* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **RSA 136/2002**

\+ **Date of Decision: 30th August, 2011**

\# **SH. JAGAN NATH** **..... Appellant**

! Through: Mr. Amit Kr. Singh, Advocate.

versus

$ **DDA** **..... Respondent**

Through: None.

**CORAM:**

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. **Whether Reporters of local papers may be allowed to see the judgment? (No)**
2. **To be referred to the Reporter or not? (No)**
3. **Whether the judgment should be reported in the digest? (No)**

## JUDGMENT

**P.K.BHASIN (ORAL)**

This is a second appeal filed by appellant-plaintiff in whose favour the trial Court had passed a decree in his suit for injunction directing the respondent Delhi Development Authority (DDA) not to cancel the allotment on hire purchase basis of the Janata flat for which he had got himself registered with DDA in the year 1989 but the first Appellate

Court in appeal filed by the respondent-defendant had reversed that judgment and decree and dismissed the suit.

2. Though initially DDA was being represented in the matter but from 13th May 2009 onwards none has been appearing on its behalf for the reasons best known only to DDA's legal department which has failed to ensure the presence of its counsel. Thus, on 19th August, 2011 this Court had after hearing the counsel for the appellant alone formulated the following substantial question of law which was considered to be arising for the decision of this Court:-

> "1. Whether the Appellate Court was justified in reversing the trial Court's judgment and decree on the ground that appellant – plaintiff had failed to challenge the resolution of the DDA whereby the terms & conditions of allotment of the flat in question to the appellant – plaintiff had been altered to his prejudice by requiring him to pay the entire price of the allotted flat in lump sum when he was allotted the plot in a Scheme whereunder 70% payment was to be made in instalments spread over a period of 20 years when it was the clear case of the appellant – plaintiff in the entire plaint that the term of allotment had been changed illegally?"

3. Today again there was no appearance on behalf of DDA when the appeal was taken up for final hearing and so today also I have heard the counsel for the appellant.

4. The relevant and undisputed facts are that in the year 1989 DDA had come out with a Scheme by the name of 'Ambedkar Avaas Yojna' for Scheduled Castes and Scheduled Tribes for allotment of Janata category of flats. As per the Brochure of the DDA for this Scheme the flats under this Scheme were to be allotted on hire purchase basis and only 30% of the price of the flat had to be paid at the time of allotment and 70% was to be paid in instalments spread over a period of twenty years. The appellant-plaintiff had got himself registered in that Scheme by paying the registration amount of Rs.4000/- and non-refundable processing charges of Rs.200/-. Thereafter he was allotted one Janata category flat in the draw of lots held on 23-12-93 but in the allotment-cum-demand letter dated 6/11-1-93 he was called upon to pay the entire cost of the allotted flat no. 105-C, Ground Floor, Sector-D, Kondli Gharoli amounting to ₹ 1,15,600 in lump sum after adjusting the initial deposit and it was mentioned in that letter that in case of non-payment of the amount by 14-4-93 the allotment would stand cancelled automatically. Feeling aggrieved with the demand of price of the flat in lump sum the appellant-plaintiff filed the suit for injunction with the following prayer:

"It is, therefore, most respectfully prayed before the Hon'ble Court

that this Hon'ble Court may kindly be pleased to order mandatory injunction, the appropriate directions/orders to the defendant thereby not to cancel the allotment of the plaintiff automatically as has been mentioned in the defendant's letter mentioned in para 5 above. This Hon'ble Court may also kindly be pleased for stops of payment by the plaintiff to the defendant as per the para no. 9 and 10 of the defendant's letter mentioned in para 5 above till final adjudication of the present suit.

Costs of the suit be also awarded in favour of the plaintiff.

Any other or such other relief which this Hon'ble Court may deems fit and proper in the circumstances of the case may kindly be awarded to the plaintiff and against the defendant."

5. The respondent – defendant contested the suit seriously on the ground that under the Brochures issued in respect of the 'Ambekar Awas Yojna' as well as the earlier New Pattern Scheme 1979 (NPRS-79) it had the discretion to alter the terms & conditions of allotment of flats as and when considered necessary and before any allotment could be made under the Scheme in question the DDA pursuant to the discretion it had passed resolutions no. 145/92 and 168/92 in respect of NPRS-79 whereby the percentage of Janata category flats to be allotted on hire purchase basis was reduced from 100% to 75% and same percentage was fixed under the 'Ambedkar Awas Yojna', 1989 vide its decision Ex. DW1/2 as against the initial decision of the DDA make 100% allotments under Janata category flats on hire purchase basis and as per the said revised policy the appellant – plaintiff came to be allotted the flat on cash down basis

thereby fixing the same percentage of allotment of flats under NPRS-79 and the Ambedkar Avas Yojna to avoid discrimination amongst the allottees of Janata flats under the Scheme.

6. The learned trial Court had framed the following issues:-

> "1. Whether suit of the plaintiff is maintainable in the present form? OPP
>
> 2. Whether suit of the plaintiff is bad for want of notice u/s 53-B, DD Act? OPD
>
> 3. Whether the DDA can alter the terms and conditions of allotment? OPD
>
> 4. Whether plaintiff is entitled to the relief claimed for? OPP
>
> 5. Relief."

7. Vide its judgment dated 27th October, 1998 the learned trial Court decided all the afore-said issues in favour of the appellant – plaintiff and against the respondent – defendant. While rejecting the defence of DDA that it had the discretion to alter the terms & conditions of allotment of flats under the brochure issued for 'Ambedkar Awas Yojna' the trial Court had relied upon a Division Bench judgment of this Court in ***"DDA Flats App. Association vs. DDA", 1987 Rajdhani Law Reporter 514*** and had come to the conclusion that the appellant – plaintiff could not be

called upon to pay the entire cost of the flat in lump sum. Consequently, the respondent – defendant was restrained from cancelling the allotment of the appellant – plaintiff because of non-payment of the cost of the allotted flat in lump sum as was demanded vide allotment-cum-demand letter dated 06-01-1993.

8. Feeling aggrieved by the judgment of the trial Court the respondent – defendant filed an appeal which was allowed by the learned Additional District Judge vide judgment dated 30/05/02. The relevant findings are as under:-

> "The learned trial Court had framed an issue regarding the maintainability. But the learned trial Court had itself observed that the suit for injunction in its present form was maintainable. But the learned trial Court had itself observed that the relief claimed by the plaintiff/respondent was from cancelling the allotment as the same was stated to be in violation of the terms and conditions stipulated in the brochure and that the change in terms and conditions had not been intimated to the plaintiff though it was stated to have been made vide resolution no. 168/92. The genesis of the letter being the demand-cum-allotment letter was the resolution no. 168/92 whereby the previous resolution no. 145/92 was made applicable to the Ambedkar Avas Yojna, the scheme under which the plaintiff/respondent had registered himself. Obviously, therefore, the plaintiff could have sought any injunction restraining the DDA from cancelling his allotment automatically, only by questioning the resolution modifying the terms of allotment. He has sought no relief by way of declaration that the resolution no. 168 of 1992 was a nullity or was unenforceable and that therefore, the demand-cum-allotment letter calling for the plaintiff/ respondent to deposit the entire cost of the flat on cash down basis at different rates by different periods calling which automatic cancellation

was to ensure, could not be given affect to by the DDA and thus seeking a restraint on the DDA from enforcing it. It is thus clear that the injunction restraining the DDA from automatically cancelling the allotment upon failure to pay the cost on cash down basis could be granted only if the modification in the terms of allotment were challenged and set aside. In these circumstances, the suit as framed was not maintainable. It is not a suit for mandatory injunction for the first place and secondly the relief of injunction placing a restraint on the DDA could have been only a consequential relief to a declaration questioning the modifications in the terms of allotment. Issue no. 1 therefore ought to have been decided in favour of the DDA and not the plaintiff as has been done by the learned trial Court. This finding is liable to be set aside and is set aside.

6. The learned Trial Court was of the view that since there was a threat of automatic cancellation, if the payment had not been made by 13.4.93, the issuance of notice would have defeated the very purpose of the suit and, therefore, the plaintiff was entitled to the exemption under Section 53B(3) of the DD Act. However, in view of the discussion hereinabove that the suit for injunction simplicitor did not lie and added to the fact that the demand-cum-allotment letter had been actually issued with the date of 6.1.93 to 11.1.93 and set out three periods by which the cash down payment at different rates could be made upto 13.4.93, it is clear that the issuance of a notice would not have defeated the very purpose of the suit. Despite the letter being dated 6.1.93 to 11.1.93 the plaintiff has not disclosed the date when he received the letter. Though the first time period allowed to the plaintiff was from 12.1.93 to 14.3.93, the plaintiff filed the suit only on 6.3.93. On 6.3.93 the threat of automatic cancellation was not so imminent as the first time schedule, the second time schedule and the third time schedule were all available to the plaintiff/respondent and an automatic cancellation would have ensued only after 13.4.93 almost a month and half subsequent to the filing of the suit. In these circumstances, the issue no. 2 also ought to have been decided in favour of the DDA and against the plaintiff/respondent. The finding of the learned trial Court in respect of this issue is also thus set aside.

The DDA claimed that under Clause 19(v) of the brochure it had the right to modify and alter the terms and conditions of allotment. The learned counsel for the plaintiff/respondent has relied on the judgment in the Hon'ble Delhi High Court in DA Flats Apex Association vs. DDA 1987 Rajdhani Law Reporter 514 to contend that the DDA was barred by the principles of promissory estopple from varying the terms and conditions of allotment. A perusal of this judgment would show that the Hon'ble High Court had while considering a similar term opined that such a clause did authorize the DDA to alter, change or modifying or revised

> the scheme but it was of the opinion that the essential features of the scheme ought to be retained and the purpose for which it was formulated could not be defeated. It was argued by learned counsel for DDA that the DDA had only modified the allotment from 100% hire purchase basis to 75% hire purchase and 25% cash down basis. It was thus submitted that the cited judgment relied upon by the learned trial Court was inapplicable to the facts of the present case. in this connection it may be mentioned that resolution no. 145 of 1992 was passed after the judgment reported in 1987 RLR 514. These modifications were then made applicable vide resolution 168 of 1992 in prospect of the Ambedkar Avas Yojna on the plea of parity between the schedule castes and schedule tribes in the two schemes being NPRS 79 and the Ambedkar Avas Yojna 1989. These resolutions reflect the policy decision of the DDA. The civil Court cannot go behind the policy of the Government to determine its correctness or otherwise. In the judgment reported in 1989 RLR 514 the Hon'ble High Court was seized of a writ petition and the Hon'ble High Court issued a writ of mandamus directing the DDA to adhere to its original scheme of allotting flats on hire purchase basis and withdraw the letter asking for payment in lumpsum. No directions in the nature of mandamus have been sought nor could have been issued by a civil Court. Thus the leaned trial Court could not have granted the relief that it has restraining the DDA from cancelling the allotment of the plaintiff automatically in terms of the demand-cum-allotment dated 6.1.93 and 11.1.93 holding that the same was not in accordance with the terms and conditions of the brochure."

9. After hearing the learned counsel for the appellant – plaintiff I have no manner of doubt that the judgment of the First Appellate Court cannot be sustained. A perusal of the plaint clearly shows that the appellant – plaintiff had categorically claimed that the demand of price of the flat in lump sum was illegal and contrary to the terms and conditions of allotment contained in the brochure meant for the persons seeking allotment of Janata category of flats under the 'Ambedkar Awas Yojna' .

Resolution no. 168/92, pursuant to which the change in the allotment pattern was suddenly introduced, was not even disclosed to the allotees in the demand letters and so there was, in any, case no occasion for the appellant – plaintiff to make a challenge to the legality of that resolution in his suit . The learned trial Court was absolutely right in coming to the conclusion that in view of the judgment of this Court in DDA Flats Applicants. Association's case(supra) the DDA could not have decided to make allotment of 75% only of flats of Janata category on hire purchase basis.

10. I am also of the view that the finding of the learned First Appellate Court that the suit was not maintainable for want of service of notice upon DDA, as required under Section 53-B of the Delhi Development Act, 1957 since there was no urgency in the matter when the suit was filed. This finding is totally unsustainable. When the suit was filed there was an imminent threat of cancellation of allotment in favour of the appellant – plaintiff in case of non-payment of the entire cost of the flat in lump sum. The finding of the learned Appellate Court that automatic cancellation would not have taken place immediately on the expiry of period given for

making the payment in the demand letter but it would have ensued only after 13-04-93 which date was almost a month and a half subsequent to the filing of the suit is also not sustainable. If the appellant – plaintiff had waited till 13th April, 1993, which was the last date of making the payment with interest for the delayed payment, his allotment would have stood cancelled automatically on the expiry of 13th April and thereafter the purpose of filing suit for injunction would have been defeated. So, the suit for injunction was very much maintainable.

11. This appeal accordingly succeeds and consequently the judgment and decree passed by the learned Additional District Judge are set aside and that of the learned trial Court are restored.

12. Before parting with this case, it may be noticed here that counsel for the appellant – plaintiff had submitted that in case this appeal is allowed the appellant – plaintiff would now straightaway make the payment of the entire cost of the flat, after adjusting the initial registration amount ,to DDA and, therefore, some time should be fixed for handing over the possession of the flat allotted to him and which is still lying

preserved for him pursuant to injunction passed by this Court in this appeal at the time of preliminary hearing. On this aspect ,all that this Court can say is that if the appellant – plaintiff now approaches DDA with the payment of the cost of the flat as per the allotment letter dated 6/11-1-93 it should not create any further problems for him in getting the possession of his flat for which he has been waiting for almost two decades.

**P.K. BHASIN,J**

**August 30, 2011**
**nk/sh**