

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

+ **Writ Petition (Civil) No.5333/2008**

% **Date of Decision: 27.07.2009**

Sukhjinder Singh Bhatia Petitioner
Through Mr.N.Kinra, Advocate

Versus

Delhi Development Authority Respondent
Through Ms.Manika Tripathy Pandey, 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.

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The petitioner seeks consideration of his property in the draw of lots and allotment of a LIG flat on the ground that his allotment letter was sent at the wrong address. It is contended that since he is an old man, his priority be considered at the earliest and a flat be allotted to him.

The petitioner had booked a LIG flat vide registration No.25527 under NPRS 1979 scheme. The address given by the petitioner was "Flat No.235, Pocket – 3, Paschim Puri. The petitioner has produced the copy of his certificate of registration and the receipt indicating the address of the petitioner as detailed hereinabove.

The grievance of the petitioner is that in 1993, a draw was held for LIG flats and Flat No.180-D, Sector-A, Type-II, Group-13, 1st Floor, Kondly Gharoli, was allotted to the petitioner. The allotment letter was, however, sent by the respondent at the address: Flat No.23, Pocket 3, Janta Flats, Paschim Puri, Delhi-3 whereas the address of the petitioner is Flat No.235, Pocket -3, Janta Flat, Delhi-110063. The location of two addresses is quite different and a communication sent to Flat No.23 could not be delivered to Flat No.235.

Since the petitioner did not receive, the intimation of demand-cum-allotment, therefore, he could not deposit the amount demanded in terms of the admission letter having block dates 27th December, 1993 – 31st December, 1993.

The plea of the petitioner is that since the demand-cum-letter was sent at the wrong address which was received back unserved, therefore, the respondent ought to have sent the demand letter again on the correct address of the petitioner. Reliance is also placed on the policy of the DDA which deals with situations where the allotment letters are sent at the wrong address. It is contended that as per the policy if the allottees are allotted flats later on account of mistake of DDA, they are to be allotted flats at the same price as per the original demand letter so that allottees are not unnecessarily harassed and compelled to approach the court. The petitioner has placed reliance on the decision taken by the respondent in the case of Jai Narain in respect of Flat No.51, C Block, in the draw held on 26th March, 1993. Reliance has

also been placed on the decision of a single Judge in W.P.C. No.10983/2004, Geeta Devi v. DDA decided on 16th August, 2004 and Writ Petition (Civil) No.2107/2007, Shri D.S. Sethi v. Delhi Development Authority decided on 30th January, 2008.

The petition is contested by the respondent/DDA contending inter alia that there is a delay of 15 years in filing the present writ petition and the petition suffers from laches and delay. Relying on demand-cum-allotment letter issued on 27th December, 1997-31st December, 1993, it is contended that the last date for depositing the cost of the flat and furnishing the required documents was 31st March, 1994. It is further contended that if the address of the petitioner on the demand letter was not correct, then he could not have obtained the copy of the same and produced in the Court. Regarding the various communications sent by the petitioner from time to time, it is contended that the file No.L-45(554)93/LIG/NP of flat No.180-D, First Floor, Sector A, Type II, Kondly Gharoli, is not traceable and, therefore, the pleas and contentions of the petitioner cannot be admitted or denied.

Refuting the pleas raised by the respondent, it is asserted that since the demand letter was not received by the petitioner, the pleas of the petitioners are not barred by time. The respondent, it is alleged, cannot be allowed to take benefit of his own lapses. Regarding the petitioner getting the copy of the demand letter later on, it is contended that he got the copy of the said demand letter on 14th December, 2004

in a meeting. An acknowledgement of the DDA has also been produced by the petitioner showing that the petitioner was given a copy of the demand letter after considering his representations and during a meeting on 14th December, 2004.

When notice was issued to the respondent, direction was given to produce the original record. The respondent failed to produce the original record. Last opportunity was granted to the respondent to trace out the allotment file, subject to a cost of Rs.2,000/- on 20th April, 2009. Despite the cost imposed, the respondent failed to produce original record, however, the cost of Rs.2,000/- has been paid today.

This is not disputed that the petitioner has approached the respondent in December 2004. Since it was pointed out to the respondent that the allotment letter of draw held in 1993, was sent at a wrong address and it was not received by him, it was for the DDA to include the name of the petitioner in the draw of flats which was held in 2004. In *Jallagi Devi v. DDA*, WPC No.4503/2006 the letter of allotment was issued some time in 1999. However, it was sent at a wrong address and allotment was cancelled. It was held by the Court that the respondent was liable to include the name of the registrant for LIG flat in the forthcoming draw of lots and the registrant was liable to pay the cost as per the old allotment letter with simple interest at 12%, subject to the ceiling of the current cost which was as per the DDA policy.

The plea of the respondent is not that the petitioner had received the demand-cum-allotment letter for the draw of lot held in 1993. The non-receipt of the demand-cum-allotment letter of 1993 has been challenged only on the ground that if the letter was not received by the petitioner then how a copy of the same was produced by him. This has been aptly replied by the petitioner that in 2004 he had approached the DDA and had made representations and during the consideration of the representation, in a meeting held on 14th December, 2004, a copy of allotment-cum-demand letter of 1993 was given to him. Admittedly, the address of the petitioner in the demand-cum-allotment letter of 1993 is not correct. If the address of the petitioner was not correct and the demand-cum-allotment letter was not served on the petitioner in 1993 and was received back by the respondent, the respondent should have sent another letter at the correct address. The respondent could not have cancelled allotment of the petitioner in accordance with its own policy, a copy of which has been produced by the petitioner which has not been denied and cannot be denied by the respondent. Rather, the pleas raised by the petitioner could not be denied by the respondent as despite the opportunities given to the respondent, it failed to produce the original record file pertaining to the petitioner.

Since the petitioner approached the respondents in 2004 and it is contended that a draw of lots for LIG flat took place in 2004, therefore, the name of the petitioner ought to have been included in the draw of lots of LIG flats in 2004. Since the name of the petitioner has not been

included in the draw of lots, the petitioner is entitled for allotment of LIG flat pursuant to the draw of lots to be held by the respondent.

For the foregoing reasons, the writ petition is allowed. Respondent is directed to include the name of the petitioner in the mini draw/draw of lots within three months for the LIG category and issue demand-cum-allotment letter within four weeks after the draw of lot of the LIG flat. Learned counsel for the petitioner admits that the petitioner shall be liable to pay the cost of the flat as per the rate for the allotment of LIG flat in 2004 since the petitioner has approached in 2004. This fact is also not denied by the counsel for DDA though under the policy the petitioner is liable to pay the rates of 1993 as draw of lot for flats had taken place in 1993, the letter of which was sent at wrong address. The learned counsel says that the rates of allotment of 2004 are higher than that of 1993. The petitioner shall also be liable to pay simple interest at 12% till date. On issuance of demand-cum-allotment letter and compliance of all the commercial formalities, the petitioner shall be entitled for possession of the flat forthwith. The name of the petitioner is to be considered for the allotment of the flats in the same zone for which the allotment was made and cancelled on account of non-service of demand-cum-allotment letter at the wrong address.

The writ petition is allowed in terms hereof. However, parties are left to bear their own costs.

July 27, 2009
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ANIL KUMAR, J.