

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

+ **W.P.(C) 2910/2007**

P.C.MALIK Petitioner
Through Counsel

versus

D.D.A. & ORS. Respondent
Through Ms. Sangeeta Chandra, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
27.03.2008

1. The petitioner was registered under NPRS scheme, 1979 with deposited Rs. 4500/- for allotment of a MIG flat. It is the case of the petitioner that he did not receive allotment.
2. The respondent/DDA in their counter affidavit have stated that a demand cum allotment letter dated 7.3.1993 was issued and the petitioner was allotted flat no.150A, Ground Floor, Phase-II, Pocket-M, Mayur Vihar, New Delhi but the said letter was returned back with remark 'no such person'. No other address was available in the record of DDA.

3. It is however, admitted that DDA thereafter did not send any show cause notice or try to confirm whether petitioner was residing at the said address.
4. On 6.5.1996 the petitioner approached DDA for restoration of the aforesaid allotment of the MIG flat at Mayur Vihar. By letter dated 21.8.1996 the petitioner was informed that his registration could be restored by placing him at tail end priority provided he paid cancellation charges of Rs.11,694.45. The said letter is written by Deputy Director (Housing), MIG. The petitioner deposited the aforesaid amount Rs.11,694.45 and informed DDA vide his letter dated 3.9.1996. In response thereto by letter dated 22.4.1997, DDA confirmed that the registration of the petitioner was restored and he had been issued fresh priority no.38936 against his registration number 11476.
5. In the counter affidavit DDA admits that letters dated 21.8.1996 and 22.4.1997 were written by DDA to the petitioner. The receipt of Rs.11,694.45 is also admitted. It is also admitted that the registration amount of Rs.4500/- and Rs.11,694.45 have not been refunded to the petitioner. The stand now taken by the DDA in the counter affidavit is that both these letters were wrongly written. This stand was taken for the first time in 2007, after having retained the registration money from 1979 and restoration charges from 1996. The ground taken is that there

was an internal circular which was issued by the Vice Chairman on 31.1.94 pursuant to which it was decided that restoration would not be granted and no case would be put in the tail end priority. The circular referred to above is an internal circular which was never communicated and informed to any of the registrants. DDA by writing letter dated 21.8.1996 made an offer to the petitioner that his registration shall be restored if he paid Rs.11,694.45. The petitioner deposited the said amount and concluded contract came into existence. The payment was accepted. DDA confirmed payment and re-issued fresh priority no.38936. Even if there was some mistake; it should have been immediately corrected and the petitioner should have been informed. The respondents cannot now after a lapse of more than 11 years from 1996 and 28 years after 1979 state that the registration of the petitioner is canceled and he is not entitled to any allotment. The respondent/DDA is bound by his own conduct and the concluded contract which has come into existence. Concluded contract cannot be varied because of some internal circular.

6. It is not the case of the respondent that under any statute, rules or regulations, the registration could not have been restored and the petitioner put an tail end priority. No statutory rule or regulation has been violated.

7. In the case of Delhi Development Authority, N.D. Vs. Jt. Action Committee Allottees of SFS Flats & Ors. in Civil Appeal No.6733/2000, DDA pursuant to a policy decision decided to charge 20% surcharge from all allottees who had failed to pay instalments in time and the allottees who had delayed payments beyond 180 days, in addition, to the surcharge were required to pay current cost or old cost plus interest, whichever was higher. The Supreme Court referred to the original terms and conditions of the contract that provided for payment of interest @18% per annum in case of delayed payment, though, DDA in the allocation letter had imposed condition of automatic cancellation in case of failure to make payment within 180 days. The Supreme Court noticed the difference between the Rules and Regulations made under the DDA Act and a policy decision. It was accordingly, observed in paragraphs 54, 58 and 59 of the said decision as under:-

”54. The office orders, on the basis whereof the purported impugned policy had been taken, do not refer to the scheme as a restoration scheme. The resolutions do not say so. Had it been so, DDA would have issued a fresh notification or at least made its stand clear to the allottees either by way of public notice or by informing each of such defaulters individually. Had such conditions for the purpose of restoration being made known, the allottees would have accepted it or rejected it. Evidently, it is a part of the original scheme. It is not a new one. It is well known principle of law that a person would be bound by the terms of the contract subject of course to its validity. A contract in certain situations may

also be avoided. With a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout. A party to the contract cannot at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract and which were not even the subject matter of a public notice.

58. The stand taken by DDA itself is that the relationship between the parties arises out of the contract. The terms and conditions therefor were, therefore, required to be complied with by both the parties. Terms and conditions of the contract can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law. Novation of contract in terms of Section 60 of the Contract Act must precede the contract making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allocate. Having not done so, it, relying on or on the basis of the purported office orders which is not backed by any statute, new terms of contract could thrust upon the other party to the contract. The said purported policy, is therefore, not beyond the pale of judicial review. In fact, being in the realm of contract, it cannot be stated to be a policy decision as such.

59. We would assume that the office orders were issued by DDA. Keeping in view the representations made by a large number of defaulters. The plea taken by DDA gives rise to a dichotomy. If it is a case of contract qua contract, the provisions of the Contract Act must be taken recourse to. If DDA was exercising a statutory power, the same must be tested on application of doctrine of ultra vires. Floating a scheme for providing housing facilities to a group of people, although is governed by statute, power under the statute by an executive not only can be tested on the touchstone of Article 14 of the Constitution of India,

but can also be tested on the touchstone of source of the power under the statute. No provision either in the Act or the Regulations was brought to our notice which makes the allottee bound by the purported policy decision taken by DDA. Even if it is so, the superior courts may exercise its power of judicial review as the power which is sought to be exercised by a statutory authority is not under the contract but under a statute. When a contract emanates from a statute or is otherwise governed by the provisions thereof, the superior court can also exercise the power of judicial review.”

8. In case of **R.K.Saxena** Vs. **DDA** (2001) 4 SCC 137, the appellant therein had failed to pay 75% of the bid amount after acceptance within 180 days but had made payment of the same along with 18% interest beyond 180 days after having written letters asking for extension of time. Payments were accepted by DDA but after about 1½ years, the appellant was informed that the allotment was cancelled due to delayed payments beyond the prescribed time. High Court had dismissed the writ petition holding, inter alia, that the payments made beyond the extended date were not legal and valid. Supreme Court reversed the said findings observing as under :-

“9. In our view, the order of the High Court cannot be sustained. To be noted that by 27-9-1996 the entire amount payable for the plot had been deposited and delay in payment was less than 30 days. Thereafter in January 1997 interest at the rate of 25% per annum on delayed payments, was also paid. Both the delayed payments and the interest amount were accepted by the respondent. The moment those payments were accepted there was deemed extension of

time. It is only after 1 ½ years i.e. after the legal notices were served by the appellant that the allotment was cancelled by the letter dated 1-7-1999, in our view, on the facts of this case, i.e. after accepting the delayed payments and interest the respondent could not have cancelled the allotment.”

9. In these circumstances writ petition is allowed with the direction that DDA will issue a fresh demand cum allotment letter on the basis of tail and priority as per 2005 costs without charging any interest. This direction is being given as tail end priority cases had matured for allotment in the year 2004-2005. Petitioner will be entitled to costs of Rs.10,000/- which will be deducted from the amount payable as mentioned in the demand cum allotment letter. Fresh demand cum allotment letter will be issued within 6 weeks from today. If required, DDA will hold a mini draw.

The writ petition is accordingly disposed of.

Dasti.

SANJIV KHANNA,J

MARCH 27, 2008
Vld/RN