

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 16.11.2011

+ **W.P.(C) 8102/2011 & C.Ms. No.18221-22/2011**

IN THE MATTER OF :

IFTIKHAR KAMIL AND ANR Petitioners
Through : Mr. Ranjan K. Chourasia, Adv.

versus

DDA AND ANR Respondents
Through : Ms. Sangeeta Chandra, Adv. for DDA.

**CORAM
HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may 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 |

HIMA KOHLI, J. (ORAL)

1. The present petition is filed by the petitioners praying *inter alia*, amongst other reliefs, for quashing of public notices dated 15.10.2011 and 12.11.2011 issued by the respondent/DDA to auction plots No.C-32A, and C-32B, situated at Friends Colony, Delhi as being bad in law. The

present case has a chequered history, relevant facts of which are taken note of herein below before dealing with the submissions made by the learned counsel for the petitioners.

2. It is the case of the petitioners that the properties of the father of petitioner No.1 were acquired by the Government, vide notification dated 11.8.1972, and as per the then prevalent policy, he was entitled to allotment of an alternative plot in lieu of the acquisition, which was not allotted to him till the date of his death, i.e., 14.7.1976. On 15.4.1996, petitioner No.1 submitted an application for allotment of an alternative plot of land in lieu of the acquired properties of his father. On 31.5.1996, the petitioners were informed by the officials of the respondent/DDA about the allotment of a plot measuring 800 sq. yards on perpetual lease hold basis, being property bearing No.C-32, Friends Colony East, New Delhi. On 14.6.1996, as required by the respondent/DDA, the petitioners deposited a sum of ₹18,00,000/- with it. On 17.7.1996, the Deputy Director (L.A.) Residential, DDA, issued a letter to the petitioners informing them to take over possession of the plot after the registration of lease deed and that a handing over and taking over memo would be prepared on 26.07.1996 and given to the petitioners.

3. On 6.9.1996, the petitioners received a letter from the respondent/DDA along with the proforma of a perpetual lease deed for getting the same stamped. The petitioners submitted the said document

before the Collector of Stamps, Delhi and duly deposited a sum of ₹1,02,019/- in the treasury on 25.9.1996. Thereafter, in January, 1997, the petitioners appeared before the respondent/DDA for completion of other requisite formalities and subsequently got the lease deed registered. However, as physical possession of the subject plot was not handed over to the petitioners despite repeated requests for the same, they filed a writ petition registered as WP(C)No.2831/1999 praying *inter alia* for directions to the respondent/DDA to handover physical possession of the plot in question to them.

4. The aforesaid writ petition filed by the petitioners came to be dismissed, vide order dated 2.3.2006 (Annexure P-7), wherein after taking note of the stand of both the parties, it was observed by the learned Single Judge that no relief in respect of the plot in question could be granted to the petitioners as it was a case of total fraud. It was further noted that in ordinary course, once DDA receives a recommendation from the Govt. of NCT of Delhi (Land and Building Deptt.) for allotment of an alternative residential plot, only then would the allotment of a plot be made by the Director (Land), DDA. But in the present case, the allotment was not made by the Director (Land), but by an Assistant Accounts Officer, whose letter of allotment was relied upon by the petitioners. With the aforesaid observations, the writ petition filed by the petitioners was dismissed with further directions to the Vice

Chairman, DDA that he would consider refunding the amount deposited by the petitioner, and that in case he is of the opinion that the petitioners were a party to the fraud, the amount would not be refunded, but instead be transmitted to the Prime Minister's Relief Fund.

5. Aggrieved by the aforesaid order dated 2.3.2006, the petitioners preferred an *intra* court appeal registered as LPA No.662-663/2006, which was dismissed by the Division Bench, vide order dated 17.5.2007. Counsel for the petitioners states that an SLP was preferred by the petitioners against the aforesaid judgment of the Division Bench dated 17.5.2007, which was dismissed at the stage of admission itself vide order dated 7.12.2007. It is submitted by the counsel for the petitioners that the learned Single Judge could not have gone into the question of fraud in the earlier writ petition filed by the petitioners and such an issue ought to have been left for adjudication in the criminal proceedings. He further states that even though adverse orders were passed in the earlier writ petitions preferred by the petitioners, the scope of the aforesaid writ petition was limited to the grant of delivery of possession of the subject plot and not with regard to the cancellation of the lease deed, which was executed in favour of the petitioners and was a legal and valid document that the respondent/DDA ought to have taken into consideration. He further states that in view of the fact that the petitioners have remained the lawful owners of the subject plot on the strength of the aforesaid

lease deed which has not been cancelled till date, any attempt on the part of the respondent/DDA to auction the same is illegal, arbitrary and without any authority of law.

6. On the other hand, counsel for the respondent/DDA who appears on advance copy vehemently opposes the present petition and terms it as a gross abuse of the process of the Court. She states that the entire issue raised by the petitioners in the present petition, was considered and rejected by the Single Judge as also by the Division Bench and ultimately by the Supreme Court and thus, it cannot be re-agitated by the petitioners under the garb of the present petition. She particularly relies on the observations made by the Division Bench in its order dated 17.05.2007 to state that the question of cancellation of the lease deed does not arise as the said document is tainted with fraud and held to be a fabricated document.

7. This Court has heard the counsels for the parties and has perused the records and is quite convinced that the present petition is a gross abuse of the process of the Court. In the teeth of the observations made by the Division Bench in its order dated 17.5.2007 passed in LPA No.662-663/2006 to the effect that the documents in question were fabricated and that it was a case of total fraud, now for the petitioners to rely on the very same document, namely, the perpetual lease deed to claim

entitlement to the subject premises, is impermissible. The observations of the Division Bench are as follows:

"No particulars, when and how application for allotment of alternative land was made, was mentioned in the writ petition. No annexures were attached. The first letter filed is letter dated 15th April, 1996 purportedly written to Vice chairman, DDA for allotment of alternative plot of 1000 sq.yds, which resulted in response from DDA dated 31st May, 1996, allotting to the appellants a plot admeasuring 800 sq.yds in prime south Delhi Colony for ₹18 lakhs. It is alleged that lease deed dated 7th November, 1997 was also executed in favour of the appellants. The respondent DDA states that the letters purportedly written by officers of DDA are forged and fabricated and no such correspondence was addressed to the appellants. Even the lease deed is also a fabricated document. Learned Single Judge has after examining the records, held that the documents relied upon by the appellants are fabricated and it is a case of total fraud. We agree with the reasoning and grounds given by the learned Single Judge.

The letter of allotment relied upon by the appellant emanates from the Assistant Accounts Officer, DDA, whereas letter of recommendation for allotment of a residential plot should emanate from the Govt. of NCT of Delhi and not the Accounts Officer, DDA. The documents on the basis of which claim is sought to be made and right and title is sought to be established being fabricated documents and obtained by way of fraud, no title would pass to the appellants on the basis of the said documents. We find no reason to interfere with the judgment and order passed by the learned single Judge. As far as refund of ₹18 lakhs is concerned, learned Single Judge has made observations in para 18 of the judgment. The appeal is devoid of any merit and the same is accordingly dismissed."

8. Further, it is pertinent to note that while dismissing their earlier writ petition, the learned Single Judge had observed that it was open for the petitioners to agitate their grievance against the Land & Building Department, Govt. of NCT of Delhi with regard to the application stated to have been filed by their predecessor-in-interest for alternative allotment of a plot. On a pointed query addressed to the counsel for the petitioners in this regard, it is stated by him that no steps have been taken by the petitioners in that direction. The contention of the counsel for the petitioners that as the issue of fraud is being examined in the criminal proceedings initiated by the Economic Offences Wing and till the said investigation is complete and proper findings returned, the respondent/DDA ought to have stayed its hands is also devoid of merits. No doubt in the criminal proceedings, the aspect of the complicity of the petitioners to the fraud shall be decided and consequences thereof shall follow. However, this cannot be a ground for the respondent/DDA to stay its hands, particularly, when the claim of the petitioners to the subject plot has been emphatically turned down in the earlier round of litigation by holding that the documents relied upon by the petitioners were forged and fabricated and no title would pass to them on the basis of the said documents. The second argument of learned counsel for the petitioners that the perpetual lease deed remains a legal and valid document till the respondent/DDA initiates necessary steps to cancel the same is also

turned down for the very same reason. Merely because the respondent/DDA has fixed dates for auction of the subject plot in the very near future, that in itself does not give rise to a fresh cause of action in favour of the petitioners. The petitioners have availed their legal remedy in the earlier writ petition filed by them and having suffered an adverse order, appealed before the Division Bench, which upheld the findings of the Single Judge and then they approached the Supreme Court only to be turned away. As a result, the findings of the Single Judge have attained finality and the matter ought to rest there.

9. Lastly, counsel for the petitioners states that though public notices have been issued by the respondent/DDA inviting objections from all concerned parties against the proposed auction of the subject plots fixed from 17.11.2011 and 18.11.2011, and the petitioners have submitted their objections to respondent/DDA on 24.10.2011, it has not responded thereto.

10. In response, counsel for the respondent/DDA states, on instructions, that the objections filed by the petitioners have been duly considered and a reply thereto has been dispatched to the petitioner only today.

11. In view of the above, this Court does not find any justification to quash the impugned public notices issued by the respondent/DDA. As a result, the writ petition fails and is accordingly dismissed *in limine*, along with the pending applications.

NOVEMBER 16, 2011
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(HIMA KOHLI)
JUDGE