

Delhi Development Authority Vs. Sh. Dhanesh Kumar Jain and anr.

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Court : Delhi

Decided On : Oct-25-2013

Judge : S.Ravindra Bhat

Appellant : Delhi Development Authority

Respondent : Sh. Dhanesh Kumar Jain and anr.

Advocate for Pet/Ap. : Ms. Manpreet Kaur

Judgement :

\$~10 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

25. 10.2013 + LPA7922013, C.M. No.16747/2013 (for stay), 16748/2013 (for condonation of delay) & 16749/2013 (for exemption) DELHI DEVELOPMENT AUTHORITY Appellant Through : Sh. N.N. Aggarwal, Ms. Manpreet Kaur and Sh. Rohit Gandhi, Advocates. versus SH. DHANESH KUMAR JAIN & ANR. Through : None. Respondents CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT) % C.M. NO.16748/2013 (for condonation of delay) For the reasons mentioned in the application, C.M. No.16748/2013 is allowed. C.M. No.16749/2013 (for exemption) Allowed, subject to all just exceptions. LPA7922013 and C.M. No.16747/2013 1. This appeal by the Delhi Development Authority (DDA) challenges an order of the learned Single Judge dated 18.09.2012 and the subsequent order in review dated 02.08.2013. Learned

LPA7922013 Page 1 Single Judge had allowed the writ petition and directed the DDA to allot plot No.833, Pocket A-1, Sector-30, Rohini, measuring 60 sq. mts. in Rohini, Phase-IV and to hand-over possession within one month, after completion of formalities.

2. The necessary facts are that the respondents applied for allotment of a plot under the MIG category under the Rohini Residential Scheme, formulated in 1981 by the DDA; it is also conceded that he deposited the Registration Amount. Pursuant to a draw, he was allotted the plot in question on 26.07.2004. The respondents requested the DDA to transfer the plot to his son, the second petitioner, who deposited the required documents as well as the amounts. The amounts demanded were deposited by 28.12.2004. On 07.04.2006, the first petitioner, the original applicant and allottee was issued with a Show Cause Notice stating that he was ineligible for the allotment and asked to reply why the allotment made in his favour be not withdrawn and the registration cancelled.

3. After considering the necessary clarifications and replies, the DDA cancelled the allotment on 06.11.2006 on the ground of concealment of facts. The first petitioner made repeated representations that the allotment should be restored. Eventually, the proceedings were filed before this Court.

4. The DDA argued that the allotment was liable to be cancelled because the original allottee/applicant had acquired a LPA7922013 Page 2 property in his name - even though from the open market, through a Power of Attorney/sale transaction. It is contended that this offended the essential eligibility criteria spelt-out in Clause 1(II) of the brochure governing the Scheme. Same is in the following terms:

The individual or his wife/her husband or any of his/her minor children do not own, in full or in part on lease-hold or free-hold basis any residential plot of land or a house or have not been allotted on hire-purchase basis a residential flat in Delhi/New Delhi or Delhi Cantonment. If, however, individual share of the applicant in the jointly owned plot or land under the residential house is less than 65 sq. mtrs., an application for allotment of plot can be entertained. Persons who own a house or a plot allotted by the Delhi Development Authority on an area of even

less than 65 sq. mtrs. shall not, however, be eligible for allotment.

5. The learned Single Judge, after considering the materials on record relied upon the decisions of the Division Bench of this Court in DDA v. Jai Kanwar Jain LPA1342009 which had relied upon a previous ruling in Dal Chandra Sharma and Anr. v. Delhi Development Authority (LPA2402007) held that if an individual acquired residence or property from the open market, the restriction would be inapplicable. The Court also relied upon a decision of the Supreme Court reported as Delhi Development Authority v. Jitender Pal Bhardwaj SLP (C) 27181/2009. LPA7922013 Page 3 6. It is argued in the present case that the issue is not whether the property was acquired from the open market or allotted. Learned counsel stressed upon the terminology employed by Clause 1(II) of the brochure, to say that so long as a residential flat or plot is owned by the applicant, which is more than 65 sq. metres, he is disentitled to the plot.

7. This Court is unable to agree with the DDAs interpretation. Clause 1(II) of the brochure is one of the eligibility conditions and has been held to be so in the previous Division Bench rulings. The argument of the DDA now seems to be that it is not mere eligibility condition but also a disqualification. Such interpretation, in the opinion of the Court, is fraught with serious if not dangerous consequences, as it would amount to arming the Authority with the power to cancel the allotment if the allottee acquires, subsequent to the allotment or possession, a property in excess of 65 sq. metres. The wording of Clause 1(II) of the brochure clearly points to the applicant being eligible on the condition that at the stage of his making the application and lodging it with the DDA (which in this case was in 1981), he did not own a plot or flat etc. the area of which exceeds 65 sq. metres. The same condition applies in the case of joint property; the portion falling to the share of the applicant should not exceed 65 sq. metres. This Court is alive to the circumstance that the applicants are made to wait for inordinately long time and even LPA7922013 Page 4 decades during which they will either be constrained or fortunate enough to acquire property. That circumstance alone should not, in the absence of clearly spelt-out disqualification conditions render their application ineligible as is sought to be suggested.

8. For the above reasons, the Court sees no merit in the appeal. The appeal is accordingly dismissed along with pending application. S. RAVINDRA BHAT (JUDGE) NAJMI WAZIRI (JUDGE) OCTOBER25 2013 ajk LPA7922013 Page 5

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