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

+ **LPA 546/2019 & C.M.Applns.38158-60/2019**

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Date of decision: 27.08.2019

SUNITA YADAV

..... Appellant

Through: Mr. R.K. Saini, Mr. Ankit Singh, Ms.
Bhavana Jain, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

.....Respondent

Through: Ms. Shobhana Takiar, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This appeal has been preferred by the appellant/petitioner being aggrieved by the dismissal of her writ petition by the judgment dated 24.05.2019. The grievance of the appellant/petitioner arose from the cancellation of the allotment of Flat No.144, Second Floor, Block D-2, Vasant Kunj, New Delhi in her favour by the respondent/Delhi Development Authority (DDA) vide communication dated 30.09.2019.
2. The appellant/petitioner had applied for allotment of a flat under the "DDA Housing Scheme 2008" (hereinafter referred to as "the 2008 Scheme"). Initially, the writ petition had been filed only for quashing the said cancellation of allotment but subsequently, the appellant/petitioner also sought quashing of Clause-2 (IV) of the 2008 Scheme prescribing the

eligibility conditions governing the 2008 Scheme. The amended writ petition filed on 23.07.2013, thus prayed for the following reliefs: -

“a) A Writ of Certiorari calling for the records of the case for perusal;

b). A Writ of Certiorari quashing the action of the Respondent/DDA in cancelling the allotment of the MIG Flat allotted to the petitioner under DDA Housing Scheme, 2008 after the draw, without show cause notice and opportunity of being heard, being illegal, arbitrary, discriminatory, unjust, unwarranted and in violation of the Rules and Regulations and the principles of equity, natural justice and good conscience and consequently the letter dated 30.09.2010 (Annexure P-9) as well as dated 08.11.2010 (Annexure P-11);

b-i) A Writ of Certiorari quashing condition No. 2(iv) in the brochure of DDA Housing Scheme 2008 (Annexure P-1), being illegal, arbitrary, discriminatory, unjust and in violation of the rules and regulations.

(c) A writ of mandamus commanding the respondent DDA to forthwith issue to the petitioner allotment-cum-demand letter in respect of the demise flat i.e. MIG FLAT bearing No.144, Floor 2nd, Block D-2, Vasant Kunj at the same cost and (without interest) at which flats were allotted to successful allottees of FHS 2008 thereafter deliver possession after payment and also execute the conveyance deed in her favour in respect thereof.”

3. The learned Single Judge found no merit in the writ petition holding that the 2008 Scheme did not permit simultaneous applications for allotment of flat by the husband and the wife and such a prohibition was well founded to give all applicants, irrespective of their marital status, an even chance for allotment by draw of lots and that merely because the respondent/DDA had subsequently done away with such a condition, would not invalidate Clause-2 (IV) of the 2008 Scheme nor would it render the pre-amended clause illegal or *ultra vires*. It was also noted that the appellant/petitioner herein

had submitted a false declaration knowing fully well that the respondent/DDA would be entitled to cancel the allotment on account of any misrepresentation or concealment of material facts. The learned Single Judge noted that at the time of the allotment, the appellant/petitioner had asserted that her husband had not applied for another flat, which amounted to a false statement on oath, both in the affidavit and the Indemnity Bond and therefore, the respondent/DDA was justified in cancelling the allotment. With regard to the contention of the learned counsel for the appellant/petitioner that Clause-2 (IV) of the 2008 Scheme flew in the face of the DDA (Management and Disposal of Housing Estate) Regulations 1968 (hereinafter referred to as “the 1968 Regulations”), it was held that the two provisions applied at different stages and there was no disharmony between them and that Regulation 7 was in the nature of a disabling provision. As a result, the writ petition was dismissed.

4. In the appeal before us, Mr. Saini, learned counsel for the appellant/petitioner has challenged the conclusions arrived at in the impugned judgment by submitting that the learned Single Judge had erred in ignoring the judgment of the Division Bench of this Court in Delhi Development Authority V. B.B. Jain, SCC OnLine Del 891 and in Kuljeet Kaur V. DDA in W.P.(C) No. 3707/2013 dated 22.08.2013, and had erroneously held that there was an element of public interest involved in Clause-2 (IV) of the 2008 Scheme because it would create an invidious divide between the married and the unmarried and the chance of each spouse would be double for the allotment of a flat, at the cost of the unmarried applicants. It was also submitted that it was unwarranted to conclude that Regulation 7 of the 1968 Regulation and Clause-2 (IV) of the 2008 Scheme

applied at different stages and that the former was only a disabling provision and Clause-2(IV) did not run counter to Regulations no. 7.

5. Sh. R.K. Saini, learned counsel for the appellant/petitioner has sought to urge that Clause-2 (IV) of the 2008 Scheme was against the 1968 Regulations and the Regulation ought to prevail. Further, emphasis was laid on the fact that for the subsequent Scheme, the respondent/DDA had itself modified the eligibility conditions w.e.f. the year 2010 whereby both, the husband and the wife could apply for flats but only one of them would be allotted a flat even if both were found successful and therefore, the fact that the appellant/petitioner and her husband had both applied for a flat in the present case, should not have been held against them. It has also been submitted that the undertaking was given by the appellant/petitioner on a printed proforma and merely because she had stated on affidavit that her husband had not applied for a flat under the 2008 Scheme, was not such a misrepresentation of facts as to result in the cancellation of the allotment of a flat in her favour. It is submitted that the judgments in Delhi Development Authority V. B.B. Jain (supra) and in Kuljeet Kaur V. DDA (supra) are fully applicable to the facts of the present case inasmuch as despite the non-disclosure by Sh. B.B.Jain that he owned an LIG flat, nevertheless, he was allotted another plot under the Rohini Residential Scheme, 1981. Similar was the case of Kuljeet Kaur V. DDA (supra). According to the learned counsel, the appellant/petitioner was entitled to be treated similarly.

6. We find no force in the submissions of the learned counsel for the appellant/petitioner. The learned Single Judge has considered all the above arguments and rejected them on well reasoned grounds. Clause-2 (IV) of the 2008 Scheme reads as under : -

“(IV) Only one person in a family can submit application. Family means spouse (if any), dependent/minor children, if any.”

7. Regulation 7 of the 1968 Regulation reads as under :-

*“7. **Eligibility of allotment** – A dwelling unit or flat in the Housing Estates of the authority shall be allotted only to such person who or his wife her husband or any of his/her dependents relations including unmarried children does not own in full or in part on free hold or lease hold basis a residential plot or house in the urban area of Delhi, New Delhi and Delhi Contonment.”*

8. It is *ex facie* apparent that Clause-2 (IV) of the 2008 Scheme deals with the process of submission of an application for a dwelling unit while Regulation 7 relates to allotment of an actual dwelling unit or flat. The learned Single Judge rightly concluded that the two stages are different. Clause-2(IV) governs eligibility of a person and lays down that only one person from a family out of the spouses and dependent/minor children could submit an application. The Regulations provide that a dwelling unit or a flat could be allotted only to such a person or his wife/her husband or any dependent/unmarried children if, none of them owned in full or in free hold or lease hold, a residential plot or house in Delhi. It is not the Regulation that has come in the way of the appellant/petitioner, but the eligibility condition spelt out in the 2008 Scheme.

9. The amendment introduced in the Scheme of 2010 is clearly inapplicable to the Scheme that was introduced two years prior thereto whereof the appellant/petitioner had applied. If the submission of the learned counsel was to be accepted, it would lead to public disarray as there would be no certainty with regard to the various Schemes floated by the

respondent/DDA spread over a period of several years. If the terms and conditions of a subsequent Scheme could be read into the earlier Schemes, it would result in reopening settled allotments, and create a chaos.

10. It is also important to note that the reason for cancellation of the allotment was not merely the fact that against the eligibility conditions, both the appellant/petitioner and her husband had applied, but is also on account of the fact that she had violated the condition laid down in Clause-22 of the Brochure, applicable to the 2008 Scheme. It is not disputed that she had knowingly submitted a false statement on oath to the effect that her husband had not applied for a flat under the 2008 Scheme, when he had done so. The undertaking given by the appellant/petitioner is reproduced here-in-below for ready reference: -

“I/We hereby declare that the information given above is true to the best of my/our knowledge and nothing is false and no material/information has been concealed therefrom. I/we have carefully read and understood the terms and conditions contained in the Brochure along with instructions and hereby agree to abide by them. I/we comply with the eligibility criteria given in the Brochure to apply under the scheme. I know if it is found that if I/we have applied although I/we am/are not eligible as per conditions laid down in para 2 of the brochure or have claimed benefit of reservation on the basis of wrong documents or has submitted more than one application as given in para 2 (IV&V) or has given false affidavit/information or quoted wrong PAN number or has/have suppressed any material fact whether at the time of application or at the time of taking over possession or at the time of execution of conveyance deed, the application(s)/allotment(s) will be rejected/cancelled summarily without issuing any show cause notice for the same. I also know that in case of such cancellation, entire amount deposited against application(s) allotment(s) shall be forfeited without any intimation/advice.”

11. The above undertaking is not a *proforma* undertaking as has been sought to be urged by learned counsel for the appellant/petitioner. It provides for onerous consequences where both the spouses have applied for allotment of a flat in contravention of the eligibility conditions viz. Clause-2(IV). The undertaking has a solemnity attached to it as it is an affirmation that the appellant/petitioner fulfils the eligibility criteria and is not misleading the respondent/DDA. It cannot, therefore, be accepted that the above undertaking was only a Standard Contract Clause, which cannot be held as binding upon the appellant/petitioner.

12. Seen sequentially, under the eligibility conditions, namely Clause-2 (IV) of the 2008 Scheme, both, the appellant/petitioner and her husband, could not have applied for a flat under the said Scheme. Admittedly, both of them did apply. Further, in an affidavit submitted to the respondent/DDA alongwith an Indemnity Bond, the appellant/petitioner had declared that her husband had not made any separate application for allotment of a flat in the 2008 Scheme, which was clearly false to her knowledge. Thus, the respondent/DDA was justified on both counts to cancel allotment of Flat No.144, Second Floor, Block D-2, Vasant Kunj, New Delhi to the appellant/petitioner.

13. The judgment in Delhi Development Authority V. B.B. Jain (supra) or Kuljeet Kaur's case (supra) does not take the case of the appellant/petitioner further as the DDA (Disposal of Nazul Land) Rules, 1981 permitted a second allotment where the area of the first land/house owned by the applicant measured less than 67 square meters and the parties got the benefit of the said Rules, whereas in the present case, there has been a clear violation of the prescribed eligibility conditions. Non-disclosure of an LIG

flat measuring less than 67 sq.mtrs. was therefore not found to be a transgression of such a nature as to be visited with cancellation of the allotment. Here, the facts show gross misrepresentation on the part of the appellant/petitioner, an act that is covered by Clause 22 of the 2008 Scheme, which states as under: -

“22. MIS-REPRESENTATION OR SUPPRESSION OF FACTS
*If it is found that the applicant has applied although he was not eligible as per conditions laid down in para 2 of this brochure or has claimed benefit of reservation on the basis of wrong documents **or has submitted more than one application as given in para 2(IV & V)** or has given false affidavit/Information including quoting wrong PAN number or suppressed any material fact whether at the time of application or at the time of taking over possession or at the time of execution of conveyance deed, the application(s)/allotment(s) will be rejected/cancelled summarily without Issuing any show cause notice for the same. In case of such cancellation/rejection, amount of registration/earnest money deposited against application(s)/ allotment(s) shall be forfeited.”*

14. We are of the opinion that there was no further occasion for the respondent/DDA to issue a show cause notice to the appellant/petitioner before cancellation, as urged by learned counsel. The appellant/petitioner had signed and submitted the undertaking and Indemnity Bond with her eyes wide open. She was aware that if she was found to have applied, although ineligible, as per the conditions laid down in para-2 of the Brochure which included Clause-IV, or had given a false affidavit or information even at the time of execution of the conveyance deed, her application/allotment made was liable to be rejected/cancelled summarily without issuance of a show cause notice. The 2008 Scheme covered both situations, one at the time of

applying for a flat, the other upon being successful at the time of actual allotment of a flat. Having agreed to bind herself to serious consequences, the appellant/petitioner is precluded from invoking the principles of natural justice.

15. To our mind, no ground is made out to interfere with the impugned judgment. The appeal lacks merits and is accordingly dismissed *in limine* alongwith the pending applications.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

AUGUST 27, 2019/MK/s