

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C).5849/2007

% **Judgment delivered on 4th May, 2010**

Smt.Neeta Rani Petitioner

Through: Ms.Richa Kapoor, Advocate

Versus

\$ DDA Respondent

^ Through: Ms.Rajdipa Behura, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ?
- 2 To be referred to the 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. The facts of the case as set out in this petition are that mother-in-law of the petitioner late Smt. Saroj Aggarwal (hereinafter referred to as the Original Allottee) was allotted a plot bearing No. 042, Pocket- 12, Sector-24, measuring 60 sq.mtrs. under the Rohini Residential Scheme on 21.11.1991. Smt. Saroj Aggarwal also applied to the DDA for allotment of a flat under the Seventh Self Financing Scheme, category II and deposited an initial amount of Rs.50,000/- along with the relevant documents on 27.10.1994. At the time of filling up the application form for the allotment of a flat under the Seventh Self Financing Scheme, category II, in column 8(a), the original allottee had disclosed the particulars of the land which had been allotted to her in the year 1991. The said column and the details given therein read as under:

“8(a) Have you or your wife/husband or any of your minor children or dependent parents or dependent minor sisters and brothers ordinarily residing with you own in part on lease hold basis or free hold any residential plot or land or a house or have been allotted on hire purchase basis a residential flat in Delhi, New Delhi or Delhi Cantt.(Say Yes or No)

Ans: Land of 60 sq.mrts. Allotted.

(b)If yes, please give details

Plot No. 042, Pkt 12, Sector 24 Measurement 60 sq. mtrs.(sixty sq.mtrs.) in Rohini Residential Scheme.”

3. During the period 1994-98 as per the Self Financing Scheme, flats were constructed out of the funds paid in installments by the allottee. On 24.8.1998, a draw of lots

was held in which Smt. Saroj Aggarwal was held successful for allotment of a flat bearing No. 44, Category II, Sector-3, Pocket-16, Dwarka under the Dwarka Residential Self Financing Scheme. As per the petitioner, Smt. Saroj Aggarwal deposited the payments towards the cost of the flat on time, as and when the demand was raised by the respondent.

4. It is contented by counsel for the petitioner that in fact, Smt. Saroj Aggarwal had paid an amount of Rs.15,599/- in excess which finds reflected in the fifth and final demand letter dated 19.11.1998 issued to the petitioner by the DDA at the time of the allotment of the flat. It is submitted that there is no amount due and payable by Smt. Saroj Aggarwal to the DDA. Smt. Saroj Aggarwal, during her life time had executed a Will dated 19.6.1996 by which she bequeathed all her movable and immovable properties in favour of her daughter-in-law, the petitioner herein. Smt. Saroj Aggarwal, during her lifetime had sold plot No. 42, Pocket-12, Sector-24, Rohini measuring 60 sq. mtrs. on 13.11.1997 even before the demand letter against the fifth and final installment in respect of the Self Financing Scheme Flat at Dwarka, was issued to her. On the demise of Smt. Saroj Aggarwal on 17.6.1998, by virtue of a Will dated 19.6.1996, the petitioner became the absolute owner of the flat bearing No. 44, Category II, Sector-3, Pocket-16, Dwarka. At the request of the petitioner, the respondent DDA mutated and transferred the flat in favour of the petitioner on 17.4.2003. During

the period 2003-07, the petitioner stated to have visited the office of the DDA and met senior officials. However, the possession of the flat was not handed over to the petitioner.

5. In July, 2007, the petitioner was informed vide letter dated 12.6.2007 that the allotment of the flat at Dwarka had been cancelled on the ground that Smt. Saroj Aggarwal had been allotted a plot of 60 sq. mtrs. and thus she was not eligible for allotment of the flat. It is stated in the letter that as per the eligibility criteria laid down, a person who has already been allotted a house/flat constructed by DDA or any other land owning agency even if it is less than 66.9 sq. mtr.(80 Sq.yds.) shall not be eligible to apply another flat under the Scheme.
6. Ms.Richa Kapoor, learned counsel for the petitioner, submits that the order of cancellation is bad in law, in view of the fact that the original allottee did not suppress or withhold her earlier allotment of 60 sq. mtrs. plot from the DDA and she had truthfully filled up Column 8(a) of the application form while applying for the flat under the Seventh Self Financing Scheme. She further submits that this application form was filled up on 27.10.1994 and thereafter finding the petitioner to be eligible, DDA included her name in the draw of lots which was held on 24.8.1998 and consequent thereto a specific flat was allotted in her name. She further submits that as per the Self Financing Scheme each allottee makes the payment in installments for the construction of the flats. In fact, the

flat allotted to the petitioner was constructed out of the funds made available by the mother-in-law of the petitioner to the DDA. She submits that the DDA demanded the installments from the petitioner which were deposited on time and the construction of the flat stands completed. It is submitted that, at this stage, the DDA is estopped from raising any objection which in any case is unfounded. She further submits that on her depositing the instalment, a right is created in favour of the petitioner which cannot be taken away by the DDA as the application form of the petitioner was processed by them and the petitioner was found eligible for allotment. She submits that even otherwise the plot at Rohini stands sold by the petitioner's mother-in-law during her life time and this is the only property available with the petitioner.

7. It is next contended that the petitioner, in any case, fulfills the eligibility criteria as laid down in the brochure of the Self Financing Scheme -VII, 1994. The eligibility criteria reads as under:-

"4. ELIGIBILITY

.....

(a)

(b) The applicant must not own any residential house or plot in full or in part on lease-hold or free hold basis in New Delhi, Delhi and Delhi Cantonment, either in his/her own name or in the name of his/her minor dependent children. If however, individual share of the applicant in the jointly owned plot or land under the residential house is less than 66.9 sq.mtr.(80 sq. yds.) he/she can apply under the Scheme.

(c) A person who has already been allotted a house/flat constructed by the DDA or any other land owning department, even if it is less than 66.9 sq. mtrs.(80 sq. yds.) shall not be eligible for another flat under this Scheme.”

8. Counsel for the petitioner submits that the petitioner would be covered both by clause 4(b) as also Clause 4(c). Ms. Richa Kapoor, submits that applying clause 4(b) of the eligibility criteria to the facts of this case would show that the original applicant at the relevant time owned a plot which was less than 66.9 sq. mtrs. and thus on this ground the cancellation letter is liable to be set aside. She submits that although her case would not be covered by clause 4(c) but in any case clause 4(c) only mentions a house/flat constructed by the DDA and does not mention a plot. Learned counsel for the petitioner has also placed reliance on a judgment of this Court in the case of **M. L. Aggarwal v. DDA**, 2003 VII AD (Delhi) 505.
9. The present petition is opposed by the learned counsel for the DDA on the ground that the mother-in-law of the petitioner at the relevant time owned a residential plot at Rohini and thus she was ineligible to apply for a flat under the Seventh Self Financing Scheme, Category-II. She has also relied upon the eligibility rule clause 4(b) & 4(c) in support of her submission that plot was allotted to the petitioner by the DDA and that even if it was less than 66.9 sq. mtrs., the petitioner has become ineligible. Learned counsel for the DDA relies upon a decision of the Apex Court in the case of **DDA v. Jitender Pal**

Bhardwaj, Special Leave Petition (C) No. 27181 of 2009 decided on 9.10.2009 in support of her contention that the intention of the DDA is to exempt only those who owned a residential house less than 65 sq. mtrs. provided the house is not allotted by the DDA. She submits that in this case, the plot has been allotted to the petitioner by the DDA under the Rohini Residential Scheme.

10. I have heard the learned counsel for the parties. In this case, the basic facts are not in dispute.
11. Initially, the mother-in-law of the petitioner had applied for a plot under the Rohini Residential Scheme and in the year 1991 she was allotted a plot measuring 60 sq. mtrs. in the year 1994. The original allottee applied for a flat under the Seventh Self Financing Scheme in the year 1994. In Column 8(a), she had truthfully disclosed that she has been allotted a plot of 60 sq. mtrs. under the Rohini Residential Scheme. Despite this disclosure having been made, the name of the petitioner was included in the draw of lots which was held in the year 1998 and she was declared successful and a specific flat was allotted to her. As per the Self Financing Scheme, the petitioner made the payments as per the stages of construction. As demanded by the DDA, all payments stand paid by the petitioner to the DDA as far back as in 1998. The possession of the flat was not handed over to the petitioner. During this period the mother-in-law of the petitioner died. She died on 17.6.1998 and on the basis of her Will the mutation of the flat was carried out by the DDA in her favour on

17.4.2003.

12. A short question which arises for consideration before this Court is whether the flat allotted in favour of the original allottee is liable to be cancelled according on the ground of eligibility bar as per clause 4(b) and 4(c) of the eligibility conditions? Clause 4(b) and 4(c) read as under:

“4. ELIGIBILITY

.....

(a)

(b) The applicant must not own any residential house or plot in full or in part on lease-hold or free hold basis in New Delhi, Delhi and Delhi Cantonment, either in his/her own name or in the name of his/her minor dependent children. If however, individual share of the applicant in the jointly owned plot or land under the residential house is less than 66.9 sq.mtr.(80 sq. yds.) he/she can apply under the Scheme.

(c) A person who has already been allotted a house/flat constructed by the DDA or any other land owning department, even if it is less than 66.9 sq. mtrs.(80 sq. yds.) shall not be eligible for another flat under this Scheme.”

13. A careful reading of clause 4(b) would show that a person who applies for allotment of a flat must not own a residential house or plot in full or in part either on lease-hold or free-hold basis in New Delhi, Delhi and Delhi Contonment in her own name or in the name of her minor dependent/children. If, however, individual share of the applicant in the jointly owned plot or land under the residential scheme is less than 66.9 sq. mtr. (80 sq. yds.) he/she can apply under the Scheme.

14. In this case, no doubt, the mother-in-law of the petitioner owns a plot which was less than 66.9 sq. mtrs.
15. As per Clause 4(c) such a person would be ineligible in case an allotment has been made of a house/flat by the DDA itself or any other land owing department, even if it is less than 66.9 sq. mtrs. (80 sq. yds.). Reading of clause 4(c) of the eligibility conditions shows that no embargo has been laid down with regard to a plot. A person would become ineligible in case he possesses a house/flat constructed by DDA. In this case mother in law of the petitioner was allotted a plot measuring 60 sq.mtrs. which is neither a flat nor any construction was carried out on it by the DDA, and thus it cannot be said that the mother-in-law of the petitioner was ineligible for making an application for allotment of a flat under the Self Financing Scheme. It may also be noticed that while clause 4(b) has clearly mentioned a residential house or plot the word 'plot' is missing in Clause 4(c).
16. Taking into consideration that the mother-in-law of the petitioner made an application to the DDA in the year 1994 clearly giving details of the plot having been allotted to her by the DDA, the DDA included the name of the mother-in-law of the petitioner in the draw of lots which was held on 24.8.1998 and thereafter accepted the installments for construction of the flat which were deposited by the petitioner within the time allowed and further, in the absence of any bar of owning a plot in terms of Clause 4(c) of the eligibility conditions, the

impugned communication dated 12.6.2007 stands quashed. DDA is directed to hand over the possession of the flat to the petitioner within a period of six weeks from the receipt of this order. The excess amount, if any, shall also be refunded to the petitioner within the same period.

17. The petition stands disposed of.

G.S. SISTANI, J.

May 04, 2010.

SV