

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION [C] No.27181 of 2009

(CC 14775/2009)

Delhi Development Authority

... Petitioner

Vs.

Jitender Pal Bhardwaj

... Respondent

O R D E R

Delay condoned.

2. More than 28 years ago, on 23.3.1981, the respondent made an application to the Delhi Development Authority ('DDA' for short) for allotment of a plot under the Rohini Scheme. The eligibility requirement prescribed in clause 1(ii) of the Terms and Conditions of the Scheme is extracted below:

"The individual or his wife/her husband or any of his/her minor children do not own in full or in part on lease-hold 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 sq.m, an application for allotment of plot can be entertained. Persons who own a house or a plot allotted by the Delhi Development Authority on an area of even less than 65 sq.m, shall not, however, be eligible for allotment."

When he made the application in 1981, neither the respondent nor any of his family members owned any land or plot or flat in Delhi and gave declaration to that effect.

3. Nearly, a quarter century later, in a computerized draw, respondent was allotted plot No.158, Block/PKT-C2, Sector-28, Rohini, measuring 60 sq.m, vide letter of allotment dated 3/7.10.2005. As required by DDA in its communication dated 11.3.2006, the respondent submitted necessary documents and affidavits under cover of his letter dated 31.3.2006 wherein he disclosed, in pursuance of the above eligibility condition, that he had acquired a flat measuring less than 65 sq.m in United India Apartments (Flat NO. 151/A), Mayur Vihar Phase-I, Delhi. He also deposited the entire premium in regard to the allotted plot.

4. After issuing a show cause notice dated 28.2.2007, DDA by communication dated 28.5.2007, cancelled the allotment on the ground that the respondent was already the owner of a flat. Feeling aggrieved, the respondent approached the High Court. He submitted that when he made the application for allotment, he did not have any land, plot or flat. He further submitted that in the year 1994, he had acquired a flat measuring 62.22 sq.m which was less than 65 sq.m and

therefore his eligibility for allotment of a plot by DDA, was not affected. He also produced a certificate from the concerned society and other documents to show that the flat measured less than 65 sq.m. A learned Single Judge allowed the writ petition and quashed the cancellation of allotment, holding that there was no violation or breach on the part of respondent. The appeal filed by DDA was also dismissed by a Division Bench. Leave to Appeal is sought in respect of the said order.

6. The entire issue depends upon the interpretation of Clause 1(ii) of the Terms and Conditions of the Rohini Scheme. The said Clause makes an applicant ineligible for allotment, if the applicant or his/her spouse and minor children own or hold in Delhi/New Delhi/Delhi Cantonment :

(i) any residential plot of land or a house either in full or in part either on leasehold or freehold basis, or (ii) any residential flat on hire-purchase basis. There is however an exemption. Any individual share held by the applicant in a jointly owned plot or land under the residential house which is less than 65 sq.m, will not be considered to be a disqualification or ineligibility for allotment.

7. The first ground urged by the petitioner is that the flat acquired by the respondent in 1994 measures 65.79 sq.m which was in excess of 65 sq.m. This contention raised before the Division Bench was rejected on the ground that the learned Single Judge was satisfied on the material produced that the acquired flat measured only 62.22 sq.m, which was less than 65 sq.m and DDA did not contest or deny the same before the learned Single Judge.

8. The DDA next contended that the only exception to the eligibility condition that the allottee should not own or hold a property in Delhi/New Delhi/Delhi Cantonment, was in respect of "individual share of the applicant in a jointly owned plot or land under the residential house being less than 65 sq.m." It was contended that the said exemption was intended to apply only in regard to holdings by joint family members or co-owners and not in regard to ownership of an apartment. The High Court has rejected this contention on the following reasoning :

"The interpretation put by the learned counsel on condition no.(ii) would be clearly violative of the equality clause under Article 14 of the Constitution. It is clear to us that the intention is to exempt all those who have acquired residential house which is less than 65 sq.m. provided the house is not allotted by DDA."

When a person acquires a flat in a multi-storeyed building, what he gets is co-ownership of the land on which the building is constructed and exclusive ownership/long-term lease of the residential flat. As per Clause 1(ii), where the individual share in the land on which the building stands, held by the allottee is less than 65 sq.m., he is not barred from securing allotment from DDA. The other interpretation is that if the measurement of the flat is less than 65 sq.m and the allottee owns only an undivided share in the land, corresponding to such flat, the benefit of exemption would be available to the applicant.

9. 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. 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. 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.

10. In view of the above, the special leave petition is dismissed as having no merit. We have assigned reasons, even while dismissing the special leave petition without ordering notice, as the petitioner has made detailed submissions and as a similar issue may arise in other applications.

J.
[R. V. Raveendran]

J
[G. S. Singhvi]

New Delhi;
October 9, 2009.