

Amit Mukhopadhyay Vs. Delhi Development Authority and Ors.

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Court : Delhi

Decided On : Dec-24-2014

Judge : Rajiv Sahai Endlaw

Appellant : Amit Mukhopadhyay

Respondent : Delhi Development Authority and Ors.

Advocate for Def. : Mr. Ajay Verma

Advocate for Pet/Ap. : Mr. Rabindra Singh

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:- 24th December, 2014 % + WP(C) No.7040/2014 AMIT MUKHOPADHYAY Petitioner Through: Mr. Rabindra Singh, Adv. Versus DELHI DEVELOPMENT AUTHORITY & ORS. Respondents Through: Mr. Ajay Verma, Adv. for respondent no.1 DDA. CORAM:HONBLE THE CHIEF JUSTICE HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J1 The petition impugns Regulation 7 of the Delhi Development Authority (Management and Disposal of Housing Estates) Regulations 1968 and subclauses (iii) and (vii) and the eligibility clause / criteria (2) of the DDA Housing Scheme, 2014 and seeks certain other directions with respect to the said scheme and also cancellation of the allotment obtained by the respondents No.2 and 3 namely Shri Budh Raj and Mrs. Kiran Raj, w/o Shri Budh Raj from the respondent No.1 Delhi Development

Authority (DDA) in violation of the Rules and Regulations of DDA.

2. It is the case of the petitioner - i) that the respondent no.1 DDA has launched the DDA Housing Scheme, 2014 for allotment of approximately 25000 flats (old and new) of different sizes under various categories; ii. that as per the sub-clauses (iii) and (vii) of clause 2 of the said Scheme, a person owning any dwelling unit (including residential plot / flat in full or in part on leasehold basis or freehold basis in Delhi, New Delhi or Delhi Cantonment, either in his/her own name or in the name of his/her spouse or in the name of any of his/her dependant relations including unmarried children and a person who has already been allotted a plot / house/ flat by the DDA or any other land owning agency in Delhi, irrespective of size, is not entitled to apply thereunder; iii. that the aforesaid restrictions under the said Scheme are in accordance with clause 7 of the Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968 which prescribe that a dwelling unit or a flat in the Housing Estates of the Authority shall be allotted only to such person who or his wife/husband WP(C) No.7040/2014 unmarried children do not own in full or in part on freehold or leasehold basis a residential plot or house in the urban area of Delhi, New Delhi and Delhi Cantonment; iv. that since the petitioner is already an allottee of a Janta flat by the respondent No.1 DDA, he, owing to the aforesaid, is ineligible to apply thereunder; however since the last date for applying under the Scheme was approaching, he has nevertheless applied under the said Scheme subject to outcome of this petition impugning the said restrictions; v. that the aforesaid restrictions in the Scheme and which in turn are as per the Regulations (supra) are highly unfair, unjust, unreasonable, arbitrary, discriminatory, whimsical and fanciful, devoid of intelligible differentia having reasonable nexus with the underlying object; vi. that over a period of time, the city of Delhi has developed into a National Capital Region (NCR) encompassing besides Delhi, also portions of the States of Uttar Pradesh, Rajasthan and Haryana, with Gurgaon, Noida, Greater Noida, Faridabad etc. being in close proximity of Delhi; vii. that today a large number of people resident in Delhi work in the NCR and a large number of persons working in Delhi though live outside Delhi but in the NCR, thereby abrogating any distinction between Delhi and the NCR; viii. that however as per the aforesaid restrictions/Regulations, though a person having a dwelling unit, though in the

NCR but outside the limits of Delhi, is eligible to apply under the said Scheme but a person owning a dwelling unit within the limits of Delhi is not so entitled, thereby resulting in an unfair advantage to those who have acquired dwelling units in NCR vis--vis those who have acquired dwelling units in Delhi; ix. that similarly, though a person as the petitioner, who has been allotted a flat by the DDA is not entitled to apply under the said Scheme but a person who may have been allotted a dwelling unit by a development agency of another State, even if in the NCR, is entitled to so apply under the scheme; x. that the petitioner, to cater his bona fide need is desirous of upgrading his accommodation from a janta flat to a higher category but owing to the restrictions/Regulations aforesaid is not being permitted to; xi. that the aforesaid restrictions/Regulations have not even been enforced by the DDA; unscrupulous persons are known to have violated the aforesaid restrictions/Regulations and obtain multiple allotments from the DDA and DDA has no mechanism to check/prevent the same; xii. that the restrictions/Regulations aforesaid are thus resulting in conferring a premium to dishonesty and are coming in the way of honest persons; xiii. this is evident from the fact that to the knowledge of the petitioner DDA has not cancelled a single allotment for violation of the said restrictions/Regulations; xiv. instance of respondents No.2 and 3 though being husband and wife and being thus not entitled to obtain more than one allotment from the DDA, having still obtained a flat each in their respective names and against whom no action is stated to have been taken by the DDA, is given; xv. that the Scheme also does not restrict persons from every nook and corner of the country from applying thereunder and which results in encouraging lucrative investments in DDA flats and which is subversive of the very aim and objective of DDA housing; while the prime concern of DDA ought to be to take care of housing needs of Delhi's own residents, DDA by not restricting persons not resident of Delhi from applying under the said scheme is encouraging the allotments under the said scheme as real estate investments; xvi. that flats allotted by the DDA to persons resident outside Delhi and who have no intention of ever residing in Delhi are either let out on rent or kept vacant for price appreciation and then sold, earning hefty profit, thus defeating the very purpose of the housing scheme; xvii. that the housing scheme of the DDA ought not to be allowed to be used for commercial gain and deriving huge and unfair advantage and ought to be

for bona fide need and requirement of the applicants; and, xviii. that the restriction under the said Scheme from selling the flat allotted thereunder for a period of five years does not serve the purpose; the said period should be at least 20 years.

3. The petition came up before us on 25th November, 2014. The petition was accompanied with an application for interim relief. The petitioner by way of interim relief was seeking stay of the said Scheme, the date for applying whereunder was till 15th October, 2014 and the date scheduled for draw of lots whereunder was 5th November, 2014 but had been extended. It was the contention of the petitioner that if draw of lots is allowed to take place, the third party rights may be created. We may record that the result of the said draw of lots was due to be announced on 25th November, 2014.

4. We however did not grant any interim relief and after hearing the counsel for the petitioner at length on the merits of the petition, reserved our judgment.

5. The counsel for the petitioner during the hearing also had argued - (i) that the restrictions/Regulations aforesaid, with the evolvement of the NCR, today have no relevance and are arbitrary; rather they lead to commercialization of the DDA flats; ii) the allotment of the flats by the DDA should be confined to residents of Delhi only and residents outside Delhi ought not to be permitted to obtain benefit of the schemes so launched by the respondent No.1 DDA.

6. We had during the hearing inquired from the counsel for the petitioner as to under which law, a restriction can be placed on citizens of India resident outside Delhi from availing of allotment of flats by the DDA. Attention of the counsel was also invited to Article 19(1) (d) & (e) of the Constitution of India conferring on each citizen of India a fundamental right to move freely throughout the territory of India and to reside and settle in any part of India. However no answer was forthcoming.

7. Not only so, the petition even otherwise appears to have been drafted without regard to the provision of the Delhi Development Act, 1957, whereunder the DDA was established. The object for which, as per Section 6 of the Act, DDA was established was to promote and secure the development of Delhi according to plan and DDA, for the said purpose, has been empowered to acquire, hold,

manage and dispose of land and other property and to carry out inter alia building and other activities necessary and expedient for purposes of such development and for purposes incidental thereto. No provision of the Act which may be requiring the DDA to act for the benefit only of the citizens of Delhi, was pointed out during the hearing.

8. Sections 21, 22 and 22A of the Act deal with the disposal of the land by the DDA. The said provisions relate to - (a) land acquired by the Central Government and transferred to the DDA without undertaking or carrying out any development thereon; (ii) land acquired by the Central Government and transferred to the DDA after undertaking or carrying out developmental activities thereon; (iii) land vested in the Union of India (called the Nazul Land) which the Central Government by notification places at the disposal of the DDA upon such terms and conditions as may be agreed upon between the Central Government and the DDA.

9. Vide Section 21 of the Act, DDA is required to exercise the power of disposal of the lands of the first category aforesaid so as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land if they desire to obtain accommodation on land and are willing to comply with the conditions stipulated by the DDA, have the opportunity to obtain thereon accommodation suitable to their reasonable requirements.

10. Proviso to Section 21(2) requires the DDA to offer the land of the first and second categories aforesaid, in the first instance, to persons from whom it was acquired.

11. However with respect to the land under the third category aforesaid, known as Nazul lands, DDA has to abide by directions given by the Central Government in this behalf.

12. Section 22(A) authorizes DDA to, before disposal, carry out developmental activities on any of the aforesaid lands.

13. The Central Government has promulgated the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 to provide for the manner of

dealing with Nazul lands developed by DDA. Chapter II of the said Rules prescribe the manner of disposal of Nazul Lands and we are unable to find thereunder also any requirement for the DDA to develop the said Nazul land and/or to dispose of the flats developed thereon only to the residents of Delhi. However, Rule 17 thereunder provides that no plot of Nazul land shall be allotted for residential purposes to an individual who himself / herself or whose dependent children whether minor or not, or any of his or her dependent parents or dependent minor brothers or sisters, ordinarily residing with such individual, own in full or in part, on lease hold or freehold basis, any residential land or house or who has been allotted on hire purchase basis any residential land or house, in the union territory of Delhi. The proviso to the said Rule however provides that if the other land/house allotted or the share therein is less than 67 square metres, then Rule 17 would not apply.

14. It would thus be seen that it is the Central Government which has placed the restrictions impugned in this petition on the DDA, while placing the land at the disposal of the DDA.

15. Though the petitioner has not stated that to which category the land underneath the flats subject matter of the DDA Housing Scheme, 2014 belong i.e. whether they are Nazul land or other lands but a perusal of the judgments referred to hereunder is indicative of at least some of the flats subject matter of the Scheme being situated on Nazul Land.

16. The petitioner has not challenged the Rule 17 of the Nazul Land Rules and which challenge could not have been made in the absence of the Central Government and in fact Union of India has not even been made a party to the petition.

17. The petition thus is misconceived and liable to be dismissed.

18. As far as the allegations in the petition against the respondents No.2 and 3 and the relief directing the DDA to put in place the full proof mechanism to rule out allotment of flats to ineligible applicants are concerned, the counsel for the DDA appearing on advance notice assures that such a mechanism exists and as and

when any violation is detected, action is taken. It was informed that such action is initiated even after the conveyance deed under the freehold scheme is initiated. In the circumstances, we do not feel the need to issue any further direction. We have recently in *Amit Bhagat Vs. Government of NCT of Delhi* MANU/DE/3351/2014, on a conspectus of precedents, held that enforcement of law, if causes any inconvenience / difficulty, is no ground for rendering a provision on the statute book to be unenforceable. As far as the complaint made by the petitioner against the respondents No.2 and 3 is concerned, we are sure that the DDA will investigate and if finds any merit therein, will take appropriate action.

19. Before parting, we may draw the attention of the petitioner to (i) *DDA Vs. B.B. Jain* MANU/DE/0604/2013 (DB); (ii) *Jaswant Singh Vs. DDA* MANU/DE/2359/2013; and, (iii) *Kamlesh Sharma Vs. DDA* 2002(2013) DLT742 as per which, notwithstanding the Regulation and / or restriction aforesaid, the allotment would be governed by the Nazul Land Rules aforesaid and if the land underneath the janta flat allotted to the petitioner is less than 67 sq. mts., the petitioner would still be eligible under the Scheme. The petition appears to have been filed without regard to the law.

20. The petition is accordingly dismissed. RAJIV SAHAI ENDLAW, J CHIEF JUSTICE DECEMBER24 2014 M..

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