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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 18 February 2022**

+ **W.P.(C) 10713/2020**

ANIL KAPOOR & ANR.

..... Petitioners

Through: Mr. Harkirat Sawhney, Ms. Rati
Coshic and Ms. Aashna Aggarwal,
Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Awadhesh Kumar Singh for R- 1
&2.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. The petitioner assails the validity of an order dated 6 September 2017 passed by the respondents pursuant to which their prayer for conversion of the subject property from leasehold to freehold has come to be rejected. As would be evident from a reading of the impugned order, the respondents have taken the position that the application has not been signed by a person who is eligible to apply for conversion and that since the transfer also involved the conveyance of the share of minors without the permission of the competent court, the prayer as made was liable to be refused. Although the impugned order refers to "clause 20.5", it is admitted before this Court on behalf of the respondents that no such clause exists or stands incorporated in the lease deed in question. The twin objections taken in the

impugned order admittedly rest on the singular fact of the rights of minors having been transferred without the requisite permission of the competent court. Before proceedings to deal with the merits of the objection taken by the respondents, it would be apposite to notice the following essential facts.

2. The petitioners disclose that one Ugar Sain Mohan was granted leasehold rights in respect of the property in question. He is stated to have bequeathed his interest in the property to his four sons Madan Lal Mohan, Mukund Lal Mohan, Prahlad Chander Mohan and Fit. Lt. Subhash Mohan in terms of a Will executed on 28 March 1986. The record further reflects that the original lessee died on 14 April 1987. The daughters of the original lessee have submitted their no objection in respect of their respective shares in the property and for the same devolving upon the sons exclusively. The submission of the aforesaid no objection is also not disputed by the respondents. In fact, it has come on the record that pursuant to the aforesaid no objection submitted by the daughters of the original lessee, the name of the four sons came to be duly mutated.

3. Flt. Lt. Subhash Mohan, one of the sons of the original lessee is stated to have died on 8 January 1991. He left behind a last will and testament dated 18 March 1986 bequeathing all his movable and immovable properties in favour of his wife Smt. Vineeta Mohan. Upon the death of Flt. Lt. Subhash Mohan and in terms of the aforesaid will, his widow came to acquire 1/4th undivided share in the leased premises. The three surviving sons as well as the widow of Flt. Lt. Subhash Mohan are thereafter stated to have executed agreements to sell with respect to the subject property in favour of the petitioners here. The petitioners are stated

to have been inducted into physical possession of the subject property pursuant to the said agreements to sell in February 1991. The petitioners upon acquiring interest in the lease property applied for its conversion to freehold in 2011. They are also stated to have submitted the monies as demanded by the L&DO authorities from time to time. However, their right to seek conversion of the property from leasehold to freehold has come to be refused in terms of the order impugned.

4. Having noticed the salient facts, the Court notes that the sole ground which appears to have weighed with the respondents is the fact that Smt. Vineeta Mohan conveyed her interest in favour of the petitioner here without seeking the permission of the competent Court with respect to the rights of the two minor children whose share also was liable to be recognized as existing once the father passed away. The Court finds itself unable to countenance or accept the objection taken for the following reasons.

5. The view as taken by the respondents clearly falls foul of the provisions made in Section 8(3) of the **Hindu Minority and Guardianship Act, 1956** which reads thus:-

“Sec 8. Powers of natural guardian.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.”

6. As is well settled a disposition made and which may also entail the transfer of the share of a minor is not void in the eyes of law. As Section 8(3) in unambiguous terms stipulates it is merely voidable. It is voidable at

the instance of the minor provided an appropriate action is brought seeking repudiation of the transfer made by the natural guardian within the period of limitation as prescribed in Article 60 of the Limitation Act. The ambit of Section 8 (3) was succinctly explained by the Supreme Court in **Nangali Amma Bhavani Amma Vs. Gopalkrishna and others** [(2004) 8 SCC 785] as follows:--

“7. But the learned counsel for the appellant is right in contending that the High Court had misconstrued the provisions of Section 8 of the Act. Section 8(1) empowers the natural guardian of a Hindu minor to do all acts which are necessary or reasonable and proper for the benefit of a minor or for the realisation, protection or benefit of the minor's estate subject to two exceptions of which we may only note the exception carved out in sub-section (2) of Section 8. Section 8(2) provides that the natural guardian shall not without the previous permission of the court, inter alia, transfer by way of a sale any part of the immovable property of a minor. The effect of violation of this provision has been provided for in the section itself under sub-section (3). This sub-section reads:

“8. (3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.”

8. In view of the express language used, it is clear that the transaction entered into by the natural guardian in contravention of sub-section (2) was not void but merely voidable at the instance of the minor. To hold that the transaction in violation of Section 8(2) is void would not only be contrary to the plain words of the statute but would also deprive the minor of the right to affirm or ratify the transaction upon attaining majority. This Court in *Vishwambhar v. Laxminarayan* [(2001) 6 SCC 163] has also held that such transactions are not void but merely voidable. It was also held that a suit must be filed by a minor in order to avoid the transaction within the period prescribed under Article 60 of the Limitation Act. The High Court did not consider the issue of limitation at all in view of its finding on the effect of a violation of Section 8(2) of the Act. As the conclusion of the High Court on this aspect of the matter is unsustainable, the impugned decision must be set aside.”

7. Viewed in light of the principles laid down in the aforesaid decision, it is clear that the impugned order would not sustain. It becomes relevant to note that it is not the case of the petitioners that the two minors have either assailed or questioned the alienation made by the natural guardian upon attaining the age of majority. The respondents are thus clearly incorrect and unjustified in viewing the transfer made by the widow in favour of the petitioners as being void.

8. Accordingly, and for reasons aforementioned, the writ petition is allowed. The impugned order of 6 September 2017 is quashed and set aside. The respondents are hereby commanded to attend to the application made by the petitioner for conversion of the subject property to freehold in accordance with law and bearing in mind the observations made hereinabove.

FEBRUARY 18, 2022
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YASHWANT VARMA, J.