

Raj Kumar Vs. Delhi Development Authority

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Court : Delhi

Decided On : Feb-29-2000

Reported in : 2000VAD(Delhi)302; 86(2000)DLT113

Judge : Dr. M.K. Sharma, J.

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

Appeal No. : C.W.P. NO. 5463/1997

Appellant : Raj Kumar

Respondent : Delhi Development Authority

Advocate for Def. : Mr. B. Devashekhar, Adv.

Advocate for Pet/Ap. : Mr. K.N. Rai and; Mr. K. Kumar, Advs

Judgement :

ORDER

Dr. M.K. Sharma, J.

1. The present writ petition is directed against the order dated 1.4.1997 whereby the respondent informed the petitioner that the allotment of Flat No. 79, Section 23, Pocket i, Group I at Dwarka allotted in the name of the petitioner had been canceled in terms of the policy of the respondent as the petitioner is an owner of

more than 80 square yards in property No.15/A, Tilak Nagar, New Delhi. To the same effect is the letter dated 13.6.1997 which is Annexure 13 to the writ petition whereunder the petitioner was asked to furnish certain documents for refund of the earnest money, the legality of which is also questioned in the present writ petition .

2. Pursuant to an advertisement of a Scheme called Registration Scheme on New Pattern-1979, the petitioner applied for allotment of a flat and deposited earnest money of Rs. 4,500/- on 24.9.1979. A draw of lots also took place for allotment of such flats under the aforesaid scheme and the petitioner was successful in such a draw of lots and by letter dated 14.5.1994, the petitioner was informed that he was declared successful for allotment of Flat No. 37 which is a ground floor flat in Sector 21, Pocket 4, the cost of which was quoted at Rs. 3,36,450/-. The petitioner was asked to deposit the amount of Rs. 3,07,515.84. The petitioner, however, on 3.6.1994 filed an application to the respondent praying to withdraw the exorbitant demand notice and for extension of the date of payment. At that stage, it came to the notice of the respondent that the petitioner is the owner of a property of more than 75 square yards being 15/46A, Tilak Nagar, New Delhi, and accordingly the allotment of the flat in favor of the petitioner was cancelled and the petitioner was informed. Being aggrieved and dissatisfied with the aforesaid order, the present petition has been preferred.

3. Counsel for the petitioner submitted that the petitioner himself by letter dated 11.12.1996 brought it to the notice of the respondent that his mother had expired on 28.6.1992 leaving behind a registered Will. In the said letter he had also sought for extension of time for making confirmation deposit of Rs. 20,000/-. It was submitted that the aforesaid property, a part of which the petitioner has inherited was an HUF property and not self-acquired property of the mother of the petitioner and, therefore, the debarring clause which is sought to be invoked by the respondent is not applicable to the case of the petitioner. The aforesaid contention was refuted by the counsel appearing for the respondent by the counsel appearing for the respondent contending, inter alia, that in terms of the eligibility conditions for allotment of a plot, any individual having a share of more than 75 square yards in a jointly owned plot or land under a residential house could not be entitled for allotment of a flat. It was submitted that the petitioner admittedly inherited more

than 75 square yards in the aforesaid property upon the death of his mother on 28.6.1992 and, there-fore, he was not entitled to such allotment of a flat in the year 1994 and the said allotment being in violation of the terms and conditions of the Scheme was rightly canceled by the respondent.

4. The Scheme under which the petitioner got himself registered for allotment of a flat is called Registration Scheme on New Pattern-1979. Clause 3 of the said Scheme lays down the eligibility conditions for being considered for allotment of a flat which provides that the applicant must not own any residential house or plot in full or in part on lease hold or free hold basis in the Union Territory of Delhi, either in his/her own name or in the name of his/her, wife/husband or any of his/her minor and or dependent children or dependent parents or dependent minor sisters and brothers. A condition was, however, attached to the aforesaid provision that if the said individual share of the applicant is less than 75 square yards in the jointly owned plot or land, an application for flat could be entertained.

5. Upon the death of the mother of the petitioner, admittedly the petitioner has become owner of more than 75 square yards in the aforesaid property situated at 15/46A, Tilak Nagar, New Delhi. The question that, therefore, arises for my consideration is whether in view of the aforesaid inheritance of the property by the petitioner, the clause as stated in Clause 3 would be applicable in the present case or not.

6. The petitioner admittedly owns a plot in part in his own name which is more than 75 square yards. The contention of the petitioner is that his case is excluded from application of Clause 3 because he had inherited an HUF property and not a self-acquired property of his mother. I have given my anxious consideration to the aforesaid submission of the learned counsel for the petitioner. On consideration of the records, I find that no such pleadings as also evidence has been placed on record by the petitioner to show and prove that the property which the petitioner has inherited was an HUF property and not self-acquired property of his mother. Besides the aforesaid question is a disputed question of fact which could not be examined and decided in the exercise of the writ jurisdiction under Article 226 of the [Constitution of India](#). It is also to be mentioned that no such distinction is made

in respect of the nature of the property while laying down the eligibility criteria and conditions in the aforesaid Scheme by the respondent. If the petitioner owns any residential house or plot in full or in part, he becomes dis-entitled to be allotted with a flat provided the area of the residential house or plot falling in his share is more than 75 square yards. The petitioner, in my considered opinion, comes within the aforesaid debarring Clause and is not entitled to be allotted with a flat under the Registration Scheme on New Pattern-1979.

7. The submission of the learned counsel for the petitioner is, therefore, misplaced and cannot be accepted since the petitioner owns a residential house/plot in part having a share in the said jointly owned property which is more than 75 square yards. In that view of the matter, there is no merit in this writ petition and the petition is dismissed, but, without any costs. It is, however, made clear that whatever amount has been deposited by the petitioner in respect of allotment of the aforesaid flat including the registration amount shall be returned to the petitioner once he completes all formalities, in accordance with law, along with interest at the applicable rate by the respondent within four weeks from the date of completion of all the formalities.