

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.15054 of 2015 (O&M)

DATE OF DECISION: 04.09.2017

Rakesh Kumar

..Petitioner

versus

Chief Administrator, Housing Board Haryana and others

..Respondents

CORAM:-HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Y.S. Rathore, Advocate for the petitioner.

Ms. Shubhra Singh, Advocate for
for respondent Nos. 1 & 2.

Mr. S.S. Kharb, Advocate
for respondent Nos. 2 to 8 & 10.

...

S.J. VAZIFDAR, CHIEF JUSTICE: (Oral)

CM No. 12363 of 2017

This application is for placing on record the replication along with Annexures P-9 to P-14.

CM is allowed subject to all just exceptions and documents Annexures P-9 to P-14 are taken on record.

CWP No. 15054 of 2015

This writ petition is pre-mature. The petitioner seeks an order directing the official respondents i.e. respondents No. 1 & 2 to transfer a dwelling unit in his name on the basis of an alleged registered will dated 25.10.1996. The petitioner is a nephew of the testator. The private respondents, namely, respondents No. 3 to 10 except respondent No.9 are the children of the testator. The private respondents disputed the validity of the will. We are not concerned at this stage with the validity of the will.

The petitioner relies upon the judgment of the Division Bench of this Court in case Vandana Arora Vs. Chief Administrator, HUDA and another, 3013 (3) R.C.R. (Civil) 289. Sub para 3 of paragraph 3 of the judgment is reproduced below:

3. Transfer on the basis of the registered Will.

On receipt of the application for mutating the property in the name of the holder of the registered Will, the Estate Officer concerned shall issue a public notice at the cost of the applicant (s) within 30 days of the receipt of the request in two newspapers - one in Hindi and other in English, having wide circulation in the area, giving particulars of the property and the applicant(s), who have applied for transfer of ownership rights. The public notice should clearly state that if any legal heir(s) is/are having any objection against the transfer of ownership, the objector(s) can submit the objection to the Estate Officer in writing along with supporting documents within one month of the publication of the notice and if no objection is received within 30 days of the publication of the notice in the aforesaid manner, then the property shall be transferred in the name of the holder of the registered Will in the records of HUDA subject to the fulfillment of other conditions regarding submission of the death certificate, affidavit, indemnity bond etc. If any objection is received, then the objector should be asked to get the dispute settled from the competent court of jurisdiction regarding the genuineness of the Will but during the pendency of the dispute, the ownership shall be transferred in the name of the holder of the registered Will subject to the final outcome of the case subject to the fulfillment of other conditions regarding submission of the death certificate, affidavit, indemnity

bond and payment of all outstanding dues

The respondent by the impugned order merely called upon the petitioner to furnish the affidavit of the 2nd attesting witness or a probate through a competent Court so that further action to transfer the house may be taken. In other words, the official respondents have not as yet disposed of the petitioner's application which incidentally was made on 21.10.2014 i.e. almost 15 years after the testator died.

The petitioner is always at liberty to file the documents and raise such contentions as he desires before the official respondents in support of his application.

The official respondents shall decide the petitioner's application, but, after hearing the private respondents who have also filed a suit challenging the will.

The instant petition is disposed of accordingly.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

04.09.2017

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No