

Sheesh Kaur Vs. Delhi Development Authority

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Court : Delhi

Decided On : Aug-22-2000

Reported in : 2000VIIAD(Delhi)101; 87(2000)DLT845; 2000(55)DRJ561

Judge : Vijender Jain, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Petition No. 1439 of 1995

Appellant : Sheesh Kaur

Respondent : Delhi Development Authority

Advocate for Def. : Mr. Jayant Bhushan, Adv.

Advocate for Pet/Ap. : Mr. B.K. Sood, Adv

Judgement :

ORDER

Vijender Jain, J.

1. The land of the petitioner measuring 44 Bighas and 10 bids was in Vilage Budhella was acquired by the respondent on 28.12.1968. The name of the petitioner was recommended for allotment of 400 sq. yds. plot in West Zone. Petitioner was requested to send her consent so that her name could be included

in the draw of lots for allotment of plot admeasuring 252 sq. mtrs. in Chaukhandi. She was asked to deposit Rs. 5000/- as earnest money, which she deposited on 17.5.1988. A decision (which is at page 28 of the paper book) was taken by the respondent inter alia, deciding that Chaukhandi residential scheme being an undeveloped area, the allottees would be allowed change to some other areas in West Zone. The same is reproduced below :

'116 plots by way of alternative plots were allotted in this pocket. Out of this, 81 persons have already got the change. The remaining are also requesting for the change. We have to examine these cases one by one and should not unnecessarily go into the same facts again and again. All the remaining allottees may also be given this option, i.e. they want the change and they may be given plots along with the proposal now being made in West Delhi.

CL may communicate the details of this land to EM. It is for EM to decide whether he would like to put up DDA housing in this area. If not, he may have these plots developed quickly so that these should now be allotted. Nondevelopment of the area seems to be the main reason for not accepting the allotment. EM may see the file before it goes to CL. Sd/- 2/9(K.S. Bains)Vice-Chairman'

2. It seems that the respondent sent a demand notice dated 25.10.1989 demanding a sum of Rs. 1,46,261/- for allotment of plot allotted to the petitioner in Chaukhandi residential scheme. After the receipt of the said letter, the respondent on 10.11.1989 sent a letter, which is at page 30 of the paper-book offering change of plot from Chaukhandi to other areas of West Zone. The whole controversy revolves around this letter, which is reproduced below :

'DELHI DEVELOPMENT AUTHORITY

LEASE ADMINISTRATION (B-I)

C-11/3rd Floor, Vikas Sadan, INA, New Delhi F-23(248/87, LSB(R) Dated: 10/11/1989 From: Deputy Director (LA), Delhi Development Authority. To, Smt. Sheesh Kaur, W/o Sh. Kashi Ram, Village Hastal, New Delhi. Sub:- Change of plot from Chaukhandi to other areas of West Zone.

Dear Sir/Madam,

Representation are being received from the allottees of Chaukhandi for the change of plot in other areas of West Zone on the ground that the Chaukhandi residential scheme is semideveloped. It has been decided to consider the request of such person who opts for the change of the plot from Chaukhandi to other areas of West Zone.

You are therefore, requested to kindly send your consent for the change of plot from Chaukhandi to other areas of West Zone within 15 days from the issue of this letter failing which, it shall be presumed that you are not interested for change and any request made in future shall not be entertained in this regard.

It may however be noted that in case, change is allowed, you will have to pay the price of plot which shall be allotted through draw of lots and the plot so allotted shall have to be accepted and no further request shall be considered either for change or for allotment of bigger size of plot.

Yours faithfully, Sd/-(M.L. Ahuja)Dy. Director (LA)'

3. Petitioner vide her letter dated 23.11.1989 accepted the offer of change and requested the respondent to allot plot at a suitable place elsewhere. It seems that petitioner also deposited a sum of Rs. 60,000/- on 31.12.1989. It is contended by learned counsel for the petitioner that thereafter in the year 1995 vide the impugned letter dated 21.3.1995 the respondent on account of nonpayment of the premium of Plot No.47, Chaukhandi cancelled the allotment and withdrew the offer of allotment. Aggrieved by the said letter, the present writ petition has been filed.

4. Mr. Sood, learned counsel for the petitioner has contended that in similar circumstances in relation to the same scheme another writ petition (CWP No. 2643/93) entitled Shri Bihari v. DDA was filed in this Court and a Division Bench of this Court on 27.10.1994 directed the respondent to allot plot as per entitlement of the petitioner in West Zone.

5. Mr. Jayant Bhushan, learned counsel for the respondent/DDA has contended that offer of change as contained in letter dated 10.11.1989 did not stipulate that

the petitioner had not to deposit the amount demanded for plot in Chaukhandi. He has further contended that petitioner on her own has understood the allotment at Chaukhandi in these terms and had deposited a sum of Rs. 60,000/- and, therefore, the petitioner now cannot agitate for allotment of plot as full payment as demanded by the respondent has not been deposited by the petitioner in time. It has been further contended by Mr. Bhushan that there was an inordinate delay in filing this writ petition in this Court as the allotment was cancelled on account of nonpayment of total amount demanded by the respondent and notices were issued on 13.7.1990 and 22.3.1991 and, therefore, the petitioner is guilty of delay and laches as no representation was made by the petitioner between 1990 to 1993. Mr. Bhushan has also contended that the case of Bihari (supra) cited by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case.

6. I have given my careful consideration to the arguments advanced by learned counsel for the parties. From the bare perusal of the letter dated 10.11.1989 of the respondent it is clear that the respondent had offered change of plot from Chaukhandi to other areas of West Zone within 15 days from the issue of the said letter. The last paragraph of the said letter makes the intention abundantly clear by which respondent reserved their right in case change was allowed, the price of the plot which shall be allotted will be at a different price, said offer was accepted by the petitioner. The petitioner in terms of aforesaid offer of the respondent within 15 days agreed to the offer of the respondent and opted for a plot other than at Chaukhandi. Once the offer was made by the respondent as a matter of fact, the demand letter dated 25.10.1989 became non est. It was the respondent who was under an obligation to first identify the area to the petitioner to allot a plot in the West Zone as per their own offer contained in letter dated 10.11.1989 and then the price ought to have been communicated to the petitioner to enable the petitioner to deposit the same. Having not done so, the respondent cannot take shelter under the demand based on allotment at Chaukhandi that amount demanded vide respondent letter dated 25.10.1989 was not deposited by the petitioner, therefore, the petitioner was not entitled to any plot. It must also not be forgotten that the respondent is not doing any charity to the petitioner in allotment of a plot. On account of large scale acquisition in Delhi, the land of the petitioner has been

acquired and for a total land holding of 44 Bighas and 10 bids which was acquired by the respondent the petitioner was recommended a 400 sq. yds. of plot earlier, which was reduced to 252 sq. mtrs. As there was no demand in existence, therefore, the cancellation of allotment and entitlement of the petitioner by the respondent was wholly arbitrary. My attention has also been drawn to the counter affidavit filed by the respondent with regard to the argument of delay and laches. At page 49 of the counter affidavit it has been admitted by the respondent :

'The petitioner has since then been representing time and again through various dignitaries for acceding to her request for change from Chauhandi to another area of West Zone.'

7. In any event of the matter as I have held that the offer of change, as a matter of fact, superseded the letter of the respondent dated 25.10.1989, this ground is not available to the respondent. With regard to the case of Bihari (supra) cited by the learned counsel for the petitioner the case squarely covers the present case as well, to some what similar arguments which were advanced before the Division Bench of this Court, the Division Bench held:

'According to the contention of DDA, a policy decision had been taken to permit change of area to those allottees who had accepted allotments in Chokhandi whereas cases of those who had not accepted allotments in Chakhandi were not considered for allotment in Vikas Puri in West Zone. The policy decision stated to be contained in the order of ViceChairman of DDA dated 30.8.1989, Annexure R-1 to the affidavit dated 7.7.1994 of Mr. Sudripto Roy does not in terms stipulate that it was to be applicable only to those who had accepted allotment in Chakhandi. It stipulates that all the remaining allottees will be given option i.e. if they want to change then they should be given plots along with the proposal in West Delhi. If the policy is interpreted as contended by DDA, then, it would be wholly arbitrary.'

8. therefore, the argument of the learned counsel for the respondent/DDA that petitioner has not deposited the total amount and, therefore, she is not entitled to allotment of a plot is not tenable in terms of the ratio of Bihari's case which squarely covers the present case. In that case, the petitioner had not even deposited the initial deposit of Rs. 5,000/- as demanded by the respondent

authority because he has not agreed to the allotment at Chaukhandi at all. The case of the petitioner is on a better footing. She has accepted the offer of change made by the respondent. At the time of initial allotment she had deposited a sum of Rs. 5,000/-. She has further deposited a sum of Rs. 60,000/-, though petitioner was not supposed to deposit any amount.

9. Looking from any angle and relying on the ratio of Bihari's case, I set aside the impugned letter dated 21.3.1995 (Annexure P-10) and issue direction to the respondent that the plot reserved vide order dated 26.4.1995 of the Division Bench of this Court in Vikas Puri be allotted to the petitioner within a period of four weeks at the rates applicable in the year 1989 on petitioner completing all the formalities within a period of three weeks. Rule is made absolute. Petition is allowed.

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