

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

+ **Writ Petition (Civil) No.5574/2003**

% **Date of Decision: 28.08.2009**

Karan Singh Arya Petitioner

Through Mr.V.Shekhar Sr. Advocate with
Ms. Deepakshi Jain and Mr. Jatin
Rajput, Advocates.

Versus

D.D.A. Respondent

Through Ms..Anita Pandey, 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? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J.

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1. The petitioner in this petition seeks allotment of Flat No.318, Ground Floor, Block 1, Mayur Vihar, Pocket 5, drawn in his favor in the draw of lots held on 10th May, 2005 on the rates at which the earlier flat was drawn in his favor which was allegedly cancelled without any show cause notice despite the payment made by the petitioner.

2. Brief facts to comprehend the disputes between the parties are that the petitioner got himself registered with the respondent/DDA

under NPR Scheme for allotment of LIG Flat and he was declared successful in the draw of lots held on 12th October, 1990 and an LIG flat on the ground floor bearing No.19-B, TY-1, Pocket A2, Group-6, Kondli Gharoli was allotted to the petitioner. The petitioner was issued a demand cum allotment letter dated 9th January, 1991 – 13th January, 1991 which demanded payment of the sum of Rs.1,98,100/- in 180 installment of Rs.1,596.78 each.

3. The petitioner had deposited an amount of Rs.1500/- at the time of registration of flat and since the price demanded was quite steep compared to what was offered at the time of registration, therefore, petitioner filed a writ petition bearing CWP No.1212 of 1991.

4. The writ petition filed by the petitioner, was allowed by a Division Bench by order dated 3rd September, 1993 holding that the petitioner was required to pay only 4½ times the price of the flat which was mentioned in 1979 Scheme and, therefore, a mandamus was issued to the respondent to handover the possession of the flats on petitioner making a payment of Rs.1,89,000/- for MIG Flat; a sum of Rs.81,000/- for a LIG flat and Rs.36,000/- for a Janta Flat. The demand letter issued earlier was set aside and the respondent/DDA was directed to issue a fresh demand letter to the petitioner who was directed to make

payment in terms of demand calculated on the basis of price indicated by the Court in its order dated 3rd September, 1993.

5. During the pendency of the case before the Division Bench, the petitioner was directed to deposit the amounts with the DDA and the petitioner had deposited the following amounts. The petitioner has produced the photocopies of the receipts and challans for the amounts deposited with the respondents, the details of which are as under:-

13.04.1991	-	Rs.27,876.48/-
16.03.1992	-	Rs.17,383.00/-
09.04.1992	-	Rs.1,338.00/-
19.06.1992	-	Rs.1,337.00/-
10.06.1992	-	Rs.1,337.00/-
01.07.1992	-	Rs.1,337.00/-
05.09.1992	-	Rs.2,675.00/-
05.11.1992	-	Rs.2,675.00/-
05.01.1993	-	Rs.2,674.00/-
10.03.1993	-	Rs.2,675.00/-
10.06.1993	-	Rs.115.00/-
10.06.1993	-	Rs.4,012.00/-
10.08.1993	-	Rs.2,675.00/-

6. The order of the Division Bench dated 3rd September, 1993 fixing the price of the MIG flat at Rs.1,89,000/- was challenged by the respondent before the Supreme Court and the appeals were allowed by the Supreme Court by order dated 20th August, 2002.

7. The petitioner thereafter, by communication dated 27th February, 2003 had represented to the respondent detailing the amount already paid as detailed hereinabove and sought a revised demand letter.

8. In reply to the communication dated 27th February, 2003, it was communicated by the respondent to the petitioner that after the decision of Sheelawanti & others v. DDA, AIR 1995 Delhi 212 on 3rd February, 1995, the allottees who were defaulter but who had complied with the terms and conditions of demand cum allotment letter regarding making the payment of demanded amount as well as nodal formalities, the flats to such allottees were re-allotted and those who had not complied with the terms and conditions of allotment cum demand letters, the flats were allotted to next wait-listed registrants through computerized draw after cancellation of allotment. The petitioner was not a party to the petition Sheelawant & ors Vs DDA and a separate order had been passed in the case of the petitioner which was not stayed in the appeal filed in the Supreme Court. It was asserted by the respondent that the flat which was allotted to the petitioner had been cancelled on account of non-payment of demanded amount as per terms and conditions of demand cum allotment letter dated 13th January, 1991 and re-allotted to next wait-listed registrants and,

therefore, revised demand cum allotment letter could not be issued to the petitioner.

9. The petitioner, thereafter, filed the present petition seeking quashing of the order cancelling the flat and for restoration of allotment and thereafter to allot the flat on the same terms and conditions including the price at which he was allotted the flat in the year 1991.

10. The respondent contested the petition contending inter alia that the petitioner was issued allotment letter dated 13th January, 1991 and the petitioner was required to pay a sum of Rs.1,98,100/- which was not paid by the petitioner despite the decision in Sheelawanti and Others (supra). It was pleaded that the petitioner was required to make the payment of demanded amount within the stipulated period of 90 days and the respondent/DDA was permitted to cancel the allotment after that period on non-payment of amount demanded by the DDA. The respondent asserted that the petitioner was required to pay demanded amount of Rs.80,360.97, however, the petitioner paid only Rs.64,500/- towards the initial demanded amount during the period April 1991 to August 1993. Relying on Sheelawanti's case, it was contended that the interest on the demanded amount for the litigation period had been waived but the amount of Rs.1,50,000/- paid on 16th

October, 2003 is much beyond the stipulated period of 90 days and consequently the respondent was entitled to cancel the flat. Regarding not replying to the legal notice dated 27th February, 2003, it was contended that the file remained untraceable and since the petitioner failed to take benefit of Sheelawanti's case, on account of depositing Rs.1,50,000/- much beyond the period of 90 days, the petitioner is not entitled for allotment of a flat and in the circumstances it had been prayed that the petitioner is not entitled for any relief.

11. By an order dated 30th July, 2004, this Court had held that the case of the petitioner in Writ Petition No.1212 of 1991 titled Karan Singh Arya v. Delhi Development Authority was disposed of following the decision of this Court in W.P.C. No.3267 of 1991, Ashok Kumar Bahl and others v. Union of India. Since the decision of the Court in Ashok Kumar Bahl (supra) had been challenged by DDA before the Supreme Court, the question of costing had also been referred to a Full Bench of this Court which was decided in the case reported as AIR 1995 Delhi 2002, Sheelawanti and Others v. DDA holding that the court cannot enter into a dispute of costing. It was also held that if the payments had not been made pursuant to Ashok Kumar Bahl's case (supra), the allottees may be asked to pay the demanded sum within 90 days of the decision and DDA would not charge any interest. The

appeal of DDA against the decision in Ashok Kumar Bahl's case was allowed by the Supreme Court on 20th August, 2003 and the view expressed by the Full Bench of the High Court in Sheelawant's case was upheld. It was further held by this Court by order dated 30th July, 2004 that though the petitioner did not make the payments within 90 days from 21st August, 2002 when the Supreme Court had decided the matter, however, DDA had cancelled the allotment of flat much earlier and in the circumstances, DDA could not be allowed to take plea about the non-payment of the amount within 90 days from 21st August, 2002.

12. Counsel for the petitioner on 30th July, 2004 had also made a statement that he would not press the present petition, if the respondent will establish with record that the flat was cancelled after 90 days from 21st August, 2002. In these facts and circumstances, the respondent was directed to file an additional affidavit supported with record indicating as to on what date allotment of the flat No.19-B, TY-1, Pocket A2, Group-6, Kondli Gharoli was cancelled.

13. Since 30th July, 2004 the respondent has failed to file any affidavit or show any document that the flat No.19-B, TY-1, Pocket A2, Group-6, Kondli Gharoli, earlier allotted to the petitioner was cancelled

90 days after 21st August, 2002 after the decision of the Civil Appeal No.9802-9807 of 1995 titled DDA v. Ashok Kumar Bahl and others.

14. On 3rd May, 2005, it was stated by the counsel for DDA that a draw of lots is to take place where the name of the petitioner would be considered for allotment of another flat in the facts and circumstances of the case. Consequently on 13th May, 2005, the result of draw of lots held on 10th May, 2005 was disclosed disclosing that the flat No.318, Ground Floor, Block 1, Mayur Vihar, Pocket 5 has been allotted to the petitioner. It was stated on behalf of the respondent that the demand-cum-allotment letter shall be issued to the petitioner within four weeks.

15. The respondent, thereafter, issued a demand cum allotment letter in respect of the flat drawn on 10th May, 2005 demanding a total amount of Rs.680970/- as the cost of the flat and demanded a balance amount of Rs.316800/- from the petitioner. The respondent demanded an amount of Rs.4,755/- per installment and 144 installments of the same amount.

16. The petitioner, therefore, filed an application being CM No.9343 of 2005 seeking direction to the respondent to handover the physical possession of the said flat on the same terms and conditions which

were indicated in the allotment letter issued in the year 1991 and not to demand the amount shown in demand cum allotment letter dated 8th June, 2005. The petitioner also claimed that if the petitioner has paid any extra amount over and above what was indicated in original demand cum allotment letter, the same be refunded to the petitioner. The petitioner therefore, claimed the balance amount with interest from October 2003 to June 2005.

17. On the application of the petitioner, by an interim order dated 3rd August, 2005, it was held that the demand raised by the demand cum allotment letter dated 8th June, 2005 be not enforced against the petitioner.

18. By order dated 3rd November, 2008, this Court granted more time to the respondent to produce the original record to show as to when the cancellation of earlier flat no. No.19-B, TY-1, Pocket A2, Group-6, Kondli Gharoli was done by the respondent. The respondent was given time till 3rd November, 2008. It was also held that if the respondent will fail to show the original record as to when the earlier flat was cancelled, then adverse inference will be taken against the respondent.

19. Despite the order passed by this Court, the respondent has failed to show as to when the earlier flat allotted to the petitioner was cancelled. It is apparent that if the flat was not cancelled 90 days after 21st August, 2002, then the cancellation will not be valid on account of alleged non-payment of the amount by the petitioner. From the record it is also apparent that the petitioner paid another sum of Rs.1,50,000/- comprising of Rs.1,30,000/- towards the cost of the flat and Rs.20,000/- towards the interest.

20. In the circumstances cancellation of the flat by the respondent on the ground that the amount was not paid within 90 days of 21st August, 2002 cannot be sustained as the respondents have failed to show as to when the flat was cancelled. If that be so, then whether the respondent is entitled to claim current cost for allotment made to the petitioner pursuant to draw of lots held on 10th May, 2005 is the next point to be determined.

21. In 1997(I) AD Delhi 578, Dhani Ram Kapoor v. Delhi Development Authority, it was held that if an allotment is made in favor of a citizen, a vested right is created and if any cancellation is to be made, principles of natural justice will come into play. If cancellation of allotment is bad

and improper, the subsequent higher demand cannot be sustained. In this case, the petitioner was a registrant for LIG flat who was allotted a flat after 11 years on hire-purchase basis. Though the registrant had deposited the installments, however, the possession was not given to him and it was communicated that his allotment had been cancelled. On the representation made to the Vice Chairman, another flat was allotted, however, he was demanded an amount of Rs.2,15,600/- instead of Rs.1,29,400/- the original demand. Relying on the decision in CWP No.587 of 1990 decided on 18th December, 1990 in a case titled Kanta Raju v. DDA, it was held that when a flat is allocated by a State authority to a private citizen, then that private citizen gets an interest therein and if the State authority wants to cancel such allotment or allocation, then the principles of natural justice will come into play. It was held that it will be contrary to the principles of natural justice, if an allotment made is sought to be cancelled without any show cause notice. Consequently, the order of the respondent demanding a sum of Rs.2,15,600/- in place of Rs.1,29,400/- was set aside and the authorities were directed to deliver the subsequent flat which was allotted to the petitioner on the price which the allottee had to pay under original demand letter.

22. In another matter reported as 92 (2001) DLT 171, Rakesh Kumar v. Delhi Development Authority, it was held that if allotment is made on account of default in dispatch of demand letter or any other default on part of DDA, then the applicant is liable to pay at the rates applicable to him for the flat originally allotted to him and DDA cannot burden the applicant with current costs for similar flat for no fault of the applicant.

23. The writ petition of the petitioner challenging the original demand made in 1991 of Rs.1,98,100/- was allowed by the High Court and in the appeal before Supreme Court no stay was granted against the order of the High Court. The appeal in the Supreme Court was decided on 21st August, 2002 and the petitioner became liable to pay the demanded amount within 90 days. Consequently the respondent could not cancel the Flat No.318, Ground Floor, Block 1, Mayur Vihar, Pocket 5, allotted to the petitioner, before expiry of 90 days from 21st August, 2002. The respondent was given opportunities since 30th July, 2004 to produce the record and to file an appropriate affidavit disclosing that the flat allotted to the petitioner earlier was cancelled after 90 days from the 21st August, 2002. The respondent has failed to file any record or any affidavit deposing as to when the flat was cancelled. In the circumstances an adverse inference has to be taken against the respondent and it has to be inferred that the flat was canceled before 90

days from 21st August, 2002 which could not be done by the respondent in the facts and circumstances.

24. The respondent in the circumstances cannot claim the current cost for the flat which has been allotted to the petitioner after cancelling his earlier flat wrongly. In the circumstances the petitioner is not liable to pay the current costs for the flat No.318, Ground Floor, Block 1, Mayur Vihar, Pocket 5. The respondent is entitled to the cost as indicated in the demand come allotment letter dated 09.01.1991-13.01.1991 which is Rs.1,98,100.00 (Rupees One lakh ninety eight thousand one hundred only). The petitioner has already deposited or paid more than Rs.1,98,100/-. The petitioner had last deposited a sum of Rs.1,50,000/- on 16th October, 2003. Therefore the amount deposited or paid by the petitioner, the amount of Rs.1,98,100/- shall be adjusted towards the cost of the flat No.318, Ground Floor, Block 1, Mayur Vihar, Pocket 5, and the balance amount shall be refunded by the respondent to the petitioner with simple interest at the @ of 9% per annum from 16th October, 2003 till the date of repayment.

25. Therefore, in the facts and circumstances and for the foregoing reasons the writ petition is allowed holding that the petitioner is liable for a cost of Rs.1,98,100/- for the flat No.318, Ground Floor, Block 1,

Mayur Vihar, Pocket 5, New Delhi. Since the petitioners has already paid more than the cost of the flat, the balance amount be refunded to the petitioner with simple interest @ 9% per annum from 16th October, 2003 when the amount was last paid/deposited by the petitioner. The respondent shall intimate the petitioner the formalities which are to be completed by the petitioner for taking over the possession of the flat within four weeks and on completion of formalities by the petitioner, the possession of the flat shall be handed over to the petitioner within four weeks after the completion of formalities. The balance amount with interest as detailed hereinbefore shall also be refunded to the petitioner within four weeks. Considering the facts and circumstances the respondent shall also be liable to pay a cost of Rs. 5000/- to the petitioner.

August 28, 2009
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ANIL KUMAR, J.