



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 02 July 2024**
Judgment pronounced on : 13 August 2024
+ W.P.(C) 2527/2011
MADHU CHAUHAN Petitioner
Through None.
versus
DDA AND ANR. Respondents
Through Mr. Tushar Gupta and Mr.
Parinay Gupta, Advocates for
R-1.
Mr. Ashwin Kumar Nair,
Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India seeking issuance of an appropriate writ for setting aside/quashing of the impugned order dated 24.03.2011 passed by the respondents, whereby the Lease Deed dated 08.04.2005 and allotment of the Plot bearing No. 169, C-5, Sector 28, Rohini, Delhi (*hereinafter referred as the 'subject property'*) in favour of the petitioner and her husband, was cancelled.

2. Briefly stated, this petition has been filed by the petitioner in a representative capacity on behalf of her husband namely, Shri Kanti Parkash Chauhan, and on account of being a joint lease holder of the subject property admeasuring 60 square metres. It is stated that the subject property was allotted to the husband of the petitioner by the



respondents *vide* Allotment-cum-Demand letter dated 01.09.2003 to 05.09.2003 under the Rohini Phase-IV Residential Scheme, 1981 (*hereinafter referred to as the 'Rohini Residential Scheme'*). Subsequent thereto, possession of the plot was transferred to the petitioner on 19.11.2004 and a Lease Deed dated 08.04.2005 was executed jointly in the favour of the petitioner and her husband.

3. The grievance of the petitioner is that she was served with a Show Cause Notice ["SCN"] dated 31.07.2008 issued by the Deputy Director (LAB), Rohini, whereby she was called upon to furnish a reply within 30 days as to why the allotment of the plot be not cancelled for violation of the terms and conditions of the Rohini Residential Scheme. The petitioner was also served with similar notices dated 11.11.2008, 23.12.2008, and 19.02.2009. In specific, it was stated therein that the petitioner attained the plot through unfair means by way of giving a false affidavit concealing the fact that she was the owner of half of the undivided share in the property situated at B-322, Saraswati Vihar, Pitampura, Delhi admeasuring 380 square yards, which ownership tantamounted to violation of Clause 1(ii)¹ of the Rohini Residential Scheme.

4. It is stated that the petitioner preferred replies *vide* letters dated 06.01.2009, 12.03.2009, 01.08.2009 and 20.08.2009 *inter alia*

¹ **Clause 1(ii) of the Rohini Residential Scheme**

"The individual or his wife/her husband or any of his or her minor children do not own in full or in part on leasehold or freehold basis any residential plot of land or a house or have not been: allotted on hire purchase basis a residential flat in Delhi/ New Delhi or Delhi Cantonment. If however, individual share of the Applicant in the jointly owned plot or land under the residential house is less than 65 sqm. an application for allotment of plot can be entertained. Persons who own a house or plot allotted by the DDA on an area of even less than 65 sqm. shall not however be eligible for allotment."



denying the allegations of misrepresentation and concealment of facts, and stated that as per the terms and conditions of the Rohini Residential Scheme there was no restriction on purchasing a property from the open market and the concerned property at Saraswati Vihar was purchased on the basis of sale documents *viz.*, a General Power of Attorney, Agreement to Sell etc.

5. In the interregnum and prior to issuance of the final SCN, it is brought forth that the respondent addressed a letter dated 04.05.2009 to the Assistant Director (Co-op Society) *vide* letter bearing No. F.38(877)2003/LAB(RO)/DDA/5260, calling for a detailed Status Report in respect of the property situated at Saraswati Vihar, Delhi. Pursuant to the said letter, the concerned Authority/Deputy Director (CS), DDA sent a Status Report dated 20.05.2009 wherein it was stated that the Saraswati Vihar plot was initially allotted to one Smt. Rani Mallik by the DDA on 26.07.1978, subsequent to which the petitioner sought conversion of the Saraswati Vihar plot on the basis of a General Power of Attorney and Agreement to Sell executed in her favour. The respondent, however, proceeded with the cancellation of the allotment and lease deed in respect of the subject property allotted to the petitioner under the Rohini Residential Scheme.

6. In light of the same, the petitioner herein preferred a representation dated 16.09.2009, and placed the same before respondent No. 2/Lt. Governor, requesting that the lease deed and allotment of the subject property may not be cancelled based on the submission that she was not the original allottee of the plot at



Saraswati Vihar; and that the same had been purchased by her in the open market, therefore, she had not contravened the terms and conditions of the Rohini Residential Scheme. Reference was also made to the decision of this Court in the case titled **DDA v. Kanwar Jain**,² wherein it was held that "*the exception carved out in the clause (ii) applies to persons who are allotted a house/plot by the DDA and not to the persons who have purchased such plot or house from the open market*".

7. The DDA/respondent No. 1 however, cancelled the Lease Deed dated 08.04.2005 and allotment of the subject property *vide* the impugned order dated 24.03.2011, which is stated to have been approved by respondent No. 2 on 15.02.2011. Challenging the said order, the petitioners have preferred the instant writ petition.

8. At this juncture, it would also be apposite to note that in the course of these proceedings, an application was moved on behalf of one Mrs. Archana Vaish, bearing CM No. 9775/2021, seeking to be impleaded in the present petition. The applicant sought to be impleaded in these proceedings stating that the petitioner herein, who was the original allottee, had subsequently sold the subject plot to one Smt. Mukta Garg by way of an Agreement to Sell and General Power of Attorney dated 19.04.2005, from whom the applicant purchased the subject property thereafter, *vide* an Agreement to Sell and General Power of Attorney dated 10.06.2005. The said application was allowed *vide* order of this Court dated 16.01.2023, and the applicant was impleaded as respondent No. 3 in this petition.

² LPA 134/2009



LEGAL SUBMISSIONS:

9. Learned counsel for respondent No. 3 vehemently urged that even though the petitioner may be in possession of the plot at B-322, Saraswati Vihar, Delhi, the same does not constitute a violation of the terms and conditions of the Rohini Residential Scheme, under which the subject plot was allotted to the petitioner. Specifically referring to Clause 1(ii) of the Rohini Residential Scheme, it is submitted that the said clause does not disentitle the petitioner as she was a subsequent purchaser of the property at Saraswati Vihar; that the petitioner was not the original allottee of the plot at Saraswati Vihar and the same was purchased by petitioner from the open market. In this regard, reliance has been placed on the decision in **Jai Kanwar Jain v. DDA**³, which was subsequently upheld by a Division Bench of this Court in an appeal preferred by the DDA bearing LPA No. 134/2009. Reliance is also placed on the decision in **Delhi Development Authority v. Sh. Dhanesh Kumar Jain**⁴, wherein reference was made to the decisions in **DDA v. Jai Kanwar Jain (supra)** and **Dal Chandra Sharma v. DDA**⁵.

ANALYSIS & DECISION:

10. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the bar and have also carefully perused the record of this petition.

11. A decision in the instant matter should not take long since the issue raised is well settled in law. Evidently, the petitioner had

³ WP (C) 1337/2008

⁴ 2013 SCC OnLine Del 4279

⁵ LPA 240/2007



purchased the property at Saraswati Vihar from the open market on 09.05.1985. A bare perusal of clause 1(ii) of the Rohini Residential Scheme would show that there was an embargo on having a second residential unit/plot only where a previous allotment has been made by the DDA. Without further ado, reference can be invited to the decision in the case of *Dhanesh Kumar (supra)* wherein it was held as under:-

“6. It is argued in the present case that the issue is not whether the property was acquired from the open market or allotted. Learned counsel stressed upon the terminology employed by Clause 1(II) of the brochure, to say that so long as a residential flat or plot is owned by the applicant, which is more than 65 sq. metres, he is disentitled to the plot.

7. This Court is unable to agree with the DDA's interpretation. Clause 1(II) of the brochure is one of the eligibility conditions and has been held to be so in the previous Division Bench rulings. The argument of the DDA now seems to be that it is not mere eligibility condition but also a disqualification. Such interpretation, in the opinion of the Court, is fraught with serious if not dangerous consequences, as it would amount to arming the Authority with the power to cancel the allotment if the allottee acquires, subsequent to the allotment or possession, a property in excess of 65 sq. metres. The wording of Clause 1(II) of the brochure clearly points to the applicant being eligible on the condition that at the stage of his making the application and lodging it with the DDA (which in this case was in 1981), he did not own a plot or flat etc. the area of which exceeds 65 sq. metres. The same condition applies in the case of joint property; the portion falling to the share of the applicant should not exceed 65 sq. metres. This Court is alive to the circumstance that the applicants are made to wait for inordinately long time and even decades during which they will either be constrained or fortunate enough to acquire property. That circumstance alone should not, in the absence of clearly spelt-out disqualification conditions render their application ineligible as is sought to be suggested.”

12. Suffice to state that the Supreme Court, in a case with a somewhat similar factual background titled **Delhi Development**



Authority v. Jitender Pal Bhardwaj⁶, set aside the decision of the DDA which cancelled the allotment of a plot made under the Rohini Residential Scheme on the ground that the allottee owned a unit in a multi-storeyed building measuring less than 65 sq. mts. in Delhi. In the said case the Supreme Court considered clause 1(ii) of the said Scheme and held as under:-

“8. It is true that the purpose of development of a residential scheme by a City Development Authority is to make available plots to those who do not own a house in that city. It is also true that allotting plots to those who already own houses, may amount to denial of plots to other deserving applicants who do not own or hold any property at all. But the policies and purposes of Development Authorities are not uniform. Some schemes contemplate allotment of plots to those who are poor and whose income is less than the specified limit. Some schemes provide for allotment of smaller plots to economically weaker sections at a lesser price and allotment of larger plots to high income groups at a higher price. Some schemes make anyone owning a property, whether commercial or residential ineligible. Some schemes make only those owning plots already allotted by the authority ineligible. Some schemes make only those owning properties which are larger than a prescribed limit ineligible.

9. Though the intention of Development Authorities in general is to allot plots to the houseless, the policy and scheme has to be given effect with reference to the specific wording of the eligibility provision. If DDA wanted to bar everyone owning a plot/house/flat from securing an allotment, it could have made its intention clear by simply providing that “anyone owning or holding a long-term lease, any plot/house/flat in Delhi/New Delhi/Delhi Cantonment area, will be ineligible for allotment under this Scheme”. But DDA chose to make the eligibility clause subject to an exemption. If it chose to exempt certain categories, such exemption has to be given effect to. When the term of exemption is specific and unambiguous, it is not possible to restrict its applicability or read into it, a meaning other than the plain and normal meaning, on the assumption that the general object of the Scheme was different from what is spelt out in the term. Be that as it may.”

⁶ (2010) 1 SCC 146



13. In view of the above discussion, the impugned decision taken by the respondent No.1 *vide* letter dated 24.03.2011 cannot be sustained in law. Accordingly, the present writ petition is allowed and the impugned order dated 24.03.2011 is hereby set aside, thereby nullifying the act of the respondent No.2 in cancelling the lease deed dated 08.04.2005 as also the allotment of the subject property to the petitioner.

14. The parties are left to bear their own costs.

DHARMESH SHARMA, J.

AUGUST 13, 2024

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