
(2004) 09 DEL CK 0129

In the Delhi High Court

Case No : Writ Petition (C) No. 3899 of 1997

Subhash Chander Gupta

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 115 DLT 70

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : Jagjit Singh, for the Appellant; Anusuya Salwan, for the Respondent

Final Decision : Allowed

Judgement

C.K. Mahajan, J.—By way of this petition, the petitioner seeks quashing of the demand raised by the respondent on account of interest and restoration charges and to issue directions to the respondent to deliver possession of the Plot in Rohini Residential Scheme, Delhi.

2. The facts leading to the present petition are that the petitioner owned land admeasuring 1 bigha and 1 biswa forming part of Khasra No. 61/8/1 (Min) situated in Village Samaypur, Delhi which was acquired by Delhi Administration vide Award dated 27.3.1985. The case of the petitioner was recommended by the Delhi Administration to the respondent for allotment of a plot of land admeasuring 250 sq. yds. vide letter dated 13.1.1993, the petitioner was allotted a plot No. 2 in Pocket No. 15, Sector No. 19 in Rohini Residential Scheme admeasuring 200 sq. yds. on perpetual leasehold basis and the petitioner was called upon to deposit a sum of Rs. 1,15,546/- which was deposited by the petitioner on 11.2.1993. It is stated that the payment was made under protest because the petitioner felt that the rate of land was very high and the same was fixed in an arbitrary manner and the area of land was less than the entitlement.

3. On 17.5.1993, the respondent demanded a further sum of Rs. 1,65,065/-

from the petitioner in respect of plot No. 02, pocket No. 16, Sector 20, Rohini Residential Scheme, Delhi whereas the plot number allotted to the petitioner was in Pocket No. 15 in Sector 19. It is stated that the sum of Rs. 1,65,065/- was demanded in respect of a plot which was never allotted to the petitioner. The petitioner did not deposit the amount and instead pointed out the discrepancy in the number of sector and the pocket to the respondent and requested for issuance of a fresh demand-cum-allotment letter with correct plot number. On 29.3.1996, the petitioner was asked to deposit the balance 85% of the premium amount @ Rs. 1650.65 per sq. mtr. amounting to Rs. 1,65,064/- besides balance of 15% payable at the time of delivery of possession amounting to Rs. 49,520/-. The petitioner deposited the aforesaid amounts on 20.5.1996 and 21.5.1996 respectively. Thereafter, on 30.5.1996, the petitioner demanded for possession of the plot but the possession was not given.

4. It is further stated that vide letter dated 30.6.1997, the petitioner was again asked to deposit a sum of Rs. 1,32,860/- comprising interest of Rs. 92,849/- and restoration charges of Rs. 40,000/-. On 23.8.1997, the petitioner represented to the respondent challenging the right of the respondent to claim the further amount of Rs. 1,32,860/-. On 29.8.1997, the petitioner submitted further documents in order to seek possession of the plot. However, the possession has not been handed over to the petitioner.

5. The petition is opposed by the respondent. It is submitted by the respondent that the petitioner was allotted plot No. 02, Pocket 15, Sector 19. However, on 12.2.1993, a corrigendum was issued whereby the petitioner was intimated that pocket number be read as 16 and sector number as 20. It is also submitted that since petitioner was already informed with the correct plot and sector numbers on 12.2.1993, the respondent avoided to reply to the petitioner's letter being mere repetition of the same. The petitioner was also shown the site plan in the office of concerned Asstt. Engineer. The petitioner was liable to pay balance premium as well as the dues as per the policy of alternative allotment. But the petitioner did not deposit interest and restoration charges of Rs. 1,32,860/- in spite of specific demand being made. Since the documents and outstanding dues were not deposited by the petitioner, he was not entitled to possession. The petitioner was required to deposit Rs. 1,65,065/- within 60 days from the date of demand, which the petitioner failed to deposit. Therefore, interest has been imposed on the delayed period. The restoration charges of Rs. 200/- per sq. mtr. have been approved by the competent authority.

6. Learned Counsel for the petitioner states that the respondent did not issue any corrigendum dated 12.2.1993. Even if there was an error in the sector and pocket numbers, a fresh allotment letter was required to be issued to the petitioner which has not been done. The respondent never clarified the factual position about the correct plot number. The respondent has no right or authority to demand interest or the restoration charges from the petitioner. The petitioner is not liable to pay interest or the restoration charges. The restoration charges

came into effect on 23.8.1997 and Therefore the same does not apply to the petitioner.

7. The respondent has also filed an additional affidavit stating Pocket No. 15 in Sector 19 of Rohini Residential Scheme does not exist and the Pocket No. 15 was mentioned due to inadvertence. Due to this inadvertent error being mentioned, the same was fed in the computer as a result of which demand letters were issued to all the allottees. When the error came to the notice of the respondent corrigendums were issued. The corrigendums were challenged by some of the allottees in CWP Nos. 3322/93, 2427/93, 2429/93 and 2434/93 which were decided by a Division Bench of this Court.

8. It is also stated that corrigendums were issued to all the allottees including the petitioner on 12.2.1993 and were sent by post. It was only after the issue of corrigendums that the demand letter was raised on 17.5.1993 requiring the petitioner to deposit the amount within 60 days from the date of issue of the letter.

9. I have heard learned Counsels for the parties and also perused the documents and the original record produced by Counsel for the respondent.

10. The main contention of learned Counsel for the petitioner is that the corrigendum dated 12.2.1993 was not received by him. He only received the demand letter dated 17.5.1993 wherein the plot number was correctly mentioned but the pocket and sector numbers mentioned were different than those mentioned in the original allotment letter. The petitioner requested the respondent to issue a fresh demand letter with correct plot number and particulars to which no reply has admittedly been sent by the respondent. Even in the letter dated 17.5.1993 issued by the respondent there is no reference to the corrigendum dated 12.2.1993. Reference has been made only to letter dated 13.1.1993 which is the allotment letter in respect of plot No. 2, Pocket No. 15, Sector 19, though in letter dated 17.5.1993 the pocket number mentioned is 16 and sector number 20. Learned Counsel for the petitioner Therefore contends that the petitioner in these circumstances was not liable to pay interest and restoration charges to the respondent.

11. On the other hand, the main contention of learned Counsel for the respondent is that the corrigendum was issued to all the allottees who were given wrong pocket and sector number, None of the allottees except the petitioner has complained about non-receipt of the corrigendum. Therefore, it cannot be presumed that petitioner did not receive the corrigendum or did not have knowledge of the same. She has also relied on a judgment of this Court in CWP Nos. 3322/93, 2427/93, 2429/93 and 2434/93 (Sh. Naresh Kumar v. Delhi Development Authority and Anr.) decided on 24th May, 1996.

12. The decision relied on by Counsel for the respondent is distinguishable on facts. In that case, the petitioners did not challenge the receipt or non-receipt of the corrigendum. This Court in that case was concerned only with the question as

to whether the corrigendum dated 12.2.1993 was reasonable or not. On the other hand, in the present case in hand, the grievance of the petitioner is that he did not receive the corrigendum at all.

13. The narrow controversy revolves around the receipt of the corrigendum by the petitioner. If the petitioner received the corrigendum, he has no case. If he did not receive the same he was justified in asking for issue of fresh demand letter with correct details. The respondent has produced the register containing the names of allottees to whom Corrigendum dated 12.2.1993 was sent wherein the name of the petitioner also figures. However, this register is only a proof of dispatch of the corrigendum by ordinary post. No material has been placed on record by the respondent to show that the corrigendum dated 12.2.1993 was received by the petitioner. Even in letters dated 17.5.1993 and 29.3.1996 issued by the respondent requesting the petitioner to deposit the price of the plot, there is no reference to the corrigendum dated 12.2.1993 but reference is made to the letter dated 13.1.1993. Furthermore, the respondent also failed to reply to the petitioner's letter dated 15.7.1993 whereby the petitioner requested the respondent to correct its record nor did they apprise him of the fact that a corrigendum had been issued.

14. Mere entry in the register showing that the letter was issued do not mean that the same was served on the petitioner. Such entry by itself cannot prove service. This was so held by a Division Bench of the Calcutta High Court in the judgment reported as Karali Prasad Roy Vs. Probodh Chandra Mitra and Others, .

15. Learned Counsel for the petitioner has placed reliance on Delhi Development Authority Vs. Mr. Ravindra Mohan Aggarwal and Another, wherein it was held:

"On the date of auction, the plot being in the green belt, could not and should not have been put to auction. There is no estoppel against statute and when the considerations of public interest are involved. The acceptance of the bid recorded by the Vice-Chairman, DDA on the file was bad for two reasons. Firstly, it was so recorded after the passing of the interim order of stay by the High Court though it was in the process of being communicated. Secondly, the acceptance was not communicated by the DDA to the respondents and Therefore the acceptance was not complete. Merely because the respondents gathered knowledge of the acceptance having been recorded on the file would not make any difference....."

16. The respondent having failed to bring to the notice of the petitioner the correct sector and pocket numbers and also having failed to reply to petitioner's letter dated 15.7.1993 could not have demanded the interest for the period of delay in making the payment by the petitioner. Moreover, when the petitioner failed to deposit a sum of Rs. 1,65,064/- as demanded by the respondent vide letter dated 17.5.1993, the respondent again slept over the matter and it was only on 29.3.1996 that the respondent demanded the amount of Rs. 1,65,064/- and that too without demanding interest or the restoration charges. The said amount was deposited by the petitioner within the stipulated period. It was only

on 30.6.1997 that the respondent asked the petitioner to deposit the interest and restoration charges. The respondent is Therefore estopped from claiming interest from the petitioner. Furthermore, no material has been placed on record by the respondent to show that the plot allotted to the petitioner was cancelled. Therefore, the demand of the restoration charges by the respondent in letter dated 29.3.1996 is unreasonable and uncalled for.

17. In light of the aforesaid discussion, the petition is allowed. The letter dated 30.6.1997 issued by the respondent demanding interest and restoration charges is quashed. The respondent is directed to hand over possession of plot-No. 02, Pocket 16, Sector 20, Rohini Residential Scheme to the petitioner, subject to completion of other formalities by the petitioner.

The petition stands disposed of.