

Basant Dayal Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Feb-18-1999

Reported in : 1999IVAD(Delhi)856; 81(1999)DLT343

Judge : C.K. Mahajan, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Petition No. 1001/99

Appellant : Basant Dayal

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Ms. Anusuya Salwan, Adv.

Advocate for Pet/Ap. : N.N. Dhingra, Adv

Judgement :

ORDER

CW 1001/99

1. Heard.

2. The petitioner by way of this writ petition seeks a direction against the respondents recalling the letters dated 5th January,1999 and 15th January,1999 suspending mutation in favor of the petitioner and has also sought a prohibition

against the respondents from acting on the Will dated 4th February,1997 propounded by Chetan Dayal, nephew of the petitioner. The petitioner contends that there was no justification in canceling/suspending the letter dated 24th August,1998 without affording any reasonable opportunity of hearing to the petitioner.

3. The communication dated 5th January,1999 is reproduced:

GS, (E7/6)/71/CS/DDA/35 Dy. Director (CS) 5.1.1999 The Hony Secy., Govt. Servant CHBS Ltd., Vasant Vihar, New Delhi 110057. Sub: Mutation of plot No. E7/6, Vasant Vihar. Ref: Letter No. GS (E7/6) 71CS/DDA/765 Dt. 24.8.98

Sir,

On the subject above, I have been directed to inform you that the mutation of the above cited plot allowed vide this office letter dated 24.8.98 has been suspended as the beneficiary has concealed the facts. You are also requested to direct S/Shri Basant Dayal and Sh. Chetan Dayal to obtain probate orders from the competent Court.

Yours faithfully,

sd/

Dy. Director (CS)

Copy to:

1. The Asstt. Commr. of Income tax, CR Bldg. I.P. Estate, New Delhi.

2. Sh. Basant Dayal, R/o. Overland Park, Kansas, USA.

3. Shri Chetan Dayal, R/o. H. No. 213, Sector 9C. Chd.

Dy. Director (CS).

4. That during his life time D.C. Kaith, father of the petitioner has gifted half undivided share of the Delhi property to his daughter Smt. Aruna Malhotra.

Mutation was effected in respect of the said half share by the respondent No.1 in 1974. In respect of the remaining half undivided share, a registered Will was executed in December, 1995 bequeathing half share in the property in favor of the petitioner. After the death of D.C. Kaith, the petitioner approached the respondents for mutation of the half undivided share of the property in his favour. The mutation was effected by order dated 24.8.1998. The Society, Respondent No. 3 did not take any action in the said matter as one Chetan Dayal, nephew of the petitioner had also applied for mutation on the basis of a later Registered Will dated 4.2.97. The petitioner served legal notice dated 14.10.98 on Chetan Dayal with a copy to respondent protesting against the move of Chetan Dayal for transfer of half share in the Delhi property in his name. Respondent No. 3 mutated the property in the name of the petitioner on 7.12.98, in their records. However, respondent No. 3 was informed by respondent No.1 that the mutation in terms of letter dated 24.8.98 has been suspended. Respondent No. 3 informed the petitioner about the suspension and advised the petitioner to obtain probate.

5. From the aforesaid facts, it is clear that the petitioner was aware of the fact that Chetan Dayal, nephew of the petitioner had requested for mutation of half of the Delhi property in his favor under registered Will dated 4.2.97. thereforee respondent No. 1 had no other option but to suspend the mutation of the plot in dispute to avoid causing injustice to either party. Chetan Dayal had propounded the registered Will dated 4.2.1997 and had claimed half share in the Delhi property. In these circumstances, it was only just for the respondents to have directed both the petitioner and Chetan Dayal to obtain probate orders from the competent court.

6. To my mind no prejudice had been caused to the petitioner. There was justification for the respondents to suspend the mutation. The action of the respondent was neither capricious nor mala fide. The object of Article 226 is enforcement and not establishment of a right or title. The merits of rival claims to the property have to be investigated and it is solely on the determination of the validity of the will that will entitle the petitioner to mutation of the property. It is not this court to go into the question as to which Will is to be given effect to and these questions can more suitably be gone into by an appropriate authority in

appropriate proceedings. No directions can be given restraining the respondents from acting on either of the Wills when the authenticity of both the Wills has been called into question.

7. The action of the respondents in suspending the letter dated 24.8.1998 is bona fide and does not cause any prejudice to the petitioner. This is not a fit case for exercise of discretion under Article 226 of the Constitution.

8. Dismissed.

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