
(2000) 09 DEL CK 0137
In the Delhi High Court
Case No : Civil Writ No. 6739 of 1999

Jatinder Nath

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 21-09-2000

Acts Referred:

Transfer of Property Act, 1882 — Section 8

Citation : AIR 2001 Delhi 89

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Naresh Thanai, for the Appellant; Sangeeta Bharti, for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—Father of the petitioner was allotted plot No. 48, Masjid Moth Extension Residential Scheme, now known as Udai Pak. New Delhi-49 in an open auction conducted by the Delhi Development Authority. A lease Deed was executed in his favor by the President of India on 24-7-1973. After the demise of the father of the petitioner the property devolved upon his two sons namely Jatinder Nath, the present petitioner and his brother Narender Nath. Both the brothers applied for mutation with the DDA. Property was mutated in the name of the petitioner and his brother Narender Nath vide letter of respondent dated 22-7-1993.

2. It is the case of the petitioner which is not disputed by the respondent that petitioner cleared entire amount and nothing is due from him. On account of oral settlement and out of love and affection both the brothers settled the matter with regard to their property and Narender Nath executed a Relinquishment Deed dated 21-12-1998 duly registered in the office of the Sub-Registrar relinquishing his share in the property in question in favor of his brother Jatinder Nath, who is petitioner before this Court. On the basis of the said Relinquishment Deed the petitioner applied for deletion of the name of his

brother Narender Nath from the records of the respondent.

3. Respondent refused to transfer/mutate/ delete the name of Narender Nath and strangely by the impugned order demanded from the petitioner that until and unless a Gift Deed duly registered with the office of the Sub-Registrar is given to the respondent the name of Narender Nath can not be deleted as co-owner of the property in question.

4. Mr. Thanai, learned counsel for the petitioner has contended that demand of the respondent is totally illegal and unwarranted. He has contended that Narender Nath happens to be younger brother of petitioner and out of love and affection he relinquished his share from the property which devolved upon them after their father. He has contended that Relinquishment Deed duly registered in the office of Sub-Registrar is also a Conveyance and inspire of Relinquishment Deed having been executed the respondent can not insist for execution of another Gift Deed. Learned counsel for the petitioner has cited Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another, where the Supreme Court held that a registered instrument styled release deed releasing right, title and interest of releaser without consideration may operate as transfer by way of gift when document clearly shows intention to effect transfer and is signed by or on behalf of releaser and attested by at least two witnesses.

5. On the other hand, counsel for the respondent has contended that as per guidelines issued by the Lt. Governor to the respondent the deletion in the name would be effected when Gift Deed is executed by Narender Nath in favor of petitioner as Narender Nath is also co-sharer in the property. Respondent has filed counter affidavit Along with the guidelines appearing at page 43 of the paper book and has relied upon Clause II "where a deed has been registered". Sub-clause of this Clause reads as under :--

i) Where a deed has been registered addition and substitution of "family members" shall be allowed without any charge but on execution of a regular conveyance/ gift deed.

6. At the outset, I must say as to how these guidelines can come in the way of the respondent in deleting the name of Narender Nath. According to the guidelines relied upon by respondent the word occurring in Sub-clause (i) of Clause 2 is a regular conveyance/gift deed. A Release Deed or Relinquishment Deed can not be said to be a Conveyance Deed. The insistence on the part of the respondent is totally untenable in law. I would not dwell much on this controversy because what has been filed by the respondent in this Court and has been heavily relied upon by counsel for the respondent is some guidelines which pertain to the substitution/ addition/ deletion of names in industrial/ commercial plots. Unmindful of the fact that guidelines under which the respondent wants to take shelter pertains to industrial and commercial plots yet the respondent has been insisting to produce a Gift Deed pursuant to these guidelines which do not apply in case of residential plots. Nothing has been filed to show that there is any

guideline by the respondent in relation to any residential plot which specifically, as a matter of principle and policy, requires for deletion of a name a gift deed. In the circumstances, I quash the impugned letter whereby the respondent is insisting upon execution of Gift Deed by Narender Nath in favor of his brother i.e. the petitioner.

7. I allow the petition and direct respondent to delete the name of Narender Nath within four weeks.

8. After deletion of the name of Narender Nath the application of the petitioner pending for conversion of property from leasehold to freehold will also be disposed of in accordance with law.

Rule is made absolute.