

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3234 OF 2015

Viday M. Vidwans

.. Petitioner.

Vs.

The State of Maharashtra & Ors. .. Respondents.

Mr. Saurabh Butala i/b Mr.Harshad Ashok Sathe for the Petitioner.

Mr. Manish M. Pabale AGP for the Respondent No.1.

Mr. B.B. Sharma for the Respondent No.2.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 28TH APRIL, 2017

P.C.

1. Heard learned counsel for the petitioner, learned A.G.P appearing for the first respondent, and . learned counsel appearing for the second respondent.

2. One Hari Dattatraya Vidwans was allotted a flat in the building constructed by the 2nd respondent - City and Industrial Development Corporation of Maharashtra (for short "CIDCO"). The said allottee died on 10th December, 2014. The petitioner claims to be the sole heir of the allottee under the Will dated 31st January, 2014 of the said Hari, which is registered in the office of Sub Registrar of Assurances at Mahad. On the basis of the said Will, the petitioner applied to the Estate Officer of CIDCO for entering his name in the records of CIDCO. The challenge is to the communication dated 6th January, 2015 issued by the Estate Officer,

CIDCO to the petitioner by which the petitioner was called upon to submit the Probate in respect of the Will.

3. The Estate Officer has filed an affidavit and has relied upon written policy of the CIDCO laying down the procedure for the transfer of property. Reliance is placed on clause 'L' of the said policy and in particular clause (ii) which reads thus:

"L. Miscellaneous Transfers : In addition to the above, transfer of the following types are permitted on payment of nominal charges.

(ii) Transfer/Assignment in case of death of original lease holders.

The leasehold rights are transferred to the successors on the basis of (a) Letters of Administration or (b) Probate of Will or (c) Succession Certificate or (d) Heirship Certificate. Such transfer is allowed on payment of nominal administrative charges of Rs.500/- only."

(underline supplied)

4. The submission of the learned counsel appearing for the petitioner is that as the deceased allottee was not a resident of Mumbai, or any of the Presidency Town and that the Will does not

affect any property situated in any presidency town, in view of the Section 57 of the Indian Succession Act, 1925 (for short "the said Act"), it is not mandatory for the petitioner to obtain Letters of the Administration or probate. He submitted that the 2nd respondent CIDCO cannot override the provisions of the said Act and insist on production of the probate or the Letters of Administration.

5. We have perused the original policy tendered across the bar by the 2nd respondent. We have already quoted clause 'L' of the said policy. Clause (ii) itself makes it clear that in case of death of the original allottee, the successor can produce Letters of Administration or Probate or Succession Certificate or Heirship Certificate. If one of the said four documents is produced, the transfer is allowed on payment of the nominal charges of Rs.500/-.

6. In this petition, there is no challenge to the policy of the 2nd respondent. However, the learned counsel appearing for the petitioner is right to the extent that the 2nd Respondent could not have insisted on production of Probate in respect of the Will executed by the original allottee. Firstly, under the said Will, an executor was not appointed and therefore, there is no question of obtaining a probate. Secondly, the 2nd respondent could not have insisted on production of the Letters of Administration as clause (ii) provides that on production of one of the four documents stated therein, the transfer will be affected, subject to the payment of

Rs.500/-. Therefore, the petitioner can always produce heirship certificate granted under the Bombay Regulation VIII of 1827.

7. In absence of any of challenge to to the policy, the petitioner will have to produce either a heirship certificate under Bombay Regulation VIII of Section 1827 or the Letters of Administration under the said Act. On production of one of the two documents, the 2nd respondent is under an obligation to transfer the flat in the name of the petitioner subject to payment of Administrative charges of Rs.500/-.

8. Subject to above directions, no other reliefs can be granted in this Writ Petition. Accordingly, Writ Petition is disposed of.

(A.K. MENON, J.)

(A.S. OKA, J.)