

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

+ **W.P.(C) 2239/2007**

% **Date of Decision: 30.07.2008**

YASHODA DEVI Petitioner
Through: Ms. Richa Kapoor, Advocate

versus

D.D.A. Respondent
Through: Ms. Manika Tripathi, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J. (Oral)

1. The petitioner was registered under NPRS 1979 for allotment of one LIG flat under Scheduled Caste quota. Her priority number was 131. The petitioner was allotted a flat in Jhilmil, Delhi. She was not interested in accepting that allotment and consequently, surrendered the same and paid Rs.3200/- as cancellation charges. In the year 1991, the petitioner was made an allotment of one LIG flat in Nand Nagri. Admittedly, the allotment letter was sent at a wrong address and was consequently, not received by the petitioner. The petitioner approached the respondent in the year 2003 upon learning of the issuance of the allotment letter on a wrong address. On

15.07.2008 the respondent issued letter to the petitioner stating that the petitioner's request regarding allotment of the LIG flat has been accepted by the competent authority and the petitioner shall be allotted one LIG flat in the same zone at the rates prevalent at the time of original allotment. The petitioner was thereafter issued a demand-cum-allotment letter with block end date 30.10.2006 in respect of the draw of lots held on 24.11.2004, wherein the petitioner was allotted flat No.541, Second Floor, Pocket-5, Mayur Vihar. The respondent demanded Rs.10,80,181/- towards initial deposit and balance was payable in instalments. Aggrieved by the cost of the said flat demanded by the respondent, the petitioner has filed this petition.

2. The submission of learned counsel for the petitioner is that the respondent could not have charged interest on the original cost. She submits that at the relevant time the policy of the DDA which covered cases where allotment letters had been sent at the wrong address, did not provide for charging of any interest. Reliance has been placed on the policy contained in précis dated 20.12.2002 Item No.108/2002 on the subject "*Cost to be charged in the cases of double allotment and in the cases where demand cum allotment letters sent on wrong addresses to the allottees F.21(Misc.)9/Int/HAC/ 2001*".

Paragraph 3 of the said précis reads as follows:

"3. Now the proposal is to charge only the old cost of the allotted flat in cases where demand letter has been sent at wrong address. In case the original allotted flat has been cancelled and some other flat is to be given than old cost will mean charging the same plinth area rate of construction and same land rate prevailing at the time of original allotment.

Besides since there is a financial loss to DDA, responsibility will be fixed of the concerned officials.”

3. Learned counsel for the petitioner submits that respondent by deliberately delaying the issuance of the demand-cum-allotment letter after holding of the draw (which was held on 24.11.2004) could not rely upon their new policy to impose interest @ 12% p.a. which was introduced on 25.05.1995 vide office order No.F-2(13)96-COORGN.P.Pt.1. She also relies on the decision of this Court in W.P.(C) No.12874/2006 “**Harbans Lal Chakravarti v. Delhi Development Authority**” decided on 04.04.2007 and W.P.(C) No.636/2007 “**Kiran Arora v. Delhi Development Authority**” decided on 09.07.2008.

4. On the other hand, learned counsel for the respondent submits that at the time when the draw of lots was held, the formulation of the new policy was under consideration and consequently, the demand-cum-allotment letter was issued after the new policy dated 25.02.2005 had come into force.

5. In my view, there is merit in the submission of the petitioner that the respondent could not have invoked its changed policy brought into force on 25.02.2005 in respect of the petitioner’s case. Admittedly, the policy prevalent since 2002 was that in such like cases where demand letters were sent to the wrong address, the allottees were not being charged any interest and the allotment was being made at the cost, which was prevalent at the time when the priority of the allottee matured. This policy continued to remain in

operation at the time when the communication dated 15.07.2003 was issued and even thereafter, till the time when the draw of lots was held in which the petitioner was allotted the aforesaid flat. Once the petitioner had succeeded in the draw of lots, the respondent could not have held back the demand-cum-allotment letter merely to await the formulation of the new policy. In any event, the new policy could not have been given retrospective effect and the same could only operate prospectively it being an administrative decision of the respondent. The proposition finds support from the decisions cited by the petitioner.

6. I, therefore, allow this petition and direct the respondent DDA to raise fresh demand-cum-allotment letter in respect of the aforesaid flat in favour of the petitioner on the basis of the cost prevalent in the year 1991 when the priority of the petitioner matured. In case there is any excess area in the flat compared to the area of the flat allotted to the petitioner in the year 1991 of which demand-cum-allotment letter was sent at the wrong address, for the additional area the petitioner would pay the rate prevalent in the year 2004 when the draw was held. The fresh demand-cum-allotment letter should be issued by the respondent within four weeks.

7. With these directions, the petition stands disposed of.

VIPIN SANGHI, J.

JULY 30, 2008
rsk