

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

+ W.P.(C) 9848/2006

BALWANT SINGH Petitioner
Through Ms. Richa Kapoor, Adv.

versus

D.D.A. Respondent
Through Mr. Yeeshu Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
09.04.2008

1. In 1979 the petitioner applied and got himself registered under NPRS, 1979.
2. In 1990 the petitioner was allotted a flat in Rohini on hire-purchase basis. The petitioner did not accept the said allotment and deposited cancellation charges on 8.2.1991.
3. The respondent/DDA accepted the cancellation charges and vide their letter dated 21.10.1991 informed the petitioner that his registration continues to be alive but he would be allotted a flat at the tail end.
4. It is admitted case of the parties that in March, 2004 tail end priority cases were put in draw of lot and flats were allotted to all persons similarly situated as the petitioner. It is also the admitted case of the

respondent/DDA that by mistake the petitioner's name was not included in the draw of lots in March, 2004, therefore, no allotment could be made to him.

5. The petitioner on coming to know about the default made by DDA made number of representations from 2004 onwards requesting DDA to allot him an MIG flat. Some of these representations dated 22.9.2004, 4.4.2005, 5.5.2005, 31.5.2005 and 8.7.2005 have been placed on record. Respondent/DDA does not dispute the said representations also.
6. After notice was issued on this writ petition respondent/DDA issued demand cum allotment letter dated 5.9.2006 thereby allotting a flat to the petitioner at Rohini, but the petitioner has been asked to pay costs of Rs.17,17,126/-.
7. The petitioner has filed an additional affidavit impugning the said cost. No reply/counter affidavit to the writ petition or the additional affidavit has been filed till date. Notice in the writ petition was issued on 1st June, 2006 and the additional affidavit was filed on 12.2.2007. I may mention here that in the Order dated 27.2.2007, the court had specifically recorded the contention of the petitioner that allotment should have been made to him at the cost prevalent in 2004, when tail end priority of the petitioner had matured and the counsel for the respondent was

asked to get instructions and file affidavit within two weeks. As already stated above no affidavit has been filed by DDA.

8. It is clear from the above facts that DDA has been negligent and wrongly failed to include the petitioner's name in the draw of lots which was held in March, 2004. The petitioner is not to be blamed for the said failure. In fact, the petitioner had brought to the notice of the respondent/DDA lapse on their part by writing letters in 2004 and 2005. In these circumstances, I do not think the petitioner should be asked to pay cost as was prevalent on the date of issue of allotment letter on 5.9.2006. Additional cost cannot be levied on the petitioner for negligence and lapse on the part of DDA. The mistake was made by DDA and therefore additional burden should also fall on DDA and cannot be passed on to the petitioner who has been waiting for allotment of a flat from 1979 onwards. There is also no explanation as to why immediate steps were not taken by DDA after the petitioner had written letters in 2004-2005. The registrant/petitioner cannot be saddled with higher liability. Similar view has been taken by this court in Civil Writ no.4859/2000 decided on 29 August, 2002 in case titled "Mohinder Malik Vs. DDA". In the said judgment reliance was placed upon the Division Bench decision in the case of "J S Rao (Prof.) Vs. DDA and

Ors.” reported in 2001 (1) AD Delhi 235 wherein it was observed as under :

“10. In that view of the matter we are of the considered opinion that the mistake for not entering of name of the petitioner in the draw of lots held for allotment of a flat at Vasant Kunj was because the Delhi Development Authority inadvertently did not include his name in the draw of lots. Therefore, for the mistake of the respondent the petitioner cannot be deprived of his right of allotment of a flat and cannot be saddled with higher liability. As SFS flat of similar nature has been kept reserved for the petitioner pursuant to interim orders passed by this court. It is brought on record that the project for which the applications were invited on 1989 and 1990 were completed in the year 1992. The petitioner filed his applications for allotment of flat in 1989 and 1990 and the said project as against which he filed his applications came to be completed in the year 1992 and therefore, the petitioner is liable to pay the price of the flat prevailing in the year 1992.”

9. Reliance can also be made to two other decisions of this court in “Subhash Chander Sethi Vs. DDA” being C.W.no.11654/2006, which was decided on 20th March, 2007 and “Jay Prakash Vs. DDA” being C.W.no.20250/2005.

10. In view of the above findings, it is directed that the petitioner will be charged cost price as prevalent on 31st July, 2004 along with interest @ 10% p.a. till 30th April, 2008. Demand cum allotment letter on this basis will be issued within six weeks from today. Possession of the flat will be given to the petitioner within four weeks after payment is made.

The writ petition is accordingly disposed of.

SANJIV KHANNA, J.

APRIL 09, 2008.
Vld/P