

Shambu Dayal Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jul-25-1997

Reported in : 68(1997)DLT880

Judge : M.S.A. Siddiqui, J.

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

Appeal No. : Civil Writ Petition No. 3768 of 1995

Appellant : Shambu Dayal

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : Atul Bandhu and; N.K.Thanai, Advs

Judgement :

M.S.A. Siddiqui, J.

(1) By this writ petition under Article 226 of the Constitution, the petitioner assails the allotment-cum-demand letter No. 39(14)/91/MP/ Np dated 24.9.1991, issued by the respondent calling upon the petitioner to pay Rs. 3.29.000.00 as cost of the flat bearing No. 455-MIG, Mansarovar Park, Delhi (hereinafter referred to as the flat in question).

(2) The respondent-DDA prepared and published a Scheme called 'Registration Scheme of New Pattern, 1979' of intending purchasers of flats to be constructed by Delhi Development Authority 'providing the procedure for allotment of flats constructed by it. The petitioner got himself registered for the allotment of a flat under the said scheme and made an initial deposit of Rs. 4,500.00. A draw was held on 18.2.1991 and vide allotment-cum-demand letter dated 24.9.1991, the flat in question was allotted to the petitioner. The said allotment-cum-demand letter also indicated that the cost of the flat what was payable was Rs. 3,29,000.00 and the due date for the Installment of Rs. 3,336.75 paise was 10.11.1991. Petitioner's main grievance is that the demand raised by the respondent on account of cost of the flat in question is illegal and arbitrary inter alia on the ground that similar flats under the scheme, and located in the same area have been allotted by the respondent to other persons at a very low price as compared to the one, being charged from the petitioner. In short, the grievance of the petitioner is that he has been discriminated in the charge of price.

(3) The respondent denied the petitioner's case and alleged that the disposal cost of the flat in question has been worked out strictly in accordance with the approved policy based on 'no profit/no loss' basis and the same is based on the rates prevailing on the date of issue of allotment-cum-demand letter. It is also contended that the flat allotted to the petitioner in 1991 is not similar to the flats allotted to other allottees in 1986 and 1988 and further the cost of the flat in question was increased on account of various factors and this Court cannot interfere under Article 226 of the Constitution in the matter of pricing/costing of flats including escalation of cost of land etc.

(4) Learned Counsel for the respondent has invited my attention to Clause (14) of the Scheme, in support of the contention that the petitioner cannot claim allotment of flat at the estimated price mentioned in the brochure. Clause (14) of the Scheme (Annexure-1) clearly says that 'it may please be noted that the plinth area of the flats indicated and the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay out cost of construction etc. In *Dda v. Pushpendra Kumar Jain*, : AIR 1995 SC1, the Apex Court had occasion to consider the effect and import of Clause

(14) of the Scheme (Annexure-I). Their Lordships observed that Clause (14) of the Scheme has to be understood in the context of steady rise in the cost of construction and of land. Their Lordships further observed 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. In this connection, I may usefully excerpt the following observations of their Lordships:

'.....Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of drawl of lots. The Scheme evolved by the appellant does not say so either expressly or by necessary implication. On the contrary. Clause (14) thereof says that 'the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay out, cost of construction etc.' it may be noted that registration of applicants under the said Scheme opened on September 1, 1979 and closed on September 30, 1979. About 1,70,000 persons applied. 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. Clause (14) of the Scheme has to be understood in this context - the steady rise in the cost of construction and of land. No provision of law also could be brought to our notice in support of the proposition that mere drawl of lots vests an indefeasible right in the allottee for allotment at the price obtaining on the date of drawl of lots. In our opinion, since the right to flat arises only on the communication of the letter of allotment, the price or rates prevailing on the date of such communication is applicable, unless otherwise provided in the Scheme. 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. We see no unfairness in the above procedure.'

(5) Thus, the point raised by the petitioner is no longer rest integra as the case in hand stands fully covered by the decision rendered by the Supreme Court in *Dda v. Pushpendra Kumar Jain*, (supra) and nothing survives for adjudication.

(6) For the foregoing reasons, the petition is dismissed with costs. Counsel's fee Rs. 3,000.00 .

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