

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 5417/2007**

% **Date of Decision : 07.08.2008**

Jitender Pal Bhardwaj Petitioner
Through: Mr. P.S. Rana, Advocate

versus

Delhi Development Authority Respondent
Through: Mr. C. Mohan Rao, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

VIPIN SANGHI, J. (Oral)

1. The respondent launched a housing scheme known as Rohini Residential Scheme 1981 for allotment of plots. The petitioner, who is now 71 years of age applied in the said scheme nearly 27 years ago. At the time when he made the application, the petitioner was not the owner of any other property in Delhi. The eligibility condition prescribed in the brochure pertaining to the Rohini Residential Scheme, inter alia, provided that any individual who is not a minor may apply for allotment of only one plot if he/she fulfills the conditions laid down therein. Condition No.(ii) is relevant for the purpose of this case

and it reads:

“(ii) The individual or his wife/her husband or any of his/her 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. mts., 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.”

2. It appears that the application submitted by the petitioner under the said scheme also contained a stipulation that at the time of allotment of the plot under the scheme, the applicant would submit an undertaking and an affidavit in the specimen provided in the brochure. The specimen of the undertaking and the affidavit read as follows:

“UNDERTAKING

_____ S/o, W/o, D/o _____ R/o
_____ do hereby undertake as under:

That I or my wife/husband undertake that we or any one of our minor children, till they attain the age of majority, **would not acquire** any other lease-hold residential plot/flats **from the Delhi Development Authority/President of India/Municipal Corporation of Delhi.**(emphasis supplied)

Signature”

“SPECIMEN ON THE AFFIDAVIT

(This affidavit should be on a non-judicial Stamp Paper of Rs.2/- and must be attested by a Notary Public/Magistrate).

.....

Affidavit of Sh./Smt. _____ S/o, W/o
_____ aged _____ years _____
Delhi/New Delhi.

I, _____ son/d/o, w/o, widow of Sh.
_____ R/o _____ do
hereby solemnly affirm and declare as under:

1. That neither I nor my wife/husband or any of my minor children own in full or in part on lease-hold or free-hold or on hire-purchase basis any residential plot of land or a house or have been allotted a residential flat in Delhi, New Delhi, Delhi Cantonment.
2. I am applying for the allotment of only one plot under EWS/Janta/LIG/MIG category.
3. My total annual income including the income of my wife/husband and minor children does not exceed Rs.7200/-, Rs.12,000/- Rs.24,000/- for the year 1980-81.
4. I have not transferred any residential plot/house or flat to any of my family members nor I have so transferred my membership in any Co-operative House Building Societies or a Group-Housing Society in Delhi in favour of any of my family members.
5. I have attained the age of majority, my date of birth being _____ and I am a resident of India.

Deponent

Verification:

I, the above named _____ do hereby verify that the contents of paras 1 to 5 above are correct and true to the best of my knowledge and belief and nothing therein has been concealed suppressed.

Verified at _____ this _____ day of _____

Deponent"

3. The DDA took its own sweet time to make the allotment. With passage of time the needs of the petitioner to acquire a residence for himself and his family naturally became acute, since the DDA was

not forthcoming with the promised plot. After 13 years of the petitioner's registration under the Scheme, the petitioner finally purchased flat No.151A from an allottee/member of United India Cooperative Group Housing Society Limited known as United India Apartments, Mayur Vihar, Phase-I, Delhi-110091, on the basis of power of attorney, agreement to sell, Will etc. The said flat admeasures 62.22 sq. meters. On 23.11.2004 the said flat was converted from lease hold to free hold upon execution of a conveyance deed. Thereafter, the respondent issued a demand-cum-allotment letter with block dates 03.10.2005 – 7.10.2005 in respect of plot No.158, Pocket No.C-2, Sector-28, measuring 60 sq. meters in Rohini Phase-IV Residential Scheme. The petitioner paid the entire amount payable under the Demand-cum-Allotment Letter. He was required to furnish the undertaking and affidavit which too have been furnished by him.

4. On 28.5.2007, the respondent has sought to cancel the allotment of the aforesaid plot made to the petitioner on the ground that he has acquired the flat in the United India Apartment, Mayur Vihar Phase-I. Consequently, the petitioner has filed this writ petition to challenge the said cancellation.

5. Submission of learned counsel for petitioner is that the eligibility condition prescribed by the respondent in the Brochure was towards the eligibility for applying for registration under the Rohini Residential Scheme. The petitioner fulfilled the said eligibility conditions since neither the petitioner nor his wife or any of his minor

children did not own any of his minor children owned in full or in part on lease hold or free hold basis any residential plot of land or house and neither of them had been allotted on hire-purchase basis a residential flat in Delhi/New Delhi or Delhi Cantonment at the time of making the application. Therefore, the application for registration was validly made. It is further argued that the petitioner has not breached the term of the undertaking which only states that neither he nor his wife nor any of his children, till they attain the age of majority, would acquire any other lease hold or free hold any residential plot/flat from the Delhi Development Authority/President of India/Municipal Corporation of Delhi. It is not even the respondent's case that the petitioner or his wife or minor children have acquired, after the allotment of the aforesaid plot any residential plot/flat from the Delhi Development Authority/President of India/Municipal Corporation of Delhi. The flat in United India Apartments is one acquired privately from the original allottee/member of the Company-operative Society and not from one of the named authorities. The real controversy has arisen on account of the fact that according to the respondent, the stand of the petitioner that neither he, nor his wife nor any of his minor children own in full or in part on lease hold or free hold basis or on hire-purchase basis any residential plot of land or acquired any house in Delhi, New Delhi or Delhi Cantonment, is incorrect.

6. In my view, the stand of the respondent that the petitioner does not fulfill the aforesaid term condition in the affidavit is not

correct. The petitioner has placed on record the communication dated 14.10.2004 from the United India Cooperative Group Housing Society Limited which clearly shows that the area of category A flats is 57.76 sq. meters. He has also placed on record the self assessment form of property tax for the year 2006-07, wherein the area of the said flat has been mentioned as 62.22 sq. meters. Consequently, the area of the said flat is well below the limit laid down by the respondent in the eligibility condition of 65 sq. meters. If a person, who even at the time of making the application was the owner of a plot or flat having area of less than 65 sq. meters was eligible to apply under the scheme, and was therefore considered entitled to allotment of a plot, it does not stand to reason that a person who may have acquired, on account of his needs which are not met by the DDA for decades and end, another resident plot/flat/area less than 65 sq. meters should be rendered ineligible for allotment of a plot when its turn arrives. The condition/statement required to be made in the affidavit has, therefore, to be read in conjunction with eligibility condition, as aforesaid.

7. For the aforesaid reasons, in my view, the cancellation of the allotment made to the petitioner cannot be sustained and the same is, accordingly, quashed. The respondent is directed to place the petitioner in respect of the plot allotted to him within one month from today and to execute the documents of title upon his fulfillment of all other conditions.

Petition stands disposed of.

VIPIN SANGHI, J.

August 07, 2008
rsk