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

% Judgment Delivered on: 25.05.2010

+ W.P.(C) 7060/2009

HARISH CHANDER SHARMA Petitioner
Through : Mr. Ravi Gupta, Sr. Adv. with Mr. Sunil Bainsla,
Adv.

versus

DDA & ANR. Respondents
Through : Ms. Manika Tripathy Pandey and Mr. Ashutosh
Kaushik, Advs.

**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. With the consent of counsel for the parties, writ petition is set down for final hearing and disposal.
2. Present petition has been filed by the petitioner under Article 226 of the Constitution of India and is directed against the order dated 26.6.2007 passed by the Estate Officer as also the order dated 10.2.2009 passed by the District Judge in an appeal filed by the petitioner.
3. Brief facts of the case, which have led to the filing of the present petition, are that in the year 1979 DDA launched a scheme for allotment of flats to be constructed by them. Sh. Dharam Pal Sharma, father of the petitioner, had booked a flat with the DDA in his name in the year 1979. In the year 1990, the father of the petitioner retired from service, till that date no allotment was made by the DDA in his favour. On his retirement, it became necessary for the father of the petitioner to acquire a property as he had no place to reside. Accordingly the father of the petitioner

became member of a Cooperative Group Housing Society, namely, Delhi Police Cooperative Group Housing Society Ltd. and purchased a flat bearing No.B-35-F, Sector 13, Rohini, Delhi, having an area of 49.98 sq. mts. or 59.83 sq. yards. In the year 1990 after a wait of 12 years a flat bearing no.DA/67-A, G-8 Area, Rajouri Garden, New Delhi, was allotted to the father of the petitioner. Possession letter was issued to the father of the petitioner on 25.2.1991 and a physical possession was delivered to him on 17.6.1991. On a complaint filed by one Sh. A.K. Mehrotra on 13.7.1992 with the DDA alleging that the allotment of the flat, in question, in favour of the father of the petitioner was liable to be cancelled as he was already in possession of a flat in the Cooperative Group Housing Society. As per the complaint, Sh. Dharmpal Sharma, father of the petitioner, was not eligible for the second allotment. Sh.Dharmpal Sharma, was served with a show cause notice on 9.10.1992 to which a reply was filed on 24.4.1993.

4. Counsel for the petitioner submits that DDA without considering the facts as also the contents of reply and also without any application of mind, issued a cancellation letter, by virtue of which, the flat allotted in favour of the father of the petitioner by the DDA, was cancelled on 3.8.1993. Subsequently, a notice under Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was received by the father of the petitioner on 23.8.1994. Reply to this notice was filed by the father of the petitioner on 4.10.1994. On 12.7.1993 father of the petitioner expired. Meanwhile, the petitioner had applied for conversion of the flat, in question, from lease hold to free hold, however, the Estate Officer passed an order of eviction on 26.6.2007. Appeal filed by the petitioner against the aforesaid order was also dismissed.
5. Counsel further submits that the entire proceedings before the Estate Officer suffered from material irregularities and are liable to be quashed. Counsel further submits that neither the Estate

Officer nor the appellate Court has given a finding that the petitioner was in fact an unauthorized occupant of the flat, in question.

6. Counsel for the petitioner submits that the allotment made in favour of petitioner's father by the DDA was cancelled on 03.08.1993, on the ground that the possession of the flat was taken fraudulently by concealing the fact that father of the petitioner was already in possession of the flat of Delhi Police Cooperative Group Housing Society Ltd. bearing No.B-35-F, Sector 13, Rohini, Delhi. It is contended that the DDA has relied upon clause 3 of the eligibility condition. The same is reproduced below:

“Eligibility Conditions:

3. The applicant must now own any residential house or plot in full or in part on lease hold or free hold basis in the Union Territory of Delhi, either in his/her own name or in the name of his/her, wife/husband or any of his/her minor and or dependent children or dependent parents or dependent minor sisters and brothers. If, however, individual share of the applicant in the jointly owned plot or land under the residential house is less than 75 sq. yds.; any application for allotment of flat can be entertained. In the event of allotment, the flat shall be used by the allottee for his/her own resident. Persons who own a house or plot allotted by the Delhi Development Authority on an area of even less than 75 sq. yds. shall not, however, be eligible for registration.”

7. Mr.Ravi Gupta, learned senior counsel for the petitioner submits that petitioner did not suffer from the eligibility bar as per clause 3 of the brochure, which contains the eligibility condition and thus, the father of the petitioner did not consider it necessary to submit the affidavit. He also submits that as per clause 3 of the brochure, the applicant must not own any residential house or plot in the Union Territory of Delhi, either in his own name or in the name of his / her wife / husband and / or minor children. If

however, individual share of the applicant, in the jointly owned plot or land under residential house is less than 75 sq. yards, the application for allotment of flat would be entertained. Counsel also submits that at the time of making the application neither the petitioner nor his wife or minor children were holding any flat or land in the Union Territory of Delhi. Counsel submits that only in the year 1990 when the father of the petitioner had retired, the father of the petitioner, with a view to secure shelter over the head of the family, became a member of Cooperative Group Housing Society and was allotted a flat and, in fact, by that time the DDA had not allotted any flat in the name of the father of the petitioner. Counsel next submits that the petitioner's father did not incur any disqualification as the flat allotted by the cooperative society, is less than 75 sq. yards and also the same was not allotted by or purchased from the DDA by petitioner's father.

8. Mr.Ravi Gupta, learned senior counsel for the petitioner further submits that even otherwise order passed by the Estate Officer and the District Judge are bad in law and are liable to be set aside, as the order passed by the Estate Officer shows complete non-application of mind; and that the estate officer has failed to satisfy himself with regard to the necessary ingredients of section 4 of the Public Premises (Eviction of Unauthorized Occupants), Act, 1971. Counsel for petitioner submits that the Estate Officer has failed to form a correct opinion that the petitioner is in authorized occupation of the premises. Mr.Gupta, learned senior counsel also contends that since the petitioner did not suffer from the eligibility bar, neither the order of cancellation could have been passed nor the Estate Officer could have come to the conclusion that the petitioner is an unauthorized occupant. Counsel for petitioner has relied upon ***Jitender Pal Bhardwaj Vs. Delhi Development Authority***, W.P.(C)No.5417/2007 and more particularly paras 3, 4 and 5, which read as under:

“3. The DDA took its own sweet time to make the allotment. With passage of time the needs of the petitioner to acquire a residence for himself and his family naturally became acute, since the DDA was not forthcoming with the promised plot. After 13 years of the petitioner’s registration under the Scheme, the petitioner finally purchased flat No.151A from an allottee/member of United India Cooperative Group Housing Society Limited known as United India Apartments, Mayur Vihar, Phase-I, Delhi-110091, on the basis of power of attorney, agreement to sell, Will etc. The said flat admeasures 62.22 sq. meters. On 23.11.2004 the said flat was converted from lease hold to free hold upon execution of a conveyance deed. Thereafter, the respondent issued a demand-cum-allotment letter with block dates 03.10.2005 - 7.10.2005 in respect of plot No.158, Pocket No.C-2, Sector-28, measuring 60 sq. meters in Rohini Phase-IV Residential Scheme. The petitioner paid the entire amount payable under the Demand-cum-Allotment Letter. He was required to furnish the undertaking and affidavit which too have been furnished by him.

4. On 28.5.2007, the respondent has sought to cancel the allotment of the aforesaid plot made to the petitioner on the ground that he has acquired the flat in the United India Apartment, Mayur Vihar Phase-I. Consequently, the petitioner has filed this writ petition to challenge the said cancellation.

5. Submission of learned counsel for petitioner is that the eligibilitycondition prescribed by the respondent in the Brochure was towards the eligibility for applying for registration under the Rohini Residential Scheme. The petitioner fulfilled the said eligibility conditions since neither the petitioner nor his wife or any of his minor children did not own any of his minor children owned in full or in part on lease hold or free hold basis any residential plot of land or house and neither of them had been allotted on hire-purchase basis a residential flat in Delhi/New Delhi or Delhi Cantonment at the time of making the application. Therefore, the application for registration was validly made. It is further argued that the petitioner has not breached the term of the undertaking which only states that neither he nor his wife nor any of his children, till they attain the age of majority, would acquire any other lease hold or free hold any residential plot/flat from the Delhi Development Authority/President of India/Municipal Corporation of Delhi. It is not even the respondent’s case that the petitioner or his wife or minor children have acquired, after the allotment of the aforesaid plot any residential plot/flat from the Delhi Development Authority/President of India/Municipal Corporation of Delhi. The flat in United India Apartments is

one acquired privately from the original allottee/member of the Company-operative Society and not from one of the named authorities. The real controversy has arisen on account of the fact that according to the respondent, the stand of the petitioner that neither he, nor his wife nor any of his minor children own in full or in part on lease hold or free hold basis or on hire-purchase basis any residential plot of land or acquired any house in Delhi, New Delhi or Delhi Cantonment, is incorrect.

9. Senior counsel for the petitioner submits that merely because a flat was allotted to the father of the petitioner by a Cooperative Group Housing Society would not fall within the exception clause as the cooperative society would not be covered by the exception clause and in any case the eligibility condition does not mention about a bar of allotment by any cooperative society.
10. Present petition is opposed by counsel for the respondent DDA primarily on the round that at the time when the allotment was made to the petitioner, the petitioner had willfully concealed the subsequent allotment made in his favour by the cooperative society and, thus, he had filed a false affidavit. Counsel further submits that the case of the petitioner would fall in the exception as per Clause 3 of the Brochure, according to which, even if a person owns a house or plot allotted by the DDA on an area of even less than 75 sq. yards, he shall not be eligible for registration with the DDA.
11. I have heard counsel for the parties and perused the pleadings and annexures filed thereto. The basic facts in this case are not in dispute. In the year 1975, father of the petitioner had applied to the DDA for allotment of a flat. No flat was allotted to the petitioner uptill 29.10.1990. It is also not in dispute that the father of the petitioner retired from service in the year 1990 and he had to vacate the Government accommodation. Since the allotment had not matured, the father of the petitioner became a Member of the Cooperative Group Housing Society and a flat having an area of 49.98 sq. mts., which is 59.83 sq yards, was allotted to him.
12. I find no force in the submission of counsel for the DDA that allotment of the subsequent flat by a Cooperative Group Housing

Society would also be covered by clause 3 of the brochure. I have carefully perused Clause 3, which has been extracted above. As per clause 3 the applicant would be ineligible for allotment in case he owns a house or flat allotted by the DDA even if it is less than 75 square yards. Admittedly, the allotment made to the father of the petitioner at Rohini is by the Delhi Police Cooperative Group Housing Society Limited and is of 49.98 square meters, which is less than 75 sq. yds. and thus would not disentitle the petitioner for a subsequent flat by the DDA. Clause 3 further disentitles a person of an allotment even if a person own a house or plot of an area less than 75 sq. yds. in case the allotment has been made by the DDA. In this case the allotment of the flat bearing No.B-35-F, Sector 13, Rohini, Delhi, having an area of 49.98 sq. mts. was made in favour of the petitioner by the Delhi Police cooperative Group Housing Society and not directly by the DDA.

13. Original record has been produced in Court, which contains the original affidavit. Admittedly in the affidavit, the petitioner has failed to mention that he has acquired a flat subsequently, which was 59.83 sq. yards from Delhi Police Cooperative Group Housing Society, however, while the petitioner was duty bound to disclose the said subsequent allotment in the affidavit but having regard to the fact that even if this information was supplied the petitioner would not have been disentitled to a flat from the DDA. Consequently, writ petition is allowed. The impugned order dated 10.2.2009 as also the order dated 26.6.2007 are quashed. In the facts of this case non disclosure of the flat by the petitioner itself cannot be a ground to dismiss the present petition.
14. Petition stands disposed of in above terms.

May 25, 2010
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G.S. SISTANI, J.