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

Decided on: 18th November, 2013

+ **W.P.(C) 343/2013**

PRADEEP KUMAR GULATI Petitioner

Through: Mr. Dilip Singh, Adv. with
Ms. Taranum Parveen, Adv.

versus

D.D.A. Respondent

Through: Ms. Manika Tripathy Pandey, Adv. with
Mr. 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 short question falling for consideration in the instant writ petition is whether a person who purchases any DDA property measuring less than 67 sq. mts. from the open market (as a subsequent purchaser) is debarred from allotment or transfer of registration in case of death of his/her predecessor of a DDA property.
2. The case is squarely covered by a number of judgments of this Court, the latest being *Kamlesh Sharma v. Delhi Development Authority, W.P.(C) 3680/2013*, decided on 29.05.2013.
3. The facts of the case are not in dispute.
4. The Petitioner owned an LIG Flat, No.FG-I/43-B, Vikas Puri, New Delhi having purchased it from the open market. Late Smt. Pritam Kumari Gulati (the Petitioner's mother) applied for allotment of a plot under Rohini LIG scheme and was allotted registration No.84522 on dated 30.03.1981. Said Pritam Kumari Gulati expired on 23.05.1994. By a

letter dated 20.11.2000, the Petitioner applied for transfer of the registration in his favour. He received a letter dated 01.06.2001 (Annexure D) from the DDA asking him to attend the office of the Assistant Director (LBS), Rohini to clarify some points and also to produce some documents, as mentioned in the letter. By a letter dated 01.02.2002, the Petitioner produced the earlier said documents.

5. Thereafter, he received a letter dated 01.02.2002 (Annexure E) asking him to produce some more documents in proof of his identity and to prove that there were no other legal heirs of the deceased. He produced these documents on 10.04.2002. Then the DDA again, by a letter dated 21.05.2002 required the Petitioner to produce an Indemnity Bond, duly registered in the office of the Sub-Registrar and proof of his ownership of House No.FG-I/43-B, Vikas Puri, New Delhi. He attended the office of the DDA on 22.07.2002 and produce the required documents. Subsequently, the Petitioner was sent another letter (Annexure-I) dated 23.08.2002 to produce proof of his residence. He again attended the DDA's office on 12.09.2002 to explain the position. However, in spite of all this, his transfer application was rejected by a letter dated 05.05.2003 which read as under:-

*"To,
Sh. Pradeep Kumar Gulati
FG-I/453-B, Vikas Puri,
New Delhi-110018.*

Sub:- Request for transfer of regn. in favour of Shri Pradeep Kumar Gulati due to death of Smt. Pritam Kumari Gulati.

.....

Sir,

With reference to your letter dt.12.9.02 on the subject cited above, I am directed to inform you that since you already own a DDA flat in your name the regn. Under Rohini Registration

scheme cannot be transferred in your name. You may kindly apply for refund of regn. money.

Yours faithfully,

Sd/-

Deputy Director, LSB (Rohini)”

6. Consequently, the Petitioner wrote a letter dated 02.02.2005 to the DDA requesting for allotment against Registration No.84522 and drew attention of the DDA to the DDA (Disposal of Developed Nazul Land) Rules, 1981 which permitted him the allotment of the plot. The relevant portion of the letter is extracted hereunder:-

“.....In this regard I brought to your kind notice that I did not get the LIG flat from DDA in any registration scheme. Therefore, I cannot be debarred from the mutation of registration of my mother due to sudden death. Here it will be appreciated to mention that there is a settled law if a person dies and after her sudden death, registration will be transferred in the name of her/his legal heirs even if they have a flat by way of allotment. But in my case it is not so, because it had been cleared in the policy of conversion, if property has been purchased on Power of Attorney and the 2nd had been taken by way of allotment. If the person applies for conversion then both the properties will be converted into free hold.

In addition to the above it is also brought to your kind notice that the allotment of Rohini land is governed by Nazul rules. And as per provision of Rule 17 I am eligible for mutation of the registration in my name which provides as under:-

“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 sq.mtrs., or*
- b) The house owned by such individual is on a plot of land which measures less than 67 sq.mtrs., or*
- c) The share of such individual in any such other land or house measures less than 67 sq.mtrs.*

He may be allotted a plot of Nazul land in accordance with the other provisions of these rules.

The area of an LIG flat cannot be more than 67 sq.mtrs. Moreover these flats are multi-storeyed flat. Therefore, the land

may be divided in equal, which becomes very less. Similarly case of Shri Naresh Kumar in file bearing No.F.22(1290)89/LSB (Rohini) has already been decided by the then V.C., DDA on 21.7.98. The mother/father of Shri Naresh Kumar had expired and the allotment of MIG plot measuring 90 sq.mtrs. was transferred in his name (Plot no.111 Pkt.6, Sector-22 Rohini). In his case it was also decided that “All cases of similar nature to be dealt accordingly.”

7. Thus, the Petitioner not only clarified and reminded the DDA about the legal position but also informed it that a similar decision has been taken by the DDA in case of one Naresh Kumar. The Petitioner persisted with the merits of his case and wrote a letter dated 27.10.2005 to the Vice Chairman of the DDA, however, nothing happened. He then wrote a reminder dated 28.05.2012 and then finally approached this Court.
8. It may be noticed that the concerned officers/officials of the DDA had been asking him for documents in piecemeal and had also been requiring his personal attendance for no reason.
9. A learned Single Judge of this Court has dealt with the precedents at great length and has opined that it is the consistent view taken by this Court that DDA (Disposal of Developed Nazul Land) Rules, 1981 apply to the residents of Rohini Residential Scheme, whose turn for allotment of a plot under the said scheme matures on or after coming into force of the abovesaid rules. Relevant portion of the judgment in *Kamlesh Sharma* is extracted hereunder:-

*“ 3. The only issue, which is involved in this writ petition, is as to whether acquisition of a plot measuring 25.09 square metre from the market, rendered the petitioner ineligible for allotment of a plot under Rohini Residential Scheme of DDA. This issue recently came up for consideration before a Division Bench of this Court in **DDA vs. B.B. Jain**, LPA No. 670/2012, decided on 05.03.2013 and the following view was taken:*

“3. One of the terms and conditions stipulated in the Rohini Residential Scheme, 1981 of the appellant reads 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 leasehold 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. mts., 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.mts. shall not, however, be eligible for allotment.”

4. Section 22 of Delhi Development Act, to the extent it is relevant, provides that the Central Government may, by notification in the Official Gazette, place, at the disposal of DDA, all or any developed or undeveloped land in Delhi vested in the Union known as Nazul Lands for the purpose of development in accordance with the provisions of the said Act. It further provides that after any such Nazul land has been developed by, or under the control of DDA, it shall be dealt with by the said Authority in accordance with the Rules made and directions given by the Central Government in this behalf. Section 56(j) of the said Act empowers the Government to make Rules prescribing the manner in which Nazul land should be dealt with after development. In exercise of the powers conferred upon it by Section 56(j) of the said Act, Central Government framed rules known as the DDA (Disposal of Developed Nazul Land) Rules, 1981. Rule 2(i) of the aforesaid Rules defines “Nazul land” to mean the land placed at the disposal of the Authority and developed by or under the control and supervision of the Authority under Section 22 of the Act.

Rule 17 of the aforesaid Rule reads 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 metres, or

(b) the house owned by such individual is on a plot of land which measures less than 67 square metres, or

(c) the share of such individual in any such other land or house measures less than 67 square metres, he may be allotted a plot of Nazul land in accordance with the provisions of these rules.”

5. It is not in dispute that since the flat allotted by DDA to the respondent in these appeals have been constructed on land measuring less than 67 square metres, they would be entitled to allotment of a plot of Nazul land from DDA, if the matter is to be governed by the aforesaid Rules. Since the terms and conditions stipulated in the Rohini Residential Scheme, 1981 debar any allottee from DDA from allotment of a plot under the said scheme, even if the area of the house/plot allotted to them by DDA is an area less than 65 square metres, the question which comes up for consideration in this case is as to whether the allotments made by DDA under the Rohini Residential Scheme, 1981, after coming into force of Nazul Land Rules, would be governed by the terms of the Scheme or by the provisions of the Rules.

6. The contention of the learned counsel for the appellant was that the respondents having applied for allotment of plot, as per the terms and conditions stipulated in its Rohini Residential Scheme, 1981, they are stopped from questioning the terms of the said Scheme and are not entitled to allotment in violation of the provisions of the aforesaid Scheme. The learned counsel for the respondents, on the other hand, contended that the Nazul Land Rules, being statutory in nature would govern, even the allotments made under Rohini Residential Scheme, 1981 and would supersede the terms and conditions of the Scheme, to the extent they are repugnant to the said Rules.

7. The first question to be examined by us in this regard is as to what would be the relevant date to determine the eligibility of the applicant under the Scheme, whether it would be the date on which the application is submitted or it would be the date on which the allotment is made. Indisputably, mere submission of application to DDA for allotment of a plot under its Rohini Residential Scheme, 1981 does not constitute a binding contract between the parties for allotment of a plot to the applicant under the aforesaid Scheme. A binding contract would come into force only when a specific plot is offered and such an offer is accepted by the applicant under the Scheme. If no binding contract between the parties came into force merely on submission of an application under the aforesaid Scheme, it would be difficult for us to say that the date of submitting an application would be the crucial date to determine the eligibility of the applicant for allotment of a plot. In our opinion, the crucial date on which the eligibility of the applicant is to be examined is the date on which the allotment of a plot is made by DDA. Since Nazul Land Rules came into force before allotment of plots under the aforesaid Scheme came to be made to the respondents, it would be difficult for us to say that the eligibility of the applicants for allotment of a plot under the aforesaid Scheme was to be examined de hors the provisions of the statutory Rules. Section 22(3) of Delhi Development Act contains a statutory mandate to the appellant to make allotment of Nazul Land developed by it or under its control and supervision only in

accordance with the aforesaid Rules, which could be supplemented only by the directions, if any, given by the Central Government with respect to disposal of such Nazul Land. In our opinion, on coming into force of the Nazul Land Rules, the eligibility of the applicants for allotment of the plots is to be considered in terms of Rule 17 of the aforesaid Rules and the terms and conditions contained in the Scheme, to the extent they are repugnant to the provisions contained in the aforesaid rules, cannot be resorted to.

*8. In **Delhi Development Authority Etc. v. Ambitious Enterprises & Anr.** 67(1997) DLT 774, the argument taken by the respondent before Supreme Court was that the Nazul Land Rules having been came into force only on 26th September, 1981 and the public advertisements for allotment of plots having been issued much earlier, the said Rules would not be applicable. The argument did not find favour with the Supreme Court. Noticing that no plots had been allotted prior to coming into force Nazul Land Rules, the Apex Court held that once these Rules, which are statutory, came into force, no allotment could have been made outside or in contravention of those Rules. In view of the authoritative pronouncement of Supreme Court in the above-referred case, there seems to be no scope for a contention that the allotments of plots under the Rohini Residential Scheme of DDA will not be governed by Rule 17 of Nazul Land Rules.*

*9. The issue involved in these appeals came to be considered by a learned Single Judge of this Court in **M.L. Aggarwal v DDA** 2004 Rajdhani Law Reporter 21. In the aforesaid case, the petitioner before this Court applied for allotment of a plot in MIG category on 24.04.1981 and allotment was made to him on 29.11.1983. The allotment having been cancelled by DDA, on the ground that wife was holding a plot about 30 square metres, the said writ petition was filed by him questioning the cancellation of allotment. In reply to the writ petition, DDA relied upon the terms and conditions of allotment and contended that Nazul Land Rules having come into operation in September, 1981 and the Rohini*

Residential Scheme having been launched in February, 1981, the aforesaid Rules did not apply. Rejecting the contention, the learned Single Judge, inter alia, held as under:-

“16. In order to appreciate the issue at hand, it has to be considered as to what would be the relevant dates – is it the date of registration under the scheme relevant or the date of allotment? The Supreme Court in DDA vs. Pushpendra Kumar Jain, JT. 1994 (6) SC 292 has held that the rights of a party come into existence only on the issuance of the allotment letter. There can be no dispute that the registration can take place by both the persons but there would not be entitlement to two allotments. The Nazul Rules came into force prior to the allotment being made.

17. In my considered view, the prospective application of the Nazul Rules cannot imply that the same would not be applicable to the present case in view of the fact that the rules did not exist when the scheme was propounded since these came into force about six months later. The Nazul Rules are statutory and the relevant date is the date of allotment. Thus, the Nazul Rules would be applicable even in the present case.”

Being aggrieved from the above-referred order passed by the learned Single Judge, DDA filed an appeal being LPA No.191/2004 which was dismissed by a Division Bench of this Court on 02.02.2006 with the following order:-

“4. The petitioner applied for allotment of a plot in Rohini Residential Scheme and he was issued an allotment letter dated 29.11.1983 against which he deposited the amount of the said plot.

5. The question in this case is that whether the petitioner was disentitled from getting the allotment in view of the fact that his wife had already been allotted a plot.

6. In this connection Rule 17 of the DDA (Disposal of Developed Nazul Land) Rules, 1981 states:

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Admittedly, the wife of the petitioner has a plot of area 31.28 sq. metres which is less than 67 sq. metres. In our opinion, the proviso to Rule 17 means that if the wife has a plot of more than 67 sq. metres then the husband cannot be allotted a plot. However, if the wife has been allotted a plot which is less than 67 sq. metres, the prohibition contained in the main part of Rule 17 does not apply. In our opinion, this is the simple and plain meaning of Rule 17 and we cannot twist its language.”

The order passed by the Division Bench was further challenged by DDA before Supreme Court by way of Civil Appeal No. 4362/2007. Dismissing the appeal vide order dated 26.11.2009, the Apex Court, inter alia, held as under:-

“We are of the opinion that the finding of the High Court that the allotment would be covered by Rule 17 of the Delhi Development Authority (Disposal Developed Nazul Land) Rules, 1981, appears to be correct as on the date of draw of lots the aforesaid rules had become operative.”

10. It would thus be seen that in view of the above-referred decision of this Court, the issue involved in these appeals is no more res integra. The learned counsel for the appellant, however, contended that in none of these cases, the existing allotment was made by DDA, whereas in the case before this Court the existing allotments were made by DDA and if the terms and conditions contained in Rohini Residential Scheme, 1981 are not applied, it would result in a person getting allotment of more than one plot/flat from DDA. In our view, the contention is misconceived in law. The issue involved in this case is as to whether the allotments made under Rohini Residential Scheme, after coming into force of Nazul Land Rules would be governed by the provisions of the Scheme or by the provisions of the statutory Rules and the view taken in the above-referred case was that it is Nazul Land Rules which would govern such allotments. Once it is accepted that the eligibility of the registrants under the Rohini Residential Scheme, would be governed by the provisions of Nazul Land Rules and not the

provisions of the Scheme to the extent the provisions of the Scheme are contrary to the statutory provisions contained in the Rules, it would be immaterial whether the existing allotment was made to DDA or by some other agency or it was free hold property purchased by the allottee from the open market. Rule 17 of the Nazul Land Rules admittedly does not debar the allottee from DDA from allotment of land by DDA, in a case where the area of the land/plot already owned by or allotted to him does not exceed 67 square metres.”

10. It is conceded by the learned counsel for the DDA that the area of the LIG flat in any case has to be less than 67 sq.mtrs. Thus, it is evident that the cancellation of the allotment to the Petitioner by letter dated 05.05.2003 of the DDA was totally illegal.
11. In *Kamlesh Sharma*, the learned Single Judge of this Court was perturbed because of the flagrant violation of the judgments of this Court resulting into unnecessary harassment to the registrants under Rohini Residential Scheme. The learned Single Judge directed the DDA to take an administrative decision based on various judicial pronouncements of this Court and further not to cancel the allotment of such cases blindly so that the people are not driven to unnecessary litigation which in any case is also not beneficial to the DDA. Para 7 of the judgment in *Kamlesh Sharma* is extracted hereunder:-

“7. It is unfortunate that despite consistent view taken by this Court with respect to eligibility for allotment of a plot under Rohini Residential Scheme to those whose turn for allotment matured after coming into force of Nazul Land Rules, wherever the area of plot of the flat owned by them, whether individually or jointly with others, does not exceed 67 square metre, DDA continues to cancel allotments on the ground that the registrant under the Rohini Residential Scheme owned another plot/flat in DDA even if the area of such plot/flat is less than 67 square

metres. As a result, the registrants have no option, but to approach this Court by way of writ petitions, which results in the registrant/allottee saddled with cost of litigation without any benefit to DDA. In fact, whenever such petitions are filed, DDA also suffers in monetary terms since it has to incur cost in defending such writ petitions. It is high time DDA takes an administrative decision, based upon various judicial pronouncements of this Court, not to cancel allotment in such cases, so that the people are not driven to litigation which brings no benefit to DDA, but at the same time causes financial loss to the registrants/allottees, besides harassment and mental agony which they have to suffer on account of cancellation of such allotments. It is, therefore, directed that one copy of this order be sent to the Chief Legal Advisor for being placed before the Vice-Chairman of DDA, within two weeks from today.”

12. In spite of all this, instead of taking a policy decision, an affidavit dated 18.07.2013 (much after the passing of the judgment in *Kamlesh Sharma*) was sworn by Shri S.N. Gupta, Director (RL) taking the same plea that the Petitioner was not entitled to the demanded allotment of a plot as he already possessed an LIG flat. As stated earlier, the LIG flat was not allotted to the Petitioner by the DDA, rather he purchased it in resale from the open market and thus, he was entitled to the allotment in accordance with Rule 17 of the DDA (Disposal of Developed Nazul Land) Rules, 1981.
13. The writ petition is accordingly allowed. The communication dated 05.05.2003 cancelling the allotment made to the Petitioner under Rohini Residential Scheme is hereby quashed. DDA is directed to allot a plot to the Petitioner in any developed sector of Rohini Residential Scheme within a period of three months.
14. Since the DDA persisted with its illegal stance in opposing the writ petition in spite of consistent view of this Court, this writ petition is

allowed with costs quantified at `15,000/-.

15. The writ petition stands disposed of in above terms.
16. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 18, 2013

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