

## **CHAPTER – 28**

### **SUBSTITUTION**

Substitution is the process of mutation of the names of legal heirs on the death of lessee. Application for this purpose shall be made on a plain paper signed by all or one of the legal heirs accompanied by the following documents:-

- (i) Attested copy of the death certificate of the lessee issued by the Local Body.
- (ii) Affidavit in the prescribed format of all the legal heirs, duly sworn before a Magistrate/Sub-Judge if the property is to be substituted in favour of all the legal heirs.
- (iii) Certified copy of the relinquishment deed duly registered with the Sub-Registrar in whose jurisdiction the property is situated, in case one or more legal heirs want to release his/her share in favour of the applicant.
- (iv) Copy of the 'Will' if any, left by the lessee.

If the application and the documents furnished are in order and there is no dispute about the genuineness of the 'Will', substitution letter shall be issued to the applicant within three months. Where genuineness of 'Will' is disputed by any of the legal heirs, the following procedure shall apply in respect of registered or unregistered 'Will'.

In cases, where the property is to be substituted in favour of one or more legal heirs on the basis of a Will (Registered/Un-Registered) the beneficiary/beneficiaries shall be asked to submit affidavit in the prescribed format, alongwith the affidavits of all other legal heirs. If it is not possible for the beneficiary to furnish affidavits from all legal heirs then he/she shall be asked to obtain probate of the 'Will' from a competent Court of Law and furnish certified copy of the same before substituting the property.

[No. 7(4)/69-CDN dt. 24.9.1992 – Office order No. 14/92]

Substitution on the basis of court orders or decree shall be carried out on furnishing by the successor of the property, an attested copy of the death certificate of the lessee and a certified copy of the court order or decree declaring the successor to be the lawful heir to the property.

## **2. PROCEDURE FOR PROCESSING SUBSTITUTION CASES:**

If the property is to be substituted in favour of all the legal heirs when there is no 'Will' or Relinquishment or any other legal documents, the affidavits of the legal heirs and the death certificate shall be checked in the Section concerned and substitution letter put up.

Where the substitution is to be carried out on the basis of the Will/Relinquishment deed/court order or any other legal documents like probate, letter of administration etc. all such documents shall be referred to the Branch Officer/Legal Officer for vetting.

In case of any doubt the matter shall be referred to Assistant Legal Advisor by the Branch Officer, with a proper referring note clearly stating the issue of advice.

[No. 24(19)/91-CDN dated 20.7.1992 – Office order No. 10/92]

Unearned increase shall not be demanded in case of transfer of property among members of the same family at the time of succession. "Family" for this purpose shall mean "husband/wife, as the case may be, mother, father, son, daughter, grand son/daughter, as the case may be. [No. 24(61)/90-CDN dated 30.9.1991, Office order No. 13/91 read with office order No. 21/76 dated 31.3.1976]

Substitution of the property in the names(s) of heirs shall not act as a waiver of the breaches in the knowledge of the lessor, if any. Substitution shall, therefore, be carried out even while the breaches remain un-remedied. In such cases it shall be indicated in the substitution letter that such and such breaches exists in the premises and that action therefor is being taken separately. The ground rent shall not be demanded or accepted till the breaches are removed or regularised.

## **3. REVIEW OF SUBSTITUTION ORDER:**

In case a situation arises where it becomes necessary to review an order passed by an officer, it shall be necessary that the approval of superior officer is obtained before any communication is issued. As for instance in a case where order is issued by the Superintendent and it becomes necessary to review it, orders or approval of the Branch Officer shall be obtained. In case where the order issued is that of the Branch Officer, approval of Head of Office shall be obtained.

[No. 24(7)/86-CDN dated 29.8.1988, Office order No. 9/88]

#### **4. SUBSTITUTION ON THE BASIS OF LETTER OF ADMINISTRATION:**

In certain cases the lessee leaves behind a 'Will' bequeathing the property in favour of one of his legal heirs and appoint another person or the beneficiary himself or herself as Executor for the purpose of administration of the property. In such cases the following procedure shall be applied :-

- (i) Where the beneficiary and the Executor/Administrator is one and the same person, the property shall be substituted straightaway in favour of the beneficiary in accordance with the 'Will'.
- (ii) In cases where the Executor/Administrator happens to be another person, but he gives a letter that he has no beneficial interest in the bequeath property and has also handed over the possession of the property to the beneficiary, the property shall be substituted in the name of the beneficiary without insisting upon the assent deed as the assent given by the Administrator is sufficient to the vesting of beneficial interest and legal title to the beneficiary in accordance with the 'Will'.

[No. 24(7)/76-CDN dated 15.2.1989, Office order No. 3/89]