

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

Date of decision: 21st September, 2011

+ **W.P.(C) 7433/2007**

% **SMT. PARVEEN SALDI** **Petitioner**
Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advs.

Versus

DDA **Respondent**
Through: Mr. Ajay Verma, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the letter dated 20.09.2007 of the respondent DDA to the petitioner communicating to the petitioner that the allotment under the Rohini Residential Scheme, 1981 earlier made to the petitioner of plot ad-measuring 32 sq. mtrs. bearing No.607, Pocket A-1, Sector-30, Rohini, New Delhi had been cancelled for the reason of the husband of the

petitioner being already the owner of property No.64, Lok Vihar Apartment, Vikas Puri, New Delhi – 110 018. The petitioner also seeks mandamus to the respondent DDA to deliver possession of the said flat and to execute title deeds with respect thereto in favour of the petitioner.

2. Notice of the petition was issued and vide *ex parte* order dated 08.10.2007 which was made absolute on 06.04.2009, the operation of the cancellation stayed.

3. The petitioner was a registrant in April, 1981 in the Rohini Residential Scheme of the year 1981 of the respondent DDA. The brochure of the said Scheme, under the heading Terms & Conditions *inter alia* provided as under:

“(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. mtrs., 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. mtrs. shall not, however, be eligible for allotment.”

4. No allotment in pursuance of the aforesaid registration was made till the year 1991. The husband of the petitioner was a member of Lok Vihar Cooperative Group Housing Society and was by virtue of the said membership allotted flat No.64 in the multi-storied apartments constructed by the said Society at Vikas Puri, New Delhi and put into possession thereof on 10.08.1991. It is the uncontroverted case of the petitioner that four storied flats have been constructed by the said Society on plot of 64.37 sq. mtrs. and thus the share in land of each flat is 16 sq. mtrs.

5. That the name of the petitioner, as per the priority number in the Scheme aforesaid allotted to her, was put in the draw-of-lots held on 26.07.2004 and the plot aforesaid allotted to her and a demand-cum-allotment letter of the plot aforesaid issued to her.

6. The petitioner made payment of the first two installments, with the third installment being payable upon being put into possession of the land / plot. However, since enquiries at this stage made by the respondent DDA

from the petitioner revealed the allotment of the flat aforesaid at Vikas Puri to the husband of the petitioner, the petitioner was not delivered possession and the allotment cancelled as aforesaid.

7. The case of the petitioner is that the DDA (Disposal of Developed Nazul Land) Rules, 1981 which came into force in September, 1981 i.e. after the Scheme aforesaid, *inter alia* provide as under:

“17. 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 squares 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.”

8. The petitioner thus contends that though as per the Brochure of the Scheme the cut off limit was 65 sq. mtrs., the same stood increased under the Rules to 67 sq. mtrs. and further that though as per the brochure, the eligibility was to be decided as on the date of registration, under the Rules aforesaid, the condition prescribed therein was to be satisfied on the date of allotment. It is contended that the flat allotted to the husband of the petitioner is less than 65 sq. mtrs. or 67 sq. mtrs. and thus the petitioner remains eligible for allotment.

9. The respondent DDA in its counter affidavit has pleaded, that the petitioner in the first instance concealed the allotment of the flat in the name of her husband and did her best to mislead the respondent DDA and only owing to persistence of the respondent DDA ultimately admitted to the allotment in the name of her husband and that the allotment in her favour was rightly cancelled since she is not eligible under the Rules. Reliance in this regard is placed on affidavits filed by the petitioner in 2004 to the effect

that neither she nor her husband had been allotted any residential plot / flat in Delhi.

10. A perusal of the order sheets in the present case shows that the parties were awaiting the outcome of one M.L. Aggarwal's case then pending in the Supreme Court. However, after the said case was disposed of by the Supreme Court, while the counsel for the petitioner contended that this petition was entitled to succeed owing to the judgment therein, the counsel for the respondent DDA controverted and owing whereto the petition was listed for hearing.

11. A perusal of the order dated 26.11.2009 of the Apex Court in Civil Appeal No.4362/2007 titled ***DDA Vs. M.L. Aggarwal*** shows that the Supreme Court therein approved of the finding of this Court that the "allotment would be covered by Rule 17 of Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981..... as on the date of draw-of-lots the aforesaid Rules had become operative" and refused to interfere with the judgment of this Court "in the peculiar facts and

circumstances of the case.”

12. The counsel for the petitioner however today has referred to, i) judgment dated 26.04.2011 in W.P.(C) No.6356/2007 titled ***B.B. Jain Vs. Delhi Development Authority***; ii) judgment dated 28.10.2010 in W.P.(C) No.2004/2006 titled ***Basant Kumar Rastogi Vs. Delhi Development Authority***; iii) judgment dated 07.08.2008 in W.P.(C) No.5417/2007 titled ***Jitender Pal Bhardwaj Vs. Delhi Development Authority***; and to iv) ***Delhi Development Authority Vs. Jitender Pal Bhardwaj*** MANU/SC/1768/2009, all holding, allotment / possession of a flat less than 67 sq. mtrs. to be not making a registrant ineligible for allotment. He thus contends that the matter is no longer *res integra*.

13. The counsel for the respondent DDA, with reference to the order dated 08.04.2010 in Civil Appeal No.12/2005 titled ***Delhi Development Authority Vs. Madan Lal Garg***, contends that the same question was expressly left open. He has however otherwise not been able to controvert the other judgments relied upon by the counsel for the petitioner and as per

which the petition is entitled to succeed. The counsel for the respondent DDA has however contended that the petitioner having indulged in falsehood, concealment and misrepresentation and in filing false affidavits and having disclosed the correct facts only when forced to, is not entitled to any discretionary relief.

14. I am unable to agree. The affidavits and representations of the petitioner are to be seen in the context of the prescription of eligibility. In this regard I may also notice that the Brochure of the Scheme in which the petitioner had applied, required eligibility to be decided at the time of registration as is apparent from the eligibility qua income being as per the income of the year 1980-81. The counsel for the respondent DDA has not been able to show any provision in the said brochure providing for the eligibility to be decided at the time of allotment. Though the judgments aforesaid appear to suggest that the Rules would override the terms and conditions in the Scheme but I am unable to find any *non obstante* clause as “notwithstanding anything to the contrary contained in any other contract” in the Rules. The Brochure containing the terms and conditions was in the

nature of a contract and the contract between the respondent DDA and the petitioner was of the petitioner or her husband or her minor children as on the date of registration not owning any residential plot of land or a house and which they admittedly did not. It thus cannot be said that the petitioner indulged in any such falsehood so as to deprive her of any equitable relief though her apprehensions of being not treated as eligible for the reason of allotment of the flat to her husband are evident.

15. I may also notice that it is also the contention of the counsel for the petitioner that there is no power in the respondent DDA of cancellation of the allotment, once made. However, the Brochure of the Scheme also provided the draft of the lease deed to be executed of the plot to be allotted. One of the terms of the said lease deed was of the same being liable to cancellation if obtained by misrepresentation, misstatement or fraud. The counsel for the petitioner upon being confronted therewith contends that the said Clause had not come into operation since lease had not been executed. However, attention of the counsel is invited to Rule 42 of the Rules whereunder the allotment is on the terms and conditions contained in the

lease to be executed. Thus the said terms and conditions come into force immediately on allotment. It has been so held in ***K.K. Birla Academy Vs. DDA*** 115 (2004) DLT 361 & ***Bansi Lal Kanhaiya Lal Vs. DDA*** MANU/DE/3297/2011. There is thus no merit in the argument that the respondent DDA could not have cancelled the allotment.

16. The next question which has been enquired is as to the interest if any payable by the petitioner for the balance price which has not been paid. The counsel for the petitioner contends that no interest is payable since the petitioner was willing to make the payment and which could not be made owing to the wrongful cancellation by the respondent DDA. I am however unable to agree. The petitioner having continued to enjoy the monies, is liable to pay interest. Though I have suggested interest @12% per annum but the counsel for the petitioner has invited attention to the order dated 29.08.2011 of the Division Bench in LPA No.709/2010 titled ***Delhi Development Authority Vs. Vinod Bhojwani*** where the Division Bench had directed the rate of interest to be 6% per annum.

17. The petition is therefore allowed. The cancellation by the respondent DDA of allotment of plot No. 607, Pocket A-1, Sector-30, Rohini, Delhi in favour of the petitioner is set aside / quashed. Subject to the petitioner depositing the balance price in terms of the demand-cum-allotment letter earlier issued together with interest at the rate of 6% per annum from the date when the payment was due and till the date of payment and complying with other formalities in this regard, the respondent DDA is directed to put the petitioner into possession of the plot and to also execute the documents of title with respect to the plot in the name of the petitioner, all within three months of today.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 21, 2011

‘gsr’
(corrected and released on 13.10.2011)