

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4209/2007**

Date of decision : 26.03.2009

IN THE MATTER OF :  
VINOD KUMAR

..... Petitioner  
Through: Mr. N. Kinra, Advocate

versus

D.D.A. .... Respondent  
Through: Ms. Sangeeta Chandra, Adv .

**CORAM**

\* **HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**HIMA KOHLI, J. (ORAL)**

1. The present writ petition is filed by the petitioner praying inter alia for directions to the respondent/DDA to issue a demand letter in respect of the MIG flat bearing No. 12A, Pocket-B, Phase-2, Ground Floor, Jhilmil, Delhi, at the cost as existing on 20.03.2000, the date of the allotment.

2. Briefly stated, the facts of the case are that the petitioner applied to DDA for allotment of a LIG flat under the New Pattern Registration Scheme, 1979 (hereinafter referred to as '**the NPRS, 1979**'). On 08.09.1989, the petitioner applied to the respondent for converting his  
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registration from NPRS, 1979 to the 6<sup>th</sup> Self Financing Housing Registration Scheme, Category II. The petitioner undertook to pay the difference of the amount on receipt of permission from the respondent/DDA. Vide letter dated 14.10.1989, the respondent/DDA acceded to the request of the petitioner for conversion of his registration from NPRS, 1979 to the 6<sup>th</sup> SFS Scheme, Category-II.

3. It is the case of the petitioner that from the year 1989 to 2000, nothing further was heard from the respondent despite his regular visits to the office of the respondent/DDA. Thereafter, on 20.03.2000, the petitioner was allotted a MIG flat bearing No. 12A, Pocket-B, Phase-2, Ground Floor, Jhilmil, Delhi, in a draw held by the respondent/DDA in March, 2000. It is stated in the writ petition that between the year 2000 to 2004, the petitioner kept visiting the office of the respondent requesting the respondent for issuance of a demand letter with respect to the MIG flat allotted to him. On 05.02.2006, the petitioner read a public notice issued by the respondent/DDA stating inter alia that the registrants under the NPRS, 1979, who had not got the allotment, would be considered on individual merits of their cases within 30 days from the date of publication of the notice. On 5.3.2006 and again on 12.10.2006, the petitioner made a representation to the respondent requesting for issuance of a demand-cum-allotment letter in his favour. Having failed to receive any response from the respondent, the petitioner has filed the present writ petition.

4. Counsel for the petitioner states at the outset that the impression of the petitioner at the time of institution of the writ petition that he had been allotted a flat bearing No. 12A, Pocket-B, Phase-2, Ground Floor, Jhilmil, Delhi, is erroneous and that the said averment was made under the bonafide impression that the computerized draw of lots held in March, 2000, had declared the petitioner a successful allottee of the aforesaid flat. He states that fact of the matter is that the petitioner was not allotted any flat by the respondent/DDA in the draw of lots held in March, 2000. He further states that the petitioner has been waiting for the past 27 years after his registration and grave injustice has been caused to him as the respondent/DDA has not allotted any flat to him.

5. Counsel for the respondent submits that once the request of the petitioner for conversion of registration from NPRS 1979, to SFS, Category II was acceded to, it was the duty of the petitioner to apply to DDA for allotment of a flat in the SFS category, as the said allotments are made to the registrants on the basis of allocation application filed by them in respect of different allocation schemes that are issued by the respondent/DDA from time to time. She states that in the present case, the SFS scheme in question was the 6<sup>th</sup> scheme in respect of which, advertisements for allocation were published for the registrants to give their preference of the locality, in March, 1989; July, 1990; February, 1991; December, 1992; January, 1993; June, 1993 and lastly, in October, 1995. However, the

petitioner, for reasons best known to him, did not give his preference of the locality by making an application to the respondent/DDA, under any of the aforesaid options offered by the respondent/DDA.

6. It is further submitted on behalf of the respondent/DDA that a Press release inviting the registrants under the 6<sup>th</sup> SFS Scheme was published from 01.06.1994 to 20.06.1994. In the said press release, the public was informed that it was the last and final chance for the registrants of 6<sup>th</sup> SFS Scheme to apply and that those who did not apply for an allotment in the said release, would not be eligible to apply again for an allotment. It was further clarified that in case the registrants of 6<sup>th</sup> SFS Scheme did not avail of the opportunity, they would be deemed to have opted out of the scheme and action shall be taken to refund their registration money.

7. The attention of this Court is drawn to the terms and conditions of the 6<sup>th</sup> SFS Scheme, particularly, para 2.1 thereof, which is reproduced hereinbelow:

*"Delhi Development Authority has decided that only the registrants of 6<sup>th</sup> SFS Scheme can avail of this present opportunity of getting allocation/allotment of DDA flat. The registrants of the aforesaid scheme who do not apply in response to this present release will not be eligible to apply again for allocation/allotment and shall be deemed to have opted out of the scheme and action to refund their registration money will be initiated."*

8. Counsel for the respondent states that the 6<sup>th</sup> SFS Scheme also contains a clarification to the effect that the registration under the said scheme would only make a person eligible for allotment of a flat and as and when the release of flat would be announced by the DDA through press advertisements in the leading newspapers, the registrants would have to apply for allocation/allotment by exercising his/her option. It is therefore stated that the respondent/DDA cannot be held responsible for non-allotment of a flat to the petitioner, as he failed to apply to the respondent/DDA despite a number of opportunities granted to him for exercising his option for allotment of a flat. She further states that there is no provision for allotment of a flat on seniority basis under the SFS Scheme, Category II and the petitioner, therefore, cannot claim any special privilege on the basis of his original registration under the NPRS, 1979.

9. I have heard learned counsels for the parties and taken into consideration their respective submissions.

10. The facts of the case are undisputed. The counsel for the petitioner does not deny the fact that the petitioner after shifting his registration from the NPRS, 1979 to the 6<sup>th</sup> SFS Scheme, Category-II, in the year 1989, did not file any application with the respondent/DDA for allocation of a flat by giving a preference of the locality. Hence, no fault can be found with the DDA for failure to allot a flat to the petitioner, under the SFS Scheme, Category II by including his name in a draw of lots. It was

incumbent on the petitioner to have exercised his option in the first instance, by making an application, which he did not do. The only plea raised by the counsel for the petitioner in the course of arguments is that the petitioner is entitled to some consideration as he was a registrant under the NPRS, 1979 and has not been allotted a flat till date. He states that till date, the respondent has retained a sum of Rs.20,000/- deposited by the petitioner with the respondent while shifting from the NPRS, 1979 to the SFS Scheme. Merely because the petitioner has not sought refund of the registration amount from the respondent cannot be a ground for considering the claim of the petitioner for allotment of a flat under the NPRS, 1979 Scheme. It was for the petitioner to have applied to the respondent and make an option after having shifted his registration to the 6<sup>th</sup> SFS Scheme, for which a number of opportunities were given to the petitioner. However, he failed to avail of any of them. As far as the claim of the petitioner that the respondent has retained a sum of Rs.20,000/- deposited by the petitioner is concerned, the respondent had written a letter dated 28.12.2001 to the petitioner informing him that the scheme had already been closed and he was entitled to claim refund. If the petitioner chose not to approach the respondent/DDA for refund, the blame cannot be laid at the door of the DDA.

11. In view of the aforesaid circumstances, the relief prayed for in the writ petition cannot be granted. The writ petition is therefore dismissed.

However, the petitioner shall be entitled to claim refund of the registration money from the respondent/DDA with interest payable @ of 7% only upto 31.12.2006.

HIMA KOHLI,J

MARCH 26, 2009  
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