

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

**+LPAs 179/2008 & CM No.5449/2008, 1324/2007, 373/2006,
1032/2006, 459/2006, 468/2006, 469/2006, 470/2006,
679/2006, 682/2006, 776/2006, and 2325/2006**

Reserved on: 8th May, 2008

%Date of Decision: 4.6.2008

LPA No.179/2008 & CM No.5449/2008

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate.
Versus
ABHAY PRAKASH SINHA ...Respondent
Through: Mr. N. Kinra, Advocate.

LPA No.1324/2007

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate.
Versus
...Respondent
Through: Mr. N. Kinra, Advocate.

LPA No. 373/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
Raj Kumar Malhotra ...Respondent
Through: Mr. R.K. Saini, Advocate

LPA No. 1032/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
...Respondent
Through: Mr. R.K. Saini, Advocate

LPA No. 459/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
Nathi Lal ...Respondent
Through: Mr. R.K. Saini, Advocate

LPA No. 468/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
Sheo Nath Ram ...Respondent
Through: Mr. R.K. Saini, Advocate

LPA No. 469/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
Pushpa Narula ...Respondent
Through: Mr. R.K. Saini, Advocate

LPA No. 470/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
Khilanda Ram Batra ...Respondent
Through: Mr. R.K. Saini, Advocate

LPA No. 679/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
Basanti Negi ...Respondent
Through: Mr. R.K. Saini, Advocate

LPA No. 682/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
Rambharosey ...Respondent
Through: Mr. R.K. Saini, Advocate

LPA No. 776/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
Chanman Lal ...Respondent
Through: Mr. R.K. Saini, Advocate

LPA No. 2325/2006

D.D.A. ...Appellant
Through: Mr. C. Mohan Rao, Advocate
Versus
Narsh Gupta ...Respondent
Through: Mr. R.K. Saini, Advocate

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA

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

J.R. Midha, J.

CM No.5449/2008 in LPA 179/2008

Since we have heard the arguments on merit, we condone the delay in filing the appeal. The CM is disposed of.

LPA 179/2008

This letters patent appeal arises out of the judgment dated 7th November 2007 passed by the learned Single Judge whereby the learned Single Judge has allowed the Writ Petition.

The respondent applied for a MIG flat under New Pattern Registration Scheme, 1979 of DDA. The respondent was allotted a MIG flat in the draw of lots held on 15th October 1990 and demand-cum-allotment-letter was issued to the respondent in January 1991. The respondent applied for extension of time to DDA. However, DDA issued a show cause notice dated 19/15th October 1991 to the respondent demanding the payment in response to which the respondent made the payment of Rs. 84,133/- within the time granted. Despite the payment, the allotment was cancelled under automatic cancellation scheme. The respondent applied for restoration. Vide letter dated 2nd December 1992, the respondent was called upon to deposit the cancellation charges to keep the restoration intact and for being considered for tail end seniority. The respondent requested DDA to adjust the cancellation charges of Rs.7,010/- out of Rs.84,133/- already deposited by him, in pursuance to

which DDA adjusted the cancellation charges and refunded balance amount of Rs.77,123/- to the respondent. Despite the restoration, the respondent's name was not considered in the draw of lots for tail end priority in 2004 whereupon the respondent filed the Writ Petition which was contested on the ground that public notices were issued in 2005-06 calling upon all the registrants including those at tail end priority to approach DDA and since the respondent did not approach DDA, he lost his entitlement.

The appellant has challenged the impugned judgment on the ground that the respondent lost the right to allotment due to the failure to approach the appellant in response to the public notices published in the newspaper. The grounds raised by the appellant are wholly misconceived and contradictory to the stand taken in LPA 373/2006 and eight other connected LPAs where the appellant conducted the draw of lot for tail end priority on 31st March, 2004 in respect of registrants who had not even deposited the cancellation charges. The registrants in those cases had neither deposited the cancellation charges nor approached DDA for fresh allotment. In the present case, the cancellation charges had been deposited by the respondent in time. As a matter of fact, no further act was required to be done by the respondent and it was the obligation of the appellant to carry out the draw of lot in respect of respondent on 31st March 2004 and to issue the demand-cum-allotment letter to the respondent. We agree with the findings of the learned Single Judge that the appellant cannot be permitted to avoid the responsibility and liability to be considered for allotment of flat and the

plea raised by the appellant is both unfair and unreasonable. DDA is a public body and is required to act fairly in discharging the public duty.

For the reasons aforesaid, we dismiss the present appeal with cost of Rs. 10,000/-. The appellant is directed to issue the demand-cum-allotment letter, if not already issued, to the respondent and to hand over the possession of the subject flat to the respondent within six weeks.

LPA 1324/2007

This letters patent appeal arises out of the judgments dated 19th July, 2007 and 10th August, 2007 passed by the learned Single Judge whereby the learned Single Judge has allowed the Writ Petition.

The respondent applied for a MIG flat under New Pattern Registration Scheme, 1979 of DDA. The respondent was allotted a MIG flat in Rohini and a demand-cum-allotment letter with block dates 3rd January, 1991 to 10th January, 1991 was issued to the respondent. The respondent could not deposit the amount and requested for cancellation. The respondent also deposited the cancellation charges of Rs.900/- on 25th March, 1991 and her registration was kept alive as per the policy of DDA. The draw for the tail end priority was conducted on 31st March, 2004 but the respondent's name was not included as the records of DDA were misplaced and were untraceable. The file appears to have been reconstructed only after RTI application was filed by the respondent.

The appellant has challenged the impugned judgment on the ground that the Scheme was closed after wide publicity vide Press Note dated 5th February, 2006 and the respondent did not approach the DDA for allotment. The grounds raised by the appellant are wholly

misconceived and contradictory to the stand taken in LPA 373/2006, and eight other connected LPAs where the appellant conducted the draw of lot for tail end priority on 31st March, 2004 in respect of registrants who had not even deposited the cancellation charges. The registrants in those cases had neither deposited the cancellation charges nor approached DDA for fresh allotment. In the present case, the cancellation charges had been deposited by the respondent in time. As a matter of fact, no further act was required to be done by the respondent and it was the obligation of the appellant to carry out the draw of lot in respect of respondent on 31st March 2004 and to issue the demand-cum-allotment letter to the respondent. We agree with the findings of the learned Single Judge that it was the policy of DDA to permit all those who could not offer to pay the cost in the first instance, to avail a second chance after cancellation of the first allotment. The respondent had paid the cancellation charges and his registration was kept alive. Learned Single Judge has rightly held that it would be harsh if such persons are made to suffer for the reason of their files being misplaced by DDA. The pleas raised by the appellants in these appeals are both unfair and unreasonable.

For the reasons aforesaid, we dismiss the appeal with costs of Rs.10,000/-. The appellant is directed to issue the demand-cum-allotment letter, if not already issued, to the respondent and to hand over the possession of the subject flat to the respondent within six weeks.

LPA 373/2006, LPA 459/2006, LPA 468/2006, LPA 469/2006, LPA 470/2006, LPA 679/2006, LPA 682/2006, LPA 776/2006, LPA 2325/2006, LPA 2325/2006.

These letters patent appeals arise out of common judgment dated 18th October 2005 passed by the learned Single Judge whereby the learned Single Judge has directed Delhi Development Authority (DDA) to issue demand-cum-allotment-letters to the respondents at the cost as on 31st March 2004. However, DDA has been held to be entitled to charge cancellation charges and interest thereon @ 15% per annum.

The appellant-DDA floated the scheme for allotment of flats in 1979 known as “The Registration Scheme on New Pattern 1979” (hereinafter referred to “the Scheme”). The Scheme offered flats in Janata, LIG and MIG category, the tentative cost of which was Rs. 8,000/-, Rs. 18,000/- and Rs. 42,000/- respectively. The respondents in these appeals registered themselves with DDA under the said Scheme and paid the registration amount in 1979. During 1986 to 1989, the respondents were allotted the specific flats which they did not accept. The Scheme provided for the respondents being considered for future allotment upon payment of cancellation charges of 20% of the registration amount. DDA carried out a fresh draw of lots on 31st March 2004 for tail end priority in which a specific flat was allotted to each of the respondents. However, formal letter of allotment was not issued to the respondents as they had not deposited the cancellation charges of 20% of the registration amount. The respondents filed the Writ Petition claiming the issuance of the demand-cum-allotment-letters and for possession of the flats in question. The learned Single Judge allowed the petitions by directing DDA to issue demand-cum-allotment-letters to the respondents.

The appellants have challenged the judgment of the learned Single Judge on the ground that DDA was under no obligation to issue demand-cum-allotment letters to the respondents as they had failed to pay 20% of the registration amount as the cancellation charges. It has been further contended that the respondents have failed to give the undertaking directed by the learned Single Judge and therefore, no equity lies in their favour. According to the appellants, the respondents are fighting proxy for property dealers and the flats shall be sold after allotment. It is next contended by the appellants that granting relief to the respondents would open pandora Box as thousands of persons who have not made the payment of cancellation charges would seek allotment from the appellant.

We have carefully considered the respective contentions of the parties. Admittedly, Delhi Development Authority has allotted specific flats to the respondents in the draw of lots held on 31st March, 2004. The cost of the said flats as on 31st March, 2004 alongwith the cancellation charges and interest thereon have also been deposited by the respondents. The demand-cum-allotment letters have also been issued by the DDA to the respondents. We have examined the NPRS Scheme 1979. The object of the said scheme was to reduce the sale price of MIG, LIG and Janta flats so as to be within the reach of the common man. The estimated cost of the MIG, LIG and Janta flats was fixed at Rs.42,000/-, Rs.18,000/- and Rs.8,000/- respectively. DDA has monopoly over the development and disposal of land in Delhi and the profit motive is not the goal of the DDA especially of the NPRS Scheme which was floated by DDA providing low cost housing to the registrants

of the said scheme. The registration amount was Rs.250/- for Janta flats, Rs.1,500/- for LIG flats and Rs.4,500/- for MIG flats, which was fixed according to the income slabs of the registrants. This scheme was clearly for the common man having no residential house in Delhi. The main contention of the DDA is that the respondents are not entitled to the said flats on account of their failure to deposit the cancellation charges in time. The cancellation charges as per NPRS Scheme are 20% of the registration amount. The registration amount varies from Rs.250/- to Rs.4,500/- and accordingly, the cancellation charges of 20% would be in the range of Rs.50/- to Rs.900/-. The respondents cannot be deprived of the flats due to their failure to deposit the cancellation charges in time. DDA is a public body and is required to act fairly in discharging the public duty of providing the housing. It had been the policy of DDA to consider tail end priority allotment to all the registrants who could not avail the initial allotment. DDA cannot behave like a private builder by cancelling the allotment on account of minor violation and then selling the flats at present market price with a profit motive. DDA undertook the acquisition of land and development of the land for providing housing to the residents of Delhi who registered themselves with DDA. We inquired from DDA that if the allotment of the respondents is cancelled, who would be entitled to the said flats. We specifically inquired from DDA as to how many registrations were done under NPRS Scheme 1979, how many flats were constructed and how many allotments have been made. We also enquired as to how many flats are now available and the number of pending registrants. The purpose was to find out whether there is any person having better

entitlement than the respondents. No specific details were provided in reply except a list of 38 persons who have deposited the cancellation charges. It is contended by the appellant that granting relief to the respondents would result in opening of Pandora's box as thousands of persons who have not made the payment of cancellation charges would seek allotment as tail end priority. We do not appreciate this argument of the DDA in the absence of specific reply to our queries. We, therefore, draw adverse inference against DDA.

From the judgment of the learned Single Judge, it is clear that though the learned Single Judge found that there was some breach on the part of the respondents herein in not making the payment in time, at the same time, the learned Single Judge was persuaded to allow the Writ Petitions filed by the respondents herein by balancing the equities and reminding the DDA that it was not to act as mere property developer, like a private entrepreneur, and in view of the fact that DDA is a public authority. These sentiments are expressed by the learned Single Judge in the following words:-

“17. In 1961, Large Scale Acquisition Policy was formulated by the Union of India. Under this policy, lands were acquired for the purpose of planned development of Delhi. The acquired land was placed at the disposal of DDA for the purpose of development and disposal. Private participation in land and housing came to a virtual nil in Delhi. DDA got monopoly over land in Delhi.

18. As noted above, since 1979, petitioners waited to be allotted a flat. Unfortunately, by the time their priority matured, the phenomenal price rise in the disposal cost of the flat coupled with the fact that quite a few got retired, put the cost beyond reach. To somewhat mitigate the hardship, DDA permitted restoration of allotment at the tail end priority, but subject to payment

of cancellation charges. Unfortunately, as of today the only default is that the petitioners did not pay the cancellation charges.

19. A humane system of government must provide some way of assuaging grievances, not only for the sake of justice but also because accumulated discontent may ultimately prove fatal to a democracy. A State Authority must evolve some mechanism to receive feed back of the public reaction qua it's functioning. This helps in the assessment of its functioning and formulation of corrective policy. The institution of ombudsman is a direct consequence of such a mechanism being put into motion.

20. Justified grievances may arise out of State actions which may otherwise be legal, in any case not illegal.”

We agree with this approach of the learned Single Judge. When two views were possible and the learned Single Judge chose one particular view in exercise of his discretion, it is not even proper for the Appellate Court to interfere with this discretionary exercise. That apart, we are of the opinion that the view taken by the learned Single Judge is in tune with the obligation cast upon the statutory bodies like the DDA. The Constitution of India makes it obligatory for the State to provide the right to adequate housing to all its citizens. There have been several important judgments that have clearly established the relation between the right to housing and right to life as guaranteed by Article 21. The Supreme Court of India has held that the right to shelter or adequate housing is a fundamental human right emanating from this provision [see ***U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.* AIR 1996 SC 114, *Francis Coralie v. Union Territory of Delhi* AIR 1981 SC 746 and *Chameli Singh and others v. State of UP* (1996) 2 SCC 549].**

Delhi Development Authority is a statutory body created under the Delhi Development Act 1957. The main purpose with which DDA is created, as is clear from the provisions of Section 6 of the said act, is to promote and secure the development of Delhi according to plan and for that purpose it is given power to acquire, hold, manage and dispose of land and other property as well as carrying out building, operations, amongst others. One of the public duty thus cast upon the DDA is to provide residential and other types of accommodations to the people of Delhi at reasonable cost. The Supreme Court reminded DDA of this duty more eloquently in the case of **Delhi Development Authority v. Joint Action Committee, Allottee of SFS Flats 2008 (2) SCC 672**. When we look into the aforesaid public duty of public authority like DDA, we find no fault in the approach of the learned Single Judge.

The appellant had next contended that the respondents have not given undertaking in terms of the order dated 19th September, 2005 of the learned Single Judge. We have perused the order dated 19th September, 2005 and note that the respondents had agreed to file an affidavit by way of undertaking not to transfer or sell the allotted flats for a period of five years from the date of taking the possession. The requirement of undertaking does now flow from the Scheme. However, since the Respondents have been given equitable relief and they had themselves agreed to give the undertaking recorded in the order dated 19th September, 2005, in our view, the respondents cannot wriggle out of the undertaking in terms of the order dated 19th September, 2005 and they would be entitled to the flat subject to the furnishing of the undertaking in terms of the said order.

In view of the aforesaid, we do not find any infirmity in the impugned judgment passed by the Learned Single Judge. We, therefore, dismiss these appeals but without costs. DDA is directed to hand over the possession of the allotted flats to the respondents within six weeks subject to the respondents furnishing undertaking to DDA that respondents would not transfer or sell the allotted flats for a period of five years from the date of taking possession in terms of the undertaking given by them before the Learned Single Judge.

LPA 1032/2006

This letters patent appeal arises out of the judgment dated 3rd September, 2005 passed by the learned Single Judge whereby the learned Single Judge has allowed the Writ Petition.

The facts of this case are similar to the facts in LPAs 373/2006, 459/2006, 468/2006, 469/2006, 470/2006, 679/2006, 682/2006, 776/2006 and 2325/2006. DDA has allotted a specific flat to the respondent in the tail end priority draw held on 31st March, 2004. However, the demand-cum-allotment letter was not issued to the respondent on the ground that the cancellation charges of Rs.900/- were not deposited by the respondent. For the reasons recorded above in LPA 373/2006 and other connected cases, we dismiss this appeal but without costs. DDA is directed to hand over the possession of the allotted flat to the respondent within six weeks. The respondent in this

case is also directed to furnish an undertaking to DDA that the respondent would not transfer or sell the allotted flat for a period of five years from the date of taking possession as this case is similar in facts to the aforesaid cases.

(J.R. MIDHA)
JUDGE

June 4, 2008
aj/s.pal

(A.K. SIKRI)
JUDGE