

Laws of inheritance

An NRI and PIO can acquire any immovable property in India by way of inheritance or legacy from a resident living in or outside the country

Sunil Tyagi
htestates@hindustantimes.com

It is important to understand inheritance rights of non-resident Indians (NRI) and persons of Indian origin (PIO) vis-à-vis immovable property in India, as in addition to inheritance laws, provisions of Foreign Exchange Management Act, 1999 (FEMA) would also come into play. Inheritance of immovable property in India by NRIs and PIOs is also regulated in terms of FEMA. Under FEMA, the Reserve Bank of India (RBI) is empowered to regulate acquisition and transfer of immovable property in India by persons outside India, such as NRIs and PIOs.

An NRI and PIO may acquire any immovable property in India (including residential, commercial, agricultural, plantation and farmhouse properties) by way of inheritance/legacy from a resident living in or outside India. This is important to bear in mind given that NRIs and PIOs are not permitted to acquire agricultural land, plantation property or farmhouse property in India by way of purchase or gift. These immovable proper-

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ties may be inherited by NRIs and PIOs provided the deceased person had acquired such property in compliance with the foreign exchange law in force, at the time of acquisition of the property.

Administration of the estate

Rules governing succession and inheritance fall broadly under two categories – testamentary succession and intestate succession. An individual is said to die intestate if he does not leave behind a will, in which case his properties would be distributed amongst the legal heirs in accordance with the personal law applicable to the deceased. On the other hand, testamentary succession refers to the distribution of a deceased individual's properties as per his/her desires stated in the last will. In India, testamentary succession is governed by the Indian Succession Act, 1925.

To facilitate administration

and inheritance of the estate of the deceased as per his/her desires in the will, one is required to obtain probate or letters of administration, wherever compulsorily required to be obtained. Once satisfied as to due execution of the will as per requirements under Indian Succession Act, 1925, courts grant a probate order (or letters of administration, as the case may be) which certifies the authenticity of the will. In case the will is challenged by any person, all legitimate doubts are to be removed – only then would probate or letters of administration be granted.

In situations where the deceased individual had executed his/her will in a foreign country, setting out inheritance of properties that are situated within India, an ancillary probate is required to be obtained from an Indian court of competent jurisdiction. When a will has been proved and deposited in a foreign court, a petition may be filed for grant of letters of administration/ancillary probate. Once an Indian court accepts the probate granted by the foreign court as valid, the foreign probate would form



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the basis for the grant of an ancillary probate in India.

Remittance rules

For an NRI/PIO who wants to ultimately dispose of the inherited immovable properties in India, rules governing remittance are to be kept in mind. Under the extant regulations by RBI, NRIs and PIOs are permitted to remit

a maximum amount of US\$1 million per financial year out of assets in India acquired by way of inheritance.

To facilitate remittance, they are required to submit documentary evidence of the inheritance, and make payment of applicable taxes as prescribed by the Central Board of Direct Taxes from time to time. As regards remittances that exceed US\$1

million in any financial year, NRIs and PIOs have to obtain prior permission from RBI.

The author is senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at htestates@hindustantimes.com or ht@zeus.firm.in