

17 IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3298/2008 & CM 6337/2008

BINOJ CHERIAN Petitioner
Through: Mr. S.K. Rungta with
Ms. Pratiti Rungta, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.... Respondents
Through: Ms. Sangeeta Chandra, Advocate
for R-1/DDA.
Mr. Kahorngam Zimik, proxy counsel for
Ms. R.O. Bhutia, Advocate for R-2/GNCTD.

AND

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W.P.(C) 3417/2008 & CM 6537/2008

KUMKUM GUPTA Petitioner
Through: Mr. S.K. Rungta with
Ms. Pratiti Rungta, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents
Through: Ms. Sangeeta Chandra, Advocate
for R-1/DDA.
Mr. Kahorngam Zimik, proxy counsel for
Ms. R.O. Bhutia, Advocate for R-2/GNCTD.

AND

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W.P.(C) 3435/2008 & CM 6564/2008

NEELAM AMAR ISRANI Petitioner
Through: Mr. S.K. Rungta with
Ms. Pratiti Rungta, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents
Through: Ms. Manika Tripathy Pandey, Advocate
for R-1/DDA.
Mr. N.K. Jha, Advocate for R-2/ GNCTD.

AND

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W.P.(C) 3804/2010

NIRMAL VASISHT Petitioner
Through: Mr. S.K. Rungta with
Ms. Pratiti Rungta, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Sangeeta Chandra, Advocate.

AND

21. **W.P.(C) 3610/2008**

T.P. OBEROI Petitioner
Through: Mr. S.K. Rungta with
Ms. Pratiti Rungta, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Renuka Arora, proxy counsel for
Ms. Anusuya Salwan, Advocate for DDA.

CORAM: JUSTICE S.MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the order? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the order should be reported in Digest? | Yes |

ORDER
17.01.2011

1. The challenge in these petitions is to the policy dated 5th November 2008 and a consequent decision contained in circular dated 24th March 2009 of the Delhi Development Authority ('DDA') to the effect that the benefit of refund of 20% surcharge consequent upon the judgment dated 13th December 2007 of the Supreme Court in *Renu Bali v. DDA*, would be given only to original allottees and not the purchasers/general power of attorney (GPA) holders. The consequent decision of the Settlement Committee headed by the Chief Legal Adviser, DDA taken at the meeting of the said

Committee on 21st August 2009 rejecting the cases of the Petitioners for refund of 20% surcharge is also under challenge.

2. The Petitioners are purchasers of flats constructed by the Respondent DDA under the Self-Finance Scheme ('SFS') at Sheikh Sarai, New Delhi. In 1992 the Government of National Capital Territory of Delhi ('GNCTD') notified a conversion policy declaring the said flats to be freehold. It is stated that the sale transactions through power of attorney were recognized by imposing a penalty and collecting additional conversion charges. The flats in question were sold even before the final demand letter was issued by the DDA. The final demand letter required the original allottee to pay the current cost and also 20% surcharge over the disposal cost. Subsequently, on 23rd January 2001 DDA decided that while original allottees who had made payments upto 22nd August 1996 would be charged the old cost plus interest, the purchasers would not even if they had made payments by that date. These demand letters were challenged in Civil Writ Petition No. 5817 of 1998 and batch and filed in this Court. In ***Smt. Renu Bali v. Delhi Development Authority 108 (2003) DLT 392***, a learned Single Judge partly allowed the petition quashing the decision of the DDA to charge current cost from purchasers. The levy of 20% surcharge over and above the disposal cost was upheld. As regards the demand of current cost, the learned Single Judge held that no distinction could be made between original allottees and the purchasers, i.e. power of attorney holders.

3. Against the said judgment of the learned Single Judge, both the DDA as well as the private individuals preferred appeals. In ***Smt. Renu Bali v. DDA W.P.(C) Nos. 3298, 3417, 3435, 3610 of 2008 & 3804 of 2010***

128 (2006) DLT 204, a Full Bench of this Court disposed of the LPAs upholding the part of the judgment of the learned Single Judge with respect to 20% surcharge and modify the portion concerning payment of current cost. However, that part of the judgment of the Single Judge which invalidated the charging of current cost from the purchasers (power of attorney holders) was not modified.

4. One of the appellants in the leading cases, i.e., Smt. Renu Bali preferred a SLP against the judgment of the Full Bench. The Supreme Court by its judgment dated 13th December 2007 allowed the appeals filed by Renu Bali and other individuals and dismissed the appeals filed by the DDA. The Supreme Court effectively set aside the policy of the DDA in respect of charging of current cost as well 20% surcharge over the disposal cost. Both amounts were therefore required to be refunded in terms of the said judgment. However, in its policy decision dated 5th November 2008, the DDA decided that the consequent revised demand-cum-allotment letters, on the basis of old cost plus interest, as well as refund of the excess amount, would be given only to “the original allottees who were Petitioners in the abovementioned LPAs”.

5. It is stated that during the pendency of the SLP before the Supreme Court, the DDA issued revised demand letters in respect of the flats in question by giving the benefit of the judgment of the learned Single Judge as regards the current cost but required the Petitioners to pay the 20% surcharge. It is stated that while none of the present Petitioners were called upon to pay the current cost, the surcharge amount had to be paid by the Petitioners as a pre-

condition to grant of conversion and execution of conveyance deed. The DDA also required the Petitioners to deposit the capitalized service charges for granting execution of the conveyance deed. This was also deposited by the Petitioners. Mr. S. K. Rungta, learned counsel for the Petitioners, states that during the pendency of these petitions, the DDA granted conversion, executed the conveyance deed and put the Petitioners in possession of the flats in question. Consequently, the only issue that remains to be considered is whether the DDA is justified in collecting the 20% surcharge from each of the Petitioners even after the judgment of the Supreme Court and thereafter refusing to refund the same to the Petitioners on the ground that they are not the original allottees but subsequent purchasers. Mr. Rungta, referred to the judgment of the learned Single Judge, the Full Bench of this Court and of the Supreme Court in the ***Renu Bali cases***, and submitted that after the judgment of the Supreme Court there was no justification in the DDA collecting 20% surcharge from each of the Petitioners. Further, since the Supreme Court upheld the legal position that no distinction could be made between the original allottees and the subsequent purchasers as regards current cost, on the same analogy there could be no distinction made between the original allottees and purchasers as regards refund of the 20% surcharge either.

6. Appearing on behalf of the DDA, Ms. Sangeeta Chandra submitted that the distinction drawn between the original allottees and the subsequent purchasers for the purposes of refund of 20% surcharge was based on a rational criteria. It is submitted that the DDA had no privity of contract with the subsequent purchasers and, therefore, it was not obliged to refund any

amount to them. Secondly, it is submitted that the DDA was not informed by the original allottees that they had sold the flats in question to the Petitioners even during the pendency of the writ petitions in this court. According to her, the Petitioners before this Court in the earlier round of litigation in the *Renu Bali cases* were all original allottees. Where the original allottees were represented by the Special Power of Attorney ('SPA') holders, it was only for the limited purpose of conveying to the Court that the SPA holders were in possession of the flats and nothing more. She submitted that false affidavits had been given to the DDA by the original allottees that they had neither sold nor parted with the possession of the plot. It subsequently transpired that they had done so. Therefore, the DDA is justified in not only collecting 20% surcharge from the GPA holders, (subsequent purchasers) even after the Supreme Court judgment and further justified in declining to refund the surcharge amount to the subsequent purchasers.

7. The above submissions have been considered by this Court. It is not in dispute plain that this Court invalidated the DDA's decision to charge current cost from the purchasers (GPA holders) even if they had made payments upto 22nd August 1996 while charging original allottees who made payments by that date the old cost plus interest. Para 105 of the judgment of the learned Single Judge in the *Renu Bali cases* reads as under:

“105. Is it really open to the respondent Authority to differentiate in the matter of restoration between registrants in different parts of Delhi under the same scheme when their allocation in the particular area was a matter of chance? In my considered view, answer to this question would be in the negative. This must be

distinguished from a matter of inclusion in prices of a particular element as the case of 20% surcharge, which is a matter of price determination with a particular object. In the present case, there appears to be no object at all. The only basis is that the flats in South Delhi are more valuable and, thus, DDA should make a greater profit from the same. It is not disputed that it is open to the respondent to make some profit, but that is not the sole object of DDA, and that too without any particular social object in mind. The party is penalised for delay in making payment of Installments by charging of high interest rates. The office orders starting with the office order of 16.8.1996, 5.11.1998, 31.3.1999 and 23.1.2001, all deal with the same aspect. The last circular deals with not giving the benefit to South Delhi allocatees, who are power of attorney transaction holders. There are power of attorney transaction holders even in other areas and there is no doubt that the same is in violation of the terms of allocation. However, DDA itself has regularised the whole thing by repeatedly coming out with policies for conversion to freehold recognising the concept of power of attorney transaction, but subject to payment of 1/3rd extra surcharges. In any case, if in a particular case, there is inordinate delay and the power of attorney holder had come into the picture at the last moment, it was open to the DDA to have refused restoration for cogent reasons to be recorded.”

8. It is plain from the above paragraph that the learned Single Judge did not approve of the distinction sought to be drawn by the DDA between original allottees and subsequent purchasers, i.e., the GPA holders in the manner of charging current cost. In other words, if the DDA was not going to charge current cost from the original allottee who had made payment by 22nd August 1996, it could not charge current cost from the GPA holder who made such payment by the same date as well. While it was open to the DDA to decline restoration of the allotment in favour of the GPA holder, it was

not justified discriminating against the GPA holder, in whose case the allotment was not cancelled, for the purposes of charging the current cost. This decision of the learned Single Judge was not upset by the Full Bench. It was also approved by the Supreme Court in its judgment dated 13th December 2007. The Supreme Court further invalidated the charging of 20% surcharge as well.

9. After the judgment of the Supreme Court, there can be no justification for the DDA deciding not to refund of the 20% surcharge to the purchasers. The submission that the invalidation of the charges of current cost and 20% surcharge only applied to original allottees and not the GPA holders (purchasers) is legally untenable. It is components of the cost of a flat that have been invalidated. This cannot change on the basis of whether the said amounts have been paid by the original allottee or the purchaser.

10. The submission put forth on behalf of the DDA that it could deny refund of 20% surcharge to the subsequent purchaser since it had no contractual relationship with the subsequent purchaser, also does not merit acceptance. Such an argument made by it in respect of charging the current cost has already been rejected by this Court and the said order was not upset by any superior court. Consequently, this Court is unable to countenance the policy of the DDA to decline the refund of 20% surcharge to the subsequent purchasers.

11. It was stated on behalf of the DDA that since an affidavit had been given by the original allottee stating that the flat in question had not been still

transferred or its possession had not been parted with, and such assertion was found to be false since by that date the sale had already taken place, the denial of the refund to the subsequent purchaser of the surcharge levied was justified. It is strange that despite the said affidavit of the original allottee, the DDA nevertheless granted conversion in favour of the subsequent purchaser and also executed the conveyance deed in favour of the purchaser. Clearly, the DDA chose not to act upon the affidavit of the original allottee asserting to the contrary. This was sought to be explained by learned counsel for the DDA by stating that the requirements for the purposes of conversion were different from the question of payment of surcharge and since all the requirements for conversion were satisfied, such conversion could not be denied to the subsequent purchaser. This Court is unable to accept the inconsistent stands of the DDA. The DDA having not acted upon the affidavit of the original allottee and having granted conversion in favour of the subsequent purchaser cannot rely upon the said affidavit to deny refund of 20% surcharge.

12. In each of the cases on hand, it appears that as a condition for the grant of conversion and grant of the conveyance deed, the DDA collected 20% surcharge from each of the Petitioners even after the judgment of the Supreme Court in the *Renu Bali cases*. This Court finds no legal justification for this action of the DDA. The 20% surcharge was no longer an amount 'due' to the DDA. It simply could not be collected after its invalidation by the Supreme Court.

13. For the aforementioned reasons, it is held that the decision of the DDA,
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as contained in its Office Order dated 5th November 2008 consequent upon the judgment of the Supreme Court dated 13th December 2007 in the ***Renu Bali case***, to the extent it declines the refund of 20% surcharge to the subsequent purchasers is held to be unsustainable in law and is hereby set aside. The consequent circular dated 26th March 2009 and the decision of the CLA Committee dated 21st August 2009, on the aspect of refund of 20% surcharge, are also set aside.

14. The DDA will now refund to each of the Petitioners the amounts constituting the 20% surcharge collected from each of them in regard to their respective flats, within a period of six weeks from today.

15. The writ petitions are allowed in the above terms with no order as to costs. Applications also stand disposed of.

S. MURALIDHAR, J.

JANUARY 17, 2011
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