

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

+ **W.P.(C.) No.15418/2006**

% **Date of Decision: 13.07.2009**

Doodh Nath Petitioner
Through Mr.Deepak Khosla and Ms.Sunita Jain,
Advocates

Versus

Delhi Development Authority Respondent
Through Mr.Rakesh Mittal, Advocate for
Mr.Vivek, 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? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (ORAL)

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Mr.Rakesh Mittal appears on behalf of counsel for the respondent and seeks an adjournment. Adjournment is opposed by the counsel for the petitioner. On 6th October, 2006, respondent was directed to file the counter affidavit within four weeks which was not filed and on 1st March, 2007 last opportunity was granted to the respondent to file the counter affidavit within four weeks. Despite the final opportunity given on 1st March, 2007 again the counter affidavit was not filed, therefore, on 25th July, 2007, the cost of Rs.3,500/- was imposed on the respondent and time was given to file the counter affidavit on or before

17th August, 2007 and the matter was adjourned to 6th December, 2007. On that date, the matter was adjourned on the personal difficulty of the counsel and thereafter the matter is listed today.

Perusal of the counter affidavit filed on behalf of the respondent also reveals that though the counter affidavit stipulates that a copy of the demand-cum-allotment letter dated 16th February, 2005 is annexed, however, no copy of demand-cum-allotment letter has been filed with the counter affidavit. In the facts and circumstances, the request of the respondent for adjournment is declined.

The petitioner has filed the present petition seeking allotment of the flat No.310, Sector 16-B, Pocket-B, Category B, First Floor, Dwarka, New Delhi on the ground that the petitioner had applied for a flat under Janta Housing Registration Scheme 1996 on 27th February, 1996 and had deposited a bank draft of Rs.5,000/-. The petitioner averred that he received a letter dated 5th June, 2003 demanding certain documents including ration card which were submitted by the petitioner. According to the petitioner, the draw of lots was held on 15th October, 2004, however, petitioner did not receive any demand-cum-allotment letter nor is he aware of any flat being allotted to him. According to the petitioner, he received a show cause notice dated 28th December, 2005 asking him to show cause as to why his allotment be not cancelled. The petitioner replied to the said letter by reply dated 6th January, 2006 which was also duly acknowledged by the respondent as an acknowledgment of the reply to show cause is filed by the petitioner as

Annexure 8. In his reply to the show cause notice, the petitioner had categorically asserted that he had not received any letter dated 16th February, 2005. Regarding the documents stipulated in the show cause notice, it was asserted that the documents had already been deposited. In the circumstances, the petitioner sought an inquiry as to how the allotment letter was not sent to the petitioner. The petitioner also sought that the amount which is to be deposited by the petitioner be also intimated to him so that the amount could be deposited by the petitioner for allotment of the flat to him.

The plea of the petitioner is that despite the reply to show cause notice asking the respondent to make an inquiry into as to why the allotment letter was not sent to him, neither the copy of the allotment letter was sent to him nor the proof of sending the letter was given to him and his allotment has been cancelled mechanically by a cyclostyled cancellation letter dated 17th March, 2006. The petitioner also contended that no personal hearing was granted to him and his allotment has been cancelled arbitrarily, mechanically and without application of mind. On failure of the respondent to allot a flat to him, the present petition has been filed.

The respondent have filed a counter affidavit contending that allotment-cum-demand letter dated 16th February, 2005 was sent for payment and documents at his address, B-1/73, New Kondli, Delhi, which was received in his family. Although the counter affidavit stipulates that a copy of P.O.D. is annexed as R1, however, neither the

copy of the P.O.D. is annexed nor has the copy of allotment-cum-demand letter dated 16th February, 2005 been filed. The pleas and contentions raised by the petitioner were not replied except the bare denials. The petitioner has filed the rejoinder affidavit reiterating pleas and contentions raised in his petition.

The cancellation of the allotment of the petitioner is solely based on not replying to the demand-cum-allotment letter dated 16th February, 2005 and depositing the amount demanded by the respondent from the petitioner. The petitioner has denied that he has received any demand-cum-allotment letter. In case the petitioner has denied that any demand-cum-allotment letter was issued to him, it was incumbent on the respondent to show as to how the demand-cum-allotment letter was sent and how it was served on him. Although it has been stated that the demand-cum-allotment letter was served on a family member, however, neither the copy of the demand-cum-allotment letter has been filed nor any proof to show that demand-cum-allotment letter was served on the member of the family of the petitioner. How the allegation has been made that the demand-cum-allotment letter was served on the member of the family of the petitioner has not been explained. Pleas raised in the reply to show cause notice have also not been considered. The cancellation letter strangely on one hand cancels the registration of the petitioner for allotment of a flat and in the same cancellation letter dated 17th March, 2006 (Annexure 9 annexed with the petition) demands the original copy of the application, copy of the

challan, bank details, three signatures along with the photos and the copy of the ration card. In case the demand-cum-allotment letter was issued and petitioner had not responded to that then while cancelling the allotment of the petitioner why he has been asked to submit the documents again which had already been submitted by him has not been answered and explained in the counter affidavit. The petitioner had also claimed an inquiry into as to why the allotment-cum-demand letter was not served upon him, however, no action has been taken by the respondent. The petitioner had also demanded in reply to show cause notice to intimate him as to how much amount is to be deposited or was to be deposited by him which fact has not been answered by the respondent. The whole action of the respondent, in the facts and circumstances, apparently reflects malafide on the part of the respondent in cancelling the allotment and consequently the cancellation of the allotment of a flat to the petitioner cannot be sustained.

Therefore, in the facts and circumstances, the cancellation of petitioner's allotment by letter No.J-312/348/05/JHRS/DW/738 dated 17th March, 2006 is set aside and registration for allotment of flat to the petitioner is restored.

Consequently, for the foregoing reasons, the writ petition is allowed. Respondent is directed to allow flat No.310, Sector 16-B, Pocket-B, Category B, First Floor, Dwarka, New Delhi and in case the said flat is not available, then to allot any other flat in Dwarka on the

same terms and conditions as stipulated in the allotment letter of Flat No. 310, Sector 16-B, Pocket-B, Category B, First Floor, Dwarka, New Delhi to the petitioner. The allotment be done within four weeks and allotment-cum-demand letter be issued to the petitioner within two weeks thereafter. On receipt of the allotment-cum-demand letter, the petitioner shall pay the amount demanded within four weeks thereafter.

With these directions, the writ petition is disposed of. Considering the facts and circumstances, Delhi Development Authority is also burdened with a cost of Rs.10,000/- which shall be payable to the petitioner within four weeks.

July 13, 2009

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ANIL KUMAR, J.