

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

+ **W.P.(C.) No.4041/2007 & C.M. No.7607/2007**

% **Date of Decision: 15.09.2009**

Smt. Veena Wanchoo and another Petitioners
Through Mr. Rajshekhar Rao, Advocate

Versus

Delhi Development Authority Respondent
Through Ms. Alpana Pandey for Mr. D.S.
Mehandru, Advocate for the
UOI/respondent No.1.
Ms. Sangeeta Chandra, Advocate for
the DDA.

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 has sought a direction against the respondent/DDA that the allotment of public houses under the FHS 2004 be declared to be arbitrary and illegal and therefore be set aside and to allot houses to the petitioners as applied by them in the Vasant Kunj area.

2. The respondent had announced the Festival Housing Scheme 2004. Under the said scheme about 2500 plots were available for allotment to the general public. The scheme for allotment for general public also had reservation of 1% for physically handicapped persons. It was also stipulated in the scheme that in case the requisite number of applications are not received in the reserved category, the remaining flats shall be offered to non-reserved category.

3. According to the petitioners since the number of flats which were to be offered were 2500, therefore, 25 flats had been reserved for physically handicapped persons including the petitioners, Smt.Veena Wanchoo and Shri Rajender Wanchoo. The petitioners submitted two applications for allotment of 2 BHK and 3 BHK flats in Vasant Kunj area. The scheme was closed on 24th November, 2004 and computerized draw was held for allotment of flats. The petitioners were not successful in the allotment of flats.

4. The petitioners contended that their names had not been included in the zone of consideration for the computerized draw. Petitioners had allegedly borrowed the money to pay the applications' amount of Rs.1.00 lakh and were paying a heavy rate of interest on the

same and, therefore, they made representations, however, they were informed that no flats had been reserved for physically handicapped persons in Vasant Kunj area.

5. Aggrieved by the actions of the respondents, the petitioners filed the present petition and sought allotment of flats to them and cancellation of draw of flats on various grounds.

6. The petition is contested by the respondent/DDA contending inter alia that the policy for reservation for physically handicapped category is reserving the flats area wise and where the flats constructed and to be allotted are more than 50 in numbers. The policy was allegedly framed at the highest level. The respondent asserted that there is no illegality or arbitrariness in allotment of public houses under FHS 2004 either in the general category or in the category of physically handicapped persons.

7. The respondent contended that in the draw of lots, no flat has been allotted to the petitioners and, therefore, they cannot make any grievances and they are not entitled for any relief. Draw was held in

presence of judges where a lucky number was picked up on random basis. The respondent disclosed that total number of applications received under the scheme and put in the draw in question were 1,64,095 against the total number of flats of 2506. Regarding the number of flats it was asserted that under clause 22 (b) of the Brochure, DDA had the right to increase and decrease the numbers of flats in the scheme according to the availability, and, therefore, no irregularity can be imputed on account of increase of number of flats for which the draw was held. Regarding the draw of lots, respondent clarified that draw of lots was held after re-shuffling of the application forms received under the scheme and after allotting random numbers to all the applicants. After the allotment of random number they are randomised serial-wise by the computer. The flats are also re-shuffled and a cross-reference of the flats is also prepared. This procedure, according to the respondent, is open and is done in the presence of judges. For lucky draw, the random digits are taken out from 5 difference boxes in the presence of the persons who are present for the draw and the lucky number thereon forms the basis for selecting the successful candidates. After the lucky number is drawn, the selection runs sequentially. For the draw of Festival Housing Scheme, respondent contended that the lucky number drawn was 1,61,834 and all the allotments that were made after the said number and ran sequentially.

8. Regarding petitioners, it was contended that they had applied under the physically handicapped category vide applications No.15007 and 1172 respectively. After re-shuffling the petitioner no.1 was allotted number 94716 and the petitioner No.2 was allotted random serial number 52162. The random numbers before serialization were 302508 and 166373 respectively. According to the respondent, the highest random serial number of an allotted flat in physically handicapped category was 584 and, therefore, the petitioners could not succeed in the said draw in the PH category. In the circumstances, it is contended that there is no illegality or arbitrariness in the allotment of flats.

9. The respondent also contended that one per cent of the reservation is made separately category-wise and locality-wise and to ensure fairness in the procedure, one per cent of the flats allocated in the each category in each locality were reserved by the respondent under physically handicapped quota.

10. A additional affidavit of Shri O.P. Gupta, Director (Housing), Delhi Development Authority, dated 13th July, 2009 was also filed explaining

the allotment made to Gopal Meena and Saroji as the petitioner had alleged irregularity in allotment to them according to their numbers. The respondent also explained that in Kondli Gharoli there were 74 flats which were allotted and not 33 flats as was alleged by the petitioners. The respondent also clarified that a reserved category person is considered first under a reserved category and if he does not get a flat under the reserved category, he is considered under the general category. It was stated that because of this policy, Shadi Ram Sharma was allotted a flat under the general quota. It was also reiterated that the allotment of the flats started with number 161834 and thereafter the number went in cyclic manner. The number started from 161834 and went till end, i.e., 164095 and then started from the beginning of the random number 1.

11. The learned counsel for the parties have been heard and the petition, counter affidavit, rejoinder, additional affidavit and documents have been considered. In W.P.C. 16025/2004, Pramod Kumar v. D.D.A and others, procedure for allotment has been upheld by this court. The relevant extract from the said decision is as follows:

“8 The procedure which is stated to be followed for the said draw of lots is that each of the applicant who submit the application in a scheme, is allotted a “Random Number”, which is not in seriatum to

the application numbers but is totally different from the same. It is stated that an application number, say, 1500 (which is higher in serialum) may be allotted random number 45000 while the application number 750 may be allotted random number 47000. This Random Number is stated to be allotted by the computer in which application numbers are fed. After the allotment of said Random Numbers to each of the applicants, the records maintained by respondent/DDA is stated to reflect all the details of a particular applicant including the application number, random number, name, father's name, preferences etc.

9. The Random Numbers so assigned to each applicant are then stated to be arranged in serialum, in ascending order, starting from serial number 1 till the last total number of applicants, which in the present case was 93775. Thus, each Random Number is assigned a "Random Serial Number" in accordance with its configuration assigned while juggling the application numbers for the assignment of a "Random Number". This process is stated to be adopted to avoid any mischief and foul play and to eradicate chances of collusion or fraud during the holding of draw of lots, whereby the application numbers are known to several persons and officials.

10. The process does not end here. After the Random Serial Numbers are assigned, the next step is stated to be picking up of a "Lucky Random Serial Number". The Lucky Random Serial Number is stated to be picked, one from each of the five boxes (in the present case) containing certain tokens/coins bearing numbers from 0 to 9, depending upon the total number of applicants placed in the draw. One number is stated to be picked from one of the said boxes by Independent Judges, who are stated to be Senior Government Officers. The numbers picked from each of the boxes is joined together to form, what is known as a Lucky Random Serial Number". This Lucky Random Serial Number is stated to form the basis of the allotment to be made to the applicants. The first allottee is stated to be the one having the said "Lucky Random Serial Number" and thereafter each "Random Serial Number" placed after the said Lucky Serial Number is picked up and depending upon the preferences given by the said applicant, allotment

continue to be made in ascending order from the said Random Serial Numbers.”

12. This procedure for draw of flats was upheld by this Court. The same procedure has been followed by the respondent/DDA in the present case. Consequently, the procedure adopted by the respondent in drawing the lucky number and then allotting the flats from the lucky number in the cyclic number till the last random number and starting again from the first number cannot be faulted. The petitioner have not faulted this procedure and has rather contended that certain flats have not been allotted according to the lucky number drawn as some of the numbers are just before the lucky number and not after the lucky number.

13. It is cannot be disputed that on the basis of random serial number the petitioner No.1 had serial No.94716, whereas petitioner No.2 had random serial number 52162 and therefore, they could not be allotted flat. A single Judge of this Court in W.P.C. 4472 of 2007, Ravi Jain v. DDA and other had relied on Pramod Kumar (supra) and had upheld the similar process of draw of lots, by order dated 17th November, 2008. It was held that on the basis of random number allotment of the flats on the basis of lucky random serial number and,

thereafter in a cyclic manner cannot be faulted. The decision of the single Judge was upheld in LPA No.83 of 2009 titled Ravi Jain v. DDA and others by order dated 20th February, 2009. The procedure for allotment of a random serial number and thereafter lucky random serial number being picked up and allotment not made on the basis of original application number was upheld. Consequently, the procedure adopted by the respondent cannot be faulted and the petitioners are not entitled for allotment of flat pursuant to allotment held on 28th January, 2005 by adopting a procedure under which random serial numbers were given and thereafter a lucky number was drawn and the flats have been allotted in cyclic manner from the lucky number onwards.

14. The learned counsel for the petitioner contended that if the lucky number was 161834 then the allotment could not be made in respect of application number 1449 having random No.161011 as indicated in the photocopy of draw of lots filed by the respondent. The original record of the DDA was called and was perused and it has transpired that the number is 161911 which come after the lucky number 161834 and, therefore, it cannot be faulted. The learned counsel for the petitioners has also challenged the list on the ground as to how allottees of reserved category have been put together in the list of allotment of flats since the allotment was done on the basis of lucky number. The

explanation by the learned counsel for the respondent that 19 flats in the list of draw of flats in the beginning are of the reserved category and the list has been generated by the computer which has parameters of reserved category and therefore they have been shown separately cannot be doubted. What is to be seen is whether the random serial number of all the candidates in the reserved category have their random serial number after the lucky serial number. From perusal of the random serial number of these allottees it is apparent that their random serial numbers are after lucky number 161834. Putting the name of the allottees who have been allotted under the reserved category prior to the general category does not reflect any irregularity or illegality in the draw of lots but it is a distinct feasibility of a computer having parameter of reserved category in its database. The plea of the learned counsel for the petitioners is therefore not acceptable. Merely because the reserved category allottees have been shown separately prior to general category allottees, the process of draw of lots cannot be faulted in the present facts and circumstances. In any case, the random number of all the 19 persons shown in the list dated 28th January, 2005 at page 107 of the paper book have their random number after the first lucky number 161834. In the circumstances, there is no illegality or such irregularity which will entitle petitioners to set aside the

allotment made by the respondent pursuant to draw held on 28th January, 2005.

15. The procedure for reserving the flats for the reserved category according to category-wise and locality-wise also cannot be faulted in the facts and circumstances. No other point has been urged by the learned counsel for the petitioners.

16. The writ petition is, therefore, without any merit in the facts and circumstances and the petitioner is not entitled for any relief. The writ petition is, therefore, dismissed. Parties are, however, left to bear their own costs.

September 15, 2009
'AA/Dev'

ANIL KUMAR, J.