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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 2781 of 2021

Dr. Manu Gouraha, S/o. Late Narendra Kumar Gouraha, Aged About 45 Years, Permanent Address House No. 08, Phase 2, Rajkishor Nagar, Bilaspur, Tahsil & District Bilaspur Chhattisgarh, Present Address M-2/1 University Campus, Vikram University, Ujjain (M.P.).

---- Petitioner

Versus

1. The Chief Estate Officer, Chhattisgarh Housing Board, Head Office, Paryawas Bhawan Atalnagar, Raipur, Tahsil & District Raipur Chhattisgarh
2. The Estate Officer, Chhattisgarh Housing Board, Eastate Management Area 01, Sirpur Bhawan Commercial Complex, Kabir Nagar, Raipur Chhattisgarh
3. Mrs. Shefali Shrivastav, D/o. Late Narendra Gouraha, W/o. & C/o. Shri Pankaj Shrivastava At Present Address 6th Floor Lodhi Road, Plot No. 5B, Jawaharlal Nehru Stadium Marg CGO Complex, New Delhi
4. Mrs. Madhulika Sharma, D/o. Late Narendra Gouraha, Aged About 49 Years, R/o. HIG 1/128, First Floor, Deen Dayal Upadhyay Nagar Bilaspur, Tahsil & District Bilaspur, Chhattisgarh
5. Smt. Pushpa Gouraha, Wd/o. Late Narendra Kumar Gouraha, Aged About 76 Years, R/o. HIG 1/128, First Floor, Deen Dayal Upadhyay Nagar Bilaspur, Tahsil & District Bilaspur Chhattisgarh

---- Respondents

For Petitioner : Mr. Nilkanth Malviya, Advocate
For Respondent No.1 & 2 : Mr. Sanjay Patel, Advocate

Hon'ble Shri Justice Goutam Bhaduri

ORDER

09.07.2021

Heard

1. Challenge in this petition is to the letter dated 15.03.2021 issued by the Chhattisgarh Housing Board wherein a HIG house has been recorded in name of all the legal heirs of the deceased Narendra Kumar Gouraha by the Housing Board.
2. The short facts of this case are that late Shri N.K.Gouraha purchased a house i.e. HIG-128 at Danganiya from Housing Board under a Hire



Purchase Agreement and in such agreement, he nominated his son Manu Gouraha to be the nominee. N.K.Gouraha died on 10.08.2012 leaving behind his wife Smt. Pushna Gouraha, son Dr. Manu Gouraha, petitioner herein and two daughters namely Mrs. Shefali Shrivastav and Mrs. Madhulika Sharma. The petitioner/ son claimed his name to be mutated in respect of the house on the basis of nomination but since various claims were made, the Housing Board observed that since dispute exists in between the legal heirs, as such, suitable decree may be obtained from the civil court and eventually the name of all four heirs were recorded as the owner thereof.

3. Learned counsel for the petitioner would submit that as per the Hire Purchase Agreement, clause 12, in case of death of hirer, the name of the legal heirs would be mutated and if some nominee is nominated then in such case the nominee would be entitled. He submits that in the Hire Purchase Agreement Annexure 1, the petitioner's name was nominated; therefore, his name is required to be recorded. He would submit at the same time, the wife of the deceased filed an application for mutation of name, therefore, the application given by the wife or daughters would not be within the domain of the Housing Board to consider, as it would be against the clause 12 of the Hire Purchase Agreement. He would submit that the application filed by the wife of the deceased and mother of the petitioner to record the name of all four heirs cannot be entertained and the petitioner cannot be asked to approach the court as observed in its letter dated 15.03.2021. Therefore, the Housing Board be directed to record the name of the petitioner alone as legal heir.

4. Learned counsel appearing for the Housing Board would submit that since dispute exists for ownership and mutation of the name, as such, in order to protect the right of the heirs, the Housing Board decided to record four names of the legal heirs as against the property and no illegality can be





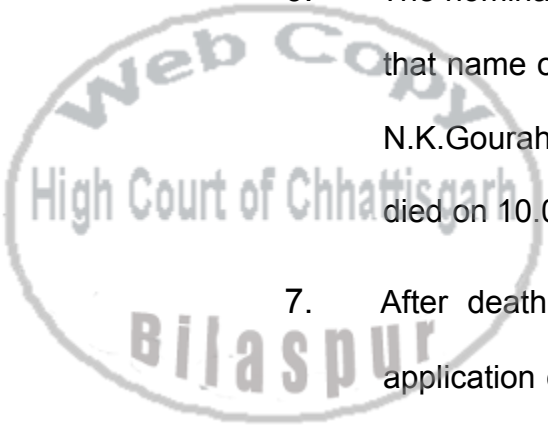
attached to it and the right of nomination will not override the right of heirs; therefore, the petitioner can approach to the competent civil court for declaration and file civil suit, if so advised.

5. Perused the documents attached with this petition and the Hire Purchase Agreement with the Housing Board which was entered on 04.02.1999 with Late N.K.Gouraha on which the petitioner placed reliance. Clause 12 reads as under :

“यदि भाड़ेदार की मृत्यु हो जाए, तो मंडल तीन माह से अधिक अवधि के लिए तथा अन्य मामले में, एक माह से अधिक अवधि के लिए आबंटन जारी रहने दे सकेगा/मंडल भाड़ेदार के नामजद व्यक्ति या उसके कानूनी वारिसों का नाम भाड़ेदार के नाम के स्थान पर रख सकेगा, बशर्ते कि वह/वे करार के अधिकारों तथा दायित्वों को स्वीकार करने के लिए सहमत हो।”

6. The nomination form attached with this Hire Purchase Agreement purports that name of Manu Gouraha was nominated to be recorded after death of N.K.Gouraha as against the house HIG- 128 at Danganiya. N.K.Gouraha died on 10.08.2012, thereafter, the dispute started.

7. After death of N.K.Gouraha, the wife Smt. Pushpa Gouraha filed an application on 06.03.2013 to record her name being the wife. In response to such letter, the Housing Board wrote a letter to two daughters and the wife observing that since there is some dispute existing in between the legal heirs; therefore, they may obtain the decree of declaration from the competent civil court, which is Annexure P-5. One of the daughter Mrs. Shefali Shrivastav also emailed a letter on 09.11.2013 to the Estate Officer Housing Board that uptill the decree is obtained, the name of all the legal heirs be recorded in respect of the house HIG-128. Thereafter, the Housing Board in 2015 & 2018 communicated to the wife and the daughters with a copy to the petitioner herein that name of all the legal heirs would be recorded and they were asked to appear to sign certain papers so that all the four names may be recorded. Lastly since the petitioner insisted that only his name may be recorded as per clause 12 of





the Hire Purchase Agreement, the impugned letter dated 15.03.2021 has been issued.

8. The facts of this case would suggest that there is no WILL by Late N.K.Gouraha in favour of the petitioner alone. Section 8 of the Hindu Succession Act, 1956, provides for general rules of succession in the case of males, which contemplates that the property of a male Hindu dying intestate shall devolve according to the provisions of chapter II. Section 8, Clause (a) reads that devolution would be firstly, upon the heirs, being the relatives specified in class I of the Schedule. Heirs of class I of the Schedule include son, daughter, widow and so on. Therefore, the petitioner being son, two daughters namely Mrs. Shefali Shrivastav & Mrs. Madhulika Sharma and the widow Smt. Pushpa Gouraha would be class I heirs as per Section 8. In absence of any WILL all the heirs would be jointly inherit the property, even if the Hire Purchase Agreement and the nomination of the petitioner would not bind the other heirs so as to defeat the devolution as per Section 8 of the Hindu Succession Act, 1956 in favour of class I heirs who are the widow and daughters.

9. The Supreme Court in case of **Smt. Sarbati Devi & Another v. Smt. Usha Devi**¹ has discussed the right of nominee and observed while dealing a case of life insurance, it held that the nominee's interest would be subject to claim of the assured under the law of succession.

10. Following, the analogy in the instant case, after death of Late N.K.Gouraha in whose name the house was held, it would become a part of estate which would be governed by the law of succession. Since in this case, there is no testamentary succession, as such, all the heirs by application of Section 8 of the Hindu Succession Act would get equal right to the property left over i.e. estate of the deceased. The right of nominee, as such, cannot be held to be over and above to the exclusion of the legal

1 (1984) I SCC 424



heirs and consequently the letter written by the Housing Board wherein all the names have been recorded subject to any declaration from the civil court, no fault can be attributed to it. The petition is devoid of merit and accordingly it is dismissed.

Sd/-
(Goutam Bhaduri)
JUDGE

Aks

