

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

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+ LPA 134/2009

DDA ..... Appellant  
Through Mr. A.K. Verma, Advocate.  
versus

JAI KANWAR JAIN ..... Respondent  
Through Mr. Pankaj Vivek, Advocate.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

% **ORDER**  
**02.04.2009**

The appellant DDA has preferred this appeal against the judgment and order dated 18.12.2008 passed by Vipin Sanghi, J in WP(C) No. 1337 of 2008 whereby the learned Judge has allowed the writ petition, inter alia, directing that the appellant shall allot and deliver to the respondent (the writ petitioner) the Plot No. 163, Pocket No. 1, Block C, Sector 27, admeasuring 32 sq. mts. in Rohini, Phase IV Residential Scheme and in case the said plot already stands allotted to any other person, the appellant shall allot another similar developed plot in the same pocket / block / sector in Rohini Phase IV Residential Scheme to the respondent at the same rate at which the earlier allotment was made.

2.The facts are that the appellant DDA floated a scheme for allotment of plots of different sizes in Rohini in the year 1981. The said scheme was known as 'Rohini Residential Scheme, 1981'. The respondent was one of the applicants under the said 'Scheme'. The terms and conditions indicated eligibility criteria in the brochure. Clause 1(ii) of the eligibility conditions in the brochure, which is material for the purpose of this

appeal, provided as follows :

“The individual or his wife / her husband or any of his or 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. metres. an Application for allotment of plot can be entertained. Persons who own a house or plot allotted by the DDA on an area of even less than 65 sq. mtrs shall not however, be eligible for allotment.”

3.An allotment was made to the respondent vide demand-cum-allotment letter with block dates 11.6.2004 to 15.6.2004 of a plot admeasuring 32 sq. meters. The respondent made payment of the amount demanded by the DDA. Eventually, the allotment made to the respondent was cancelled by the DDA on 28.11.2007, after issuance of the show cause notice dated 17.9.2007 on the ground that the respondent, his wife and his son are already in possession of another property bearing No. 112, Pocket F-22, Sector-3, Rohini Residential Scheme, Delhi-110085 admeasuring about 90.00 sq. mtrs.

4.The cancellation has been challenged by the respondent in the writ petition. The respondent has not disputed that he, his wife and his son acquired the aforesaid plot bearing No. 112, Pocket F-22, Sector-3, Rohini, which admeasures 91.96 sq. meters. However, the submission of the respondent is that individual share of the respondent in the aforesaid plot is about 30 sq. meters, and even if the share of his wife is clubbed to his share, it comes to less than 65 sq. meters and thus he continues to be eligible for allotment of the plot in question in terms of the eligibility condition aforesaid. The case of the respondent that the plot has been

acquired by him not through an allotment by the DDA, but privately from the allottee of the DDA. Therefore, according to the respondent, the last part of the aforesaid clause, which provides that "*Persons who own a house or a plot allotted by the Delhi Development Authority on an area of even less than 65 sq. meters*", would not be eligible for allotment, would, therefore, not apply to the respondent's case.

5. On the other hand, the stand of the DDA is that it does not matter whether the respondent has acquired the other property directly from the DDA by way of allotment, or through power of attorney / sale by the original allottee of the DDA. So long as the source from which the property has originated is the DDA, it is sufficient to debar the respondent in terms of the last para of the aforesaid eligibility condition. In support of this argument, the reliance is placed on an unreported Division Bench judgment of this Court in ***Dal Chandra Sharma & Anr. v. Delhi Development Authority*** LPA No. 240/2007 decided on **30.09.2008**.

6. The learned single Judge has not agreed with the interpretation suggested by the DDA and held as follows :

"7. Clause (ii) of the eligibility condition, which is relevant for the purpose of this case, is in three parts. The first part broadly states that a person who himself or whose spouse or minor children own a house / residential plot in Delhi would not be eligible to apply under the scheme. The second part, however, narrows down the aforesaid ineligibility by prescribing that if the individual share of the person is below 65 sq. mts. He would not be ineligible. The third part in turn seeks to limit the scope of the second part of the said clause aforesaid, by providing that a person who owns a house or a plot "allotted by the Delhi Development Authority" would not be eligible, irrespective of the area thereof. It is not in dispute that the individual share of the petitioner in the jointly owned plot that is held by him, his wife

and his son comes to less than 65 sq. mts. Therefore, he is not rendered ineligible for allotment of a plot on the strength of the first part of Clause (ii), as he is saved by the second part thereof. However, in case, as contended by the respondent DDA, the petitioner can be said to be a person who owns a plot "allotted by the DDA" in respect of plot bearing No. 112, Pocket F-22, Sector 3 Rohini Residential Scheme, Delhi, he would forfeit his right to allotment of the plot now allotted to him. Having considered the submissions of the parties I am of the view that the expression "a plot allotted by the Delhi Development Authority", would not include a property acquired by the applicant through a private sale transaction which may originally have been acquired by the first owner through an allotment by the DDA. Such an interpretation is opposed to the plain language used in the eligibility condition which only talks of "a plot allotted by the Delhi Development Authority". This expression is used while dealing with the eligibility of the applicant. It would therefore mean that the allotment of the plot or house by the DDA has to be to the applicant. The person, to become ineligible under the Rohini Residential Scheme should himself be allotted a house or a plot by the DDA. The interpretation advanced by learned counsel for the respondent to the aforesaid clause is extremely wide and far-fetched. The respondent is seeking to read into the said clause words and meaning which is not borne out therefrom."

7. We are in complete agreement with the view taken by the learned single Judge that the case of the respondent would not fall in the last part of the Clause 1(ii) of the terms and conditions. The plot of land on which the respondent has built up the house has been purchased by the respondent from the open market by paying full market price and the respondent has not benefited from any subsidized allotment by the DDA. Merely because the title to the plot purchased by the respondent flows from the appellant does not disentitle the respondent from claiming benefit of the clause. The decision relied upon by the appellant in the judgment of the Division Bench in ***Dalchand Sharma's case*** (supra) is clearly distinguishable. In that case the relevant term of the auction

reads as under :

“any individual who is not a minor and is citizen of India may purchase lease hold rights in any one plot by bid in the auction, if he/she, his wife/husband or any of his/her minor and or dependent children or dependent parents or dependent minor sisters and brothers, ordinarily residing with him / her do not own in full or in part on lease hold or free hold basis any residential plot or flat or house or have been allotted on hire purchase basis a residential plot or house or flat to any one in the past, nor has transferred his / her membership in any co-operative house building society / CGHS in Delhi.”

8.The argument before the Division Bench was that the terms and conditions of auction do not debar anyone from participating in an auction if any other property is held on GPA or agreement to sell basis. It was urged that unless the terms and conditions specifically stipulate such a condition it cannot be said that such persons are barred from participating in the auction. The Division Bench confirming the order of the learned single Judge held that the disqualification would apply to GPA and agreement to sell, which are used by numerous people to acquire properties, without a formal conveyance or sale deed. We fail to appreciate as to how this decision has any bearing to the facts of the present case where the issue raised is about the applicability of the last portion of the clause 1(ii) of the terms and conditions.

9.In this regard we may also refer to a recent decision of the Supreme Court in **Chandigarh Housing Board v.Major-General Devinder Singh (Retd.) and another** (2007) 9 SCC 67 where the eligibility condition stipulated under the relevant housing scheme provided :

“The applicant should not have acquired a house / residential site anywhere in India through Government / semi-Government/ Municipal Committee / Corporation / Improvement Trust at concessional rate i.e. at reserved / fixed price, in his /

her own name or in the name of any dependent member of his / her family”.

10. While interpreting the aforesaid eligibility condition, the Supreme Court observed that the right to acquire property though not a fundamental right, is nevertheless a constitutional and human right. Before a person can be deprived of his right to acquire property, the law and / or contract must expressly or explicitly state so. The respondent had been allotted a flat by Army Welfare Housing Organization, registered society under the Societies Registration Act. The said organization undisputedly is not a government or semi government organization. The Supreme Court, keeping in view the settled principles of interpretation of deed / statute, held that the condition of eligibility must be construed literally. If a plain meaning can be given effect to, there is no reason as to why it should not be applied. Rejecting the argument of Chandigarh Housing Board that the expression ‘through’ must be given its due meaning in construction of the eligibility conditions and in view of the fact that some allotments at concessional rates had been made by the Ministry of Housing and Urban Development to the Societies, the respondents being part of the Society would come within the purview of the restrictions in the eligibility condition the Supreme Court held as follows :

“30. We are unable to accept the said submission. The word “through” in this context would imply “agency”. Thus only when a person acquires some property through the “agency” specifically mentioned therein, the condition of eligibility which, it will be a repetition to state, imposes a restriction on a valuable right of a citizen must be held to be applicable and not otherwise.

31. Acquisition of any property through any other source or through any other agency is not prohibited. Right to acquire property is a human right. A deed must be construed reasonably and in its entirety. If

acquisition of any property through any agency other than specified therein is not prohibited, evidently, the restriction clause in the condition of eligibility will have no application. The same, in our opinion, must be construed strictly. A clause impinging the right of a citizen must, in our opinion, receive strict construction and the principle of contextual interpretation will have no application in such a case.”

11.In the instant case from the bare reading of the relevant clause it is clearly seen that the exception carved out in the clause 1(ii) applies to persons who are allotted a house / plot by the DDA and not to the persons, who have purchased such plot or house from the open market.

12.In the circumstances, we do not see any reason to interfere with the order passed by the learned single Judge. The appeal is dismissed.

**CHIEF JUSTICE**

**SANJIV KHANNA, J**

**APRIL 02, 2009**

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