

Krishna Basra Vs. Mcd and anr.

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Court : Delhi

Decided On : Mar-22-2010

Judge : Sanjiv Khanna, J.

Appeal No. : W.P.(C) 4802/2008

Appellant : Krishna Basra

Respondent : Mcd and anr.

Advocate for Def. : Usha Saxena, Adv.

Advocate for Pet/Ap. : Kamlesh Mahajan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Sanjiv Khanna, J.

1. Ms. Ram Chameli was allotted property No. C-69, Kasturba Niketan Complex, Lajpat Nagar-II, New Delhi by respondent-MCD in accordance with the scheme floated by the Slum and JJ Department of the MCD for redevelopment. Ms. Ram Chameli became entitled to allotment of land measuring 33.58 square meters. In the draw of lots, she was allotted plot No. D-9, Kasturba Niketan Complex, Lajpat Nagar, New Delhi.

2. On 10th September, 2003, Ms. Ram Chameli expired and the petitioner-Ms. Krishna Basra being her daughter made an application for recording mutation in her name. The petitioner relied upon a registered Will dated 13th March, 2001 executed by late Ms. Ram Chameli. It is apparent from the original file that the application filed by the petitioner was considered and it was decided to obtain legal opinion. This was necessary as Mr. Dinesh Mehta, Mr. Chetan Mehta and Mr. Sandeep Mehta grandsons of late Ms. Ram Chameli had also filed an application for mutation. The office file reveals that from 3rd June, 2005 till 23rd December, 2005, the respondents were not able to decide whether or not to mutate the property in the name of the petitioner or the grand children due to conflicting claims.

3. In the meanwhile, the petitioner herein filed a civil suit for injunction in which the respondents were served. The grandsons of late Ms. Ram Chameli were also parties to the said civil suit. During the pendency of the civil suit, the respondent-MCD by their letter dated 30th January, 2006 informed the petitioner that the property can be mutated in her favour in case the will relied upon is probated from the court of competent jurisdiction or she furnishes no objection certificate/relinquishment deed from the remaining legal heirs of the deceased.

4. The petitioner by her letter dated 8th February, 2006 which was delivered by hand as well as by registered post informed the respondent-MCD that she had filed proceedings for grant of probate/letter of administration in respect of the Will dated 13th March, 2001.

5. In spite of the aforesaid letters and stand of the respondent-MCD, it is shocking and surprising that subsequently mutation was transferred and recorded in the name of Mr. Chetan Mehta. The Dealing Assistant (Allotment) wrote a detailed note dated 31st December, 2007 making reference to minutes of a meeting dated 2nd May, 2003 presided over by the Joint Secretary (Disability Division) to resolve matters recording discrepancy in number of persons in occupation of the land at Kasturba Niketan. Thereafter, the file was processed in great hurry and moved to Head Clerk (Allotment), Assistant Director (Allotment), Deputy Director (Allotment) on 31st December, 2007 itself. The file was examined and cleared by the J.L.O

(HQ) and two other officers on 2nd January, 2008 (obviously 1st January, 2008 was a holiday being new year's day). J.L.O. has recorded that contents mentioned above in the note dated 31st December, 2007 merit acceptance as the grandsons of deceased Ram Chameli had filed an affidavit that they were in continuous physical possession of the premises. The note does not state that any actual site verification about possession was made.

6. Thereafter, allotment/mutation letter was issued in favour of Mr. Chetan Mehta in view of the relinquishment deed executed by Mr. Dinesh Mehta and Mr. Sandeep Mehta.

7. The probate case was decided in favour of the petitioner on 6th September, 2008 and probate of the Will dated 13th March, 2001 has been granted.

8. The stand of the respondent-MCD is not understandable and cannot be comprehended. They have acted contrary to their own letters and the law of inheritance. In the counter affidavit, the MCD has relied upon the minutes of the meeting dated 2nd May, 2003. The relevant portion of the minutes records as under:

Joint Secretary (Disability Division) took a meeting with Officers of Govt. of NCT of Delhi and Slums and Resettlement Wing, Municipal Corporation of Delhi to resolve the matter regarding discrepancy in number of persons in occupation of land at Kasturba Niketan, at 11.30 am on 2.5.2003.

2. List of participants is annexed.

3. In the meeting the issues relating to discrepancy in number of persons in occupation of land at Kasturba Niketan, was discussed in detail and the broad parameters for settling disputed cases were decided as under:

(i) If the allottee has expired but his/her children are living there, their claim can be treated as genuine. If persons other than allottees are living without proof regarding entitlement (by way of allotment through exchange/assignment by MCD) claim for allotment should not be accepted.

(ii) If there is a mention in the original list regarding legal heirs, such cases be considered.

(iii) Controversial cases are to be studied in depth in consultation with the legal experts before taking a decision.

9. A reading of the aforesaid minutes shows that the committee was dealing with the question of discrepancy in number of persons in occupation of land and broad parameters for settling disputed cases were resolved. In Clause (i) it was resolved that claims of children of an allottee, who has expired and are living on the land in question, can be treated as genuine but claim by any third person without proof regarding entitlement should not be accepted. Clause (i) of the broad parameters gives discretion to the authorities to accept a claim made by children of a dead allottee, who are living in the premises. The use of the word 'can' in the first sentence of Clause (i) shows the discretionary element. The said Clause is not clearly applicable when there is a dispute, as in the present case between daughter of the deceased and grand children of the deceased. It appears that the officers of the respondent have gone out of the way and ignored the earlier file notings relating to transfer of mutation and the letters that the petitioner should get probate or get relinquishment deed from other legal heirs. Even under the law of inter-state succession, the petitioner had inherited the property.

10. The writ petition is accordingly allowed and the mutation/allotment granted by the respondent-MCD in respect of property No. C-69, Kasturba Niketan Complex, Lajpat Nagar-II, New Delhi is quashed. The respondent-MCD will reexamine the case of allotment in light of the probate granted to the petitioner in respect of the Will dated 13th March, 2001. Before passing any order, they shall hear all third parties also. Additional Commissioner (MCD) will also examine the facts of the case and if deemed appropriate, departmental action, if required, will be taken against officers, who were guilty of lapse and dereliction of duty.

The writ petition is disposed of. There will be no order as to costs.