

Delhi Development Authority Vs. Rajinder Kumar Verma

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Court : Delhi

Decided On : Apr-12-1996

Reported in : 1996IIAD(Delhi)648; 62(1996)DLT262; 1996(37)DRJ271; (1996)113PLR38; 1996RLR273

Judge : M.J. Rao and; M.K. Sharma, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 144

Appeal No. : Letters Patent Appeal No. 35 of 1995

Appellant : Delhi Development Authority

Respondent : Rajinder Kumar Verma

Advocate for Pet/Ap. : V.K. Sharma and; R.P. Jain, Advs

Judgement :

M.K. Sharma, J.

(1) This appeal is directed against the order dated 7.4.1995 passed by the learned Single Judge in C.M. No.4484/1993 in C.W.No-1578/1989 directing the appellant to allot shop No.3 in Shopping Complex, Ber Sarai, New Delhi to the respondent No.1 at the rate which prevailed in the year 1988 when the original allotment was made.

(2) The facts leading to filing of the writ petition by the respondent No.1 are that some land belonging to the grand father of respondent No.1 was acquired by the appellant and it was agreed upon between the parties at the relevant time that a residential plot and a shop at Shopping Complex at R.K.Puram, Sector Vi, would be allotted by the appellant to respondent No.1. The grand father of respondent No.1 having died in the meantime, the respondent No.1 applied for mutation in respect of the plot as well as the shop. The mutation was allowed in respect of the plot whereas the allotment of the shop was cancelled by letter dated 28.10.1988 for non-submission of the land acquisition certificate in the name of respondent No.1.

(3) Accordingly, the writ petition was filed seeking a direction to the appellant to restore shop No.39, Sector 6, R.K.Puram, New Delhi. After hearing the parties, the writ petition was allowed on 14th November, 1994. The learned Single Judge directed that the aforesaid shop No.39 at Sector 6, R.K.Puram, New Delhi be restored to respondent No.1. It was also directed that in case the aforesaid shop was not available for restoration the appellant would inform the court so that some other shop could be allotted to respondent No.1 in lieu of the shop in question.

(4) In pursuance of the aforesaid direction, the appellant stated that shop No.39, at Sector 6, R.K.Puram, or any other shop in the said complex was not available. The appellant, however, filed a statement indicating availability of six shops and the respondent No.1 was given option to indicate his choice of the shop among the available shops. The respondent No.1 chose shop No.3 in Shopping Complex, Ber Sarai, New Delhi and accordingly, the learned Single Judge directed that the said shop be allotted to the respondent No.1 at the rate which prevailed in the year 1988.

(5) Being aggrieved by the aforesaid order, this appeal has been preferred by the appellant mainly on two counts, namely-that the shop No.3 could not have been directed to be allotted to the respondent No.1 at the rate prevalent in the year 1988 when the said area was received by the appellant for allotment only in December, 1993 and secondly the shop No.3 in Ber Sarai has an area of 21.22 Sq. Meter whereas the area that could be allotted to respondent No.1 as per policy

could not have been more than 20 Sq. Mtr.

(6) On careful consideration of the arguments of the counsel for the parties and also the facts giving rise to the present case, we are of the firm opinion that none of the aforesaid grounds raised in the appeal has any force or basis. In the writ petition it was found that allotment of shop No.3 at Sector 6, R.K.Puram, in favor of respondent No.1 was illegally cancelled by the appellant and accordingly, direction was issued for restoration of the said shop. As the appellant in the meantime, disposed of the said shop in favor of some other allottee it was incumbent on them to allot an alternative shop to respondent No.1 which they did by filing a statement showing availability of six shops and affording an opportunity to respondent No.1 to choose one out of the said six. In the light of the said option, the respondent NO.1 exercised his option for shop No.3 in pursuance of which the aforesaid direction was issued by the learned Single Judge against which the present appeal has been filed. The stand taken by the appellant in the present appeal on the face of it appears to be unreasonable and irrational. It is the appellant who submitted the list of alternative shops available for allotment and the respondent No.1 was also given the option by the appellant to choose one out of the six shops mentioned in the list. thereforee, there is clear waiver and acquiescence on the part of the appellant to challenge allotment of shop No.3 in favor of respondent No.1.

(7) On the facts found and discussed above, we find no infirmity in the order of the learned Single Judge passed on 7.4.1995. The appeal has no merit and is dismissed but without any costs.

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