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

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Judgment delivered on: 18.11.2021

+ W.P.(C) 9788/2021

MR.NAVIN DUGGAL

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Pramod Kumar Dubey, Senior Advocate with Mr. Shiv Chopra, Ms. Kaustubh Chauhan and Ms. Aadhya Khanna, Advocates.

For the Respondent: Mr. Tushar Sannu, Standing Counsel, SDMC with Mr. Shubham Gupta, Advocate (through VC).

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks quashing of letter dated 09.07.2021 whereby the respondent Corporation has directed petitioner to obtain a NOC from the other legal heirs and the legal member surviving certificate from the concerned SDM for the purposes of proceeding with the mutation.

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to HMJ Sanjeev Sachdeva.

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2. Learned senior counsel for the petitioner submits that petitioner is the sole and absolute owner of the subject property. He submits that the property was originally owned by his late father and mother and his mother has gifted her 50% share in the subject property by way of a registered gift deed dated 25.01.2007 and father has willed his half share in the property by way of Will dated 07.05.2000.

3. Learned senior counsel submits that father on his death left behind besides the petitioner, his mother and his two sisters.

4. Learned senior counsel submits that one of the sisters Smt. Charu Mehra had filed a suit for injunction in the year 2006 which was registered as C.S No.1571/2006 which was thereafter registered again as Suit No.269/2009.

5. Learned senior counsel submits that by order dated 23.02.2010, plaint in the said suit was rejected as being barred by Section 41(h) of the Specific Relief Act. He submits that the plaint was rejected on the ground that a simplicitor suit for injunction was not maintainable in the absence of the plaintiff therein specifically challenging the validity of the Will of late father.

6. Learned senior counsel further submits that no further proceedings were taken, after the impugned judgment and the judgment has become final. He submits that at no point of time did the sister ever challenge the validity of the Will of the father dated

07.05.2000. He submits that in view of Section 57 of the Indian Succession Act, 1925, no probate is required to enforce the right under a Will except in case the Will is under challenge.

7. Learned senior counsel submits that since the Will has never been challenged, respondent cannot deny mutation or require the petitioner to produce an NOC from the other legal heirs

8. In the Court Affidavit, Respondents have relied on circular dated 08.08.2011 to contend that in the cases of beneficiaries of unregistered Will either no objection certificate is to be furnished by all the legal heirs and in case no objection certificate is not furnished by any one of the legal heirs then a notice would be issued to the said legal heir for filing objections if any within a period of one month.

9. Learned counsel appearing for the respondent submits that a letter was issued to the petitioner on 08.11.2021 requiring the petitioner to furnish the latest names and addresses of the other legal heirs of the deceased father - Sh. S.K.Duggal.

10. Learned counsel submits that by response dated 12.11.2021, names and addresses of the legal heirs of Sh. S.K.Duggal have been provided.

11. Circular dated 08.08.2011 *inter-alia* provides as under:-

CIRCULAR

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Pursuant to Departmental Circular No.Tax/HQ/2009/GRP/D/194/A&C/P.Cell dated 11.08.2010 dealing with mutation procedure in case of Unregistered Will, it was notified that "In case of Unregistered Will, the beneficiaries must be asked to obtain Succession Certificate/ Probate Order from a Competent Civil Court."

The matter has been re-examined. After having considered, the Hon'ble Lt.Governor, Delhi has been pleased to waive the condition of the beneficiaries of an Unregistered Will obtaining Succession Certificate/ Probate Order from a Competent Civil Court and to direct that Mutation may be allowed in cases of Unregistered Will in favour of beneficiary with certain safeguards. In pursuant thereof mutation u/s 128 of the DMC Act following an "Unregistered Will" will be done as under:-

- a) If the no objections of other legal heirs of the deceased are made available by persons claiming mutation or;*
- b) In case no objections are not furnished by the person in whose favour mutation is sought, a notice to that effect will be issued by the Deptt. to other legal heirs of the deceased for their no objection within a period of one month. Either in case no objections are received or in case no objections are not received within the prescribed period, then mutation shall be granted;*
- c) In case certain dispute exists or objections are received, then the person claiming mutation be asked to obtain a Probate of Will/Letters of Administration;*
- d) Indemnity bond will continue to be obtained from the person(s) whose name Is being entered In MCD*

records to indemnify MCD of any loss / any litigation arising in the case of said property and will continue to pay property tax under the DMC Act;

e) Change of "Ownership" in the property tax records will not amount to recognition of Title of property rights.

Accordingly the existing departmental instructions/corrigendum/circulars issued from time to time dealing with the cases of mutation and relating to duty on transfer under Section 147 read with notice of transfer under Section 128 of the DMC Act will stand amended to the extent mentioned above.

The above circular comes into force with immediate force. All the concerned officer(s)/official(s) are directed to circulate the above instructions amongst the staff working under their control to ensure strict compliance."

12. The Circular of the Corporation inter alia stipulates that in case of an unregistered will, mutation would be done if no objection is furnished by the legal heirs and if no objection is not furnished then a notice would be issued to the legal heir to provide their no objection within one month and in case no objection are received or in case no objections are not received within the prescribed period, then mutation shall be granted.

13. As noticed hereinabove, one of the legal heirs i.e. Smt. Charu Mehra had filed a suit for injunction in the year 2006, the plaint of which was rejected on the ground that she had not challenged the

validity of the Will. Further as noticed hereinabove, no further proceedings were initiated by the said legal heir, Smt. Charu Mehra for proceedings initiated challenging the validity of the Will.

14. Since the details of the legal heirs have already been provided, this petition is disposed of with a direction to the respondent Corporation to expeditiously dispose of the application for mutation in accordance with law *inter alia* the circular dated 08.08.2011.

SANJEEV SACHDEVA, J.

NOVEMBER 18, 2021

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