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

+ W.P.(C) 8553/2008

Date of decision: 12th October, 2009

HARVINDER KAUR Petitioner
Through Mr. N. Kinra, Advocate.

versus

D.D.A. Respondent
Through Ms. Rajdipa Behura & Mr. C.S. Chauhan,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

1. The petitioner's husband Mr. Gurmeet Singh was registered for allotment of an MIG flat with the DDA in the year 1979.
2. Mr. Gurmeet Singh went missing in 1989 and a police report was filed on 25th July, 1989.
3. Allotment letter with block dates 1st October, 1999 – 4th October, 1999 was issued to Mr. Gurmeet Singh informing that in the draw of lots held on 6th August, 1999, flat No. 17, Section 18, Block- D, Ground Floor,

Rohini was allotted to him. As per the said allotment letter, the total cost of the flat was Rs.3,89,883.50. The petitioner deposited Rs.20,000/- towards the earnest money and wrote letter dated 2nd November, 1999 informing DDA that her husband was missing since 1989 and the flat may be allotted in her name.

4. DDA after waiting for about two years on 7th June, 2001 informed the petitioner that she should furnish a copy of the FIR, report of the investigating authority, affidavit of relatives, proof of relationship and certificate from the Court about presumption of death of the missing person. It appears that the petitioner took her time to comply with the said formalities and ultimately DDA vide their letter dated 4th July, 2008 transferred the registration in favour of the petitioner. The said letter records as under:-

“ The terms and conditions of registration will remain unchanged. Please note that in case it is noticed at any time/stage that the facts have been concealed or any mis-representation/mis-statement has been made for seeking the above transfer, the permission granted through this letter will be automatically treated as cancelled.”

5. The petitioner is justified in asking for allotment under the registration, which was originally made in the name of Mr. Gurmeet Singh. It is admitted position that the said registration amount deposited has not been repaid and continues to be with the DDA. In addition, the petitioner had made payment of Rs.20,000/- in the year 1999.

6. The petitioner, however, cannot now ask for allotment of the flat as per allotment letter with block dates 1st October, 1999 – 4th October, 1999. She, however, will be entitled to allotment of a flat on today's rate. This direction is being passed as the petitioner had taken her own time to comply with various formalities despite letter of the DDA dated 7th June, 2001. At the same time, it will be harsh to deny the petitioner right to allotment of a DDA flat on the ground of delay in submitting the documents. The delay deserves to be condoned as the petitioner's husband is missing and she is staying with her parents and has to also look after her two children. The petitioner's name will be included in the next mini draw of lots, which will be held within three months from the date copy of this order is received.

7. Learned counsel for the respondent-DDA has drawn my attention to the averments in the counter affidavit that mutation/registration was allowed only for refund of the registration money. This is not borne out and stated in the letter dated 4th July, 2008 written by the DDA, which has been quoted above. Obviously, the respondent-DDA was satisfied that the registration granted in the name of Mr. Gurmeet Singh should be transferred in the name of the petitioner. If the transfer of registration is valid and correct, it would be unjust and unfair to treat the said transfer valid only for the purpose of refund of the registration money and invalid for allotment of a flat. The distinction drawn by DDA in this regard cannot

be accepted. The respondent being a State has to be considerate and take a sympathetic view. The petitioner, however, will submit a fresh indemnity bond that in case her husband returns, the mutation/allotment shall be transferred in the name of her husband Mr. Gurmeet Singh. No costs.

SANJIV KHANNA, J.

OCTOBER 12, 2009
VKR