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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1844/2001

New Delhi, this the 4th day of January, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

Shri D.Bhattacharjee
S/o Late Shri N.G.Bhattacharjee
R/o Qr. No.1322, Type-II (M-S)
Timarpur, Delhi - 110 054.

Sr.Acctt. in the office of the
Director of Accounts(Postal)
Delhi - 110 054.

...Applicant

(By Advocate Shri Lokendrajit Paonam,
proxy counsel for Shri S.K.Bhattacharya)

V E R S U S

UNION OF INDIA : THROUGH

1. The Secretary
Ministry of Communication
Dak Bhawan, Sansad Marg.
New Delhi - 110 001.
2. Director of Accounts (Postal)
Delhi - 110 054.
3. Chief Postmaster General
Delhi Circle, New Delhi - 110 055.

...Respondents

(By Advocate Shri R.N.Singh with
Ms.Harvinder Oberoi)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, VC (J)

The applicant is aggrieved by the Memorandum issued by the respondents dated 12-1-2001 rejecting his request for House Building Advance (HBA).

2. The respondents have given two main reasons for rejecting the request of the applicant for HBA, namely,

(i) that the land has been allotted to M/s Gopal Dass Aggarwal Foundation by G.D.A. whereas the purchase of flat is being made from M/s Devidayal Builders and Developers.

(ii) that he has failed to provide the

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Registration Certificate of Builder in accordance with the H.B.A.Rules.

3. Relevant HBA Rules as extracted by the applicant in the OA are as follows :-

"(4-1) "Private parties" do not include private individuals - A point has been raised whether "private parties" referred to in the aforesaid OM include individual house builders.

2. The matter has since been examined in this Ministry and it is clarified that the "private parties" include registered builders, architects, house building societies, etc., but not the private individuals. Therefore, House Building Advance is not admissible to Government servants, for purchasing a house/flat from a private individual, irrespective of its being urban or rural areas".

4. During the course of hearing, Shri Lokendrajit Poanam, learned proxy counsel for the applicant has frankly admitted that M/s Devidayal Builders and Developers, Ghaziabad who are building the residential colony in question, for which the applicant had sought HBA, are not registered builders. However, he places much reliance on an agreement dated 1-6-1989 entered into between M/s Gopal Dass Aggarwal Foundation (hereinafter called as the Foundation), which is a public charitable trust with M/s Devidayal Builders and Developers, an association of persons having its office at Bombay, (copy of the agreement is placed at pages 16-21 of the paper book). We note that the Agreement for Sale dated 3-7-2000 is between M/s Devidayal Builders and Developers, Bombay and the applicant, which admittedly is not a registered builder. The reliance placed by the learned counsel for the applicant on the agreement dated 1-6-1989 between the Foundation and Devidayal Builders and Developers, Bombay will, therefore, not assist the

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applicant. In other words, we are not satisfied that the applicant has complied with the statutory requirements of the HBA Rules, wherein a clarification has been given that "private parties" do not include private individuals but include registered builders, architects, house building societies etc. Therefore, unless and until, the applicant satisfies the requirement of the provisions of the HBA Rules, no such declaration as sought for by the applicant in the OA can be granted that he is entitled to HBA from the Govt. The fact that the Foundation is the owner of the land and is a registered body is of no avail to the applicant in view of the fact that the Builder is not a registered builder under the provisions of the HBA Rules.

5. Another argument advanced by the learned counsel for the applicant was based on a document placed at pages 37A & B of the paper book. This appears to be an extract of the register of Devidayal Builders and Developers, Ghaziabad. His contention is that at least one person, namely, Shri P.Dabral who is at Sl.No.22 has obtained a loan from the Govt. of India, Ministry of External Affairs. Apart from the fact that this document is not signed as a true copy of the extract it is only some document in the letter head of M/s Devidayal Builders and Developers. As correctly pointed out by Shri R.N.Singh, learned counsel for the respondents, it is also not clear under what circumstances, the Ministry of External Affairs had granted the loan. Learned counsel for the applicant has also relied on the sanction letter issued by the Ministry of External Affairs dated 10-3-1998. Shri R.N.Singh, learned counsel has

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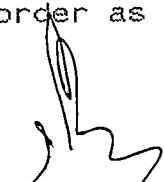
submitted that this sanction is not in accordance with the HBA Rules, for the reason that the Builders are not registered builders who have made the demand in the case of the applicant. He has submitted that even if such sanction for HBA has been given to another officer in another Ministry, that would not entitle the applicant to similar sanction of HBA contrary to the Rules. He has stressed on the clarification issued that HBA can be given only to registered builders and not to other builders, who are not registered. As mentioned above, learned counsel for the applicant does not deny the fact that Devidayal Builders and Developers are not registered builders, in favour of whom the applicant has requested for HBA. In the facts and circumstances, we see merit in the submissions made by Shri R.N.Singh, learned counsel. The respondents cannot be compelled to grant the HBA to the applicant unless and until he complies with the statutory requirements, which he has not done in the present application. Therefore, the documents placed at page 37A & B will also not assist the applicant. It is settled law that in such financial matters, the Rules have to be strictly construed even in the HBA Rules, which may be taken as a welfare measure for Govt. servants.


6. In the facts and circumstances of the case, we are unable to agree with the contentions of the learned counsel for the applicant that the action of the respondents is either illegal or arbitrary, wherein they have insisted upon the applicant fully complying with the HBA Rules before sanctioning the advance. We have also considered the other submissions made by the learned counsel for the

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applicant but do not find any merit in the same.

7. In the result for the reasons given above,
the OA is fails and is accordingly dismissed. No
order as to costs.


(GOVINDAN S. TAMRI)
MEMBER (A)


(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)

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