



\$~68

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 15th January, 2025

+

W.P.(C) 128/2022

SH. GULZAR AHMED

.....Petitioner

Through: Mr. Anis Ahmed, Advocate along
with Petitioner in person.

versus

NORTH DELHI MUNICIPAL CORPORATION
& ANR.

.....Respondents

Through: Ms. Sunieta Ojha, Standing Counsel
with Mr. Rajeev Kumar Pandey, Ms. Vasudha
Priyansha and Ms. Vinita, Advocates**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition is preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to impugned order dated 08.11.2021 whereby Respondents have rejected the application of the Petitioner for e-change of name/mutation with respect to property bearing House No. 988, Haveli Bakhtawar Khan, Madarsa Hussain Bux, Matia Mahal, Jama Masjid, Delhi ('subject property'), on the ground that the Gift Deed by which the property has been transferred is not a valid instrument in the absence of registration and stamping.

2. It is the case of the Petitioner that late Sh. Abdul Nazeer purchased the subject property on 05.12.1963 by a duly registered Sale Deed from its



erstwhile owner. He did not have a child and therefore, a Will was executed by him on 28.04.1983 in favour of his wife Ms. Tanveer Begum bequeathing the property to her. Will was duly witnessed and signed by his two brothers. Legal heirs of the two brothers filed a partition suit bearing No. 410/1995/01 on 14.03.2001 against Ms. Tanveer Begum and also challenged the Will. The suit was dismissed on 09.03.2004 holding Ms. Tanveer Begum to be the absolute owner of the subject property and appeal was dismissed by this Court on 21.03.2012.

3. It is averred in the petition that on 03.11.2020, *Hibanama*/Gift Deed was executed by Ms. Tanveer Begum in favour of the Petitioner. Application for mutation of the property was filed by the Petitioner in the office of the Respondents on 22.04.2021 but the same was rejected on 08.11.2021 on the ground that the Gift Deed was not registered and stamped and was thus not a valid instrument of transfer. Challenging this order, Petitioner has filed this writ petition.

4. Learned counsel for the Petitioner contends that the stand of the Respondents that the Gift Deed must be registered and stamped is wholly misconceived and overlooks the Mohammadan Law under which a Gift need not be in writing and can be oral and only three essential conditions are required for it to be valid: (a) declaration of the Gift by the donor; (b) acceptance of Gift, express or implied by the donee; and (c) delivery of possession of the subject of the Gift by the donor to the donee and in the present case, each of the three conditions are fulfilled.

5. It is further argued that the impugned order is in ignorance of Section 129 of Transfer of Property Act, 1882 ('1882 Act') which provides that nothing in Chapter VII shall be deemed to affect any rule of Mohammadan



Law and therefore, Section 123 of the said Act will not be attracted in the present case. The order is also in teeth of the judgment of the Supreme Court in *Hafeeza Bibi and Others v. Shaikh Farid (DEAD) by LRs. and Others, 2011 SCC OnLine SC 733*, wherein it has been held that no registration of Gift Deed in respect of an immovable property will be required in a case relating to Mohamman Law. Learned counsel also relies on the judgments of the Supreme Court in *Rasheeda Khatoon v. Ashiq Ali, (2014) 10 SCC 459* and *D.N. Joshi v. D.C. Harris, (2017) 12 SCC 624*, as also a recent judgment in *Mansoor Saheb (Dead) and Others v. Salima (D) by Lrs. and Others, 2024 SCC OnLine SC 3809*. In this backdrop, it is urged that the impugned order be quashed and directions be issued to the Respondents to mutate the subject property in favour of the Petitioner basis the Gift Deed dated 03.11.2020.

6. Ms. Ojha, learned Standing Counsel for MCD opposes the writ petition and places strong reliance on Section 147 of the Delhi Municipal Corporation Act, 1957 ('1957 Act') which provides for duty on transfer of property and method of assessment thereto and urges that in the absence of document being registered and stamped, Respondents will be unable to realize the duty on transfer.

7. Having heard learned counsels for the parties, this Court finds merit in the contention of the counsel for the Petitioner that the Gift Deed in question is not required to be registered and/or stamped. Section 123 of 1882 Act provides that for the purpose of making a Gift of immovable property, transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. However, Section 129 of 1882 Act provides that nothing in Chapter VII shall be deemed to affect any



rule of Mohammadan Law and therefore by virtue of Section 129, Respondents cannot insist on registration of the Gift Deed in question which is between parties governed by Mohammadan Law. This position of law is settled by the Supreme Court in *Hafeeza Bibi (supra)*, wherein it was held that three essentials of a Gift under Mohammadan Law are: (a) declaration of the Gift by the donor; (b) acceptance of Gift by the donee; and (c) delivery of possession. Rules of Mohammadan Law do not make writing essential to the validity of Gift and an oral Gift fulfilling all the three essentials is a complete and irrevocable Gift. However, donor may record the transaction of Gift in writing but this will not mean that only because the Gift is in writing, it must be registered as this would not be in conformity with the Rule of Gifts in Mohammadan Law. Supreme Court also held that Section 129 of 1882 Act preserves the Rule of Mohammadan Law and excludes applicability of Section 123 thereof to a Gift of an immovable property by a Mohammadan. This position of law has been reiterated recently in *Mansoor Saheb (supra)* and the Supreme Court has held that registration of Gift is not required under Mohammadan Law and the unwritten and unregistered Gift executed by the donor in favour of the donees is valid.

8. In view of the aforesaid position of law, this Court is unable to agree with learned counsel for the Respondents. The impugned order rejecting the application of the Petitioner on the ground that the Gift Deed dated 03.11.2020 is not stamped and registered, cannot be sustained in law. Insofar as payment of duty on transfer under Section 147 of 1957 Act is concerned, which is the cause of concern to the Respondents, learned counsel for the Petitioner, at this stage, fairly submits that Petitioner has always been ready



2025:DHC:358



and willing to pay the transfer duty. This stand of the Petitioner is taken on record.

9. Accordingly, the writ petition is allowed quashing the impugned order dated 08.11.2021 to the extent the Respondents insist on the Gift Deed being registered and stamped. However, as offered, Petitioner will deposit the transfer duty and complete all other formalities required for mutation of the subject property. For this purpose, Petitioner will meet Deputy Assessor and Collector, City SP Zone, Kashmere Gate, on 30.01.2025 at 11:00 AM with all the relevant documents. He will be informed of the transfer duty payable and the time within which it has to be deposited and/or any other document to be furnished. As soon as the transfer duty is deposited and formalities are completed, Respondents shall proceed to mutate the subject property in the name of the Petitioner. The needful shall be done expeditiously and not later than six weeks from the date Petitioner completes all formalities.

10. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

JANUARY 15, 2025

YA/shivam