

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Date of decision: 10.07.2008**

% **W.P.(C) 3947/2007**

JAG RAM SINGH Petitioner
Through: Mr. Sumit Bansal & Mr. Manish
Paliwal, Advocates

versus

D.D.A. Respondent
Through: Ms. Rajdipa Behura, 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? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. One Sh. Mahadev Prasad, father of the petitioner, registered himself with the respondent-DDA for allotment of one MIG Flat, under the Ambedkar Awas Yojna Scheme in the year 1989. Sh. Mahadev Prasad passed away on 06.07.2000. On 31.12.2001 the respondent held a draw of lots wherein flat bearing No.8, First Floor, Pocket-A, Phase-II, Dwarka, was allotted in the name of Sh. Mahavir

Prasad, under the aforesaid scheme. On receipt of this demand-cum-allotment letter, the widow of late Sh. Mahadev Prasad Smt. Mishri Devi vide communication sent on 27.03.2002 informed the respondent about the demise of Sh. Mahadev Prasad. She also sought cancellation of the allotment of the flat, and allotment of another flat after some time in the next draw. Inter alia, vide communication dated 05.02.2004, the respondent required Smt. Mishri Devi to submit certain documents for carrying out mutation of the registration in her favour. Smt. Mishri Devi sent the requisite documents on 09.12.2004. On 20.01.2005, the respondent issued another communication addressed to Smt. Mishri Devi communicating the cancellation of the allotment of the flat on the ground that she had failed to comply with the terms and conditions of the allotment letter dated 31.12.2001. She was also requested to apply for refund of the amount deposited for registration under the scheme by submitting the original FDR duly discharged on the back sent on 27.03.2002, original registration certificate and the original fourth copy of challan. By a further communication dated 18.02.2005 the respondent communicated the mutation/substitution of Smt. Mishri Devi in place of her late husband *“only for refund of registration money”*.

2. Late Smt. Mishri Devi thereafter, continued to represent for restoration of the same flat. This representation was rejected by the DDA on 15.09.2005 and she was required to apply for refund of the

registration amount.

3. Smt. Mishri Devi also passed away on 17.11.2005 whereafter the petitioner, her son, applied for mutation/substitution. Vide communication dated 07.08.2006, the respondent has carried out mutation in favour of the petitioner in respect of the aforesaid registration earlier held by his father Sh. Mahadev Prasad and thereafter by his mother late Smt. Mishri Devi. Learned counsel for the respondent submits that this mutation was carried out only for the purpose of refund of registration amount, and not for allotment of flat. Since the petitioner is denied allotment of a flat, the present petition has been filed, firstly, seeking the quashing of the letter dated 20.01.2005 whereby the allotment of flat No.88, First Floor, Pocket-A, Dwarka, has been cancelled, and further seeking the direction to the respondent to allot a flat to the petitioner in the same zone and locality at the cost prevailing in the year 2002.

4. The submission of learned counsel for the petitioner is that late Smt. Mishri Devi had communicated the demise of the original registrant late Sh. Mahadev Prasad soon after the issuance of demand-cum-allotment letter dated 26.12.2001-31.12.2001, on 27.03.2002. The respondent issued two communications dated 07.05.2002 and 05.02.2004, requiring late Smt. Mishri Devi to submit documents for carrying out mutation in her favour. Late Smt. Mishri Devi even

complied with that requirement on 19.12.2004. After having received the said documents, the respondent issued the communication dated 20.01.2005 not only cancelling the allotment in respect of flat No.88, as aforesaid, but also cancelling the registration under the scheme. Though this is not so specifically stated in the communication dated 20.01.2005, learned counsel for the petitioner submits that this is the only inference that can be drawn from the said letter of the respondent, as the respondent required her to apply for refund of the amount deposited at the time of registration under the said scheme. It is argued by learned counsel for the petitioner that in terms of the request made by late Smt. Mishri Devi the respondent could have, at best, cancelled the allotment of the allotted flat but could not have proceeded to cancel the registration under the scheme itself. It is further argued that the communication dated 18.02.2005 issued by the respondent stating that the mutation in favour of late Smt. Mishri Devi was carried out only for the purpose of refund of registration amount was also illegal for the same reason.

5. On the other hand, learned counsel for the respondent submits that on account of the fact that late Smt. Mishri Devi did not submit the documents required of her to carry out mutation of the registration in her favour for nearly two years, she was no longer entitled to continue with the registration under the scheme itself and consequently the communication dated 20.01.2005 as issued, not only

cancelling allotment of the aforesaid flat bearing No.88, but also the registration under the scheme.

6. Having heard learned counsel for the parties, I am of the view that the respondent was not justified in cancelling the registration of the petitioner under the scheme merely on account of there being some delay in the submission of the documents by late Smt. Mishri Devi for carrying out mutation of the registration in her name. Pertinently, the respondent itself had issued a reminder on 05.02.2004, requiring Smt. Mishri Devi to submit the documents for the purpose of carrying out mutation in her favour and the said documents were submitted on 19.12.2004. It was only thereafter that the cancellation of allotment and the registration appears to have taken place which was communicated on 20.01.2005. Learned counsel for the respondent has not been able to place before me any rule or regulation, or term of the scheme which required late Smt. Mishri Devi to submit the documents for mutation within a certain time, failing which the registration under the scheme could have been cancelled. Even the communication dated 05.02.2004 did not put late Smt. Mishri Devi to notice that she should submit the documents within a specified time, failing which her registration under the scheme itself would be cancelled. By not submitting the documents earlier Smt. Mishri Devi suffered the consequence of not being included in a draw of lots for two years. In these circumstances, having received the relevant

documents for carrying out mutation in her favour from late Smt. Mishri Devi on 19.12.2004, it was not open to the respondent to have cancelled her registration under the scheme on 20.01.2005.

7. The prayer made by the petitioner for allotment of the said flat or another flat on the rates prevalent in the year 2002, however, does not appear to be justified. Late Smt. Mishri Devi herself sought to surrender the said flat bearing No.88 on 27.03.2002. No payment was made by her in furtherance of the allotment made on 26.12.2001-31.12.2001 of flat No.88. In view of the aforesaid, I allow this petition to the extent that I direct the respondent to retain the registration under the said scheme earlier made in favour of Sh. Mahadev Prasad and to allot to the petitioner a flat by including his name in the next draw of lots. The petitioner would, however, be liable to pay the cost for the flat as per the prevalent rules, as per the respondent's policy in death cases.

Dasti.

VIPIN SANGHI, J.

JULY 10, 2008
RSK