

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 23099-109/2005 & CM 15199/2005**

Date of decision : 12.02.2009

IN THE MATTER OF :

#MOHAN LAL WADHWA & ORS
!

... Petitioners
Through :Ms. S. Janani with
Mr. Deepak Goel, Advs.

versus

\$ D.D.A. & ANR.
^

..... Respondents
Through : Mr. Sushil Dutt Salwan with
Mr. Neeraj Choudhary, Advs.

CORAM

* **HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (ORAL)

1. The present writ petition is filed by the petitioners praying inter alia for quashing the order dated 6.1.2003 issued by the respondent/DDA to The Mount Everest Co-operative Group Housing Society Ltd. situated on plot bearing No.17, Sector-9, Dwarka, New Delhi-110075 (hereinafter referred to as 'the Society'). As per the

aforesaid notice, the Provisional Occupancy Certificate (hereinafter referred to as 'POC') granted to the Society, vide letter dated 1.1.2002, was revoked partially for one of the blocks i.e. the front block where 40 dwelling units were stated to be converted into 20 dwelling units. The petitioners numbering eleven, who are members of the Society, are aggrieved by the aforesaid order passed by the respondent/DDA.

2. It is the case of the petitioners that the Society was allotted land by the respondent/DDA on 18.12.1995. On 18.6.1996, a General Body Meeting was held, wherein it was decided that the Society shall comprise of 3 sizes of flats in the categories of HIG, MIG and Deluxe flats. It was also agreed that there would be 40 HIG flats, 40 MIG flats and 20 Deluxe flats. In pursuance to the aforesaid meeting of the General Body held on 18.6.1996, the Secretary of the Society issued a circular dated 13.8.1996 calling upon the members to exercise their option. Counsel for the petitioners states that the said circular specified that each of the Deluxe flats will be shared by two members of the Society, i.e. in two names of the same family or near relations. It is stated that on 15.10.1996, an Annual General Meeting of the Society was held and in the said meeting, the General Body approved the drawings of the building plan displayed by the architect, wherein

the total number of the flats to be built was decided as 100. Thereafter, all the members of the Society exercised their options.

3. As per the petitioners, those who had opted for Deluxe flats, were given four bedrooms flats, where there existed no partition wall to bifurcate the flats into two portions. On 1.1.2002, the respondent/DDA issued a 'POC' in favour of the Society. However, an inspection was carried out by the respondent/DDA on 10.7.2002 for the purposes of issuance of the Completion Certificate. In the course of the inspection, it was noticed that in the front block dwelling units comprising of 40 deluxe flats, had been amalgamated and converted into 20 dwelling units. On 16.09.2002, the President and the Secretary of the Society were called for a hearing by the respondent/DDA. In the hearing, the respondent/DDA was informed that the matter would be resolved in the General Body Meeting to be held in the very next month, i.e., in October, 2002. However, later on, the Secretary of the Society intimated the respondent/DDA later on that the then existing Managing Committee had tendered their resignation. In the meantime, vide letter dated 06.08.2002, the architect of the Society informed the Society that he had received a notice from the respondent/DDA about the changes carried out in the

front block comprising of deluxe flats. He requested the Society to either rectify the changes or reduce the membership of the Society from 120 to 100. Vide letter dated 02.12.2002, the architect of the Society also intimated the respondent/DDA that change in the dimension of the flats had been made by the Society, without his knowledge and without obtaining his consent.

4. Counsel for the petitioners submits that right from day one when the flats were handed over to the petitioners, there were no two flats and hence the question of amalgamation of two flats into one did not arise. She states that two members of the Society were collectively allotted a four bedroom deluxe flat and hence the notice issued by the respondent/DDA cancelling the 'POC' is illegal and liable to be quashed. She further submits that mischief has been played by the then Managing Committee of the Society. It is contended that the petitioners cannot be held responsible for the fault of the Managing Committee of the Society who indulged in fraudulent practices and did not approach the respondent/DDA with a new plan for its approval, before carrying out changes in the dimensions of the flat.

5. Counsel for the petitioner submits that the some of the

members who were not allotted any flat on account of collusion and connivance by the then Secretary of the Society, respondent No.4 herein, had filed a writ petition, which is pending consideration before the Division Bench. She states that at present, an Administrator has been appointed to manage the affairs of the Society and that he is appearing before the Division Bench in the aforesaid case wherein the Registrar of the Co-operative Societies has also been impleaded as a respondent. She, however, concedes that the relief sought in the present writ petition has not been sought in the pending writ petition before the Division Bench.

6. Counsel for the respondent/DDA submits that the respondent/DDA has issued the impugned notice purely on the basis of the records available with it and the inspection of the site carried out by its officers on 10.7.2002, during the course of which it transpired that the structures of 'A' category flats (deluxe flats) had been changed and 40 dwelling units in the front block had been converted into 20 dwelling units by removing the common wall between the two adjoining units. It is on account of gross violation of the sanctioned plans and on account of deviation without the approval or sanction of the respondent that the 'POC' issued on 01.01.2002 in respect of the

12 dwelling units was revoked. He submits that originally, the 'POC' was issued on 01.01.2002 for 120 dwelling units. The draw for 80 dwelling units was confirmed and the balance 40 dwelling units were regularized by the respondent/DDA, vide letter dated 1.5.2001. Subsequently, on verification being made, the architect of the Society confirmed the aforesaid position and expressed his ignorance about the structural changes made by the Society, which he stated, were without his knowledge or approval.

7. Counsel for the respondent draws the attention of this Court to the records containing the sanctioned plan granted to the Society. A perusal of the said plan shows that the plan was for a total number of 120 dwelling units. The records produced by the DDA also reveal the numbering plan dated 9.1.1997 submitted by the Secretary of the Society under his signatures affixed on 29.1.1997, as also the signatures of the architect. The said numbering plan shows that in Type 'A' category flats (deluxe flats), 40 dwelling units were duly numbered, there being six units on each floor. On inquiry, counsel for the respondent submits that the violation and the deviation in question is non compoundable and the respondent cannot issue a

‘POC’ in respect of the flats in question till the wall between each unit is reconstructed/restored to per the building plans sanctioned by DDA.

8. The original records produced by the respondent/DDA contains, amongst others, a scrutiny report prepared by the DDA. The said report reflects that a total number of 120 members were approved and the total number of dwelling units were shown as 120. It is pertinent to note that the scrutiny report, which is prepared for the purpose of granting ‘D’ Form to the Society, also indicates that the dwelling units as per sanctioned plan were 120 in number. The said fact is also borne out from the numbering plan.

9. The limited issue for scrutiny before this Court in the present proceedings is as to whether the impugned notice dated 6.1.2003 issued by the respondent/DDA, partially revoking the ‘POC’ in respect of the Society is legal and valid. The facts as narrated herein above show that the then Managing Committee of the Society, on the strength of a decision taken in a General Body Meeting held on 18.6.1996 decided to have only 20 units under the Deluxe category. The said decision was however contrary to the sanctioned plan and

the permissions obtained by the Society from the respondent/DDA in respect of the land allotted to it on 18.12.1995. Admittedly, 120 members were approved by the DDA. It is also undisputed that 120 dwelling units were sanctioned for construction, as per the sanctioned plans. Out of 120 dwelling units, there is no dispute that there exist 40 flats under HIG category & 40 flats under MIG category, thus leaving 40 flats in the remaining category, i.e. Deluxe Category ('A' category). The records reflect that the Society did not approach the respondent/DDA for approval of any change sought to be made by it in respect of the number of dwelling units to be constructed or the layout plan of the Society. Nor did the Society seek approval of the authorities for reducing the number of members from 120 to 100.

10. The decision of the General Body held on 18.6.1996 was followed by issuance of a circular by the Secretary of the Society calling upon the members to opt for the four bedrooms set to be shared by two members of the same Society. It is the claim of the petitioners that when they opted for the four bedrooms flat in the Deluxe category, as there was neither any partition nor any wall bifurcating the flat into two portions, hence there was no question of

any unauthorized deviation made by the allottees. Even if it is assumed that the petitioners are not at fault for the aforesaid predicament, it cannot be held that the impugned notice issued by the respondent/DDA is illegal or invalid. This Court, while exercising its powers of judicial review is required to examine the decision making process of the respondent/DDA prior to issuance of the impugned order dated 06.01.2003. The records made available by the respondent/DDA, clearly show that before taking such a decision, the respondent/DDA had called upon the then President and the Secretary of the Society, as also the architect to furnish an explanation. However, no satisfactory reply was furnished to the respondent/DDA. As a result, the respondent/DDA issued the impugned notice, based on its records and the inspection of the site conducted by it, on 10.7.2002. The said action of the respondent/DDA cannot be faulted in the given circumstances. Had the Society approached the respondent/DDA for approval of the decision of the General Body held on 15.10.1996, wherein the number of dwelling units proposed to be constructed by the Society were resolved to be reduced from 120 units to 100 units, the situation would have been different. However, in the absence of any document/correspondence to establish that the Society sought necessary sanctions from DDA to reduce the number of dwelling units

from 120 to 100, any unilateral action on the part of the Society to amalgamate 2 dwelling units into one, thus reducing 40 deluxe units into 20, was neither legal, nor valid. A direct fall out of the aforesaid amalgamation of 40 units has resulted in depriving 20 members of the Society of allotment of flats to which they were lawfully entitled.

11. Counsel for the petitioners submits that some solutions are being explored before the Division Bench in the pending writ petition. As this Court is only required to examine the legality and validity of the impugned notice dated 6.1.2003 in the present proceedings, it therefore refrains from trying to unknot the circumstances which led to such an aberration or the reasons thereof so that neither the interests of the petitioners herein, or the other members who are not present before this Court, are adversely affected. However, it is apparent from the records that the action of the respondent/DDA in issuing the impugned notice dated 6.1.2003 cannot be faulted.

12. In view of the foregoing facts and circumstances and on the basis of a scrutiny of the records made available by the respondent/DDA, the contention of the petitioner that the action of the

respondent/DDA in issuing the impugned notice dated 6.1.2003, is illegal, cannot be sustained. The plea of the petitioners that the erstwhile members of the Managing Committee of the Society conspired to play a fraud upon the petitioners is a matter which is stated to be pending before the Division Bench. In any case, the petitioners are at liberty to seek their remedies against the then existing Managing Committee of the Society for the wrong stated to have been done to them. However, in the present proceedings, it has to be held that the impugned notice dated 6.1.2003 does not suffer from any arbitrariness, illegality or infirmity, which requires interference by this Court. As a result, the relief sought in the present writ petition cannot be granted. The impugned order dated 6.1.2003 is upheld. The writ petition is dismissed, along with the pending application. There shall be no orders as to costs.

HIMA KOHLI,J

FEBRUARY 12, 2009
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