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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8305/2011

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Judgment dated 18.09.2012

DHANESH KUMAR JAIN AND ANR

..... Petitioners

Through : Mr.Sumit Bansal, Mr.Ateev Mahtur and
Ms.Sumi Anand, Advs.

versus

DDA

..... Respondent

Through : Mr.Arjun Pant, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present petition has been filed by petitioners under Article 226 of the Constitution of India seeking a writ, order or direction in the nature of certiorari to quash the decision dated 6.11.2006 of the DDA whereby the DDA has cancelled the allotment of plot, bearing no.833, Pocket-A1, Sector 30, measuring 60 sq. mts. in Rohini, Phase IV, Delhi, (hereinafter referred to as the plot, in question), made in favour of petitioner no.1.
2. Rule. With the consent of counsel for the parties writ petition is set down for final hearing and disposal.
3. The necessary facts, to be noticed for disposal of the present writ petition, are that in the year 1981 petitioner no.1 had applied to the DDA for allotment of a plot under the MIG category under the Rohini Residential Scheme, 1981 and also deposited the registration amount of Rs.5000/- with the DDA. After waiting for 23 years, on 26.7.2004 petitioner no.1

was issued an allotment-cum-demand letter in respect of the plot, in question, pursuant to a draw held on 26.7.2004. The total cost of the said plot was fixed at Rs.4,09,860/-. On receipt of the demand letter the petitioner made an application dated 2.9.2004 to the DDA requesting the DDA to transfer the plot in question in favour of his son, petitioner no.2. Petitioner no.2 also deposited the required documents with the DDA. Since no reply was received from the DDA, petitioner no.2 submitted a representation to the DDA along with documents including the bank challan of Rs.1,30,412/- on 1.10.2004, however, no response to the said representation was received by the petitioner from the DDA. On 25.11.2004 petitioner again represented to the DDA along with proof of deposit of second installment, which was made on 22.11.2004 in the sum of Rs.2,04,930/-. Petitioner no.2 also deposited the balance amount of Rs.61,479/- with the DDA vide receipt dated 28.12.2004. After the amounts were deposited, petitioner no.1 received a communication dated 28.12.2004 requiring the petitioner no.1 to submit the status of the property bearing no.B-13, Anand Vihar, Delhi, i.e. the House Tax receipt. Thereafter petitioner no.1 was also served with a Show Cause Notice dated 7.4.2006, wherein, *inter alia*, it was stated that petitioner no.1 was not eligible for allotment of plot under the Rohini Residential Scheme. Petitioner no.1 was called upon to show cause as to why the allotment made in her favour be not withdrawn and the registration cancelled. In response to the said Show Cause Notice, petitioner no.1 sent a reply to the DDA on 21.4.2006 stating that the allotment made in his favour was valid and he has not been allotted any plot/flat by the DDA under any Scheme either in his name or in the name of any dependent members of his family. In response to the reply sent by petitioner no.1 to the DDA on 21.4.2006, DDA vide communication dated 12.5.2009 asked the petitioner no.2 to

clarify the position with regard to property bearing no.B-13, Railway Board Employees Cooperative House Building Society Limited, which was allotted in the name of Sh.V. Laxmanan and Smt.Laxmi Laxmanan and thereafter Sh.Surinder Kumar Jain, a General Power of Attorney holder, had applied for conversion in favour of petitioner no.1 and Smt.Roshini Jain and conversion was carried out on 15.11.1994. The petitioner was asked to clarify his stand. Petitioner no.1 reiterated his stand that he had not been allotted any plot of land or flat by the DDA and as per the prevailing policy he is entitled to the allotment. Petitioner no.1 also prayed for mutation in favour of petitioner no.2. The DDA vide communication dated 6.11.2006 cancelled the allotment made in favour of the petitioner on the ground of concealment of facts. By this communication, petitioner no.1 was also required to submit the documents in original for the refund of amount. Petitioner no.1 again requested to the DDA vide communication dated 17.11.2006 that the plot had been allotted after a gap of nearly 25 years from the date of booking. Petitioner no.1 also prayed for withdrawal of cancellation order and restoration of allotment in his favour. As no reply to the said communication addressed by petitioner no.1 to the DDA was received for a period of nearly four years, the petitioner no.1 made an application to the DDA for refund of the amount, however, subsequently the petitioner no.1 learnt that in similar cases the DDA had restored the allotment and given the benefit of allotment to the allottees. Petitioner no.1 immediately made a request to the DDA for withdrawal of the said application on 4.6.2010, however, the said request of petitioner no.1 was not acceded to.

4. Mr.Bansal, learned counsel for the petitioners, submits that that the allotment in respect of B-13, Anand Vihar, Delhi, was not made by DDA in favour of petitioner no.1. Nor the petitioner no.1 derived any benefit of

the allotment of any plot from DDA. Reliance is placed by counsel for the petitioner on **DDA V. Jitender Pal Bhardwaj**, Special Leave Petition No.27181/2009, wherein the Apex Court has held that if the DDA wants to debar anyone owning a plot/house/flat from securing the allotment, then it would have made its intention clear by simply providing that anyone holding or owning on a long term lease plot/house or flat in Delhi or New Delhi area will be ineligible for allotment under the Scheme. It is further submitted that the case of the petitioner is fully covered in fact and law by the decision rendered by the Supreme Court of India in **DDA V. Jitender Pal Bhardwaj** (supra).

5. Learned counsel for the petitioners has further relied upon a decision rendered by a Division Bench of this Court in the case of **DDA V. Jai Kanwar Jain**, LPA 134/2009, more particularly paras 7 to 11, which read as under:

“7.We are in complete agreement with the view taken by the learned single Judge that the case of the respondent would not fall in the last part of the Clause 1(ii) of the terms and conditions. The plot of land on which the respondent has built up the house has been purchased by the respondent from the open market by paying full market price and the respondent has not benefited from any subsidized allotment by the DDA. Merely because the title to the plot purchased by the respondent flows from the appellant does not disentitle the respondent from claiming benefit of the clause. The decision relied upon by the appellant in the judgment of the Division Bench in **Dalchand Sharma’s case** (supra) is clearly distinguishable. In that case the relevant term of the auction reads as under :

“any individual who is not a minor and is citizen of India may purchase lease hold rights in any one plot by bid in the auction, if he/she, his wife/husband or any of his/her minor and or dependent children or dependent parents or dependent minor sisters and brothers, ordinarily residing with him / her do not own in full or in part on lease hold or free hold basis any residential plot or flat or house or have been allotted on

hire purchase basis a residential plot or house or flat to any one in the past, nor has transferred his / her membership in any co-operative house building society / CGHS in Delhi.”

8.The argument before the Division Bench was that the terms and conditions of auction do not debar anyone from participating in an auction if any other property is held on GPA or agreement to sell basis. It was urged that unless the terms and conditions specifically stipulate such a condition it cannot be said that such persons are barred from participating in the auction. The Division Bench confirming the order of the learned single Judge held that the disqualification would apply to GPA and agreement to sell, which are used by numerous people to acquire properties, without a formal conveyance or sale deed. We fail to appreciate as to how this decision has any bearing to the facts of the present case where the issue raised is about the applicability of the last portion of the clause 1(ii) of the terms and conditions.

9.In this regard we may also refer to a recent decision of the Supreme Court in *Chandigarh Housing Board v. Major-General Devinder Singh (Retd.) and another* (2007) 9 SCC 67 where the eligibility condition stipulated under the relevant housing scheme provided :

“The applicant should not have acquired a house / residential site anywhere in India through Government / semi-Government/ Municipal Committee / Corporation / Improvement Trust at concessional rate i.e. at reserved / fixed price, in his / her own name or in the name of any dependent member of his / her family”.

10.While interpreting the aforesaid eligibility condition, the Supreme Court observed that the right to acquire property though not a fundamental right, is nevertheless a constitutional and human right. Before a person can be deprived of his right to acquire property, the law and / or contract must expressly or explicitly state so. The respondent had been allotted a flat by Army Welfare Housing Organization, registered society under the Societies Registration Act. The said organization undisputedly is not a government or semi government organization. The Supreme Court, keeping in view the settled principles of interpretation of deed /

statute, held that the condition of eligibility must be construed literally. If a plain meaning can be given effect to, there is no reason as to why it should not be applied. Rejecting the argument of Chandigarh Housing Board that the expression 'through' must be given its due meaning in construction of the eligibility conditions and in view of the fact that some allotments at concessional rates had been made by the Ministry of Housing and Urban Development to the Societies, the respondents being part of the Society would come within the purview of the restrictions in the eligibility condition the Supreme Court held as follows :

“30. We are unable to accept the said submission. The word “through” in this context would imply “agency”. Thus only when a person acquires some property through the “agency” specifically mentioned therein, the condition of eligibility which, it will be a repetition to state, imposes a restriction on a valuable right of a citizen must be held to be applicable and not otherwise. 31. Acquisition of any property through any other source or through any other agency is not prohibited. Right to acquire property is a human right. A deed must be construed reasonably and in its entirety. If acquisition of any property through any agency other than specified therein is not prohibited, evidently, the restriction clause in the condition of eligibility will have no application. The same, in our opinion, must be construed strictly. A clause impinging the right of a citizen must, in our opinion, receive strict construction and the principle of on textual interpretation will have no application in such a case.”

11. In the instant case from the bare reading of the relevant clause it is clearly seen that the exception carved out in the clause 1(ii) applies to persons who are allotted a house / plot by the DDA and not to the persons, who have purchased such plot or house from the open market.”

6. The respondent has filed its counter affidavit. In the counter affidavit the stand taken by the DDA is that since the petitioner was in possession of

another property which was allotted by the DDA the petitioner would be disentitled to another property of the DDA and thus the subsequent allotment made in favour of the petitioner being the plot at Rohini was liable to be cancelled. Counsel further submits that as soon as this fact came to the notice of the DDA, a show cause notice was issued to the petitioner; time was granted to petitioner no.1 to file reply to the show cause notice; and after following the due process of law DDA has cancelled the allotment made in favour of petitioner no.1.

7. I have heard learned counsel for the parties, considered their rival submissions and also perused the necessary documents filed on record. The basic facts, which have been detailed above, are not in dispute. During the course of hearing, learned counsel for the DDA has been unable to show that the present case is different in any manner from the decision rendered by the Supreme Court in the case of ***DDA V. Jitender Pal Bhardwaj*** (supra) and also the decision rendered by a Division Bench of this Court in the case of ***DDA V. Jai Kanwar Jain*** (supra). In the case of ***DDA V. Jai Kanwar Jain*** (supra) an allotment was made in favour of the said petitioner with respect to a plot measuring 32 sq. mts. The plot was cancelled on the ground that the petitioner's wife and son were already in possession of another property. The Division Bench came to the conclusion that the plot of land was purchased by the respondent from the open market by paying full market price and the respondent had not derived any benefit from subsidized allotment by the DDA and merely because the title to the plot purchased by the respondent flows from the DDA, does not disentitle respondent/the allottee from claiming the benefit of the clause. The facts of the present case are fully covered in fact and law by the decision rendered by the Division Bench of this Court in ***DDA V. Jai Kanwar Jain*** (supra).

8. Accordingly, present petition is allowed. The order of cancellation dated 6.11.2006 is quashed. Rule is made absolute. DDA is directed to allot the plot bearing no.833, Pocket-A1, Sector 30, measuring 60 sq. mts. in Rohini, Phase IV, Delhi, in favour of the petitioners and possession thereof shall be handed over to the petitioners by the DDA within one month from completion of all the formalities by the petitioners.
9. Petition stands disposed of in view of above.

G.S.SISTANI, J

SEPTEMBER 18, 2012

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