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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C.) No.2669/2008

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Date of Decision: 17.09.2009

Sh.Harbhajan Lal

.... Petitioner

Through Mr.N.Kinra, Advocate.

Versus

Delhi Development Authority

.... Respondent

Through Ms.Manisha Tyagi, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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

ANIL KUMAR, J. (ORAL)

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1. The petitioner seeks a direction to the respondent to include his name in the draw of lots and to allot a LIG flat as he is a registrant for it since 1979..

2. The plea of the petitioner is that the petitioner booked a LIG flat by registration No.18609 under the NPRS Scheme 1979. He was allotted a LIG flat No.109, Pocket 14, Sector-20, Phase III, Ground Floor, Rohini and a demand-cum-allotment letter dated 31st December, 1993 was issued to the petitioner stipulating the last date for payment as 31st March, 1994.

W.P(C) No.2669/2008

Page 1 of 6

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8

3. Before the date for payment of consideration under the demand-cum-allotment letter, the petitioner sought cancellation of the LIG flat allotted to him under the policy of the respondent and also deposited an amount of Rs.300/- towards the cancellation charges by challan No.084967 dated 7th February, 1994. After cancellation of his flat, the petitioner became entitled for consideration of his priority as the tail end priority.

4. The plea of the petitioner is that thereafter he had been approaching the respondent time and again in order to ascertain whether his priority has matured and a flat has been allotted to him, however, nothing was communicated to him.

5. According to the policy of the respondent those registrants who had got their allotment cancelled were entitled for consideration of their priority as a tail end priority and they were liable to deposit the cancellation charges equivalent to 20% of the amount deposited by such registrants at the time of registration.

6. The petitioner contended that though the priority of the petitioner had matured in 2007 and the case of the petitioner should have been included in the tail end priority draw which was held on 27th September, 2007, however, his name was not included on the ground that the petitioner had not paid the cancellation charges.

7. The assertion of the petitioner is that he had paid Rs.300/- as the cancellation charges as per the policy prevalent at the time of allotment of flat in 1993, however, the respondent demanded another amount of Rs.1701/- on 25th July, 2007.

8. The petitioner contends that on account of non payment of cancellation charges the case of the petitioner could not be declined to be considered by the respondent, though he had deposited the cancellation charges and had also submitted the proof of deposit to the respondent. The petitioner, however, deposited other amount of Rs.1701/- demanded by the respondent, though according to the petitioner, he was not liable to pay the same and on account of nonpayment of same his name could not be excluded.

9. Reliance has been placed by the learned counsel for the petitioner on Raj Kumar Malhotra v. DDA, W.P(C) No.5793/2005 decided on 18th October, 2005 holding that the respondent being a state, profit motive cannot be the goal and in the circumstances where the flats are not allotted for a considerable period, equity leans in favour of the applicants. In the circumstances, it was held that DDA was liable to consider the case of allotment of those allottees also who had not paid the cancellation charges. The Court had directed the DDA to include the name of such registrant for allotment of flats and such

10

registrants were directed to pay cancellation charges along with interest at 15% per annum.

10. The petition is contested by the respondent contending inter-alia that the scheme for tail end priority was closed on 31st December, 1993, therefore, the petitioner is not entitled for consideration of his priority.

11. This cannot be disputed by the respondent that the scheme of tail end priority was closed on 31st December, 1993 after the flat was allotted to the petitioner. If the petitioner had got the flat during the period the respondent had a policy entitling the allottees to get the allotment cancelled subject to payment of certain charges, the right to such allottees could not be negated. The petitioner had got his flat cancelled on account of it and had also deposited the cancellation charges. Consequently, on this ground the consideration of the case of the petitioner for the tail end priority could not be declined.

12. The respondents also cannot dispute that the tail end priority for allotment of LIG flats, a draw was held on 27th September, 2007. The name of the petitioner was not included in the draw held on 27th September, 2007 presumably on the ground that he had not paid the cancellation charges as no other ground were disclosed and communicated to the petitioner. The respondent had not taken the ground that the petitioner could not get his earlier flat cancelled as

11

though the flat was allotted during the subsistence of policy of cancellation, however, it was got cancelled after the expiry of that policy. Depositing the cancellation charges for availing the policy which was valid upto 31st December, 1993 is not relevant and what is relevant is that in case a flat was allotted prior to that date, the same could be got cancelled by the allottee on payment of cancellation charges. If the petitioner was not entitled to get the earlier flat allotted to him cancelled on the ground now taken by the respondent, then the respondent should have returned the cancellation charges to him which were deposited in 1994. The respondent not only accepted the cancellation charges in 1994, the respondent again demanded other sum of Rs.1701/- as other charges for cancellation of earlier flat which amount was also paid by the petitioner though his contention is that the said amount of Rs.1701/- was not payable by the petitioner. In these circumstances, the respondent cannot be allowed to contend that the petitioner was not entitled to get his earlier flat cancelled.

13. Consequently, the petitioner is entitled for consideration of his priority as the tail end policy. Therefore, for the foregoing reasons the writ petition is allowed. The respondent is directed to hold a mini draw within three months and include the name of the petitioner for allotment of a LIG flat. On the flat being allotted in the mini draw, demand-cum-allotment letter demanding the rates as were prevalent in September, 2007 be sent to the petitioner within four weeks thereafter.

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On payment of consideration in accordance with the demand-cum-allotment letter and on fulfilling the formalities within six weeks thereafter, the possession of the flat be given to the petitioner. After handing over the possession, the conveyance deed in respect of LIG flat be also executed in favour of the petitioner in accordance with rules and regulations. Considering the facts and circumstances parties are left to bear their own cost.

September 17, 2009

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ANIL KUMAR, J.