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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on : 29.04.2013

Judgment Pronounced on: 20.05.2013

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LPA 619/2012

SURINDER KUMAR JAIN

..... Appellant

Through: Mr. Rakesh Munjal, Sr. Adv. With
Mr. Maneesh Goyal, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents

Through: Mr. Arun Birbal, Adv. for DDA.
Mr. Sumant De, Adv. For R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

LPA 619/2012

1. By the present appeal, the appellant challenges the dismissal of his writ petition vide judgment dated 20.07.2012. In brief, it is the contention of the appellant that his brother-Ramesh Kumar Jain became a member of respondent No. 2-Vardhman Co-operative House Building Society in October 1966. The said brother-Sh. Ramesh Kumar Jain on 02.02.1976 resigned from the said membership. It is further stated that as per the rules, the membership could be transferred in favour of the appellant being a real brother (blood relation) of the said Sh. Ramesh Kumar Jain. In fact, Ramesh Kumar Jain had in his resignation expressed his desire and had requested respondent No. 2-Society to transfer all his rights, interest, etc. and

membership of the Society in favour of the appellant.

2. It is further contended by the appellant that the resignation of Sh. Ramesh Kumar Jain was accepted by respondent No. 2 and simultaneously it was agreed to transfer the membership in favour of the appellant. Accordingly, the appellant paid admission fee of Rs. 10 on 02.02.1976. The decision to accept the resignation and transfer the membership in favour of the appellant was ratified by the Management Committee of respondent No. 2 on 24.02.1976.

3. It is further contended by the appellant that having been inducted as member of respondent No. 2, he has been paying various amounts which have fallen due and demanded by respondent No. 2. He claims that even the lease amount accrued till date with respect to the plot in question stands paid by the appellant.

4. It appears that in January 1984 a draw of lots took place by respondents whereby Plot No. 23, Arihant Nagar, near Punjabi Bagh, New Delhi was allotted in favour of Sh. Ramesh Kumar Jain, the brother of the appellant. Hence the appellant raised an objection. It is contended that respondent No. 2 submitted all necessary documents and papers to respondent No. 1. It is stated that this was done on 07.07.1984. Respondent No. 1 accepted the receipt of letter dated 07.07.1984 vide its letter dated 25.07.1985 and directed respondent No. 2 to rectify its records. A reminder was also written on 06.08.1986 by respondent No. 2 to respondent No. 1.

5. Subsequently the appellant received a letter dated 06.10.1986 whereby it was informed to the appellant that the allotment in his favour stood cancelled on the ground that the original allotment was in the name of Sh. Ramesh Kumar Jain who had concealed facts and filed a false affidavit

regarding non-ownership of any residential property either by him or his wife or dependent children within the area of Delhi when in fact he already owned a residential property in Delhi. The letter was purported to be in continuance of show cause notices dated 07.10.1985 and 14.01.1986. The appellant contends that no show cause notice was received by him and that in all probability the show cause notices were addressed to his brother who had nothing to do with the plot in question.

6. Similarly, a representation was made by the appellant which was rejected on 12.12.1990. Hence the appellant filed the present writ petition seeking following reliefs.

“(i) CERTIORARI thereby quashing the communication dated 06.10.1986 and 12.12.1990 issued by respondent No. 1.

(ii) Mandamus directing the respondents to allot plot No. 23, at Arihant Nagar, Near Punjabi Bagh, New Delhi in favour of the petitioner and handover the peaceful and vacant possession of the same to the petitioner.”

7. It is the contention of the learned senior counsel for the appellant that after his brother-Sh. Ramesh Kumar Jain had resigned from the membership of respondent No. 2-Society on 02.02.1976, the appellant had become a member of the said Society. Hence, the acts, deeds or mis-deeds, if any, of his brother are of no consequence inasmuch as the appellant is now the member of the Society and there are no allegations about any wrong act or concealment by him. It is hence contended that the allotment of the plot could not be cancelled in these facts and circumstances.

8. Learned senior counsel for the appellant has also contended that since 02.02.1976 he was the member of respondent No. 2-Society and hence the action of the DDA in cancelling the allotment for any acts of omission done by his brother is not warranted. He relies upon Section 41 of the Delhi

Cooperative Society Act, 2003 and Rule 34 of the Delhi Cooperative Society Rules 1973 to argue that on transfer being affected in his name, the membership cannot be cancelled for acts of omission of his brother. It is further contended that till the date when his membership stood cancelled due to resignation with the respondent No. 2 Society, even his brother has done no act which would lead to termination of the membership of the appellant of respondent No. 2 Society. He contends that admittedly on the day the conveyance deed was registered for the residential plot in favour of his brother i.e. 15.02.1977, his brother was not a member of respondent No. 2-Society and hence there are not grounds or basis to cancel the allotment. He further argues that the date that is material is not the date of allotment of the residential plot in favour of his brother but the date of registration of conveyance deed in favour of his brother.

9. On the other hand, learned counsel for respondent No. 1-DDA has argued that they have rightfully taken the step to cancel the allotment. The appellant had become a member of respondent No. 2-Society only on transfer of membership from his brother-Ramesh Kumar Jain. The said Ramesh Kumar Jain had given a wrong undertaking to the respondents claiming that he or his immediate family does not own any residential plot or accommodation in Delhi. The fact of the matter is that a plot in Malviya Nagar was allotted to him in 21.08.1975 and he had made full payment on 31.12.1975. Hence he was ineligible for membership of respondent No. 2-Society. What was transferred to the appellant were the rights of his brother and hence DDA has rightfully cancelled the allotment. It is the stand of respondent-DDA in its counter affidavit filed before the learned Single Judge that the membership rights were transferred in the name of the

appellant on 25.07.1985 whereas the draw of lots took place on 06.01.1984. It was stated that certain documents were submitted by respondent No. 2-Society to the answering respondent vide letter dated 07.07.1984 and it was only thereafter his membership rights were transferred in favour of the appellant on 25.07.1985. It is further stated that the Registrar of Co-operative Society had cleared the membership of the brother of the appellant-Shri Ramesh Kumar Jain on 05.12.1983 and hence confirmation of allotment was issued on 23.02.1984. It is further stated that on the date of the draw of lots, the brother of the appellant, Shri. Ramesh Kumar Jain was still the member of respondent No. 2 Society and he had an alternate residential plot in his name and hence the cancellation order dated 06.10.1986 was issued.

10. Learned counsel for respondent No. 2 has stated that respondent No. 2 transferred the membership of Ramesh Kumar Jain in favour of the appellant and that thereafter the appellant was treated as a member of the Society for all intents and purpose. Respondent No. 2 in their counter affidavit before the learned Single Judge have though confirmed that the membership was transferred in favour of the appellant in the meeting held on 24.02.1976 w.e.f. 02.02.1976 and though steps were taken by respondent No. 2 Society to communicate the change of membership in favour of the appellant only after the draw of lots held in 1984.

11. On 07.09.2012, this Court noted that though Sh. Ramesh Kumar Jain had resigned as member of respondent No. 2 Society on 02.02.1976, he was given a plot bearing No. D-15, Ashok Vihar in August 1976. Hence, the following directions were passed:-

“2. It is the version of the appellant that the resignation of

Shri Ramesh Kumar Jain was accepted on 2nd February, 1976. It is the case of the appellant himself that Shri Ramesh Kumar Jain was given possession of plot bearing No. D-15, Ashok Vihar in August, 1976. The moot question would be as to whether Shri Ramesh Kumar Jain was given the allotment of the said plot before 2nd February, 1976 in as much as if there was any allotment in his favour, he could not have become the member of the respondent no. 2 Society.

3. In these circumstances, we call upon the appellant to file an affidavit of himself and/or that of Shri Ramesh Kumar Jain disclosing when the respondent DDA made the allotment to him of the plot in Ashok Vihar, New Delhi.”

12. In response to the said order, the appellant file an affidavit on 20.09.2012. As per the said affidavit, it is stated that the brother of the appellant was allotted a plot No. J-135, Malviya Nagar, New Delhi and the lease deed was executed on 15.02.1977 which was registered on 02.03.1977. It is further stated that his brother exchanged the plot No. J-135, Malviya Nagar, New Delhi with the plot No. D-15, Ashok Vihar vide exchange deed dated 15.02.1984. The affidavit does not mention about the date of allotment of the property in Malviya Nagar to the brother of the appellant though there was a specific direction to this effect in order dated 07.09.2012 of this Court. It is however contended by the appellant in the affidavit that mere allotment of a property does not give any person ownership of a property. In this context reliance is placed on section 55 of the DDA (Management and Disposal of Housing Estates) Regulations, 1968, according to which it is stated that an allottee becomes an owner of a property after the sale deed/conveyance deed is executed.

13. Respondent No. 1 DDA have filed an affidavit dated 04.03.2013 in compliance of order dated 09.10.2012 where the facts as stated by the

appellant in his affidavit are reiterated. It is further clarified that the said plot No. 135, Block J, Malviya Nagar admeasuring 200 sq. yds. or thereabouts was allotted to Sh. Ramesh Kumar Jain in the draw of lots held on 20/21.08.1975 and that the balance premium was paid on 31.12.1975 and possession of the plot was handed over on 04.08.1976. Subsequently, the plot has been exchanged on 15.02.1984 with another plot.

14. In our opinion the present appeal is devoid of merits. Much stress was laid by the learned senior counsel for the appellant on the fact that on the date of the draw of lots, the respondent No. 2 had accepted the appellant as its member and hence any mis-deed of his brother as on that date is of no consequence. Membership of the respondent No. 2 Society may have been transferred to the appellant on 02.02.1976 as contended by the appellant and respondent No. 2. Though the said submission does not inspire confidence in as much as it is strange that though membership was transferred in favour of the appellant on 24.02.1976 by respondent No. 2 yet respondent No. 2 chose to inform DDA about this change on 07.07.1984, after the draw. However, on the date when the allotment had been made in favour of the brother of the appellant for the plot in Malviya Nagar for which full consideration had been paid, he had become ineligible for the membership of the Society. Clearly the allotment of the plot in favour of the brother of the appellant was before he resigned as member of respondent No. 2 Society.

15. Further as evident from the record of the writ petition is that subsequent to the draw of lots in 1984, respondent No. 2 had written to the appellant to submit required papers failing which the right to the plot would be forfeited. In response thereto, the appellant filed an affidavit of his

brother-Ramesh Kumar Jain dated 24.07.1984 which states as follows:-

“I, Ramesh Kumar S/o Shri Amar Nath do hereby solemnly and declare as under:-

i) The I hold valid membership of VARDHMAN Coop. House Building Society in accordance with the Delhi Cooperative Society Act, Rules and Bye-laws. My membership number is 151.

ii) That neither I nor my husband/wife nor any of my dependent relations (including unmarried Children) during the period of my membership of this society has been a member of any other house building Cooperative Society, functioning in Delhi/New Delhi/Delhi Cantt.

iii) That neither I nor my husband/wife nor any of my dependent relations (including unmarried children) during the period of my membership of this society has owned either in full or in part, on lease hold or free hold basis, any plot of land or a house in Delhi/New Delhi /Delhi Cantt.

iv) That I will inform within one month the said society as well as the Lt. Governor, Delhi if any plot of land or house is occupied by me or my wife of any of my dependent relation, including unmarried children.”

16. Hence as per the said affidavit dated 24.07.1984, the said brother was not a member of any house building cooperative society and had not owned any lease hold or free hold plot or house in Delhi. This was clearly false. It is clear that the entire process of allotment is based on a false and incorrect affidavit of the brother of the appellant. The fact of the matter is that land at Malviya Nagar was allotted to the brother on 20/21.08.1975 and full premium was paid on 31.12.1975, whereas the brother resigned on 02.02.1976 as a member of respondent No. 2-Society. The brother of the appellant was hence not entitled to the plot and allotment has been obtained by making a false statement. This was the position in 1976 when the brother

resigned as a member of respondent No. 2 Society and was the position in 1984 when the brother gave the abovenoted affidavit.

17. Reference may also be made to Rule 25(1)(c) of the Delhi Cooperative Society Rules, 1973 which reads as follows:-

“25. Disqualification for Membership

1. No person shall be eligible for admission as a member of a co-operative society if he-

...

(c) in the case of membership of a house society-

[(i) owns a residential house or a plot of land for the construction of a residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale:

...

(iii) he or his spouse or any of his dependent children is a member of any other housing society except otherwise permitted by the Registrar.

2. Notwithstanding anything contained in the rules or the bye-laws of the co-operative society, if a member becomes, or has already become, subject to any disqualifications specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred.”

18. A perusal of the above Rule makes it clear that a person who owns a residential house or a plot of land whether in his name or in the name of his spouse or dependent children or is a member of housing society is ineligible for admission as a member of any housing cooperative society. Rule 25(1)(c)(iii) also states that once a member incurs a disqualification, he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred. Admittedly in the present case even as per

the appellant his brother was allotted a plot in Malviya Nagar for which a lease was executed on 15.02.1977. Respondent-DDA has confirmed that the plot in Malviya Nagar was allotted on 20/21.8.1975 and the full premium was paid on 31.12.1975 by the brother of the appellant. The appellant has failed to give details as to how and on what circumstances the draw of lots took place in favour of the brother of the appellant in 1975 for the Malviya Nagar plot. No details are given by the appellant of the date of membership of the other Housing Society by his brother or as to how the brother was allotted the said plot. It is but obvious that material particulars have been withheld from this Court by the appellant. Even if we ignore the fact that in 1984 when the draw of lots took place, the membership of the appellant had not been cleared by the Registrar of Cooperative Societies, even as on 1976 when the brother of the appellant resigned from the membership of respondent No. 2-Society, the brother was ineligible to be a member of respondent No. 2-Society. His membership was hence liable to be cancelled.

19. In view of the above, we see no reason to differ from the view taken by the learned Single Judge.

20. The present appeal is dismissed.

CM No. 15715/2012 (stay)

21. In view of the dismissal of the appeal, this application has become infructuous. It stands disposed of.

JAYANT NATH, J.

CHIEF JUSTICE

May 20, 2013/rb