

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No. 11676/2005

□

□ **Dated: 31.03.2006**

□

□ **Present:** Ms. Roma Bhagat with Ms. Anuradha, Advs. for petitioner.

□ Mr. G. S. Sistani, Adv. with Ms. Achi Sharma, Adv. for NCT.

□ Mr. Ajay Verma with Mr. Amit Mehra, Adv. for DDA.

Mr. S. K. Dubey with Ms. Rachit Mishra, Adv for R-1, 3 and 4.

□

ORDER

□

□ 1. Costs have been paid.

□ 2. Rule. Heard for disposal.

3. Petitioner is the father and natural guardian of Jitesh Singh. □ Petitioner states that his son suffers from a mental disability. Petitioner states that within his means he has provided to his mentally handicapped son □ whatever he could. He has been sending his son to a school where education □ could be imparted to mentally challenged children. According to the petitioner, □ DDA has a policy notified on 17.11.2003. The said policy gives benefit of □ preferential allotment at concessional rates of houses and land to physically □ handicapped persons, but denies benefit to mentally challenged persons.

□ 4. According to the petitioner, there is no reason why mentally ill or one □ may use the phrase mentally handicapped persons may not be included within the aforesaid scheme.

5. Stand taken by DDA was that as and when it notifies for allotment □ built-up structures, a percentage thereof is reserved for ex-servicemen, freedom □ fighters, physically handicapped and those whose lands are acquired. Qua the □ persons with physical disability, it is stated that at least 40% physical disability should be suffered, as certified by a Government Doctor. It is stated that this allotment is at a predetermined rate.

6. Counter affidavit filed by the Union of India draws attention of this □ Court to a revised policy notified by DDA under directions and approval of the □ Government of India, Ministry of Urban Development. The policy decision dated 19.4.2004 refers to physical handicapped persons. However, learned counsel for □ Union of India, in reference to the affidavit filed by Sh. S. N. Gupta, Under □ Secretary, Ministry of Urban Development states that under the umbrella of a □ physically handicapped person all those with a disability as defined in Section □ 2(1) of the Persons with Disability (Equal Opportunities, Protection of Rights □ and Full Protection) Act, 1995 would be covered, meaning thereby, that a person □ suffering

from mental retardation or mental illness would also be covered under the umbrella of a physically handicapped person.

7. If that be the way policy notified on 19.4.2004 has to be read, learned counsel for petitioner states that a clarificatory/declaratory order may be passed declaring that policy dated 19.4.2004 annexed as Annexure A to the affidavit filed by Sh. S.N.Gupta on behalf of Union of India would apply to persons with mental illness or mental retardation. 8. In view of the stand taken by counsel for Union of India and as is projected in reference to the affidavit filed by Sh.S.N.Gupta, I hereby declare that the policy dated 19.4.2004 No. F.1(15) 2003/N-C (H)/49 would be applicable to persons suffering from mental illness or mental retardation.

9. Needless to state, as per a scheme and relying upon the certificates in favour of his son, petitioner would be entitled to apply as and when DDA notifies applications for allotment of land/built-up structures in the reserved categories.

10. Since son of the petitioner is stated to be suffering from mental retardation, learned counsel for petitioner wants it to be recorded that DDA should not raise a issue that petitioner's son should apply as counsel states that under the general laws of the Land, son of the petitioner would have to be treated as a minor or a person who has to act through a guardian for the reason his son is unable to take decision for himself and in law would not be competent to enter into the contract.

11. Counsel for DDA likewise seeks a clarification that the present order/direction should not be read as a mandamus to DDA to allot a built-up structure/land for the reason as and when applications are invited, if number of applicants are more, subject to eligibility of the applicants, names are entered at a draw of lots and the lucky one gets the built-up structure/land.

12. Learned counsel for petitioner wants a direction to be issued that schemes which have been notified by DDA during pendency of the writ petition and where draw of lots have not been held should be made applicable for participation by the petitioner.

13. Learned counsel for DDA points out that this would create administrative chaos for the reason DDA has finalised procedural formalities to hold draw of lots. Secondly, counsel states, that some cases were disposed of with consent after it surfaced that DDA would restrict the number of participants at a draw to an equal number of shops to be allotted, meaning thereby, each applicant was assured a confirmed allotment.

14. I concur with the submissions made by Counsel for DDA. There is every possibility of administrative chaos resulting if petitioner is permitted to participate in the existing schemes, last date of receipt of application whereof has expired.

□

15. Petition stands disposed of with the directions issued in para 7 and

8. Above. I clarify that petitioner would be permitted to act on behalf of his son Jitesh in the future schemes notified by DDA and subject to determining eligibility name of petitioner's son would be included at a draw of lots.

16. No costs.

17. Dasti.

March 31, 2006 PRADEEP NANDRAJOG, J.