

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

+ **W.P.(C) 7166/2007**

ANIRUDH GUPTA Petitioner
Through Ms. Sapna Chauhan, Adv.

versus

D.D.A. Respondent
Through Ms. Manisha Tyagi, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
27.03.2008

1. The petitioner's grandfather Late Mr.Hari Nath Gupta was registered for allotment of MIG flat under the New Pattern Scheme, 1979. The allotment matured in the year 1989 with allotment of a MIG flat on third floor. Grandfather of the petitioner wrote a number of letters enclosing medical certificates requesting that the said allotment may be cancelled and he may be allotted another flat at Trilok Puri or Mayur Vihar on the ground floor.
2. In response to these letters, grandfather of the petitioner was informed that he should deposit cancellation charges of Rs.900/- and his registration shall continue and he shall be allotted another flat.
3. Grandfather of the petitioner deposited cancellation charges of Rs.900/- vide challan dated 02.11.1993. He accordingly wrote a letter to DDA

stating that the priority number may be kept alive and he may be allotted a flat at Mayur Vihar or Dilshad Garden. In response to these letters, DDA vide letter dated 8/11-11-1993 informed grandfather of the petitioner that his request for registration had been accepted and his registration was kept alive and he would be allotted a flat in due course.

4. Subsequently, grandfather of the petitioner requested for transfer for registration in the name of his son Mr.A.K.Gupta by letter dated 04.1.1994. The request was accepted and registration was transferred in the name of Mr.A.K.Gupta by DDA by their letter dated 9th February, 1995. Registration of certificate was also transferred.
5. Mr.A.K.Gupta expired on 17th June, 1996 and the registration was then transferred in the name of the petitioners. DDA accepted the said transfer of registration vide letter dated 25th June, 1998. Endorsement was also made on the original certificate of registration.
6. The petitioners thereafter have been repeatedly writing letters asking for allotment of MIG flat. DDA on 20.11.1998 informed the petitioners that the registration was still alive and allotment would be made as and when the allotment number matures as allotment was to be made on tail end priority.
7. After about eight years on 20.4.2006, DDA informed the petitioners that for verification and genuineness of their claim, they should come to the

office along with relevant documents including specimen signatures, petitioners' identify cards and an undertaking on judicial stamp paper.

Petitioners complied with the said request.

8. On 13th September, 2006, DDA wrote a letter informing the petitioners that the registration made in 1979 stands cancelled and the petitioners should ask for refund of the registration amount along with the documents. No reason or ground for cancellation was mentioned.

9. In these circumstances, the petitioners have approached this Court. The stand taken by the respondent/DDA in the counter affidavit is that the registration of the grandfather of the petitioner was cancelled for failure to deposit cost of the MIG flat allotted to him in 1990 and the grandfather of the petitioner had deposited the cancellation amount of Rs.900/- belatedly on 2nd November, 1993.

10. The stand of DDA cannot be appreciated and accepted. Grandfather of the petitioner deposited Rs.900/- towards cancellation charges on 02.11.1993. The amount was accepted and the registration was restored as is clear from letter dated 8/11-11-1993 which reads as under :-

“Sub : Cancellation of flat no.15, pocket A-2, Sector-18, Rohini.
Request regarding restoration of registration.

Sir,

With reference to your letter dated 2.11.93 on the subject

noted above, I am to inform you that abovesaid allotment has already stands cancelled due to non-payment and non-submission of documents. However, your request for restoration of registration has been accepted and your registration has been kept alive at your turn. You will be allotted flat at your turn.”

11. Thereafter, DDA transferred the registration first in the name of Mr.A.K.Gupta and then in favour of the petitioners. Further DDA vide letter dated 20.11.1998 accepted and admitted that the registration of the petitioners was alive and they would be allotted a flat on their turn at tail end priority. The said letter reads as under:-

“ In continuation of this office letter even no.dt.11.11.93 on the above mentioned subject. It is to inform you that the Registration has been kept alive and the allotment will be made at your turn as your seniority has been fixed at tail end, which will be intimated in due course.”

12. 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 in tail end priority. No statutory rule or regulation has been violated.

13. 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 allocatee. 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 allocatee 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.”

14. 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.”

15. The said decisions are applicable to the facts of the present case. The writ petition is accordingly allowed. The petitioner will be entitled to

costs of Rs.10,000/-. Allotment cum demand letter will be issued on the basis of 2005 costs without charging any interest. This direction has been given as tail end priority cases had matured for allotment in the year 2004-2005. Costs awarded to the petitioner will be deducted from the cost price. Fresh demand cum allotment letter will be issued within six weeks from today. If required, DDA will hold draw of lots.

SANJIV KHANNA,J

MARCH 27, 2008
Vld/RN