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

+ **W.P.(C) 354/2016, CM Nos.1482/2016 & 27516/2017**

Date of decision: 17.02.2020

S P KUREEL & ORS

..... Petitioners

Through : Mr. Rohit Sharma, Mr. Atul Agarwal
and Mr. Rounak Nayak, Advs. with
Mr. Shalendar Kumar, P-2 in person.

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents

Through : Mr. M.K. Singh, Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

1. *Via* this writ petition, challenge is laid to the order dated 08.12.2015, whereby the respondents, which, in effect, is the Delhi Development Authority (DDA), cancelled the allotment made to the petitioners *qua* two flats.

2. Shorn of unnecessary details, what has emerged from the record is as follows :

2.1 The petitioners before me are members of a family consisting of Mr.S.P. Kureel, Mr. Shalendar Kumar, Mrs.Vidya Kureel.

2.2 Mr.S.P. Kureel is the head of the family (i.e. the father), while Mrs.Vidya Kureel, is his spouse. Mr. Shalendar Kumar and Mr. Uttam Kumar are the sons of Mr.S.P. Kureel and Mrs.Vidya Kureel.

2.3 To be noted, Mr. S.P. Kureel, Mr. Shalendar Kumar and Mrs. Vidya

Kureel are arrayed as the petitioner nos.1, 2 and 3 respectively. Mr. Uttam Kumar is not arrayed as a party to the present proceedings.

2.4 For the sake of convenience, though, wherever necessary, the aforementioned persons will be referred to as a family.

2.5 The record shows that the family preferred four applications for allotment of flats under the DDA Housing Scheme, 2010 (in short "the Scheme").

2.6 The first application was filed by Mr. S.P. Kureel and his son Mr. Shalendar Kumar. Mr. S.P. Kureel was the first applicant in this application.

2.7 The second application was preferred by Mr. Shalendar Kumar and Mrs. Vidya Kureel. Mr. Shalendar Kumar was the first applicant in this application.

2.8 The third application was filed by Mr. Uttam Kumar along with Mrs. Vidya Kureel. Mr. Uttam Kumar was the first applicant in this application.

2.9 The last and the fourth application was filed by Mrs. Vidya Kureel along with Mr. Shalendar Kumar. In this application, Mrs. Vidya Kureel was the first applicant.

3. Upon draw of lots being held, the first two applications were successful i.e. the application filed by Mr. S.P. Kureel along with his son Mr. Shalendar Kumar and the application filed by Mr. Shalendar Kumar along with Mrs. Vidya Kureel.

3.1 Consequently, the demand-cum-allotment letters were issued in favour of Mr. S.P. Kureel and Mr. Shalendar Kumar. Mr. S.P. Kureel was issued the demand-cum-allotment letter on 28.03.2012, whereas

Mr. Shalendar Kumar was issued the demand-cum-allotment letter on 30.03.2012.

3.2 It is not in dispute that Mr. S.P. Kureel and Mr. Shalendar Kumar deposited the amount demanded by the DDA and also paid the requisite stamp duty.

3.3 It is also not in dispute that Mr. S.P. Kureel and Mr. Shalendar Kumar had submitted the requisite draft conveyance deed forms for execution of a formal conveyance deed in their favour *qua* the subject flats.

3.4 The DDA, upon scrutiny of documents, issued two separate cancellation letters *qua* the subject flats to Mr. S.P. Kureel and Mr. Shalendar Kumar.

3.5 The DDA issued cancellation letters dated 7.12.2012 to the petitioner no.1 and petitioner no.2 which were received by them on 20.12.2012. The apparent reason for cancellation was that Mr. Shalendar Kumar was a co-applicant in Mr. S.P. Kureel's application while he was the first applicant in the application filed by him along with his mother i.e. Mrs. Vidya Kureel.

3.6 Being aggrieved, the cancellation orders were challenged by way of a writ petition i.e. W.P.(C)No.40/2013. This court vide judgment dated 11.11.2013 set aside the cancellation orders, principally, on the ground of violation of the principles of natural justice.

3.7 Consequently, the DDA issued a fresh show cause notice dated 09.01.2014. This show cause notice was addressed to Mr. S.P. Kureel, Mr. Shalendar Kumar and Mrs. Vidya Kureel. The addressees filed a common reply to the show cause notice, which is, dated 20.01.2014.

3.8 Interestingly, thereafter, vide letter dated 07.08.2015, the DDA addressed the following communication to Mr. S.P. Kureel. Since this letter

is crucial to the case set-up by the petitioners, the relevant extract is set forth hereafter :

“To,

*Shri S P Kureel,
C-12/Pk.6
Kendriya Vihar-2
Sector-82, NOIDA,
UP-201 304*

*Sub.: Regarding Allotment of HIG Flat in Housing Scheme-
2010 -Your grievance on CPGRAMS*

Sir,

This is with reference to the subject cited above.

In this regard, it is submitted that as you are aware that the committee constituted for the purpose had recommended that since there is no ban in submission of more than one application under Housing Regulations, it would be harsh to cancel both the allotments made against two applications. Only one allotment should be cancelled and in the other one we may allow issue of demand cum allotment letter. This position was explained to you during the course of public hearing as well.

As of now, the file is under submission to the Systems Branch for determining the first allotment in the case, so that necessary action as decided by the committee can be taken accordingly.

Yours faithfully,

-s/d-

(Harish Kumar)

Dy. Director(SFS)”

(emphasis is mine)

3.9 Despite such communication being issued by the DDA, vide the impugned communication dated 08.12.2015, the DDA, proceeded to cancel both flats i.e. the flat allotted to Mr. S.P. Kureel as also the flat allotted to his son Mr. Shalendar Kumar, purportedly, for violation of Clause 2(VI) of the Scheme.

4. Being aggrieved, the petitioners have approached this court.

5. Mr. Rohit Sharma, who, appears for the petitioners says that Mr. Shalendar Kumar, at the time when he had applied for allotment of a flat, both as a co-applicant and as first applicant had attained legal age.

5.1 Mr. Rohit Sharma submits that Mr. Shailendar Kumar was well within his right to prefer an application along with his father as a co-applicant and also make an application in his own right.

6. According to Mr. Rohit Sharma, since in the application, the PAN number and the bank account details were required to be furnished of only the first applicant, there was no violation of Clause 2(VI) of the Scheme.

7. On the other hand, Mr. M.K. Singh, who appears on behalf of the DDA, says that since Mr. Shalendar Kumar was an applicant, both, in the first application as well as in the second application, the provisions of the Scheme were infringed.

7.1 According to Mr. M.K. Singh, the petitioners were not entitled to allotment of any flat whatsoever and that this was a case of misrepresentation entailing summary rejection of all four applications.

8. Having heard learned counsel for the parties and perused the record, what is relevant to arrive at a decision in this case are the provisions of the Scheme.

8.1 The relevant provisions of the Scheme which are necessary for

adjudication are set out hereafter :

“2. *ELIGIBILITY*

- (I) The applicant must be a citizen of India.
- (II) He/She should have attained the age of majority. For this an applicant should have completed 18 years of age as on the date of filling of the application for a flat.
- (III) The applicant must not own' any residential flat or plot in full or in part on lease hold or free hold basis in Delhi/New Delhi/Delhi Cantonment either in his/ her own name or in the name of his/her wife/husband or in the name of his / her minor or dependent children.
- (IV) Family means spouse (if any), dependent/minor children, if any.
- (V) Both husband and wife can apply for flats subject to fulfilment of eligibility condition with a stipulation that if both are found to be successful only one shall be allotted flats.
- (VI) One person can submit one application only.
xxx xxx xxx
- (IX) The applicant must have an account in any bank and the particulars must be filled in the application form. It is assumed that the bank has followed 'KYC' norms of Reserve Bank of India In respect of such Accounts.
- (X) Applicant must have Permanent Account Number allotted under the provisions of Income Tax Act and the same must be quoted on the application form.

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21. MIS-REPRESENTATION OR SUPPRESSION OF FACTS

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 & VI) 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, the amount of registration/earnest money deposited against application(s) shall be forfeited.”

8.2 A perusal of the aforementioned provisions of the Scheme would show that it was incumbent upon an applicant to make only one application. The Scheme also defines as to what would comprise a family.

8.3 Clause 2(IV) clearly sets out that a family would include the spouse (if any), dependent/minor children, if any.

8.4 Furthermore, Clause 2(V) provides that while the husband and the wife could separately apply for a flat subject to fulfilment of eligibility conditions as stipulated, in case, if both were found successful, only one flat would be allotted.

8.5 Clause 2(VI) stipulates that one person could prefer only one application.

8.6 The crucial question is, whether the inclusion of Mr. Shalendar Kumar as a co-applicant in his father's application ran foul of Clause 2(VI) in view of the fact that he had also made a separate application along with his mother Mrs. Vidya Kureel in his own right.

8.7 As indicated above, the son i.e. Mr. Shalendar Kumar being major did not fall within the definition of a family, and, therefore, the son was entitled to make an application in his own right. However, the son not only made an application in his own right but also was a co-applicant in the application preferred by the father.

8.8 Mr. Rohit Sharma argues that the co-applicant is not recognized as an

applicant under Clause 2 subclause (IX) read with the provisions of the application form since the Permanent Account Number (PAN) and the bank details are sought of only the first applicant.

8.9 In my view, this submission cannot be accepted. The DDA, for the sake of convenience, would have sought the details only of the first applicant, which would not in law mean that the co-applicant had no right to a flat if the application was successful once a draw was held.

8.10 Therefore, what is required to be considered is : would the second application preferred by Mr. Shalendar Kumar in his capacity as the first applicant survive?

8.11 In my view, the second application cannot survive as he has already exhausted his chance by joining as a co-applicant with his father Mr. S.P. Kureel. This was, as noted above also, the decision taken by the DDA in its communication dated 07.08.2015 which has been extracted hereinabove by me. Given this communication, this is not a case of misrepresentation as portrayed by Mr. M.K. Singh. The DDA acknowledged *via* this communication that only that flat could be allotted.

9. However, Mr. Shalendar Kumar, as adverted to above, has also deposited the money towards allotment of flat made in his favour.

10. Mr. Rohit Sharma, at this stage, says that the petitioners would be satisfied if one of the two flats would be allotted to them.

11. The record shows that on 15.01.2016, this court had directed the DDA not to allot the Flat No.304, Block Saraswati, S-6, Pocket D-6, Vasant Kunj, New Delhi to any third party till the next date of hearing. This interim order, I am told, has continued up until today.

12. Therefore, given the fact that the aforesaid flat stands reserved and the

other flat may have been disposed of, I am of the opinion that the said flat can be allotted to Mr. S.P. Kureel along with his son Mr. Shalendar Kumar.

13. Furthermore, the DDA will refund the amount collected *qua* the subject flats, which is, over and above Rs.86,21,737/-.

13.1 Mr. Rohit Sharma says that the surplus amount, which is inclusive of conveyance charges, should be refunded along with interest. I am of the view that no interest can be granted, as way back on 07.08.2015, an offer had been made by the DDA to Mr. S.P. Kureel that he could retain one of the two flats which was not accepted by him.

13.2 Therefore, it is a case, in which, I am not inclined to grant interest.

13.3 Mr. Rohit Sharma, on instructions of Mr. Shalendar Kumar, who is present in court, says that he will rest with the direction *qua* rejection of the prayer for interest and confining the relief to allotment of the aforementioned flat.

14. It is ordered accordingly.

15. DDA will comply with the aforementioned directions at the earliest, though, not later than eight weeks from the date of receipt of a copy of the order.

16. The captioned writ petition is disposed of in the aforesaid terms. Resultantly, pending applications shall stand closed.

RAJIV SHAKDHER, J

FEBRUARY 17, 2020

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