

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1977/2007

V.K.MALHOTRA

..... Petitioner

Through Ms.Richa Kapoor, Adv.

versus

D.D.A.

..... Respondent

Through Mr.Vibhu Shankar, Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% 10.03.2008

1. In 1995, the petitioner was registered under Expandable Housing Scheme on payment of Rs.15,000/- towards application money. In 1995, he was allotted a flat in Dwarka but the petitioner did not avail of the said allotment allegedly on the ground that basic amenities were not available to the said

locality. DDA accepted this factual position and on 1st September, 2000 issued a letter to the petitioner that the Competent Authority had acceded his request for allotment of another flat at Dwarka at current cost.

2. In October, 2000, the petitioner was allotted flat No.257, Sector-13, Pocket-1, Phase 1, Dwarka and a demand cum allotment letter with block dates 30.10.2000 and 04.11.2000 was issued. As per the said letter, the disposal cost of the flat was Rs.3,88,400/-.

3. It appears that immediately thereafter, the CBI registered a case against the Officers of the DDA and some property dealers for irregularities in allotments made in Expandable Housing Scheme, 1995. 48 files including file of the petitioner were requisitioned, investigated and scrutinized by CBI. CBI thereafter filed a charge sheet in the Court against Officers of DDA, property dealers and allottees. However, upon investigation, the petitioner Mr.V.K.Malhorta, was completely exonerated and the charge sheet specifically mentions as under:-

“During the investigation no evidence came forth which could establish the linkage of S/Sh. Puran Chand, VK Malhorta and Ms. Nirmal Gupta with any of the property dealers.”

4. In spite of the charge sheet giving clean chit to the petitioner, DDA refuses to make allotment of the flat to the petitioner. Repeated representations were made but without success. The petitioner also sent legal notice but no

response was received. Thereupon the petitioner move an application under Right to Information Act and by the letter dated 4th January, 2007, the petitioner was informed that the flat in question which was allotted to the petitioner was cancelled on account of failure to pay the demanded amount and was allotted to Mr.S.K.Kaul in the draw held on 5th September, 2002 and therefore, Mr.V.K.Malhotra is not entitled to the said flat. In the counter affidavit filed by the DDA, a similar stand has been taken. It has been stated that allotment made in favour of the petitioner was cancelled and the flat in question was re-allotted to Mr.S.K.Kaul in the draw of lots held on 05.7.2002. It is however, admitted that the file in question was taken by CBI/ACP for investigation in the criminal proceedings. It is also not disputed that the petitioner has been fully exonerated and there is no evidence to show that the petitioner was involved in any wrongful or illegal act to ensure allotment of flat.

5. The petitioner in the rejoinder affidavit has filed copy of data downloaded from the website of DDA. Details show that Mr.Sanjay Kumar Kaul was allotted flat No.257, Category A, Sector 13, Pocket -1, Phase 1, Dwarka, which is a different flat from one that was allotted to the petitioner. The downloaded data from DDA website further reveals that the flat in question is still registered and stand allotted to the petitioner and not to any third person. This is clear from Annexure P1 at page 65 of the rejoinder affidavit.

Confronted with the said evidence DDA has now admitted their fault in the sur-rejoinder filed by them. It is however, stated that it is a case of bonafide mistake as Mr.Sanjay Kumar Kaul was allotted a flat at Dwarka in Pocket 1, Phase 1, Mayur Vihar, Delhi and the flat allotted to the petitioner is in Phase-II. It is difficult to believe that it is a case of bona fide mistake as Officers of DDA are aware that Dwarka has separate Sectors and Phases. However, I will give benefit of doubt to the Officers of DDA.

6. The next question which arises for consideration is whether the petitioner should be asked to pay current cost or should be allotted a flat on the basis of allotment letter dated 1st September, 2000. It is not denied by DDA that in October, 2000, the file of the petitioner was taken aware and requisitioned by CBI and later after investigation CBI has given a clear chit to the petitioner. The petitioner has also mentioned in the writ petition that file of Ms.Nirmal Gupta was requisitioned by CBI but she too exonerated and thereafter Ms.Nirmal Gupta was given possession of the flat , which was allotted to her. The petitioner has been writing letters to the DDA from July, 2002 onwards requesting them to confirm the allotment and give him possession of the flat. Several such letters have been placed on record. DDA by letter dated 03.8.2003 had informed the petitioner that his case would be taken up for

consideration after file is received back from CBI. In these circumstances,, it is directed as under:-

1) DDA will get re-confirmation from the CBI whether the petitioner has been given a clean chit and has been exonerated in RC No.DA1-2000-A062 registered on 5th November, 2000. The aforesaid exercise will be completed within one month from today, If required, Officers of DDA will personally visit the office of CBI.

2) Based upon the response by the CBI, afresh demand cum allotment letter will be issued to the petitioner on the basis of disposal cost of Rs.3,88,400/-.

3) The petitioner will be liable to pay simple interest @ 12% per annum of Rs.3,88,40/- with effect from 1st December, 2000 till 31.3.2008. No further interest will be payable w.e.f. 1st April, 2008 till fresh demand cum allotment letter is issued by the DDA and thereafter interest will be payable as per the policy of DDA. No interest is being paid after 1st April, 2008 till allotment letter, to ensure early response from DDA.

With the above observations and directions, the writ petition is disposed of.

DASTI.

SANJIV KHANNA,J

MARCH 10, 2008

RN/vld