
(1999) 12 DEL CK 0102

In the Delhi High Court

Case No : Civil Writ Petition No. 2908 of 1999

Guneet Singh Lehl

APPELLANT

Vs

Lt. Governor, NCT of Delhi and Another

RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Citation : (2000) 4 AD 26 : (2001) 59 DRJ 415

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : Aman Lekhi, for the Appellant; B. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

C.K. Mahajan, J.—Rule.

With the consent of counsel for the parties the writ petition is finally heard and being disposed of.

2. The petition is directed against the communications dated 1.9.1998, 29.12.1998 and 12.4.1999 issued by the respondents requiring the petitioner to deposit Rs. 8,18,348/- for mutation of plot No. 134, Hargobind Cooperative Housing Building Society. It is contended in the petition that the petitioner is entitled to mutation of the said plot without payment of any unearned increase.

3. The petitioner is the nephew of late Sh. G.S. Lehl who was the lessee of the plot in question under a perpetual sub lease dated 27th April, 1979. A will was executed by the said Sh. G.S. Lehl on 8th September, 1992 bequeathing the said plot to the petitioner. Mr. G.S. Lehl had passed away on 27th August, 1993. The petitioner applied to the Society for transfer of membership of Late Sh. G.S. Lehl in his favour. The Society vide resolution No. R-34, dated 27.2.1994 enrolled the petitioner as a member. The Assistant Registrar, Cooperative Societies was informed vide letter dated 11th March, 1994. The petitioner thereafter submitted the documents to the respondents for mutation of the plot in his name in June,

1994. Thereafter the petitioner received a communication dated 16.2.1995 requiring him to certify that no consideration passed in execution of the will and he has succeeded to the property of the deceased Sh. G.S. Lehl. The petitioner responded to the said communication and furnished the certificate. The petitioner received communication demanding house tax receipts, proof of relationship, composition fee and no objection certificate from other relatives of the deceased. These documents were also submitted to the respondent. He again received communication requiring him to furnish additional documents for mutation of the plot. These documents were submitted by the petitioner.

4. On 1.9.1998 the petitioner received a communication demanding Rs. 8,18,348/- as a condition for mutation of the plot. The petitioner requested respondent No. 2 for withdrawal of the said demand.

5. The learned counsel for the petitioner contended that the petitioner was not liable to pay any unearned increase as he had succeeded to the said property under the will. The only requirement under the sub lease in case of a person succeeds under a will was notice to the Lesser of the said devolution and submit a certified copy of the documents evidencing the transfer on devolution. The petitioner has satisfied all these requirements.

6. Counsel for the petitioner placed reliance on a judgment of this Court in *Mrs. Vijay Gursahney v. DDA and Ors.* 1994 RLR 367 wherein the court has held that the communications requiring the petitioner to pay unearned increase was bad and invalid in law and the same were set aside directing the respondents to transfer the lease hold rights in favor of the petitioner and to mutate the plot in her name on the basis of the letters of administration with the will executed in her favour. The court had in the said decision also examined the policy of the DDA where in case a request received for transfer of property on the basis of the will to a person within the definition of family member certain documents were required to be obtained from the legatee for the purpose of mutation which included certified copy of the will, death certificate, affidavit disclosing the particulars of the legal heirs no objection certificates of the legal heirs and affidavit from the legatee declaring that the property in question had not passed on to him during the life time of the testator and no sale agreement/agreement for construction etc. had been executed by the testator in his/her favour, nor any GPA./SPA had been executed in his favor or in favor of a person nominated by him. The legatee was asked to furnish indemnity bond, no objection certificate from the Cooperative Society and other eligibility documents etc. The petitioner had complied with the requirements laid down in the policy decision of the D.D.A. for mutation on the basis of the will.

7. Reliance was also placed on *State of West Bengal and Anr. v. Kailash Chandra Kapur and Ors.* 1997 (11) SCC 387 wherein it has been held by the Supreme Court that the lease does not provide any bar for transfer of property in favor of a stranger by way of a will. However the legatee should be bound by all the covenants or any new covenants or statutory base so as to bound all the existing

lessees.

8. It is not disputed that a will was executed by Late Mr. G.S. Lehl bequeathing all his rights in the plot in favor of the petitioner. The considerations that prevailed upon the deceased to bequeath the property to the petitioner are of no consequence.

9. There is no opposition by the learned counsel for the respondents who states that the petitioner had fulfilled the requirements laid down in the policy decision of the DDA and thus was entitled to have mutation effected in his favour.

10. The communications of the respondents dated 1.9.1998, 29.12.1998 and 12.4.1999 requiring the petitioner to pay unearned increase and interest are bad in law and are accordingly set aside. The respondents are directed to transfer the lease hold rights of late Sh. G.S. Lehl in favor of the petitioner and to mutate the property in his name on the basis of the will and the documents submitted Along with the will in terms of the policy decision of the DDA.

11. According the writ petition is allowed. No order as to costs.