

Jitendra Mohan Gupta Vs. Delhi Development Authority

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Court : Delhi

Decided On : Apr-01-2003

Reported in : 2003IIIAD(Delhi)441; 104(2003)DLT719; 2003(71)DRJ478

Judge : Sanjay Kishan Kaul, J.

Appeal No. : CW No. 577/1981

Appellant : Jitendra Mohan Gupta

Respondent : Delhi Development Authority

Advocate for Def. : Neelima Tripathi, Adv.

Advocate for Pet/Ap. : Sanjay Gupta and; Varsha Kriplani, Advs

Disposition : Petition dismissed

Judgement :

Sanjay Kishan Kaul, J.

1.The DDA came out with the registration scheme of new pattern, 1979 and the petitioner registered himself under the said scheme on 1st September 1979. The relevant clauses of the said scheme, in so far as the present dispute is concerned, are as under:

'2. The Registration Scheme will open on 1st September, 1979 and will close on 30th September, 1979.'

'9. The allotment of flats under this registration scheme will be by seniority. The allotment of specific flat will be by draw of lots. Seniority will be decided on the basis of the payment through Challan or the date of receipt of Bank Draft.'

'26. The above terms and conditions will be followed generally but the DDA reserves its right to alter any of them in its discretion as and when considered necessary.

2.The respondent thereafter published an advertisement in terms whereof it is alleged that clause 9 aforesaid was sought to be altered inasmuch as all the registrants within a period of one month were sought to be put in a draw of lots for the seniority instead of the seniority being decided on the basis of the payment through challan or the date of receipt of bank draft.

3.The petitioner's claim is that he took necessary steps to forthwith register himself under the scheme on 1st September 1979 itself and thus it is not permissible for the respondent to alter the scheme of 'first-cum-first-serve basis' by the subsequent amendment.

4.In the counter-affidavit, it is stated that a period of the scheme was the whole month of September 1979 for the purpose of registration. The factual matrix is not really disputed. It is, however, stated that on the very first day of the registration there was unprecedented rush and crowd of thousands of people came for collecting registration forms and it became difficult to control the situation. In view thereof, a decision was taken on 1st September 1979 to publish an advertisement in the newspapers on 2nd September 1979 which was so published. In terms of the said modification which was published during the currency of the scheme, it was communicated to the general public that in order to ensure uniformity of seniority and registration and in order to avoid inconvenience to the public who are unable to get forms within the first few days, the DDA has decided to slightly modify the scheme as per the pattern adopted for the SFS scheme and all persons who registered under this scheme during the month of September 1979 would be

deemed to have equal seniority and allotment will be made by draw of lots from the eligible registered applicants.

5.Learned counsel for the petitioner initially contended that it was not open to the respondents to rescind from the concluded contract. A query was thus put by the court as to when a contract can be said to be concluded where there is an invitation to offer to the general public in pursuance whereof the application was made and acceptance had not been communicated. The learned counsel fairly stated that a concluded contract may not have come into existence but the petitioner had acted on the representation made by the respondent in the form of the brochure and detriment was being caused to the petitioner by alteration of the scheme and, therefore, an enforceable contract had come into existence.

6.Learned counsel for the petitioner referred to the judgment of the Supreme Court in Century Spinning and Manufacturing Company Limited & Anr. v. The Ulhasnagar Municipal Council & Anr., : [1970]3SCR854 to contend that a representation of existing fact resulting in the other party acting on such representation may give rise to an estoppel.

7.Learned counsel then referred to the judgment of the Supreme Court in Navjyoti Cooperative Group Housing Scheme etc. v. Union of India & Ors., : AIR 1993 SC155 to contend that the doctrine of legitimate expectation imposes a duty on a public authority to act fairly and a reasonable opportunity must be given to the parties likely to be effected in pursuance to a change in the consistent past policy and to make representation.

8.Learned counsel lastly referred to the Full Bench judgment of this court in Sheelawanti & Anr. v. DDA & Anr., : AIR1995 Delhi212 where, while dealing with the issue of change from 50% each on cash down and hire-purchase basis under the special Housing Registration Scheme, 1982, a change was sought to be made to provide for 100% allotments on cash down basis. It will be appropriate to reproduce para 40 of the said judgment which is as under:

'40. We feel that it is not necessary for us to go into the larger question whether under Clause 26 of the 1982 scheme, the D.D.A. could abandon its scheme of

allotting flats on hire purchase basis and insist for lump sum payment because we find that in the present case no fresh scheme was announced in the year 1993 and the registrants under various schemes had been invited to apply for out of turn allotment on the basis of the scheme announced in 1982, which admittedly provided for 50% allotment on hire purchase basis. In our view, the members of the petitioner association having acted to their detriment on the basis of the original scheme of 1982, the D.D.A. cannot by a unilateral action, without notice, abandon the scheme originally announced.

9.I have considered the submissions advanced by learned counsel for the parties.

10.In my considered view, no enforceable rights have arisen in favor of the petitioner nor is there any enforceable contract which stands concluded giving rise to any such rights. An invitation to offer was issued to the general public in the form of the scheme. The scheme was to remain open in the month of September, 1979. The petitioner managed to apply on the first day itself. There is no doubt that the clause 9 of the scheme provided for seniority in registration on the basis of the applications submitted. This, however, resulted in a chaos and I dare say, this would be the normal result of such a clause. Every registrant would be running and queuing up at the office to be the first one to obtain the application and submit the registration. Fortunately, wisdom dawned on the respondent on the very first day and they issued an advertisement on the second day on 2nd September 1979 during the currency of the scheme to put the public at ease and inform them that all the registrants under the scheme would be issued a priority number on the basis of a draw of lots held under the seniority. It was open ended time within which the applicants could apply but was limited to during the currency of the period of the scheme initially provided for of one month.

11.Clause 26 of the scheme further gave the powers to the respondent to alter the scheme. There is no doubt that there cannot be any alteration which is destructive of the scheme itself. In fact, in Sheelawanti's case (supra), the Full Bench did not even consider the ramification of the clause 26 of the said scheme as is apparent from the reading of the para 40 of the said judgment. The judgment was based on the fact that the scheme continued to be in existence. In the present case, there is

no such alteration as would be destructive of the scheme or alter any material term and condition. In fact, a fair and just solution was found by issuing the advertisement whereby all the applicants during the period of the registration for the scheme were to be put in a draw of lots to determine their seniority and which was so done.

12.I am further of the considered view that by merely submitting the application on the first date, a case would not be made out of legitimate expectation having arisen in favor of the petitioner that the petitioner would be the senior-most specially when the petitioner was aware of the existence of clause 26 of the scheme.

13.I am of the considered view that the challenge of the petitioner to the alteration is misplaced and without any basis or law.

14.Dismissed.

15.It may be noticed that in terms of the interim orders dated 23rd March 1981 read with the order dated 10th April 1981, one flat in Badli was directed to be kept reserved. The interim orders stand vacated.

16.During the pendency of the writ petition, the petitioner was issued allotment of a flat at Dwarka but in view of the pendency of the writ petition, the petitioner failed to accept the same.

17.In view of the pendency of the writ petition, I am of the considered view that the name of the petitioner be included in the next draw of lots to be held without putting the burden of any cancellation charges on the petitioner and the flat be allotted to the petitioner under the scheme. The cost of the flat will have to be as on the date of issuance of the allotment letter.