

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

Date of decision: 13th APRIL, 2023

IN THE MATTER OF:

+ **LPA 359/2020 & CM APPL. 30508/2020**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Anish Dhingra, Advocate

versus

SH. S.P. KUREEL & ORS Respondents

Through: Mr. C. Mohan Rao, Senior Advocate
with Mr. Lokesh Kumar Sharma,
Advocate

+ **LPA 69/2021**

S P KUREEL & ORS Appellants

Through: Mr. C. Mohan Rao, Senior Advocate
with Mr. Lokesh Kumar Sharma,
Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents

Through: Mr. Anish Dhingra, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant LPAs have been filed against the Judgment dated 17.02.2020 passed by the learned Single Judge in W.P.(C) No.354/2016.
2. As the instant appeals arise out of the same impugned Judgment, for the sake of convenience, LPA No.359/2020 is being taken as the lead matter.

3. Respondent No.1 (S P Kureel), is the father of Respondent No.2 (Shailender Kumar) and husband of Respondent No.3 (Vidya Kureel).
4. Shorn of details, the facts leading to the present appeals are as under:-
 - i. On 25.11.2010, DDA launched the Housing Scheme, 2010 offering flats for allotment in various localities of Delhi including Vasant Kunj and Dwarka.
 - ii. It is stated that Respondent No.1 and Respondent No.2 as joint applicants submitted Application No.441242. Another application being Application No.441244 was submitted by Respondent No.2 and Respondent No.3 as joint applicants.
 - iii. Thereafter on 18.04.2011, a draw of lot held in respect of Application No. 441242, Flat No. 1, Pocket 2, Block E 2, Sector 18B, Dwarka, New Delhi was allotted and in respect of Application no. 441244, Flat No. 304, Block Saraswati, S-6, Pocket D-6, Vasant Kunj, New Delhi was allotted.
 - iv. It is stated that in addition to the above applications, two more applications were submitted, one by (Uttam Kumar), second son of Respondents No.1 & 3, who was the joint applicant along with Respondent No.3 and in the second application Respondent No.3 was the joint applicant with Respondent No.2.
 - v. It is stated that both these applications were not selected in the draw of lots.
 - vi. On 02.06.2011, the Appellant had issued letters to Respondents No.1 & 2 asking them for verification of documents and genuineness of allottees. Thereafter, on 13.05.2011, a public notice was issued by the Appellant informing the applicants that

demand-cum-allotment letter would be issued only after the verification of documents and genuineness of allottees.

- vii. Subsequently, the Appellant issued letters of allotment to the Respondents *vide* letters dated 14.09.2011 and 15.09.2011. The Respondents received a demand-cum-allotment letter on 28.03.2012 and 30.03.2012.
- viii. Respondent No.1 deposited a sum of Rs.72,56,599/- towards the allotment of flat in Dwarka and Respondent No.2 deposited a sum of Rs.86,21,735/- towards the allotment of flat in Vasant Kunj.
- ix. It is stated that during this time, on 28.05.2012, Respondent No.2 paid a stamp duty of Rs.3,94,225/- and submitted conveyance deed form in respect of Vasant Kunj flat. It is stated that Respondent No.1 also paid a sum of Rs.3,93,835/- towards stamp duty in respect of the Dwarka flat on 08.06.2012.
- x. It is stated that Respondents No.1 & 2 obtained home loans of Rs.18,00,000/- and Rs.70,00,000/-. The Respondents also sold a residential house in Kanpur for making the payments to the DDA.
- xi. Thereafter, DDA considered the documents submitted by the Respondents and found that the Respondents have suppressed material facts and one person has applied twice.
- xii. On 07.12.2012, DDA cancelled the allotment of flats to the Respondents. Thereafter, Respondents No.1 & 2 filed W.P.(C) No.40/2013 before this Court challenging the cancellation of flats allotted to them.

- xiii. This Court *vide* Judgment dated 11.11.2013 set aside the cancellation orders on the ground of violation of the principles of natural justice and directed the DDA to issue show cause notice and take necessary action in accordance with law.
- xiv. The DDA in compliance of the orders of this Court issued show cause notice dated 09.01.2014 to the Respondents to show cause as to why the allotments of flats should not be cancelled.
- xv. The Respondents submitted a detailed reply to the above show cause notice *vide* replies dated 20.01.2014, 12.03.2014, 03.04.2014, 05.05.2014 and 12.05.2014.
- xvi. The Appellant *vide* letter dated 07.08.2015 replied to the grievance of the Respondents which reads as under:-

"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 Systems Branch for determining the first allotment in the case, so that

necessary action as decided by the committee can be taken accordingly."

- xvii. The Appellant after considering the reply of the Respondents cancelled the allotment of flats to the Respondents by letters dated 08.12.2015 on the ground that it was in violation of terms and conditions of the Housing Scheme, 2010.
- xviii. Aggrieved by the said letter of cancellation, the Respondents filed W.P.(C) No.354/2016 and the learned Single Judge after hearing arguments from both sides passed Judgment dated 17.02.2020 allowing the writ petition of the Respondents, directed the Appellant herein to allot Flat No. 304, Block Saraswati, S-6, Pocket D-6, Vasant Kunj, New Delhi to Respondents No.1 & 2 and to refund the amount of Rs.86,21,737/- collected from the Respondents for the other subject flat.
- xix. Aggrieved by the Judgment dated 17.02.2020 passed by the learned Single Judge, the Appellants have approached this Court by filing the instant appeals.
5. Learned Counsel for the Appellant/DDA contends that the Respondents/applicants have violated the instructions inasmuch as there is a clear prohibition of a person submitting more than one form. He states that the Respondent No.2 had filed two applications, one with his father, i.e., Respondent No.1, wherein he was shown as second applicant and the second one with his mother, i.e., Respondent No.3, wherein he was the first applicant. Similarly, Respondent No.3 had filed three applications, one with her elder son (Uttam Kumar), one with her husband (S P Kureel) and one

with her second son (Shailendar Kumar). It is stated that both (Vidya Kureel and Shailendar Kumar) were disqualified from even participating in the bid because of having filed more than one applications which is contrary to the instructions. It is contended that a person who has knowingly violated the instructions, forfeits its right to participate in the draw of lots, and, therefore, two allotments made in favour of Respondents No.1 & 2 and Respondents No.2 & 3 are liable to be cancelled.

6. *Per contra*, Mr. C Mohan Rao, learned Senior Counsel for the Respondents, contends that the Clause 2(v) of the DDA Housing Scheme, 2010 permits both husband and wife to apply for flats with a stipulation that if both are found to be successful, only one will be allotted the flat. He states that two flats have been allotted, one which is in the joint name of Respondents No.1 & 2 and second in the name of Respondents No.2 & 3, and, therefore, Respondents No.1 & 3 are entitled to allotment of one flat each.

7. Mr. Rao also places reliance on the DDA Housing Scheme, 2014 wherein it is stipulated that one person can submit only one application either in his/her name or as a joint applicant. He states that only in DDA Housing Scheme, 2014, there was a prohibition of a person for filing two applications, a stipulation which was absent in the DDA Housing Scheme, 2010, and, therefore, the Respondents are entitled to the allotment of two flats for which they have been successful in the draw of lots.

8. Clause 2 of the DDA Housing Scheme, 2010 under which the Respondents had applied and which lays down the eligibility criteria reads as under:-

"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 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.

VII. A person who has already been allotted a plot or house/ flat constructed by the DDA or any other land owning department shall not be eligible to apply for another flat under this scheme.

VIII. There is no income criterion. The applicant can apply according to his/her requirement and affordability.

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. "

9. Reading Clause 2(V) and 2(VI) together permits husband and wife to make separate applications but only one of them will be allotted the flat.

10. A perusal of the facts shows the following position:-

- i. Respondent No.1 (S P Kureel) has filed only one application.
- ii. Respondent No.2 (Shailendar Kumar) is the co-applicant with his father (S P Kureel) and also a co-applicant with his mother (Vidhya Kureel).

11. One person could not have made more than one application, and, therefore, Respondent No.2 was disentitled from filing two applications. The short question which arises for consideration is whether Respondent No.1 who had filed only one application should be deprived of his flat or not.

12. It is now well settled that the drastic power of cancellation of allotment by the authorities must be used only as a last resort. The doctrine of proportionality which is a well accepted doctrine to determine the quantum of punishment is a well-known principle in the administrative law and which is now used even in constitutional law. The Apex Court in Teri Oat Estates (P) Ltd. v. U.T., Chandigarh & Ors., (2004) 2 SCC 130, has observed as under:-

"44. The situation, thus, in our opinion, warrants application of the doctrine of proportionality.

45. The said doctrine originated as far back as in the 19th century in Russia and was later adopted by Germany, France and other European countries as has

been noticed by this Court in Om Kumar v. Union of India [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] .

46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority

“maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve”.

47. This Court as far back as in 1952 in State of Madras v. V.G. Row [(1952) 1 SCC 410 : AIR 1952 SC 196 : 1952 Cri LJ 966] observed: (AIR p. 200, para 15)

*“[T]he test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. **The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.** In evaluating such elusive factors and forming their own conception of **what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should***

play an important part, and limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable.”

48. The principle started gaining momentum in other countries and it was applied and developed in England as noticed by Lord Diplock in R. v. Secy. of State for the Home Dept., ex p Brind [(1991) 1 AC 696 : (1991) 1 All ER 720 : (1991) 2 WLR 588 (HL)] . This Court in Tata Cellular v. Union of India [(1994) 6 SCC 651] while opining in concurrence with the judgment of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] that the extent of judicial review should ordinarily be limited to illegality, irrationality and procedural impropriety, observed that they are only the broad grounds but did not rule out addition of further grounds in the course of time and also noticed “Brind” [(1991) 1 AC 696 : (1991) 1 All ER 720 : (1991) 2 WLR 588 (HL)] .

49. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. In cases where such legislation is made and the restrictions are reasonable; yet, if the statute concerned permitted administrative

authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. In such cases, the administrative action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is being done by the courts. Administrative action in India affecting the fundamental freedom has always been tested on the anvil of the proportionality in the last 50 years even though it has not been expressly stated that the principle that is applied is the proportionality principle. (See Om Kumar [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] .)

50. *In Om Kumar [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , however, this Court evolved the principle of primary and secondary review. The doctrine of primary review was held to be applicable in relation to the statutes or statutory rules or any order which has the force of statute. The secondary review was held to be applicable inter alia in relation to the action in a case where the executive is guilty of acting patently arbitrarily. This Court in E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165] noticed and observed that in such a case Article 14 of the Constitution of India would be attracted. In relation to other administrative actions as for example, punishment in a departmental proceeding, the doctrine of proportionality was equated with Wednesbury unreasonableness.*

51. *We may, however, notice that the said doctrine in principle or the spirit thereof has recently been applied by the Court of Appeal.*

52. *In Edore v. Secy. of State for the Home Deptt. [(2003) 3 All ER 1265 (CA)]* the appellant was a citizen of Nigeria who had entered the United Kingdom and remained back after her visa had expired. She had two children, born to a British citizen. The children were emotionally dependent on him and he was a stabling influence on their lives. If the appellant and her children were returned to Nigeria, their relationship with their father would end. The Court trying to resolve the conflict at hand opined: (All ER pp. 1274 & 1276, paras 20 & 27)

Where the essential facts were not in doubt or dispute, the adjudicator's task was to determine whether the decision under appeal was properly one within the decision-maker's discretion, namely, that it was a decision which could reasonably be regarded as striking a fair balance between the competing interests in play. If it were, then the adjudicator could not characterize it as a decision "not in accordance with the law" and so, even if he personally would have preferred the balance to have been struck differently, he could not substitute his preference for the decision in fact taken. However, there would be occasions where it could properly be said that the decision reached was outside the range of permissible responses open to him, in that the balance struck was simply wrong.

53. *In a later case although the doctrine of proportionality was not expressly referred to but the spirit thereof was applied in R. v. Lewisham London Borough Council [(2003) 3 All ER 1277 (CA)]* wherein it was held: (All ER p. 1292, para 49)

"When the decision-maker comes to balance the factors he is entitled to place in the scales....

Thus, even though the length of delay and reasons for it are often balanced against the prospect of success, it is possible to envisage circumstances in which an authority can rationally and properly conclude that even short delay for which there is a good explanation is not good enough to justify an extension of time for review.” (emphasis supplied)

13. Applying the said doctrine, this Court is of the opinion that the view taken by the learned Single Judge does not require any interference for the reason that Respondent No.1 had made one application and the allotment in the name of Respondent No.1 need not be disturbed in the appeal proceedings. The other allotment has been cancelled.

14. There is no merit in the submission made by learned Senior Counsel for the Respondents that they were entitled for both the flats and his reliance on Clause 2 of the DDA Housing Scheme, 2014 is unmerited. Clause 2 of the DDA Housing Scheme, 2014 reads as under:-

"2. ELIGIBILITY

I. The applicant must be a citizen of India.

II. He/she would have attained the age of majority, i.e., an applicant should have completed 18 years of age as on the date of submitting the application.

III. The applicant must not own any dwelling unit (including residential plot)/flat in full or in part on lease hold or free hold basis in Delhi, New Delhi or Delhi Cantonment, either in his/her own name or in the name of his/her spouse or in the name of any of his dependent relations including unmarried children.

IV. Family means spouse and dependant relations including unmarried children.

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

VI. One person can submit one application only either in his/her own name or as a Joint applicant.

VII. A person who has already been allotted a plot/house/flat by the DDA or any other land owning agency in Delhi, irrespective of size shall not be eligible to apply for another flat under this scheme.

VIII. There is no income criterion, except for applicants applying for EWS flats. The applicant can apply according to his/her requirement and affordability.

IX. The income of applicants applying for EWS flats should not exceed Rs.1 lakh per annum.

X. The applicant should 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 account.

XI. Applicant must have Permanent Account Number (PAN) allotted under the provisions of Income Tax Act and the same must be quoted in the application form except when applying only for a EWS flat.

XII. In case of joint application under SC/ST reserved category, the joint applicant should be from within the Family as defined in the sub-clause (IV) above.

XIII. In case of joint application under war widows, persons with disabilities, ex-servicemen reserved categories, the applicant himself/herself should fall within the reserved category and the joint applicant

should be from within the Family as defined in sub-clause (IV) above."

15. From a reading of the two Schemes, it is clear that Clause 2(VI) of the DDA Housing Scheme, 2014 emphasizes that a person cannot make more than one application, jointly or individually, whereas in the DDA Housing Scheme, 2010, both husband and wife were entitled to file separate applications and if both of them were successful, only one of them was entitled to get the allotment. Under the DDA Housing Scheme, 2014, a person can file only one application either jointly or separately. The contention of Mr. Rao that in the DDA Housing Scheme, 2010, both, the husband and wife could have applied jointly and severally in different names does not find merit.

16. In view of the above, both the appeals fail and the same are dismissed, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

APRIL 13, 2023

hsk/arsh