

406-C Janak Park, New Delhi-64". Thereafter the respondent issued a letter of cancellation dated 30.12.2003 showing the address as provided by the petitioner and the same was received by the petitioner.

2. The petitioner submits that thereafter he attended public hearings held by the respondent in the years 2005 and 2006 but to no avail. He has thereafter filed this petition seeking quashing of the letter of cancellation dated 30.12.2003 and a mandamus to direct the respondent to allot one MIG flat to the petitioner. The petitioner relies on the policy of the DDA contained in Office Order dated 25.2.2005 which states that in cases where change of address was intimated by the registrants but erroneously not recorded by the DDA and demand cum allotment letter was sent at the wrong address, and the allottee approaches the DDA within a period of four years from the date of allotment, he/she will be allotted a flat at the old cost, prevalent at the time when the priority of the allottee matured. However, in cases where such intimation, viz, demand-cum-allotment letter had been issued but the allottee had not approached the DDA within a period of four years from the date of allotment the allottee would be considered for allotment of flat with the old cost prevalent at the time of original allotment with 12% simple interest with effect from the date of original allotment to the date of issuance of a fresh demand cum allotment letter.

3. Learned counsel for the respondent has vehemently opposed the grant of any relief to the petitioner. It is pointed out that the petitioner is making a mountain of a mole by over emphasizing the relevance of "C/o....." as mentioned by the

petitioner in the application form while giving his address. Counsel for the respondent submits that in three successive letters issued by the petitioner in 2005 and 2006, which are placed at pages 22, 24 and 26 of the record, the petitioner had himself given his address as “**Prem Prakash WZ 406-C, Hari Nagar, Clock Tower, New Delhi-64.**” The petitioner had not written “C/o Roshan Lal Gupta” since the same is not of any relevance. It is further submitted that the petitioner, despite being served with the cancellation letter dated 30.12.2003 slept over his rights and did not take any steps before filing this petition in the year 2006.

4. From the aforesaid narration of facts it is clear that the demand cum allotment letter was sent thrice by speed post by the respondent DDA. However on each occasion the address mentioned on the envelop containing the said demand cum allotment letter was different from that given by the petitioner, inasmuch as, the words “C/o Roshan Lal Gupta” were not mentioned. It is also seen that “Clock Tower” was not mentioned and instead “Tilak Nagar” was mentioned. The respondent has placed on record the copies of the three envelops received back from the postal authorities. Each one of them as aforesaid carries the endorsement “**no such name WZ-406-C, Janak Park N.D.-64**”. It is not clear as to how the postal authority could have taken the said letter to “Janak Park” when that is not the address given by the petitioner. Admittedly the demand-cum-allotment letter was not left at the address given by the petitioner. If the Postal Authorities failed to take the said letter at the correct address and to deliver the same to the petitioner, it is the respondent and not the petitioner who should take the consequences since the Postal

Authorities were acting as the agent of the respondent and not that of the petitioner while carrying the said post. My attention has also been drawn to a decision of Division Bench of this Court in LPA No. 378/2008 **DDA vs. Ganga Ram**. In that case the demand cum allotment letter was sent by the DDA to the allottee at an address which contained the wrong pin code. The learned single Judge rejected the contention of the DDA that the mention of the wrong pin code was a minor mistake and that presumption of deemed service under Section 27 of the General Clauses Act could be drawn. The DDA had contended before the Division Bench that subsequent communication in the form of a show cause notice for cancellation of allotment was also sent at the same address with incorrect pin code which has been received by the respondent allottee. Therefore, it was contended, that the presumption should be raised that the demand cum allotment letter was also received by the respondent. The Division Bench rejected the aforesaid submission of the DDA by holding that the mere fact that the subsequent communication sent to the respondent at the same address with an incorrect pin code was received by the respondent cannot lead to a presumption of deemed service as regards the allotment letter which was clearly not sent at the correct address. The decision of the learned single Judge was upheld. It is not a case where one can presume that the petitioner was even otherwise aware of the fact that the respondent had made an allotment in his favour and had issued a demand cum allotment letter when it was so issued by the respondent.

5. For the aforesaid reasons, in my view the petitioner is entitled to allotment of one MIG flat at the rate prevalent at the

time when the initial allotment was made to him in the year 2003. However, considering the fact that the petitioner despite being put to notice of the allotment and its subsequent cancellation on or after 30.10.2003, did not take steps for nearly two and a half years (he filed this petition in July 2006) in my view, the petitioner is bound to pay simple interest @12% per annum from the initial date of allotment till the time the respondent raises the fresh demand cum allotment letter. I, therefore, allow this petition and direct the respondent to make allotment of one MIG flat to the petitioner in Dwarka zone, if available, and if not available in any other zone, within a period of four weeks. The fresh demand cum allotment letter in respect of the aforesaid allotment in terms of this judgment be issued within six weeks. Upon the petitioner making payment of the demand as raised by the respondent, the respondent shall place the petitioner in possession of the MIG flat.

6. With the aforesaid directions petition stands disposed of.

7. Parties are left to bear their own costs.

(VIPIN SANGHI)
JUDGE

AUGUST 11, 2008
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