(2013) 10 DEL CK 0028

Delhi High Court

Case No: LPA 764 of 2013, CAV 913 of 2013 and CM Application 16198, 16199 of 2013

Delhi Development Authority		APPELLANT
	Vs	
Mrs. Kuljeet Kaur		RESPONDENT

Date of Decision: Oct. 22, 2013

Hon'ble Judges: S. Ravindra Bhat, J; Najmi Waziri, J

Bench: Division Bench

Advocate: Ajay Verma, for the Appellant; R.K. Saini, for the Respondent

Final Decision: Dismissed

Judgement

S. Ravindra Bhat, J.

CAV 913/2013

Caveat discharged.

CM APPL. 16199/2013 (exemption)

Allowed, subject to all just exceptions.

LPA 764/2013, CM APPL. 16198/2013 (stay)

1. The present appeal is directed against an order of the learned Single Judge allowing the respondent''s writ petition on 22.08.2013. The facts briefly are that the respondent applied for an LIG flat under the DDA Housing Scheme of 2008 and was allotted a flat. The appellant (hereafter referred to as DDA) later sought to cancel the allotment on the ground that the respondent''s husband owned a flat, i.e., an LIG unit bearing No. E-202, Green Valley Apartment, Plot No. 18, Sector 22, Dwarka. The petitioner, therefore, approached this Court claiming various reliefs including a declaration that Regulation 7 of the DDA (Management and Disposal of Housing Estates) Regulations, 1968 was void and inapplicable in the light of Rule 17 of the DDA (Disposal of Developed Nazul Land) Rules, 1981.

2. The learned Single Judge after considering the rival contentions and the materials on record allowed the writ petition and quashed the cancellation letter of 11.01.2011.

3. The DDA argues-through its counsel Mr. Ajay Verma-that the learned Single Judge fell into an error in not appreciating that the applicable regime was contained in the DDA (Management and Disposal of Housing Estates) Regulations, 1968, particularly Clause 7, which rendered ineligible the applicant whose spouse or dependent relation owned in full or in part a freehold or on a leasehold basis a residential plot or house in Delhi. It was contended that even the eligibility conditions contained in the concerned Scheme, i.e., the DDA Housing Scheme of 2008 was carefully drafted. In this connection, a pointed reference was made to Clause 2(iii) which imposes a restriction on applicants owning residential flats or plots either in their name or "in the name of his/her wife/husband...". This condition, it is submitted, makes only one exception, i.e., that if the area of the flat was less than 66.9 sq. mtrs., his or her application is deemed to be eligible.

4. This Court has considered the submissions. At an early stage of the proceedings when the writ petition itself was listed before the Division Bench, in the light of the challenge to Regulation 7 of the 1968 Regulations, the Bench had recorded the DDA''s submissions that the cancellation was in terms of 2008 Scheme. That submission was made to resist the petitioner''s challenge to Regulation 7 (of the 1968 Regulations); they were consequently given up. In the light of this circumstance, the Court finds no force in the DDA''s contentions that Regulation 7 was applicable.

5. So far as the contention that in terms of Clause 2(iii), the petitioner was ineligible since her husband owned a flat elsewhere in Delhi, the Court notices that the phraseology adopted is ownership "in his/her own name or in the name of his/her wife/husband" (emphasis supplied). In other words, unlike Clause 7 which speaks to ownership without any such condition, the idea is that if the husband or the wife or minor children is deemed to be a nominal owner and the real owner is someone else, i.e., the applicant, then alone would the disability or disqualification apply. This Court is conscious of the fact that when Clause 2(iii) was conceived and framed, the restriction imposed on nominal ownership of properties through The Benami Transactions (Prohibition) Act, 1988 had come into force. Apparently, Clause 2(iii) is an attempt to give effect to such law. Even otherwise, the interpretation suggested by the DDA can to this Court''s mind result in strange and inequitable consequences. If, for instance, at the time when the application is sought to be made, the spouse is in litigation with the other spouse and eventually the proceedings culminated into a decree for divorce, the cancellation or ineligibility would in fact act as a benefit, howsoever unintended.

6. The Court in the light of the above discussion endorses and affirms the findings of the learned Single Judge who has relied upon the earlier Bench''s ruling in DDA v.

B.B. Jain (LPA 670/2012). In the light of the above conclusion, the Court finds no merit in the appeal which is accordingly dismissed along with all the pending applications.