

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

+ **Writ Petition (Civil) No.6523/2008**

% **Date of Decision: 02.09.2009**

Shobha Saraf Petitioner

Through Mr.N.Kinra, Advocate

Versus

Delhi Development Authority Respondent

Through Mr.Sushant Thakur, 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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Despite last opportunity granted to the respondent DDA to file the counter affidavit subject to payment of cost of Rs.1000/- by order dated 20th April, 2009, neither the counter affidavit has been filed nor has the cost been paid. The learned counsel for the respondent states that he has not received the file from the respondent nor he has received any instructions. In the circumstances, right of the respondent to file the counter affidavit is closed.

The petitioner booked a MIG Flat by registration No.34263. The petitioner had deposited an amount of Rs.4500/- on 10th June, 1980

under New Pattern Scheme, 1979. A certificate of registration was issued in the name of petitioner on being registered under the said scheme.

A demand-cum-allotment letter for the block dates 9th/10th January, 1991 was issued to the petitioner for flat No.30, Sector 15, Block E-2, Pocket 3, Rohini. The cost of the flat was Rs.2,92,600/-. According to the policy prevalent at that time the petitioner was entitled to get the flat allotted to him cancelled on payment of 20% amount of the initial deposit.

The petitioner, therefore, on account of financial problems opted to get the MIG flat which was allotted to him in 1991 to be cancelled and sent communication dated 9th April, 1991 seeking cancellation of the allotment, however, requesting the respondent to retain his booking and to give him an opportunity as and when flats would be available in future. The petitioner also deposited a sum of Rs.900/- by challan No.80848 dated 9th April, 1991 and sent the original challan with the communication dated 9th April, 1991 which was duly received by the respondent.

The petitioner thereafter received a communication reference No.24(197)91/RO/MIG/NP dated 21st October, 1991 demanding a sum of Rs.7078.15/- on account of cancellation charges. Petitioner sent a

reply dated 16th November, 1991 contending that he is not liable to pay the exorbitant cancellation charges of Rs.7078.15/- as he had deposited the cancellation charges within one week on receipt of allotment letter. The petitioner asserted that the registered letter was posted by DDA on 27th March, 1991 and was received by him on 2nd April, 1991 and, therefore, the prescribed period of 30 days should not be calculated from the date of allotment letter that is 9th January, 1991 and, therefore, he should not be penalized for the same. The petitioner also produced the copy of the registered envelope showing the date of dispatch as 27th March, 1991.

The petitioner, therefore, did not pay the amount of Rs.7078.15/- and thereafter sent a communication dated 21st August, 1999 demanding the status of his priority after getting the earlier allotment cancelled in 1991. According to the petitioner a tail end draw was held on 31st March, 2004, however, the name of the petitioner was not put in the tail end draw, therefore, the petitioner made a representation on 5th February, 2006 pursuant to a notice published in the newspaper by the DDA that the registrants not allotted flats must represent to DDA within 30 days. Another representation was made by the petitioner on 3rd March, 2006 and yet another representation on 30th October, 2006. Another representation was sent on 28th July, 2008, however, the representations made by the petitioner have not been replied by the respondent.

According to the petitioner the Vice Chairman of DDA had issued instructions on 2nd April, 2004 that all the names of tail end priority who could not be included on the tail end draw which was held on 31st March, 2004 on account of the records being not kept properly, shall be considered again according to their seniority. The petitioner has also relied on the order of this Court in the case of Rajkumar Malhotra v. DDA, W.P(C) 5793/2005 decided on 18th October, 2005, holding that those registrants whose names were not included in the tail end draw would be entitled for allotment of flat after draw of lots and they would be liable to pay the cost of the flat at the rate which was charged by the respondent for allotment of flats made pursuant to draw of lots held on 31st March, 2004. It was further held that while allotting the flats to such tail enders, they shall, however, be liable to pay cancellation charges and interest on cancellation charges at the rate of 15% per annum, however, no interest would be charged by the respondent on the price of the flats.

The averment made by the petitioner have not refuted as no counter affidavit has been filed. This cannot be disputed that the petitioner is a registrant for the MIG flat and the flat which was allotted to him in 1991, allotment letter dated 9th January, 1991 was issued on 27th March, 1991 which was received by him on 2nd April, 1991. The petitioner has also paid 20% of the cancellation charges on 9th April,

1991. The petitioner, therefore, became entitled for cancellation of the flat allotted to him earlier by allotment letter of block date 9th/10th January, 1991 and he was to be considered in the tail end draw in future. This also cannot be disputed that the draw of tail end priority took place on 31st March, 2004, however the name of the petitioner was not included in the same. The respondents are unable to show any cogent reason for not including the name of the petitioner in the tail end draw and therefore, petitioner has become entitled for inclusion of his name in the draw of lots for the MIG flats and for allotment of a flat at the rates which were charged by the respondent on 31st March, 2004.

The learned counsel for the petitioner has contended that he was not liable to pay the sum of Rs.7078.15/- the cancellation charges demanded from the petitioner by letter dated 21st October, 1991. The learned counsel for the petitioner contends that there was no policy for demanding the said amount and he is liable to pay only 20% of the cancellation charges. This cannot be disputed that the petitioner had paid 20% of the amount initially deposited on 9th April, 1991 within thirty days of receipt of allotment letter which was posted on 27th March, 1991 and which was received by the petitioner on 9th April, 1991. No counter affidavit has been filed by the respondent to show or demonstrate as on what account the respondent had demanded the cancellation charges of Rs.7078.15. The petitioner has categorically contended that the applicable policy of DDA in 1991 only contemplated

20% of the amount initially deposited as cancellation charges and that amount had been deposited by the petitioner. The respondent has not filed any other policy or circular or anything to justify the liability of the petitioner for the said amount of Rs.7078.15 on account of cancellation charges. Therefore, it will have to be held that the petitioner is not liable to pay the said amount of Rs.7078.15 as demanded by the respondent and the petitioner has already paid an amount of Rs.900.00 towards the cancellation charges which is the amount payable under the policy applicable at that time. The learned counsel for the petitioner has also relied on Rajkumar Malhotra (Supra) to contend that only 20% of the amount of the initial deposit was payable as the cancellation charges. Therefore, the petitioner shall not be liable to pay an amount of Rs.7078.15/- as cancellation charges.

In the circumstances, the petitioner shall be entitled for allotment of a MIG flat on the draw of lots and for this the respondent is liable to hold a mini draw which will be held by the respondent expeditiously. The petitioner shall be entitled to flat at the rates which were charged from the allottees of MIG flats allotted pursuant to draw made on 31st March, 2004. The petitioner shall not be liable to pay interest on the amount of flat which is to be allotted to the petitioner.

For the reasons stated above, the writ petition is allowed. The respondent is directed to include the name of the petitioner in the mini

draw of lots which should be held within three months. On allotment of the flat to the petitioner, the demand-cum-allotment letter to be issued within four weeks demanding the costs of the flat at the rate at which, the flats were allotted in the draw of lots held on 31st March, 2004. The respondent shall not be entitled for any interest on the amount of flat from the petitioner. On payment of the cost of the flat within four week from the date of receipt of demand cum allotment letter, the respondent shall get the formalities fulfilled within two weeks thereafter. On payment of demanded amount and fulfilling the formalities for handing over the possession, the possession shall be handed over within four weeks to the petitioner from the date of payment of cost of the flat by the petitioner to the respondent. The writ petition is allowed in terms hereof. Parties are, however, left to bear their own costs.

Dasti.

September 02, 2009

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ANIL KUMAR, J.