

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

% **Date of decision 20th August, 2010**

+ **LPA 605/2010**

MEENAKSHI RAI KATARIYA Appellant

Through **Mr. Jayant Bhushan, Sr. Adv. with
Mr. C.Mohan Rao, Adv.**

versus

DDA Respondent

Through **Mr. Rajiv Bansal, Adv.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

Questioning the vulnerability of the order dated 3.8.2010 passed by the learned Single Judge in W.P.(C) No.5128/2010, the present intra-court appeal has been filed under Clause 10 of the Letters Patent.

2. The facts which are essential to be stated for adjudication of this appeal are that the appellant – petitioner (hereinafter referred to as ‘the appellant’) invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking a declaration that Clause 2(iv) of the DDA Housing Scheme, 2008 (for short ‘the Scheme’) is unconstitutional being opposed to public policy and also being in transgression of Section 23 of the Indian Contract Act, 1972. It was contended before the learned Single Judge that the definition of the term ‘family’ as defined in the Scheme

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LPA No. 605/2010

prohibits the members of the family to submit individual applications and imposes such terms and conditions that are fundamentally arbitrary which invite the frown of Article 14 of the Constitution of India. That apart, it curtails the rights of the appellant to enter into contract with the DDA as a consequence of which the provisions enshrined under Section 23 of the Contract Act is violated.

3. The aforesaid stand was resisted by the respondent – DDA contending, inter alia, that the appellant and her husband had applied under the Scheme and both their application were put in draw of lots and the appellant was the fortunate one to get draw in her favour. At that juncture, the authority noticed that both the husband and wife had applied which was in contravention to the policy and played foul of Clause 22 of the Scheme which deals with misrepresentation or suppression of facts and the consequences. It was also urged that once the appellant had participated in the Scheme knowing fully well the nature and tenor of the Scheme, it cannot take a somersault and challenge the Scheme.

4. The learned Single Judge took note of the fact that the appellant had applied, under the Scheme with eyes wide open and knew the very purpose and purport of Clause 22 of the Scheme and, therefore, she cannot turn back and challenge the Scheme. On the aforesaid foundation, the writ petition was dismissed.

5. Mr. Jayant Bhushan, learned senior counsel appearing for the appellant, submitted that the learned Single Judge has fallen into error by

not testing the policy on the ground urged but non-suited the appellant on the ground that she was aware of all the terms and conditions as enshrined in the brochure / scheme though it was necessitous to delve into the issues urged. It is further submitted that the Scheme / policy floated by the DDA is irrational as there is no reasonableness in such a definition of the 'family' as a consequence of which all the family members are clubbed together as a singular unit to submit a singular application. It is urged by Mr. Bhushan that it could have been reasonable had the scheme postulated that one family can have only one allotment but the restriction imposed qua family pertaining to submission of an application suffers from unreasonability and, therefore, invites the wrath of Article 14 of the Constitution of India. The learned senior counsel further propounded that the said stipulation runs counter to public policy and smacks of arbitrariness and denies an individual to make an offer and further violates the stipulations under Section 23 of the Contract Act. It is canvassed by him that the classification made excludes the other individual members of the family and such exclusion has no intelligible differentia and nexus with the object to be achieved, for the purpose of the scheme is to provide accommodation to the people without houses of their own and in that context to treat a family as a singular entity is sans objective.

6. Mr. Rajiv Bansal, learned counsel appearing for the respondent, in opposition of the aforesaid submissions, contended that regard being had to the equitable distribution of largesse, such a condition was engrafted in the Scheme and, therefore, no fault can be found with it. It is propounded that

once the appellant had made an endeavour to take the benefit of the Scheme and deliberately violated the terms and conditions of the Scheme, she cannot turn back to challenge its validity.

7. To appreciate the submissions raised at the Bar, we have carefully perused the Scheme dated 16.9.2008. Clause 2 of the said Scheme deals with eligibility. It reads as under:

"ELIGIBILITY

- I. The applicant must be a citizen of India.
- II. He / She should have attained the age of majority. For this an applicant should have completed 18 years of age as on the date of filling of the application for a flat.
- III. The applicant must not own any residential flat or plot in full or in part on lease hold or free hold basis in Delhi / New Delhi / Delhi Cantonment either in his / her own name or in the name of his / her wife / husband or in the name of his / her minor or dependent children. If, however, individual share of the applicant in the jointly owned plot or land under the residential house / flat is less than 66.9 sq. mtrs. (80 sq. yds.) he / she can apply under this scheme.
- IV. Only one person in a family can submit application. Family means spouse (if any), dependent / minor children, if any.
- V. One person can submit one application only.
- VI. A person who has already been allotted a plot or 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 to apply for another flat under this scheme.
- VII. There is no income limit. The applicant can apply according to his / her requirement and affordability.
- VIII. The applicant must have an account in any bank and the particulars must be filled in the application form.
- IX. Applicant must have Permanent Account Number

allotted under the provisions of Income Tax Act and the same must be quoted on the application form.”

8. The clause under attack is Clause 4. The proponement of Mr. Bhushan is that the singular application from a family which has been defined in the eligibility criteria plays foul of Article 14 of the Constitution of India being totally unreasonable and arbitrary and defies the terms of classification as accepted in law.

9. To understand and appreciate the entire gamut of challenge, it is appropriate to refer to certain authorities how the language employed in a statute should be understood. We are inclined to dwell upon the said arena as understanding the relevant purpose of the Act is also essential while testing the constitutional validity in certain spheres, may be not in all. In the case at hand, though we are not testing the validity of an Act passed by the legislature but a scheme introduced by an authority as a social measure, the said principle, no doubt, can be taken aid of. In this context, we may refer with profit to the decision in *Poppatlal Shah v. The State of Madras*, AIR 1953 SC 274, wherein B.K. Mukhrajia, J (as his Lordship then was) observed “Each word, phrase or sentence is to be construed in the light of the general purpose of the Act itself.”

10. In *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate*, AIR 1958 SC 353, it has been held thus:-

“the definition clause must be read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act.”

In this regard we may refer to the observations made by Tindal, C.J. in *Warburton v. Loveland*, (1832) 2 Dow and Cl (HL) 480 that where the language of an Act is clear and explicit, we must give effect to it, whatever be the consequences, for in that case the words of the statute speak the intention of the legislature.

11. In *Sheikh Gulfan v. Sanat Kumar*, AIR 1965 SC 1839, it has been held as follows:-

“19..... Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material. As Halsbury has observed, the words “should be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning apart from that context”....”

12. We have referred to the aforesaid decisions only to highlight that a provision has to be construed in the light of the general purpose of the Act itself. We are absolutely conscious that the petitioner has challenged the constitutional validity of the scheme on the backdrop of Article 14 but we have thought it apposite to understand the object of the scheme while dealing with the assail pertaining to the challenge made under Article 14. The submission of Mr. Bhushan, learned senior counsel for the petitioner is that the restriction imposed qua family pertaining to the submission of an

application suffers from unreasonability and creates an artificial classification which excludes the other individual members of the family without any purpose to be achieved. Thus, the core issue that emerges for consideration is whether by such a definition in the eligibility criterion Article 14 is violated. To elaborate, whether such a definition qua submission of an application is unreasonable and thereby also becomes arbitrary. On a close and studied scrutiny of the said Clause, it is manifest that the Scheme was floated and to remain effect from 6.8.2008 to 16.9.2008. Clause 2(II) stipulates that the applicant should have attained the age of majority on the date of filling of the application for a flat. It also requires that as per Clause 2(III), the applicant must not own any residential flat or plot in full or in part on lease hold or free hold basis in Delhi or other areas either in his / her own name or in the name of his / her wife / husband or in the name of his / her minor or dependent children. Clause 4 defines the family to mean spouse (if any), dependent / minor children, if any.

13. Presently, we think it apposite to refer with profit to certain citations in the context of Article 14 of the Constitution of India.

14. In *The State of Jammu & Kashmir v. Triloki Nath Khosa and Ors.*, (1974) 1 SCC 19, the Apex Court has observed as under:-

“31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints, or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterized by different and distinct attainments. Classification, therefore, must be truly

founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

32. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rulemaking authority on the need to classify or the desirability of achieving a particular object.”

15. In *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others*, AIR 1958 SC 538, the Apex Court has expressed thus:

“...It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question....”

16. In *Indira Nehru Gandhi v. Raj Narain and another*, (1975) Supp. SCC 1, the Apex Court has held that:

“This Court, at least since the days of Anwar Ali Sarkar’s case, has consistently taken the view that the classification must be founded on an intelligible differentia which distinguishes those who are grouped together from those who are left out and that the differentia must have a rational relation to the object sought to be achieved by the particular law.”

17. In *Union of India v. Parameswaran Match Works*, 1978 (2) ELT (SC), a three-Judge Bench of the Apex Court dislodged the decision of the High Court which had declared that the cut-off date fixed for grant of benefit of concessional rate of duty violated Article 14 of the Constitution of India. The Apex Court took a view that choice of a date as the basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the same, unless it is shown to be capricious or whimsical. Their Lordships further observed that there is no mathematical or logical way for fixing a particular date and the decision of the legislature or its delegate must be accepted unless the fixation of date is found to be very wide off the reasonable mark.

18. In *A.K. Behra v. Union of India and another*, JT 2010 (5) SC 290, their Lordships have opined thus:

“84. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed.

85. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be arbitrary, artificial or evasive.

86. The classification must not be arbitrary but must be rational, that is to say, it should be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a

reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.”

19. In this regard, we may refer to a Full Bench decision of the Orissa High Court in *Nityananda Guru and etc. etc. v. State of Orissa and others*, AIR 1983 Orissa 54 wherein the Full Bench was addressing whether the definition of ‘family’ in Section 37(b) of the Orissa Land Reforms Act (16 of 1960) being an artificial one shall have the effect notwithstanding ones notions of family or the meaning given to the expression in any other law. The said definition was challenged on the ground of being mechanical, inapt and unjust. A issue was raised with regard to the propriety and/or utility of the law. In that context, the Full Bench held thus:-

“7. We have to keep our sights clear by keeping the object of the legislation in the forefront. The Act was enacted manifestly with a view to imposing ceiling on agricultural holdings and acquisition and distribution of the surplus area to landless and weaker sections of the society and is in substance and reality an enactment relating to agrarian reforms. The statute has been intended to strike at vast concentration of land in the hands of a few and to act as a great equalizer by reducing inequality in holding of land between the haves and the have-nots (vide Thumati Venkaiah’s case, AIR 1980 SC 1568 and Nand Lal’s case, AIR 1980 SC 2097).”

In the said decision in the concurring opinion, the learned Chief Justice opined thus:-

“17. The undisputed purpose of the Act is to make “progressive legislation relating to agrarian reforms and land tenures” and with a view to implementing the Directive Principle in Art. 39 of the Constitution “that the operation of the economic system does not result in the concentration of wealth and means of production to the common scheme for fixing a ceiling for land to be possessed by a family and the surplus to vest in the State Government on payment of a small compensation for settlement of such land with persons belonging to the Scheduled Tribes or Scheduled Castes and failing them, with people of economically backward classes.”

20. We have referred to the aforesaid decision in extenso to highlight that the scheme has a purpose. The validity of the scheme has to be tested on the parameter whether the scheme has an intelligible rationale to achieve the purpose or it suffers from vice of discrimination.

21. The submission of Mr. Bhushan is that there is no rationale behind the said policy inasmuch as the family has been restricted to only submit a singular application and in the sweep of the family the spouse, dependant and minor children have been included.

22. Mr. Bansal, learned counsel for the respondent submitted that the same has been incorporated because if a particular family does not include spouse, minor and dependant children they would avail number of opportunities and if number of persons apply, the chances to have a uniform balance in the process of allotment gets curtailed and in a way crippled and, therefore, such a definition has been incorporated.

23. We have referred to certain citations that the purpose and object of an Act of legislature has to be seen scrutinized in the text and context and what

is the goal behind it to achieve. Though the observations have been made while testing the constitutional validity of the Act of the legislature, yet said principles would also apply while testing the validity of the scheme. We have also referred to certain authorities on classification and arbitrariness to highlight that equality and arbitrariness cannot co-exist for one is in the realm of rule of law and the other is in the sphere of whim and caprice. A submission has been advanced that a small family is entitled to submit one application, whereas a large family is also be entitled to submit a singular application which shows an effective endeavour has not been made to give a realistic meaning to the family. The definition of family in the scheme, as we understand, is a comprehensive one and it has not gone by the members or the largeness of the family. The family has been treated as a unit. A distinction between the large family or a small family is permissible regard being had to the nature of the scheme as the same relates to allotment of flats which are limited in number. The scheme provides the family as a singular unit which stands the test of rationality and also meets the intelligible criteria behind the conceptual criteria for classification. To elaborate, a particular family can only take a chance to have one flat.

24. To cite an example, supposing a family as defined under Clause 2(IV) has 10 to 15 members including spouse, dependent/minor children, they will be able to file 10 to 15 applications and another family which comprises only of husband and wife and a singular dependent will be able to file only three applications. When put in that comparison, the chances of getting successful at the draw / lot by 15 is more whereas it is less in the case of

three. To avoid that kind of imbalance, it has been restricted to a singular application qua family. Thus, it cannot be said that it is violative of Article 14 of the Constitution of India as the classification is rationale. Viewed from the aforesaid perspective, we are disposed to think that the scheme does not invite the frown of Article 14 of the Constitution of India.

25. As far as public policy is concerned, the policy involved in the Scheme is for allotment of flats. Regard being had to the number of flats which are available, it cannot be said it is violative of any public policy. As far as the question of violation of Section 23 of the Contract Act is concerned, we really fail to understand how the said provision is attracted.

26. In view of the aforesaid premised reasons, we do not find any substance in this appeal and, accordingly, the same stands dismissed without any order as to costs.

Justice Manoj

CHIEF JUSTICE

Manoj

MANMOHAN, J

AUGUST 20, 2010

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