

UNREPORTABLE

* IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No.6356/2007

Reserved on: April 26, 2011

Date of Decision: May 26, 2011

B.B.JAIN

..... Petitioner
through Mr. R.K.Saini, Advocate with
Mr. Sitab Ali Chaudhary & Mr. Vikas
Saini, Advocates

versus

DELHI DEVELOPMENT AUTHORITY Respondent
through Ms. Manisha Tyagi, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the 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'?

REKHA SHARMA, J.

The petitioner is aggrieved by the action of the respondent, namely, the Delhi Development Authority (in short, called the DDA) in cancelling the allotment of a plot allotted to him under Rohini Residential Scheme, 1981, on the ground that under the terms and conditions of the Scheme, he was not eligible to the plot as he had already been allotted a flat by the DDA in Motia Khan against registration of 1976.

It is not disputed that the petitioner got himself registered with the DDA in 1976 for allotment of one LIG flat and that LIG Flat No.78A, Ground Floor, Motia Khan, Delhi was allotted to him vide allotment letter dated August 16, 1988. It is also not disputed that the plot area on which the said flat is built is less than 65 Square meters. However, before the aforesaid flat at Motia Khan was allotted to the petitioner, the DDA came out with a scheme called the "Rohini Residential Scheme, 1981" for allotment of plots to the general public. The Scheme was applicable subject to fulfillment of certain terms and conditions, one of which was as under:-

"(i) xxx xxx xxx xxx xxx

(ii) The individual or his wife/her husband or any of his/her minor children do not own in full or in part on lease-hold or free-hold basis any residential plot of land or a house or have not been allotted on hire-purchase basis a residential flat in Delhi/New Delhi or Delhi Cantonment. If, however, individual share of the applicant in the jointly owned plot or land under the residential house is less than 65 sq. mts., an application for allotment of plot can be entertained. Persons who own a house or a plot allotted by the Delhi Development Authority on an area of even less than 65 sq. mts. shall not, however, be eligible for allotment."

The petitioner in addition to his application for allotment of a flat also applied for allotment of a plot under the aforementioned Scheme of 1981 and in his application form, he did disclose the fact that he was registered with the DDA in 1976 for allotment of one

LIG flat. He also gave the details of the registration. The name of the petitioner was put in the draw of lots by the DDA and vide Allotment-cum-Demand letter dated August 06, 2004, he was informed that a 60 Square meters plot bearing No.778, Pocket B-3, Sector-29, Rohini has been allotted to him at a total cost of ₹ 4,09,860/- at PDR of ₹ 6831/- per Sq. Meter. The petitioner made the payment as demanded from him, but when he asked for possession of the plot in question, the same was not given to him. He was told that since a flat had already been allotted to him in Motia Khan on November 19, 1987, he was not entitled for any further allotment. Not only this, he was given show-cause notice dated November 08, 2006, alleging therein that inspite of the fact that he was allotted flat No.78A in Motia Khan Residential Scheme, he filed false affidavits dated August 05, 2005 and September 21, 2006 stating therein that neither he nor his wife nor any of his children owned in full or in part any residential plot/flat in Delhi. Hence, he was called upon to show-cause why the plot allotted to him in Rohini Residential Scheme be not cancelled and action for perjury or other offences arising out of the false affidavits be not initiated against him. The petitioner in reply to the show-cause notice relied upon the proviso to Rule 17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter called the "Nazul Land Rules of 1981") and on the basis of the same asserted that he was entitled to the plot in

question regardless of the fact that he was allotted an LIG flat at Motia Khan. Furthermore, he denied that he filed false affidavits. The reply given by the petitioner did not find favour with the DDA resulting in the cancellation of the plot allotted to him in Rohini.

From what has been noticed above, two questions arise for consideration. Firstly, whether the proviso to Rule 17 of the Nazul Land Rules of 1981 entitles the petitioner to the allotment of a plot in Rohini, and secondly, whether the petitioner filed false affidavits to secure allotment of the plot in question?

Let me, before I proceed any further, reproduce Rule 17 of the Nazul Land Rules of 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.”

Undoubtedly, the aforesaid Rule disentitles an individual to a plot on Nazul land if he, his wife or husband or any of his or her dependent children, his or her dependent parents or dependent minor brothers or sisters, ordinarily residing with such individual, own in full or in part any residential land or house in the Union Territory of Delhi. However, the Rule is not absolute. It carves out an exception as contained in the proviso. The proviso lays down that if on the date of allotment of Nazul land, the land owned by such individual is less than 67 square meters or the house owned by such individual is on a plot of land which measures less than 67 square meters, then the substantive part of the Rule shall not apply.

The petitioner was allotted flat No.78A on August 16, 1988. It was on a plot of land of less than 67 square meters. It is true that Rohini Residential Scheme of 1981 did stipulate that a person who owned a house or a plot allotted by the DDA even on an area measuring less than 60 square meters was not eligible for allotment, but on the coming into force of Rule 17 of the Nazul Land Rules

of 1981, this stipulation became otiose, the reason being that the Rules have a statutory force and any stipulation contrary to the Rules is of non-est.

In any case, the question, whether a person who owns a plot or a flat which is less than 67 square meters is entitled to a plot under the proviso to Rule 17 of the Nazul Land Rules of 1981, is no longer *res-integra*. It has been held in the case of *Krishan Bhagwan Versus Delhi Development Authority*, reported in 1999(50) DRJ 99 that such a person is entitled to a plot of land. The same view has been taken by the 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 passed in Civil Appeal No.4362 of 2007 has finally put the issue at rest by upholding the judgment of the Division Bench.

In view of the aforementioned judgments, the DDA cannot any more contend that because the petitioner was allotted a flat which, admittedly, is less than 67 square meters, he was not entitled to the plot as aforementioned.

On the question, whether the petitioner filed false affidavits, I feel that the respondent/DDA is making much ado about nothing. Having regard to the fact that when the petitioner applied for allotment of a plot under the Rohini Residential Scheme of 1981, he

clearly stated in his application form that he had got himself registered for allotment of one LIG flat in the year 1976 and also furnished his registration number as well as other details, he cannot be accused of suppression of a material fact. True, that he filed affidavits dated August 05, 2005 and September 21, 2006, stating that he or his family members were not owning in full or in part a residential flat/plot in Delhi, but the contents of those affidavits have to be and should be read keeping in view the proviso to Rule 17A of the Nazul Land Rules of 1981 and should be understood to mean that the petitioner or his family members were not owning a flat or plot in terms of the proviso to Rule 17A. In any case, if the DDA was so particular about the contents of the affidavits, it should have issued a revised format of the affidavits after the coming into force the aforesaid Rules.

For the fore-going reasons, I allow the writ-petition and consequently, direct the DDA to handover possession of the plot allotted to the petitioner under the Rohini Residential Scheme of 1981 if full payment in terms of the Scheme has been received by it.

REKHA SHARMA, J.

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