

**Arun Kumar Jain and Another Vs. Dda**

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**Court :** Delhi

**Decided On :** Mar-01-2012

**Judge :** Sunil Gaur

**Appeal No. :** W.P.(C) 630 OF 2011

**Appellant :** Arun Kumar Jain and Another

**Respondent :** Dda

**Judgement :**

1. Violation of terms and conditions of the Lease Deed executed by the petitioners on 27th January, 1994 in respect of Plot No.81, Pocket A-2, Sector 16, Rohini, Delhi, allotted to Petitioner - A.K.Jain vide letter of 1st July, 1984 under the Rohini Residential Scheme, 1981 alleged was that both the petitioners who had married on 27th November, 1985, had at the time of execution of the Lease Deed in question, furnished false affidavits to the effect that neither of them were owning any other property. Whereas, the second petitioner was allotted Plot No.223, Pocket G-29, Sector 3, Rohini, Delhi, under the aforesaid Scheme on 29th December, 1983 and lease in respect thereof, was executed on 5th May, 1998. Relevantly, at the time of execution of the aforesaid Lease Deed of 5th May, 1998 the second petitioner was already married to the first petitioner but she had submitted an Affidavit to the effect that the lease be executed in her single name i.e., her maiden name - Shama Rani, as it will help her to take loan from her employer and as ladies are entitled to hold property in their names.

2. Pertinently, in the year 1994, when the Lease Deed in respect of plot No.81, Pocket A-2, Sector 16, Rohini, Delhi (hereinafter referred to as the premises in question), was executed in the joint name of both the petitioners, they had furnished their respective Affidavits to the effect that neither of them nor their children own any other property except the premises in question.

3. According to the respondent, aforesaid Affidavits of the petitioners furnished at the time of execution of the Lease Deed in respect of the premises in question were not only false, but were misleading as the second petitioner instead of disclosing her true name i.e., Shama Rani, had disclosed her name as Seema Jain in her aforesaid affidavit. This was noticed in the year 2003, when the petitioners had applied for conversion of leasehold rights to freehold rights in respect of the premises in question. A show cause notice of 9th June, 2004 was served upon the petitioners by the respondent and thereafter, upon finding that the afore-noted information furnished in the Affidavits by the petitioners was false and in violation of the terms and conditions of the Lease Deed, respondent vide order of 25th October, 2004 (Annexure P-3/A) had cancelled the Lease Deed in respect of the premises in question. Since petitioners had failed to surrender the possession of the premises in question, proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were initiated against them which resulted in passing of the eviction order of 18th July, 2007 (Annexure P-4) by the Estate Officer. Statutory appeal preferred by the petitioners against the Eviction Order (Annexure P-4) stands dismissed vide impugned order of 25th October, 2010.

4. The twin issues raised at the hearing of this petition are whether allotment of the premises in question in favour of the first petitioner is liable to be cancelled, as there is allotment of another plot under this very Scheme of the respondent in favour of the second petitioner and; whether the allotment of the premises in question can be cancelled on the ground of false/inaccurate affidavits furnished by the petitioners at the time of execution of the Lease Deed in respect of the premises in question.

5. So far as the afore-noted second question raised is concerned, there can be no doubt that upon finding that the information furnished on Affidavit is false one, the allotment in question can be always cancelled. Respondent maintains that furnishing of false or misleading information on Affidavits violates the terms and conditions of the Lease Deed. Since the petitioners do not dispute that the maiden name of the second petitioner was Shama Rani and because it is not their case that the name of the second petitioner after marriage was changed, therefore, furnishing of Affidavit by the second petitioner under the name of Seema Jain at the time of execution of the Lease Deed in respect of the premises in question, is clearly misleading with a purpose to retain the allotment in respect of the premises in question while simultaneously retaining the allotment of Plot No. 223, Pocket G-29, Sector 3, Rohini, Delhi which was in the maiden name of the second petitioner.

6. On behalf of the petitioners reliance was placed upon decisions in **M.L.Aggarwal vs. Delhi Development Authority**, 107(2003)DLT 611; **DDA vs. M.L.Aggarwal**, 127(2006)DLT 572 (DB); C.A. No.4362/2007 titled as **DDA vs. M.L.Aggarwal**, rendered on 26.11.2009; W.P.(C) No. 7433/2007 **Smt. Praveen Saldi vs. DDA**, rendered on 21st November, 2011, to justify the allotment in favour of the petitioners despite allotment of another plot of less than 67 sq. meters, in favour of the second petitioner being already there. Reliance was also placed upon the decision in W.P.(C) No. 12553/2004, titled as **Chandra Kumar Satija vs. DDA**, rendered on 24th February, 2005 to assert that where the allotment of the plot is of less than 67 sq. meters, Rule 17 of the DDA (Disposal of Developed Nazul Land) Rules, 1981 would come to the rescue of the petitioners as the allotment of premises in question as well as the allotment of Plot No.223, Pocket G-29, Sector 3, Rohini, Delhi, is of less than 67 sq. meters. Thus, it was contended by learned counsel for the petitioners that the eligibility of the petitioners is to be seen on the date of the allotment of the plots in question and not subsequent to the allotment of the premises in question which was in the year 1984, i.e., prior to the marriage of the petitioner in the year 1985 and so it is vehemently urged that in the light of the submissions advanced, as aforesaid and the decisions cited, impugned order as well as Eviction Order (Annexure P-4) deserves to be set aside.

7. To the contrary, is the submission of learned counsel for the respondent who asserts that the factum of petitioners filing false and misleading Affidavits at the time of execution of the Lease Deed in respect of the premises in question, stands firmly established and the same being in violation of the terms and conditions of the Lease Deed justifies the passing of the Eviction Order (Annexure P-4) as well as the impugned order and the decision cited are distinguishable on facts.

8. Upon careful consideration of the rival submissions advanced and on perusal of the impugned order, material on record and the decisions cited, it would be worthwhile to first take note of the undisputed factual matrix of the instant matter.

9. Allotment of premises in question was made by the respondent in favour of the first petitioner in the year 1984 whereas, allotment of Plot No.223, Pocket G-29, Sector 3, Rohini, Delhi (hereinafter referred to as 'another premises') in favour of the second petitioner in her maiden name was made in the year 1983. Subsequent thereto, both the petitioners had married in the year 1985 and thereafter had obtained the possession of their respective premises and the Lease Deed in respect of the premises in question was got executed in the year 1994 in joint name of both the petitioners by the second petitioner and in respect of another afore-noted premises, it was got executed by the second petitioner in the year 1998. Since the allotment of the premises in question was later in point of time, therefore it became the subject matter of cancellation. The stand taken by the petitioners in appeal reveals that the petitioners were not living in the premises in question and had given it to their relative for the purpose of residence. Even at the stage of filing of this petition, the petitioners were not residing in the premises in question. This indicates that the petitioners do not need the premises in question for their residence. In any case, what is to be seen is whether the petitioners are entitled to retain the premises in question in spite of non-disclosure of the fact that the second petitioner had been allotted another premises by the respondent.

10. It cannot be a subject matter of dispute that the eligibility in matters of allotment of plots by the respondent has to be seen on the date of the allotment and the DDA (Disposal of Developed Nazul Land) Rules, 1981 would apply in view of the decision in **M.L.Aggarwal** (supra). However, **M.L.Aggarwal** was held to be

not disentitled from getting allotment in view of the fact that his wife had already been allotted a plot because it was found that he was unaware of the fact that his wife had already owned plot measuring 35 sq. yds. and upon learning about it, he had promptly disclosed this fact to the respondent. It is the prompt discloser in **M.L.Aggarwal** (supra), which renders the afore-noted decision inapplicable to the instant case as herein there was a material concealment by the second petitioner about her maiden name, because of which allotment of another afore-noted plot was made to her. Not only this, second petitioner had changed her name to retain the allotment of the premises in question at the time of execution of the Lease Deed. This is a deliberate concealment, which cannot be ignored.

11. The relevant portion of the terms and conditions of the Rohini Residential Scheme, 1981, which was subject matter in **M.L.Aggarwal** (supra) as well as in the instant matter dealing with the eligibility of the applicants deserves to be noted. Its relevant portion is as under:-

**"1. Eligibility:**

(ii) The individual or his wife/her husband or any of his minor children do not own in full or in part on lease-hold or free-hold basis any residential plot of land or a house or have not been allotted on hire-purchase basis a residential flat in Delhi/New Delhi or Delhi Cantonment. If, however, individual share of the applicant in the jointly owned plot or land under the residential house is less than 65 sq.mtrs., an application for allotment of plot can be entertained. **Persons who own a house or a plot allotted by the Delhi Development Authority on an area of even less than 65 sq. mts. shall not, however, be eligible for allotment."**

12. Reference to the DDA (Disposal of Developed Nazul Land) Rules, 1981 by learned counsel for the petitioners has to be considered in the light of the eligibility condition in the aforesaid scheme as noticed herein above. It would be relevant to note that the afore-noted eligibility condition puts categoric embargo upon dual allotment of the plots by the DDA even if they are less than 65 sq. meters. In this view of the matter, though the allotment of plots in favour of the petitioners is of less than 65 sq. meters, still in view of the afore-noted embargo, which is an

essential eligibility condition in the Rohini Residential Scheme in question, the first question raised is answered against the petitioners declaring that the Lease Deed of 1994 executed in the joint name of the petitioners has been rightly cancelled. Indeed, there is a fine line of distinction between fraudulently obtaining allotment of a plot and of retaining an allotment of plot by fraudulent means. Instant matter falls in the latter category.

13. The second question of furnishing of false/ inaccurate information on Affidavits by the petitioners, has to be considered in its proper perspective. It is a serious matter. Concealment is not only of the fact that the petitioners while submitting declaration on Affidavits at the time of execution of the Lease Deed in respect of the premises in question, had deliberately omitted to disclose that the second petitioner holds an allotment in respect of another afore-noted premises but is also about the true name of the second petitioner. That is to say, the name on which second petitioner had been allotted another afore-noted premises was deliberately concealed and with altogether different name, Lease Deed in respect of the premises in question was fraudulently obtained. To my mind, this provides a strong basis to straightaway cancel the allotment of the premises in question in favour of the petitioners.

14. Regarding the decision in **Chandra Kumar** (supra), all that is required to be said is that the aforesaid decision is clearly distinguishable as in **Chandra Kumar** (supra) the question of non-disclosure was not the subject matter for consideration and the issue therein was of applicability of the DDA (Disposal of Developed Nazul Land) Rules, 1981 and in the said decision, it was also noticed that the persons who owned house or plot allotted by the respondent on an area even less than 65 sq. meters shall not be entitled for allotment of another plot by the respondent. What distinguishes the decision in **Smt. Parveen Saldi** (Supra), is that the allotments of the two plots was not under the Rohini Residential Scheme of 1981 of the respondent, as in the instant matter. In the said decision, the other allotment was by a private Group Housing Society and so the afore-noted eligibility clause was not violated.

15. In view of the afore-going narration, I find that cancellation of the lease in respect of the premises in question to be eminently justified as concealment of second petitioner's name at the time of execution of the Lease Deed in question by itself is a valid basis to sustain the Eviction Order (Annexure P-4). Furthermore, retention of both the premises by the petitioners violates the afore-noted eligibility clause, thereby rendering the petitioners being ineligible to retain the premises in question, being a subsequent allotment. Such a view is in consonance with the decision of the Apex Court in **Bihar State Housing Board and Ors vs. Satya Narayan Prasad (Dead) by legal heirs**, (1998) 2 SCC 681, upholding the cancellation of plot being contrary to the Rules of allotment embodying that an individual will not be entitled to an allotment of a second plot if he or any member of his family in possession of a plot or house within the municipal limits.

16. Consequentially, this writ petition fails and is dismissed, with no orders as to costs.

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