

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

+ **W.P.(C) 2791/2011**

MOHINDER KAUR BAJAJ & ORS. Petitioners
Through: Mr. Satinder S.Gulati, Advocate.

versus

DDA & ANR. Respondents
Through: Ms. Shobhana Takiar, Advocate.

% Date of Decision : February 19, 2013

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. The present petition seeks to impugn Show Cause Notice dated 17.09.2009 and Final Show Cause Notice dated 04.11.2009, as also cancellation order dated 06.01.2011 and letter dated 25.03.2011 of the Respondent/DDA seeking to take back the physical possession of the Plot No.273, Pocket-III, Block-C, Sector-28, Rohini measuring 60 sq. mtrs. The Petitioners also seek mandamus to the Respondent/DDA not to dispossess and interfere in any manner whatsoever with the peaceful enjoyment and possession of the said plot of land presently in possession of the Petitioners.

2. Notice of the petition was issued to the Respondents and upon the Respondents accepting notice, the operation of the impugned notice dated 25.03.2011 was ordered to be kept in abeyance. This interim order was made absolute on December 15, 2012 and thus the dispossession of the Petitioner remains stayed till date.

3. Petitioner No.1 is the mother and Petitioner Nos.2 to 4 are the sons of the Petitioner No.1. In 1965, husband of the Petitioner No.1 and father of the other Petitioners, namely, Late Shri R.S. Bajaj took on rent a residential premises at Ramjas Road, Karol Bagh, New Delhi. While the Petitioners' family was living on rent, the DDA advertised Rohini Residential Scheme, 1981. Late Shri R.S. Bajaj was a registrant vide application No.113240 in the said Scheme for a plot measuring 90 sq. mtrs. and paid a sum of ₹ 5,000/- as earnest money vide receipt No.06952 dated 21.02.1981. The Respondent/DDA not having held a draw of lots even after a lapse of 14 years from the registration of Shri R.S. Bajaj, keeping in view the needs of his expanding family, Shri R.S. Bajaj, who had superannuated from service with the MCD in the year 1995, entered into a sale transaction for the purchase of C-125, Naraina Vihar, New Delhi-28 measuring 125 sq. yards (104 sq. mtrs. approximately) as a joint family property. A registered Agreement to Sell was executed by the erstwhile owner of the said property in favour of the Petitioner No.1 (wife of Shri R.S. Bajaj), on 06.08.2001 and a registered General Power of Attorney was executed in favour of Shri K.S. Bajaj, Petitioner No.4 (one of the sons of Shri R.S. Bajaj). The said property was purchased for a total sale consideration of ₹ 7,08,000/-

and the aforesaid payment was made by the family members through cheques, photocopies whereof have been placed on record which show the respective amounts contributed by the family members and the details thereof as follows:-

<i>Name</i>	<i>Mode of Payment</i>	<i>Amount (Rs.)</i>
<i>Late Sh. R.S. Bajaj</i>	<i>Cheque</i>	<i>50,000/-</i>
<i>Sh. G.S. Bajaj</i>	<i>Cheques (two)</i>	<i>75,000/- + 48,000/-</i>
<i>Sh. J.S. Bajaj</i>	<i>Cheque</i>	<i>21,000/-</i>
<i>Sh. K.S. Bajaj</i>	<i>Cheque</i>	<i>3,50,000/-</i>
<i>M/s. Bajaj Grafics (Proprietor Late Mr. R.S. Bajaj)</i>	<i>Cheque</i>	<i>27,000/-</i>
<i>M/s. Ripplex (Proprietorship firm of Sh. G.S. Bajaj)</i>	<i>Cheque</i>	<i>55,000/-</i>
<i>Smt. Mohinder Kaur Bajaj</i>	<i>Cash</i>	<i>72,000/-</i>

4. The Petitioner's case is that all the aforementioned cheques were deposited in her (Petitioner No.1's) Saving Bank Account No.SB-38353, Punjab National Bank, Karol Bagh, New Delhi and the statement of account of her said bank account clearly reflects the encashment of the aforementioned cheques. The Petitioner thus contends that her contribution in the aforesaid property was to the extent of only a sum of ₹ 72,000/-, out of the total sale consideration of ₹ 7,08,000/-. In any event, she being a housewife had no source of income and after the acquisition of the aforesaid property, she filed her return of income under Section 39(1) of the Income Tax Act,

1962 in Form No.2C for the Assessment Year 2002-03, declaring a gross income of ₹ 5,095.27.

5. The Petitioner's further case is that Shri R.S. Bajaj expired on 29.09.2002 and till the date of his death, the DDA did not allot any plot of land to him under the Scheme of 1981. It was on 11.06.2003 that the DDA issued a letter of allotment in the name of Late Shri R.S. Bajaj after a computerized draw held by them and Plot No.273, Pocket No.C-III, Sector-28, Rohini, measuring 60 sq. mtrs., Phase IV, Residential Scheme was allotted to him. The said letter though initially issued in the name of Late Shri R.S. Bajaj, but later on Petitioner No.1 informed the Deputy Director (LAB) regarding the death of Shri R.S. Bajaj and change of her residential address to C-125, Naraina Vihar, New Delhi. Pursuant to the said letter, the Respondent/DDA scrolled the name of Shri R.S. Bajaj on the said allotment letter and issued the same in the name of the Petitioner No.1 – Smt. Mohinder Kaur Bajaj. Petitioner No.1 again vide letter dated 25.11.2003 informed DDA regarding the change of her residential address to C-125, Naraina Vihar, New Delhi. Pursuant to the allotment letter issued to Petitioner No.1, she also paid a sum of ₹ 1,30,230/- vide a pay order to the DDA, vide challan bearing No.10918703 dated 25.11.2003 and an acknowledgment receipt was issued by DDA which has been placed on record. A further sum of ₹ 2,04,336/- was paid by Petitioner No.1 vide challan No.10918803 to DDA in respect of the plot in question and yet another sum of ₹ 61,401/- was paid vide challan No.10918903 to DDA. True copies

of all the challans and acknowledgment receipts have been placed on record by the Petitioners.

6. By a letter dated 02.08.2004, the Petitioner No.1 was informed by the DDA regarding the mutation of plot in her favour on the basis of the documents submitted by her and other legal heirs, wherein she had been recognised as registrant in place of her deceased husband Shri R.S. Bajaj in the Rohini Residential Scheme. Thereafter, vide letter dated 14.10.2004, Petitioner No.1 was informed that possession of the plot in question would be handed over to her. On 28.10.2004, as evidenced from the endorsement made on the letter dated 14.10.2004, the possession of the plot in question was in fact handed over to the Petitioner No.1. On 10.02.2006, the DDA demanded an additional amount of ₹ 20,658/- as the difference in provisional rate and final rate of the plot in question, which too was paid by the Petitioners vide bank challan No.489505 dated 25.03.2009, acknowledgment of which was duly issued by the DDA. By a notice dated 17.09.2009, the Respondent No.2 – Deputy Director (LAB), Rohini, however, called upon the Petitioner No.1 to show cause within 15 days from the date of the issue of the said notice, as to why the allotment of the plot in question be not cancelled, since Petitioner No.1 had purchased property No. C-125, Naraina Vihar, New Delhi and the Conveyance Deed thereof was executed on 20.11.2003 in her favour. The Petitioner No.1 replied to the notice dated 17.09.2009 vide her letter dated 1st October, 2009 through her son Gurinder Singh Bajaj, seeking extension of time by one month as she was on a religious tour.

7. Subsequently, by her letter dated 03.11.2009, Petitioner No.1 replied to the Show Cause Notice dated 17.09.2009 in detail, wherein she explained that the property at Naraina Vihar is a joint family property and out of the total area of 104 sq. mtrs. (approx.) of the said property, she has an undivided share in the said property only to the extent of 26 sq. mtrs., in view of the fact that the other members of her joint family comprised of her three sons. In her said letter, she also submitted that her share in the said property was far less than the limit prescribed under Rule 17 of Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, being less than 67 sq. mtrs. and, therefore, the bar against allotment of Nazul land by DDA to her was not applicable. It was further submitted by her that the purchase price against the property at Naraina Vihar was paid by the joint family members since all her sons had been living together with her as a joint family since the purchase of the aforementioned property.

8. Notwithstanding the aforesaid reply sent by the Petitioner No.1, the Respondents issued a Final Show Cause Notice dated 04.11.2009, wherein without considering at all the reply submitted by the Petitioner No.1 dated 03.11.2009 (the receipt whereof had been duly acknowledged by the DDA), the respondents instead mentioned the reply dated 01.10.2009 whereunder the Petitioner had sought extension of time for giving reply to the Show Cause Notice dated 17.09.2009.

9. In response to the Final Show Cause Notice dated 04.11.2009, the Petitioner No.1 again submitted reply vide letter dated

10.11.2009, informing DDA that a reply letter dated 03.11.2009 had already been sent by her and attaching a copy of the said letter and acknowledgment thereof.

10. On 25th March, 2011, the Respondents issued a letter to the Petitioner No.1 requiring her to hand over the possession of the plot in question on 25.04.2011 on the ground that she had concealed the fact of ownership of plot No. C-125, Naraina Vihar in respect of which Conveyance Deed was executed on 20.11.2003 and had obtained allotment of plot No.273, Pocket III, Block C, Sector-23 in the Rohini Residential Scheme by making false statement/misrepresentation. It was asserted in the said letter that the allotment of the aforesaid plot had been cancelled by the Competent Authority on 06.01.2011 under the terms and conditions of allotment of the Rohini Residential Scheme. However, according to the Petitioners, till date no cancellation letter dated 06.01.2011 has been received by the Petitioners.

11. The grievance of the Petitioners is that the DDA without considering the facts explained by the Petitioner No.1 in her letter dated 03.11.2009 and by blatant misuse of power issued a Final Show Cause Notice without following the proper procedure required for issuance of the same and, therefore, the cancellation order passed by DDA is *per se* illegal. The Petitioner No.1 claims that she herself had informed the Respondent/DDA in regard to her change of address to C-125, Naraina Vihar, New Delhi and explained to the DDA that it was a joint family property and that she (Petitioner No.1) had only 1/4th share in the same after the death of her husband Shri R.S. Bajaj,

being an undivided share of only 26 sq. mtrs., which is far less than the limit of 67 sq. mtrs. prescribed by Rule 17 of the DDA (Disposal of Developed Nazul Land) Rules, 1981.

12. In the counter-affidavit filed by the Respondent/DDA, the facts as set out hereinabove have not been controverted, but reliance has been placed by the DDA on the terms and conditions of the allotment, and in particular on Clause 1(ii) of the Scheme, which reads as under:-

“1. Eligibility:

(ii) The individual or his wife/her husband or any of his minor children do not own in full or in part on lease-hold 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. mtrs., 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. mtrs. shall not, however, be eligible for allotment.”

13. It is submitted by the Respondent that at the time of allotment of the plot in Rohini, the Petitioner No.1 owned a residential plot on freehold basis bearing No. C-125, measuring 104 sq. mtrs., in Naraina Vihar, New Delhi. As such, with the approval of the Competent Authority, the allotment of the plot in Rohini had been cancelled on 06.01.2011 and the said cancellation was conveyed to the Petitioners vide letter dated 25th March, 2011. It is further submitted that the

Petitioners' reliance upon the Nazul Rules was misplaced as the said Rules came into existence after the floating of the Rohini Residential Scheme, 1981. And also, the property having been purchased in a single name cannot be said to be a jointly owned property. The Petitioner had filed a false affidavit affirming that neither she nor her husband owned any leasehold or freehold residential flat/plot in Delhi.

14. Rebutting the contention of the Respondent/DDA that since the Nazul Rules came into existence after the floating of the Rohini Residential Scheme, 1981 the said Rules are of no assistance to the Petitioner, learned counsel for the Petitioner contended that the case of the Petitioner cannot be rejected on the ground that the Nazul Rules would not be applicable. He submitted that the matter was no longer *res integra*. A learned Single Judge of this Court (Hon'ble Mr. Justice Sanjay Kishan Kaul) in a decision reported in **107 (2003) DLT 611, M.L. Aggarwal vs. Delhi Development Authority** had opined that the Nazul Rules would be applicable to all such cases where the allotment has been made after the Rules have come into force. In such a situation, it cannot be said that the Petitioner gave a false affidavit or gave a wrong declaration, the allotment in favour of the first Petitioner being less than 67 sq. mtrs., which was not a disqualification for the Petitioners to get the allotment of the plot in question from the DDA. Reference was made by him to the following observations made in the said judgments:-

"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 they 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.*

18. Rule 17 itself prescribes as to the circumstances under which the disqualification has to take place. The proviso uses the expression “both owned” or “allotted”. Thus, in case the land owned or allotted is less than 67 sq. mtrs., the disqualification is not to apply. The allotment made in favour of the wife of the petitioner is admittedly much less than this, being about 32 sq. mtrs...”

15. It may be mentioned at this juncture that the aforesaid decision was unsuccessfully challenged before the Division Bench which rejected the said challenge and an appeal to the Supreme Court, being Civil Appeal No.4362 of 2007 titled “**Delhi Development Authority vs. M.L. Aggarwal**” met with the same fate. The Supreme Court upheld the finding of the High Court that the allotment would be covered by Rule 17 of the Nazul Rules *as on the date of draw of lots the aforesaid Rules had become operative.*

16. Reference was next made by Petitioners’ counsel to the decision of the Hon’ble Supreme Court in **Delhi Development Authority vs. Jitender Pal Bhardwaj, (2010) 1 SCC 146**. In the said case, the Supreme Court affirming the judgment of this Court and dismissing the Special Leave Petition filed by DDA, made the following apposite observations:

“9. Though the intention of Development Authorities in general is to allot plots to the houseless, the policy and scheme has to be given effect with reference to the specific wording of the eligibility provision. If DDA wanted to bar everyone owning a plot/house/flat from securing an allotment, it could have made its intention clear by simply providing that “anyone owning or holding a long-term lease, any plot/house/flat in Delhi/New Delhi/Delhi Cantonment area, will be ineligible for allotment under this Scheme”. But DDA chose to make the eligibility clause subject to an exemption. If it chose to exempt certain categories, such exemption has to be given effect to. When the term of exemption is specific and unambiguous, it is not possible to restrict its applicability or read into it, a meaning other than the plain and normal meaning, on the assumption that the general object of the Scheme was different from what is spelt out in the term.....”

17. Learned counsel next contended that it is trite that so far as immovable property alleged to be owned by the joint family is concerned, in case the same stands in the name of an individual member, there would be a presumption that the same belongs to the joint family, provided it is proved that the joint family had sufficient nucleus at the time of its acquisition. It was so held by the Supreme Court in *P.S. Sairam and Anr. vs. P.S. Rama Rao Pissey and Others*, (2004) 11 SCC 320; and the aforesaid legal position is now well settled. He also contended that the legal position with regard to burden of proof in the context of separation in a joint family is equally well settled. The Supreme Court as far back as in the year 1951 had held in the case of *Bhagwati Prasad Sah and Others vs. Dulhin Rameshwari Kuer and Anr.*, 1951 SCR 603 that:

“.....The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family, there is no presumption that the rest of the coparceners continued to be joint.”

18. Learned counsel for the Petitioner also relied upon the judgment rendered by this Court in the case of ***Puran Mal Gupta vs. Commissioner (Housing) Delhi Development Authority & Anr., 45 (1991) DLT 438***. In the said case, while setting aside the cancellation of the allotment made by the Respondent in favour of the Petitioner, a learned Single Judge of this Court relied upon an earlier decision rendered by the Division Bench in ***D.M. Samanatra vs. DDA, Civil Writ No.1424/88*** decided on December 16, 1988, wherein it was observed:

“.....No doubt, the petitioner is the independent owner of that portion, but the land or the plot on which the said building was constructed cannot be said to be independently owned by him. He was the joint owner so far as the land or plot under the said residential house. The petitioner, in our view, squarely falls in the eligibility clause (c) referred to above.”

19. Reliance was also placed upon the case of ***Mallappa Giri Mallappa Betgeri vs. R. Yellappagouda, AIR 1959 SC 906***, wherein the Supreme Court held that where the Appellant, a Manager of the joint family, acquired certain properties in his own name for a consideration and there was sufficient nucleus of joint family properties out of which the said property might have been acquired

and the Appellant had no source of income, a presumption arose that the properties were the properties of the joint family and unless the said presumption was rebutted, it must prevail.

20. In the instant case, there is no denying the fact that the Petitioner No.1 had no source of income. It is also stands established from the record that the property bearing No. C-125, Naraina Vihar, New Delhi was purchased by the joint family for a total sale consideration of ₹ 7,08,000/-, out of which the Petitioner No.1 contributed only a sum of ₹ 72,000/- and the remaining amount was contributed by the other members of the joint family, namely, her three sons. All the aforesaid payments were made by the family members through cheques deposited in the Saving Bank Account of the Petitioner, and the Bank Account Statement of the Petitioner placed on record clearly reflects the encashment of the 7 cheques totalling ₹ 7,08,000/-, including the cheque of the Petitioner of ₹ 72,000/-. Thus, indubitably the undivided share of the Petitioner comes to 1/4th in the said property, i.e., 26 sq. mtrs. only in the property at C-125, Naraina Vihar. Since the land owned by the Petitioner was less than 67 sq. mtrs., therefore, the bar against allotment of Nazul land enshrined in Rule 17 of the Nazul Rules would not apply.

21. A look now at Rule 17 of Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, which reads as follows:

“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.”*

22. A bare glance at the aforesaid Rule is sufficient to show that the case of the Petitioners falls within the four corners of Proviso (a) to the said Rule. Thus, it cannot be said that the Petitioner filed a false affidavit, since the allotment in her favour was of less than 26 sq. mtrs., which was not a disqualification for the allotment of the plot in question on the date of the allotment. The necessary corollary

is that the cancellation of the plot of land allotted to the Petitioner No.1 by the DDA on the ground of concealment and misrepresentation is wholly unwarranted. To be noted, that it was the Petitioner herself who volunteered to disclose about the allotment to the DDA.

23. The contention of the DDA that the Nazul Rules would not be applicable has been already dealt with hereinabove and stands negated by this Court in the case of *M.L. Aggarwal (Supra)* referred to hereinabove. The reliance placed by learned counsel for the Respondent/DDA on the judgment of the Hon'ble Supreme Court in *Chandigarh Housing Board and Anr. vs. Narinder Kaur Makol, (2000) 6 SCC 415* is also wholly misplaced as the eligibility for allotment by the Chandigarh Housing Board/Development Authority as set out in its regulations was altogether different. Similarly, the case of *Delhi Development Authority vs. Arjun Lal Satija and Others, (2007) 13 SCC 603* relied upon by the counsel for the DDA is wholly distinguishable on facts. As noted by the Hon'ble Supreme Court, nowhere was it the stand of the Appellant in the said case that the land in question was Nazul land; therefore, the question of applying Rule 17 did not arise. In the instant case, it is not denied by the Respondent/DDA that the land in question is Nazul land and the only plea taken is that since the Nazul Rules came into existence after the floating of the Rohini Residential Scheme, 1981, the same are not applicable. The aforesaid contention, it is stated at the risk of repetition, has been negated in the case of *M.L. Aggarwal (supra)*

both by the learned Single Judge and by the Division Bench, and the view of the High Court has been affirmed by the Supreme Court.

24. A writ of mandamus is, therefore, issued directing the Respondents not to dispossess the Petitioners of Plot No.273, Pocket-III, Block-C, Sector-28, Rohini measuring 60 sq. mtrs. or interfere in any manner whatsoever with the enjoyment and possession of the said plot presently in possession of the Petitioners.

25. W.P.(C) 2791/2011 stands disposed of.

**REVA KHETRAPAL
(JUDGE)**

February 19, 2013
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