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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.587/2011

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20th December, 2011

NARESH SAINI

..... Appellant

Through : Mr. R.S. Mahla, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents

Through : Mr. Ajay Verma, Advocate with Mr.
Mukesh Kumar, Advocate for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.23049/2011 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

C.M. No.23048/2011 (condonation of delay)

For the reasons stated in the application, delay of 164 days in
re-filing the appeal is condoned.

Application stands disposed of.

+ RFA No.587/2011 and C.M. No.23047/2011 (stay)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 8.3.2011. By the impugned judgment, the trial Court dismissed the suit of the appellant/plaintiff filed for declaration, permanent and mandatory injunction for preventing the Delhi Development Authority (DDA) from acting upon the cancellation of the plot No.280, Pocket-6, Block B, Sector-7, Rohini, New Delhi admeasuring 25.9 sq. mtr.

2. The facts of the case are that respondent No.2/ defendant No.2 Sh. Ruhat Kumar Dewan, and who remained exparte in the trial Court, was allotted the suit plot on 14.9.1982. The possession of the plot was handed over to the respondent No.2/defendant No.2 on 11.7.1986. The allotment of the suit plot to the respondent No.2/defendant No.2 was pursuant to an application made by the respondent No.2/defendant No.2 under a 1981 scheme of the DDA. As per the admitted rules of the DDA, there cannot be allotment of an immovable property to a person, if such person has already been allotted another immovable property by the DDA. It was found that the respondent No.2/defendant No.2 had applied under an earlier 1979 scheme of the DDA for a flat, and had in fact been allotted a flat on 29.7.1985, and physical possession of which flat was taken by the

respondent No.2/defendant No.2 on 8.5.1986. The respondent No.2/defendant No.2, in violation of the rules, took possession of the suit plot on 11.7.1986, and to which he was not entitled to, having already been allotted and having taken possession of the flat on 8.5.1986 pursuant to 1979 scheme. The rights in the suit plot were transferred to the appellant/plaintiff by means of certain documentation dated 11.4.1990. These documents are an agreement to sell, General Power of Attorney etc. dated 11.4.1990. The appellant/plaintiff claims to have raised construction on the plot and obtained sewerage, water and electricity connections and thereafter applied for conversion of the plot from leasehold to freehold with the respondent No.1/DDA. On this application for conversion being made, the respondent No.1/defendant No.1 rejected the application on the ground that respondent No.2/defendant No.2 had no right in the plot as the allotment in the name of respondent No.2/defendant No.2 was cancelled after issuing of show cause notices dated 24.6.1988, 25.10.1990 and 30.3.1992. The defendant No.1/respondent No.1 also took up a stand that building plan dated 6.10.1987 is a forged and fabricated document as no building plan can be sanctioned unless the lease deed is executed and registered and which has not been done in the present case. It was argued that the documents which are relied upon on behalf of the appellant/plaintiff are hit by Section 17 of *RFA No.587/2011*

the Registration Act, 1908. The respondent No.1 further averred in its pleadings that the respondent No.2/defendant No.2 was informed about the cancellation of the allotment of the suit plot vide letter dated 23.10.1992.

3. The trial Court has dismissed the suit by giving findings including of the documents dated 11.4.1990 being the agreement to sell, general power of attorney, receipt etc cannot be looked at as they are not registered documents. I may note that Supreme Court recently in the case of ***Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana and Anr. 183 (2011)*** ***DLT 1*** has also held that the documents being the agreement to sell, general power of attorney etc being an endeavour to defraud public authorities and public revenue would be treated as void unless the documents have already been implemented by the public authorities i.e. unless the documents had already been implemented by the public authorities, such type of documentation is void and cannot be acted upon. Therefore, in the facts of the present case the subject documents dated 11.4.1990 are void in that no ownership interest in the suit property is created by virtue of such documents in view of the recent judgment of the Supreme Court in the case of ***Suraj Lamp Industries (supra)***.

4. The trial Court has also dismissed the suit by giving the finding that the defendant No.2/respondent No.2 obtained allotment of plot by ***RFA No.587/2011***

concealment of facts, inasmuch as he was not entitled to allotment and possession of the suit plot as he had already obtained possession of the flat pursuant to 1979 scheme. Some of the relevant observations of the trial Court are contained in paras 17 to 20 and which read as under:-

“17. On merits, admittedly, in the year 1979, the defendant No.2 got registered with the defendant no.1 regarding the flat in the scheme 1979. Again in the year 1981, the defendant no.2 got registered himself with the defendant no.1 for the plot in the scheme 1981. Vide demand cum allotment letter dated 14.09.1982, the defendant no.2 was allotted the plot. In the meanwhile, the flat was allotted to the defendant no.2 on 29.07.1985 and physical possession of the flat was given to him on 08.05.1986. Subsequently, the defendant no.2 took over the possession of the plot on 11.07.1986. It is also an admitted position that allotment of plot was cancelled by the defendant no.1.

18. Case of the defendant no.1 is that the defendant no.2 got registered himself for the plot under the scheme 1981 without disclosing that he had already applied for the flat also under the scheme 1979. Under the scheme 1981, a special category was made for the applicants who had already booked under the scheme 1979 to get themselves transfer in the scheme 1981 on completion of certain formalities. While the defendant no.2 was allotted the plot and demand cum allotment letter dated 14.09.1982 was issued to him, it was specifically made clear that allotment of the plot was subject to surrender of HUDCO/General registration. Even the possession letter dated 26.04.1984 regarding the plot mentioned the same condition. However, the defendant no.2 did not turn up to take up the possession of the plot. In the meanwhile, the defendant no.2 was allotted the flat and he took the possession of the same after completing the formalities. He also filed an affidavit dated 30.09.1985 deposing therein that he or his family members did not possess any residential plot in Delhi and he had not got

himself registered under the Scheme 1979. As such, the defendant no.2 had concealed the material fact and thereby succeeded in getting the allotment of the plot. Not the lease, after taking the possession of the flat, he approached the defendant no.2 for issuance of possession letter regarding the plot on the plea that he did not get the earlier possession letter. On the said pretext, the possession letter was re-issued and the defendant took the possession of the plot on 11.07.1986. The defendant no.1 proved certificate of registration dated 30.06.1980 Ex.DW1/1, allotment letter regarding flat dated 29.07.1985 Ex.DW1/2, possession letter dated 24.04.1986 regarding flat Ex.DW1/3, certificate regarding the allotment of the flat and the defendant no.2 entitlement to obtain electricity and water connection in the flat Ex.DW1/4, affidavit of the defendant no.2 dated 30.09.1985 Ex.DW1/5, brochure of Rohini Scheme Ex.DW1/6, application form dated 30.03.1981 in respect of the plot Ex.DW1/7, allotment letter dated 14.09.1982 in respect of the plot Ex.DW1/8, Undertaking dated 28.02.1984 by the defendant no.2 Ex.DW1/9, possession letter dated 26.04.1984 in respect of the plot Ex.DW1/10, letter dated 06.05.1986 from defendant No.2 to DDA Ex.DW1/11, possession letter dated 15.05.1986 regarding plot Ex.DW1/12, possession slip dated 11.07.1986 in respect of the plot Ex.DW1/13. Letter dated 25.02.1984 is Ex.DW1/PX. In the affidavit dated 30.09.1985 Ex.DW1/5 filed by the defendant no.2 before the defendant no.1, he specifically deposed that he was not registered under the Scheme, 1979. The plaintiff has failed to rebut the same.

19. On the contrary, case of the plaintiff is that if there had been any concealment of fact by the defendant no.2, then the flat which was issued subsequent to the allotment of the plot should have been cancelled and not the plot. Firstly, the plaintiff has no locus standi to challenge the cancellation of the allotment of the plot in favour of the defendant no.2. Secondly, the defendant no.2 applied under the Scheme 1979 at the first instance and then under the Scheme 1981 wherein he was supposed to disclose the fact of the earlier registration, which he had not done so. The defendant no.2 again concealed the said fact despite the specific requirement under the allotment letter and the possession letter

which was subject to surrender of earlier registration document. As such, the defendant no.2 applied for the plot and succeeded in getting the allotment and possession of the same on the basis of the information which was false in nature and contrary to the eligibility of the scheme 1981. As such, the allotment of plot under the scheme 1981 was subjected to the earlier registration under the Scheme 1979 and not vice versa. Therefore, even if the flat was allotted later in time, but the same was allotted as per the scheme 1979, while the allotment of plot under the scheme 1981 was obtained on concealment of facts and therefore, was liable to be cancelled.

20. It is the specific case of the defendant no.1 that before initiating the action for cancellation of the plot, vide show cause notice dated 24.06.1988 Ex.DW1/14, the defendant no.2 was directed to show cause why the allotment of the plot was not cancelled. The said notice was followed in another show cause notice dated 25.10.1990 Ex.DW1/15. Once the defendant no.2 failed to respond to the same, then vide letter dated 23.10.1992 Ex.PW-1/16 the allotment of the plot was cancelled. The said notices were issued to the defendant no.2 at the address furnished by him. in his cross examination, the plaintiff showed his ignorance as to the public notice dated 30.03.1992. As such, an adverse inference can be drawn against him. It is no where the case of the plaintiff that before purchase of the plot, as alleged, any permission was sought from the defendant no.1 or any intimation was given to the defendant no.1 to that effect. It implies that the plot was cancelled by the defendant no.1 in favour of the defendant no.2 on following the principal of nature justice.” (underlining added)

5. Learned counsel for the appellant/plaintiff argued that the impugned judgment is illegal and the action of the respondent No.1/DDA is also illegal in cancelling the plot inasmuch as the allotment of the plot by the respondent No.1/defendant No.1/DDA caused the appellant to pay valuable

consideration to the respondent No.2/defendant No.2 for obtaining rights under the same which makes the allotment of the suit plot to defendant No.2 irrevocable. It is argued that when the plot was allotted to the defendant No.2 on 14.9.1982 and possession was handed over on 11.7.1986, there was no cancellation of the suit plot on account of an earlier allotment of flat having been made to the respondent No.2 and therefore there cannot be cancellation of the suit plot by the respondent No.1/DDA.

6. I am afraid, I am unable to agree with the arguments as raised on behalf of the appellant/plaintiff inasmuch as if the reliefs as prayed for by the appellant/plaintiff are granted, the same will result in respondent No.1/defendant No.1/DDA being forced to allot two immovable properties to a person although the same is clearly barred by the rules. The object of the policy of the DDA to give one immovable property to a person was to see that denizens of Delhi have a roof over their heads and if I allow the present appeal it would mean that I must give allotment of two immovable properties to a person so that the appellant/plaintiff can claim benefit of transfer of rights in the second immovable property which was illegally got allotted by the respondent No.2/defendant No.2 from the DDA. I cannot give my imprimatur to the illegal allotment of the suit plot and as asked for by the appellant/plaintiff. Of course, the appellant/plaintiff has been caused

loss, however, this loss has been caused to him not by the respondent No.1/DDA but by the respondent No.2/defendant No.2 who has defrauded him and against whom the appellant/plaintiff will have appropriate rights, but surely not qua the suit plot. It is an undisputed fact emerging on the record that respondent No.1/defendant No.1/DDA was not aware of the fact that respondent No.2/defendant No.2 had already been allotted a flat and had obtained possession of that flat when the suit plot was allotted and possession of which was handed over. The respondent No.2/defendant No.2 therefore concealed facts and obtained allotment and possession of the suit plot from the respondent No.1. If I give my stamp of approval to entitlement of the respondent No.2/ defendant No.2 to the plot merely because such appellant/plaintiff has acquired rights in the same, it would lead to many fraudulent litigations and gross violation of the policy of the DDA of entitlement of a person to only one immovable property from the DDA.

7. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

DECEMBER 20, 2011

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