

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

+ **W.P(C) No.51/2009**

% **Date of Decision: 14.09.2009**

Gopi Ram Petitioners

Through Mr.N.Kinra, Advocate

Versus

Delhi Development Authority Respondent

Through Mr.M.K.Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner seeks a direction to the respondent to allot a flat under the tail end policy as allotted to other similarly placed in draws held in 2007 and 2008.

2. The petitioner was a registrant of a LIG flat under the NPRS, 1979. An LIG flat was drawn on 27th January, 1992 for the petitioner bearing flat NO.35F, Sector A-3, GRP-III, Type I, Kondli, Gharoli and a

demand-cum-allotment letter with a block date of 24th/27th February, 1992 was sent to him and was received by him.

3. According to the prevalent policy at that time, petitioner opted for cancellation of flat allotted to him in the draw and for retention of his priority as a tail end priority and deposited Rs.300/- by challan No.0137370 drawn on Central Bank of India, Vikas Sadan, New Delhi as the cancellation charges.

4. The petitioner, thereafter, demanded from the respondent to get his name included in the tail end draw according to his priority. According to the petitioner he visited DDA on 24th January, 2005 when he was directed to file an affidavit, indemnity bond, undertaking and photocopy of the challans for consideration of his case for the tail end draw and allotment.

5. The petitioner's plea is that a tail end draw was held on 27th September, 2007, however, his name was not included though the name of other registrants who were lower to the petitioner were included in the tail end draw held on 27th September, 2007. The petitioner contends that despite representations made by the petitioner, the name of the petitioner was not included in another tail end draws which were held on 8th March, 2008 and 17th November, 2008.

6. After the petitioner's name was not included in the tail end draw according to the policy of the respondent and in terms of the orders passed by this Court in case of similarly situated other persons, the petitioner has filed the present petition on 6th January, 2009.

7. The learned counsel for the petitioner relies on order dated 25th August, 2008 passed in W.P(C) No.5793/2005, Raj Kumar Malhotra v. DDA and Ors wherein it was held that those registrants who are waiting since 1979 for allotment of the flat and who have been denied allotment of flat on the ground that the cancellation charges have not been paid by them and there is a default in payment of the same, allotment of flat cannot be denied to them provided they pay cancellation charges and simple interest on the cancellation charges at 15% per annum.

8. The petition is contested by the respondent DDA contending inter-alia that since the cancellation charges were not paid within one month of the issue of demand-cum-allotment letter, the petitioner forfeited his right. It is asserted that under clause 6 of the demand-cum-allotment letter, the allottee was liable to pay surrender charges at 20% of the registration deposit plus interest on the amount as the amount remained block during the said period. According to the respondent the calculation of cancellation charges was referred to the accounts wing of the respondent and it was calculated at Rs.1618.35

and, therefore, the petitioner was asked to pay Rs.1318.35 as Rs.300/- had already been paid which amount the petitioner failed to deposit and since the scheme is already closed, therefore the petitioner is not entitled for allotment of another flat nor the name of the petitioner is to be included in the tail end draw. It was further contended that the precedents relied on by the petitioner *Veena Kumari v. DDA, W.P(C) No.8910/2008* and *Om Prakash v. DDA, W.P(C) No.8912/2008* are not relevant and in the circumstances it is contended that the writ petition be dismissed.

9. The arguments have been heard on behalf of the parties and the petition, counter affidavit, rejoinder and the documents filed by the parties have also been perused. The learned counsel for the respondent has very emphatically contended that the decision in *Raj Kumar Malhotra (supra)* and other writ petitions is not applicable to such other applicants who had not paid the cancellation charges and who had not filed the writ petitions. The learned counsel for the petitioner is, however, unable to contend and show that in the tail end draws which were held on 27th September, 2007, 8th March, 2008 and 17th November, 2008, whether any of the applicants who had not filed the writ petitions along with *Raj Kumar Malhotra (Supra)* were included or not.

10. This cannot be disputed that it was held in Raj Kumar Malhotra that the respondent being a state monopoly could not have profit motive as the goal. It was held that the equity leans in favour of such persons who applied for allotment of the flats to get a roof over their heads almost three decade ago and who were the victims of circumstance and to some extent to the inefficiencies of the respondent. Even after almost three decades if the tail end priorities are not considered, it will cause extreme injustice to such applicants and, therefore, subject to depositing the cancellation charges, the DDA was directed to include the names of such applicants were ordered to be included in the tail end draw subject to such applicant also paying simple interest at 15% per annum on the unpaid cancellation charges.

11. After order dated 18th October, 2005 was passed, it was appealed and it has not been set aside before the Division Bench and the Special Leave petition filed in the Supreme Court has also been dismissed. Following the ratio of Raj Kumar Malhotra (supra) in various writ petitions filed by applicants who had not paid cancellation charges, the respondent/DDA has been directed to include the name of such applicants in the tail end draws subject to such applicants paying cancellation charges with simple interest @15% per annum. Consequently on the basis of plea that the petitioner had not paid the cancellation charges, the name of the petitioner who has also been

denied the allotment on the basis of the tail end draw cannot be permitted. The respondent has failed to show as to how the ratio of the case of Prem Kumar Malhotra (supra) is not applicable to the case of the petitioner.

12. The plea of the learned counsel for the respondent that only those applicants who had filed the writ petitions have to be considered is also reflective of injudicious attitude of the respondent. Since this Court has already held that an applicant who has not paid the cancellation charges, cannot be denied allotment of flats in the tail end draw subject to payment of cancellation charges with simple interest @ 15% per annum,

13. In the circumstances the contention of the respondent that since the petitioner did not pay the cancellation charges his name is not be included in the tail end draw, cannot be accepted. The plea raised by the respondent is unjustifiable and cannot be sustained. Allotment of flat pursuant to tail end draw can also be not denied to the petitioner on the alleged ground that the scheme has been closed. Such a plea is not acceptable. The respondent cannot be permitted to capitalize on its own mistakes. The last tail end draw took place in November, 2008 and the respondent should have included the name of the petitioner which

was not done and the petitioner has filed the present petition without much delay in January, 2009. The respondent has failed to aver and disclose that the names of only those applicants who had filed the writ petitions in whose favor the orders had been passed by the Court were included in the tail end draw. The plea of the respondent is not sustainable and on this ground the petitioner cannot be denied his rights.

14. In the facts and circumstances and on the basis of the precedents of this Court, the tail end priority cannot be denied on the ground that the petitioner had not paid the cancellation charges and therefore, the right of the petitioner for inclusion in the tail end draw had lapsed, cannot be sustained.

15. For the foregoing reasons, the writ petition is allowed. The respondent is directed to include the name of the petitioner in the mini draw which should be held within three months. The demand-cum-allotment letter be issued after the mini draw to the petitioner at the current cost or at the rates which were applicable in the draw held on 27th September, 2007 with simple interest at the rate of 12% per annum, whichever is lower. On payment of the amount demanded under the demand-cum-allotment letter, the respondent shall get the

formalities completed for handing over the possession of the flat within four weeks and handover the possession to the petitioner within the said period. Considering the facts and circumstances, respondent is also liable to pay a cost of Rs.20,000/- to the petitioner.

September 14th , 2009
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ANIL KUMAR, J.