

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

% *Date of Decision : 28th October, 2009*

+ **LPA 629/2003**

DDA Appellant
Through: Ms.Anusuya Salwan, Advocate.

versus

ANJUMAN COOP. GROUP HOUSING SOCIETY LTD.
.....Respondent
Through: Mr.Ateev Mathur, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

PRADEEP NANDRAJOG, J. (Oral)

1. DDA has challenged the order dated 24.1.2003 passed by a learned Single Judge of this Court allowing WP(C) No.7476/2000 resulting in the issuance of a mandamus directing DDA to issue a fresh demand-cum-allotment letter to the writ petitioner charging for the land @Rs.3,533/- per sq.mtr. Since the writ petitioner had deposited the premium charge @Rs.4,063/- per sq.mtr. it was directed that the differential sum

be refunded within 6 weeks together with interest @12% per annum from the date the amount was deposited till the date the same was refunded.

2. Facts noted by the learned Single Judge are not in dispute. Many co-operative societies had registered themselves with the Registrar Co-operative Societies and as per the departmental policy of DDA i.e. the appellant, depending upon the membership of a co-operative society as certified by the Registrar Co-operative Societies, land used to be allotted at pre-determined rate as applicable and in force when the allotment letter-cum-demand letter was issued. Writ Petitioner society was one such society which had registered itself with the Registrar Co-operative Societies.

3. Way back in the year 1992, the Registrar Co-operative Societies had cleared the names of many co-operative societies which included the writ petitioner society as eligible for allotment of land by DDA and had certified that the approved membership of the society was 120. Unfortunately, in a letter dated 16.12.1993 addressed by the Registrar Co-operative Societies to DDA, it got inadvertently recorded that the name of the writ petitioner society had not been approved notwithstanding the fact that on 31.8.1992 the Registrar Co-

operative Society had written a communication, with copy thereof to DDA as under:-

“No.F.47/1022/NGF/COOP/

Dated 31.8.92

To,

The President/Secretary,
Anjuman Coop. G/H Society Ltd.
E-33, Sushila Road, Adarsh Nagar,
Delhi-110 033.

SUB: Approval of final list of members of the society.

Sir,

With reference to your office letter dated 25.1.92 on the above noted subject, you are hereby informed that the final list of 120 members submitted by you has been approved.

You are requested to collect a copy of the approved final list on any working day.

Yours faithfully,

Sd/-
(P.M.Tanwar)
Assistant Registrar (NGH)
Dt.31.8.92

No.F.47/1022/NGH/Coop/

Copy to :
The Deputy Director (GH)
Delhi Development Authority,
Vikas Sadan, INA New Delhi.”

4. Draw of lots for allotting specific plots to various co-operative societies whose names were cleared by the Registrar Co-operative Societies till the year 1998 was held somewhere in the year 1998 and to these co-operative societies land was

allotted by issuing demand-cum-allotment letter on different dates in the year 1999; the rate being charged @Rs.3,533/- per sq.mtr.

5. When the writ petitioner society learnt of allotment of land to other co-operative societies, its President wrote a letter to DDA questioning why no allotment was made to the writ petitioner society. At that stage it was realized by DDA that the mistake committed by the Registrar of Co-operative Societies in not reflecting the name of the petitioner society in the list of approved societies forwarded to DDA was the cause of the problem; compounded by DDA not being conscious of the letter dated 31.8.1992, copy whereof was in the record of DDA. Thus, DDA took corrective action by issuing a demand-cum-allotment letter to the writ petitioner society on 20.11.1999 charging for the land @Rs.4,063/- per sq.mtr. for the reason, there was a revision in the land price between the year 1998, when allotment letters were issued to other co-operative societies and the year 1999, when the allotment letter was issued to the writ petitioner society.

6. The writ petitioner society raised the issue with DDA to correct the price at which land rate was made applicable to it. Correspondence ensued between the society and the DDA. By agreement of the parties the matter was referred to a Lok Adalat

presided over by Justice J.D.Jain (Retd.), who, vide order dated 18.8.2000 held in favour of the society. But, the Vice Chairman DDA did not agree to the order passed by the Presiding Officer of the Lok Adalat, DDA. This necessitated the filing of the writ petition.

7. Noting the stand of DDA that as per law, it was entitled to charge land rate at the current prices when demand-cum-allotment letter was issued, the learned Single Judge noted that the entitlement of the writ petitioner society was at par with the societies to whom allotments were made in the year 1998 and that the confusion arose due to an error committed by the Registrar Co-operative Societies, but noting the letter dated 31.8.1992, contents whereof have been noted by us in para 3 above, held that there was no reason for DDA to have ignored the said letter and not included the name of the writ petitioner society when draw of lots were held in the year 1998. Thus, finding blameworthy, the action of the officers of DDA, to undo the discrimination which resulted against the writ petitioner society, the mandamus as afore-noted was issued.

8. Ms.Anusuya Salwan, learned counsel for DDA urges that DDA is entitled to charge land premium at the rate applicable in the year when the demand is raised.

9. It is true that DDA is entitled to charge the land premium as per the rate notified in the year when the demand-cum-allotment letter is issued, but that right of the DDA is subject to DDA acting justly, fairly, legally and without negligence. Surely, DDA cannot take the benefit of its own negligence, more so when the negligence of DDA is to the detriment of a third party.

10. Learned counsel for DDA has rendered no satisfactory explanation as to why DDA ignored the letter dated 31.8.1992 received by it from the Registrar Co-operative Societies. Counsel simply urges that since the consolidated list received by DDA excluded the name of the writ petitioner society, DDA acted bona fide.

11. When DDA had in its record a specific letter dated 31.8.1992 pertaining to the writ petitioner society, we see no justifiable cause for DDA to act pursuant to a general letter.

12. The view taken by the learned Single Judge is a reasonable and a plausible view and not only conforms to law but also conforms to equity. Equity plays an important role whenever an extraordinary jurisdiction of a discretionary nature is exercised by a Court of Record.

13. We find no infirmity in the impugned order and accordingly we dismiss the appeal.

14. Needless to state, DDA shall comply with the mandamus issued by the learned Single Judge.

15. No costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

October 28, 2009
Dharmender