

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

+ LPA NO.82/2008 & CMs 2693/08 (delay) & 2691/08 (stay)

Reserved on: 7th July, 2008

Date of Decision : 8th August, 2008

DDA

.....Appellant

Through

Ms. Monica Sharma, Adv.

versus

JAGDISH CHOPRA

.....Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

JUDGMENT

08-08-2008

: MUKUL MUDGAL, J.

1. The present Letters Patent Appeal arises from the judgment and order dated 17th August 2007 passed by the learned single Judge in Writ Petition (C)

No.20246/2005, wherein the learned Single Judge had issued directions to the appellant authority to “consider the case of the respondent as one of an automatic cancellation followed by the request for restoration of the allotment on delayed payment of about slightly over a month.” The appellant authority was also directed to hold a mini draw and allot a flat to the respondent at the cost which was prevalent in June-July, 2000.

2. The brief facts of the case are as follows:

a) The respondent applied for an LIG flat under the New Pattern Registration Scheme 1979 (NPRS) with the appellant, Delhi Development Authority (DDA) and gave his address as F-72, Outram Lane, Kingsway Camp, Delhi.

b) According to the respondent after shifting his address to House No. 297, Block 18, Dakshinpuri, Madangir, Delhi he informed the appellant on 14.9.1995 of the change of address. The appellant, however, disputes this.

c) A further intimation was given on 11.3.1999 which was received by the appellant on 15.3.1999. The latter communication is not disputed by the

appellant.

d) The respondent again changed his address to House No. 166, F-1, Madangir, Delhi-110 062 and according to him he informed the appellant of this change of address on 12.4.1999. He has produced the photocopy of the said letter with initials by way of acknowledgment dated 15.4.1999 which according to him is that of the appellant.

e) The next communication by the respondent to the appellant was on 30.10.2000 stating that he had yet not heard about the allotment of flat to him. He gave his address as House No. 166, F-1, Madangir. The receipt of this communication is admitted by the appellant.

f) In the meanwhile, the respondent's allotment had matured in a draw of lots held on 28.3.2000. A demand-cum-allotment letter with block dates of 30.6.2000 to 7.7.2000 was sent to him at the address at House No.297, Block 18, Dakshinpuri, Madangir, Delhi. In this letter it was indicated that the allotment, which was on cash down basis, was liable to be automatically cancelled if the payment was not made within 30 days i.e.,

6.8.2000 or, together with interest on or before 5.10.2000. The appellant claimed that this letter, which was sent by courier, was not delivered back to the appellant as unserved, and therefore it was presumed that the respondent had been duly intimated of the allotment by the deemed service of such letter.

g) The factual situation, therefore is that when the respondent approached the appellant on 30.10.2000, he had crossed the deadline for making payment by about 25 days.

h) The appellant authority vide letter dated 13th November, 2000 informed the respondent about the cancellation of the allotment made in his favour and called upon him to submit the original documents for refund of the registration amount as the allotment stood cancelled due to the non fulfillment of the terms and conditions of the demand cum allotment letter.

i) The respondent made several representations to the appellant as on 30th November, 2000, 10th January 2001, 13th July 2001, 4th October 2001, 4th June 2002, 24th July 2002 and 22nd February 2004 and thereafter filed the writ petition.

j) The learned Single Judge in his judgment/order dated 17th August 2007 in Writ Petition (C) No.20246/2005 had issued directions to the appellant authority to consider the case of the respondent as one of an automatic cancellation followed by the request for restoration of the allotment on delayed payment. The appellant authority was also directed to hold a mini draw and allot another flat of the same category and size in the same locality to the respondent, at the cost which was prevalent in June-July 2000 within a period of six months from the date of judgment.

k) The appellant being aggrieved by the findings of the learned Single Judge has filed the present Letters Patent Appeal.

3. The learned Single Judge in his judgment/order dated 17th August 2007 inter alia held as follows:

“13. This Court finds that without entering into the controversy whether the change of address intimated by the Petitioner was in fact recorded by the DDA, the matter could be decided on certain admitted facts.

14. Even the DDA does not dispute that on 30.10.2000 it received intimation of the change of

address. Even assuming that the automatic cancellation came into effect on that very date, it could not have been difficult for the DDA to inform the Petitioner that it will be willing to restore the allotment by treating the payment of the Petitioner thereafter as a case of delayed payment. Admittedly the delay as of that date was only 25 days beyond the deadline of 5.10.2000 as indicated in the demand-cum-allotment letter.

15. However, the DDA does not appear to have adopted such an approach. In response to the numerous representations made by the Petitioner on 30.11.2000, 10.1.2001, 13.7.2001, 4.10.2001 and 22.2.2004, the response of the DDA has been to treat the case as a cancelled allotment which could not be restored. The Petitioner was informed on 1.4.2002 that the case had been placed before the competent authority and had been rejected. The Petitioner thereafter made further representations on 4.6.2002, 24.7.2002 and also had a legal notice issued to the DDA on 11.3.2003. Thereafter, he filed the present writ petition.

16. The narration of facts hereinabove indicates that the approach of the DDA in the matter was not reasonable. It could have easily, even according to its own case, treated the case as one of an automatic cancellation of allotment followed by a delayed payment. The Petitioner was ready and willing to take the allotment of the flat at the time he informed the DDA on 30.10.2000 of the change of address. In the numerous representations made after knowing of the cancellation of the allotment, the Petitioner kept asking for the allotment to be made to him. Therefore, the DDA ought to have

considered this as a request for restoration. It should have applied its Policy dated 1.6.2000 as further modified by the policies dated 31.8.2001 and 3.6.2005, and processed the petitioner's case thereunder.

17. The delay was not so extraordinary that it could not be condoned. Mr. Saini says that it is a normal practice of the DDA to permit at least three months' time beyond the time indicated in the demand-cum-allotment letter for making payment. In this case the delay was only of 25 days. Even if it is assumed that the petitioner may have required about 10 days thereafter to arrange the funds, the total period of delay would not be over 45 days. Considering that this is the case of delayed payment this Court is of the considered view that the delay of 25 days in the Petitioner approaching the DDA for the allotment of the flat to him could have easily been condoned. In other words it should have easily been possible for the DDA, in terms of the above policies dated 1.6.2000 as modified by the revised policies dated 31.8.2001 and 3.6.2005, to have condoned the delay and restored the allotment.

18. Accordingly a direction is issued to the DDA to consider the case of the Petitioner as one of an automatic cancellation followed by the request for restoration of the allotment on delayed payment of about slightly over a month. It is directed that the DDA will process the case of the Petitioner on the basis that the delay in making payment has been condoned subject of course to the Petitioner making payment within the time to be stipulated in the fresh demand letter. The DDA will allot the

Petitioner either the flat in question if it is available, and if not, the DDA will hold a mini draw within a period 6 weeks from today, and allot another flat of the same category and size in the same locality within a period of 6 weeks thereafter. On the basis that the delay which has been condoned is for a period slightly over one month the DDA will collect the restoration charges and also charge interest for such period of delay. The cost of the flat will be that indicated in the demand letter already issued to the Petitioner with block dates of 30.6.2000 to 7.7.2000. This is further subject to all other formalities including proof of identity being satisfied by the Petitioner.”

4. The learned Single Judge in his judgment/order dated 17th August 2007 had held that the narration of facts indicates that the approach of the DDA in the matter was not reasonable. We are unable to differ with the findings of the learned Single Judge as the appellant should have treated the case of the respondent as one of an automatic cancellation of allotment followed by delayed payment. The respondent was ready and willing to take the allotment of the flat. He even informed the DDA on 30th October 2000 about the change of address. The respondent after knowing of the cancellation of the allotment kept asking for allotment to be made to him in numerous representations made

to the Appellant on 30th November, 2000, 10th January 2001, 13th July 2001, 4th October 2001, 4th June 2002, 24th July 2002 and 22nd February 2004. The appellant should have, in our view, as rightly held by the learned Single Judge applied its policy dated 1st June 2000 as modified by the revised policy dated 31st August 2001 and 3rd June 2005 and ought to have considered the request of the respondent for restoration.

5. The learned Single Judge also directed that the delay of 25 days could have been easily condoned by the appellant and it would have been easily possible for the appellant in terms of the policy dated 1st June 2000 as modified by the revised policy dated 31st August 2001 and 3rd June 2005 to have condoned the delay and restored the allotment. We do not find any infirmity with the findings of the learned Single Judge as the assertion that it was normal practice of the appellant DDA to permit at least three months time beyond the time indicated in the demand-cum-allotment letter to make the payment has not been countered. This has also been done by relying on the policies of DDA dated 31st August 2001 and 3rd June 2005. We have not been shown any

reason why these policies do not apply in the present case. In this case, the delay was only of 25 days and even to raise the funds and other requisite documents the total period of delay would not have been over a period of 40 days. Therefore, the treatment of the case of the respondent as a cancelled allotment, which could not be restored by the appellant, cannot be justified even on this ground.

6. The learned counsel for the appellant Ms. Monica Sharma, contended that the respondent had changed his address from House No. 297, Block-18, Dakshin Puri, Madangir, Delhi to House No. F-1/166, Madangir, Delhi. The appellant did not ever receive any letter from the respondent for incorporating the new residential address of the respondent in its records. The appellant had sent the demand cum allotment letter and show cause notice at the address which was intimated by the respondent and did not receive back any of the letter/notices unserved. It is admitted case of the appellant itself that this letter which was sent by courier was not delivered back to the appellant as unserved. A mere presumption of the receipt of a letter which was not delivered back to

the appellant cannot lead to a drastic penalty of cancellation of allotment.

7. This Court in **Madan Lal Mokhawal v. Delhi Development Authority**,

decided on 21st February 2005 in Writ Petition (C) No.15212/2004, has held

that such demand letters should be sent by registered post as under:

“11. The discussion with regard to service in my view has to be the back-drop of the provisions under the Delhi Development Act. Section 43 of the Act deals with service of notices etc. under the Act. The relevant portion of the Act is extracted below:

“43(1) Service of notices, etc. -
All notices, orders and other documents required by this Act or any rule or regulation made thereunder to be served upon any person shall, save as otherwise provided in this Act or such rule or regulation, be deemed to be duly served-

(a) x x x
(b) x x x
(c) x x x
(d) in any other case, if the document is addressed to the person to be served and-

(i) is given or tendered to him, or
(ii) if such person cannot be

found, is affixed on some conspicuous part of his last known place of residence or business, if within the [National capital territory of Delhi] or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates, or
(iii) is sent by registered post to that person.”

12. Section 43 (1)(a)(b)(c) deal with different eventualities. Sub-clause (a) deals with service on a Company; sub-clause(b) deals with service on a partnership and sub-clause(c) deals with service on a public body or Corporation/Society. The mode of service in the case of others namely, which include individuals in the present case is specific. It requires in the first instances personal service upon the noticee. In the event of the person not being found, the mode of affixation is permitted. The only other mode recognized is through registered post. It may be kept in mind that the strict letter of Section 43 may not, *prime facie*, be applicable, as the notices are not statutory. Yet, it is to be remembered that DDA is an authority created under the Act. Its schemes, including the scheme under consideration are formulated in exercise of its statutory powers. Hence, the standards prescribed under the Act, norms imposed by the statute, and would bind the DDA. Consequently, failing the mode of a personal tender of the communication, the DDA cannot escape its obligation to serve the notice of

allotment as indeed a demand-cum-allotment letter is, to every registrant, through registered post.

13. It may also be useful to notice Section 27 of the General Clauses Act which expands on the expressions “serve” “give” and “send” respectively. It enacts that unless a contrary intention appears the service in such cases would be deemed to be effected by properly addressing, pre-paying and posting by registered post a letter containing the document and unless the contrary is proved it shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post. A joint reading of Section 43 of the Act and Section 27 of the General Clauses Act, therefore, clearly obliges the DDA to ensure that every registrants in its Schemes are intimated through registered post.”

This not having admittedly been done by DDA, any punitive action against the respondent based upon such a letter sent by courier which was presumed to have been delivered cannot be sustained. If a courier is resorted to it can only be in addition to the normal mode of service and in any event the documentation of the courier agency must demonstrate that the service was duly effected on the addressee. Since the very foundation of the impugned action against the respondent is based upon a flawed presumption of the

service of the demand letter, the cancellation of the respondent's allotment could not be sustained. The appellant is unable to inform the court even today of the exact date of the dispatch of this letter of allotment and the very fact that the demand-cum-allotment letter was sent by courier and not through registered post goes against the appellant and is contrary to the position of law as laid down by the judgment of this court in **Madan Lal's** case (supra).

8. The Hon'ble Supreme Court while dealing with the question of an appellate court in an intra-court appeal interfering with the exercise of discretion under an appeal in the case of **B. Venkatamuni v. C.J. Ayodhya**.

Ram Singh, (2006) 13 SCC 449, held as follows:

“11. In an intra-court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but the following dicta of this Court in *Umabai v. Nilkanth Dhondiba Chavan* could not have been ignored by it, whereupon the learned counsel for the respondents relied:

“52. It may be, as has been held in *Asha Devi v. Dukhi Sao* that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is

discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint.”

12. In the said decision, it was further noticed:

“50. Yet in *Manjunath Anandappa v. Tammanasa* it was held:

‘36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.’ ”

In our view, the learned Single Judge in exercise of his jurisdiction and discretion has taken a reasonable and plausible view in the judgment and order dated 17th August 2007 and no case at all is made out for this Court to reverse the findings of the learned Single Judge, particularly where the direction of the learned Single Judge subserves the interests of justice. Public bodies such as DDA must deal with citizens in a reasonable manner and not find ways and means to find reasons to deny allotment on flimsy grounds such as presumed service as done in the present case.

9. The learned Single Judge in paras 10, 11 and 13 of his judgment and

order dated 17th August 2007 held as follows:

“10. There are two approaches that could be adopted in the present matter. One is to ascertain if the fault lay with the DDA in not taking note of the change of address, and even after taking note of change of address, in sending allotment letter to the old address. One set of consequence will flow if the fault is with the DDA. There are the policies of the DDA as expressed in its Office Order dated 25.2.2005 and 13.2.2006 for such contingencies.

11. The second approach is to proceed on the assumption that the fault lay with the Petitioner in not informing the DDA of the change of address till 30.10.2000. If the automatic cancellation of the allotment ensued, and the Petitioner was seeking restoration of the allotment thereafter, then there are another set of DDA circulars/resolutions dated 1.6.2000, 31.8.2001 and 9.6.2005, that would become applicable.

13. This Court finds that without entering into the controversy whether the change of address intimated by the Petitioner was in fact recorded by the DDA, the matter could be decided on certain admitted facts.”

The learned Single Judge, in our view, had rightly held that the matter could be decided on certain admitted facts without going into controversy whether the change of address as intimated by the respondent was recorded by the appellant or not. The respondent had on 30th October, 2000 approached the

appellant stating that he has not heard about the allotment of flat to him and given his house address as House No.166, F-1, Madangir. However, the allotment was cancelled on 30th October 2000. It was a grave error on part of the appellant that on the very day that it received the intimation from the respondent about the change of address at a public hearing, it cancelled the allotment made to the respondent, which cannot be justified on any ground. The respondent should have applied its policy dated 1st June 2000 as modified by the revised policies dated 31st August 2001 and 3rd June 2005 and ought to have considered the request for restoration made by the respondent in his numerous representations. The action of the appellant cannot be justified on any ground and the case of the respondent deserves to be treated as one of an automatic cancellation followed by the request for restoration of the allotment of the flat on delayed payment of about slightly over a month. The respondent deserves to be allotted another flat of the same category and size in the same locality subject to terms. In any event, the exercise of jurisdiction and discretion by the learned Single Judge is not so unreasonable so as to warrant

interference in this Letters Patent Appeal, as held by the Hon'ble Supreme court in the case of **B. Venkatamuni** (supra).

10. In this view of the matter, we see no reason for differing from the findings as given by the learned Single Judge and accordingly, the appeal is dismissed along with the pending applications. The appellant is directed to comply with the judgment / order dated 17th August 2007 of the learned Single Judge on or before 12th September, 2008.

(MUKUL MUDGAL)
Judge

(MANMOHAN)
Judge

August 08, 2008
dr/sk