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

1 W.P.(C) 5442/2011

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Judgment dated 14.03.2013

GANGA BISIIAN GUPTA

..... Petitioner

Through: Mr.R.K. Saini, Advocate

versus

D.D.A.

..... Respondent

Through: Mr.Rajiv Bansal and Mr.Devvrat Singh
Raghav, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Pleadings in this matter are complete. Rule. With the consent of counsel for the parties, the present petition is set down for final hearing and disposal.
2. The necessary facts for disposal of this petition are that the petitioner had applied and registered himself with the DDA under the Rohini Residential Scheme 1981 for allotment of LIG plot (32 sq. mtrs.) in the year 1981. It is the case of the petitioner that till March, 1995, no allotment had been made in favour of the petitioner by the DDA and as the petitioner was in dire need of residential accommodation, he purchased the first floor of property bearing No.4-A/48 Old Rajinder Nagar, New Delhi. This property is stated to be built on a land measuring 88.1 sq. yds., which is equivalent to 73.66 sq. meters. The property was purchased by way of an

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of five floors, including, basement, ground-floor to third floor. Copies of the purchase documents have been placed on record.

3. It is also the case of the petitioner that a draw was held by the DDA in the year 2003 and the name of the petitioner was included and the petitioner was allotted a plot measuring 32 sq. mtrs. bearing no.1044 Pocket-2 Block-C, Sector 28 Rohini, Delhi. A demand-cum-allotment letter was issued to the petitioner with block dates of 5.9.2003 to 12.9.2003. The petitioner made the entire payment and possession was handed over to the petitioner on 21.2.2006. Thereafter a perpetual lease deed was also executed by the DDA in favour of the petitioner and his wife on 22.8.2008.
4. The petitioner was thereafter shocked to receive a show cause notice dated 14.1.2009 from the respondent DDA alleging that he is the owner of Flat No.4-A/48 (First floor), Old Rajinder Nagar, New Delhi and also alleging that he had purchased flat No.D-18, Adarsh Apartment, Sector-9, Rohini, Delhi in the name of his mother-in-law and later on he gifted the said flat D-18, Adarsh Apartment, Sector-9, Rohini, Delhi to his wife, calling upon him to show cause within 15 days as to why allotment/ lease of the demised plot in his favour be not cancelled.
5. The petitioner submitted his reply to the show cause notice on 21.1.2009, clarifying the position with regard to the flat No.D-18, Adarsh Apartment, Sector -9 Rohini, Delhi, subsequently, the petitioner received a letter dated 1.6.2009 from the DDA, seeking information with regard to flat at Rohini. By another communication dated 16.9.2010 the petitioner was asked to provide further details with regard to the carpet area in respect to the Rohini flat. Along with the reply, the petitioner submitted an architect's report, pointing out that the carpet area of the first floor owned by him is 530 sq. ft. equivalent to 49.23 sq. mtrs. Petitioner was again

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called upon to submit all the documents in his favour, such as GPA, Agreement to Sell, Will etc. with respect to the flat at Rohini. The necessary documents were supplied by the petitioner to the DDA. It is the case of the petitioner that despite the petitioner having provided all the necessary information, the allotment made in his favour was cancelled by a cryptic and non-speaking letter dated 22.7.2011, which has led to the filing of the present writ petition, seeking quashing of cancellation and restoration of the allotment.

6. Mr.Saini, counsel for the petitioner submits that issue in hand is no longer *res integra* that a person holding a house / flat / plot having area of less than 65 sq. meters at the time of registration, would be entitled for allotment under the Rohini Residential Scheme. Counsel for the petitioner has placed reliance on WP(C)No.5417/2007 titled **Jitender Pal Bhardwaj Vs. DDA** [decided on 7.8.2008] and more particularly on paragraph 6 thereof, which reads as under:

“6. In my view, the stand of the respondent that the petitioner does not fulfill the aforesaid term condition in the affidavit is not correct. The petitioner has placed on record the communication dated 14.10.2004 from the United India Cooperative Group Housing Society Limited which clearly shows that the area of category A flats is 57.76 sq. meters. He has also placed on record the self assessment form of property tax for the year 2006-07, wherein the area of the said flat has been mentioned as 62.22 sq. meters. Consequently, the area of the said flat is well below the limit laid down by the respondent in the eligibility condition of 65 sq. meters. If a person, who even at the time of making the application was the owner of a plot or flat having area of less than 65 sq. meters was eligible to apply under the scheme, and was therefore considered entitled to allotment of a plot, it does not stand to reason that a person who may have

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acquired, on account of his needs which are not met by the DDA for decades and end, another resident plot/flat/area less than 65 sq. meters should be rendered ineligible for allotment of a plot when its turn arrives. The condition/statement required to be made in the affidavit has, therefore, to be read in conjunction with eligibility condition, as aforesaid."

7. Counsel for the petitioner submitted that the aforesaid decision was upheld by the Supreme Court, wherein the Apex Court has held as under:

"6. The entire issue depends upon the interpretation of Clause 1(ii) of the Terms and Conditions of the Rohini Scheme. The said Clause makes an applicant ineligible for allotment, if the applicant or his/her spouse and minor children own or hold in Delhi/New Delhi/Delhi Cantonment : (i) any residential plot of land or a house either in full or in part either on leasehold or freehold basis, or (ii) any residential flat on hire-purchase basis. There is however an exemption. Any individual share held by the applicant in a jointly owned plot or land under the residential house which is less than 65 sq.m, will not be considered to be a disqualification or ineligibility for allotment.

8. The DDA next contended that the only exception to the eligibility condition that the allottee should not own or hold a property in Delhi/New Delhi/Delhi Cantonment, was in respect of "individual share of the applicant in a jointly owned plot or land under the residential house being less than 65 sq.m." It was contended that the said exemption was intended to apply only in regard to holdings by joint family members or co-owners and not in regard to ownership of an apartment. The High Court has rejected this contention on the following reasoning :

"The interpretation put by the learned counsel on condition no.(ii) would be clearly violative of the equality clause under Article 14 of the Constitution. It is clear to us that the intention is to exempt all those who have acquired residential

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house which is less than 65 sq.m. provided the house is not allotted by DDA."

When a person acquires a flat in a multi-storeyed building, what he gets is co-ownership of the land on which the building is constructed and exclusive ownership/long-term lease of the residential flat. As per Clause 1(ii), where the individual share in the land on which the building stands, held by the allottee is less than 65 sq.m., he is not barred from securing allotment from DDA. The other interpretation is that if the measurement of the flat is less than 65 sq.m and the allottee owns only an undivided share in the land, corresponding to such flat, the benefit of exemption would be available to the applicant.

9. It is true that the purpose of development of a residential scheme by a City Development Authority is to make available plots to those who do not own a house in that city. It is also true that allotting plots to those who already own houses, may amount to denial of plots to other deserving applicants who do not own or hold any property at all. But the policies and purposes of development authorities are not uniform. Some schemes contemplate allotment of plots to those who are poor and whose income is less than the specified limit. Some schemes provide for allotment of smaller plots to economically weaker sections at a lesser price and allotment of larger plots to high income groups at a higher price. Some schemes make anyone owning a property, whether commercial or residential ineligible. Some schemes make only those owning plots already allotted by the authority ineligible. Some schemes make only those owning properties which are larger than a prescribed limit ineligible. 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

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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."

8. Reliance is also placed by counsel for the petitioner on a decision of the Division Bench in LPA No.134/2009 titled DDA Vs. Jai Kanwar Jain [decided on 2.4.2009]. Counsel for the petitioner also submits that this decision has been followed in two more cases i.e. Basant Kumar Rastogi Vs. DDA and B.B. Jain Vs. DDA and in LPAs preferred against the decision, have been decided in favour of the allottees by the Division Bench by an order dated 5.3.2013. Counsel also submits that in the case Basant Kumar Vs. DDA WP(C)2004/2006, a Single Judge has held as under:

"The question whether Rule 17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 disentitles the petitioner to the plot in question even if he was having a Janta flat measuring less than 67 square meters is no more an issue. It has been held by this Court in the case of Krishan Bhagwan Versus Delhi Development Authority, reported in 1999(50) DRJ 99 that a person who owns property which is less than 67 square meters does not become disentitle for allotment of a plot in Delhi. The same view was taken by a Division Bench of this Court in the case of DDA Versus M.L. Aggarwal, reported in 127(2006) Delhi Law Times 572 (DB). The said judgment of the Division Bench was taken in appeal to the Supreme Court and the Supreme Court vide its order dated November 26, 2009 has finally put the issue at rest by upholding the judgment of the Division Bench."

9. Counsel for the respondent has opposed this petition on the ground that petitioner had concealed material facts while making an application for

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allotment under Rohini Residential Scheme, to which counsel for the petitioner submits that at the time of making application for allotment under Rohini Residential Scheme, petitioner had not purchased the flat in question.

10. Counsel for the respondent also submits that there is nothing on record to show that the area which is in possession of the petitioner is less than 65 sq. mtrs. as admittedly the plot on which construction had been carried out is 73.66 sq. mtrs., which is more than the prescribed area of 65 sq. mtrs. In response to the said submission, counsel for the petitioner has relied on the House-tax receipts to show that the House-tax has been assessed for the single floor and the covered area is only 49.23 sq. Mtrs. hence, is less than 65 mtrs. It is also the case of the petitioner that the area in possession of the petitioner, is much less than the 65 sq. mtrs.
11. I have heard counsel for the parties and considered their rival submissions and perused all the judgments, which have been relied upon by counsel for the petitioner. In the Rohini Residential Scheme, 1981 one of the terms and conditions stipulated is 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 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. 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.”

12. Counsel for the petitioner has submitted that the DDA (Disposal of Developed Nazul Land) Rules, 1981 defines “Nazul land” to mean the land placed at the disposal of the Authority and developed by or under the

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control and supervision of the Authority under Section 22 of the Act and has placed reliance on rule 17, which 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.”

13. It is not in dispute that an allottee would incur a disqualification for allotment of a plot under the Rohini Residential Scheme, in case an individual, his wife/ her husband or any of his/her minor children have been allotted a house in New Delhi or Delhi cantonment. However, a person, who owns a house or a plot allotted by the DDA of an area of even less than 65 sq. meters, would also not be eligible for the allotment. This condition was discussed and had been a subject matter of various

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decisions of this Court.

14. The issue involved in the present case 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 the MIG category on 24.04.1981 and allotment was made to him on 29.11.1983. The allotment was cancelled by DDA, on the ground that the wife of the said petitioner was holding a plot about 30 square metres, 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.”

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15. 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.”

16. 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

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to be correct as on the date of draw of lots the aforesaid rules had become operative."

17. Applying the law to the facts of the present case, it may be noticed that the petitioner was allotted a plot measuring 32 sq. mtrs. under the Rohini Residential Scheme. The petitioner had purchased the first floor of property bearing No.4-A/48 Old Rajinder Nagar, New Delhi, which is built on a piece of land measuring 88.1 sq. yrs. which is equivalent to 73.66 sq. mtrs. Petitioner has placed on record supporting documents, evidencing purchase of the first floor. The petitioner has also placed on record a copy of the agreement to sell to show that he has purchased the first floor of property bearing No.4-A/48 Old Rajinder Nagar, New Delhi measuring 88.1 sq. yrds. Petitioner has further placed on record a copy of the house-tax receipt and a copy of the assessment order, to show that he is in possession of the first floor of the flat in question. As per the assessment order, total cost of the land has been shown as Rs.7,73,535/- and individual cost of land is Rs.1,28,925/- for 14.75 sq. mtrs. Keeping the documents placed on record, it can safely be said that the flat owned by the petitioner is less than 67 sq. mtrs. and thus, petitioner does not incur any disqualification, as per the Scheme.
18. Having regard to the consistent view taken by this court in various judgments, the present writ petition is allowed. The impugned order of cancellation dated 22.7.2011 is quashed. DDA shall restore the allotment in favour of the petitioner.
19. Writ petition stands disposed of, in above terms.


G.S.SISTANI, J

MARCH 14, 2013 ssn