



2024:DHC:7399



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Judgment reserved on : 25 July 2024**  
**Judgment pronounced on : 25 September 2024**

+ W. P. (C) 11903/2009 and CM APPL. 12032/2009

RAJ RANI ..... Petitioner  
Through: Mr. Sumit Bansal, Mr. Udaibir  
Singh Kochar, Mr. Pushkar  
Khanna & Mr. Utsav Garg,  
Adv.

versus

DDA & ORS. .... Respondents  
Through: Mr. M. K. Singh, Adv for  
R1/DDA.

**CORAM:**  
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

### **J U D G M E N T**

1. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, for issuance of appropriate direction for quashing of the impugned order dated 24.09.2007, by which the respondent No. 1/DDA<sup>1</sup> has cancelled the Conveyance Deed dated 13.04.2004 in respect of the flat bearing No. E-76, Aravali C.G.H.S. Ltd., Plot No. 44, Sector -13, Rohini, Delhi<sup>2</sup>, and thereby seeking restoration of the Conveyance Deed and further direction not to disturb the peaceful enjoyment of the flat in question.

### **BRIEF FACTS:**

2. The brief facts leading to the filing of the present petition are that the petitioner purchased the flat in question from the respondent

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<sup>1</sup> Delhi Development Authority

<sup>2</sup> Flat in question



No.2<sup>3</sup> *vide* an Agreement to Sell dated 30.12.1998. Following the purchase, the petitioner approached DDA for the conversion of the flat in question from leasehold to freehold, and subsequently DDA converted the flat to freehold and executed a Conveyance Deed in favour of the petitioner on 13.04.2004, which was duly registered on the same day with the office of the Sub-Registrar, Delhi and the petitioner became the owner of the flat in question.

3. During the conversion of the flat in question from leasehold to freehold, respondent No. 3 society issued a 'No Due Certificate' and other relevant documents, besides confirming that they had no objection to the conversion. After purchasing the flat, the petitioner applied for membership in the respondent No. 3 society under Rule 34(a) of the Co-operative Societies Act and submitted a cheque dated 14.12.2007 for Rs. 610/- for membership enrolment. Although the cheque was not encashed, she has been paying the maintenance charges regularly, which have been accepted by respondent No. 3 society.

4. The petitioner has been in the peaceful possession of the flat in question since 2001. Later, the petitioner became aware of legal proceedings against the predecessor-in-interest. Upon inquiry, the petitioner learnt that in arbitration proceedings, the act of transferring possession of the flat of Smt. Bimla Jain without verifying dual membership was deemed improper. Though, the petitioner was not a party to the award but on an application filed by the petitioner, she was added as a party on the date of the making of the award. The

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<sup>3</sup> Smt. Bimla Jain



petitioner submits that she was not given an opportunity to present her case, and the award was passed without considering the petitioner's legal rights. It is contended by the petitioner that the award is not binding on the petitioner and is considered a nullity to the extent that it prejudices the petitioner's rights.

5. The petitioner asserts that on 30.03.2006, she received a Show Cause Notice<sup>4</sup> from DDA, indicating that the Conveyance Deed executed in her favour had been cancelled under clause (04) of its terms and conditions, as the allotment of the flat in question to the predecessor-in-interest has been ceased under Rule 25 of the Delhi Cooperative Society Rules, 1973<sup>5</sup>. The clause (04) of the Conveyance Deed dated 13.04.2004 is as follows: -

“4. If it is discovered at any stage that this deed has been obtained by suppression of any fact or by any mis-statement, mis-presentation or fraud, then this deed shall become void at the option of the vendor, which shall have the right to cancel this deed and forfeit the consideration by the purchaser. The decision of the vendor in this regard shall be final and binding upon the purchaser and shall not be called in question in any proceedings.”

6. The petitioner on 25.04.2006 submitted a reply to the aforementioned SCN and also made a representation to the Commissioner (L&D) and Director (RL), DDA, requesting the withdrawal of the notice in which she re-asserted that she is a *bona fide* purchaser. On 01.10.2007, DDA issued a Circular No. F.11(168)1985/LSB(R)/9446, deciding that the *bonafide transferee's* purchase would not be disturbed, and the allotment would be regularized upon payment of charges. The petitioner received the

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<sup>4</sup> SCN



impugned cancellation order on 24.09.2007 and a representation was made by the petitioner to the respondent No.1 on 15.10.2007, which reads as follows: -

“Respected Sir,

The undersigned has been stunned to read the contents of letter No. F5(193)/2004/GH/DDA/8619 dt. 24/9/2007, the facts have not been brought to the kind notice of Hon’ble LG, Delhi which has resulted in the cancellation of Conveyance Deed executed by DDA on 13-4-2004, The facts of the case are as under.-

Shri Gulab Chand Jain, Husband of Mrs. Bimla Jain was owner of Flat No. 502, Rashmi Apartments, Harsh Vihar, Pitampura, Delhi. Smt. Bimla Dev was allotted Flat No. E-76, Aravali Kunj, Rohini, Delhi-110085. Rule 25(1) (C) of Delhi Co-operative Societies Rules, 1973 Prohibits a person from becoming a member of a Housing Society who owns a residential house or a plot of land for the construction of a residential house either in his own name or in the name of his/her spouse or in the name of any of his dependent children or leasehold or freehold basis or on Power of Attorney or on agreement for sale or he or his spouse or any of his dependent children is a member of any other housing society/ except otherwise permitted by the registrar.

As Shri Gulab Chand Jain and his wife Mrs. Bimla Jain have got allotments of two Flats, Mrs. Bimla Jain's membership (Membership No. 242) was closed. Prior to cessation (on 17.5.2004) of membership (No. 242) of Mrs. Bimla Jain, Flat No. E- 76, Aravali CGHS Ltd. (Plot No. 44, Sector-13), Rohini, New Delhi-110085 was sold out through registered GPA, valid Sale Agreement, money receipt etc. which was Processed in DDA under ‘Conversion Policy’ and finding my Conversion application and documents annexed there to in perfect order, requested conversion was allowed and subsequently conveyance deed was executed on 13.04.2004. As the third Party right has been created by Mrs. Bimla Jain (allottee), it is Mrs. Bimla Jain who has to "Face the music" for filing wrong affidavit and Concealing the facts; retrieval of released right is not allowable under the law of the land.

Two such (exactly) identical cases have been decided by the Hon'ble High court of Delhi. Full text of judgement dt. 25.11.2003 of one court case CWP No. (1483/2000) is enclosed herewith for the perusal of DD(GH). Particularly, the sidelined portions of the judgment necessitate concentration of DD/GH in the interest of justice. These order and the orders of another case were found

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<sup>5</sup> DCS Rules



convincing and unchallengeable, hence no appeal was filed in the double bench of the Delhi High Court and these were implemented after taking consent of the Hon'ble LG, Delhi. Kindly read the proposal of PC, DDA and Orders/approval of VC, PDA dt. 18.01.2006 (copy enclosed) and assess and evaluate yourself whether my case is (exactly) identical or not. On the basis of above approval of VC, DDA, a circular has been circulated by Shri Sanjeev Kumar, DD(LA) vide No. F11(1687/1985/LSB(R)/9446 dt. 1.10.2007 (copy enclosed), therefore, the flat purchased by me has been ordered to be regularized.

As the orders dt. 25.11.2003 of the Hon'ble HC have been implemented by the DDA vide VC's approval dt. 18.01.2005 and on the basis of the same, a circular has been circulated on 1.10.2007, you are requested to withdraw the Cancellation letter forth with."

7. The petitioner on 04.06.2008 received a second SCN from respondent No. 3 society, wherein the petitioner was asked to vacate the flat in question within 30 days. The petitioner, in accordance with DDA's policy and circular, requested with the DDA for the restoration of the Conveyance Deed. This representation remains pending with the authority, and no decision has been made. As a result, the petitioner did not pursue legal action, believing in good faith that the authority would favourably consider the request, as it had in similar cases.

8. The petitioner became aware of the order dated 25.08.2009 passed by the Division Bench of this Court "Ashok Aggarwal v. R.C.S. & Ors.", on 30.08.2009 in WP(C) no. 9940/2016, when the office bearers of the respondent No. 3 society informed the petitioner that this Court has directed DDA to take legal action against the petitioner for eviction. The petitioner was also informed that this Court had ordered the respondent No. 3 society to proceed with taking possession of the flat as per the law.



9. Upon learning of this, the petitioner immediately inquired and on inspection of the file, learnt that Shri Ashok Aggarwal had filed the writ petition against the society without impleading the petitioner as a party for taking action against the petitioner and other similarly situated persons. The petitioner was neither included as a party nor any notice was issued before a decision impacting the rights of the petitioner was made. Subsequently, the petitioner filed an application for recall of the order dated 25.08.2009. The application was listed before this Court on 18.09.2009, and the Court deferred the hearing to 25.09.2009, as the petitioner had informed the Court that legal remedies were being sought to challenge the cancellation order dated 24.09.2007.

10. Due to the lack of response from DDA regarding the petitioner's representations, the petitioner has challenged the cancellation order, by way of this writ petition. The petitioner submits that the impugned cancellation order issued by DDA is a violation of the principles of natural justice and is liable to be set aside. The petitioner contends that she never received a SCN prior to the cancellation of the Conveyance Deed, and the proceedings took place without the petitioner's knowledge until after the Conveyance Deed was cancelled.

**SUBMISSION ADVANCED BY THE PETITIONER:**

11. It is the case of the petitioner that the Conveyance Deed has been cancelled on the alleged grounds of violating Clause (4) of the Conveyance Deed, which stipulates that the deed becomes void at DDA's discretion if obtained through suppression of facts,



misrepresentation, or fraud. The petitioner asserts that no such misrepresentation, fraud, or misstatement is attributed to her. In accordance with the DDA's policy, the petitioner applied for the conversion of the property from leasehold to freehold, and at the time of executing the Conveyance Deed, represented that the property was purchased *vide* General Power of Attorney, Agreement to Sell, etc., from respondent No. 2 for consideration. These facts, undisputed by DDA, establish that there was no misrepresentation by the petitioner. Therefore, the cancellation of the Conveyance Deed by the DDA is unwarranted and is liable to be set aside.

12. It is contended that DDA failed to recognize that the petitioner is a *bona fide* purchaser for valuable consideration. The petitioner acquired the property from respondent No.2, believing that respondent No.2 was validly enrolled in the Cooperative Society and that the title was free from any defects. The petitioner paid the prevailing market price for the flat, and the title was validly transferred in accordance with the Transfer of Property Act. While not conceding that the DDA has the authority to cancel the Conveyance Deed under Clause (4), the petitioner submits that, even if Clause 4 applies, the contract between the President of India and the Petitioner is merely voidable. If the conditions under Clause (4) are met, the DDA may revoke the contract, but such revocation must comply with legal provisions. As the Conveyance Deed does not prescribe any procedure for cancellation, the DDA should have followed Section 31 of the Specific Relief Act, which it failed to do.



13. The petitioner submits that the His Excellency Lieutenant General failed to recognize that society had issued the requisite NOC<sup>6</sup> for the transfer of the flat in question in favour of the petitioner, thereby validating the transfer from the society's perspective. Once the statutory requirements for converting the flat into freehold were completed, the DDA's role was limited to executing the Conveyance Deed, which it duly did in favour of the petitioner.

14. It is put forth by the petitioner that DDA held a meeting on 16.07.2010, in the chamber of the Commissioner (Land Disposal), to discuss the applicability of the Circular dated 01.10.2007 in relation to the petitioner's case. During the meeting, it was decided that the Circular would apply only to individual plots and not to Group Housing Societies. The DDA has not presented any circular superseding the Circular dated 01.10.2007. The petitioner further submits that the Circular does not carve out any exceptions and explicitly clarifies that in cases where an individual has obtained two properties through false affidavits, the issue can be regularized at the current cost by the person who purchased the property. The petitioner questions how the DDA can exclude the application of this Circular in the present case, especially when it covers all properties under the Land Sales/Disposal Branch (Residential) of the DDA, which includes the petitioner's property. The intent of the Circular and the earlier decision of the Lt. Governor is to regularize bona fide purchasers who acquired properties from allottees.

**SUBMISSION ADVANCED BY DDA:**

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<sup>6</sup> No Objection Certificate





15. The DDA submits that the present case involves the allotment of DDA flats to Cooperative Societies registered under the Delhi Cooperative Societies Act, 1973. In such matters, the DDA acts based on the recommendations of the Registrar, Cooperative Societies, Delhi, and has a limited role in the allotment and cancellation of DDA flats. The relevant documents, including affidavits and declarations, are submitted to the Registrar of Cooperative Societies. It is further submitted that compliance with the Delhi Cooperative Societies Rules, 1973, is the responsibility of the concerned Cooperative Societies and the Registrar. The DDA's role is limited to conducting the draw for allotment based on the list of members provided by the Registrar and processing cancellations based on the Registrar's recommendations.

16. The DDA submits that, based on available information, respondent No. 2 was a member of respondent No. 3 society under M.S. No. 242. Several complaints were made by Shri Ashok Aggarwal to the Registrar, Cooperative Societies, Government of N.C.T. of Delhi, alleging that certain members, including Respondent No. 2, held illegal membership in violation of Rule 25 of the Delhi Cooperative Societies (DCS) Rules, 1973, and were ineligible for flat allotment. It was requested that DDA be restrained from conducting the draw of lots for allotment. However, the draw was allowed to proceed on 17.06.2001 in the interest of the majority of society members. Eligible members, including respondent No. 2, were allotted flats based on individual affidavits declaring that they did not incur any disqualification under Rule 25 of the DCS Rules at the time of their membership clearance, as required under Rule 77 of the DCS



Rules. Consequently, respondent No. 2 was allotted the DDA flat in question.

17. The DDA contends that arbitration proceedings were initiated by the Cooperative Society concerning respondent No. 2, which resulted in an award dated 09.10.2006. The award directed the respondent No. 3 society to approach the DDA for action against respondent No. 2, including the cancellation of her membership. Additionally, a writ petition titled "Ashok Aggarwal vs. DDA & Ors.<sup>7</sup>" was filed, challenging the allotment of flats, including the one to the respondent No. 2, on the grounds of improper verification and violation of Rule 25 of the DCS Rules. This Court, *vide* order dated 21.08.2002, remanded the case to the Registrar, Cooperative Societies, with instructions to determine the eligibility of members and communicate the names of ineligible members to the DDA for cancellation of their membership.

18. During these proceedings, the Assistant Registrar (North-West) filed an affidavit confirming that the ownership of properties by certain members had been verified by the Zonal Inspector through the House Tax Department of the MCD. It was found that some members, including respondent No. 2, held properties either in their own names or in the names of their spouses. Specifically, it was found that respondent No.2's spouse owned Property No. F-502, Rashmi Apartments, Harsh Vihar, Pitampura, New Delhi-85. Consequently, a Show Cause Notice dated 17.09.2002 was issued to the respondent No. 2 under Rule 25 of the DCS Rules, 1973.



19. The Registrar (North/West) Cooperative Societies Cell, Govt. of NCT of Delhi, through Letter No. F-47/226/GH/NW/1461 dated 02.09.2005, provided a list of 10 members, including respondent No. 2, who were wrongfully allotted flats in violation of Rule 25 of the DCS Rules, 1973, during the draw held on 17.06.2001. The Registrar directed the DDA to repossess the flats and initiate cancellation proceedings, in accordance with this Court's order dated 21.08.2002 in CWP No. 4202/01. Meanwhile, based on the GPA executed by respondent No. 2 in favour of the petitioner, the DDA executed a Conveyance Deed for the flat in question in favour of the petitioner.

20. The DDA submits that the petitioner is not entitled to claim relief from this Court based on prior judgments and orders, as the petitioner cannot be considered a bona fide purchaser. The GPA in favour of the petitioner was executed by respondent No. 2 on 30.12.1998, while the allotment of the flat occurred on 17.06.2001. Moreover, this case does not involve an individual allottee but relates to the allotment made to a Cooperative Group Housing Society. The DDA further contends that the Circular dated 01.10.2007 is not applicable to Group Housing Societies and applies only to individual plots allotted by the DDA. The issue of the Circular's applicability to Group Housing Societies was discussed in a meeting on 16.07.2010, where it was decided that the Circular, which applies to individual plots, does not extend to Group Housing Societies.

### **ANALYSIS & DECISION**

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<sup>7</sup> W.P. (C) No. 4202/2001



21. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and I have also perused the record. At the outset, this court finds that the impugned letter/notice (s) dated 24.09.2007 & 04.06.2008 followed by subsequent decision *vide* letter dated 13.08.2010 by the DDA, thereby intimating cancellation of the Conveyance Deed dated 13.04.2004 cannot be sustained in law.

22. First things first, there is merit in the submissions made by the learned counsel for the petitioner that each of SCN dated 30.03.2006, 24.09.2007, 04.06.2008 & 13.10.2008 were although ostensibly captioned as SCN, the same were in reality a decision already made about cancellation of the allotment of the flat in question in favour of the petitioner on account of decision in CWP No. 4202/2001 in the case of Ashok Kumar v. DDA dated 21.08.2002 of this Court, as a result of which the original allottee Smt. Bimla Jain ceased to be entitled to allotment under Rule 25<sup>8</sup> of the Delhi Cooperative Societies

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<sup>8</sup> **25. Disqualification of Membership**

1. No person shall be eligible for admission as a member of a co-operative society if he...

(a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or

(b) has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude and dishonesty and a period of five years has not elapsed from the date of expiry of the sentence:

(c) in the case of membership of a housing society:-

(i) owns a residential house or a plot of land for the construction of a residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale;

Provided that disqualification of membership as laid down in sub-rule (1)(c)(i) shall not be applicable in case of co-sharers of property whose share is less than 66.72 sq. metres of land;

**Provided further that the said disqualification shall not be applicable in case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the membership of the housing society concerned; (Amended on 6.8.97)**

(ii) he deals in purchase or sale of immovable properties either as principal or as agent in the



Rule, 1973. It is a stark fact that the petitioner was not a party in the aforesaid CWP No. 4202/2001, as well as in WP(C) No. 9940/2006 by which this Court directed the society to take over the possession of the flat from the present petitioner in terms of order dated 25.08.2009. The aforesaid decision was made without affording any opportunity of hearing to the petitioner, who by all accounts undisputedly has been the *bona fide* purchaser of the flat in question consequent upon the NOC issued by the Society in her favour, pursuant to which the Conveyance Deed was executed and registered on 13.04.2004. The Coordinate Bench of this Court in the case of **Sunil Kumar Dey v. DDA**<sup>9</sup> in an almost similar factual backdrop held as under:

“In view thereof, a solution to the problem would be to issue appropriate directions against Respondent No.3 to deposit the sale consideration to the DDA since the allotment was obtained by the said person in a fraudulent manner. Respondent No.3 was thus directed on the last date of hearing to file an Affidavit. The said Affidavit has been filed and in terms thereof Respondent No.3 has sold the flat to Respondent No.5 for a total consideration of Rs.

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national Capital Territory of Delhi: or

(iii) he or his spouse or any of his dependent children is a member of any other housing society except otherwise permitted by the Registrar.

2. Notwithstanding anything contained in the rules or the bye-laws of the co-operative society, if a member becomes, or has already become, subject to any disqualification specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualifications were incurred.

3. A member who ceases to be a member of a co-operative society under sub-rule (2), shall not be entitled to exercise rights of memberships or incur liability as member with effect from the date referred to in sub-rule (2) but as from the date he becomes a creditor of the co-operative society in respect of the amount due to him on account of paid up share capital, deposit, cost of land deposited or any other amount paid by him to the co-operative society as its member. As from the date of his ceasing to be a member or the society under sub-rule (2), the amount standing to his credit shall be paid to him by the co-operative society within 3 months and when the co-operative society is already under liquidation, the amount due to him will be credited as a debt due to a third party from the co-operative society. (Amended on 24.5.82).

4. If any question as to whether a member has incurred any of the disqualification referred to in sub-rule (1) arises, it shall be referred to the Registrar for decision. His decision shall be final and binding on all concerned. The power of the Registrar under this rule shall not be delegated to any other person appointed to assist the Registrar.

<sup>9</sup> W.P. (C) 1483/2000 dated 25.11.2003



9,25,000/-. Respondent No.3 claims to have spent more than Rs. 2 Lakhs on fitting and fixtures and renovations. Respondent No.3 had paid the consideration of Rs.5,02,875/- to the DDA inclusive of registration and incidental charges. It was thus this cost which was incurred by the petitioner for the purchase of the flat. The differential of these two amounts would thus be the profit amounting to Rs. 4,22,125/-. I am unable to accept the plea of learned counsel for Respondent No.3 that the renovation and other work are also liable to be taken into account and the same be deducted from the profit. Learned counsel further sought to contend that the restriction of ownership of two flats is only to the extent that Respondent No.3 cannot own two flats – one in his name and one benami in the name of his wife. I am unable to accept this contention which is contrary to the policy and in fact to the Affidavit filed by Respondent No.3.

Learned counsel for Respondent No.3 states that Respondent No.3 would have earned interest on the amount invested in the flat as he has been compelled to sell the flat because of the court litigation. This plea can hardly be accepted on behalf of the person who has fraudulently obtained the flat and had in fact prejudiced Respondent No.5 by perpetuating the fraud and selling the flat to Respondent No.5. In view of the aforesaid, I am of the considered view that a direction should be issued to Respondent No.3 to deposit the sum of Rs. 4,22,125/- with DDA within one month from today. In case Respondent No.3 fails to deposit this amount, the same being debt due to the DDA. It is open to DDA to recover the same as arrears of land revenue.

The writ petition is disposed of in the aforesaid terms leaving it open to the DDA to take any other steps against Respondent No.3 arising from the consequences of filing a false Affidavit by Respondent No.3.”

23. Be that as it may, since a registered Conveyance Deed had been executed in favour of the petitioner, the respondent/DDA had no unilateral right to cancel the same. It was rightly submitted that it was a grant under Section 3<sup>10</sup> of the Government Grants Act, 1895 and the same was executed in terms of the policy of the respondent/DDA

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<sup>10</sup> **3. Government Grants to take effect according to their tenor** - All provisions, restrictions conditions and limitations ever contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law statute or enactment of the Legislature to the contrary notwithstanding.



permitting the purchasers of its flats to convert leasehold property to freehold property on the basis of sale documents viz., Power of Attorney, Agreement to Sell etc. It would be appropriate to refer to decision in the case of **Sasikala v. Revenue Divisional Officer**<sup>11</sup> wherein it has been held as under:

“58. From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents, we reiterate the dictum of Hon'ble Supreme Court in Thota Ganga Laxmi v. Government of Andhra Pradesh, reported in (2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Ltd., case, reported in AIR 2011 Mad 66 and inclined to follow the judgment of three member Bench of Hon'ble Supreme Court in Veena Singh's case reported in (2022) 7 SCC 1 and the judgment of two member Bench of Hon'ble Supreme Court in Asset Reconstruction Company (India) Ltd., Case, reported in 2022 SCC OnLine SC 544 for the following propositions:

- (a) A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.
- (b) Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.
- (c) Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.
- (d) The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.
- (e) However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act.
- (f) As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

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<sup>11</sup> 2022 SCC OnLine Mad 4343



(g) The legal principles above stated by us cannot be applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest.”

24. Another decision has been cited by the learned counsel for the petitioner in the case of **Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties**<sup>12</sup>, wherein it has been held as under:

“32. The reasoning in the aforesaid judgment would again expose the incongruous result of Section 31 of the Specific Relief Act being held to be an in rem provision. When it comes to cancellation of a deed by an executant to the document, such person can approach the court under Section 31<sup>13</sup>, but when it comes to cancellation of a deed by a nonexecutant, the non-executant must approach the court under Section 34<sup>14</sup> of the Specific Relief Act, 1963. Cancellation of the very same deed, therefore, by a non-executant would be an action *in personam* since a suit has to be filed under Section 34. However, cancellation of the same deed by an executant of the deed, being under Section 31, would somehow convert the suit into a suit being in rem. All these anomalies only highlight the impossibility of holding that an action instituted under Section 31 of the Specific Relief Act, 1963 is an action in rem.”

25. At this juncture, it would also be appropriate to reproduce the Circular dated 01.10.2007 (Annexure P-9) which reads as under:

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<sup>12</sup> (2021) 4 SCC 786

<sup>13</sup> 31. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

<sup>14</sup> 34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.





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**DELHI DEVELOPMENT AUTHORITY  
LAND SALES BRANCH (RESDL)**

NO. F.11(168)1985/LSB(R)/9446

DATED : 01.10.07

CIRCULAR

It is been decided by Vice Chairman, DDA that in those cases where a person has obtained two properties by filing false Affidavit, the same will be got regularized by charging the current cost from the person who has purchased such a plot / flat and also to file an FIR against the party who has filed false Affidavit. In addition the sale consideration be recovered from the person who has filed the false Affidavit.

Sd/-  
(Sanjeev Kumar)  
Dy. Director (LA)

1. Commissioner (LD)/Housing DDA
2. Director (RL), (Lands), (CL), (Housing) – I & II
3. All Dy. Directors of Land Disposal wing.
4. Dy. Director (Housing) Coordn.
5. Sr. P.S. to Vice-Chairman, DDA
6. Sr. P.S. to Pr. Commissioner, DDA

26. A bare perusal of the aforesaid circular would show that it was provided that if a person has obtained two properties by filing false affidavit, the same could only be regularized by charging the current cost from the person who has purchased such a plot/flat and also to file an FIR<sup>15</sup> against the party who has filed a false affidavit. The circular also empowers the DDA to recover the sale consideration from the person who has filed a false affidavit.

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<sup>15</sup> First Information Report



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27. At this juncture, it would be appropriate to refer to the communication dated 13.08.2010 of the DDA, which was addressed to Shri Ashok Aggarwal, who was claiming cancellation of allotment in favour of the erstwhile owner of the subject property, as well as others with regard to applicability of circular dated 01.10.2007, which is as under:

दिल्ली विकास प्राधिकरण  
DELHI DEVELOPMENT AUTHORITY

दिनांक 13/8/2010  
Dated: 13/8/2010

F.4(366)80/GH/DDA / 7895

To ✓ Sh. Ashok Aggarwal  
B-7/107, Extn.  
Safdarjung Enclave,  
New Delhi-110029

Sub: Applicability of circular dt. 1.10.2007 in CGH Society

Sir

With reference to decision of C.I.C. dt. 7.7.10, I am directed to inform you that matter regarding applicability of circular No. F.11(168)1985/LSB(R) dt. 1.10.2007, was discussed in a meeting, and after discussion it has been decided that the said circular which is applicable in individual plots, will, however not be applicable in Group Housing Societies.

Yours faithfully  
  
(M.L. Alawadhi)  
Dy. Director) GH

Copy to:-

1. Copy forwarded to Central Information Commissioner, Central Information Commission Room No. 308, B, Wing August Kranti Bhawan, Bhikaji Cama Plac, New Delhi-110066, with reference to their decision taken on 7.7.2010 in the case of Sh. Ashok Aggarwal (File No.CIC/LS/A/2010/000455) for information.
2. Sh. Madhav, Advocate, through B-7/107, Extn. Safdarjung Enclave, New Delhi-110029

Dy. Director (GH)

28. To my mind, the aforesaid circular was meant to protect a *bona fide* purchaser of the property belonging to the DDA, where the initial allotment was obtained by the original allottee based on a false affidavit. The word 'properties' is wide enough to include any



properties including land or residential units whether independent or otherwise under the control of any Cooperative Society. Seen from that prospective, the plea that the aforesaid circular dated 01.10.2007 has been superseded by subsequent communication dated 13.08.2010 appears to be arbitrary and illegal exercise of powers.

29. Lastly, there is merit in the plea by the learned counsel for the petitioner that the petitioner is entitled to protection and benefit under the relevant Rules of the Delhi Co-operative Societies Act/Rule, which are as under:

“87. Subject to the provision of this Act, in the case of a cooperative housing society, a person shall also cease to be a member of a cooperative society –

(a) on disposing of the property through instrument of power of attorney and agreement for sale subject to the interest of the mortgagee if there is any loan on the property; or

(b) if he –

(i) before becoming a member of a cooperative housing society, already owns, either in his own name or in the name of his spouse or any of his dependent children;

(ii) after becoming a member in a cooperative housing society, during the currency of such membership, till allotment of any plot or flat to him, as the case may be, acquires either in his own name or in the name of his spouse or any of his dependent children; a residential property exceeding 66.72 sq. meters in area, in any of the approved or unapproved colonies or other localities in Delhi either on lease-hold basis or free-hold basis or on power of attorney or on agreement for sale basis : Provided that no person having residential property under this section in the village abadi area in Delhi shall be disqualified:

Provided further that no such disqualification shall be applicable in the case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the membership of the cooperative housing society concerned :



Provided also that no member shall earn disqualification in clause (b) above, if the residential property devolves on him by way of inheritance.

X X X

**91.** A member of a housing society who has sold his plot or flat on the power of attorney or agreement for sale or by sale deed, shall cease to be a member of that society from the date of the sale of plot or flat:

**Provided** that the purchaser having registered power of attorney or registered agreement for sale or registered sale deed, as the case may be, in respect of such plot or flat, may apply for membership by paying transfer fee of five hundred rupees and share money and admission fee as per the provisions of the bye-laws of the society and the committee shall grant membership to the applicant within thirty days after the submission of his application. In case of refusal by the committee, the applicant may appeal to the Registrar within thirty days and the decision of the Registrar shall be final:

**Provided** further that no purchaser shall be entitled for more than one membership in a housing society.”

30. Suffice to state that on a careful perusal of the aforesaid provisions vis a vis Rule 25 brought w.e.f. 06.08.1997 referred hereinabove, would show that the legislature deemed it fit to protect the persons who bought the property on the basis of sale letters *viz.* Power of Attorney, Agreement to sell, Will, Receipts etc., as was the practice prevailing during the relevant time, and the underline objective was to protect a *bona fide* purchaser of a property belonging or otherwise under the control of the respondent/DDA.

31. In view of the foregoing discussion, the present writ petition is allowed. A writ of certiorari is issued thereby, quashing the letter/cancellation order dated 24.09.2007 and 04.06.2008 followed by subsequent decision *vide* letter dated 13.08.2010 issue by the respondent/DDA thereby cancelling the Conveyance Deed dated 13.04.2004 in favour of the petitioner in respect of flat in question i.e.

