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

% **Date of decision: 14th December, 2021**

+ **W.P.(C) 1708/2012**

US MISHRA & ANR

..... Petitioners

Through: Mr. Manish Vashisht, Sr. Adv. with
Mr. Rinky Gupta and Mr. Manashwy
Jha, Advs.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Anuj Aggarwal, ASC, GNCTD
with Ms. Aishwarya Sharma, Ms.
Ayushi Bansal and Mr. Sanyam Suri,
Advs. for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. This writ petition has been preferred principally seeking the following reliefs: -

“(a) Issue a writ, direction, order in the nature of certiorari thereby directing the Respondents to grant of No-objection certificate on the application filed by the Respondent No. 3 i.e. Shri Sandeep Jain for transfer of land in favour of Petitioners;

(b) Issue any other appropriate writ, direction or order as this Hon'ble Court deems fit and proper in the facts and

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circumstances of the case and to enable the registration of Sale Deeds in favour of the Petitioners;”

2. The petitioners are constrained to approach this Court by means of the present petition in the following backdrop of facts. The Goan Sabha, Ghitorni on 24th November, 1981 is stated to have passed a resolution for leasing land bearing No. 630 admeasuring approximately 2 acres. Pursuant to the aforesaid resolution, a Lease Deed came to be executed by the Gaon Sabha in favour of one Kailash Chand Jain. That lease was extended up to 28th December, 1991 whereafter Kailash Chand Jain came to be recorded and declared as the *bhumidar* thereof in terms of Section 74(4) of the Delhi Land Reforms Act, 1954¹. The grant of *bhumidari* rights to Kailash Chand Jain was assailed by the Gaon Sabha unsuccessfully before the Court of the Additional Collector. Consequent to the dismissal of that claim, the rights of Kailash Chand Jain over the plot in question came to be perfected. The original land holder is thereafter stated to have died in August 1996. The name of his son came to be mutated in the revenue records on 30th September, 1996.

3. The son of the original land holder is ultimately stated to have executed an Agreement to Sell in favour of the petitioners and it is in connection with the aforesaid transaction that a No Objection Certificate (NOC) was sought from the respondents. The respondents, in terms of the communication which appears at P-10 of the paper book, have denied the grant of that NOC asserting that the provisions of Section 74(4) of the 1954 Act have been violated.

¹ 1954 Act

4. However, when this matter was taken up for hearing today, learned counsel appearing for the respondent was unable to indicate or establish any violation of that provision having been committed by the original land holder or his heirs in terms of the restrictions which stand placed therein. No submissions were also addressed which may have questioned or raised a doubt with respect to the conferment of bhumidari rights on the original land holder.

5. That only leaves the Court to consider whether the permission, as sought, could have been refused in light of the provisions made under the 1954 Act. The Court notes that Section 31 commences with a recordal that the interest of a *bhumidar* shall be transferable subject to the conditions imposed thereafter. The only provision which places a fetter on the right of the *bhumidar* to effect transfer then stands comprised in Section 33. That provision reads as follows: -

“33. Restrictions on the transfers by a Bhumidhar. - [(1) (Note: Renumbered by Act 38 of 1965)] No Bhumidhar shall have the right to transfer by sale or gift or otherwise any land to any person, other than a religious or charitable institution or any person in charge of any such Bhoodan movement, as the Chief Commissioner may, by notification in the Official Gazette, specify, where as a result of the transfer, the transferor shall be left with less than eight standard acres in the Union Territory of Delhi:

Provided that the Chief Commissioner may exempt from the operation of this section, the transfer of any land made before the 1st day of December, 1958, if the land covered by such transfer does not exceed one acre in area and is used or intended to be used for purposes other than those mentioned in clause (13) of section 3]

[(2) (Note: Inserted by Act 38 of 1965) Nothing contained in sub section (1) shall preclude the transfer of land by a Bhumidhar who holds less than eight standard acres of land, if such transfer is of the entire land held by him;

Provided that such Bhumidhar may transfer a part of such land to any religious or charitable institution or other person referred to in sub section (1)

Explanation – For the purposes of this section, a religious or charitable institution shall mean an institution established for a religious purpose or a charitable purpose, as the case may be.”

6. The Court notes that while further provisions regulating the creation of mortgages, letting of land, lease or exchange stand incorporated, restrictions on transfer stands controlled solely by Section 33. At least learned counsel for the respondents could not draw the attention of the Court to any other provision under the 1954 Act which may have placed a restriction on transfer. The Court notes that the respondents, even otherwise, do not place the refusal NOC on the ground that any of the restrictions contemplated under Section 33 would stand attracted. Consequently, the Court finds itself unable to sustain the objection as taken by the respondents herein.

7. The reliance placed by the respondents on the decision of the Supreme Court in **Murlidhar Dayandeo Kasekar Vs. Vishnu Pandu Barde and others**² is clearly misconceived. **Murlidhar** was dealing with a challenge to the restriction imposed upon members of the SC/ST communities and landless persons from transferring land allotted to them under beneficial statutory provisions. The constitutional validity of those restrictions was upheld. It was, however, observed in paragraph 22 of the report that the question which would have to be answered in such situations would be “*whether such alienation is void under any law or violates*

² 1995 Supp. (2) SCC 549

provisions of the Constitution and whether permission could be legitimately given". The respondents have woefully failed to prove that the proposed alienation would be in violation of any provision of the 1954 Act. That the same is a valid piece of legislation is also not disputed. A legitimate reason to refuse, undisputedly, must be founded in law.

8. Accordingly, and for the aforesaid reasons, this writ petition shall stand allowed. The respondents are hereby commanded to attend to the request for the grant of the NOC, as made by the petitioners herein, in accordance with law and bearing in mind the observations made hereinabove.

YASHWANT VARMA, J.

DECEMBER 14, 2021
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