

S/L 13+14
25.08.2025
Court. No. 19
Swayan

WPA 9055 of 2024

**Arun Kumar Saraf
Vs.
The State of West Bengal & Ors.**

With

WPA 9069 of 2024

**Saroj Saraf
Vs.
The State of West Bengal & Ors.**

*Mr. Saptanshu Basu, Sr. Adv.
Mr. Altamash Alim
Ms. Pooja Sah
Mr. Sourav Mondal*

...for the petitioner.

*Mr. Amitabrata Roy, GP
Ms. Munmun Ganguly
Mr. Debraj Sahu*

...for the State in WPA 9055 of 2024.

*Mr. Chandi Charan De, AGP
Mrs. Reshma Chatterjee*

...for the State in WPA 9069 of 2024.

*Mr. Chayan Gupta
Mr. Dyutimoy Paul
Mr. Saaqib Siddiqui*

...for H.I.D.C.O.

1. Since subject matter of WPA 9055 of 2024 and WPA 9069 of 2024 are identical, this Court proposes to dispose of the instant two writ petitions being WPA 9055 of 2024 and WPA 9069 of 2024 by a common judgment.
2. In both the aforementioned writ petitions the subject matter of challenge is the memo dated 17.10.2023 as issued by the General Manager, Marketing, West Bengal Housing Infrastructure Development

Corporation Limited being the respondent no. 3 in both the writ petition whereby and whereunder the said respondent no. 3 requested the writ petitioners to submit legal heir certificate of one Kedarnath Saraf, since deceased along with relinquishment of share by all other legal heirs of the said deceased in favour Smt. Saroj Saraf who is the writ petitioner in WPA 9069 of 2024 through an affidavit executed before a first class Judicial Magistrate for taking further action on the basis of application for transfer of ownership of plot no. AA-IIB-1289 category HIGI-II as has been originally allotted to the said deceased Kedarnath Saraf.

3. At the time of hearing, Mr. Basu, learned Senior Advocate at the very outset draws attention of this Court to the copy of the probated Will as has been executed by the said testator Kedarnath Saraf.
4. Attention of this court is also drawn to the memo dated 27.03.2002 a copy of which has also been annexed with the instant two writ petitions.
5. It is submitted by Mr. Basu that from the memo dated 27.03.2002 as issued by the HIDCO/authority it would reveal that the aforementioned plot of land was originally allotted to Kedarnath Saraf, since deceased and it is undisputed that the said Kedarnath Saraf during his lifetime paid four numbers of installments for such allotment of the plot.
6. At this juncture, Mr. Basu requests this Court to go through the recital of the probated Will. It is submitted

by Mr. Basu that from the recitals of the said Will it would reveal that the said testator expressed his intention that the said plot no. 1289 would be vested to Sm. Saroj Saraf the writ petitioner in WPA 9069 of 2024 after his death. It is thus submitted by Mr. Basu that in view of the desire of the said testator as expressed in the said Will and in view of the fact that the said Will has been probated by a competent Court of law there cannot be any justification on the part of the respondents/authorities more specifically; the respondent no. 3/authority to issue the letter under challenge dated 17.10.2023 insisting upon the writ petitioners in both the abovementioned writ petitions to submit legal heirs certificate along with an affidavit indicating relinquishment of shares of the other legal heirs of the deceased.

7. It is further submitted by Mr. Basu that the respondent no. 3 authority while issuing the letter under challenge has failed to visualize the true implication of the Indian Succession Act, 1925 and, therefore, appropriate relief/reliefs may be granted in favour of the writ petitioners as prayed for.
8. In course of his submission, Mr. Basu, learned Senior Advocate appearing on behalf of the writ petitioners places his reliance upon the reported decision of ***State of W. B. & Anr. vs. Kailash Chandra Kapur & Ors*** reported in ***(1997) 2 SCC 387***.
9. *Per contra*, Mr. Gupta, learned Advocate appearing on behalf of the respondents contended that the

respondent no. 3 is perfectly justified in issuing the memo under challenge dated 17.10.2023 since in the first paragraph of the said memo it has been clearly indicated that on the day of execution of the said Will the said testator, Kedarnath Saraf was not the owner of the said plot of land. It is thus submitted by Mr. Gupta that mere obtaining probate in respect of the last Will and testament of the deceased, Kedarnath Saraf is not sufficient for effecting transfer of ownership as prayed for by Sm. Saroj Saraf under cover of her application.

10. This Court has meticulously gone through the entire materials as placed before this Court. This Court has also considered the submissions of the learned Advocates for the contending parties.

11. On careful consideration of the memo dated 27.03.2002 it reveals that the aforementioned plot was originally allotted to the said Kedarnath Saraf, since deceased. It is equally undisputed that out of five installments the said Kedarnath Saraf, since deceased during his life time paid four numbers of installments, however, no material could be placed before this Court that prior to the death of Kedarnath Saraf, since deceased the original allottee has paid the fifth installment and a registered deed of conveyance was executed in favour of the said Kedarnath Saraf, since deceased in respect of the said plot by the respondents/authorities.

12. Such being the position, this Court has got no hesitation to hold that before this Court both the writ

petitioners have failed to satisfy even *prima facie* that the right, title and interest in respect of the aforementioned plot of land passed in favour of the deceased, Kedarnath Saraf prior to his death.

13. At this juncture, if I look to the recitals of the probated Will as left behind by the testator Kedarnath Saraf it reveals that the said Will has been written in such a fashion which gives an impression that at the time of execution of the deed of Will the testator was the absolute owner of the said plot of land.
14. In considered view of this Court, the respondents/authorities more specifically the respondent no. 3/authority rightly pointed out such discrepancy and considering the fact that no right, title and interest passed in favour of the writ petitioner, Sm. Saroj Saraf by virtue of the said probated Will, the respondent no. 3/authority is perfectly justified in asking both the writ petitioners to submit legal heirs certificate of the deceased allottee along with no objection from other legal heirs of the original allottee regarding their consent towards relinquishment.
15. It is settled position of law that a probate Court while granting probate does not look to the title of the property and on the contrary the probate Court must satisfy itself with regard to due execution and attestation of the Will and the absence of any suspicious circumstances while execution of the Will.
16. Such being the position, this Court is of considered view that mere grant of probate in respect of the last

Will and testament of the original allottee Arun Kumar Saraf, since deceased does not *ipso facto* create any right, title and interest in favour of the writ petitioner, Sm. Saroj Saraf in respect of the allotted land.

17. This Court considers that the reported decision of ***Kailash Chandra Kapur & Ors (supra)*** is quite distinguishable from the facts and circumstances of the case and the same has got no manner of application in connection with the two instant writ petitions.

18. In view of the discussion made hereinabove, this Court thus finds no illegality and/or infirmity in the memo dated 17.10.2023.

19. With the aforementioned observation, WPA 9055 of 2024 and WPA 9069 of 2024 are hereby dismissed.

20. However, there shall be no order as to costs.

21. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)