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

+ WP(C)NO.2213/2008

% ***Judgment Delivered on: 11.12.2009***

KANTI CHANDER BANSAL Petitioner

Through : Mr. Anurag Kumar Agarwal, Advocate

versus

D.D.A. Respondent

Through : Mr.Sangita Chandra, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Rule.
2. With the consent of the parties, the writ petition is set down for final hearing and disposal.
3. In the year 1981, the DDA had launched a scheme for allotment of plots at Rohini under Phase – III Residential Scheme. As per Clause V of the brochure issued by the respondent, the allotment was required to be made in phases spreading over a period of five years by conducting draw of lots amongst the eligible applicants. The petitioner applied for a plot measuring 48 sq. meters under LIG category in the year 1981 and deposited a sum of Rs.2000/-. The petitioner was working with the Indian Railways at the relevant time. He retired on 31.05.1994 but even at the time of his retirement the plot was

not allotted to him within the stipulated period of five years as per the scheme. On 16.03.2007, the petitioner received an allotment-cum-demand letter from the respondent after a wait of 26 years. As per the allotment-cum-demand letter, the petitioner was required to pay a sum of Rs.4,06,348.80 towards premium of the plot @ Rs.11,544/- for 32 sq. meters. The petitioner was required to pay 50 percent of the premium i.e. Rs.2,03,174/- by 13.07.2007. On 13.04.2007, the petitioner deposited the full payment of Rs.4,00,812/- with the respondent vide Challan No.10389207 dated 13.04.2007. The petitioner also submitted all the requisite documents with the respondent, as per the allotment-cum-demand letter. On the receipt of full payment from the petitioner, respondent issued a letter dated 07.05.2007 in respect of Plot No.137, Pocket 15, Sector 24, measuring 32 sq. meters under the LIG category in Rohini Residential Scheme, 1981. By means of the aforesaid letter, the respondent also asked the petitioner to submit certain other documents to enable the DDA to hand over the possession of the said plot to the petitioner. The petitioner had mentioned in one of his affidavits filed by him that earlier he was residing in Flat No.D-2, A/19-C, Janakpuri, Delhi, for the last seven years. While, in fact, the petitioner had purchased the flat in the year 1996 from his landlord. After detecting the said mistake the petitioner wrote a letter to the respondent on 17.06.2007 clarifying the facts that he resided in the said flat as a tenant till 08.05.1996 and thereafter the petitioner had purchased the same and a Conveyance Deed was executed in his favour on

23.05.2001. The petitioner also filed a fresh affidavit in this regard. Vide letter dated 21.08.2007, the petitioner requested the respondent to hand over the possession of the plot as he had already completed all the formalities. The petitioner received a show cause notice dated 06.12.2007 on the ground that the ownership proof submitted by the petitioner shows that the petitioner is the owner of property bearing no.D-2A/19C, Janakpuri, New Delhi. The petitioner was asked to give his explanation within 15 days from the date of issuance of the said letter and in case no reply was received the offer of allotment would be withdraw. In response to the show cause notice, the petitioner sent a reply dated 17.12.2007 wherein it was stated that the petitioner is an old man of 72 years of age and is suffering from loss of sight and hearing. The petitioner had also undergone an operation for vision due to which he could not detect the inadvertent mistake prior to 18.06.2007. The petitioner further stated that if his intention was mala fide or dishonest he would not have furnished the fresh affidavit on his own.

4. On 8th January, 2008, the respondent sent a final show cause notice to the petitioner. As per the show cause notice, taking into consideration the earlier reply and documents submitted by the petitioner, according to the DDA it was established that the petitioner is the owner of a property in Delhi from 23rd May, 2001 onwards. The respondent further asked the petitioner to give his explanation within 7 days from the day of issuance of the said letter and if no reply was received from the petitioner

the offer of allotment would stand withdrawn. Counsel for the petitioner submits that a detailed reply dated 15th January, 2008 was sent to the DDA. In the reply it was, inter alia, stated that the respondent cannot impose any further condition which did not exist in the initial brochure. Petitioner thereafter received a letter dated 5th March, 2008 from the DDA by which his allotment of the plot stood cancelled and the petitioner was called upon to furnish the original demand letter and copy of the challan within 15 days to enable the DDA to process his case for refund. Counsel for the petitioner submits that after his retirement the petitioner had faced acute problem of accommodation and he had no house to live in and the DDA had failed to allot any plot to the petitioner for the past 13 years which forced the petitioner to shift in a rented accommodation at Flat No.D-2A/19 C, Janak Puri, New Delhi. In the year 1996, the landlord of the said flat had asked the petitioner to vacate the flat as he intended to sell the flat. Faced with an option either to purchase the flat or to vacate the same, the petitioner decided to purchase the said flat from the landlord by paying the prevailing market price. In the year 2001, the petitioner applied for conversion of the said flat from leasehold to freehold and paid the requisite fee. Consequent thereto, a conveyance deed was issued in his favour on 23rd May, 2001. It is contended that even at that stage when the conveyance deed was executed, DDA had failed to offer any plot to the petitioner pursuant to his registration.

5. Counsel for the petitioner has strongly urged before this court that there is no restriction under any of the scheme of the DDA in buying a flat from the open market, neither any of the terms of the policy of the DDA makes such person ineligible for allotment of a plot under the aforesaid scheme. It has thus been submitted that merely because the petitioner had purchased a flat from a third party from the open market by paying the prevailing market rate, the petitioner would not become ineligible and the cancellation order is illegal, unreasonable and is liable to be quashed.
6. Per contra learned counsel for the DDA, the petitioner has relied upon the eligibility criteria for allotment. Clause 1 (ii) of the brochure reads as under:-

“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. 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. mtrs. shall not, however, be eligible for allotment.”

7. Counsel for the DDA submits that a bare reading of Clause 1 (ii) of the brochure would make it clear that the petitioner would be ineligible as the petitioner is in possession of a house which has been allotted by the DDA. Counsel for the DDA further

submits that the case of the petitioner would be squarely covered by clause 1 (ii) of the brochure and thus the action of the DDA in cancelling the plot is fully justified.

8. Counsel for the petitioner submits that the defence sought to be raised already stands rejected by this Court by a decision of a single Judge of this court in the case of **Jai Kanwar Jain vs DDA (W.P (C) No.1337/2008)**, which has been upheld by a Division Bench of this court in **DDA vs Jai Kanwar Jain** (LPA 134/2009). The facts of the case in hand are identical to the case of **DDA vs Jai Kanwar Jain (supra)**.

The learned Single Judge of this court had held as under:-

“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 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 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.”

9. The Division Bench of this Court had thereafter in LPA 134/2009, observed as under:-

“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 cooperative house building society / CGHS Delhi.”

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”.

10. While allowing the appeal the Division Bench has also placed reliance on a decision of the Supreme Court in **Chandigarh Housing Board v Major General Devinder Singh (Retd.) and Another (2007) 9 SCC 67**).
11. Taking into consideration that the petitioner was not allotted a house or a plot by the DDA but he had purchased the same from the open market, this case is fully covered by the decision of this court in **Jai Kanwar Jain vs DDA (supra)** which has been subsequently upheld by the Division Bench of this court in **DDA vs Jai Kanwar Jain (supra)**.
12. Accordingly, the present petition is allowed and the Rule is made absolute. Impugned letter bearing Ref.No.F.52 (319)/07/LSB (Rohini)46291 dated 5th March, 2008 is quashed. The respondents are directed to restore the allotment of the plot allotted to the petitioner vide letter bearing Ref.No.FS2

(319)/2007/RHN/LSB (Rohini) dated 7th May, 2007. Upon the petitioner complying with the necessary formalities, the respondents shall handover possession of the plot to the petitioner and execute the conveyance deed with respect to Plot No.137, situated at Pocket 15, Sector 24 admeasuring 32 sq. mts, Rohini, Delhi allotted under the Rohini Residential Scheme.

December 11, 2009

'msr/sjs'

G.S. SISTANI, J.