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

Reserved on: 13<sup>th</sup> August, 2015

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Pronounced on: 8<sup>th</sup> October, 2015

+ LPA 60/2015 and CM Appl. 2098/2015 (stay) & 2099/2015 (delay in filing)

DELHI STATE INDUSTRIAL &  
INFRASTRUCTURE DEVELOPMENT  
CORPORATION LTD THR CHIEF MANAGER ..... Appellant  
Through Ms.Renuka Arora, Advocate.

versus

HARPAL SINGH ..... Respondent  
Through Mr.M.P.Sharma, Advocate.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.**

1. The present appeal is filed seeking to impugn the order dated 28.08.2014 passed by the learned Single Judge.
2. The brief facts which led to filing of the present appeal are that the appellant floated a scheme to provide functional and economical residence to the workers in the industrial areas, known as “Rajiv Gandhi Housing Project Self Finance Cost Effective Workers Housing Scheme”. The Scheme was launched in view of certain orders passed by the Supreme Court directing closure of the industrial units operating in non-conforming/residential areas and directing the Government of NCT of Delhi to relocate the said industries to dedicated industrial areas. The

appellant was made the implementing agency for the Relocation Scheme.

3. As per the relevant eligibility criteria specified in the Scheme, the applicant should be a bona fide allottee of the Relocation Scheme in the Bawana and Narela Industrial Area.

4. The respondent Shri Harpal Singh was a partner of M/s Hemkunt Industries, an allottee of an industrial plot. Shri Savinder Singh was the other partner. It is contended by the appellant that as per the eligibility criteria, only one application could be made by an allottee of an industrial plot and the partners of the allottee firm could not make separate applications for allotment of dwelling units under the said categories. It is further averred that in violation of the above condition, both, Shri Harpal Singh, the respondent and his partner, namely, Shri Savinder Singh applied separately for allotments vide separate applications. It is claimed that Shri Savinder Singh applied in the category of an "Industrial Worker". The said application was submitted by Shri Savinder Singh in 2003. As there was misrepresentation by Savinder Singh of being an industrial worker, the said Savinder Singh submitted an affidavit on 19.06.2006 mentioning that he had mentioned his designation as being partner and not a worker. Later on, he also submitted an affidavit of the respondent dated 04.06.2007 stating that the respondent had no objection if possession of a dwelling unit is handed over to Savinder Singh in the capacity of a partner of M/s Hemkunt Industries.

5. It is further averred that on the scrutiny of the application of the respondent, it was found that both the partners had applied for allotment of a dwelling unit and accordingly, a show cause notice was issued to the respondent on 22.09.2009 and the flat allotted to the respondent was

cancelled and the entire amount paid by the respondent was forfeited vide order dated 01.06.2011. The said order of cancellation was impugned in the Writ Petition.

6. The learned Single Judge vide impugned order dated 28.08.2014 allowed the writ petition and quashed the cancellation order dated 01.06.2011. The impugned order notes that the appellant floated a Housing Scheme in September 2003 which invited applications during the period from 27.09.2003 to 30.10.2003. Shri Savinder Singh applied for a dwelling unit under the said 2003 Scheme. A separate brochure was printed and circulated inviting applications again in September 2004 for allotment of dwelling units. The eligibility criteria in the two Schemes was identical. The respondent applied pursuant to the brochure issued in September 2004 and was allotted a flat. Pursuant to the allotment, the respondent had paid a total sum of Rs.2,17,000/-. The impugned order notes that Savinder Singh in his application form has clearly stated his status to be a partner in the opening sheet and merely because there might be some irregularities in the application, it cannot be said that the said Savinder Singh made any misrepresentation in his application. It was further held that there is nothing in the two Schemes launched in 2003 and 2004 respectively to show that they were part of the same scheme. The impugned order further held that the criteria does not stipulate that those who have applied under the 2003 Scheme need not apply in the 2004 scheme or that the 2004 Scheme was in continuation of the 2003 Scheme and not a separate scheme. On these premises, the learned Single Judge concluded that there has been no misrepresentation by the respondent and no grounds are made out to cancel the allotment. If the

allotment made to the respondent was contrary to the Scheme, the same was an error on the part of the appellant and the respondent could not be penalised for the same. Hence, the order of cancellation dated 1.6.2011 was quashed.

7. We have heard the learned counsel for the parties and gone through the record.

8. Learned counsel appearing for the appellant relies upon the affidavit of Shri Savinder Singh where he states that he is the partner of M/s Hemkunt Industries and that the respondent has never booked a residential flat under the present scheme. Reliance is also placed on the affidavit of the respondent dated 04.06.2007 where he states that he has no objection if the flat is handed over to Savinder Singh in the capacity of a partner of M/s Hemkunt Industries. Hence based on these facts, it is contended that both the respondent and Sh. Savinder Singh are guilty of misrepresentation to the appellant and the flat of the respondent was validly cancelled. Reliance is also placed on the judgment of the Division Bench of this High Court in LPA No. 772/2010 dated 20.04.2011 in the case of *M.S. Sethi vs. DSIIDC* to contend that based on identical facts and circumstances, this Court did not quash the cancellation letter.

9. We may first see the ground on which the allotment of flat in favour of the respondent was cancelled. This was done vide communication dated 01.06.2011. The relevant part of the communication reads as follows:

“Whereas, DSIIDC launched housing scheme for allotment of dwelling units to Industrial workers and

industrial plot allottees under R.L. scheme at Bawana & Narela for use of their workers.

Whereas, Sh. Harpal Singh and Sh. Savinder Singh are the partners of M/s Hemkunt Industries, which is allottee of Indl. Plot No.90, Sector-1, Pocket-9, at Bawana. They have secured allotment of two dwelling units in the name of both partners against application from No.4528 and 5782 by misrepresentation.

And, whereas, reply dated 09.10.2009 submitted to show cause notice dated 22.09.2009 was placed before competent authority who is of the view that allotment has been secured on the basis of the misrepresentation and has ordered to cancel the allotment and forfeit the deposits as per terms and condition of allotment. Accordingly, allotment of dwelling unit 11/849/D Type-II against application form No.5782 stand cancelled and amount of Rs.2,10,000/- (Two Lakh Ten Thousand Only), deposited by Sh. Harpal Singh stand forfeit in accordance with clause 14 of the brochure.”

10. Hence, the ground on which the allotment has been cancelled, is that the respondent and Sh. Savinder Singh had secured two separate dwelling units by misrepresentation. What was the misrepresentation done by the respondent is not mentioned in the said order. For the same, we may take a look at the show cause notice which was issued on 22.09.2009. The relevant portion of the same reads as follows:

“Whereas DSIIDC launched Housing Division for allotment of flats to Indl. workers and allotment in the year 2003 and 2004.

Whereas both the partners of M/s Hemkunt Industries, i.e. Sh. Harpal Singh (yourself) under App. No.5782 and Sh. Savinder Singh App. No.4528 secured allotment of one flat each.

Whereas Sh. Savinder Singh was allotted flat under Indl. Worker on the basis of employer certificate issued by you.

On scrutiny of an application form of Sh. Savinder Singh, it was detected that he was not an employee of M/s Hemkunt Industries but a partner.

His allotment was retained on the basis of affidavit submitted by him that his partner has not booked any flat under the scheme which is found contrary to the fact.

Sh. Harpal Singh is hereby called upon to explain why allotment made to him under App. No.5782 is withdrawn/cancelled.”

11. Hence, it is the case of the appellant in the above notice that there was misrepresentation as Sh. Savinder in his affidavit stated that the respondent has not booked any flat under the scheme.

12. We may see the affidavit filed by Sh. Savinder Singh dated 19.06.2006. In the affidavit, he states that the respondent, his partner has never booked any residential flat under the “1<sup>st</sup> Scheme of Rajiv Gandhi Housing Scheme at Bawana or anywhere else”. It is clear that Sh. Savinder Singh had thought the two schemes of 2003 and 2004 to be

different and that is why the phrase “1<sup>st</sup> Scheme” has been used in his affidavit.

13. Coming to the affidavit filed by the respondent dated 04.06.2007. The same only states that the respondent has no objection if the possession of the flat allotted to Sh. Savinder Singh is handed over to him in the capacity of partner of Sh. Savinder Singh.

14. Do the two affidavits show any misrepresentation? We may for the said purpose look at the eligibility criteria for the 2004 scheme, which reads as follows:

“5. Eligibility and Mode of Payment

a) The applicant must be a citizen of India & resident of NCT of Delhi and should have attained the age of 18 years on the date of application.

b) The applicant should either be a bonafide allottee or industrial worker in DSIIDC Bawana and Narela Industrial Area under Re-location Scheme or any worker with the Govt. of NCT of Delhi or its PSUs.

c) The allotment is proposed to be made by draw of lots among eligible applicants.

d) The decision of DSIIDC regarding allotment of dwelling units shall be final and binding on the applicants.

e) Upto five dwelling units will be allotted to an allottee under Re-location Scheme through a single application form and the unit to Industrial Worker of an allottee under the Re-location.

However, the scheme shall be simultaneously extended to the industrial workers, allottee entrepreneurs of other indl. Areas developed, under the Relocation Scheme”

15. The relevant eligibility criteria for allotment in the above 2004 Scheme does not spell out that an allottee of an industrial plot can only apply for one flat. In fact Clause 5 (e) states that “upto five dwelling units could be allotted to an allottee through a single application form”. Further nowhere in the eligibility criteria is it mentioned that those who have applied under the earlier Scheme which was floated in September 2003 and for which application has been invited from 27.09.2003 to 30.10.2003 should not apply under the present Scheme which is floated in 2004. The applications in the 2004 Scheme had to be filed from 27.09.2004 to 30.10.2004.

16. The respondent had applied under the 2004 Scheme. Savinder Singh had applied under the 2003 Scheme. There was no manner in which the respondent could have known that Savinder Singh having applied in the 2003 Scheme, he had become ineligible to apply in 2004 for the said scheme.

17. Further, there is nothing to show that the said schemes constitute only one scheme. Hence, the respondent and his partner Sh. Savinder Singh cannot be faulted for having made two separate applications for booking two separate dwelling units in two separate schemes; one issued in 2003 and another issued in 2004. They presumably thought that they were applying under different schemes. They had no means to know that the schemes were in continuation of each other as claimed. It cannot be said that the respondent and Sh. Savinder Singh made a wrong statement in their affidavit.

18. There is nothing on record to support the conclusion of the

appellant that the respondent is guilty of misrepresentation. The affidavits of the respondent and Sh. Savinder Singh do not show any misrepresentation. The entire basis for cancelation of allotment vide order dated 01.06.2011 is misplaced.

19. Regarding the judgment relied upon by the learned counsel for the appellant, namely, in the case of *M.S.Sethi vs. DSIIDC(supra)*, that was a case which pertains to the Scheme of 2003. The petitioner in that case had made an application for allotment of five flats. However, he was allotted only one flat. The ground for the same was that a policy decision was taken by DSIIDC that only one flat would be allotted to one applicant. The petitioner in that petition had filed an application seeking a direction for allotment of five flats. It was on those facts that the Division Bench came to the conclusion that the right of the petitioner to get five flats had not fructified. The said judgment has no application to the present facts and issues raised.

20. There is no merit in the contention raised by the appellant. We see no reason to interfere with the impugned order. The appeal is dismissed.

**(JAYANT NATH)  
JUDGE**

**CHIEF JUSTICE**

**OCTOBER 08, 2015  
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