

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

+ WP (C) 384/2013

NARENDER KUMAR WADHWA

..... Petitioner

Through: Mr. Siddharth Dutta, Adv.
with Devesh Kumar, Adv.

Versus

D.D.A

..... Respondent

Through: Mr. Dhanesh Relan,
Standing Counsel with Ms.
Gauri Chaturvedi and Ms.
Mrinalini Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

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16.12.2019

C. HARI SHANKAR, J.

1. Narender Kumar Wadhwa, the petitioner before this Court, seeks issuance of a writ of mandamus, directing the Delhi Development Authority (DDA) to hand over possession, to him, of a 60 sq.m. Middle Income Group (MIG) plot at Rohini, pursuant to an application, made by him, therefor, in 1981, under the Rohini Residential Scheme, 1981 of the Delhi Development Authority.

Facts

2. The Rohini Residential Scheme, 1981 (hereinafter referred to as “the Scheme”) was floated, by the Delhi Development Authority, for

allotment of plots to persons in need thereof.

3. Perpetual leasehold rights, in the allotted plots, were created by the Scheme.

4. Sub-clause (ii) of Clause 1 of the terms and conditions of the Scheme, which set out the conditions for eligibility thereof, reads thus:

“(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 tree-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.”

5. Clause 8 of the terms and conditions of the Scheme contained the “lease conditions” of the scheme and sub-clause (vii), thereof, stipulated that if the lease of the plot was obtained by any misrepresentation, misstatement or fraud, or if there was any breach of the conditions of the lease, the lease would be terminated and the possession of the plot and the building thereon would be taken over by the lessor and the lessee would not be entitled to any compensation.

6. An affidavit was required to be submitted, by every applicant under the Scheme. A sample proforma was provided with the Scheme. Para 1 of the affidavit, as per the said proforma, reads as under:

“1. That neither I nor my wife/husband or any of my minor children own in full or in part on lease-hold or free-hold basis or on hire-purchase basis any residential plot of land or a house or

have been allotted a residential flat in Delhi, New Delhi, Delhi Cantonment.”

7. In 1981, the petitioner applied for allotment of a plot, under the Scheme.

8. The petitioner was registered, under the said Scheme, on 23rd April, 1981.

9. Consequent to draw of lots conducted on 5th January, 2004, the petitioner was allotted a priority number, for allotment of plot under the Scheme, and was provisionally allotted plot no. 48, Pocket-I, Block-C, Sector 27, Rohini, Delhi.

10. A demand-cum-allotment letter, provisionally allotting the aforesaid plot, to the petitioner, was issued, by the DDA, on 19-27th January, 2004.

11. There is no dispute that consequent to the aforesaid provisional allotment to him, of plot no. 48, Pocket-I, Block-C, Sector 27, Rohini, the petitioner deposited the entire amount of Rs. 4,08,672/-, payable for allotment of the plot, within time, *vide* cheques dated 26th March, 2004, 21st May, 2004 and 11th August, 2004.

12. On 14th October, 2004, the petitioner submitted the requisite affidavit, in terms of the requirements under the Scheme. Inasmuch as the controversy, in the present case, revolves around this affidavit, it would be apposite to reproduce the affidavit, in its entirety, thus:

“Affidavit of SHRI NARENDER KUMAR WADHWA son of Shri R.P. Wadhwa resident of 217, First Floor, Deepali, Pitampura, Delhi.

I, NARENDER KUMAR WADHWA son of Shri R.P. Wadhwa resident of 217, First Floor, Deepali, Pitampura, Delhi, do hereby solemnly affirm; and declare as under :-

1. *That neither I nor my wife or any of my children own in full or in part on lease hold or free hold basis or on hire purchase basis any residential flat/plot in Delhi /Delhi Cantonment.*

2. That I am applying for the allotment of only one plot under janta/LIG/MIG Category.

3. That my total annual income including the income of my wife and minor children does not exceed Rs. 40,000 for the year 1980-81.

4. That I have not transferred any residential plot/house of flat to and of my family member nor I have so transferred membership in any cooperative House Building Societies or a Group Housing Society in Delhi in favour of any of my family member.

5. That I have attained the age of Majority, my date of birth being 18.10.1953 and I am a resident of India.

Sd/-
Deponent

Verification:-

I, the above named Deponent do hereby verify that the contents of paras 1 to 5 are correct and true to the best of my knowledge and belief.

Verified at Delhi, on _____

Sd/-
Deponent”

13. The DDA came to know, thereafter, that the petitioner was actually in possession of freehold plot no. 217, Deepali Enclave, U.P. Samaj Co-Operative House Building Society, Pitam Pura, New Delhi. As this indicated that the recital, in para 1 of the affidavit, dated 25th March, 2004, was false, a show cause notice, dated 14th December, 2004, was issued by the DDA, to the petitioner, requiring the petitioner to show case as to why the allotment of the aforesaid plot no. 48, Pocket-I, Block-C, Sector 27, Rohini, in his name, be cancelled and his deposit forfeited.

14. It is not in dispute that the plot at 217, Deepali Enclave, New Delhi admeasures 180 sq. meters.

15. The petitioner, in his undated reply, submitted in response to the aforesaid show cause notice dated 14th December, 2004, was silent regarding the date of acquisition and obtaining of possession, by him, of the plot at 217, Deepali Enclave, but sought to point out that he had sold the said plot to one Ms. Preeti Jain and Ms. Raj Bala Garg, *vide* sale deed dated 6th September, 2004. He sought to aver that he had purchased the said plot as the allotment of plot, to him, under the Rohini Residential Scheme, was not fructifying, and he was in dire need of money. In these circumstances, the petitioner requested that the show cause notice, issued to him, be withdrawn.

16. Refusing to accept this explanation, the Delhi Development Authority, *vide* communication dated 4th March, 2005, addressed to the

petitioner, canceled the allotment of the aforesaid plot no. 48, Pocket-I, Block-C, Sector 27, Rohini earlier provisionally allotted to the petitioner. The letter further stated that, as the petitioner had resorted to concealment of facts, he would not be entitled for allotment of another plot from the DDA.

17. Aggrieved thereby, the petitioner has approached this Court, by means of the present writ petition, praying that the DDA be directed to grant possession, to him, of plot no. 48, Pocket-I, Block-C, Sector 27, Rohini, and that the letter, dated 4th March, 2005, of the DDA, cancelling the said allotment, be quashed. In the alternative, the petitioner has prayed that the DDA be directed that the amount deposited by the petitioner be returned to him.

Analysis

18. In my opinion, the present writ petition is completely bereft of merit.

19. The prayer clause in the writ petition places specific reliance, in support of the prayer, on the judgments of the Supreme Court in ***DDA v. Jitender Pal Bhardwaj***¹ and of this Court in ***DDA v. Jai Kanwar Jain***².

20. Neither decision, in my view, can save the petitioner's case from sinking, or keep it afloat.

¹ 2010 1 SCC 146

² 2009 SCC OnLine Del 613

21. The application of the respondent in *Jitender Pal Bhardwaj*¹, for allotment of a plot too, no doubt, was rejected on the ground that he had, in his possession, an earlier plot (hereinafter referred to as “the first plot”). The issue before the Supreme Court was, however, as to whether, despite the said first plot admeasuring less than 65 sq. mtrs., the DDA could nevertheless, cancel the allotment of the second plot, made to the respondent. The Supreme Court, while acknowledging the fact that the scheme of allotment of DDA was intended to provide homes for the homeless, went on to observe that, nonetheless, if the DDA chose to incorporate certain conditions, whereunder the possessor, of one plot, was rendered ineligible for allotment of a second, the DDA was bound by those conditions. Observing that the conditions in the scheme of the DDA disentitled a person, holding one plot, from allotment of another, only where the first plot admeasured 65 sq. mtrs. or more, the Supreme Court held that, inasmuch the first plot, owned by the respondent before it, was less than 65 sq. mtrs, the DDA could not use the possession of the said first plot as a ground to disentitle the respondent to allotment of the second.

22. Significantly, no issue of submission of a false affidavit, arose before the Supreme Court.

23. In the present case, there is no dispute about the fact that the plot at Deepali Enclave was admeasuring 180 sq. meters. It has been so averred in para 7 of the counter affidavit of the DDA, and besides the fact that there is no rebuttal, thereto, in the petitioner’s rejoinder, the document relating to the subsequent sale of the said plot, by the petitioner, to Ms.

Preeti Jain and Ms. Raj Bala Garg, also discloses that the plot was admeasuring 180 sq. meters.

24. The decision in *Jitender Pal Bhardwaj*¹, therefore, has no applicability, whatsoever, to the facts of this case, and the reliance thereto, by the petitioner, is completely misconceived.

25. The reliance, by the petitioner, on *Jai Kanwar Jain*² is, in my opinion, equally inapt.

26. The plot, which was already owned by respondent Jai Kanwar Jain in that case, on the date when allotment was made, to him, by the DDA, was a freehold plot, *in which the share of Jai Kanwar Jain was, undisputedly, admeasuring less than 65 sq. mtrs.*

27. The learned Single Judge, in that case, interpreted the expression “a plot allotted by DDA” as not including a property acquired by the applicant through a private sale transaction, even if the original allotment of the plot was DDA. No occasion, for applying the said expression to the particular case, arises, inasmuch as the expression “plot allotted by DDA” figures in the concluding part of clause 1 (ii) of the Scheme, which states that, in the cases of plots allotted by the DDA, even if the area of the plot is less than 65 sq. mtrs., the person shall not be entitled for a second allotment.

28. While not disputing the fact that the first plot, owned by Jai Kumar Jain, was admeasuring less than 65 sq. mtrs., the case put up by the DDA,

before this Court, was that, inasmuch as the first plot, which came into his possession, had originally been allotted by the DDA, the respondent Jai Kanwar Jain could not be allotted a second plot, even if the first plot was admeasuring less than 65 sq. mtrs.

29. This submission, of the DDA, has been rejected by the learned Single Judge as well as by the Division Bench of this Court, holding that the expression “allotted by the DDA” would not cover cases in which the original allotment was by the DDA but when the applicant had purchased the plot from a private persons.

30. In any case, as the share of Jai Kanwar Jain in the plot already possessed by him, was admeasuring less than 65 sq. mtrs., the said decision can be of no help to the petitioner.

31. No such situation arises in the present case.

32. It is well settled that adherence to precedent has necessarily to be conditioned by the facts in which the precedent was rendered. Judgments of courts, it is trite, are not Euclid’s theorems, and are to be appreciated, and applied, keeping in mind the fact-situation in which they were delivered³. The following aphorism, in *Padma Sundara Rao v. State of T.N.*⁴, aptly sums up the legal position:

“Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that

³ Natwar Singh v. Director of Enforcement, (2010) 13 SCC 255

⁴ (2002) 3 SCC 533

judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

33. *Jai Kanwar Jain*², too, therefore, can provide no succor to the petitioner.

34. The petitioner has also sought to place reliance on the judgment of a Division Bench of this Court in *DDA v. B.B.Jain*⁵.

35. This judgment, if anything, defeats, rather than supports the case of the petitioner.

36. The main dispute in *B.B.Jain*⁵ was entirely different, viz. whether allotment of plot would be bound by the terms of the Rohini Residential Scheme, or by the terms of the Delhi Development Authority (Disposal of Developed Nazul Land), Rules 1981. The DDA had refused allotment on the basis of terms of the Scheme. The learned Single Judge of this Court held that the Nazul Land Rules would apply and that, in terms thereof, the respondents before it, were entitled to allotment of plot. Letters Patent Appeals, preferred thereagainst, by the DDA, were dismissed. While doing so, the Division Bench clearly held, in para 7 of the report, that “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”. Further, the Division Bench entered the following cautionary, but

⁵ 2013 SCC OnLine Del 891

important, caveat, at the concluding paragraph of its judgment:

“... 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.”

(Emphasis supplied)

37. In the afore-extracted paragraph, the DDA has clearly held that the affidavit would have to be reckoned as on the date of provisional allotment of the plot. In the present case, provisional allotment of the plot, in favour of the petitioner, admittedly took place on 5th January, 2004.

38. The affidavit, which was submitted by the petitioner, was admittedly verified on 25th March, 2004, though it was submitted only on 14th October, 2004. On the date of affirmation and verification of the affidavit, there is no dispute about the fact that para 1 thereof was false, inasmuch as the petitioner had purchased, and was in possession of the plot at Deepali Enclave, which was sold, by him, only subsequently on 6th September, 2004. Equally, on the date of provisional allotment, to him, of plot no. 48, Pocket-I, Block-C, Sector 27, Rohini (which, according to **B. B. Jain**⁵, was the crucial date), the petitioner was admittedly in possession of the Deepali Enclave property.

39. In fact, the exercise, undertaken by the petitioner, is purely adventurism, and nothing else.

40. Having applied for allotment of a plot, under the Scheme, in 1981, the petitioner, within five years of such application, purchased the plot in Deepali Enclave in 1986. He enjoyed possession of the said plot for 18 long years, without, admittedly, ever informing the DDA, of the acquisition, by him, thereof. Even when, on 5th January, 2004, the petitioner was provisionally allotted plot no. 48, Pocket-I, Block-C, Sector 27, Rohini, he did not choose to dispose of the plot at Deepali Enclave. Rather, he held onto the said plot and, without the slightest compunction, affirmed a false affidavit, on 25th March, 2004, to the effect that he was not in possession of any other residential plot or flat in Delhi. It was only much thereafter, on 6th September, 2004, that the petitioner chose to dispose of the plot at Deepali Enclave. The petitioner chose, consciously, to keep the facts relating to the purchase, by him, of the Deepali Enclave property, as well as the subsequent sale thereof, by him, a complete secret, and it was only when the DDA, having become wise about the fact, served the petitioner with a show cause notice dated 14th December, 2004, that the petitioner started devising desperate explanations, seeking to validate his case.

41. Justice, equity and good conscience penetrate every sinew of Article 226 of the Constitution of India. The doors of the writ court can never be opened to one who acts inequitably, or practices fraud.

42. The affirmation, by the petitioner, of the affidavit, on 25th March, 2004, was an act of perjury and fraud, and could expose the petitioner to penal criminal consequences. Submission, of the affidavit, was one of the essential terms and conditions of the Scheme, and the incorporation of false details therein, therefore, disentitles, *ipso facto*, the deponent of the affidavit, to any benefit under the Scheme.

43. Significantly, the petitioner never chose to place, on record, the aforesaid affidavit, and the affidavit surfaced only with the counter affidavit of the respondent-DDA. In fact, para 9 of the writ petition avers, in a clearly misleading fashion, thus:

“That on 4.3.2005 despite the personal explanation of so many years of waiting when at the time of registration had assured the allotment to take about 5 years also such a assurance was given during the question hour in the parliament and public. When no plot were allotted even after 10-years, waiting the petitioner bought a plot no. 217, Deepali Enclave from open market and sold it before the next allotment and gave affidavit accordingly and declare it on 6.9.2004, Despite explanation of delay to DDA the plot was cancelled on the ground of the affidavit given above on 14.10.2004. (copy of the DDA cancellation letter dated 4.3.2005 is attached as Annexure P-6)”

44. The afore-extracted para 9 of the writ petition is conspicuously silent regarding the date of acquisition of the plot at Deepali Enclave, as well as the date of affirmation of the affidavit by the petitioner. All that is disclosed, therein, is that the affidavit was tendered on 14th October, 2004. This too, appears, on its face, to be an attempt to mislead this Court.

45. This Court finds nothing irregular, much less illegal, in the DDA cancelling the allotment of plot no. 48, Pocket-I, Block-C, Sector 27, Rohini, earlier allotted to the petitioner, *vide* the impugned communication dated 4th March, 2005.

46. That apart, this Court is also disinclined to interfere, at the instance of a petitioner who is guilty of having sworn to a false affidavit. One who knowingly affirms to an affidavit, which contains a misstatement of fact, cannot be entitled to any benefit under Article 226 of the Constitution of India.

47. For all the aforesaid reasons, I am of the opinion that this writ petition is thoroughly misconceived and deserves to be dismissed. It is ordered accordingly.

48. The DDA had, during the course of hearing, submitted that it was willing to return the amount deposited by the petitioner. In the facts of this case, I am not inclined to issue any directions, requiring the DDA to do so. Needless to say, however, if the DDA desires to return the amount deposited by the petitioner, it is free to do so, and this judgment shall not act as an impediment.

49. Inasmuch as the amount deposited by the petitioner is, as of now, retained by the DDA, there shall be no order as to costs.

C.HARI SHANKAR, J.

DECEMBER 16, 2019/dsn