effect that documents sought were lost and NCR² No. 1979/2013 dated 16.09.2013 registered with Police Station Mukherjee Nagar, Delhi, was attached with the reply.

3. However, before any action could be taken, the allottee/testator passed away on 12.12.2013, and the petitioner, on the basis of the aforesaid registered Will dated 05.05.2004, applied for mutation as well as conversion of the subject property in her name by submitting all the relevant documents. Although mutation of the subject property was carried out in favor of the petitioner in the house tax records maintained with the MCD³, there was an inordinate delay on the part of the respondent No.2/DDA in carrying out the mutation upon the death of the allottee/testator ; and eventually the petitioner received a letter dated 07.01.2015 to the effect that she should submit a "*Letter of Administration and/or a decree of declaration*" from the competent Court of law with regard to her identity as a legatee and her entitlement over the subject property left behind by the deceased sub-lessee/allottee.

¹ Delhi Development Authority

² Non-Cognizable Report



4. Aggrieved thereof, the petitioner preferred the present writ petition on 11.05.2016. Suffice to state that the respondent No.2/DDA in its counter-affidavit acknowledged that the sub-lease deed was executed in favour of the allottee/testator on 19.04.1978; and that he had applied for conversion of the subject property into freehold *vide* application No. 0152139 dated 16.05.2013 but certain discrepancies were found *inter alia* acknowledging that the wife of the allottee/testator died on 26.02.2010 prior to his death. It is also acknowledged that a copy of the Will was submitted whereby it was sought to be explained that the petitioner had been living and taking care of the deceased and his wife for more than 30 years; and that as per the declaration filed on an affidavit with the respondent No.2/DDA, no consideration, or General Power of Attorney, or Sale Agreement had been executed by the allottee/testator with respect to the subject property; and that the subject property had not passed hands during the lifetime of the allottee/testator.

ANALYSIS & DECISION:

5. Having heard the learned counsels for the parties and on perusal of the record, unhesitatingly, the respondent No.2/DDA cannot insist upon the petitioner to submit Letters of Administration or a decree of declaration as sought from the competent Court of law, for the simple reason that a registered Will is neither mandated to be probated nor any Letter of Administration is required, much less a decree of declaration from a Court of law.

³ Municipal Corporation of Delhi



6. In this regard, reference can be invited to the decision by this Court in the case of **Winifred Nora Theophilus v. Lila Deane**⁴, wherein, while interpreting Section 213⁵ and Section 57⁶ of the Indian Succession Act, 1925, it was held as under:

“10. The provision of sub-Section 1 of Section 213 clearly put a complete embargo on the right as executor or legatee under the will unless the Court of competent jurisdiction in India has granted probate of the will. Sub-Section 2 of Section 213 specifies that this Section would not apply to wills by Muhammadans. Thus so far as will executed by a Muhammadan is concerned, it is not necessary to obtain any probate from the court to establish the right as executor or legatee under the will. Sub-Section 2 further carves out the category to which this Section shall apply. Clause (ii) thereof relates to the wills made by any Parsi dying, after the commencement of Indian Succession Act, 1962 where such wills are made within the local limitation of the High Courts of Calcutta, Madras and Bombay. In first category are included the wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of

⁴ 2001 SCC OnLine Del 644

⁵ **213. Right as executor or legatee when established.**—(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in 3 [India] has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed. [(2) This section shall not apply in the case of wills made by Muhammadans [or Indian Christians], and shall only apply—

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such wills are made within the local limits of the [ordinary-original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits.]

⁶ **[57. Application of certain provisions of Part to a class of wills made by Hindus, etc.]**—The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits, [and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):] Provided that marriage shall not revoke any such will or codicil.]



classes specified in Classes (a) & (b) of Section 57. Clauses (a) and (b) of Section 57 read as under:

"[57] Application of certain provisions of Part to a class of wills made by Hindus, etc-The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply-

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to Immovable property situate within those territories or limits".

11. On interpretation of Section 213 read with Section 57 (a) and (b), the Courts have opined that where the will is made by Hindu, Buddhist, Sikh and Jaina and were subject to that Lt. Governor of Bengal or within the local limits of ordinary original civil jurisdiction of High Courts of Judicature at Madras and Bombay or even made outside but relating to Immovable property within the aforesaid territories that embargo contained in Section 213 shall apply. From this it stands concluded that if will is made by Hindu, Buddhist, Sikh or Jaina outside Bengal, Madras or Bombay then embargo contained in Section 213 shall not apply. This is what the various judgments cited by the leaned counsel for the defendants decide. Therefore there is no problem in arriving at the conclusion that if the will is made in Delhi relating to Immovable property in Delhi by Hindu, Buddhist, Sikh or Jaina, no probate is required."

7. Further, reference can also be made to a decision by this Court in the case of **Ramesh Grover v. DDA**⁷ wherein the facts were delineated in paragraph (12) of the Judgment, which are as under:

"12. The facts of this case are extremely material. The initial allotment of the plot was made by the DDA in favour of three persons, i.e. petitioner, mother of petitioner (Smt.Usha Grover) and Sh.Amar Nath. All three were running a partnership firm i.e. M/s.

⁷ W.P.(C) 7398/2008 dated 02.02.2010 [2010:DHC:619]



Grover Steel Corporation with petitioner and his mother having 60% share. Thus petitioner is not a stranger to the allotment of the Industrial plot by the DDA. Late Sh.Amar Nath was the real mausa of the petitioner. Wife of Amar Nath was the real sister of petitioner's mother. Sh.Amar Nath and his wife all along stayed with the petitioner. Sh.Amar Nath and his wife died issueless and both executed a Will in favour of the petitioner. During his lifetime Sh.Amar Nath did not sell his share to the petitioner and continued to participate in the partnership business which is borne out of the Will dated 01.07.1990 of Sh.Amar Nath, copy of which has been placed on record. Sh.Amar Nath has revealed in the Will that petitioner was not a stranger to the entire transaction."

8. Based on the aforesaid facts, this Court made the following decision:

"14. The main aim and object for formulation of the policy by the DDA is to curb the illegal transactions in favour of persons who are not blood relations of the allottee and who on the basis of consideration get the Will executed. Taking into consideration the facts of this case, I am satisfied that the Will executed by late Sh.Amar Nath in favour of the petitioner herein was not for any consideration for the reasons that Sh.Amar Nath was a close relation of the petitioner, he died issueless, he and his wife stayed with the petitioner during their lifetime, all of which is evident from the Will, copy of which has been filed along with the writ petition. In the Will the testator has stated that petitioner is like his own son and he has got great love and affection for their family. The petitioner has complied with all the conditions laid down as per the policy. Accordingly, letters dated 12.3.2008, 7.4.2008 and 23.4.2008 are quashed. DDA is directed to mutate the property i.e. industrial plot bearing No.4, Block X, in the layout plan of Naraina Ware Housing Scheme, New Delhi, in the name of the petitioner, without any demand of any unearned increase within six weeks after receipt of this order. Petition stands disposed of."

9. It is pertinent to mention here that the proposition of law in aforesaid decisions was approved by the Supreme Court in the case of **Kanta Yadav v. Om Prakash Yadav**⁸.

⁸ (2020) 14 SCC 102



10. In view of the above, the present writ petition is allowed and the respondent No.2/DDA is directed *firstly*, to carry out the mutation of the subject property in favour of the petitioner within four weeks; and *secondly*, to process the application for conversion of the subject property from leasehold to freehold based on the rates that were applicable as on the date of filing of the present writ petition i.e. 09.05.2016, which exercise be completed within four weeks thereafter.

11. The present writ petition stands disposed of accordingly.

DHARMESH SHARMA, J.

SEPTEMBER 26, 2024

Sadiq