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

% Judgment reserved on : 01.03.2013
Judgment pronounced on : 05.03.2013

\+ **LPA 670/2012**

DELHI DEVELOPMENT AUTHORITY ..... Appellant

Through: Mr Ajay Verma, Adv.

versus

B.B. JAIN ..... Respondent

Through: Mr R.K. Saini, Adv with Mr Sitab Ali Chaudhary, Adv.

AND

\+ **LPA 709/2012**

D.D.A. & ANR. ..... Appellants

Through: Mr Ajay Verma, Adv.

versus

BASANT KUMAR RASTOGI ..... Respondent

Through: Mr Anand Yadav, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. The respondent in LPA No.670/2012 got himself registered with the appellant - DDA in the year 1976 for allotment of a residential flat.

The appellant allotted an LIG flat to him at Motia Khan, vide allotment letter dated 16th August, 1998. The said flat was built on area measuring less than 65 sq.m. In the meanwhile, the appellant had come out with a Scheme known as Rohini Residential Scheme, 1981, for allotment of plots of land. The respondent also applied for allotment of a plot under the aforesaid Scheme and a plot measuring 60 sq.m. was allotted to him vide demand-cum-allotment letter dated 6th August, 2004. However, possession of the aforesaid plot was refused to him on the ground that he had already been allotted a residential flat in Motia Khan and, therefore, was not entitled to any further allotment from DDA. Since the appellant cancelled the allotment of plot to the respondent, he filed a writ petition questioning the aforesaid cancellation. The learned Single Judge, vide impugned order dated 26th May, 2011, directed the appellant to hand over possession of the aforesaid plot to the respondent if full payment in terms of the Scheme has been received by it. Being aggrieved from the aforesaid order, the appellant is before us by way of this appeal.

2. In LPA No.709/2012, the respondent before us was allotted a plot of land under the Rohini Residential Scheme of the appellant and a demand-cum-allotment letter dated October 5, 2005 was issued to him.

The respondent, however, did not deposit land premium with the appellant in terms of the allotment letter on the ground that one condition added in the allotment letter was to the effect that the allotment was subject to non-allotment of Janta flats. The respondent sought deletion of the aforesaid condition from the allotment letter issued to him and finding no positive response from DDA filed a writ petition seeking an order restraining the appellant from cancelling the aforesaid allotment and directing it to handover possession of the aforesaid plot to him. It would be pertinent to note here that the respondent in this case has been allotted a Janta flat constructed on an area measuring less than 67 sq. metres. The learned Single Judge, vide impugned order dated 28.10.2010 held that irrespective of allotment of a Janta flat to him by DDA, the respondent was entitled to allotment of a plot under the Rohini Residential Scheme, 1981.

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 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."

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

11. For the reasons stated hereinabove, we find no merits in the appeal and the same are hereby dismissed.

We are, however, in agreement with the learned counsel for the appellant that irrespective of whether the respondent was eligible for allotment of a plot under the Rohini Residential Scheme or not, he ought not to have submitted a false affidavit at the time of obtaining allotment of plot from DDA. We, therefore, make it clear that dismissal of these appeals will not come in the way of DDA taking such action as is open to it in law, on account of the respondent having filed a false affidavit, at the time of obtaining allotment from DDA, stating therein that neither he nor

his wife or any of his children owned in full or in part any residential plot or flat in Delhi.

V.K.JAIN, J

CHIEF JUSTICE

MARCH 05, 2013
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