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

+ **W.P.(C) 785/2016**

CHANDER MOHAN MANAKTALA Petitioner
Through: **Mr. J.K. Chawla, Advocate.**

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: **Ms. Manika Tripathy, Advocate**
(Standing Counsel for DDA) with **Mr. Roshn Kumar, Advocate.**
Mr. Unmukt Gera, Mr. Harshit and
Mr. Gautam Narayan, Advocates for
Respondent No.2.

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Date of Decision: 24th January, 2023

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (Oral):

1. The present petition has been filed assailing the letter dated 28.02.2014 ('impugned letter'), bearing number F40(5)/78LAB(H)/46/395, issued by the Respondent, Delhi Development Authority ('DDA'), as well as seeking a direction to the Respondent, DDA, to mutate the property bearing MIG Flat No. 152, RPS Sheikh Sarai, Phase-1, New Delhi ('the subject property'), in the name of the Petitioner.
2. Learned Counsel for the Petitioner states that subject property was allotted by Respondent, DDA, in the name of father of Petitioner, late Sh.



Ascharj Lal, vide letter dated 24.10.1978. He states that the Petitioner's father expired on 20.01.2004, leaving behind seven sons, two daughters and the legal heirs of a pre-deceased son.

2.1. He states that Sh. Ascharj Lal, during his lifetime had executed a Will dated 28.01.1984, which was duly registered before the concerned Sub-Registrar. He states that as per the said Will, Sh. Aschraj Lal bequeathed the subject property in the name of the Petitioner herein to the exclusion of all other legal heirs. He states that after the death of Sh. Aschraj Lal, the Petitioner herein, relying upon the registered Will, approached the Respondent, DDA, for mutation of the subject property in his name. He states that the Petitioner also filed the No Objection Certificates ('NOC') of each of the other legal heirs, all dated 23.03.2010, before the DDA. The said NOCs have also been placed on record in the present writ petition as Annexure P-8 (Colly.).

2.2. He states that however, instead of acceding to the Petitioner's request, the Respondent, DDA, directed the Petitioner herein to obtain a probate or Letters of Administration of the said Will dated 28.01.1984.

2.3. He states that the Petitioner in pursuance to the aforesaid direction of the Respondent, filed a petition before the learned ADJ, South-II, Saket Court, Delhi ('Trial Court'), for grant of Letters of Administration with respect to the Will dated 28.01.1984. He states that the remaining legal heirs of late Sh. Aschraj Lal, again filed their respective 'No Objection Affidavit' before the Trial Court. He states that after following the due process of law, the Trial Court on 29.11.2010 issued Letters of Administration in favour of the Petitioner qua the subject property. He states that the Petitioner placed the said Letters of Administration before Respondent, DDA, on 21.02.2011



with a request for mutation.

2.4. He states that the Petitioner thereafter was in receipt of a letter dated 06.01.2012 issued by the Respondent, DDA, stating that late Sh. Aschraj Lal had allegedly written a letter dated 22.08.1996 and as per the said letter, the registered Will dated 28.01.1984 was revoked and a fresh Will was executed by Sh. Ascharj Lal in July, 1991. He states that date of the alleged Will of July 1991 was not mentioned in this letter.

2.5. He states that this was the first time, the Petitioner was made aware about any such alleged letter dated 22.08.1996. He states that no such objection of revocation was raised by any of the legal heirs of late Sh. Ascharj Lal before the Trial Court, which was the competent Court to determine the issue, if any, with respect to the revocation of the Will dated 28.01.1984.

2.6. He further states that the Petitioner being aggrieved by the aforesaid communication dated 06.01.2012, participated in a public hearing organised by Respondent, DDA. He states that at the said hearing, the Petitioner once again informed the Respondent, DDA, that there is no objection by any of the legal heirs of late Sh. Ascharj Lal, either to the registered Will dated 28.01.1984 or to the grant of Letters of Administration during the probate proceedings.

2.7. He states that the Petitioner was thereafter, surprised to receive the impugned letter dated 28.02.2014, whereby the Respondent, DDA, informed the Petitioner that the Letters of Administration granted by the Trial Court vide order dated 29.11.2010 is 'null and void' in view of the purported letter dated 22.08.1996.



2.8. He states that Respondent, DDA, is bound by the Letters of Administration granted by a competent Court and that the Respondent's letter, declining to mutate the subject property in the name of the Petitioner herein, is bad in law and it is in these circumstances the Petitioner was compelled to file the present Writ Petition.

3. In reply, learned counsel for the Respondent, DDA, reiterates the contention raised in the impugned letter dated 28.02.2014 and letter dated 06.01.2012. She states that as a matter of fact the letter is dated 20.08.1996 and it was received in the office of the Respondent on 22.08.1996. She states the said letter was addressed to the S.H.O., PS Malviya Nagar, Delhi and a copy was marked to the DDA.

3.1. She states that she does not dispute the fact that the NOCs of the legal heirs had been furnished by the Petitioner, to the Respondent, DDA. However, the sole reason for the Respondent in denying the mutation and not acting in compliance with the Letters of Administration is the letter dated 22.08.1996.

4. To a query from the Court that if any steps were taken by the Respondent, DDA, at the contemporaneous time after receipt of the letter dated 22.08.1996, to make any inquiry with respect to the veracity of said letter, from Sh. Ascharj Lal, she clarifies that there was no inquiry undertaken independently by Respondent to verify the said impugned letter.

5. This Court has considered the submissions of the parties. This Court is unable to find any merit in the communications dated 28.02.2014 and 06.01.2012 issue by the Respondent, DDA. The Respondent, DDA, has admittedly, neither impugned nor questioned the validity of the grant of Letters of Administration by the Trial Court. The judgment of the Trial



Court is a judgment in rem and it binds the Respondent, DDA. The Letters of Administration issued by the Trial Court is conclusive to the legal character throughout the world. The right of the Applicant herein had been effectively settled after the grant of Letters of Administration. In regard to the aforesaid, the Supreme Court in **Kunvarjeet Singh Khandpur v Kirandeep Kaur, (2008) 8 SCC 463**, has held as under: -

“24. In a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the court to perform a duty. Probate or letter of administration issued by a competent court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the Succession Act, 1925 does not convey a meaning that by the proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the court to perform that duty. There is only a seeking of recognition from the court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a view to discharge the moral duty, the applicant seeks recognition from the court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an “application” under Article 137 of the Limitation Act, 1963.”

(Emphasis Supplied)

6. It would be pertinent to note that, in fact, in the State of Delhi, probate is not mandatorily required to be obtained in respect of a Will and the statutory authorities as well as legal heirs commonly act upon the Will itself. It is only where there is a dispute about the validity of the Will that the beneficiary seeks a probate of the Will.

7. However, in the present case, at the instance of Respondent DDA, the



Petitioner obtained Letters of Administration from the competent Court. The only other person who could have had a rival claim to the Petitioner were his brother or sisters, who as well have duly confirmed the validity of the Will executed by their father. The remaining legal heirs of late Sh. Ascharj Lal have duly issued their NOCs, as filed before the DDA and the Trial Court. In these facts, Respondent, DDA was statutorily obliged to mutate the subject property in favour of the Petitioner.

8. This Court also takes judicial notice of the 'Handbook on Mutation of DDA Flats', a policy document, issued by the Vigilance Department of the Respondent, DDA, wherein in respect of a registered Will, DDA accepts and acts upon the registered Will of the recorded owner and carries out mutation in favour of the beneficiary of the Will. Further, in respect of the unregistered Will, the DDA insists upon the NOC from the other legal heirs as a precaution.

9. In the present case, the Petitioner not only furnished the NOCs of his brothers, sisters and the legal heirs of late Sh. Ascharj Lal, but, he has also furnished the Letters of Administration issued by the learned Trial Court. Thus, Respondent, DDA was bound even as per its own policy document to mutate the subject property in favour of the Petitioner.

10. Further, the learned counsel for the Petitioner has also filed a short note pointing out the contradictions in the impugned letter dated 22.08.1996, which contradictions show that the letter is incoherent and inconsistent. It is his submission that his father, who was a practising lawyer, and an intelligent person could not have issued such an incoherent letter.

11. It is also a matter of record that this Court had issued direction to the concerned SHO to verify if the letter dated 20.08.1996 was received in the



police station at the relevant time. The concerned SHO was represented in the present proceedings through his counsel and he has stated that the records of the police station, up to 31.01.2012, have been weeded out and there is no record of the said letter available with the concerned SHO. In these circumstances, the veracity of the letter dated 20.08.1996 has not been established on record.

12. This Court is of the considered opinion that in view of the Letters of Administration granted by the Trial Court as well as NOCs issued by all the legal heirs, the impugned letter dated 28.02.2014 and letter dated 06.01.2012, issued by Respondent, DDA, are illegal, untenable and hence, quashed.

13. The Respondent, DDA, is directed to mutate the DDA Flat i.e. MIG Flat No. 152, RPS Sheikh Sarai, Phase-1, New Delhi in the name of the Petitioner within a period of four weeks.

14. In view of the aforesaid, the present petition is allowed.

MANMEET PRITAM SINGH ARORA, J.

JANUARY 24, 2023/DC/aa