

V.K. Vadhera Vs. Dda

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Court : Delhi

Decided On : Aug-29-2000

Reported in : 2000(56)DRJ238

Judge : Vijender Jain, J.

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

Appeal No. : Civil Writ Petition No. 334 of 1999

Appellant : V.K. Vadhera

Respondent : Dda

Advocate for Def. : Ms. Sangita Chandra, Adv.

Advocate for Pet/Ap. : Mr. D.R. Mahajan, Adv

Judgement :

ORDER

Vijender Jain, J.

1. Rule.

This petition has been filed by the petitioner seeking directions against the respondent inter alia, praying therein for the quashing of the demand of unearned increase and unspecified damages mentioned in the letter of the respondent dated

23/24.12.1998.

2. At the outset, Mr. D.R. Mahajan, learned counsel appearing for the petitioner, has contended that this case is squarely covered by the Division Bench judgment of this Court in Mrs. Vijaya Gursahaney v. DDA & Ors. 1994 R.L.R. 367. However, learned counsel appearing for the respondent, Ms. Sangita Chandra, has contended that the present case is distinguishable on its own facts as the lease was determined by the respondent on 17.8.1990. It has also been contended by her that from the documents filed by the petitioner, it would be apparent that it was a case of sale and, therefore, this case is not covered by Mrs. Vijaya Gursahaney's case (supra).

3. I have given by careful consideration to the arguments advanced by the learned counsel appearing for both the parties. There is no disputed that Mrs. Mitra, who became the lessee of the plot in question after the death of his husband, executed a Will on 26.11.1987. That Will was probated in London on 18.7.1989. In Mrs. Vijaya Gursahaney's case (supra) this Court held:-

'It is not disputed, and nay it could be disputed, that under the will executed by Ram Dhan, the original lessee, he bequeathed all his rights in the plot in favor of the petitioner. It should be immaterial, as far as respondents are concerned, as to what considerations prevailed upon Ram Dhan to bequeath his plot to the petitioner. For the respondents to allege that will was not executed by the testator out of any love or affection for the petitioner, is of no relevance. The petitioner obtained Letters of Admn. as per the procedure prescribed under Succession Act, 1925. The Letters of Admn. in the form prescribed u/s.290 of the said Act were granted on 7.5.80 in pursuance of the order dated 27.4.79 of the District Judge, Delhi.....'

4. On what basis respondents have taken the stand that it was a case of sale and the petitioner is not entitled under the will to inherit the property is without any legal foundation. The same is based on mere surmises and conjectures and, therefore, demand based on such surmises and conjectures is totally unwarranted in law. My attention was drawn by the learned counsel appearing for the respondent to a judgment of this Court in the proceedings filed by the present petitioner bearing

Probate Case No.7/1990, which was decided on 14.12.1991, to get the will probated in India after the same was probated in London. During her lifetime, Mrs. Mitra gave to the petitioner letters of authority, power of attorney in favor of the petitioner to collect relevant papers and get it mutated from Delhi Development Authority and also sent a perpetual lease deed of the plot in question along with buildings plans and maps. Sending of power of attorney or the original perpetual lease deed, when she admittedly was living in London, would not in any way lead to a conclusion that the property was sold by Mrs. Mitra in favor of the petitioner. respondent which is an instrumentality of the State wearing the hat of the Government, must be objective in dealing with right of a citizen, more so, when the Division Bench of this Court in no uncertain terms had observed that respondents have no right to levy unearned increase or any other charges on those persons, who have got a validly executed Will in their favour. The whole approach of the respondent is to recover unearned increase without any material on record. I would recall the Division Bench judgment in Mrs. Vijaya Gursahaney's case (supra) as it is germane to the controversy of the present case. In Para-11 of the said judgment it was observed:-

'We must record our deep anguish at the harassment caused to the petitioner all these 15 years. The correspondence with the D.D.A. forms part of as many as three volumes in its record, which was shown to us at the time of hearing. It is unfortunate that so much paper work has gone into without any benefit to the petitioner. The D.D.A. has been constituted to promote and secure the development of Delhi according to plan and for that purpose various powers have been conferred upon it. It is, thus, constituted for the benefit of the people. When it is allotting a plot or transferring the leasehold rights in plot in favor of other persons, it is not showing any favor of giving any dole, or conferring any special benefit on them. Rather, its instrumentalities should act with a feeling that they are serving the people and they should not by their actions or otherwise thwart the rights of the people which they have under the law, in the circumstances of this case, we award Rs. 5,000/- as costs to the petitioner.'

5. In view of the discussion above, I hold that the present case is fully covered by the decision of Mrs. Vijaya Gursahaney's case (supra). In this case also the Will

was probated in London prior to the determination of lease. In the premises, letter dated 23/24.12.1998 is quashed.

6. The writ petition is, therefore, allowed. Rule is made absolute.

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