

\$~26

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

Date of decision: 23rd January, 2019

+ W.P.(C) 7840/2016 & CM Nos. 32410/2016 and 32411/2016

BENI PAUL

..... Petitioner

Through: Mr. Rohit Goel, Mr. Mithlesh
Jha and Mr. Haider Ali, Advs.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

%

J U D G M E N T (O R A L)

1. There is no appearance on behalf of the DDA, despite the matter having being called out twice at the end of the board. I have proceeded, therefore, to hear the petitioner in the writ petition.

2. The grievance of the petitioner stems from the decision of the DDA, as manifested in the impugned letter dated 5th May, 2016, to cancel the allotment of Plot No.1029, Pocket-C 3, Sector-34, Rohini, made in favour of the petitioner by the DDA under the Rohini Residential Scheme, 1981 (hereinafter referred to as the "Scheme").

3. Inasmuch as the only direction that can be issued, in this case, would be for the DDA to reconsider the matter, it is not necessary to adumbrate, in detail, the facts. Suffice it to state that, according to the averments in the writ petition, the petitioner's father had applied for allotment of a flat under the scheme on 24th April, 1981 and had deposited, for the said purpose, the requisite initial payment of ₹2,000/-. The petitioner's father expired on 24th August, 2007, whereafter, on 29th March, 2010, the DDA wrote to the petitioner directing the petitioner to submit the relevant documents, in support of the claim made by his father. These documents were submitted, by the petitioner, on 5th August, 2010.

4. Learned counsel for the petitioner submits that the petitioner committed an error at this stage, by enclosing, with the said letter dated 5th August, 2010, documents relating to ownership, of the petitioner, of two properties, one located at Plot No. 15, Swarg Ashram, Kingsway Camp, Delhi (hereinafter referred to as "the Swarg Ashram property") and the other at Plot No.3, Khasra No. 880, Sant Nagar, Burari, Delhi (hereinafter referred to as "the Burari property"). His contention is that the Swarg Ashram property was the property in which the petitioner was residing till May, 2007, when the petitioner shifted to the Burari property. The Swarg Ashram property, according to learned counsel for the petitioner, was sold by the petitioner in October, 2007 and, as such, ought not to have found any mention in the letter dated 5th August, 2010.

5. Learned counsel for the petitioner has drawn my attention to Rule 17 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter referred to as “the Rules”) as they existed at that time. The said provision reads thus :

“17. General restriction to allotment for residential purposes

Notwithstanding anything contained in these rules, no plot of Nazul land shall be allotted for residential purposes, to an individual other than an individual referred to in clause (i) of rule 6, who or whose wife or husband or any of his or her dependent children, whether minor or not, or any of his or her dependent parents or dependent minor brothers or sisters, ordinarily residing with such individual, own in full or in part, on lease-hold or free-hold basis, any residential land or, house or who has been allotted on hire-purchase basis any residential land or house in the Union territory of Delhi:

PROVIDED that where, on the date of allotment of Nazul land,-

- (a) the other land owned by or allotted to such individual is less than 67 square metres, or
- (b) the house owned by such individual is on a plot of land which measures less than 67 square metres, or
- (c) the share of such individual in any such other land or house measures less than 67 square metres, he may be allotted a plot of Nazul land in accordance with the provisions of these rules.”

6. The contention of learned counsel is that each of the aforementioned properties i.e. the Swarg Ashram property and the

Burari property, was less than 67 square metres in area and that, therefore, the petitioner was never in possession of any property which was in excess of 67 square metres.

7. However, owing to the fact that the details of both the properties were forwarded, by the petitioner, with his letter dated 5th August, 2010, an impression was created that the petitioner was in possession of property in excess of 67 square metres and that, therefore, Rule 17 of the Rules stood infringed.

8. The petitioner was allotted Plot No. 1029, Pocket C-3, Sector 34, Rohini by the respondent *vide* allotment letter dated 31st December, 2014. Pursuant thereto, the writ petition avers that the petitioner submitted the requisite documents and also deposited the charges required to be deposited in that regard.

9. On 28th January, 2016, the DDA issued a show cause notice, to the petitioner, alleging that the petitioner was in possession of two properties, i.e. the Swarg Ashram property and the Burari property, which disentitled him to allotment of a plot under the Scheme. The petitioner was, therefore, directed to show cause against cancellation of the allotment made to him.

10. The petitioner responded to the said show cause notice *vide* communication dated 8th February, 2016, which is annexed as

Annexure-1 to the writ petition. Though, it is averred in the writ petition, that the Swarg Ashram property stood sold by the petitioner in 2007, there is no such sale reflected in the communication dated 8th February, 2016 or, for that matter, not even in any other communication addressed by the petitioner to the DDA. The only submission, which finds place in the aforementioned communication dated 8th February, 2016, is that his mother was the owner of the aforementioned properties mentioned in the show cause notice and that he, his wife and his children did not own any property. Needless to say, in view of the embargo created by Rule 17 of the Rules, ownership of a property by the petitioner's mother would be as fatal, to the claim of the petitioner, as ownership of property by the petitioner himself.

11. As such, the stand adopted in the reply dated 8th February, 2016, was, *ex facie* without merit.

12. The show cause notice dated 28th January, 2016 (*supra*) was adjudicated, by the impugned communication dated 5th May, 2016, which merely reiterated the allegation in the show cause notice that the petitioner was in possession of two properties, i.e. the Swarg Ashram property and the Burari property and that, therefore, the total area was in excess of that permissible under Rule 17 of the Rules. Accordingly, the impugned communication informed the petitioner that the allotment, made to him on 31st December, 2014, stood

cancelled *vide* an order dated 31st March, 2016, issued by the competent authority.

13. The petitioner has moved this Court, by means of the present writ petition, assailing the said cancellation.

14. Learned counsel for the petitioner submits that the very basis of the show cause notice was fallacious, as the embargo cast by Rule 17 of the Rules was only to ownership of land in excess of 67 square metres, whether by the petitioner or by his immediate relatives. He points out that, at the time of application, the petitioner was in possession only of the Swarg Ashram property, and, at the time of allotment, he was in possession only of the Burari property, and that he had never been in possession of both the properties simultaneously except for a period of four months between 25th May, 2007 and October, 2007.

15. As such, learned counsel would submit that there was no infraction, by the petitioner, of the mandate of Rule 17 of the Rules, as would justify cancellation of the allotment made to him under the Scheme.

16. No occasion arises for me to enter into this controversy, for the simple reason that the response, dated 8th February, 2016, to the show

cause notice dated 28th January, 2016 (*supra*) does not set out the case argued before me by learned counsel for the petitioner. As such, no occasion arose, for the DDA to consider the said contentions of the petitioner on merits.

17. In view thereof, I am of the opinion that the interests of justice would be subserved if this writ petition is disposed of with liberty to the petitioner to submit a fresh response, to the show cause notice dated 28th January, 2016, to the DDA, setting out his exact stand in respect of the allegations contained in the said show cause notice. The petitioner is directed to submit such response within a period of two weeks from today. The DDA is directed to consider the said response and pass a speaking order, thereon, within a period of two weeks from the date of submission of the response. Needless to say, if the petitioner's stand is found to be correct on facts and the petitioner is found to be entitled to allotment of the flat on merits, the DDA would withdraw the impugned cancellation letter dated 5th May, 2016, cancelling the allotment of Plot No.1029, Pocket C-3, Sector 34, Rohini, to the petitioner. In such an eventuality, in case the said plot has not been allotted to anyone else, allotment thereof would be made to the petitioner within a period of one week thereof. In case the said plot stands allotted to someone else, an alternative plot would be allotted to the petitioner in accordance with the terms of the Scheme.

18. In the event of the decision of the DDA, on the show cause notice dated 28th January, 2016 (*supra*), being adverse to the interests

of the petitioner, the petitioner's right to assail the said decision by way of remedies available to him in law shall stand reserved.

19. The writ petition stands disposed of in the above terms with no orders as to costs.

JANUARY 23, 2019/kr

C.HARI SHANKAR, J

