

Kishan Chand Vs. Delhi Development Authority and ors.

Kishan Chand Vs. Delhi Development Authority and ors.

SooperKanoon Citation : sooperkanoon.com/701233

Court : Delhi

Decided On : Mar-03-1997

Reported in : 1997IIAD(Delhi)722; 66(1997)DLT292

Judge : Devinder Gupta and; K.S. Gupta, JJ.

Appeal No. : Civil Writ Appeal No. 2718 of 1988

Appellant : Kishan Chand

Respondent : Delhi Development Authority and ors.

Advocate for Pet/Ap. : Anand Yadav, Adv

Judgement :

Devinder Gupta, J.

(1) On 21.11.88 this petition was filed seeking direction against the respondents to issue Demand-cum-Allotment letter in respect of Shop No. 14, Vaishali, Pitam Pura, Delhi and to hand over the possession thereof and execute proper conveyance deed.

(2) The facts giving rise to the petition are that, on petitioner's land having been acquired by the Government at public expense for public purpose, namely. Planned Development of Delhi, under the relevant scheme, which was in vogue, stall No. 23, L.S.C. Wazir Pur, Phase-1, Delhi was allotted to him. A sum of Rs.

25,200.00 towards premium lease money, ground rent and maintenance charges was deposited by the petitioner on 21.2.86. It is the petitioner's case that possession of the stall was also handed over to him. Certificate Annexure C was issued in August, 1986 by the Deputy Director (CE), D.D.A. entitling him to obtain electric connection in his own name. It is alleged that the said shop at Wazirpur was located at a considerable distance from his residence and was also very inconvenient. Accordingly a representation was made to the Commissioner (Land), D.D.A., with a request to allow change in allotment from Wazirpur to some other convenient area in Pritam Pura or Vaishali since such changes were being allowed. Through letter Annexure D dated 5.12.86 the petitioner was informed by the Deputy Director (CE) that his request for change of allotment had been accepted and he had been allotted shop No. 14 measuring 12.67sq.metres at Vaishali (Pitampura). The petitioner was also informed that Demand-cum-Allotment letter would be issued to him on the petitioner surrendering the possession of stall earlier allotted to him in Wazirpur. It is the petitioner's case that pursuant to the said communication dated 5.12.86, the petitioner contacted the Assistant Engineer concerned and handed over possession of the stall and signed all the documents, which were required to be signed by the Assistant Engineer and as per his information the said Stall No. 23, WazirPur was thereafter put to auction by D.D.A. in 1987. No detailed Demand- cum-Allotment letter in respect of shop No. 14 at Vaishali was handed over to him despite best efforts. This non-action on the part of the respondent in not issuing detailed Demand-cum-Allotment letter and delivering possession of the shop is under challenge in this petition.

(3) The petition came up on 30.11.88 when the respondent were restrained from cancelling the allotment of stall No. 14, Vaishali (Pitam Pura), Delhi in petitioner's favor and were also restrained from allotting or handing over possession to any one else. Rule D.B. was issued on 3.2.92.

(4) In reply filed on the affidavit of Ranbir Singh, Secretary, D.D.A. the respondents have taken a preliminary objection that the petitioner is guilty of suppression of material facts relating to points in controversy. It is not disputed that the petitioner was allotted a stall on acquisition of his property and that he later on applied for change of allotment. It is stated that Deputy Director (CE) Shri

Som Prakash committed various irregularities in the conduct of affairs of the D.D.A. and was placed under suspension. On 27.11.86 a note was put up by Som Prakash in which it was mentioned that it was not clear as to whether the petitioner had already taken possession or not of the stall allotted to him and recommended the petitioner's case to Commissioner (Land) for acceptance of petitioner's request for change. The Commissioner agreed with the proposal and stated in his note dated 27.11.86 that it should be checked whether the petitioner had already taken possession of the stall allotted to him or not. This became necessary because Som Prakash had intentionally kept back the information that the petitioner had already taken possession of the stall. File thereafter was sent by the Commissioner to the Director (CL), who was on leave. Som Prakash then issued letter Annexure D to the petitioner showing acceptance of petitioner's request for change as aforesaid. It is stated that the petitioner was allotted the stall of much lower size in Wazirpur but the shop now offered in Annexure-D in Vaishali is of much larger size. It was Som Prakash who manipulated the issuance of letter to the petitioner. Respondents did not dispute the fact that the shop, which had originally been allotted to the petitioner, had been sold by public auction but it was stated in the reply that the possession thereof had not been delivered to the auction purchaser. The affidavit in reply was filed in September, 1989. The petitioner filed rejoinder and refuted the respondent's stand as regards suppression of facts. It was stated that in three or four other cases of Moti Ram, Kundan Lal, Chhatar Singh and Roop Chand where similar plea had been taken by the respondents as regards the conduct of Som Prakash and ultimately change was allowed and affirmed in their favor with respect to the adjacent shops at Vaishali in similar circumstances.

(5) We have heard learned Counsel for the petitioner and been taken through the entire record. Nobody has put in appearance on behalf of the respondent at the time of hearing.

(6) We have also perused the record of decided cases of Roop Chand Yadav titled as R.C. Yadav v. D.D.A. b Others, Cw 2693/88, and our attention has also been drawn to the case of Chhatar Singh which is reported as Chhatar Singh v. Delhi Development Authority & Ors., : 41(1990)DLT329 .

(7) Case of R.C. Yadav was also similar to the petitioner's case, inasmuch as on acquisition of his property he was allotted shop at Cse Ghonda, which was found to be inconvenient by him. Accordingly a request for change was made, which was allowed on 21.11.86. R.C. Yadav was conveyed the acceptance by Som Prakash, Deputy Director (CE) of allotment of shop No. 8, Block Qu in Pitam Pura in lieu of earlier allotment at Ghonda. He was informed that Allotment-cum-Demand letter would be issued. Instead of that, he was conveyed an order of cancellation of shop of Pitam Pura, which action was challenged by him by filing writ petition. Ultimately when this Court called upon the respondents to produce the entire record, it appears that the matter on being examined was settled and the relief was granted to the petitioner, which resulted in rendering the petition infructuous and the same was dismissed on 7.8.89 as infructuous.

(8) In Chhatar Singh's case (supra) also in similar circumstances a shop was allotted in East Zone in Yamuna Puri in 1983. He applied for change, which had been allowed. Shop No. li, Vaishali, Pitam Pura (North Zone) was allotted, in lieu of earlier allotment but the same was cancelled on 9.9.89. The said action was challenged by Chhatar Singh in this Court. Similar plea was taken as in the instant case that change was not approved by the Competent Authority and it was Som Prakash, Deputy Director (CE), who had issued the letter conveying to the petitioner the approval of the Commissioner for change in the allotment. It was Vol. noticed in that case that the Commissioner was the Competent Authority, who had approved the change in the allotment and that the cancellation had been made without any reason and authority of law. Chhatar Singh's petition was allowed with directions to the respondents to execute lease deed in respect of the shop in his favour.

(9) Petitioner has in his pleadings cited, in addition to these two cases, other instances where the respondents permitted the change and ultimately those persons were put in possession of the shops, which were allotted after changes were approved. Petitioner's case is on a more stronger footing inasmuch as, pursuant to the letter Annexure D dated 5.12.86, he delivered back possession of the stall, which had been allotted to him in Wazir Pur. After possession was surrendered, the said stall at Wazir Pur was put to auction by the respondents.

The respondents have not disputed that the petitioner's land was acquired and under the policy he was entitled to allotment of a shop. Copy of policy is placed on record as Annexure A. Under the policy the petitioner's case was required to be considered for allotment of a shop and it is not disputed that a shop was allotted to him. Under the policy, which was then in force, there was no restriction as regards the area of the shop to be allotted. It could be a smaller shop or a bigger shop and it is not the case of the respondents that the shop at Vaishali could not have been allotted to the petitioner. Respondents' case is that on the basis of some vague note of Som Prakash the Commissioner passed the order permitting the change. In case it was the Commissioner, who was the Competent Authority to effect changes, there is no reason why the petitioner should be made to suffer merely because of vagueness in the note so put up by Som Prakash. After the petitioner surrendered possession of the shop at Wazir Pur and the same was put to auction it was but natural that the petitioner ought to have been allotted a shop and as per the letter dated 5.12.86 respondents ought to have issued a Demand-cum-Allotment letter in petitioner's favour.

(10) We are informed that by virtue of the order, which was passed on 13.11.88 shop No. 14 at Vaishali is still lying vacant and has not been put to auction. Since it was under the orders passed by the Commissioner, who was the Competent Authority who allowed the change in allotment from Wazir Pur to Vaishali, prayers made in this petition deserve to be allowed by directing the respondents to issue Demand-Cum-Allotment letter and to put the petitioner in vacant and peaceful possession of the shop in question forthwith.

(11) Accordingly we allow the writ petition and direct the respondents to issue Demand-cum-Allotment letter with respect to shop No. 14 at Vaishali. Since the shop at Vaishali is of bigger size than the one at Wazir Pur the Demand-cum-Allotment letter obviously will be issued as per the rates, which were prevalent in the year 1986 in the area in question for the shop at Vaishali, which will also include the additional amount of premium for the increased area of the shop. The petitioner will be called upon to pay the difference of the amount, after adjusting the amount already deposited by him through receipt Annexure B, Along with interest at the rate of 18% p.a. on such difference till the date of deposit. Demand-

cum-Allotment letter will be issued within a period of four weeks from the date of receipt of the writ order from this Court. Within a period of four weeks thereafter the petitioner will deposit the amount and on deposit of the amount the petitioner will be put in possession of the shop in question within a period of two weeks thereafter. There will be no order as to costs. Rule is discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com