

Bimla Sachdev vs.delhi Development Authority

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Court : Delhi

Decided On : Feb-04-2019

Appellant : Bimla Sachdev

Respondent : Delhi Development Authority

Advocate for Def. : Mr. Karan Sharma, Mr. Mohit Siwach, Mr. Rohit Kaliyar

Advocate for Pet/Ap. : Mr. Sameer Rohatgi Mr.Akshi Pradhan

Judgement :

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

4. h February, 2019 + W.P.(C) 12172/2016 & CM APPLs. 48057/2016, 15579/2018 BIMLA SACHDEV Through: Mr. Sameer Rohatgi Mr.Akshi Pradhan, Advs.

... Petitioner
and % 1.

2. versus DELHI DEVELOPMENT AUTHORITY Respondent Through: Mr. Karan Sharma, Mr. Mohit Siwach and Mr. Rohit Kaliyar, Advs. CORAM: HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

(ORAL) The facts, in this case, are undisputed. Sh. Lila Krishan Sachdev, the deceased husband of the petitioner, Bimla Sachdev, was declared successful, in a draw of lots, conducted by the Delhi Development Authority (hereinafter referred to as the DDA), on 20th August, 1975, for allotment of a residential plot, in the Low/Middle Income Group Scheme of the DDA and was, consequently, allotted plot No.C-71, Vikas Puri, New Delhi. Subsequently thereto, on 29th September, 1975, the petitioners husband deposited the amount demanded by the DDA.

3. Physical possession of the plot was handed over to the petitioners husband by the DDA on 30th September, 1976. The W.P.(C) 12172/2016 Page 1 of 9 relevant papers pertaining to the lease deed, leasing the said plot to the petitioners husband, were handed to him, on 19th March, 1977.

4. Unfortunately, owing to his ill-health, the petitioners husband was not in a position to submit the lease deed papers and have them stamped within the stipulated time, as a result whereof the allotment of the aforesaid plot at C-71, Vikas Puri, New Delhi was cancelled vide letter dated 3rd August, 1987, consequent whereupon the DDA resumed the possession of the said plot.

5. The petitioners husband applied for restoration of the said plot. The application was rejected by the DDA vide letter dated 26th December, 1996.

6. The petitioners husband, thereafter, approached this Court by way of W.P.(C) 2003/1997 which was dismissed in default and for non-prosecution on 29th September, 1999.

7. Unfortunately, on 5th February, 2006, the petitioners husband expired, whereupon the present petitioner, who was his widow, represented to the DDA for restoration of the aforesaid Plot No.C-71, Vikas Puri, New Delhi in her name. The application was favourably considered by the DDA, and allotment of the said plot was restored. However, by this time, the allotted Plot C-71, Vikas Puri, New Delhi already stood allotted to someone else. The petitioner, thereafter, requested for allotment of an alternative plot of the same size and in the same zone or in the adjoining zone. This request was acceded to, W.P.(C) 12172/2016 Page 2 of 9 by the DDA, vide letter dated 14th September, 2012. In the draw of lots, which was

held on 4th October, 2012, the petitioner was, therefore, allotted Plot No.C-389, Vikas Puri, New Delhi in lieu of the earlier allotted Plot No.C-71, Vikas Puri, New Delhi.

8. The entire consideration, for the said allotted plot, was admittedly deposited by the petitioner, on 5th November, 2012. On 28th December, 2012, the plot at C-389, Vikas Puri, New 9. Delhi was mutated in favour of the petitioner, by the DDA. Vacant physical possession of the said plot was handed over, by the DDA, to the petitioner, on 21st January, 2013.

10. The lease deed, in respect of the said plot, was also executed in favour of the petitioner, and registered in the office of the Sub- Registrar, Delhi on 18th February, 2013.

11. The building plan, for the said plot, was also sanctioned on 8th April, 2013, by the concerned Municipal Authority and, consequent thereupon, part construction was also undertaken by the petitioner.

12. On 5th May, 2014, the DDA executed a conveyance deed for the said plot at C-389, Vikas Puri, New Delhi, in favour of the petitioner, which was duly registered in the office of the Sub-Registrar, Delhi.

13. A revised plan was submitted by the petitioner, to the DDA, which was also sanctioned in April, 2015. W.P.(C) 12172/2016 Page 3 of 9 14. While things stood thus, the SHO PS Vikas Puri, one day, visited the aforementioned site of the plot and informed the petitioner that interim orders, for maintenance of status quo regarding the plot, stood passed by the learned Additional District Judge (hereinafter referred to as learned ADJ) on 22nd January, 2015 in Suit No.52/2013, apparently filed by one Rajni Saini.

15. The petitioner asserts that, she, thereafter, visited the office of the SHO, with all documents establishing her ownership over the plot as well as the sanctioned plan, in her favour, but that the SHO did not condescend to give her an audience. Thereafter, the petitioner received another court notice, dated 22nd December, 2015, by another learned ADJ, in Suit No.78/2014 (Sanjeev Mittal v. DDA) in

which too, it appears, the said plaintiff claimed ownership over the plot. Consequently, in the said suit, an application was filed, by the DDA, under Order I Rule 10 of the Code of Civil Procedure, 1908, to implead the petitioner therein.

16. The petitioner, needless to say, expresses her chagrin at having been needlessly dragged into a suit which had nothing to do with her. Apart from the aforesaid suits, i.e. Suit Nos. 52/2013 (Rajni Saini v. DDA) and 78/2014 (Sanjeev Mittal v. DDA), the writ petition asserts, that there are other litigations, concerning the same plot, in which orders of status quo stand passed by various courts. As a result, the petitioner complains that, despite her having been handed over the said plot after such a long period of time, the sword of Damocles W.P.(C) 12172/2016 Page 4 of 9 continues to hang over her head, as the plot is under several litigations simultaneously being conducted before various courts and is suffering various orders of status quo.

17. The writ petition asserts that the petitioner is entitled to an unencumbered plot, over which there is no litigation pending.

18. The writ petition points out that Plot No.A-4/39, Paschim Vihar, New Delhi was vacant, the possession whereof could be handed over to the petitioner.

19. In these circumstances, the writ petition seeks issuance of a writ of mandamus, to the DDA, to allot, to the petitioner, either the aforementioned Plot No.A-4/39, Paschim Vihar, New Delhi or Plot No.F-1U/11, Pitampura, New Delhi, or an equivalent plot of similar area.

20. Vide order dated 11th April, 2017, the DDA was directed to file an additional affidavit, especially setting out its stand with respect to aforementioned plots.

21. In the additional affidavit filed by the DDA, pursuant to the said order, it was admitted, by the DDA, that both the aforementioned plots were vacant. However, during the pendency of these proceedings, the petitioner came to know that Plot No.F-1U/11, Pitampura, New Delhi was under litigation since 2013. She, accordingly, moved CM No.15579/2018, for issuance of a direction, to the respondent, to reserve W.P.(C) 12172/2016 Page 5 of 9 Plot No.A-4/39, Paschim

Vihar, New Delhi for allotment to the petitioner in lieu of the earlier plot at Vikas Puri, New Delhi, which already stood allotted to her.

22. On 24th April, 2018, the DDA responded, to this Court, confirming that the plot at A-4/39, Paschim Vihar, New Delhi was indeed vacant as the person to whom it had been allotted, namely, Vinod Batra, had refused to accept the said allotment as high-tension wires were running over the said plot. The petitioner, thereupon, agreed to accept the said plot, if allotted to her. However, on the very next date i.e. 14th May, 2018, the DDA made a statement, before this Court, that it was not willing to allot, to the petitioner, the plot at A- 4/39, Paschim Vihar, New Delhi.

23. Today, Mr. Karan Sharma, learned counsel appearing for the DDA, categorically makes a statement that the DDA is unwilling to allot any alternative plot to the petitioner, stating that any concession to the said effect would set a bad precedent.

24. To my mind, the stand of the DDA is capricious in the extreme, and amounts to undue harassment of the petitioner, who, it may be noted, is a 78 year widow.

25. There is no dispute about the fact that the plot allotted to the petitioner is subject matter of several litigations.

26. At least in the suit filed by Ms. Rajni Saini, it is noticed that, W.P.(C) 12172/2016 Page 6 of 9 prior to the issuance of the conveyance deed on 5th May, 2014, in favour of the petitioner, by the DDA, the matter was listed, before the learned ADJ, on as many as eight occasions. The DDA was, therefore, well aware of the fact that the property was under litigation, at the stage when it issued conveyance deed in favour of the petitioner. Despite this fact, instead of candidly bringing this fact to the knowledge of the petitioner, and allotting her an alternative plot, the DDA, by clear subterfuge, chose to execute the Conveyance Deed in favour of the petitioner, without disclosing, to her, the fact that the property was under dispute.

27. In Suit No.78/2014 (Sanjeev Mittal v. DDA), the DDA, ironically, chose to move an application for impleadment of the petitioner, though the petitioner had nothing

to do with the said litigation.

28. Mr. Sharma, appearing for the DDA, submits, on instructions, that as per the DDA, the petitioner was the absolute owner of the plot at C-71, Vikas Puri, New Delhi and that all the litigations, by various persons claiming ownership of the plot, were vexatious and without substance. That, however, is totally, irrelevant. The fact of the matter is that the said plots have been under litigation prior to the execution of the conveyance deed in favour of the petitioner by the DDA.

29. A person who invests her, or his, hard-earned money to obtain a plot from the DDA, is entitled to an encumbrance-free plot and not a plot over which multifarious litigations are pending. The petitioner has W.P.(C) 12172/2016 Page 7 of 9 justifiably expressed her grievance that, owing to the various orders of status quo passed in respect of the plot, she is unable to enjoy the plot, make any alteration thereon, or dispose of the same, in whole or in part.

30. Mr. Rohatgi, learned counsel appearing for the petitioner has also relied on para 18 of the judgment of the Supreme Court in Suraj Lamp and Industries v. State of Haryana (2012) 1 SCC656 which reads thus: 18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. (Emphasis supplied) 31. As such, in view of the fact that conveyance deed was executed, in favour of the petitioner, only on 5th May, 2014, it could not be said that the subject property was transferred in her name prior to the said date.

32. Even de hors this fact, the liability of the DDA, to allot an alternative plot to the petitioner, once the fact that the plot allotted to her was subject matter of various pending litigations, in which interlocutory orders, injunctioning enjoyment of the said plot stood passed, had come to the notice of the DDA, was absolute, and it was the bounden duty of the DDA, in my opinion, to allot, to the petitioner, an alternative plot. W.P.(C) 12172/2016 Page 8 of 9 33. For the aforesaid reasons, this writ petition is allowed.

34. The DDA is directed to allot, forthwith, to the petitioner, an unencumbered plot, of the same area as the plot at C-71, Vikas Puri, New Delhi. On such allotment being made, the petitioner would forthwith release the relevant documents for the allotment of the plot at C-71, Vikas Puri, New Delhi, made in her name.

35. It is also made clear that the plot allotted should be one which is habitable, and not one over which, for example, high tension wires may be running, as would pose a risk to life and limb.

36. The petitioner has, in the pleadings, referred to a plot at A-1/1, Sector 8, Rohini, Delhi, which admeasures 144 sq. mtrs., and stated that she is willing to accept the said plot in lieu of plot at C-389, Vikas Puri, New Delhi, which admeasures 160 sq. mtrs. The DDA may consider, if possible, allotting the said plot at Rohini in favour of the petitioner.

37. The writ petition stands allowed in the above terms with costs, which are quantified at 50,000/-, to be paid to the petitioner within four weeks. FEBRUARY04 2019/dsn C.HARI SHANKAR, J W.P.(C) 12172/2016 Page 9 of 9

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