

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

+ **Writ Petition (Civil) No.11432/2009**

% **Date of Decision: 04.09.2009**

Smt.Bimla Sehgal Petitioner

Through Mr.R.S.Rana, Advocate

Versus

Delhi Development Authority Respondent

Through Ms.Sangeeta Chandra, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has impugned the decision dated 16th June, 2009 of the respondent cancelling the allotment of flat No.363, Pocket A-01, Sector-29 in Rohini Residential Scheme allotted in the name of Smt.Bimla Sehgal, petitioner on account of allotment of flat no.B-148, Brotherhood Apartment, H Block, Vikas Puri, New Delhi, earlier in the name of the petitioner.

The petitioner has admitted that she acquired flat No.B-148, Brotherhood Coop. Group Housing Society Limited vide membership No.23 dated 15th November, 1985 which flat was later on sold by her to

Shri Atul Kumar vide general power of attorney and agreement to sell dated 29th January, 1996.

According to the petitioner, the petitioner was allotted flat No.363, Pocket-A1, Sector 29, Rohini, Phase IV, Delhi by allotment letter dated 2nd/6th August, 2004.

According to the petitioner, the respondent had issued a letter dated 13th April, 2007 regarding concealment of allotment of flat No.B-148, Brotherhood Apartment. The petitioner's assertion is that he had given a reply dated 4th June, 2007 contending that at the time of registration of plot neither the petitioner nor her husband or children had owned in full or part on lease or freehold basis or on hire-purchase basis any flat in Delhi and even at the time of allotment of flat on 26th July, 2004 neither the petitioner nor any of her family members had any property on lease or freehold.

Learned counsel for the petitioner has relied on 2008 (106) DRJ 361, Jitender Pal Bhardwaj v. Delhi Development Authority. Perusal of the precedent relied on by the petitioner, it is apparent that the same is not applicable as in that case the area of the flat which was allotted was below the limit laid down by the respondent/DDA in the eligibility condition, i.e., less than 65 square meters and, therefore, on non-

disclosure of such a flat, the allotment of the flat later on could not be cancelled by DDA. Admittedly the plot No.B-148, Brotherhood Coop. Group Housing Society Limited, Vikas Puri, which was allotted to the petitioner earlier was not such a flat whose area was not within the restriction imposed for allotment of the subsequent flat.

Learned counsel for the respondent has pointed out the draft of the affidavit which the petitioner was required to submit at the time of taking the possession of Flat No.363, Pocket-A1, Sector 29, Rohini, Phase IV, Delhi, categorically stipulated that the petitioner had not transferred any residential plot/house or flat to and of any family members in any cooperative House Building Societies or a Group Housing Society. The relevant stipulation of the affidavit is as under:

“I have not transferred any residential plot/house of flat to and of my family member nor I have so transferred membership in any cooperative House Building Societies or a Group Housing Society in Delhi in favour of any of my family member.”

According to the learned counsel for the respondent, the petitioner concealed that information and has given an incorrect affidavit which would disentitle the petitioner from getting the possession of the subsequent flats. This has not been and could not be denied by the petitioner that such an affidavit was required to be filed by the petitioner at the time of taking possession of the subsequent flat.

The condition for giving such an affidavit has not been challenged by the petitioner.

Learned counsel for the petitioner has not been able to give any reasonable explanation for not giving an appropriate affidavit disclosing about the transfer of flat No/B-148, Brotherhood Coop. Group Housing Society Limited, Vikas Puri, Delhi on 15th November, 1985 to Shri Atul Kumar by GPA, Receipt, agreement to sell, registered will, agreement to appoint arbitrator dated 29th January, 1996. The petitioner in the circumstances was not entitled for allotment of second flat. The petitioner also concealed the material information from the respondent/DDA. The order of the respondent in the facts and circumstances, cancelling the allotment of flat to the petitioner cannot be faulted.

In the circumstances, the decision of the respondent/DDA dated 16th June, 2009 cancelling the allotment of Flat No. 363, Pocket-A1, Sector 29, Rohini, Phase IV, Delhi allotted in the name of the petitioner cannot be faulted. The writ petition is without any legal basis nor the petitioner is entitled for any of the reliefs sought by her. The petition is an abuse of process of law.

The writ petition is, therefore, dismissed. Parties are, however, left to bear their own costs.

September 04, 2009
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ANIL KUMAR, J.