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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 11th November, 2013

+ W.P.(C) 40/2013

SP KUREEL AND ANOTHER

..... Petitioner

Through: Mr. R.K. Saini, Adv. with
Ms. Seema Salwan, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Manika Tripathy Pandey, Adv. with
Ms. Ashutosh Kaushik, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.(ORAL)

1. The two Petitioners applied for allotment of a flat each under Delhi Housing Scheme-2010. In the case of Application No.0441242, Petitioner No.1 was the first applicant and Petitioner No.2 was the second applicant. In case of Application No.0441244, Petitioner No.2 was the first applicant and his mother Smt. Vidya Kureel was the second applicant. As per the eligibility conditions laid down in the brochure, every citizen of India who was of the age of majority was entitled to apply for allotment of a flat, provided he did not own any residential flat or plot in full or in part on leasehold or freehold basis in Delhi/New Delhi/Delhi Cantonment either in his/her own name or in the name of his/her wife/husband or in the name of his/her minor or dependent children. In Clause IV 'family' has been defined as spouse (if any) and

dependent/minor children, if any. Both husband and wife were also made eligible and could apply, subject to fulfilment of eligibility condition with a stipulation that if both were found to be successful, only one would be allotted a flat. It was also laid down that one person can submit only one application.

2. The crux of the matter in the writ petition is whether second applicant would be included within the meaning of Clause VI of the eligibility criteria, that is, one person can submit only one application. It goes without saying that had Petitioner No.1 applied for allotment of a flat singly, he was entitled to the same. Similarly, Petitioner No.2 being a major son of Petitioner No.1 was entitled to apply independently of Petitioner No.1.
3. During pendency of the writ petition, the Petitioners brought to the notice of this Court two other sets of persons, namely, Vikram Madan and Kapil Madan & Vikram Madan and Smt. Uma Palsani & Vijay Palsani and Smt. Suylochana Palsani & Vijay Palsani, who had also been made similar allotments. Initially, it was represented by the DDA that the allotment of their flats were also cancelled, however, subsequently, an affidavit dated 22.10.2013 was filed stating that Show Cause Notices No. F.2/358(53)2005/FHS04/SB/1486, FM/312(182705/FHSO4/ DW/1486, dated 04.10.2013; No.353(784)11/DDA-10/RO/8052, dated 08.10.2013 and No.353(221)11/DDA-10/RO/8054, dated 08.10.2013 respectively were issued to them for cancellation of the allotments made in their favour.
4. Admittedly, in the instant case, the Petitioners were not given any show cause notice before issuance of the cancellation of allotment by file no. H-312(742)2012/DDA10/DW/7096 dated 07.12.2012 and no.

H1365(417)2012/DDA10/VK/7086 dated 07.12.2012.

5. One of the grounds raised by the learned counsel for the Petitioners is that atleast show cause notice was required to be issued to the Petitioners in accordance with the principles of natural justice before taking the drastic action of cancellation of allotment of the flats to each of the Petitioners. In support of his contention, the learned counsel for the Petitioners places reliance on a judgment of this Court in *Dhani Ram Kapoor v. DDA, 1997 (1) AD (Delhi) 578*.
6. On the other hand, the learned counsel for the DDA argues that as per Clause 21 of the Brochure, in case an applicant was found to be not eligible as per the conditions laid down in Para 2 of the Brochure or if he had submitted more than one application or had given false affidavit/information, the application/allotment was liable to be rejected/cancelled without issuing any show cause notice for the same.
7. The learned counsel for the DDA tries to distinguish the case of the two sets of persons mentioned above from the case of the Petitioners, in as much as those three persons have also been delivered possession in pursuance of the letter of allotment.
8. It is not in dispute that the two instances pointed out by the learned counsel for the Petitioners related to this very scheme and the Petitioners are also similarly placed. Thus, if those three persons had been issued a show cause notice, the Petitioners were also entitled to the same.
9. In *Dhani Ram Kapoor* this Court held as under:-

“3. Mr. Saini, learned counsel appearing for the petitioner, has contended that the amount raising from ₹1,29,400/- to ₹2,15,600/- in the facts and circumstances of the case is illegal and arbitrary. Mr. Saini has further contended that the cancellation of the flat by the respondent Authority after allotment without giving an opportunity of being heard, is totally arbitrary and illegal, more

so, when the petitioner had deposited the full amount as demanded by the respondent and was also paying regular instalments. Mr. Saini has also contended that the respondent adopted double standards in treating the petitioner as in other cases where even the amount demanded by the respondent has not been deposited, the respondent Authority had issued show cause notices to them whereas in the case of the petitioner, even after the amount has been deposited and monthly instalments for two months have also been paid, without giving any notice the respondent has cancelled the allotment of the petitioner, which is against the principles of natural justice. Learned counsel has contended that even the cancellation order was not communicated to the petitioner. Mr. Saini in support of his contentions has cited the case of Kanta Raju v. DDA C.W.P. No.587/1990 decided on 18.12.1990, in which it is held that:-

“.....When a flat is allocated by a State Authority to a private citizen then that private citizen, like the petitioner, gets an interest therein. If the State authority wants to cancel such allotment or allocation, then the principles of natural justice will come into play. It will be contrary to the principles of natural justice if an allotment made is sought to be cancelled without any show cause notice.”

10. Although the DDA pleads that there was misrepresentation, yet the same could have been explained by the Petitioners, had they been issued a show cause notice.
11. Thus, on the basis of law laid down in *Dhani Ram Kapoor*, the DDA was required to follow the principles of natural justice and to issue a show cause notice before taking the drastic action of the cancellation of the flat.
12. Consequently, cancellation of the flat by the impugned letter No.H-312(742)2012/DDA10/DW/7096 dated 07.12.2012, in respect of allotment of Flat No.1, Block E-2, Pkt. 2, Sector 18-B, Dwarka, New Delhi and No.H1365(417)2012/DDA10/VK/7086 dated 07.12.2012 in respect of the allotment of Flat No.304, Block S6, Pkt. D-6, Vasant Kunj, New Delhi is hereby quashed.

13. The DDA shall be at liberty to issue show cause notices to the Petitioners and to take action in accordance with law/rules.
14. Till then, these flats shall not be allotted to any other person.
15. The Petitioners shall be at liberty to approach the Court if their grievance is not redressed.
16. The writ petition stands disposed of in above terms.
17. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 11, 2013

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