

Krishan Chander Vs. Dda

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Court : Delhi

Decided On : Nov-03-2011

Judge : Pradeep Nandrajog, J.

Acts : Rohini Residential Scheme 1981

Appeal No. : LPA 904 of 2011

Appellant : Krishan Chander

Respondent : Dda

Judgement :

1. Rohini Residential Scheme 1981 has been a source of fertile litigation in this Court. DDA bit more than what it could chew. It did not limit the number of applicants under the scheme and as a result nearly 1,20,000 applicants found themselves registered under the scheme as per which DDA became obliged to allot a plot of land to each applicant as per priority position assigned to each applicant; the land to be allotted as and when acquisitions were complete and development completed.

2. The appellant applied under the scheme. Finding his application to be in order, DDA assigned priority number to the applicant and on 1st-5th September 2003 issued a demand- cum-allotment letter demanding premium in sum of `7,18,872/- payable in installments. The appellant paid the first installment within time but defaulted in payment of the second and the third, which were deposited with a

delay of one year resulting in DDA cancelling the allotment.

3. W.P.(C) No.13302/2005 was filed against the allotment being cancelled and reliance was placed upon various decisions of this Court which had highlighted certain policies of DDA as per which delay in depositing the premium installments could be condoned. The writ petition was filed by the constituted attorney of the appellant who is his brother.

4. The appellant, an Indian born national has admittedly acquired Canadian citizenship and the learned Single Judge has been influenced by the said fact and also the fact that the power of attorney holder has been authorized to even sell the plot allotted to the appellant and in respect whereof view formed is that the appellant has sold the plot allotted to him which was contrary to the policy. The learned Single Judge has also opined that the power of attorney executed by the appellant in favour of his attorney did not authorize the attorney to file the writ petition.

5. Learned counsel for the respondent DDA concedes that there was no document filed before the learned Single Judge by DDA to show that an Indian born who had acquired citizenship of a foreign country was ineligible to apply under the scheme in question. It is apparent that the learned Single Judge has been influenced by a fact which had no relevance to the lis before him.

6. The view taken by the learned Single Judge that the appellant is litigating through an attorney, ignores the fact that the attorney is a blood relation (brother) of the appellant and the power of attorney is not for any valuable consideration.

7. The view taken by the learned Single Judge that the power of attorney does not vest a power in the attorney to file the writ petition runs in the teeth of the power vested in the attorney as per the power of the attorney dated 12.11.2004 which empowers the attorney to inter-alia (a) manage, control and look after the property, (b) to act on behalf of the principle with DDA and (c) to do all acts, deeds and things in respect of all the matters of the said property, even if they are not covered by the clauses of the power of attorney.

8. The learned Single Judge has been influenced that vide clause 10 of the powers vested in the attorney the authorization is limited to file suits for recovery of rent in the Court of Law and do all acts, deeds and things relatable thereto. The other clauses as noted hereinabove have been ignored.

9. The power of attorney has been misread and misconstrued on two counts. Firstly that it evidences a sale of the plot and secondly that the constituted attorney does not have the authority to sue and file the writ petition against DDA.

10. At this stage, learned counsel for DDA prays that since the matter is going to be remanded to the learned Single Judge, liberty be granted to DDA to file an additional affidavit on the question whether a citizen of a foreign country was entitled to apply for and obtain a plot of land under the Rohini Residential Scheme 1981.

11. The appeal is allowed. Impugned judgment and order dated 26.8.2011 is set aside. W.P.(C) No.13302/2005 filed by the appellant is restored for fresh adjudication on merits. DDA is permitted to file an additional affidavit limited to the subject matter as per para 10 above.

12. No costs.

CM No.20034/2011 (Stay)

Since the appeal stands disposed of, the instant application seeking interim relief against the impugned order stands disposed of as infructuous.

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