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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 8525/2015

ROHINI RESIDENTIAL
SCHEME 1981 ASSOCIATION

..... Petitioner

Through: Mr. Rakesh Khanna, Advocate with
Mr. Udit Kumar Chaturvedi, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Arun Birbal, Advocate with
Mr. Sanjay Singh, Advocate

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Date of Decision : 11th September, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM Appl. 18368/2015 (for exemption) in W.P.(C) 8525/2015

Allowed, subject to just exceptions.

W.P.(C) 8525/2015 & CM Appl. 18369/2015

1. Present writ petition has been filed challenging the Demand-cum-Allotment letter issued to members of the petitioner-association who are allottees under the Rohini Residential Scheme 1981.
2. It is the case of the petitioner-association that levying of pre-determined rates for the year 2014-2015 in the Demand-cum-Allotment

letter for the plots booked in 1981 is arbitrary and against various statements made by DDA in Courts.

3. Mr. Rakesh Khanna, learned counsel for petitioner-association states that the members of petitioner-association are entitled to get plots under the 1981 Scheme at the prices agreed to under the terms of the booking in 1981. According to him, today's demand is 115 times higher than the assured rate and the said action of the DDA is discriminatory as about 52,000 other allottees have been allotted bigger plots at lower rates.

4. Mr. Khanna further states that respondent-DDA diverted the land earmarked in the 1981 Scheme for its other projects which resulted in delay of more than three decades in allotment inspite of protracted litigation. He states that the allottees cannot be made to suffer due to DDA's manipulation and inefficiency.

5. Mr. Khanna also contends that DDA could not have unilaterally reduced the size of the plots vide Public Notice dated 01st November, 1999 without taking approval from the Central Government as required under the Delhi Development Authority Act, 1957 and without giving reasonable opportunity of hearing to the allottees.

6. On the other hand, Mr. Arun Birbal, learned counsel for respondent-DDA states that as the present petition is accompanied by a stay application, the petition itself is not maintainable in view of the Supreme Court's order dated 10th March, 2015 passed in ***SLP (C) 16385-16388/2012, Rahul Gupta vs. Delhi Devevelopment Authority***. The portion of the order relied upon by Mr. Birbal is reproduced hereinbelow:-

“ xxx xxx xxx

For the same objective, as has been noticed in the foregoing paragraph, we consider it just and appropriate to direct that no Court other than this Court, shall entertain any applicator for grant of interim directions with reference to the above allotments or execution of the works. If and when an interim direction is required, the aggrieved party who approaches a Court of competent jurisdiction, would be relegated to this Court. The concerned party would make such prayer, through an interlocutory application.....”

7. Mr. Birbal also points out that the petitioner-association has been registered only in July, 2015 and even the names of its members have not been disclosed in the present petition. He states that if notice is issued in the present petition, then the principle of *lis pendens* would be attracted and title of some of the allottees under the Scheme would also get clouded which they may not like.

8. Mr. Birbal submits that reduction in the size of the plots was done in pursuance to the directions issued by the Central Government, Ministry of Urban Development. He also states that DDA's action of reducing the size of plots has already been upheld by a Coordinate Bench of this Court in ***Major General Pradeep Kumar Mahajan & Ors. vs. Delhi Development Authority & Ors., 2005 (80) DRJ 699.***

9. Mr. Birbal also submits that the Supreme Court in ***Delhi Development Authority vs. Pushendra Kumar Jain, AIR 1995 SC 1*** has held that the price or rate prevailing on the date of issuance of the letter of allotment is alone to be taken into consideration and not the price prevailing on the date of issuance of the Brochure or the floating of the Scheme.

10. At the stage of rejoinder, Mr. Khanna, learned counsel for petitioner has handed over an affidavit enclosing the list of members of the petitioner-

association. The same is taken on record.

11. Mr. Khanna submits that this Court while deciding the case of *Major General Pradeep Kumar Mahajan & Ors.* (supra) has not taken into account certain documents and facts which have now been placed on record.

12. Having heard the learned counsel for parties, this Court is of the opinion that in view of the judgment of a Coordinate Bench of this Court in *Major General Pradeep Kumar Mahajan & Ors* (supra), it is not open to the petitioner in the present proceedings to challenge the reduction of size of the plots inasmuch as the said judgment had been passed ten years back and has attained finality. In any event, being a Coordinate Bench, it is not open to this Court to go behind the judgment and order of another learned Single Judge. Consequently, the challenge with regard to the reduction of size of plots is rejected.

13. The demand issue raised by the learned counsel for petitioner-association can only be decided after a counter affidavit is filed. However, this Court is of the view that if any interim order is passed in the present proceedings, it would delay the project even further. Consequently, the prayer for interim relief is declined.

14. Accordingly, issue notice only with regard to rate/demand in the writ petition.

15. Mr. Arun Birbal, learned counsel accepts notice on behalf of respondent-DDA. He prays for and is permitted to file a counter affidavit within a period of six weeks. The respondent is permitted to take all its preliminary objections in the counter affidavit to be filed by it. The same shall be decided at the stage of hearing of the writ petition. Rejoinder affidavit, if any, be filed before the next date of hearing.

16. It is clarified that there is no interim order passed by this Court and all the allottees of the Rohini Residential Scheme 1981 shall pay amounts in accordance with the impugned Demand-cum-Allotment letter.

17. In the event, a member of the petitioner-association does not pay in accordance with the Demand-cum-Allotment letter or does not meet the eligibility condition, it shall be open to respondent-DDA to cancel the allotment. However, it is clarified that such orders shall be subject to final order to be passed in the present writ petition.

18. List the matter on 04th December, 2015.

MANMOHAN, J

SEPTEMBER 11, 2015

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