
(2002) 09 DEL CK 0295

In the Delhi High Court

Case No : CW No. 5788/99 and CM 10507/99

Gopal

APPELLANT

Vs

DDA

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Citation : (2003) 102 DLT 819

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Sumit Bansal, for the Appellant; Ronu Mohanty, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—Rule.

2. With the consent of the learned Counsel for the parties, the petition is taken up for final disposal.

3. The land owned by the petitioner was acquired in 1978-80 and on an application for alternative plot in lieu of the acquisition, the case of the petitioner was recommended on 27/11/1987 for said allotment of alternative plot in village Bhorgarh, Delhi of 250 sq. yds. The allotment letter was issued by the DDA on 14/1/1993 allotting plot No. 11, Sector B-4, Pocket-4, measuring 209 sq. metres in Narela Residential Scheme. Since the petitioner failed to deposit the amount within time, this allotment was cancelled but on representation of the petitioner, allotment was restored on 12/3/1997. The petitioner deposited the full amount on 8/8/1997 and submitted the requisite documents on 11/6/1997. The possession was yet to be handed-over.

4. A letter was received by the respondent on 11/7/1997 from one Dr. K.S. Solanki, stating that the property had been sold by the petitioner on Power of Attorney basis to him and requested that the property should be expeditiously transferred in favor of the petitioner so that Dr. Solanki could enjoy the property. The respondent taking cognizance of the said letter, issued a show cause notice to the petitioner dated 1/10/1997, alleging that the petitioner had violated

Clause 4(v) of the allotment letter while seeking restoration. The said clause is as under:-

"If it is discovered at any stage that you have secured allotment by suppression of any fact or any mis-statement, misrepresentation, fraud or incorrect information the allotment will be considered to be void ab initio and you shall not be entitled to any compensation whatsoever, nor to the return of an premium paid by you."

5. Simultaneously, the respondent also called upon Dr. Solanki to appear before the DDA. The petitioner filed reply dated 21/10/1997, refuting the allegations. However, the petitioner did not appear personally before the respondent as stated by the respondent. It may be noted that the said Dr. Solanki never appeared before the respondent despite repeated reminders.

6. A final show cause notice dated 31/7/1998 was sent to the petitioner, calling upon the petitioner to attend the office of the respondent failing which action for cancellation of plot would be initiated. On 28/9/1998, the said Dr. Solanki stated that his disputes with the petitioner had been resolved and that he would like to withdraw the letter dated 11/7/1997. The allotment in favor of the petitioner was cancelled on 7/10/1998.

7. I have considered the submissions advanced by learned Counsel for the parties.

8. It is not in dispute that after the restoration of allotment of the petitioner, the petitioner deposited the amount and completed the necessary formalities. The only reason why the plot of the petitioner has been cancelled is the complaint sent by one Dr. Solanki. No documents have been filed along with the counter affidavit submitted by Dr. Solanki. It appears that only letter dated 11/7/1997 has been acted upon. In view of the subsequent letter dated 28/8/1998 Dr. Solanki stated that disputes had been resolved but a view has been taken that there is violation of the terms of the compromise by the respondent.

9. The clause sought to be relied in the terms of allotment only requires that the allotment should not be procured by any mis-statement, mis-representation, fraud or incorrect information. In my considered view, no allotment has been sought by violation of any terms of the allotment letter. In fact, the allotment was made in 1993 and was only restored in 1997. Further, the said Dr. Solanki never even came forthwith before the respondent to substantiate his allegations but on the other hand, withdrew even the said letter. In my considered view, it would not be open to the respondent to act merely on such a letter when the same has been refuted by the petitioner in writing and the complaint has also been subsequently withdrawn by Dr. Solanki.

10. Interestingly, the complaint was only of alleged sale of the plot on Power of Attorney basis and the respondent itself has recognised such sales and has been converting properties into freehold at request of such attorney holders.

11. A writ of Mandamus is issued, quashing the order of cancellation dated 7/1/1998. The respondent is directed to hand-over possession of the plot allotted to the petitioner within a period of three weeks from today.

12. Taking into consideration the fact that the petitioner has been deprived of the enjoyment of the plot for the last five years despite having deposited the full amount, the petitioner shall be entitled to cost of Rs. 15,000/-.