

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 3976 OF 2022

(Mrs. Seema Nilesh Kumbhalkar ..vs.. Estate Officer/Wealth Manager-2, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Vikrant Pandey, Counsel for the petitioner.

**CORAM : ROHIT B. DEO &
MRS. VRUSHALI V. JOSHI, JJ.**
DATED : 28-04-2023

Heard the learned Counsel for the petitioner
Mr. Vikrant Pandey.

2. The grievance in the petition is that the respondent-Estate Officer/Wealth Manager-2, Nagpur Housing and Area Development Authority, Nagpur is insisting that the petitioner Mrs. Seema Kumbhalkar should produce succession certificate before considering the mutation of her name on the basis of purported Gift-deed executed by the mother of the petitioner Mrs. Vimal Dadhe.

3. It is not in dispute that there is a specific condition in the Lease-deed dated 19-6-1998

executed in favour of Mrs. Vimal Dadhe that there shall be no assignment, sub-letting, under-letting or **“otherwise transfer”** in any manner nor shall the possession or any interest or benefit in the leased premises be transferred without the previous written permission of the authority.

4. We have asked the learned Counsel for the petitioner whether the petitioner is in possession of previous written permission of the authority, inasmuch as we have found that there is neither any averment to that effect nor is any document placed on record. The learned Counsel fairly states that no such permission was obtained. Considering that the so called Gift-deed is executed without obtaining the previous permission of the authority, the Gift-deed will have to be considered by the authority in that perspective. We refrain from making any further observation.

5. In so far as the grievance in the petition, we note that there is a rival claimant. It is not in dispute that the petitioner is not the only child of Mrs. Vimal Dadhe. We are informed that Mrs. Vimal Dadhe has four daughters. According to the petitioner, the husband of Mrs. Vimal Dadhe, Mr. Ghanshyam Dadhe executed Will dated 16-10-1990. It is the petitioner who has placed on record that Will. The recital in the Will is that the subject tenement is the self acquired property of Mr. Ghanshyam Dadhe. In the Will, Mr. Ghanshyam Dadhe specifically narrates the history of the property and then expresses that till Mrs. Vimal Dadhe is alive she would be entitled to receive the rent etc. Mr. Ghanshyam Dadhe clearly states in the Will that Mrs. Vimal Dadhe shall not be entitled to alienate the subject tenement by executing Gift-deed or Mortgage-deed etc. According to the Will of Mr. Ghanshyam Dadhe, after the death of Mrs. Vimal Dadhe, the subject tenement shall be given in

possession of and enjoyed by the husband of the other daughter namely one Mr. Ramesh Rewatkar who incidentally is not made party to the present petition. It appears that it is in this backdrop that Mr. Ramesh Rewatkar applied to the respondent and faced with two rival claimants all that the respondent did was to request the petitioner to obtain succession certificate.

6. We have no doubt in our mind that the respondent was absolutely right in insisting on succession certificate.

7. That apart, as we have underscored supra, no previous permission from the authority appears to have been obtained before executing the so called Gift-deed

8. Mr. Ramesh Rewatkar is not impleaded as party although were the petition be allowed, his claim would have stood defeated.

9. We dismiss the petition with costs of Rs.1,000/- (Rupees One Thousand) to be deposited in the account of the High Court Legal Services Sub-Committed, Nagpur, within four weeks, failing which coercive steps shall be taken.

10. The registry shall ensure that copy of this order is forwarded to the respondent within the next two weeks.

11. Compliance report shall be submitted.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

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