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

+ W.P.(C) 4460/2017 & CM No.19470/2017

JASWANT LAL ANEJA (EXECUTOR) ESTATE OF SH OM
PRAKASH KAPOOR (DECEASED) Petitioner

Through Mr. Mohit Gupta and Rajiv Aneja,
Advocates

versus

MUNICIPAL CORPORATION OF
DELHI (NORTH)

..... Respondent

Through Ms. Mini Pushkarna, Adv. for North
DMC

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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26.05.2017

Vide communication of 22nd November, 2016 respondent-*North Delhi Municipal Corporation* (hereinafter referred to as North DMC) had called upon petitioner to furnish the requisite documents in relation to conversion of subject flat from lease hold to free hold. Legal notice of 28th December, 2016 stands answered by respondent-North DMC vide its detailed Communication of 10th March, 2017 which is annexed as Annexure P-15 with this petition.

In this petition quashing of aforesaid letter of 22nd November 2016 as well as respondent's reply of 10th March 2017 is sought. In addition, mandamus is sought to convert the subject flat from lease hold to free hold on the application of original allottee who had applied for conversion more

than a decade ago, on the basis of then applicable policy.

At the outset, learned counsel for petitioner confines to prayer made in this petition to issue of mandamus to respondent-North DMC to convert the subject flat from lease hold to free hold at the earliest. Upon notice, learned counsel for respondent-North DMC submits that petitioner's conversion application is still pending and for want of requisite documents, the conversion could not be granted. It is pointed out by respondent's counsel that petitioner is required to deposit fresh proof of deposit of ground rent up to date and since petitioner is not the beneficiary of the Will as a blood relation, therefore, North DMC has legal right to deal with the property in terms of the agreement of the lease of this property.

At this stage, learned counsel for petitioner submits that the ground rent was to be paid upto the date of payment of last instalment which has already been paid and so there is no question of submitting proof of deposit of ground rent upto date i.e. upto November, 2016. Nothing else is urged by either side.

Upon hearing and on perusal of respondent's Communication of 10th March 2017 (Annexure P-15) and the material on record, I find that since the Will in favour of petitioner has already been probated, therefore, respondent-North DMC is not within its rights to question the said Will by taking a stand that it is not in favour of petitioner as a blood relation. Such a course is not open to respondent. However, since the application filed by the original allottee for conversion of the subject flat from lease hold to free hold is said to be still pending, therefore, respondent is directed to decide the application filed by the original allottee for conversion within a period of 12 weeks and to also look into the aspect as to whether the original allottee

has deposited the ground rent or not and if ground rent is to be deposited till the last instalment or is to be paid every year, is an aspect which respondent will consider while deciding the application filed by the original allottee for conversion of the subject flat. This Court is of the considered opinion that petitioner is not to file a fresh application for the reason that by virtue of obtaining a probate he steps into shoes of the original allottee. Subject to petitioner furnishing the other requisite documents, respondent shall decide the application for conversion filed by the original allottee within a period of 12 weeks and if conversion is not granted, then respondent is directed to pass a speaking order indicating why it is not being granted. If required, petitioner be afforded a personal hearing. The fate of the representation be made known to petitioner within two weeks of taking the decision on the application for conversion within stipulated time.

With the aforesaid directions this petition and application are disposed of.

Copy of this order be given DASTI to counsel for both sides.

(SUNIL GAUR)
JUDGE

MAY 26, 2017

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