

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

+ **Writ Petition (Civil) No.385/2009**

% **Date of Decision: 03.08.2009**

Vijay Kumar Malhotra Petitioner
Through Ms.Richa Kapoor, Advocate.

Versus

Delhi Development Authority Respondent
Through Ms.Manika Tripathy Pandey, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

- | | |
|--|-----|
| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J.

*

1. The petitioner seeks a writ in the nature of mandamus or a direction to the respondent to allot an LIG flat to the petitioner at the cost prevalent in September, 2007 when the tail end priority of the petitioner was missed by respondent in tail end draws.

2. Brief facts to comprehend the controversy raised by the petitioner are that the petitioner got registered under the New Pattern Registration Scheme, 1979 of DDA referred to as "NPRS, 1979" for allotment of a LIG flat. The registration number of the petitioner was 37691 and he was

assigned priority number 23315. The petitioner contended that he is residing at DP-174, Maurya Enclave, Pitampura, Delhi.

3. The petitioner pleaded that in 1991 the priority of the petitioner matured and he was allotted a flat bearing No.863, Pocket D, Category-I, Dilshad Garden, Delhi in the draw of lots held on 15th February, 1991. The petitioner was issued demand letter having block dates 5th August, 1991 to 8th August, 1991 on cash down basis. The last date of payment was 6th November, 1991.

4. The petitioner contended that since he was not interested in the said allotment, he deposited Rs.300/- (20% of the registration amounts) vide challan No.102569 dated 31st October, 1991 towards the cancellation charges and intimated the respondent by his representation dated 31st October, 1991. The petitioner also requested the respondent to consider him for allotment in the next draw of lots and also enclosed with the representation, original demand letter and bank challan No.102569.

5. The plea of the petitioner is that prior to 31st December, 1993, on cancellation of flats, the respondent used to assign tail end priorities to the registrants who did not avail the allotment made in their favour. This practice is alleged to have continued until 1994.

6. The petitioner has alleged that in January, 2008 he came to know that the tail end draw of lots for LIG category was held in September, 2007. According to the petitioner his name was however, not included in the draw of lots held on 27th September, 2007. The petitioner, therefore, approached the respondent and made a representation dated 5th February, 2008 and requested the respondent to allot him a LIG flat and also enclosed with his representation dated 5th February, 2008, all the requisite and necessary documents. The petitioner has claimed allotment of flat at the cost prevalent in September, 2007 and despite reminders sent to the respondent no action has been taken by the respondent on the representation of the petitioner.

7. The petitioner also sought information under the RTI Act and also wrote a letter addressed to the Director (H)-II, DDA. In response to the RTI application of the petitioner, he received a letter dated 14th October, 2008 from the respondent that his case file is not readily traceable. It was represented to the petitioner that as soon as his file would be traced a suitable reply shall be sent to him. In the circumstances, the petitioner claims that his case is of missing priority of tail end, on account of fault on the part of DDA.

8. Reliance has also been placed by the petitioner on the policy/guidelines dated 25th May, 1995 stipulating that with regard to cases where allotment is not made due to non inclusion of the name of

the registrant in the draw by fault of DDA, then in such cases the DDA has taken a policy decision that the allotment shall be made in the next draw at the rates prevailing at that time when the registrant would have got the allotment according to his/her priority position.

9. The petitioner has also relied on Attar Kaur v. DDA, LPA No.184/2002 decided on 8th February, 2002 and W.P(C) No.4859/2000, Mohinder Malik v. DDA decided on 29th August, 2002 to contend that all similarly situated persons should be dealt with in the same manner as envisaged by the said orders so that such persons are not unnecessarily compelled to file proceedings in the Court. According to the petitioner despite the order passed more than six years ago DDA has not taken any remedial action on the representations made by the petitioner. The petitioner contends that in such circumstances the Court has also imposed punitive costs and has relied on Smt.Attar Kaur (Supra) and Sh.Mohinder Malik (Supra).

10. On behalf of the petitioner reliance has also been placed on the policy framed by the respondent in 2004 contemplating that the LIG flats be allotted to NPRS, 1979 who did not accept the allotment made to them from time to time and opted for placement of their priority at the tail end to be considered for next allotment upto 31st December, 1993. According to the petitioner under the said policy the registrants who sought cancellations prior to 31st December, 1993, their right to

allotment and registration would remain intact and the respondent had decided to allot the flat to such allottees/registrants at the tail end after charging cancellation charges with interest.

11. Reliance has also been placed by the petitioner on the order dated 16th December, 2004 passed in W.P(C) No.19095/2004 resolving two issues, one relating to fault of DDA in non inclusion of name of registrants for consideration of allotment of flats at relevant time and in other words cases of missing priority by DDA's fault and another sending intimation at wrong address due to fault of DDA inspite of correct address available in the record.

12. The petitioner in substance has alleged that the entire fault is attributable to DDA/respondent and because of his fault the tail end priority of the petitioner was missed in September, 2007 and the petitioner's right to allotment has been negated. This is also contended by the petitioner that the respondent cannot rely on the public notices issued by them and in these circumstances the petitioner has sought a direction to the respondent to allot the LIG flat at the cost prevalent in September, 2007.

13. The petition is contested by the respondent contending inter-alia that the petitioner unilaterally submitted the cancellation charges which was permitted subject to deposit of Rs.3742/- as cancellation

charges within 60 days from 5th March, 1992. It is contended that since the petitioner failed to pay the cancellation charges of Rs.3742/- within 60 days, therefore, the name of the petitioner was not included in the tail end priority list. The respondent, however, admitted that petitioner by letter dated 31st October, 1991 had surrendered the flat No.863, Second floor, Pocket D, Category I, Dilshad Garden, Delhi allotted to him in the computerized draw held on 15th February, 1991. It is also admitted that the petitioner had deposited Rs.300/- towards cancellation charges by bank challan No.102569 dated 31st October, 1991. The allotment of flat No.863 was admitted to have been cancelled by letter dated 28th January, 1992. The respondent, however, contended that a demand for Rs.3742/- was also made on account of cancellation charges which has not been complied with within 60 days or even thereafter. The respondent also admitted that a tail end priority list of registrants was made who had not availed of the allotment in their favour prior to 31st December, 2003.

14. Regarding untraceability of the file of the petitioner pursuant to RTI application dated 16th September, 2008 it is contended that the file of the petitioner has been traced. The tail end priority of the petitioner is, however, denied on account of non deposit of Rs.3742/- as cancellation charges within the stipulated period of 60 days. Along with the counter affidavit filed by the respondent the copy of letter dated 5th March, 1992 addressed to the petitioner at "House No.5638, Gali

Chaman Ganj, Roshanara Road, Delhi-7” was also relied,, however, nothing has been filed.

15. In Smt.Attar Kaur (Supra) a Division Bench of this Court relying on J.S.Rao v. DDA, 2001 I, A.D (Delhi), 235, had held that for the mistake of the Delhi Development Authority a registrant cannot be deprived of his right of allotment of a flat nor can such a registrant be saddled with higher liability. The DDA was permitted to charge the rates prevalent when the draw of lots was held in which the name of the registrant was not included by the DDA by mistake. In Mohinder Malik (Supra) a Single bench had held that the principle that defaulting party being Delhi Development Authority cannot burden the allottee for its own mistakes and failures would be squarely applicable and in view of that it was held that the registrant would be entitled to the flats at the original cost of 1998 without payment of any interest thereon.

16. In Raj Kumar Malhotra v.DDA, W.P(C) No.5793/2005 decided on 18th October, 2005 the respondent was permitted to issue demand cum allotment letters to the registrant at the same cost at which demand was raised on others for the flats allotted at the draw of lots held on 31st March, 2004. It was further held that DDA would be entitled to charge cancellation charges and interest on the cancellation charges at 15% per annum. It was clarified that no interest would be charged by DDA

on the draw of flats for the reason that it did not issue the requisite demand cum allotment letters.

17. In Subhash Chand Sethi v. DDA, W.P(C) No.11654/2006 decided on 20th March, 2007 the registration of the registrant was kept alive as per the policy of the respondent and the petitioner was under the impression that his priority being at tail end of the seniority, he would be allotted a flat as and when the scheme was likely to close or as and when the registrants with tail end priorities are allotted flats. The draw of lots was held on 31st March, 2004 in which the name of the petitioner was not included and the plea of the registrant was opposed on the ground that the registrant had to update his residential address in the records of DDA pursuant to a public notice and since he failed to do so his name was not included. The plea of respondent was not accepted holding that the public notice was meant only to update the residential address in the record of the DDA and it did not make it mandatory for all the registrants, whether or not there had been a change in their addresses given to the DDA, to update the address. It was held that in the circumstances, there was no obligation on the part of the registrant to update his address and, therefore, non inclusion of the registrant was held to be not justified in the draw of lots and a direction was issued to issue demand cum allotment letter in respect of the flat after calculating the amount on the basis of cost prevalent as on 31st March, 2004. Similarly in Usha Saika v. DDA, W.P(C) 266/2007 decided on

28th January, 2008 this Court had held that public notices are not a substitute for individual notice. It was also observed that the scheme under which the registrants are registered never envisaged public notices to the registrants and the registrants were not duty bound to scan newspapers day after day to verify whether any advertisement has been taken out by the DDA for allotment. It was further held that it was never envisaged under the scheme that in case the registrant does not respond to a public notice within the period specified, he will be denied allotment and the terms of the scheme could not be modified unilaterally to the detriment of the persons registered under the scheme. It was further held that once it was admitted that priority number of the petitioner is valid then the registrants name should have been included in the draw of lots.

18. In the case of the petitioner, his allotment prior to 1993 was cancelled and cancellation charges as per the policy prevalent at that time were deposited. The petitioner could not be denied inclusion of his name in the tail end priority on the ground that the petitioner was liable to pay some more cancellation charges than what were deposited by the petitioner.

19. In the circumstances the respondent is liable to include the name of the petitioner in the draw of lots for allotment of an LIG flat to him. The respondent shall be liable to charge rates prevalent on 27th

September, 2007 when the last draw had taken place under the LIG category and the name of the petitioner was not included. The petitioner shall be liable to pay the difference in the cancellation charges which are to be paid by the petitioner, as part of the cancellation charges has already been deposited. The petitioner shall also be liable to pay simple interest on the amount of balance cancellation charges payable by the petitioner at the rate of 15% per annum.

20. Consequently, the writ petition is allowed. The mini draw/draw be held within four months and the name of the petitioner be included. The respondent shall also issue a demand-cum-allotment letter within one month after the draw. On petitioner paying the amount due from him within four weeks thereafter, the possession of the flat be also given to the petitioner within next four weeks. The respondent shall also be liable to pay a cost of Rs.10,000/- in the facts and circumstances which shall be payable to the petitioner. With these directions, the writ petition is disposed of.

August 3, 2009
'k'

ANIL KUMAR, J.