

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C)18970/2006 & CMs 15735/2006 & 14820/2008**

Date of decision : 16.02.2009

IN THE MATTER OF :

#KRISHNA SAPRA ... Petitioner
! Through :Ms. Richa Kapoor, Advocate.

versus

\$ D.D.A. Respondent
^ Through : Mr. Vivek Goyal, and
Mr.Maninder Dubey, Advocates

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* **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 a writ of mandamus to be issued to the respondent/DDA to issue a demand-cum-allotment letter in respect of Flat No. 314, Mayur Vihar, Pocket-5, Delhi, at the cost prevalent in the year 1991, on the date of draw of an alternative flat.

2. The case of the petitioner is that her husband, Shri S.C. Sapra was registered under the New Pattern Registration Scheme, 1979 (NPRS, 1979). In the year 1989, the respondent floated Avas Sarkar Yojna (ASY) Scheme to reduce the backlog of registrants under the NPRS, 1979. The petitioner's husband, who had not been allotted a flat till 1989, applied for conversion of his registration to the ASY, 1989 scheme. In the meanwhile, in the year 1991, Shri S.C. Sapra was allotted a flat bearing No. 51A, Pocket A-3, Group III, Kondli Gharoli, Ground Floor, Delhi but a demand-cum-allotment letter was not issued to him on the ground that his registration had been transferred to ASY. On 07.10.1992, the respondent/DDA resolved to close the ASY, 1989 Scheme and not to entertain any more cases, other than of the nine Co-operative Societies duly registered under the said scheme. It is relevant to note that the name of the husband of the petitioner was not included in the list of the nine Co-operative Societies. As a result, on account of closure of the ASY, 1989 scheme, the registration of the husband of the petitioner continued to remain under the NPRS, 1979 scheme. However, till the year 1998, the respondent/DDA did not issue a demand-cum-allotment letter in respect of the flat, allotted to Shri S.C. Sapra. On 12.12.1998, the husband of the petitioner expired, whereafter, the registration of the petitioner's husband was mutated in favour of the petitioner, vide letter dated 09.09.2003 issued by the DDA.

3. It is the case of the petitioner that while browsing through the website of the DDA, she noticed that the flat bearing No. 314 (LIG), Mayur Vihar, Pocket 5, Delhi was allotted in her favour in terms of a draw held in the year 2004. However, as no demand-cum-allotment letter was issued by the respondent/DDA to the petitioner, she is compelled to file the present writ petition.

4. Counsel for the petitioner states that the present case is covered by the order dated 09.07.2008 passed in **WP(C) 636/2007** entitled 'Kiran Arora vs. DDA'. She submits that the petitioner is entitled to allotment at the rates prevalent at the time, when the allotment matured in favour of her husband, i.e., on 12.10.1990 when the computerized draw of lots was held by the DDA. She states that while the petitioner is ready and willing to pay the current cost of the additional area allotted to her, the old disposal cost is liable to be charged on the basis of the date of maturity of the priority of her husband.

5. On the other hand, counsel for the respondent states that the cost of the flat, allotted to the petitioner, has been worked out at Rs.8,87,424/- as per a demand-cum-allotment letter bearing block date 02.11.2007 to 09.11.2007. He contends that the respondent is entitled to not only claim the old cost of the earlier allotted flat, but is also

entitled to claim interest thereon. He states that the cost of the additional land has also been calculated on the basis of the year 2007, the date of issue of the demand-cum-allotment letter.

6. The aforesaid claim of the respondent towards interest and the current cost for additional area is disputed by the counsel for the petitioner, who states that the DDA is not entitled to charge the rate prevalent in the year 2007 for the additional land or the interest towards the old disposal rate as the said aspect was duly considered and decided in the case of Kiran Arora (supra).

7. A perusal of the aforesaid judgment dated 9.7.2008 shows that the Circular dated 06.06.2006, relied upon by the respondent/DDA in the aforesaid case, was duly considered by the Court. As per the said Circular, the DDA decided that in cases where the registrants did not approach the DDA within a period of four years, they shall be considered for allotment of a flat at the old prevalent cost at the time when the flat matured for allotment in favour of the registrants but with a simple interest at the rate of 12% till the date of issuance of fresh demand-cum-allotment letter or the current cost prevalent at the time of issuance of the fresh demand-cum-allotment letter, whichever is lower. The aforesaid submission made on behalf of DDA was, however, rejected by the learned Single Judge, who opined that the DDA would not be entitled to charge the rate prevalent in the year

2004, much less to charge any interest thereon.

8. It was held by the Single Judge that the respondent/DDA would be entitled to charge only the rate, which was prevalent at the time of maturity of the priority of the petitioner therein, in terms of the order of the DDA dated 14.03.2005 (annexed as Annexure P9 to the writ petition). The logic for arriving at the aforesaid conclusion was the fact that the policy of the DDA at the relevant time, i.e., in the year 2004, was to charge from registrants, the rate prevalent at the time when the priority of the registrant matured. The subsequent policy dated 6.6.2006, as relied upon by the respondent/DDA was held not to be applicable as it could not be given retrospective effect when the allotment had been made belatedly in the year 2004, as opposed to the year 2000 when the same ought to have been made.

9. Learned counsel for the petitioner also draws the attention of this Court to the order dated 04.04.2007 passed in **WP(C) 12874/2006** entitled 'Harbans Lal Chakravarti vs. DDA' and judgment dated 26.05.2008 passed by the Division Bench in **LPA No. 272/2008** entitled 'DDA vs. Vinod Nagpal'. In the case of Vinod Nagpal (supra), the Division Bench upheld the decision of the learned Single Judge dated 24.01.2008 passed in the WP(C) 6316/2006 and approved the judgment in the case of Harbans Lal Chakravarti (supra) wherein it was

observed that the policy of the DDA dated 14.03.2005 would apply in the cases having similar facts as that of the petitioner herein. Even in the present case, it is not disputed by the respondent/DDA that the priority of the husband of the petitioner matured in the year 1990.

10. Taking into consideration the aforesaid judgments, the present writ petition is allowed to the extent that the respondent shall issue a fresh demand-cum-allotment letter in respect of Flat No. 314, Mayur Vihar, Pocket-5, Delhi, in favour of the petitioner, wherein the cost of the flat shall be calculated at the rate prevalent in the year 1990. The respondent shall not be entitled to levy any interest on the cost as calculated. However, insofar as the cost of additional area allotted is concerned, considering the fact that the respondent/DDA held the draw of lots on 24.11.2004, it shall be entitled to claim the cost at the rates as existing on 24.03.2005. The respondent shall, however, not be entitled to charge any interest on the aforesaid amount for the reason that the demand-cum-allotment letter came to be issued to the petitioner only as late as in November, 2007, by virtue of letter having block dates 02.11.2007 to 09.11.2007. While issuing a fresh demand-cum-allotment letter, the respondent shall take into consideration and give credit for the amount already deposited by the petitioner. The said letter shall be issued in favour of the petitioner within four weeks from today. The petitioner shall complete all the

requisite formalities and make the payment within the time stipulated by the respondent. The respondent shall hand over possession of the flat to the petitioner within four weeks from the date of completion of all formalities by the petitioner. The petition is disposed of along with the pending applications.

11. Parties are left to bear their own costs.

HIMA KOHLI,J

FEBRUARY 16, 2009
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