

Delhi High Court

Smabhavana & Anr. vs D.D.A. & Anr. on 20 March, 2013

Author: V. K. Jain

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : March 13, 2013
Judgment pronounced on : March 20, 2013

+ W.P.(C) 7487/2008 & CM No.13515/2010

ALL INDIA CONFEDERATION OF BLIND Petitioner

Through: Ms Roma Bhagat and Mr Pankaj
Sinha, Advs

versus

UOI & ANR Respondents

Through: Mr Rajiv Bansal, Adv.

+ W.P.(C) 8419/2008

SMABHAVANA & ANR. Petitioners

Through: Ms Roma Bhagat and Mr Pankaj
Sinha, Advs

versus

D.D.A. & ANR. Respondents

Through: Mr Rajiv Bansal, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. Section 43 of The Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 enjoins upon the appropriate Government and the local authorities to frame Schemes, in favour of the persons with disabilities, for preferential allotment of land at concessional rates for houses, setting up business, setting up special recreation centres, and for establishment of special Schools, research centres and factories, by entrepreneurs with disabilities. The contention of the petitioner in W.P.(C) No. 7487/2008 is that neither the respondent DDA nor the Central Government has framed a Scheme in terms of the aforesaid Act. Respondent No.2- DDA framed a policy on 13th October, 2003 which was restricted only to persons with physical disabilities. Later, vide OM dated 17th April, 2004, the said policy was extended to persons with mental illness and

mental retardation. The contention of the petitioner is that the said policy was never made public, as a result of which persons with disabilities were unable to take advantage of the said policy. The policy of DDA envisaged 5% reservation in residential allotments along with 10% concession in the total cost. On 9 th October, 2006, Government of India, Ministry of Urban Development framed a policy providing for 5% reservation in allotments made for commercial purposes and 1% reservation in allotments made for residential purposes. The concession was reduced to 5% of the total cost subject to the ceiling of Rs.1 lakh.

2. The petitioner is accordingly seeking quashing of policy dated 13 th October, 2003 framed by DDA and policy dated 9th October, 2006 framed by Government of India. The petitioner is also seeking a direction for framing fresh policy extending the benefit to all categories of persons with disabilities. Another direction sought in the petition is to direct the respondents to make up the difference between the allotments, if any, in each of the four areas, i.e. commercial residential industrial and institutional, as compared to the total numbers that should have been allotted.

3. In August, 2008, Delhi Development Authority announced a Scheme called DDA Housing Scheme, 2008 for allotment of 5000 ready plots for occupational purposes in different areas in Delhi. The Scheme had reservation of 1% for physically handicapped persons. It further provided that if requisite number of applications were not received from the physically handicapped categories, then all the remaining plots shall be offered to the persons from non-reserved categories. The petitioner in W.P.(C) 8419/2008 is seeking quashing of the aforesaid policy on the ground that it provides 1% reservation instead of giving preference to all eligible persons with disabilities. The petitioner is also seeking direction to DDA to proceed with the allotment only by allotting available houses in each area first to the disabled eligible applicants by giving preference to them, viz-a-viz, other eligible applicants.

4. The petitions have been contested by Delhi Development Authority as well as Union of India. In its counter-affidavit Delhi Development Authority has stated that since they have revised the policy of 2003 by Memorandum dated 9th October, 2006, challenge to the policy of 2003 does not survive. It is further stated that the Scheme dated 9 th October, 2006, inter alia, provides for reservation of 1% in allotment of flats and plots and 5% in allotment of shops, for persons with disabilities, as defined in Section 2 of the The Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995. The reservation, however, is not available in case of disposal by way of auction. The Scheme has also been extended to the allotment of institutional land to the societies of physically handicapped/disabled persons at concessional rates in accordance with the terms and conditions laid down under the Nazul Land Rules. The Scheme provides 5% rebate in cost subject to maximum of Rs.1 lakh, to the persons with the disabilities who are allotted shops, flats and plots under the reserved quota and contains a restriction that such properties shall not be transferred for a period of 15 years. It is further stated in the reply that DDA had provided 1% quota for physically handicapped category in its Rohini Residential Scheme which closed on 25 th April, 1981 and 431 residential plots were allotted to the physically handicapped persons. According to DDA, there is no backlog and request from those persons who are registered under this Scheme but who had not availed the benefit of quota are being entertained, for conversion from general category to physically handicapped category, for allotment of residential plots. It is stated in the reply that in

order to ensure a fair distribution of shops for general and reserved categories, the entire new inventory is fed into computer and based on computerized draw shops were earmarked for general and reserved categories including physically handicapped. The shops for reserved categories are disposed of after issuing public notice in leading newspapers, inviting applications from eligible persons of reserved categories, whereas the shops in general category are disposed of through tenders. In case of non-disposal of the shops earmarked for a particular category, such shop is again included in the next draw/tender under that particular category. Since allotments under reserved category are made at reserved price, generally such allotments are through draw only. According to DDA, it allotted 133 shops in the year 2004-2005 and 143 shops in the year 2005-2006 under reserved category. During 2004- 2005 to 2006-2007, the allotment of new shops was made in the following manner:-

Year bifurcation	of Total no. of shops	of Earmarked for general category	Earmarked for reserved category	Out of reserve category for PH
2006-07	398	224	174(Yet to be allotted)	20(Yet to be allotted)

(5) In its counter-affidavit, respondent No.1 Union of India has stated

that in the year 1978, it had set up an expert Committee known as Bueja Committee, to examine the working of the Delhi Development Authority. The Committee, inter alia, recommended 1% reservation for physically handicapped persons. The policy of reservation for preferential allotment by DDA, to persons with disabilities, was revised accordingly and as against recommendation to provide reservation of 1%, the policy provides for reservation of 5% in allotment of shops. It is further stated that the number of allotments are much large in the case of residential flats and plots, as compared to shops and the policy framed by the Government meets the objectives of the Act.

6. Section 43 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998 reads as under:

"43. Schemes for preferential allotment of land for certain purposes - The appropriate Governments and local authorities shall by notification frame schemes in favor of persons with disabilities, for the preferential allotment of land at concessional rates for -

- (a) house;
- (b) setting up business;
- (c) setting up of special recreation centers;
- (d) establishment of special schools;
- (e) establishment of research centers;
- (f) establishment of factories by entrepreneurs with disabilities."

It would thus be seen that the aforesaid provision provides for framing such a scheme, whereby disabled persons get preference in allotment of land for the purpose of constructing houses, shops/offices and recreation centres as well as for establishing special schools, research centres and factories. The said provision thus does not mandate preferential allotment of built up houses or shops.

7. The Scheme, which DDA has framed in the year 2003, stands superseded by the Scheme framed by Government of India, Ministry of Urban Development on 09.10.2006. To the extent it is relevant, the Scheme reads as under:-

"2. The undersigned is directed to convey the approval of the Government to the revised policy for preferential allotment of houses/land to persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, which is as under: -

(I) PREFERENTIAL ALLOTMENT:

(i) 1% reservation in allotment of flats and plots and 5% reservation in allotment of shops will henceforth be provided to the Persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act, 1995. The above reservation will not be applicable in case of auction mode of disposal.

(ii) Allotment of flats to persons with disability will be made at Ground Floor.

(iii) The allotment of DDA flats to persons with disability would be on hire purchase basis. The initial payment in case of hire purchase allotment would be 25% instead of 50% of the total cost applicable for general category. Rest of the amount would be taken in monthly installments.

(iv) The power of change of locality and floor to persons with disability shall be exercised by the Vice- Chairman, DDA.

(II) CONCESSIONAL RATES:

5% rebate in the cost subject to a maximum of Rs. 1.00 lac. will be given to the persons with disability, who are allotted flats, shops and plots under the above quota. The remaining conditions of allotment

will remain the same. The conveyance deed papers will be executed in the name of original allottees only.

(III) ALLOTMENT OF INSTITUTIONAL LAND:

Societies of physically handicapped /disabled persons will be considered for allotment of Institutional Land at concessional rates in accordance with the terms and conditions laid down under Nazul Rules.

(IV) CONSTRUCTION PLAN:

All constructions will be disabled friendly to facilitate movement of the disabled persons in accordance with provisions of building bye-laws.

(V) ALLOTMENT CONDITION:

In order to ensure that the concessional provisions means for the persons with disability do not lead to misuse or speculation, it has also been decided that the letter of allotment of such flats/plots/shops would specifically state that alienation of possession of the flats/plot/shop prior to 15 years from the delivery of possession to the allottee would result in automatic cancellation of the flat/plot/shop and under no circumstances such cancellation would be withdrawn. In addition, the conveyance deed for all such cases would projected in the letter of allotment itself, and the allottee should by way of affidavit specifically agree to the same being a part of the conveyance deed before the possession of the flat/plot/shop is delivered to the allottee.

X X X X

3. The concession shall be applicable to persons who come within the meaning of disability as defined in the Persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 and duly certified by a Medical Board."

8. The first contention of the learned counsel for the petitioner is that instead of reservation, the respondents should provide preferential allotment to the Persons with Disabilities, which would mean that no allotment to the other categories should be made, without first making such allotments to all the applicants who are disabled. In our view, the contention cannot be accepted. The reservation, in our opinion, is also a mode of preferential allotment. If we accept the contention of the learned counsel for the petitioner that may result in a situation where all or most of the allotments are made to Persons with Disabilities and the persons belonging to other categories, including categories such as Scheduled Castes, Scheduled Tribes, and Other Backward Classes, who have been accorded reservation in such allotments, may not get any allotment or may get very few

allotments. This is more so when the number of allotments in a particular Scheme is rather small. Taking any such interpretation would result in defeating the rights of the persons, belonging to other reserved categories and, therefore, the Court needs to eschew from taking such an interpretation. The mandate of the Act is to give preferential treatment in allotment of land for specified purposes. What should be the mode and extent of preference is to be decided by the Government or Local Authority which frames the Scheme; taking into consideration the objectives of the Act. In the matters of policies, the Court cannot interfere, unless it is shown that it contravenes the provisions of some law, for the time being in force, or is wholly arbitrary or irrational. In our view, the extent of reservation provided in the Scheme, considering the large number of allotments made by DDA, cannot be said to be irrational, arbitrary or in derogation of the provisions of the Act.

9. The second contention of the learned counsel for the petitioner is that there is no provision in the Scheme framed by the Government for according reservation by giving preference to the Persons with Disabilities in allotment of land for commercial, institutional and industrial purposes. A perusal of the Scheme would show that it contains no provision for according reservation or preferential treatment to the Persons with Disabilities in institutional and industrial allotments of lands. Though it has come in the affidavit of DDA that the aforesaid Scheme was also extended to allotment of institutional land to the societies of physically handicapped/disabled persons at concessional rates, no order to this effect has been filed by DDA before this Court. It would, therefore, be necessary to give a direction to the respondents to either frame an independent Scheme or to modify the existing Scheme, so as to provide preference/reservation to the Persons with Disabilities in allotment of land for setting up businesses, special recreation centres, special schools and research centres as well as for establishing factories by entrepreneurs with disabilities.

10. Admittedly, DDA has been allotting land to Cooperative Societies for construction of residential flats for its members. The members of said societies may include Persons with Disabilities, within the meaning of the Act. However, the allotment made to the Cooperative Societies contains no stipulation for giving preference/reservation to those members. If the society allots flats to all its members, there would be no need of any reservation/preference for the Persons with Disabilities, but, in case considering the extent of the land available to the society, the allotment is made only to a limited number of persons, the societies should give preference/reservation to such members, who are Persons with Disabilities, within the meaning of the Act so that the objective behind enactment of Section 43 of the Act may be fulfilled in its letter as well as spirit. Therefore, a suitable direction needs to be given to the respondents to insert an appropriate direction in this regard, while making allotment of land, to the Cooperative Societies in future.

11 It is contended by the learned counsel for the petitioner that DDA should provide reservation/preference to Persons with Disabilities even in case of sale by auction and tender. We, however, cannot agree. By its very nature, the allotment by way of auction/tender can be made only to the highest bidder and providing reservation/preference in such allotments would defeat the objective behind such allotment since DDA will not be able to get the current market value of the property which it otherwise gets in sale by way of auction/tender. We need to keep in mind that DDA adopts the policy of cross subsidies in making allotments and the profit earned by it by selling

certain plots and flats by way of auction/tender are used for carrying out various other development activities. If DDA is not able to sell flats, plots/built up commercials by way of auction/tender, it would not have funds available to it for carrying out development activities in Delhi, which was the primary objective behind setting up the organization. We, therefore, cannot accept the contention that reservation/preference to the Persons with Disabilities should also be provided in sale by way of auction/tender.

12. It was also submitted by the learned counsel for the petitioner that DDA sells plots to provide builders for constructing commercial buildings, but the builders do not give any preference nor do they give any price concession to Persons with Disabilities and, therefore, DDA should be directed to make it obligatory for builders purchasing land from it to give preference and concession in price to the Persons with Disabilities, while selling shops/offices/commercial flats on the land purchased from DDA. We, however, are not in agreement with this contention. The builders purchase land for commercial purposes on the basis of auction/tender, thereby paying the prevailing market price to DDA. They having paid market price of the land to DDA cannot be compelled to extend any concession or preference while selling the shops/offices/commercial flats constructed by them to the Persons with Disabilities.

13. It was contended by the learned counsel for the petitioner that since Persons with Mental Disabilities are not capable of applying for allotment from DDA, they are unable to obtain benefit of the reservation and concession provided in the Scheme and, therefore, DDA should allow allotment in the name of guardian of the persons with mental illness and retardation. In our view, since the Act provides for according preference to the Persons with Disabilities and not to their guardians, the contention made by the learned counsel for the petitioner cannot be accepted. We are, however, of the view that in case a Person with Disability is not in a position to apply for allotment, his/her guardian should be permitted to apply for allotment though in the name of the Persons with Disability and not in the name of the guardian.

14. This was also the contention of the learned counsel for the petitioner that reservation of 1% in allotment of shops is grossly inadequate, considering the population of Persons with Disability in the country and also considering that the reservation made in the residential plots/flats is 5%. As noted earlier by us, Section 43 of the Act envisages preference by way of allotment of land alone and not by way of allotment of built up structures such as shops and office. Therefore, no direction to enhance the percentage of reservation in allotment of built up shops can be issued to the respondents. We also take note of the fact that the number of residential plots and flats allotted by DDA is many times more than the number of shops/built up commercial spaces allotted by it and, therefore, there cannot be any parity in percentage of reservation allotment of residential plots/flats on one hand and commercial shops/built up commercial structures on the other hand.

15. It was submitted by the learned counsel for the petitioner that 5% concession in the price, which the policy framed by the respondent, provides subject to a limit of Rs 1 lakh is inadequate. In our view, it is for the respondents to decide as to how much should be the concession in the matter of price, while making allotment to Persons with Disabilities. The Court cannot interfere with the policy decision taken by the respondents in this regard unless it is shown that the decision taken by

them is wholly arbitrary, irrational and perverse. Considering the per capita income in our country, we are of the view that 5% concession in price, subject to a limit of Rs 1 lakh, accorded by the respondents, cannot be said to be unreasonable, arbitrary and irrational.

16. In the writ petition, the petitioner also seeks to challenge the restriction, which the policy framed by the respondents imposes upon the Persons with Disabilities, prohibiting them from transferring the flat/plot obtained by them from DDA for a period of 15 years. The contention is that even in case of financial need, a Persons with Disability is not able to sell the plot/flat obtained by him, which sometimes, may cause grave hardship to such persons. The objective behind placing such a restriction, while making such preferential/concessional allotment, is to ensure that unscrupulous persons are not able to take advantage of the Scheme by earning huge profits by selling the plot/flat obtained from DDA at a higher price. In the absence of such a restriction, unscrupulous persons may be encouraged to misuse the Scheme by persuading Persons with Disabilities to obtain allotment at concessional rates and on preferential basis and then sell the flat/plot at higher price.

17. For the reasons stated hereinabove, we find no ground to quash the existing scheme, though additional scheme(s) needs to be framed to carry out the objectives of the Act. We, therefore, dispose of the writ petition with the following directions:-

(i) The respondents are directed to frame, within three months, appropriate scheme(s) in favour of persons with disabilities, as defined in Section 2 of The Persons With Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995, for the preferential allotment of land at concessional rates for

(a) setting up of special recreation centers;

(b) establishment of special schools;

(c) establishment of research centers;

(d) establishment of factories by entrepreneurs with disabilities.

(ii) The respondent DDA is directed to incorporate a condition in future allotment of land made to Co-operative Societies requiring them to give preference/reservation to the persons with disabilities in the flats to be constructed by them on the land taken from DDA.

(iii) The Delhi Development Authority is directed to permit the guardians of persons with mental disabilities to apply for allotment on behalf of and in the name of the persons with disabilities.

V.K.JAIN, J CHIEF JUSTICE MARCH 20, 2013'sn'/BG