

Rajinder Singh Vs. Dda and anr

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Court : Delhi

Decided On : Sep-30-2013

Judge : G.P. Mittal

Appellant : Rajinder Singh

Respondent : Dda and anr

Advocate for Def. : Ms. Shobhana Takiar, Ms. Ritagya Riti

Advocate for Pet/Ap. : Mr. R.K. Saini, Mr. Dushyant

Judgement :

\$~14 * IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

30. h September, 2013 + W.P.(C) 1172/2013 & CM.APPL.2212/2013 RAJINDER SINGH Through: Petitioner Mr. R.K. Saini with Mr. Dushyant, Advocates Versus DDA & ANR Through: Respondent Ms. Shobhana Takiar with Ms. Ritagya Riti, Advocates for the DDA. CORAM: HON'BLE MR. JUSTICE G.P. MITTAL

JUDGMENT

G.P. MITTAL, J.(ORAL) 1. The Petitioner was a successful bidder in respect of allotment of a residential plot No.69, Chowkandi, Delhi measuring 162 sq. mts. in an auction held on 21.08.2002. His bid of `12,97,000/- was accepted by the DDA. The earnest money of `3,24,250/-, representing 25% of the total bid amount, was

deposited with the DDA on the date of the auction itself. The balance of `9,72,766/- was admittedly deposited by the Petitioner in November, 2002 according to the terms of the auction and the allotment of the plot was made to the Petitioner.

2. As per the terms of the allotment, the Petitioner was required to submit four copies of the unsigned lease deed along with duly stamped perpetual lease deed papers. According to the Petitioner, he did not receive the lease deed papers and, therefore, the same could not be stamped from Collector of Stamps and could not be submitted to the DDA. The Petitioner avers that it was only on 22.03.2005 when the Petitioner received a show cause notice issued by the DDA through one of his neighbours that he came to know about the non-submission of lease deed papers duly stamped. The reason for the same attributed by the Petitioner is that he was temporarily working in Berlin(Germany) and, therefore, the same could not be received by him. On 07.11.2005, the Petitioner paid a sum of `87,406/- to the Collector of Stamps and deposited three copies of the perpetual lease deed duly stamped with the DDA on 21.11.2005. The Petitioner alleges that he did not hear anything further in the matter and the Petitioner continued to work in Berlin.

3. Thereafter, when the Petitioner was in Delhi, he made a representation on 02.03.2012 to the DDA stating that in spite of making full payment and submission of the duly stamped lease deed papers seven years ago, he had not received the possession letter in respect of the plot. The Petitioner, therefore, requested the DDA to issue the possession letter. The Petitioner also gave his alternative address where his father and his family members were residing, that is, C-8/247-B, Keshavpuram, Delhi110035. The Petitioner alleged that he did not receive any response from the DDA. On the other hand, on 07.01.2013, a show cause notice was received by the Petitioner to the effect that he had failed to submit the lease papers and other documents. The Petitioner's grievance is that simultaneously, a letter dated 08.01.2013 was received by the Petitioner calling upon him to furnish the details of the accounts from where the bid amount of `12,97,000/- and the stamp duty amount of `87,406/- were deposited by him. He was further required to furnish a photocopy of the passbook and the bank statement. The Petitioner says that a detailed para-wise reply dated 13.01.2013 to the show cause notice was

submitted by him. Reply to the letter dated 08.01.2013 was also submitted by the Petitioner on 29.01.2013, whereby he informed the DDA that the payment of the auction money having been made in the year 2002 and the accounts having been closed, it will not be possible for him to give the details of the bank accounts from which the payment was made. The Petitioner also informed that it was not permissible for the DDA to ask for these details, that too after a period of eleven years and one month. The Petitioner's grievance is that in spite of having made the payment and completing all the formalities, neither the lease deed is being executed nor the possession letter is being issued to the Petitioner.

4. The Petition is resisted by the DDA by way of filing a counter affidavit. The payment of 25% earnest money and 75% balance bid amount within the stipulated period is not disputed by the Respondent DDA. The submission of lease deed papers duly stamped on 21.11.2005 is also not disputed. It is also not disputed by the DDA that all the formalities have since been completed by the Petitioner. The DDA's plea, however, is that the stamped papers and lease deed was submitted after a delay of 02 years 11 months and 09 days and the other formalities and submission of requisite documents were completed only after a period of 09 years and 20 days.

5. The learned counsel for the Petitioner relying on a Division Bench judgment of this Court in *Asha N. Madnani v. DDA*, 1997 I AD(Delhi) 385 submits that the terms as to payment of the allotment money are mandatory and the terms with regard to deposit of the documents are only directory and, therefore, the DDA cannot deny execution of the lease deed as also delivery of the possession since all the formalities have been completed by the Petitioner.

6. In para 10.1 and 10.2, the Division Bench held as under:

10.1 Each allotment is part of a composite scheme. By default in payment the working of the scheme is disturbed and the DDA has to rearrange its financial affairs. An allottee defaulting in payment must give way to an aspirant waiting for an allotment and willing to make payment. 10.2 In case of a mere default in filing of the documents (having no material bearing on eligibility or qualification for allotment) and proof of payments within the prescribed period the considerations

are different. Even the respondent-DDA is aware of the payment having been made. It is merely a question of convenience that allottee is required to furnish proof of payment so that collective information as to payment is available at one place and the DDA is not required to scan its records time and again in respect of each allottee. Having made the payments-all and in time- it is primarily the allottee who suffers by his failure to furnish the documents and proof of payments. Execution of lease and delivery of possession to the allottee would be delayed in spite of his having parted with money and that flat lying ready for delivery of possession. Situation may be different if third party interest or any other similar factor has intervened which would render it inequitable or impossible to accommodate the allottee on his original allotment.

7. It is urged by the learned counsel for the DDA that in spite of several reminders by the DDA, the formalities were not completed by the Petitioner within reasonable time. However, the Petitioner has given a reasonable explanation for the same, that is, he was temporarily working in Berlin. Moreover, since the conditions with regard to deposit of documents were not mandatory, the DDA cannot withhold the execution of the lease deed and delivery of the possession to the Petitioner.

8. By a letter dated 07.01.2013, the Petitioner was directed to show cause within 15 days as to why the allotment /bid of the plot no.69, measuring 162.00 sq. mtr. in Chowkhandi, Residential Scheme may not be cancelled. While issuing notice of the writ petition on 22.02.2013, this court had stayed the operation of the show cause notice. In view of the above discussion, a writ of mandamus is issued directing the DDA to deliver the possession of plot No.69, measuring 162.00 sq. mtr., Chowkhandi, Delhi within eight weeks to the Petitioner and to execute the lease deed within four weeks thereafter.

9. Pending applications, if any, stand disposed of.

10. Dasti to the counsel for the parties. (G.P. MITTAL) JUDGE SEPTEMBER30 2013 pst