

(2011) 07 DEL CK 0023

Delhi High Court

Case No: Writ Petition (C) 4849 of 2011 and CM No. 9835 of 2011 (for stay)

Bharat Bhushan

APPELLANT

Vs

DDA

RESPONDENT

Date of Decision: July 13, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151

Hon'ble Judges: Rajiv Sahai Endlaw, J**Bench:** Single Bench**Advocate:** Arun Sukhija, for the Appellant; Razia Ali, for Rajiv Bansal, for the Respondent**Final Decision:** Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The Petitioner was allotted a residential flat bearing No. 95, Sector-22, Pocket-15, Rohini, Delhi in the draw held by the Respondent DDA on 3rd January, 2007. The demand by the Respondent DDA of cost of the flat was on the premise of the plinth area thereof being 35 sq. mtrs. The Petitioner contended that the plinth area of the flat was 28 sq. mtrs. only and hence the demand should be proportionately reduced. The said contention of the Petitioner was not accepted by the Respondent DDA which contended that the plinth area of 35 sq. mtrs. was inclusive of the share in the common area of the terrace.

2. The Petitioner vide letter dated 6th August, 2007 as under:

Dy. Director (Housing), (EHS) Delhi Development Authority, I.N.A., New Delhi.

Sub.: Request for surrender of the flat No. 95, Pocket-15, Sector-22, Rohini, Delhi allotted under DDA Housing Scheme, 2006.

Ref.: File No. A/353/(1095)/2007/DDA06/RO, Demand letter No. 66952/Registration No. 285022.

Sir,

I have been allotted flat No. 95, Pocket-15, Sector-22, Rohini, Delhi under DDA Housing Scheme, 2006. It is informed that I do not intend to own the above referred flat hence the same is hereby surrendered, if price is not reduced.

You are requested to kindly refund the Registration Amount of Rs. 1,50,000/- which I had deposited along with application under DDA Housing Scheme, 2006. It is further informed that the Registration Amount was deposited by UTI on my behalf which I have later paid to the UTI. Since I have paid the amount of Rs. 1,50,000/- to the UTI, the cheque may kindly be prepared in my name and send the same at my residential address.

Yours sincerely,

Sd/-

(BHARAT BHUSHAN)

WZ-198, TILAK NAGAR,

NEW DELHI-110018

Attached: i) Original demand letter.

ii) Original receipt amount Rs. 1,50,000/-.

surrendered the allotment in his favour and sought refund of the amount of Rs. 1,50,000/- earlier deposited by him. A sum of Rs. 50,000/- admittedly was tendered by the Respondent DDA to the Petitioner vide cheque dated 6th September, 2007 and received by the Petitioner.

3. The Petitioner filed W.P.(C) No. 1722/2008 for directions to the Respondent DDA to reduce the price of the flat. Though the Petitioner has not placed any document pertaining to the said writ petition but it is on record that the said writ petition was dismissed vide order dated 10th February, 2010 with liberty to the Petitioner to make a representation to the Respondent DDA.

4. It seems incongruous as to why the said writ petition was filed since the allotment had already been surrendered and an amount of Rs. 50,000/- received back by the Petitioner.

5. The Petitioner filed yet another W.P.(C) No. 3567/2010 making a grievance that his representation had not been decided. The said writ petition was disposed of vide order dated 30th September, 2010 with a direction to the Respondent DDA to dispose of the representation of the Petitioner.

6. The Respondent DDA has now vide its order dated 1st February, 2011 impugned in this petition disposed of the said representation of the Petitioner stating that out of the deposit of Rs. 1,50,000/-, the amount of Rs. 1,00,000/- had been deducted on

account of cancellation charges as per provisions of Clause No. 12 of DDA Housing Scheme-2006 brochure. It has also been reiterated that the demand on the basis of plinth area of 35 sq. mtrs. is in order.

7. This writ petition has been filed claiming the following reliefs:

In the premises of the aforesaid, it is, therefore respectfully prayed that in view of the facts and circumstances above stated, this Hon"ble Court may be pleased to:

a) To issue necessary writ, orders or directions against the Respondent thereby setting aside and quashing the judgment / orders / letter bearing No. HC/H(1216)10/Legal/57 dated 01.02.11 issued by Asma Manzar, Commissioner (Housing), DDA.

b) Issue an appropriate writ, order or directions thereby directing the Respondent to restore the allotment to the Petitioner in respect of the flat No. 95, Sector-22, Pocket-15, Rohini, Delhi and adjust the registration money forfeited by the Respondent as cancellation charges and to reduce the price of the flat No. 95, Sector-22, Pocket-15, Rohini, Delhi in proportion of area of 28 Sq. Mtrs. as against the promised area of 35 Sq. Mtrs. for which the Petitioner is ready to take possession of the flat and to make the necessary payment as and when directed by the Hon"ble Court;

Or

b) Issue an appropriate writ, order or directions thereby directing the Respondent to allot any other flat in Sector-22, Pocket-15, Rohini, Delhi of plinth area 35 sq. mtr. and to adjust the registration money forfeited by the Respondent as cancellation charges for which the Petitioner is ready to take possession of the flat and to make the necessary payment as and when directed by the Hon"ble Court;

c) Pass any other order or such other further orders as this Hon"ble Court may deem just and proper in the facts and circumstances of the present case and also in the interest of justice.

8. The Petitioner having withdrawn from the allotment and having also received refund of Rs. 50,000/-, it is not understandable as to how the relief of restoration of the allotment and / or of alternate flat is being claimed.

9. The counsel for the Petitioner has contended that the withdrawal of allotment was under protest. However, the same is not borne out from the letter dated 6th August, 2007 (supra) of the Petitioner. The same is unequivocal. Even if the Petitioner intended to dispute the demand, the same ought to have been done in the two writ petitions earlier filed and which were disposed of as aforesaid.

10. As far as the claim of the Petitioner for refund of the balance Rs. 1,00,000/- is concerned, it is not disputed that such forfeiture is in accordance with the Housing Scheme (supra). The writ of mandamus is maintainable only when an authority is acting contrary to the rules. No mandamus directing the authority to act in

contravention of its rules / regulations can be issued. (see [Union of India \(UOI\) and Others Vs. S.K. Saigal and Others](#),

11. I am even otherwise of the opinion that the writ petition for the relief of refund of Rs. 1,00,000/- would not be maintainable. (see [Kanhaya Lal Madan Vs. New Delhi Municipal Council and Another](#) The appropriate remedy for the said relief if any would be by way of a suit.

12. The writ petition is therefore dismissed with liberty to the Petitioner to if so advised, to file a suit for recovery of Rs. 1,00,000/-.

CM No. 9836/2011 (u/S 151 CPC for exemption)

Allowed, subject to just exceptions.