

Nomination: Overview of Various Legislations

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Abstract

The paper deals with the relevant and significant provisions relating to Nomination under various Acts. It takes a closer look at whether just nominating a person is sufficient or whether further a further bequest of such movable and immovable property is necessary.

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Introduction

Nomination means to appoint a person to an office or position. The significance of nomination is that it is a simple method of transmitting an object of value without going through the lengthy procedure of identifying the correct beneficiary under the succession laws. If an act has provided for a nomination to expressly over-ride the relevant inheritance laws, only then the nominee would get the rights of a person who has made such nomination and that nomination shall not be subject to any future claims made by the beneficiary under the succession laws. However in most Acts, a nominee is only a trustee of the owner of the property and any the prevalent succession laws will over-ride the nominations set out by the owner of the property.

This paper analyses a few relevant laws in India with respect to nomination provisions.

Significant Laws

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) and the Payment of Gratuity Act, 1972 (PG Act)

The EPF Act and the PG Act provides collection of pension and deposit fund, deposit linked insurance and gratuity for the employees at factories and other establishments.

Relevant provisions of the EPF Act and the PG Act provides the following:

1. Each member shall make a declaration in Form No. 2 nominating a person to receive the amount standing to his credit in the event of his death or where the amount has become payable.
2. A member may in his nomination distribute the amount amongst his nominees at his own discretion.
3. If the member has a family at the time of making nomination, the nomination shall be in favour of one or more persons belonging to his family. In other words he cannot ignore family persons and nominate any outsider for receiving the amount standing to his credit.

4. Nomination can be modified at any time by a member by giving a notice of intention in Form No. 2. If the nominee predeceased the member, the interest of the nominee shall revert back to the member who can make a fresh nomination.

EPF Act and PG Act deals with the payment of accumulations of the deceased member. The payment is to be made in accordance with the valid nomination. If no nominations subsist, the amount is to be paid to the members of his family in equal shares. In a case where no nomination subsists and there is no member of the family, the whole amount is to be paid to the person legally entitled.

The above Acts lead to the following explanations:

1. Nomination must be validly made towards only family members i.e. spouse, minor son, unmarried daughter or any adopted children.
2. Only when there is no family member can a nomination be made to outsiders.
3. The employee can decide what share of his entitlement to be distributed and that must be mentioned in the Nomination Form. However if no share is mentioned, the nominees will be entitled to a proportionate share.
4. The Company may request for a legal heir certificate when a family member is not nominated.
5. On the death of the employee and on an application from the nominee, the employer shall forthwith forward the said application to the Commissioner.

The Companies Act, 1956

Sections 109A 109B read with Section 58A (11) of the Companies Act 1956 provide for the rules on nomination with respect to holders of shares, debentures and fixed deposits. The Companies Act excludes a trust, society, body corporate, firm, Karta of HUF, power of attorney holder from being a nominee. In other words, the nominee has to be an individual only.

If the nomination is made by the holders of Fixed Deposits, Debentures or Shares, the nominee becomes entitled to all rights in the aforesaid deposits, shares or debentures as the case maybe excluding all others. Nomination becomes effective on the death of the holder as aforesaid.

A nomination in favour of nominee in the case of joint ownership is only effective when both joint owners are dead. Articles of Association of most companies provide that when first joint owner dies, the other joint owner is the only person having the title and interest in the shares.

Section 109B provides an option to the nominee to either to get his name entered as holder of shares, debentures or deposits or to directly transfer/ sell the shares or debentures as the deceased could have made.

Maharashtra Co-operative Societies Act, 1960

Section 30 of the MCS Act has been clearly drafted to provide for an individual who has to deal with the society on the death of a flat owner and not to create a new rule of succession.

This section is significant so as to avoid confusion in case there are disputes between the heirs and legal representatives and to avoid obscurities as to with whom the society should get to deal to get proper discharge.

The Society is not concerned with any kind of dispute raised by any person whatsoever so for the transfer of membership of the deceased member to his nominee is concerned. However, all the persons entitled to the estate of the deceased, as per the prevalent succession laws applicable to them, do not lose their right to the same, even after transfer of the shares in the name of the deceased member.

It must be clearly noted that the right of society to admit a person of its choice as a member cannot be exercised arbitrarily and so as to deprive person of his/her right to the shares or property of a deceased member. The act does not give a right to the society to refuse membership to a person who is entitled to become a member.

It is pertinent to note that a nomination is not a will. A nominee is a mere trustee with whom society can initially deal and after the death of a member all the heirs of the deceased member will have a right of succession to the property and the nominee cannot exclude other heirs. To put it simply, provisions of the succession laws will not be affected by nomination.

In view of the aforesaid, it can be safely concluded that a nomination for property is insufficient. For vesting of ownership of property after death of the owner in consonance of his wishes it is more advisable to make a will besides nomination.

Conclusion

Upon reading of the aforesaid explanations under various Acts, one fact which comes out clearly is that under most prevalent laws a nominee is only considered a trustee of the rightful owner of the property (movable or immovable as the case maybe). In the event of any valid and legal bequest done by the owner which maybe contrary to the nomination made earlier, the bequest shall prevail. It is further clarified under most of the Acts that the prevalent succession laws will over-ride the nominations set out by the owner of the property.

References

Acts and Bills

The Employees Provident Fund and Miscellaneous Provisions Act, 1952

Payment of Gratuity Act, 1972 (PG Act)

The Companies Act, 1956

Maharashtra Co-operative Societies Act, 1960

Websites

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