

Anil Kumar Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Feb-29-2008

Reported in : 2008(102)DRJ212

Judge : Mukundakam Sharma, C.J. and; Reva Khetrapal, J.

Appeal No. : LPA No. 974/2006 and CM No. 6568/2006

Appellant : Anil Kumar

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Deepak Khadaria, Adv.

Advocate for Pet/Ap. : J.N. Aggarwal, Adv

Disposition : Appeal dismissed

Judgement :

Mukundakam Sharma, C.J.

1. This appeal is directed against the judgment and order dated 10th February, 2006 passed by the learned Single Judge whereby the writ petition filed by the appellant was dismissed.

2. The appellant applied under the Rohini MIG Residential Scheme for allotment of a plot in 1981. Vide allotment-cum-demand letter bloc-dated 1st September, 2003

to 5th September, 2003, the appellant was informed that he has been allotted plot bearing No. 102, Pocket C-2, Sector 28, Rohini Phase ' IV, Delhi measuring 60.00 sq.mtrs in pursuance of computerised draw held on 11th June, 2003, at a premium of Rs. 3,71,520/-. As per the said allotment-cum-demand letter the appellant was required to deposit Rs. 1,17,287/- by 4th November, 2003 and Rs. 1,85,760/- by 3rd January, 2004 and Rs. 55,728/- was to be deposited when possession was to be offered by the DDA.

3. It is an established fact that there was a delay of 175 days and 115 days in making payment of the first and the second Installments respectively. The appellant deposited both the Installments at one go on 28th April, 2004 So far as the payment of Rs. 55,728/- is concerned, the appellant on his own without any demand had deposited an amount of Rs. 55,000/- on 29th September, 2004 A sum of Rs. 36,600/- was also deposited by the appellant on 25th October, 2004

4. Thereafter, on 3rd October, 2005 DDA issued a show cause notice to the appellant stating that the competent authority has decided not to restore the already cancelled allotment in favor of the appellant on the ground that DDA has noticed deposit of premium by as many as six different persons on behalf of the appellant, which indicates sale of the plot by the appellant unilaterally and in contravention of the terms and conditions of the allotment. The appellant was given an opportunity to file a reply within 15 days from the date of issue of the said show cause notice. Finding the reply submitted by the appellant to be unsatisfactory, vide letter dated 13th December, 2005 the allotment was cancelled by the competent authority. The said order was under challenge in the writ petition seeking issuance of a writ of mandamus directing DDA to hand over the possession of the said plot to the appellant.

5. The learned Single Judge on perusal of the records noted that the appellant did not deny deposit of payment by different persons and sought to explain the same by stating that as he remained out of Delhi for long time due to the nature of his business, his wife took the help of somebody, who also completed the necessary formalities on her behalf. The learned Single Judge also found that the character of the deposits was identical as in WP(C)18854/2005, wherein also payment

towards deposit of premium on behalf of the appellant therein was made by different persons residing at different localities. In the said case also the DDA had cancelled the allotment, which was upheld by the learned Single Judge holding that it is a highly improbable coincidence that 13 persons residing in 13 different colonies would go to the same bank i.e South Indian Bank Ltd. for preparation of the pay orders and deposit the same with the DDA. It was also noticed by the learned Single Judge that the delay in making the payments in all the aforesaid cases was not condoned by the DDA. Consequently, considering the facts and circumstances of the case, the learned Single Judge dismissed the writ petition filed by the appellant herein.

6. Being aggrieved by the aforesaid order, the present appeal is filed on which we heard the learned Counsel appearing for the parties and have also perused the records placed before us.

7. The learned Counsel for the appellant challenged the impugned judgment on the ground that the order of the DDA dated 13th December, 2005 was prepared on 23th September, 2005, i.e. even before the issuance of show cause notice dated 3rd October, 2005 which indicates predetermination on the part of the DDA to cancel his allotment. It was further contended that the learned Single Judge ignored the fact that in order to prove the identity and genuineness of the allottee, the appellant in March/April 2005 has furnished original documents, with which the DDA was satisfied.

8. The learned Counsel appearing for the DDA however refuted all the allegations and submitted that it was clear that the appellant in collusion with land mafia has sold the plot, which is also evident from the fact that deposits towards premium were made by different persons residing at different places through pay orders issued by the same bank.

9. In order to appreciate the contention of the appellant regarding the date of 23rd September, 2005 mentioned in the cancellation letter, which was scored off and the date of 3rd December, 2005 was written, we have perused the said letter and reproduce the same below for ready reference:

DELHI DEVELOPMENT AUTHORITY

LAND SALES BRANCH (ROHINI)

No. F38(335)03/LSB(Rohini)22953 Dated 23/09/0513/12/05From

Dy. Director LSB (Rohini),

DDA

To

Shri Anil Kumar

S/o Lt. Sh. Mulakh Raj Kumar

R/0 E-39, Moti Nagar

New Delhi-110 015

Sub: Allotment of plot No. 102, Pkt.C-2, Section 28, measuring 60.00 sq.mtrs
Rohini Residential Scheme, 1981.

Sir, This is in continuation of this office Show Cause Notice of even No. 19482 dt. 03/10/05 on the subject cited above. Further I am directed to inform you that the your reply dt.07/11/05 has not been found satisfactory and allotment of plot cancelled by the competent authority.

Your are, thereforee, requested to submit the following documents to facilitate the refund of deposit as per rule.

In the aforesaid letter it is specifically mentioned that it is in continuation of the Show Cause Notice dated 3rd October, 2005 and reply thereto by the appellant dated 7th November, 2005. If the said letter by any chance would have been prepared on 23rd September, 2005, it would not have in any case made a reference to the subsequent Notice and the reply filed thereto. Thus in the light of the aforesaid observation, we are in agreement with the learned Singe Judge in accepting the submission of the DDA that it was only a typographical error.

10. Further, as per the Clause-9 of the demand-cum-allotment letter, the said allotment was liable to be automatically cancelled if the payment was not made within the prescribed period. In the instant case it is an admitted fact that there was a delay of as many as 175 days and 115 days in payment of first and the second Installments respectively, thus resulting in automatic cancellation the allotment made to the appellant. The appellant has alleged that an amount of Rs. 36,600/- was deposited in lieu of interest for delay in payment of Installments and restoration charges, but no document has been placed on record whereby it could be shown that DDA had condoned the delay and restored the allotment of plot to the appellant. Thus it can be said that the aforesaid amount was deposited by the appellant on his own and without any approval or confirmation from the DDA.

11. Also, it cannot be denied that the said allotments are made at pre-determined concessional rates. Such plots are allotted to satisfy the residential needs of the general public and not for the purpose of trading. The said fact was also noticed by the learned Single Judge while dismissing the writ petition. The fact that the amounts were deposited by six different people residing at different locations through pay orders issued by the same bank lead to an inference that the said amounts were deposited as a part of the sale consideration in respect of the plot and not on behalf of the appellant. It was also not the case of the appellant that the plot could be sold without the permission of the allotting authority before the said plot could be actually transferred in the name of the allottee. On 27th September, 2007 the appellant sought for an adjournment for the purpose of filing an affidavit. However, the same was never filed.

12. In light of the aforesaid observations, we are also of the view that there was an un-condoned delay in deposit of the Installments, resulting in automatic cancellation of allotment. Even otherwise, on a careful consideration of the records, the only inference that can be drawn is that there appears to be collusion with the land mafia. The learned Single Judge has rightly held that the ultimate beneficiary would be the land mafia if the relief as prayed for is granted. We accordingly find no justification to take a different view than that taken by the learned Single Judge.

13. We therefore find no infirmity in the impugned judgment and order. There is no merit in this appeal. Accordingly the appeal and the application are dismissed. Interim order dated 9th May, 2006 stands vacated.

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