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

\+ **RSA No. 249/2015**

% **19th April, 2017**

RAJ SINGH ..... Appellant

Through: Mr. Prasoon Kumar Mishra, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent

Through: Mr. Nikhil Rohatgi, Mr. Mohit Khubchandani and Mr. Shashank Khurana, Advocates for DDA with Mr. Dharmendra Sharma, Deputy Director, DDA.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) the appellant/plaintiff impugns the concurrent judgments of the courts below; of the Trial Court dated 15.10.2012 and the First Appellate Court dated 30.4.2015; whereby the suit filed by the appellant/plaintiff for permanent and mandatory injunction for directions to the respondent/defendant to allot the flat being No. 310, ground floor, Pocket-B, Phase-2, Sector-24, Dwarka, New Delhi has been dismissed.

2. The facts of the case are that the respondent/defendant/ Delhi Development Authority (DDA) announced an Ambedkar Awas Yojna, 1989 for housing of the weaker sections of the society. Under the scheme, the appellant/plaintiff claimed that he was eligible under the MIG category and hence he applied under the MIG category. The appellant/plaintiff applied for allotment on hire-purchase basis. The appellant/plaintiff, however, received an allotment letter on the basis of the draw dated 15.9.1998 whereby the appellant/plaintiff was allotted the flat on cash-down basis and was directed to deposit the entire amount of Rs.7,85,595.36/- on or before 25.5.1999 i.e the appellant/plaintiff was allotted the flat on cash-down basis and not on hire-purchase basis for which he had applied. Appellant/plaintiff approached the respondent/defendant for conversion of the allotment from cash-down basis to hire-purchase basis but the respondent/defendant showed its inability to do the same in view of its Resolution no. 145/1992. The appellant/plaintiff did not have the funds to make the entire payment and he therefore requested for extension and which were granted to him, with the last extension being up to 25.8.1999. The appellant/plaintiff still failed to pay the amount and hence the respondent/defendant cancelled the allotment of the subject flat and it also refused to accept the request of the

appellant/plaintiff for conversion of the appellant's/plaintiff's category from cash-down basis to hire-purchase basis as per its policy.

3. The suit was contested on behalf of the respondent/defendant by stating that the appellant/plaintiff was entitled to the flat only on cash-down basis as per the draw of lots held on 15.9.1998 and since appellant/plaintiff inspite of repeated notices failed to deposit the price even after granting extensions, and finally upto 24.11.1999, and hence a show cause notice was issued to the appellant/plaintiff on 30.5.2002 and thereafter the allotment was cancelled on 12.11.2002. Respondent/defendant also pleaded that as per its Resolution no. 145/1992 it was decided that there will be no entitlement to change the mode of payment and no entitlement will be there of a registrant/allottee to change the allotment from cash-down basis to hire-purchase basis.

4. The undisputed facts are that admittedly the appellant/plaintiff failed to deposit the amount due inspite of repeated extensions and hence the allotment was cancelled. This aspect has been dealt with by the trial court in Issue No. 3 in para 8 of its judgment and this para 8 of the judgment of the trial court reads as under:-

"8. I have heard both the parties and have perused the record carefully. **Issue no.3**. Whether the plaintiff is entitled to cancellation of letter dated 12.11.2002 against the suit property? OPP

The decision on this issue will have bearing on the remaining two issues and is, therefore, being decided first. The onus of proving this issue was on the plaintiff. It is not in dispute that plaintiff had applied for allotment under the Ambedkar Avas Yojna and he was found entitled for the same. It is also not disputed that consequently flat no.310, Pocket-8, Sector-14, Dwarka, Delhi was allotted to him in a draw held on 15.09.1998. The terms and conditions of the housing scheme is not in dispute as both the parties have relied on the same document as Ex.PW1/1 and Ex.DW1/1. It is also not disputed that allotment letter in the block dated 20-24.02.1999 was issued to the plaintiff by the defendant. It is also not in dispute that plaintiff requested for change of mode of payment vide his letter dated 08.03.1999 but the request was not acceded to by defendant/DDA. It is also settled position between the parties that plaintiff was given extension of time to make the payment till 25.08.1999 but he has not made payment till date.

The bone of contention in the present suit is whether the defendant had authority to change the mode of payment from hire-purchase basis to cash down basis on its own. Plaintiff submits that he has applied for flat on hire-purchase basis and it is not possible for him to meet the entire price of flat on cash down basis. On the other hand, it is the case of defendant that as per resolution Ex.DW1/5, the allotment on cash down basis could not have been converted into hire-purchase basis and thus plaintiff was only granted further time to make up the payment.

Ld SLO has brought to my attention clause 11 of the Ambedkar Avas Yojna Scheme which is titled as "Mode of Payment". It is categorically mentioned that while registrants may indicate their choice in regard to mode of payment, this does not confer any right on such registrant to get a flat as per his choice of mode of payment. Clearly plaintiff is claiming a relief which is contrary to the policy of government. Plaintiff has neither challenged this policy, nor does this Court have jurisdiction to strike down the policy of government. The policy as it exists clearly disentitles any registrant from claiming a right as to any specific mode of payment. Accordingly, it cannot be held that the allotment of flat on cash down basis was illegal.

Plaintiff was admittedly given extended time till 25.08.1999 to make the payment but he has failed to avail this opportunity tool. He has not made any further payment till date and in such eventuality the cancellation letter dated 12.11.2002 Ex.PW1/13 cannot be declared null and void.

Accordingly, **this issue is decided against the plaintiff and in the favour of the defendant**." (underlining added)

5. The only issue before the court below was whether the appellant/plaintiff should be allowed to covert his category from cash-down basis to hire-purchase basis, and which was denied on the basis of Resolution no. 145/1992 of the respondent/defendant. This resolution was proved as Ex.DW1/5.

6. When this Second Appeal came up before this Court it was found that as per the scheme itself there were two categories of flats, one of hire-purchase basis and another of cash-down basis and therefore this Court thought it fit to issue directions to the respondent/defendant as to why if flats were available on hire-purchase category basis under the scheme, and the appellant/plaintiff had applied only under the hire-purchase basis, then why should not the appellant/plaintiff be treated in the hire-purchase basis category and the respondent/defendant should not be allowed to allot the flat to the appellant/plaintiff on cash down basis. This Court, therefore passed the following order on 24.8.2016 and which order reads as under:-

> "1. This Regular Second Appeal is filed against the concurrent judgments of the courts below; of the trial court dated 15.10.2012 and the first appellate court dated 30.4.2015; by which the courts below have dismissed the suit filed by the appellant/plaintiff for allotment of a flat allotted to the appellant being flat No. 310, Pocket-B, Sector – 14, Ground floor, Phase – II, Dwarka, New Delhi.

2. Admittedly, appellant/plaintiff applied for allotment of a flat to the defendant under the Ambedkar Awas Yojna Scheme. This scheme was floated by the Government for grant of flats to economically weaker sections by two methods. One method of allotment was to be by hire purchase basis and another method of allotment was to be by cash down basis. The relevant Clause 11 of the policy of the defendant reads as under:-

"11. MODE OF PAYMENT

(i) Flats will be allotted on Cash Down and Hire Purchase basis, 40% allotments in MIG and 25% allotment in LIG will be made on Cash Down and remaining 60% in MIG and 75% in LIG would be on hire purchase basis only. Allotment would be on the terms and conditions contained in the Delhi Development Authority (Management, Disposal of Housing Estates) Regulations 1968 by way of draw of lots. Successful applicants would be issued laminated identification cards which would bear photographs specimen signatures and identification mark of the allotee. No separate applications will be invited for allotment of flats. Registrants may indicate their choice in regard to the Mode of Payment in Application Form. However, that does not confer on the Registrants the right to get flat as per their choice of Mode of Payment exercised by them.

(ii) In case of allotment on Hire Purchase basis the successful applicants in MIG and LIG will be required to pay 40% and 25% respectively of the cost of the flat (including the amount paid as Registration Deposit) within one month from the date of issue of allotment-cum-demand letter and the balance payment in equal monthly instalments with usual interest spread over a period of 10 years and 15 years respectively. In case of Janta Category, successful applicants will be allotted flats on Hire Purchase basis and would be required to pay 30% cash down and balance payment spread over a period of 20 years.

(iii) In case of allotment on Cash Down basis, allottees are required to pay the total cost of the flat (including the amount paid as Registration Deposit) within two months from the date of issue of allotment-cum-demand letters. In the event of default the allotment is liable to be cancelled.

(iv) The Registration Deposit will carry interest at the rate of 7% p.a. The interest amount will be credited to his/her account annually and interest thereon will be adjusted towards the payment of cost or the flat. The interest amount will be payable only upto the date of draw of lots in which the registered person becomes successful in getting the allotment. No interest will, however, be paid in case the Deposit is withdrawn before the expiry of one year"

3. No doubt sub-para 1 of Clause 11 specifically states that when registrants indicate their choice with respect to mode of payment being hire purchase or cash down, the same would not confer the registrants the right to get the flat as per their choice of mode of payment, however, the very same Clause states that flats in different categories, including the MIG category for which the appellant/plaintiff applied for, would be reserved in a particular percentage both for cash down basis as also hire purchase basis.

In the MIG category 60% of the flats were to be sold on hire purchase basis and 40% of the flats were to be sold on cash down basis. Therefore, once appellant/plaintiff applied for being allotted the flat on hire purchase basis, and admittedly 60% of the MIG flats were to be sold on hire purchase basis, the respondent/defendant had to state valid reasons for not considering the appellant/plaintiff in the hire purchase category under which 60% of the MIG flats were reserved.

4. I have gone through the written statement filed by the respondent/defendant in the trial court, as also the two judgments of the courts below, and it is found that the aforestated crucial issue has not been adverted to at all because there has to be a valid reason as to why the appellant/plaintiff who had applied under the hire purchase category was not treated under the hire purchase category, but was treated under cash down basis. Of course defendant may have a basis to treat the registrants under hire purchase basis or cash down basis provided it is shown that there was either a draw of lots or some other method conducted whereby all the applicants who applied under the hire purchase basis being higher in number than the flats available for hire purchase basis, and therefore respondent/defendant from the total applicants in the hire purchase category removed those persons who by draw of lots or otherwise were to be treated for allotment on cash down basis instead of hire purchase basis. Putting it in other words, once admittedly the appellant/plaintiff applied on hire purchase basis, flats were available to be allotted on hire purchase basis, then, the respondent/defendant had to come out with a specific stand as to why and on what basis appellant/plaintiff was not treated under the hire purchase category but was treated only for the cash down basis. As already stated above, neither the judgments of the courts below nor the written statement of the defendant in any manner throws light on this crucial issue.

5. Considering that the entire object of the scheme in question being Ambedkar Awas Yojna Scheme was to help economically weaker sections and who would obviously may not have moneys available for payment on cash down basis, and the fact that flats were available for allotment on hire purchase basis, such facts show that the respondent/defendant ought to have given valid reasons for not treating the appellant/plaintiff who had applied under the hire purchase basis to be not under the hire purchase basis but on cash down basis.

6. Let respondent/ Delhi Development Authority file an affidavit as to why the appellant/plaintiff in spite of applying under the hire purchase basis, and 60% of the MIG being reserved for allotment on hire purchase basis, yet why the appellant/plaintiff was not considered for allotment on hire purchase basis. Respondent/defendant must file a detailed affidavit as to who were the persons who were granted flats on hire purchase basis in the MIG category with respect to 60% flats reserved for hire purchase basis and why the appellant/plaintiff was excluded from 60% reserved category of MIG flats under hire purchase basis. Let needful be filed by the respondent/defendant within a period of six weeks from today.

7. List on 7th November, 2016.” (underlining added)

7. Respondent/defendant pursuant to the aforesaid order dated 24.8.2016 has filed a detailed affidavit dated 7.11.2016 and as per which affidavit it is seen that by a computerized process random allotments were made, and this mode of allotment was adopted because the number of applicants were more than the number of flats in both the hire-purchase category and cash-down category. Thus it is only because of the computerized process, effectively lottery basis, that a registrant by this lottery process is included either in the hir- purchase category or in the cash-down category. It is stated in this affidavit that as per the computerized process appellant/plaintiff was allotted the flat on cash-down basis, and therefore such cash-down basis for allotment was valid and could not be converted into hire-purchase basis as claimed by the appellant/plaintiff. The relevant para of this affidavit dated 7.11.2016 are paras 6 to 11 and these paras read as under:-

> 6. I say that the applicant records and the flats are randomized by appending random numbers to each application and each flat and sorting them on random numbers. The randomized applicant records and the randomized flats are then printed on papers. Printed form of randomized applicant records is called "Cross Reference of Applicant" and those of flats is called "Cross Reference of Flats". A sample page of the printout of Cross Reference for Flats is annexed hereto as **Annexure-A.** These cross references of applicants and flats are then placed before the judges for checking to see if all the applicants and flats are properly randomized/reshuffled. After their satisfaction, judges put their initials on these records.
>
> 7. I say that, the software used to carry out the randomization is called the Housing Management Information System. While generating the cross reference of flats, a screen appears on the computer, displaying the number of flats selected and it asks for the user to specify "how many flats to be given in Cash Down and how many in Hire Purchase". If no values are

specified, all the flats will be marked as Hire Purchase. One by one, each flat will be marked as either hire purchase or cash down, which is decided on the basis of Scheme of Allotment of flats. A screen-shot of the Housing Management Information System is annexed hereto as **Annexure-B.**

8. I say that, the next step is of mapping of Applicants and Flats/Allotment process. The lucky number of applicants and the flats picked up by the judges by the above process are written on paper and signed by the judges. After this, the lucky number of applicants and flats are fed into the computer and the computer then makes the allotment by mapping the applicants and flats starting from the position corresponding to the lucky numbers in the cross references, while taking care of "choices of localities" of the applicants and reservation in favour of various categories. While making the allotment, the physically handicapped persons are allotted the flats first, up to their specified reservations, as they are supposed to be given the ground floor. The reservation to each category is provided locality wise. The reservation for Physically Handicapped (PH), Scheduled Castes (SC), Scheduled Tribes (ST), Ex-Service Men (EX), War Widow (WW) etc is kept as per their scheduled quota.

9. I say that, if the number of applicants in a particular reserved category is less than the number of flats allocated for that category then the remaining surplus flats of that category are given to the general category.

10. I say that in the present case, the plaintiff/Appellant was allotted a flat in Dwarka, Sector-14, Pocket B, Phase 2 by the abovementioned process. A copy of the Allotment List of Ambedkar Awas Yojna-1989/MIG is annexed hereto as **Annexure-C**. The Appellant's name and flat details appear at Serial number 107 at page 5 of the said list.

11. I say that, therefore there is a proper standardized procedure for deciding the mode of payment for each successful applicant under the Ambedkar Awas Yojna. This method is fully computerized and fair, without any possibility of human choice or favour." (underlining added)

8. In view of the above, it is clear that the appellant/plaintiff was rightly treated as an allottee of the flat on cash down basis in terms of a valid computerized lottery process. Appellant/plaintiff failed to pay the amount under cash down basis inspite of repeated extensions and therefore allotment of the flat with the appellant/plaintiff was cancelled, and which is therefore a valid cancellation and so rightly held by the courts below.

9. No substantial question of law arises and therefore this Regular Second Appeal is dismissed, leaving the parties to bear their own costs.

APRIL 19, 2017/ AK **VALMIKI J. MEHTA, J**