Delhi Development Authority vs Pushpendra Kumar Jain on 23 September, 1994

Equivalent citations: AIR 1995 SUPREME COURT 1, 1994 AIR SCW 3985, 1994 (6) JT 292, 1994 SCFBRC 370

Bench: B.P. Jeevan Reddy, Suhas C. Sen

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           CASE NO.:
Appeal (civil)  6205 of 1994

PETITIONER:
DELHI DEVELOPMENT AUTHORITY

RESPONDENT:
PUSHPENDRA KUMAR JAIN

DATE OF JUDGMENT: 23/09/1994

BENCH:
B.P. JEEVAN REDDY & SUHAS C. SEN

JUDGMENT:
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JUDGMENT 1994 SUPPL. (3) SCR 770 The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J, Leave granted. Heard counsel for the parties.

This appeal is preferred against the judgment and order of a Division Bench of the Delhi High Court allowing the writ petition filed by the respondent.

The appellant, Delhi Development Authority (D.DA.) prepared and published a scheme called "Registration Scheme of New Pattern, 1979 of intending purchasers of flats to be constructed by Delhi Development Authority"

> providing the procedure for allotment of flats constructed by it. Clause (11) of the Scheme, issued as a brochure says that "in case of flat allotted under Hire Purchase basis, the cost of the land plus 20% of the balance cost of the flat will be recovered as initial deposit at the time of allotment and balance amount will be recovered in monthly installments spread over a period of 7 years in case of M.I.G., 10 years in case of L.I.G. and 15 years in case of Janata flats". Clause (14) says that "it may please be noted that the plinth area of the flats indicated and the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of layout, cost of construction etc."

The appellant has been constructing flats in several localities in Delhi and has been selling them to needy citizens from time to time in accordance with the procedure indicated in the said brochure. Since there are always more applicants than the number of flats available, the appellant has been adopting the method of draw of lots among the registered applicants to select the allottees. One of such draws was held on October 12, 1990 for allotment of certain number of flats at which the respondent was successful. Intimation was sent to him on January 9/13/1991 informing him that a flat No.42-A, Type-3, Pocket-A2, and GRP.5 Kondli Gharoli has been allotted to him and that he must remit the initial deposit as per the rules.

The writ petition was occasioned by the fact that between the date on which lots were drawn and the date on which the allotment of flat was communicated to the respondent, the land rates were revised by the D.D.A. by Circular dated December 6,1990. There has been a substantial enhancement of land rates in the region of about fifty to seventy per cent. Since the allotment to the respondent was made on January 9/13, 1991, he was called upon to remit the first installment of the price of the flat determined taking into account the revised land rates aforesaid. The respondent's contention in the writ petition was that only the land rates prevailing on the date of drawl of lots should be charged to him. He submitted that the revised land rates cannot be applied to him inasmuch as the said rates came to into force after the draw of lots. This contention has been upheld by the Division Bench. The reasoning behind the allowing of writ petition is disclosed from the following extracts from the impugned order. (Indeed, it is a short order and what we are extracting herein below represents almost the entire order :

> "it is the case of the petitioner that though the draw was held on 12th October, 1990, it was because of the inefficiency of the respondent that the allotment-cum-demand letter was not issued till 9th January - 13th January, 1991, In the meanwhile, the respon-dent has revised the land rate on 6th December, 1990, Thus, the petitioner was made to pay higher amount for the LIG flat which he became entitled to get in the draw held on 12th October, 1990.
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> Counter Affidavit has been filed by the respondent and it is admitted that the petitioner became successful in the draw of lot held on 12th October, 1990. There is no reason given for not issuing allotment-cum-demand letter till 9th January - 13th January, 1991.
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> It is thus clear that the allotment-cum-demand letter was delayed in the office of the respondent. In the meanwhile, even if the land rates have been increased, since the petitioner had be-come entitled to get the flat on 12th October, 1990, the respondent could not charge enhanced rate from the petitioner. As such we allow the writ petition and direct the respondent to revise the demand and charge the rate payable by petitioner on 12th October, 1990. The revised demand be issued within one month. No costs."

A perusal of the High Court's order shows that it is based upon the following two reasons;

(i) Though the draw was held on October 12, 1990, the allotment-cum-demand letter was issued to the respondent only on January 9/13, 1991. This delay was the result of inefficiency of the D.D.A. (2) Inasmuch as the issue of allotment-cum-demand letter was delayed in the office of D.D.A, it cannot charge the revised land rates to the respondent inasmuch as the respondent became entitled to get the flat on October 12, 1990; the revision of land rates subsequent to the drawl of lots cannot affect the respondent.

In our opinion, both the grounds assigned by the High Court are unsustainable. There was no material placed before the High Court- nor has any material been brought to our notice - to record a finding that the interval of three months between the drawl of lots and the despatch of allotment-cum-demand letter was on account of inefficiency of the appellant. The appellant's case is that the draw of lots was held for nearly three thousand flats and since the land rates were revised meanwhile, the process of calculating the cost of each flat and sending of demand-cum-allotment letters to nearly three thousand allottees took some time. In our opinion, the interval of three months cannot be characterised either as inordinate or as deliberate delay. The scheme itself does not prescribe the period within which allotment has to be communicated from the date of drawl of lots. It has, of course, to be done within a reasonable period.

Now coming to the other ground, we are unable to find any legal basis for holding that the respondent obtained a vested right to allotment on the drawl of lots. Since D.D.A. is a public authority and because the number of applicants are always more than the number of flats available, the system of drawing of lots is being resorted to with a view to identify the allottee. It is only a mode, a method, a process to identify the allottee, i,e., it is a process of selection. It is not allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of drawl of lots. The scheme evolved by the appellant does not say so either expressly or by necessary implication. On the contrary, clause (14) thereof says that "the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay out, cost of construction etc." It may be noted that registration of applicants under the said scheme opened on September 1, 1979 and closed on September 30, 1979. About, 1,70,000 persons applied. Flats were being constructed in a continuous process and lots were being drawn from time to time for a given number of flats ready for allotment. Clause (14) of the Scheme has to be understood in this context-the steady rise in the cost of construction and of land. No provision of law also could be brought to our notice in support of the proposition that mere drawl of lots vestes an indefeasible right in the allottee for allotment at the price obtaining on the date of drawl of lots. In our opinion, since the right to flat arises only on the communication of the letter of allotment, the price or rates prevailing on the date of such communication is applicable unless otherwise provided in the Scheme. If in case the respondent is not willing to take or accept the allotment at such rate, it is always open to him to decline the allotment. We see no unfairness in the above procedure.

We may clarify that the validity or justification of the revision of land rates by circular dated December 6, 1990 was not questioned in the writ petition nor has it been pronounced upon by the High Court nor has it been urged before us. We must, therefore, proceed on the assumption that the said revision of land rates is valid.

For the above reasons, the appeal is allowed and the judgment and order of the High Court is set aside.