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

Reserved on: 21st May, 2019
Date of pronouncement: 24th May, 2019

+ W.P. (C) 1621/2013 & CM APPL. 3054/2013

SMT. SUNITA YADAV Petitioner
Through: Mr. R. K. Saini, Adv. with Mr.
Ankit Singh, Adv.

versus

D.D.A. Respondent
Through: Ms. Shobhana Takiar, Adv.
with Ms. Shweta Anand, Adv.

+ W.P. (C) 6836/2016 & CM APPL. 28186/2016

DEEPAK KUMAR Petitioner
Through: Mr. R. K. Saini, Adv. with Mr.
Ankit Singh, Adv.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Shobhana Takiar, Adv.
with Ms. Shweta Anand, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

W.P. (C) No. 1621/2013

1. In 2008, the Delhi Development Authority (hereinafter referred to as “the DDA”) launched a Scheme for providing flats, which came to be known as the “DDA Housing Scheme 2008” (hereinafter

referred to as “the 2008 Scheme”). The eligibility conditions, for applying for allotment of a flat under the said Scheme, were to be found in Clause 2 thereof.

2. Sub-clause IV and (V), of the said Clause 2, which alone may be of relevance for the present case, reads thus:

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

(v) One person can submit one application only.”

3. On the ground that the petitioner, and her husband, had both applied for allotment of flats, under the 2008 Scheme, in violation of the above-extracted clause 2 (IV), the allotment of Flat No. 144, Second Floor, Block D-2, Vasant Kunj, New Delhi which had earlier been made in the petitioner’s name, was cancelled, by the impugned communication dated 30th September, 2010.

4. The writ petition, as originally filed, prayed for quashing of the aforesaid communication, dated 30th September, 2010, cancelling the allotment of the flat in favour of the petitioner. Subsequently, the writ petition was amended, to incorporate a challenge to Clause No. 2 (IV) (*supra*), in the eligibility conditions governing the 2008 Scheme, itself.

5. As amended, therefore, the writ petition prays for quashing of the said Clause 2 (IV), as well as the cancellation, by the DDA, of the allotment of flat in favour of the petitioner. Consequently, the

petitioner prays for issuance of a writ of mandamus to the DDA to allot, to her, the same flat – which Mr. R. K. Saini, learned counsel for the petitioner, would seek to submit, is still vacant.

6. The facts are brief and may be easily stated.

7. Application Nos. 150920 and 730277 were submitted, by the petitioner and her husband Mahender Pal Yadav, for allotment of flats under the 2008 Scheme. This, the writ petition avers, was done only to double the chance of getting a flat, as allotment was to be by draw of lots.

8. On 19th March, 2009, the DDA informed the petitioner that consequent to the draw of lots held on 16th December, 2008, she had been allotted Flat No. 144, Second Floor, Block D-2, Vasant Kunj, New Delhi. Though the petitioner, thereafter, visited the office of the DDA with all original documents for the purpose of verification, nothing was heard, from the DDA, thereafter, till, on 14th July, 2010, the petitioner represented to the DDA, seeking to know the status of her allotment. She was informed, then, that her allotment stood cancelled as she had “failed to comply with instructions”. In its subsequent communication, dated 8th November, 2010, addressed to the petitioner, the DDA alleged that as she had violated Clause 22, read with Clause 2 (IV) and (V) of the Brochure applicable to the 2008 Scheme, the allotment of the flat in her favour had been cancelled.

9. For ready reference, Clause 22 of the 2008 Scheme may be reproduced thus:

“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(1V & 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.”

10. It is in this backdrop that the petitioner has approached this Court by means of the present writ petition.

11. Mr. Saini, learned counsel for the petitioner, has invited my attention, initially, to Regulation 7 of the DDA (Management and Disposal of Housing Estates) Regulations 1968 (hereinafter referred to as “the 1968 Regulations”), which reads thus:

“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 dependants 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.”

12. Mr. Saini contends that the only bar, to allotment of a flat, as contemplated by Regulation 7 (*supra*), is where the spouse, or dependent relation(s) of the person in whose favour the allotment has been made, herself/himself owns, in full or in part, any residential plot or house. There is no provision, therefore, Mr. Saini would submit, prohibiting both spouses from applying for allotment of flats under the 2008 Scheme. No such embargo existing in the 1968 Regulations, therefore, Mr. Saini submits that Clause 2 (IV) of the 2008 Scheme, could not introduce such an embargo. The impugned Clause 2 (IV), he points out, results, on one spouse already having applied for a flat, the other spouse ineligible to do so. Such ineligibility could not, in his submission, be introduced by a dispensation, in the Scheme, which is alien to the 1968 Regulations.

13. Mr. Saini places reliance, in this context, on the judgment of the Supreme Court in ***Harbhajan Singh v. Press Council of India (2002) 3 SCC 722***, to contend that disqualifications, if any, must necessarily figure in the Regulations and could not be introduced in the Scheme.

14. Further, the effect of impugned Regulation 2 (IV), Mr. Saini would seek to contend, is to treat the husband and wife as one body and one soul, which is absurd and unknown to the law.

15. As a residuary argument, Mr. Saini would seek to submit that, even if Clause 2 (IV) of the 2008 Scheme were to be treated as valid, the DDA would not be justified in cancelling the allotment made in

favour of either of the spouses solely for that reason. The only consequence of violation of Clause 2 (IV), he submits, would be that the allotment would be finalized in favour of one, or the other, spouse, and not in favour of both.

16. In this context, Mr. Saini draws my attention to the fact that, in the very next year, Sub-Clauses (IV) and (V) in Clause 2 of the 2008 Scheme were replaced by sub-clauses (IV), (V) and (VI), which read thus:

“IV. Family means spouse (if any), dependent/minor children, if any.

V. *Both husband and wife can apply for flats subject to fulfillment of eligibility condition with a stipulation that if both are found to be successful only one shall be allotted flat.*

VI. One person can submit one application only.”
(Emphasis supplied)

17. The amended Clause 2 (IV), 2(V) and 2(VI), Mr. Saini would seek to submit, would reflect the correct legal position.

18. Mr. Saini further points out, in this context, that the Hon’ble Lieutenant Governor of Delhi also echoed the same view, as is manifest from his noting, dated 23rd March, 2009, which directed that “henceforth, DDA should modify the condition in the brochure to allow both husband and wife to apply for flats, subject to fulfillment of eligibility conditions, with a stipulation that if both are found to be successful, only one shall be allotted the flat.”

19. To a query, by the court, as to whether, if husband and wife were both to apply for allotment of a flat under the Scheme, in which allotment was made on the basis of draw of lots, it would not impact the comparative chance of other applicants, Mr. Saini would respond, relying on the judgment of this Court in *Surender Singh v. D.S.S.S.B, 2008 SCC OnLine Del 1186*, that the court was not concerned with persons who were not before it.

20. For the above reason, Mr. Saini would submit that the impugned Clause 2 (IV) of the 2008 Scheme was liable to be struck down, and at the very least, a flat allotted either to the petitioner or to her husband. In any event, the decision to cancel, altogether, the allotment of flat made in the petitioner's favour, he would submit, cannot sustain in law.

21. Arguing in opposition, Ms. Shobhana Takiar, learned counsel appearing for the DDA, has sought to submit, at the outset, that after the allotment of the flat had been made in favour of the petitioner, she submitted an indemnity bond dated 20th May, 2010, along with an affidavit, in which, she categorically averred that her husband had not applied for the flat under the 2008 Scheme. This, Ms. Takiar would seek to submit, amounted to a false statement made on oath, which was one of the grounds on which the petitioner's allotment could ultimately be cancelled under Clause 22 of the 2008 Scheme. She also sought to submit that a litigant, who filed a false statement on

affidavit, could not claim any relief under Article 226 of the Constitution of India.

22. In this connection, Ms. Takiar sought to place reliance on the judgment of the Supreme Court in *Bihar State Housing Board v. Satya Narayan Prasad (Dead) by LRs* 1998 (2) SCC 681, as well as the judgment of this Court in *Krishan Dhawan v. Delhi Development Authority*, 2004 SCC OnLine Del 267 and *Venkateshwar Education & Medical Society (Regd.) v. Delhi Development Authority*, 2012 SCC OnLine Del 6012.

23. Ms. Takiar further sought to submit that the drawing of the name of the petitioner in the draw of lots conducted by the DDA did not confer, on her, any indefeasible right to allotment of flat, for which purpose she relies on the judgment of the Supreme Court in *Delhi Development Authority v. Pushpendra Kumar Jain*, AIR 1995 SC 1.

24. The entire issue, according to Ms. Takiar, stands covered by the decision of a Division Bench of this Court in *Meenakshi Rai Katariya v. DDA*, 2010 SCC OnLine Del 2867, which specifically dealt with clause 2 (IV) of the 2008 Scheme. She drew my attention to paras 23 to 25 of the said decision, which read thus:

“23. We have referred to certain citations that the purpose and object of an Act of legislature has to be seen scrutinized in the text and context and what is the goal behind it to achieve. Though the observations have been made while testing the constitutional validity of the Act of the legislature, yet said principles would also apply while testing the validity of the scheme. We have also referred to certain authorities on classification and arbitrariness to highlight that equality and arbitrariness

cannot co-exist for one is in the realm of rule of law and the other is in the sphere of whim and caprice. A submission has been advanced that a small family is entitled to submit one application whereas a large family is also be entitled to submit a singular application which shows an effective endeavour has not been made to give a realistic meaning to the family. The definition of family in the scheme, as we understand, is a comprehensive one and it has not gone by the members or the largeness of the family. The family has been treated as a unit. A distinction between the large family or a small family is permissible regard being had to the nature of the scheme as the same relates to allotment of flats which are limited in number. The scheme provides the family as a singular unit which stands the test of rationality and also meets the intelligible criteria behind the conceptual criteria for classification. To elaborate, a particular family can only take a chance to have one flat.

24. *To cite an example, supposing a family as defined under Clause 2(IV) has 10 to 15 members including spouse, dependent/minor children, they will be able to file 10 to 15 applications and another family which comprises only of husband and wife and a singular dependent will be able to file only three applications. When put in that comparison, the chances of getting successful at the draw/lot by 15 is more whereas it is less in the case of three. To avoid that kind of imbalance, it has been restricted to a singular application qua family. Thus, it cannot be said that it is violative of Article 14 of the Constitution of India as the classification is rationale. Viewed from the aforesaid perspective, we are disposed to think that the scheme does not invite the frown of Article 14 of the Constitution of India.*

25. *As far as public policy is concerned, the policy involved in the Scheme is for allotment of flats. Regard being had to the number of flats which are available, it cannot be said it is violative of any public policy. As far as the question of violation of Section 23 of the Contract*

Act is concerned, we really fail to understand how the said provision is attracted.”

(Emphasis supplied)

25. Ms. Takiar finally drew my attention to the covenants contained in the application form for the 2008 Scheme, which was filed in by the petitioner and to which the petitioner appended her signature. The said covenant contained the following declaration:

“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.”

(Emphasis supplied)

26. Ms. Takiar sought to submit that, having agreed to the summary rejection/cancelation of her application/allotment, without issuance of

any show cause notice, in the event of violation, by her, of sub-clause (IV) of Clause 2 of the 2008 Scheme, the petitioner could not, now, claim to be aggrieved by the said cancellation, or seek the quashing thereof.

27. I have heard learned counsel for the parties and applied myself to the material on record.

Analysis

28. Two issues, essentially, arise for consideration in the present case, viz. (i) whether sub-clauses (IV) and (V) of Clause 2 of the 2008 Scheme is liable to be struck down, or declared illegal, and (ii) whether the cancellation of the petitioner's allotment, by the DDA, was sustainable in law.

Challenge to validity of Clause 2 (IV)

29. Addressing, first, the preliminary objection, of Ms. Takiar, regarding the petitioner not having approached this Court without clean hands, and having, thereby, disentitled herself to any relief under Article 226 of the Constitution of India, in which equity and fair play are inherent, I am of the opinion that there is considerable substance therein.

30. A perusal of the record, as filed by the petitioner before this Court, reveals that there is not even a mention of the declaration, in the application form, extracted in para 25 (*supra*), to which the

petitioner consciously subscribed. Neither is there any reference to the affidavit, filed by the petitioner, in which *she declared, clearly falsely, that her husband had not made any separate application for allotment of flat under the 2008 Scheme.*

31. There is no wishing away these indiscretions. Besides, the total absence of any reference, either to the declaration in the application form, or to the affidavit, amounts, in my view, to conscious suppression of fact.

32. It is well settled that a litigant, who seeks to invoke the equitable jurisdiction of the court under Article 226 of the Constitution of India, has to come with clean hands. Suppression of material information, *ipso facto* disentitles the litigant to any relief under Article 226 of the Constitution of India. Untruth and Article 226 cannot dwell together.

33. Clearly, therefore, the writ petition is liable to be dismissed even on this score.

34. In conjunction therewith, I also find substance in the submission of Ms. Takiar, to the effect that, in view of the false averment, in the affidavit and Indemnity Bond filed by her, consequent to the allotment of the flat, in her favour, the petitioner exposed herself, consciously, to cancellation of the allotment made in her favour. The declaration, in the application form, submitted by her, unequivocally consents to summary cancellation/rejection of the allotment/application, without issuance of any show cause notice, in the event of providing, by her,

of information which is subsequently found to be false. To the same effect is Clause 22 of the 2008 Scheme, which has been extracted in para 9 (*supra*). Even on this score, too, therefore, I am of the opinion that the petition is bound to fail.

35. I have, nevertheless, examined the case of the petitioner on merits, as detailed and extensive arguments were advanced.

36. The primary submission, advanced by Mr. Saini, is that the impugned Clause 2 (IV) of the 2008 Scheme renders, ineligible, persons who are eligible to apply for allotment of flats, under the 1968 Regulations. He relies, for this purpose, on Regulation 7 of the 1968 Regulations, which has been extracted in para 11 (*supra*).

37. A reading of Regulation 7 *supra* reveals that the said provision is in the nature of a disabling, rather than an enabling, clause. The provision disables a person from being allotted flats by the DDA, if such person, or her, or his spouse, or any of her, or his, dependent relations owns, in full or in part, on freehold or leasehold basis, a residential flat or dwelling unit in Delhi.

38. In other words, what the said provision ordains is that a person whose spouse or dependent relations already own a flat or a dwelling unit, cannot be allotted another flat or dwelling house. It is obvious that this provision has been enacted in view of the limited number of dwelling units available with the DDA for allotment, and in order to ensure equitable distribution of the available units.

39. Is the impugned Clause 2 (IV) of the 2008 Scheme contrary, in any manner, to this provision ?

40. In my considered opinion, the answer has necessarily to be in negative.

41. The impugned provision prohibits both spouses from applying for flats under the 2008 Scheme. The submission, of Mr. Saini, that, thereby, persons who are eligible for applying for allotment of flats/dwelling houses, in terms of the 1968 Regulation, have been rendered ineligible to do so, is too facile to pass muster. In my opinion, the impugned Clause 2 (IV) does not disentitle any person who is eligible to apply under the 1968 Regulations, from doing so.

42. Had the impugned regulation altogether disentitled either the husband, or the wife, from applying for a flat, though she, or he, was entitled to do so under the 1968 Regulations, possibly, the submission of Mr. Saini might have merited consideration. The impugned clause 2 (IV) does not, however, do so. Neither is the husband, nor is the wife, disentitled from applying for a flat, by operation of the impugned clause 2 (IV) of the 2008 Scheme. What the said clause proscribes is simultaneous applications for allotment of flat, under the Scheme, by both the spouses. The 1968 Regulations do not contain anything which allows both the spouses, simultaneously, to apply for flats. As such, the submission, of Mr. Saini, to the effect that the impugned Clause 2 (IV) of the 2008 Scheme renders, ineligible, persons who are eligible under the 1968 Regulations, for applying for allotment of flats, is, in my view, entirely without substance.

43. The matter may be viewed from another angle as well.

44. The submission, of Mr. Saini essentially was – though Mr. Saini did not say so in so many words – that, had the impugned Clause 2 (IV) not been in existence, neither spouse would stand disentitled from applying for a flat, merely because her, or his spouse had done so. Inasmuch as the impugned Clause 2 (IV) disentitles a person, whose spouse already has a flat, from herself/himself from applying another flat, Mr. Saini submits that the said clause infracts Regulation 7 of the 1968 Regulations. I am not inclined to agree.

45. Regulation 7, as already observed by me hereinabove, is not an enabling, but a disabling provision, as is apparent from the use of the word “only” therein.

46. What, essentially, Regulation 7 postulates is that a person, whose spouse or dependent relation, already owns a house, or plot, in Delhi, would not be allotted another plot or dwelling unit by the DDA. It does not, in any manner, say that every person who does not have a spouse or dependent relation, who owns a flat or dwelling unit in Delhi, *ipso facto*, stands disentitled to allotment of a flat or plot by the DDA.

47. In, therefore, prohibiting a person, whose spouse is applying for allotment of a flat under the 2008 Scheme, from simultaneously applying for allotment of another flat, I am of the opinion that the

impugned Clause does not run, in any manner, counter to Regulation 7 of the 1968 Regulations.

48. There is yet another facet of this aspect of controversy. Regulation 7 of the 1968 Regulations applies at the stage of application for, whereas the impugned Clause 2 (IV) of the 2008 Scheme applies at the stage of allotment of, a flat. The two provisions, therefore, apply at different stages, and, consequently it cannot be said that either one is contrary to the other.

49. For all these reasons, I am of the opinion that the submission, of Mr. Saini, that the impugned Clause 2 (IV) of the 2008 Scheme is liable to be struck down as being violative of Regulation 7 of the 1968 Regulations, is misconceived and is liable to be rejected.

50. There is an element of public interest involved in Clause 2(IV) of the 2008 Scheme, too, inasmuch as the multiplication of applications, which would be the inevitable consequence, were both spouses in every family to be permitted to apply, would necessary reduce the chance of each applicant to obtain allotment of a flat in her, or his, favour. It would also create an invidious divide between the married and the unmarried, inasmuch as, in the case of couples, the chance of each spouse, to get a flat allotted, would be double, at the cost of the unmarried applicant, who simultaneously applies, which would, in the bargain, be halved.

51. This aspect has been noticed by this Court, in paras 23 to 25 of *Meenakshi Rai Katariya* (*supra*), on which Ms. Takiar has placed

reliance and which stand extracted in para 24 which hereinabove, holds that the impugned provision has, been enacted in public interest.

52. Mr. Saini has sought to place reliance on the judgment of Division Bench of this Court in *Delhi Development Authority v. B. B. Jain*, 2013 SCC OnLine Del 891 and order dated 22nd August, 2013 in W.P.(C) 3707/2013 (*Kuljeet Kaur v. DDA*).

53. *B.B. Jain (supra)* is a case in which the petitioner *B.B. Jain* (hereinafter referred to as ‘Jain’) was allotted an LIG flat by the DDA. The area of the flat was less than 67 sq. mtrs. He also applied for allotment of a flat under the Rohini Residential Scheme, 1981, (hereinafter referred to as “the RR Scheme”) pursuant to which, a plot admeasuring 60 sq. mtrs. was allotted to him. Subsequently, the said allotment was cancelled by the DDA on the ground that, as he was already in possession of a residential plot, Jain was not entitled to another plot. The case involved a conflict between the applicable provisions in the RR Scheme and in the DDA (Disposal of Nazul Land) Rules, 1981 (hereinafter referred to as “the Nazul Land Rules”). The clause in the RR Scheme barred persons, who owned house or plots allotted by the DDA, irrespective of the area thereof, from being eligible for allotment of any other house or plot. As against this, Rule 6 (i) of the Nazul Land Rules permitted such second allotment, where the area of the first land/house was less than 67 sq. mtrs.

54. It was in these circumstances, that the learned Single Judge held that, as the petitioner was entitled to allotment of a second dwelling

unit, as per the Nazul Land Rules, the earlier unit owned by him being less than 67 sq. mtrs. in area, the DDA could not have cancelled the allotment of the flat made in his name, irrespective of the provisions of the RR Scheme, as the Nazul Land Rules would be entitled to predominance over the provisions of the RR Scheme.

55. *Kuljeet Kaur (supra)* was identical, on facts, to *B.B. Jain (supra)*. The controversy in issue in the above two decisions, insofar as their merits are concerned, was, therefore, totally different from that which arises in the present case.

56. The concluding para of the judgment of the Division Bench of this Court in *B.B. Jain (supra)*, noticed an objection, raised by learned counsel for the DDA, regarding a false affidavit having been submitted, by Jain, at the time of obtaining allotment of plot to the effect that neither did his, nor his wife, nor any of his dependent children, own any residential plot in Delhi. The Division Bench, while dismissing the appeal of the DDA, merely directed that the dismissal of the appeal would not come in the way of DDA taking such action, against Jain, as was open to it in law.

57. A similar caveat is to be found in the judgment of the learned Single Judge in *Kuljeet Kaur (supra)* which, for the said purpose, relies on *B.B. Jain (supra)*.

58. These decisions, in my view, cannot condone the mis-statement, on the part of the petitioner, in filing a false affidavit, to the effect that

her husband had not applied for allotment of a separate flat. No such principle of law can be said to emanate from the decisions either in ***B.B. Jain (supra)*** or ***Kuljeet Kaur (supra)***, which essentially dealt with other issues. As against this, in ***Krishan Dhawan (supra)***, the facts are strikingly similar to those obtaining in the present case. The DDA had cancelled the allotment of the plots allotted to the father and mother of the appellant in ***Krishan Dhawan (Supra)***, without restoring the plot to either of them. The challenge, thereto, dismissed by a learned Single Judge, on the ground that they have been misrepresentation and concealment of material facts of filing a false affidavit which had led to cancellation of the plots allotted to the appellant's parents. The appellant urged before the Division Bench in appeal that as his father had surrendered the allotment made in his name, the DDA was not justified in cancelling the allotments made in favour of both the parents of the appellant. The Division Bench of this Court repelled the said submission and dismissed the appeal. Para 7 and 8 of the of the judgment of the Division Bench which, in my view would cover the present case as well, reads thus :

“7. Mr. R.K. Saini, learned counsel for the appellant has vehemently urged that under the scheme of allotment of plots by the DDA, both the parents of the petitioner could get themselves registered as they were eligible to do so and had not incurred any disqualification and since before the conveyance deed of the plots in question was registered in favour of the parents of the petitioner, one of them, i.e. the father had surrendered the allotment and, therefore, the DDA was not justified in cancelling the allotment of both the plots made in favour of his parents. The learned Single Judge has taken pains to note the reprehensible conduct of the parents of the appellant in not only applying for registration and allotment of plot under the said scheme of the DDA but even accepting the

allotment and further acting by depositing the requisite amount against the two plots and by filing false affidavit and suppressing material facts about the registration and allotment of plots in favour of both of them.

8. We are not prepared to accept the contention of Mr. Saini that the parents of the appellant would have incurred disqualification only after a conveyance deed of the plot had been executed in favour of the other. It appears to us that there was a clear attempt on the part of the parents of the appellant to secure two plots by suppression of material facts. In our opinion, on the face of such a conduct, the impugned order is eminently justified and calls for no interference by this Court. Dismissed.”

59. That apart, there is a subtle factual distinction between the situation which obtained in *B.B. Jain (supra)* and *Kuljeet Kaur (supra)*, as compared to that which obtains in the present case.

60. In *B.B. Jain (supra)* and *Kuljeet Kaur (supra)*, the Nazul land Rules permitted allotment of a second flat to the concerned allottees, despite their being in possession of a flat allotted earlier, as the earlier flat admeasured less than 67 square meters.

61. Though the provisions of the RR Scheme were against them, the provision of the Nazul Land Rules permitted them to apply, and to be allotted, a second flat. As against this, in the present case, there is a clear cut proscription, in Clause 2 (IV) of the 2008 Scheme, from both spouses applying under the 2008 Scheme.

62. It appear clear, to me, that the averments, in the affidavit and indemnity bond submitted by the petitioner, to the effect that her

husband had not applied for any flat under the 2008 Scheme, was clearly intended to get over this handicap. Not only, therefore, was subterfuge employed to avoid the legal obligations cast on the petitioner; the petitioner compounded matters by concealing, from the present writ petition, the fact of ever having filed such an affidavit or indemnity bond, as well as the application form and all declarations contained therein, which already stand extracted in para 25 (*supra*).

63. The decisions in *B.B.Jain (supra)* and *Kuljeet Kaur (supra)*, therefore, do not come to the assistance of Mr. Saini, or his client.

64. The prayer for striking down the impugned Clause 2(IV) of the 2008 Scheme is, therefore, rejected.

65. The alternative argument, of Mr. Saini, to the effect that, even if the validity of the impugned Clause 2 (IV) of the 2008 Scheme were to be upheld, the DDA ought not to have entirely cancelled the allotment of a flat in favour of his client, but to only have cancelled the application made by her husband, as at least one of them was entitled to a flat, too, has no legs to stand on, in view of the categorical undertaking contained on the body of the application form extracted in para 25 (*supra*) submitted by the petitioner, below which the petitioner had appended her signature. By subscribing to the said covenant, the petitioner agreed to cancellation of the application/allotment, without issuance of Show Cause Notice, if she was found to have violated Clause 2 of the Information Brochure governing the 2008 Scheme. That she had, can hardly be denied, as she, and her husband, submitted

forms for allotment of flats, in clear and stark violation of the proscription, to the contrary, contained in the impugned Clause 2 (IV) of the 2008 Scheme, as it existed at the time. A faint effort has been made, in the rejoinder of the petitioner, to gloss over this misrepresentation, by seeking to aver that the petitioner *herself* had not infringed the said Clause, as she had, after all, submitted only one form. The specific averment, in this regard, as contained in the rejoinder filed by the petitioner, merits reproduction, thus:

“It is correct that if the applicant has submitted more than one application as given in para 2 (iv) and (v) the allotment will be cancelled summarily without issuing any show cause notice. In the present case, however, the petitioner has submitted only one application and as such, there was no justification for cancelling the allotment or at least a show cause notice was liable to be issued to the petitioner before taking the drastic action to cancel the application. As such, the impugned action of the Respondent is liable to be set aside by this Hon’ble Court ...”

The above submission requires merely to be urged to be rejected. The relevant part of the declaration, as contained in the application form, filled in by the petitioner and to which she appended her signature, may, at the cost of repetition, be reproduced, once again, thus:

“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.”

(Emphasis supplied)

The petitioner has, therefore, agreed to cancellation of the allotment without notice, if it is found that she had violated the conditions contained in para 2 of the brochure, *or* where she had submitted more than one application as given in para 2 (IV) or (V). In my view, the petitioner stands mulcted by *both* these covenants. By simultaneously submitting a form for allotment of a flat, when her husband had, to her full knowledge, also done so, she violated Clause 2 (IV) of the 2008 Scheme. Also, though *she* herself may not have submitted more than one form, and though, legally speaking, husband and wife may not, as Mr Saini rightly submits, be liable to be treated as two bodies and one soul, the fact remains that each has acted, as she, or he, did, with the full knowledge and awareness of the other. They remain, therefore, jointly and severally liable for their actions, and stand completely disentitled to any benefit under the 2008 Scheme.

66. That the petitioner had not signed the form innocently and unwary of the said undertaking, contained on the body thereof, it appears from the fact that the said application form, as well as the undertaking contained therein, has studiously been suppressed in the present proceedings.

67. In any event, in view of the said undertaking, whereby the petitioner agreed to cancellation of her application/allotment in the event of her having violated Clause 2(IV) of the Scheme or having submitted a false affidavit, I am of the opinion that the challenge, by the petitioner to the cancellation of her allotment, has also, necessarily, to fail.

68. As has already been noted hereinabove, Mr. Saini also sought to rely on the fact that the 2008 Scheme was subsequently amended to permit simultaneous applications for allotment of flat by husband and wife, with the stipulation that, in case both husband and wife was successful in the draw of lots, the flat would be allotted only to one of the two.

69. This submission, in my view, is neither here nor there.

70. The fact that the DDA chose to amend the eligibility conditions in the 2008 Scheme, from the year 2010 onwards, to read as Mr. Saini would prefer the clauses to have read even prior to their amendment, cannot, in any manner, be of relevance in deciding whether the pre-amended clause was legally valid, or not. The validity of Clause 2 (IV) of the 2008 Scheme, as it existed at the time that the petitioner applied for allotment of flat thereunder, has to be reckoned by examining the clause as it then existed, and not by the manner in which the clause was subsequently amended/substituted.

71. The subsequent amendment/substitution of the clause, does not, *ipso facto*, render, in any manner, the pre-amended clause invalid, illegal or *ultra vires*.

Conclusion

72. In view of the above discussion, this writ petition necessarily has to fail. It is, accordingly, dismissed, with no order as to costs.

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73. Though Mr Saini fairly stated that, in this case, too, the petitioner must have filed an affidavit, as had been done by the petitioner in WP (C) 1621/2013, no specific arguments were advanced in this writ petition. Neither were the affidavit filed by the petitioner in this writ petition, or the application form filled in by him, produced before the Court.

73. List this writ petition, therefore, for disposal, at the end of the Board, on 23rd August, 2019.

C. HARI SHANKAR, J

MAY 24, 2019

dsn