

* IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No.2004/2006

Date of Decision: October 28, 2010

BASANT KUMAR RASTOGI Petitioner
through Mr. Anand Yadav, Advocate with
Ms. Anita Tomar, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents
through Mr. Pawan Mathur, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the 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

REKHA SHARMA, J. (ORAL)

It is not disputed that the petitioner was allotted plot No.198, Pocket No.II, Block-A, Sector-30, measuring 32 square meters in Rohini, Phase-IV, Residential Scheme vide 'Allotment-cum-Demand Letter' dated October 05, 2005. In terms of the said letter, the petitioner was required to deposit a total sum of ₹ 1,63,296/-, out of which ₹ 51,825/- were to be deposited latest by December 05, 2005, 50% of the premium amounting to ₹ 81,648/- by February 03, 2006 and the balance 15% amounting to ₹ 24,494/- on receipt of further communication from the respondent-DDA.

Admittedly, the petitioner did not deposit the amount as claimed in the 'Allotment-cum-Demand Letter'. He says that he did not do so for the reason that apart from the printed conditions on the 'Allotment-cum-Demand Letter', the respondent added another condition by hand and it was to the effect that the allotment was "subject to non-allotment of Janta Flats". The petitioner wrote to the respondents seeking deletion of the said condition but when he did not hear from them he filed the present writ-petition praying for a direction to the respondents to accept the payment from him and further to handover possession of the flat to him, dehors the said condition.

The relevant rule which governs the entitlement or otherwise of the petitioner to the plot in question is Rule-17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981. It runs as under:-

"General restriction to allotment for residential purposes – Notwithstanding anything contained in these rules, no plot of Nazul land shall be allotted for residential purposes, to an individual other than an individual referred to in Clause (i) of Rule 6, who or whose wife or husband or any of his or her dependent children whether minor or not, or any of his or her dependent parents or dependent minor brothers or sisters, ordinarily residing with such individual, own in full or in part, on lease-hold or free-hold basis, any residential land or house or who has been allotted on hire purchase basis any residential land or house in the Union Territory of Delhi –
Provided that where, on the date of allotment of Nazul land,

- (a) the other land owned by or allotted to such individual is less than 67 square meters, or
- (b) the house owned by such individual is on a plot of land which measures less than 67 square meters, or

(c) the share of such individual in any such other land or house measures less than 67 square meters, he may be allotted a plot of Nazul land in accordance with the other provisions of these rules.”

The petitioner admits that he owned a Janta flat but submits that the area of that flat was less than 67 square meters. Hence, as per him, his case falls under the proviso to the aforementioned rule. The respondents also admit that the plot which the petitioner owned in his name was less than 67 square meters and yet contend that he is not entitled to the plot.

The question whether Rule 17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 disentitles the petitioner to the plot in question even if he was having a Janta flat measuring less than 67 square meters is no more an issue. It has been held by this Court in the case of *Krishan Bhagwan Versus Delhi Development Authority*, reported in 1999(50) DRJ 99 that a person who owns property which is less than 67 square meters does not become disentitled for allotment of a plot in Delhi. The same view was taken by a Division Bench of this Court in the case of *DDA Versus M.L.Aggarwal*, reported in 127(2006) Delhi Law Times 572 (DB). The said judgment of the Division Bench was taken in appeal to the Supreme Court and the Supreme Court vide its order dated November 26, 2009 has finally put the issue at rest by upholding the judgment of the Division Bench.

In view of the aforementioned judgments, particularly, the judgment of the Supreme Court, the respondent-DDA cannot any more contend that because the petitioner was in possession of a Janta flat

which was admittedly less than 67 square meters, he was not entitled to the plot as aforementioned.

Having failed on this score, the learned counsel for the respondents has made a feeble attempt to contend that as the petitioner did not deposit the sum of ₹ 1,63,296/- in terms of the 'Allotment-cum-Demand Letter' dated October 05, 2005, his right to the plot stood forfeited. Reference in this regard has been made to Clause-8 of the 'Allotment-cum-Demand Letter' which stipulates that in case an allottee fails to deposit the amount and the required documents within the specified period, the allotment would be treated as cancelled and the amount already deposited by him would be refunded on his request after deducting a sum of 10% of the earnest money in addition to the interest payable.

The aforementioned submission is liable to be rejected for the reason that since the petitioner was questioning the condition that made his allotment "subject to non-allotment of Janta flat", he could not be expected to deposit the amount as claimed by the respondents, for had he done so, he would have blocked his money without being assured of the fact that the condition as imposed would be deleted.

Let me also refer to an order of this Court passed on February 17, 2006 which reads as under:-

"x x x x x

1. Notice. Mr. Anil Sapra, Advocate accepts notice for DDA. Counter affidavit be filed within six weeks. Rejoinder be filed within four weeks thereafter.
2. Post on 07.7.2006.
3. Learned counsel for the petitioner states that petitioner is prepared to make the necessary

deposits without prejudice to the rights of the parties and states that the petitioner will not claim any equity in his favour if deposit is directed to be made.

4. It is open to DDA to avail benefit of offer made by the petitioner. It is made clear that if DDA does not accept the offer made by the petitioner, it would not be permissible for DDA to take a stand that due to non-payment, allotment stood cancelled. In that eventuality, on petitioner succeeding DDA would also have no right to claim interest.

x x x x x"

It is submitted by learned counsel for the petitioner that in view of the above order, the petitioner wrote to the Deputy Director (LSB), Delhi Development Authority, Rohini stating that he was ready to deposit the amount and that if the Delhi Development Authority was ready to accept the same in terms of the order of the High Court dated February 17, 2006, he be informed accordingly. It is further submitted that the respondent-DDA chose to keep quiet with the result that the petitioner though offered to deposit the amount in terms of the order of this Court dated February 17, 2006, the same remained unpaid.

Having regard to the aforesaid facts and the decision of this Court as well as of the Supreme Court with regard to Rule 17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, I hold, that the respondent-DDA was not justified in issuing the 'Allotment-cum-Demand Letter' dated October 05, 2005 with the condition that the same was "subject to non-allotment of Janta flat". Hence, I further hold that the petitioner is entitled to the plot in question, notwithstanding the fact that he was at some point of time having a Janta flat in his name measuring less than 67 square meters.

Accordingly, I direct the respondent-DDA to accept the full payment from the petitioner which he shall pay within four weeks from now and to handover possession of the plot to the petitioner within eight weeks thereafter. The respondent-DDA shall also execute a conveyance deed in favour of the petitioner.

The writ-petition is disposed of.

REKHA SHARMA, J.

OCTOBER 28, 2010
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