

Subhash Chandra Vs. Delhi Development Authority

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Court : Delhi

Decided On : Feb-18-2000

Reported in : 1999VAD(Delhi)277A

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

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

Appeal No. : C.W. NO. 6209/1998

Appellant : Subhash Chandra

Respondent : Delhi Development Authority

Advocate for Def. : Ms. Monica Sharma, Adv.

Advocate for Pet/Ap. : Mr. Keshave Dayal, Sr. Advocate,; Mr. Prahlad Dayal and;
Ms

Judgement :
ORDER

Dr. M.K. Sharma, J.

1. The present writ petition has been preferred by the petitioner seeking for issuance of a writ of mandamus against the respondent quashing the demand raised by the respondent under letter dated 26th June, 1998 regarding allotment of

category II flat bearing No. 438, Ground Floor, Sector 12, Pocket -I, Dwarka, New Delhi with a further direction to the said respondent to allot flat on payment of the charges as charged from the other allottees under the 9th Self Financing Scheme and as per brochure of the 9th Self Financing Scheme.

2. The petitioner registered himself under the 1979 HUDCO Scheme seeking for allotment of a flat. Subsequently, however, on 28th September, 1993, the petitioner submitted an application for conversion of registration from MIG to Self Financing Scheme VI-B Category -II. Respondent under letter dated 7th August, 1996 intimated to the petitioner that the petitioner was registered with DDA for allotment of Category-II SFS flat under VI-B, Self Financing Scheme. By another letter dated 20th August, 1996 the petitioner was again intimated about the liability for allotment of a flat under SFS Scheme-9. The petitioner submitted his application under 9th Self Financing Scheme, 1996 as offered by the DDA.

By letter dated 11th April, 1997 the respondent intimated the petitioner that he has been allotted with a category-II SPS flat at Second Floor in Sector No. 19, Pocket-2, Dwarka and he was asked to deposit an amount of Rs. 8,08,588/-. Subsequent thereto, the petitioner submitted an application on 25th July, 1997 seeking for change of floor on compassionate ground that his wife would be unable to climb the stairs to the second floor and, therefore, he should be provided with a flat on the ground floor. The aforesaid application was made to the Lt. Governor, who on the body of application wrote that the petitioner should be given a flat at the ground floor, Pursuant thereto, the case of the petitioner was considered for allotment of a flat on the ground floor and his name was included in a draw of lots. The petitioner was succeeded in the said draw, pursuant to which he was allotted with a flat at the ground floor bearing flat No. 438, Ground Floor, Sector-12, Pocket-1, Dwarka, New Delhi.

3. By letter dated 11th March, 1998, the petitioner was informed that the earlier allotment dated 11.4.1997 has been changed to flat No. 438, Pocket No. 1, Sector 12, Ground Floor in Dwarka (Category-II). However, on 26th June, 1998 a demand letter was issued by the respondent claiming higher price for the said flat and demanding payment thereof. At the request of the petitioner time was allowed to

make the payment up to 22nd November, 1998. Being aggrieved of which the petitioner preferred this petitioner seeking for the aforesaid relief.

4. The respondent has contested the writ petition by filing a detailed counter-affidavit wherein it is stated that the demand as is raised by the respondent under letter dated 26th June, 1998 regarding allotment of category-II, being flat No. 438, Ground Floor, Sector-12, Pocket-I, Dwarka was issued in terms and conditions and the policy of the respondent. It was also stated that the prices stated in the brochure are the tentative prices and the same, therefore, could be revised taking consideration of the costing policy of the Delhi Development Authority. It was also stated that pursuant to his registration and the draw held, the petitioner was allotted a ready built flat No. 676, Second Floor, Sector 19, Pocket-II, Dwarka, Delhi and the demand-cum-allotment letter was issued to the petitioner, but in view of his subsequent request for an allotment of a flat on the ground floor, he was considered afresh and as the draw of lots held on 17th February, 1998, the petitioner was allotted flat No. 438, Ground Floor in Sector 12, Pocket-I, Dwarka, Delhi.

5. The issue that arises for my consideration, therefore, is as to whether the respondent could demand a higher price for the ground floor flat allotted to the petitioner in lieu of the second floor flat. According to the petitioner, change of the floor was requested by him which was accepted by the Lt. Governor and, therefore, the respondent should have allotted the ground floor flat to the petitioner at the same price on which was allotted a second floor flat. It was contended by him that flats were already built up and, therefore, there was no justification for enhancing the price for allotment of a flat on the ground floor in lieu of second floor flat. Counsel appearing for the petitioner also submitted that a case of discrimination is made out in view of the fact that he has stated in paragraph 12 that other persons similarly situated, who had applied for the said scheme had been allotted flats at the rates fixed in the brochure and that the petitioner was being denied equal treatment due to no fault of the petitioner.

6. I have considered the submissions of the counsel appearing for the parties in the light of the documents available on the records. In my considered opinion, the

averments made in paragraphs 12, 15 and 18 of the writ petition are vague and uncertain. No definite case has been set out so as to scrutinise whether there is an actual case of discrimination or not. In my considered opinion, a case of discrimination cannot be made out on the basis of a vague statement made by the petitioner. In order to scrutinise and examine the case of discrimination, it was necessary for the petitioner to plead definite and concrete cases giving particulars thereof. In absence of such concrete evidence on record, it is not possible to examine and scrutinise the plea of discrimination as sought to be made out by the petitioner.

7. The other question that is to be examined is whether the respondent is entitled to claim a higher amount for allotment of a ground floor flat in lieu of the Second Floor flat.

7.1. In *D.D.A Vs . Pushpendra Kumar Jain* reported in : AIR 1995 SC1 , the Supreme Court has held that flats were being constructed in a continuous process and lots were being drawn from time to time for a given number of flats ready for allotment and, therefore, mere draw of lots does not vest an indefeasible right in the allottee for allotment at the price obtaining on the date of draw of lots. It was further held that since the right to flat arises only on the communication of the letter of allotment, the price or rate prevailing on the date of such communication is applicable unless otherwise provided in the Scheme. The Supreme Court then went on to hold that if in case the respondent is not willing to take or accept the allotment at such rate, it is always open to him to decline the allotment and that there was no unfairness in the said procedure.

In the light of the ratio of the aforesaid decision of the Supreme Court, let me examine the facts of the present case. The flat which was allotted to the petitioner initially was at the second floor which the petitioner did not accept and sought for change of the floor requesting for allotment of a flat at the ground floor. The Lt. Governor ordered that the petitioner should be considered for a ground floor flat. The name of the petitioner was again put to a draw of lots, to the knowledge of the petitioner, and in the same the petitioner could get a ground floor flat, which was allotted to him and, therefore, the right for allotment to the ground floor flat has

arisen only on the communication of the letter of allotment and, therefore, the price or rates prevailing on the date of such communication has been rightly made applicable which is also in terms of the decision of the Supreme Court in Pushpendra Kumar Jain's case (Supra). That again is in consonance of the condition of brochure according to which the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies, layout, cost of construction etc.

8. I do not find any error in demanding the higher price under the allotment-cum-demand letter from the petitioner.

9. Another glaring and relevant aspect needs mention at this stage. After issuance of the letter dated 26th June, 1998 demanding payment of the amount for ground floor flat, the petitioner filed an application before the respondent seeking for extension of time for depositing the amount as per the demand letter on which time was extended till 20.11.1999 and in the meantime he filed the present petition.

The petitioner is liable to make payment of the amount in terms of the aforesaid demand-cum-allotment letter, which although was claimed but was not deposited and according to the respondent for non-payment of the said demand, there is an automatic cancellation of the flat allotted to the petitioner. The petition stands dismissed but with a direction to the respondent that if in case the petitioner deposits the amount in terms of the demand-cum-allotment letter issued by the respondent within four weeks from today, the flat allotted to him at the ground floor shall not be cancelled and the same shall be allotted to the petitioner and possession of the said flat shall be handed over to the petitioner on payment of the entire dues and on compliance of all formalities within four weeks from today. In terms of the aforesaid order the Writ Petition stands disposed of.