

Dinesh Kumar Sharma Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : May-12-2004

Reported in : 111(2004)DLT526; 2004(75)DRJ296

Judge : Sanjay Kishan Kaul, J.

Appeal No. : Cont. Case (C) No. 521/2003

Appellant : Dinesh Kumar Sharma

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Anusuya Salwan and ; Monica Sharma, Advs., for respondents No.1 to 3, ;

Advocate for Pet/Ap. : D. Singh, Adv

Judgement :

Sanjay Kishan Kaul, J.

1. The petitioner has filed the contempt petition alleging violation of the order dated 21.1.2003 in Civil Writ Petition 6455/1999.

2. The petitioner had been allocated a Category III flat on the ground floor in Pocket 2 and 3 Block B, Vasant Kunj and on the petitioner depositing the first four installments, the petitioner was allotted a specific flat bearing No.2353. The

allotment letter was, however, not issued to the petitioner. The reason for the same was stated to be that the petitioner had not completed the necessary formalities for mutation of the flat in his name which was originally booked by his father under the scheme and who had passed away. Subsequently, the demand letter was issued at fresh cost. Since the petitioner was not found at fault, the fresh demand letter was quashed and a writ of mandamus was issued to issue a demand letter in terms of the directions contained in the order.

3. The fresh demand letter was issued on 7.4.2003 in compliance of the said order for the flat in question and the petitioner deposited the amount. The Conveyance Deed was also issued to the petitioner for getting it duly stamped which was got done by the petitioner though the same was not apparently executed and registered yet. The possession letter was issued on 18.8.2003 for the petitioner to take physical possession but on going to the site on 22.8.2003, the flat was found to be occupied. The petitioner thus filed the contempt petition.

4. In the reply affidavit filed by the respondent the factual matrix is not disputed. It is, however, stated that the status quo order which was passed in respect of the flat in question on 1.11.1999 was recorded in the original allotment file and the said file was with the panel lawyer. The main property register is maintained with dealing assistant of the scheme/area and it is the duty of the dealing assistant to have recorded the stay in the property register which the dealing assistant failed to do. In fact, dealing assistant has been identified and an Explanationn has been called from him and disciplinary proceedings have been initiated.

5. The SFS scheme is stated to have been closed in pursuance to the advertisement dated 1.4.2002 and the remaining registrants were asked to take the refund. Some of the flats were lying vacant and were deteriorating resulting in financial loss to the respondent and thus it was decided to launch another one-time scheme to dispose of the vacant flats which was called the HIG Vasant Kunj, 2002 Scheme. Before mootng the new scheme, the vacant flats in Vasant Kunj were got verified and even a physical survey was conducted. The 721 flats of Category II and 44 flats of Category III were lying vacant in the said area. The total number of applicants was 11,000 and odd and a draw for them was held on

25.10.2002. Since the flat in question which had been allotted to the petitioner was shown as vacant, the same was also included in the draw of lots. The demand letter for the said flat was issued to Mr. Mahesh Kumar Arora who was successful in the draw, who deposited the final payment on 22.1.2003. It is stated that it was a computerised draw of lot at random and thus there was no favoritism to any person. The scheme being a new one, a new dealing assistant was assigned to keep the records and a new property register was also opened for the scheme. Thus, due to a mistake, two parallel files of the same property with two different dealing assistants continued under the two schemes. Mr. M.K. Arora completed the formalities and the possession letter was issued on 9.4.2003. The possession letter to the petitioner was issued subsequently on 18.8.2003 under his file since the Legal Department decided not to file an appeal against the order passed in favor of the petitioner. When the problem was found out, the enquiry was held and in order to make amends, the respondents promptly allotted flat No.9903 ground and first floor Category III Sector C Pocket 9, Vasant Kunj in a mini draw held on 22.10.2003 out of the two ground floor flats available which is a newly constructed duplex flat and the flat will be made available at the same cost except for any excess area at old rates.

6. The problem does not rest at this since application bearing CM 509/2003 was filed by one Vikram Saroha in the present contempt petition for being imp leaded as a party along with another CM 510/2003 for interim relief. It has been averred in these applications that the flat in question was given on a freehold basis to one Shri M.K. Arora vide Conveyance Deed dated 6.6.2003 duly registered. Shri M.K. Arora in turn executed a Registered Sale Deed dated 24.7.2003 in favor of the applicant for a total consideration of Rs.23 lakhs. This amount was paid by the applicant by taking a loan of Rs.20 lakhs from the Standard Chartered Bank against the equitable mortgage of the flat and the original Title Deed documents were deposited with the bank. The flat is stated to be the only residential accommodation available with the applicant and it is stated that considerable amounts have been spent on improvement of the flat. The documents in support of the averments have also been filed. The break-up of the cost has been given by the applicant by filing a separate CM 4897/2004 giving the cost of permanent improvements amounting to almost Rs.9 lakhs, stamp duty on Conveyance Deed,

transfer duty and other charges.

7. This court on 13.1.2004 noted its anguish at the conduct of the DDA which had created this anomalous situation. The allotment had been made to the applicant even after passing of the final judgment. The Conveyance Deed was duly executed and registered in favor of the third party being Mr. M.K. Arora who in turn had sold it to the applicant who was the bona fide purchaser of the flat.

8. The counsel for the petitioner, however, stated on the said date that the petitioner was not willing to accept either the alternative flat or any of the alternative flats offered to the petitioner. Reason for the same was stated to be that though the other flats were also in the same locality, the flat of the petitioner was East-facing and that he wanted only that particular flat.

9. The court had directed necessary documents to be filed to consider as to what would be the equitable order to be passed in the present case keeping in mind the aforesaid factual matrix. There was also an issue of some deviations in the flat carried out by the applicant for which action was required to be taken.

10. The hearing was concluded on the last date of hearing on 20.4.2004 and learned counsel for the petitioner stated that he would like to take instructions from the petitioner before any orders are passed. On 7.5.2004, learned counsel for the petitioner stated that he had instructions that the petitioner wanted only that particular flat.

11. There can be no doubt that in normal circumstances, the petitioner should be entitled to the flat in question in pursuance to the judgment dated 21.1.2003. The respondent DDA has conducted itself in a manner which is highly negligent. However, now action has been taken by the DDA against the officials. As explained by the DDA, the problem has arisen on account of the failure of the concerned person to note in the property register the factum of the interim order and two parallel files proceeded in view of the new scheme.

12. The fact, however, remains that no fault can be attributed to Mr. M.K. Arora who acquired the flat for valid consideration and in turn sold it to the applicant. The

applicant has mortgaged the flat to Standard Chartered Bank and even availed of the loan. In case the applicant is compelled to take one of the alternative flats, the result would be that the Conveyance Deed, the Sale Deed executed would have to be cancelled and a fresh deed executed. These expenses would naturally be borne by the DDA. The matter did not rest at this since the applicants are stated to have made considerable improvements in the property and would have to be compensated for the same.

13. On the other hand, in so far as the petitioner is concerned, the flat is not yet registered in his name though the Conveyance Deed has duly been stamped. The important aspect is that it was not a purchase of a particular flat for which the petitioner entered into an agreement. The father of the petitioner was originally registered under the scheme and by draw of lots, the petitioner was allocated a particular floor and area. The allocation to that extent really does not change. It is only the allotment of a specific flat after a draw of lot by which the petitioner got any rights to the said flat. What has been offered to the petitioner is another flat in the same area on the same floor. The petitioner cannot be permitted to contend that there were any peculiar circumstances as a result of which he sought acquisition of a particular flat. In the draw, the petitioner could have been allotted any other flat. The rights of the petitioner in terms of the judgment dated 21.1.2003 had to be balanced against the rights of the applicant who is a bona fide purchaser for value.

14. I do consider that the stand taken by the petitioner and insisting on that flat is only an attempt to extract his pound of flesh. The DDA has already moved an application even for variation of the final directions on the writ petition in view of the developments set out in the contempt petition. I am thus of the considered view that though there is a negligent conduct of the respondent in view of the facts set out, it cannot be said that the same is willful disobedience of the orders of the court. The petitioner has been given a reasonable option of taking the alternative flat or any of the other flats available totally numbering three and to choose from them. This is the only thing possible in the given circumstances of the case. It is thus for the petitioner to exercise his option for the alternative flat for which a time period of 15 days is granted to the petitioner. In view of the fault of the respondent

there is no question of charging the petitioner any extra amount for whatever reason and any incidental cost to be incurred on account of the change of the flat will have to be borne by the DDA including in respect of the stamp duty.

15. The petitioner has, however, been compelled to approach this court in view of the conduct of the respondent DDA and thus must be compensated with costs which are quantified at Rs.10,000/-.

16. The contempt petition is disposed of and contempt notice is discharged in the aforesaid terms.

CMs 509-10/2003 and CM 4897/2004

17. In view of the directions passed aforesaid, the rights of the applicant are not affected and thus no further orders are called for in these applications. The applicant shall, however, remove any non-compoundable deviations made in the flat in question and necessary directions have been issued to the MCD already in that behalf to take action in case there are any such non-compoundable deviations continuing to exist.

18. The applications are disposed of accordingly.

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