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IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Judgment Delivered on: 19.05.2010***

+ W.P.(C) 452/2008

BADRI KISHAN SETH Petitioner
Through: Ms.Richa Kapoor, Advocate

versus

D.D.A. Respondent
Through: Ms.Manika Tripathi Pandey, Adv.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

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

G.S.SISTANI, J. (ORAL)

1. Rule. With the consent of counsel of the parties, present petition is set down for final hearing and disposal.
2. The facts of the case, as set out in the petition, are that petitioner had registered himself with DDA, under the New Pattern Registration Scheme, 1979, for allotment of an MIG flat by depositing a sum of Rs.4,500/-. Petitioner was assigned a priority number in the year 1986 being 15817 for allotment of an MIG flat. Since there were large number of registrants under the NPRS, 1979 and flats available for allotment were far less in numbers, the respondent introduced a scheme known as Awas Sarkar Yojna, 1989 with the aim to reduce the backlog and expedite the process of allotment of the flats. Under the Awas Sarkar Yojna, 1989, registrants of NPRS, 1979 whose priority number was beyond 10000 were called upon to give their willingness to become members of the cooperative group housing societies to be formed under the supervision of the DDA. The petitioner, whose priority number was 15817 and who had not been allotted any flat till

1989, with a view to have an early allotment, gave his consent for being considered under the said Awas Sarkar Yojna, 1989 of the DDA. In all approximately 6000 applications were received under the Awas Sarkar Yojna, 1989, however, only 11 cooperative group housing societies could be identified by the DDA, having a total strength of 834 members and out of 11, only 9 cooperative societies were granted registration by the Registrar, Cooperative Societies. Consequent to this on 07.10.1992 respondent vide its resolution, resolved to close the said Awas Sarkar Yojna, 1989 and not to entertain more cases under that Scheme other than the 9 cooperative societies already registered. This led to filing of a writ petition by two left out cooperative societies already registered. In that writ petition it was represented by DDA that such registrants of NPRS, 1979, who had opted for Awas Sarkar Yojna, 1989, but have not been identified as members of the societies registered by the Registrar of Cooperative Societies, should continue to remain as members of the NPRS, 1979, leaving their priority number intact and would be made entitled to allotment according to the NRRS, 1979 Scheme. The respondent agreed to relegate such persons, who could not be accommodated in Awas Sarkar Yojna, 1989 back to NPRS, 1979 Scheme, leaving their priority number intact. In the year 1994 priority of the petitioner matured under the NPRS, 1979 and he was allotted a flat bearing No.53, Sector-22, Pocket-26, Rohini. The petitioner, however, was not issued any demand/ allotment letter pertaining to the aforesaid Scheme.

3. Counsel for the petitioner submits that in the meanwhile DDA had formulated a policy dated 28.05.2003. As per this policy, it was decided that all registrants of the original NRPS, 1979, who had opted for Awas Sarkar Yojna, 1989, but had not been identified as members of the society would continue to remain the members of the NPRS, 1979 along with the priority numbers and they would be entitled to the allotment on the prevalent rates at that time.
4. Counsel for petitioner while relying on the policy dated

28.05.2003, which was reiterated by a subsequent policy dated 14.03.2005, prays for allotment of a flat. Counsel further relies upon the case of **Vinod Nagpal Vs. DDA** [WP(C)No.15791/2006], in support her plea that the policy in force at the time when allotment was made would be applicable to the present case at hand and DDA cannot rely upon the subsequent policy, taking into consideration that the subsequent policy cannot be applied retrospectively.

5. Ms. Kapoor, further submits that the file noting of the DDA obtained by the petitioner by making an application under the RTI Act also shows that the allotment was made to the petitioner at the cost prevalent in the year 1994. Extract of the file noting dated 24.05.2008 are reproduced below:

“In view of above orders and opinion of Law Department (H), we may request the competent authority to issue the demand-cum-allotment letter in respect of MIG flat No.9-C, Pkt.B, Jhilmil, East Delhi allotted in 2004 at the cost prevailing in the year 1994.”

6. Present petition is opposed by counsel for the DDA, *primarily* on the ground that by the time the case of the petitioner was finalized the policy dated 28.05.2003 as well as policy dated 14.03.2005 were substituted by policy dated 06.06.2006, according to which DDA was entitled to claim interest @ 12% per annum on the cost prevailing in the year 1994 on account of the fact that petitioner had approached the DDA beyond the period of four years.
7. In response to the submission made by counsel for the DDA, counsel for petitioner submits that there was no occasion for the petitioner to approach the DDA as the allotment was to be made by the DDA itself which it did in the year 2004, but for reasons best known to the DDA, the demand / allotment letter was not issued to the petitioner. Counsel for petitioner further submits that it is the petitioner who has suffered on account of inaction on the part of the DDA and has been deprived of a flat and a roof above his head from the year 2004 onwards and thus, at this

stage, to burden the petitioner with additional financial burden of interest @12% for no fault of the petitioner would be unfair and unjust.

8. I have heard counsel for the parties and given my thoughtful consideration to the matter. The basic facts are not in dispute that petitioner had applied to DDA for an MIG flat under the NPRS, 1979 Scheme. The priority number of the petitioner was 15817, and keeping in view the non-availability of flats, she opted for Awas Sarkar Yojna, 1989. Petitioner was not successful in this venture as well and thus was forced to fall back on the earlier Scheme, as per the stand of the DDA itself, leaving his priority number intact. It is not in dispute that in the year 2004 in the draw held on 31.03.2004 a flat bearing No.53, Sector-22, Pocket-26, Rohini, Delhi was allotted to the petitioner. There is no explanation on record as to why after allotment having been made in favour of the petitioner, a demand /allotment letter was not issued to the petitioner nor petitioner was called upon to make the payment. The petitioner has placed on record letters to show that he had approached the DDA time and again despite the tragedy of losing his son in the year 2003. The letter sent to the DDA were not replied to which ultimately led the petitioner into filing the present writ petition. Admittedly, when the allotment was made in favour of the petitioner, policy dated 28.05.2003 was in force, which reads as under:

“CIRCULAR

It has been decided that all the registrants of original NPRS Scheme, 1979 (LIG & MIG), who had opted for Awas Sarka Yojna, but who had not been identified as members of the society would continue to remain the members of NPRS – 1979 alongwith their priority numbers & would be entitled to the allotment on the prevailing rates at that time. When they were entitled for allotment according to their priority numbers.

This circular is being issued in compliance of the orders of the Hon’ble High Court in CWP No.4859/2000, 4899/2000 and 4329/2001 wherein for

the reasons stated in the judgment, Hon'ble High Court held that the petitioner are entitled to the flats at the original cost without payment of any interest.

This issues with the approval of V.C. on file No.F-8 (Misc.) 99/ LIG/ NP OR 67/2003/ Legal."

9. The DDA in its own wisdom reiterated this very policy by an office order dated 14.03.2005 on similar lines. The same reads as under:

"NO.F2 (10)2004/N&C (H)/65

Dated: 14.3.05

ORDER

In supersession of office circular No.F2(10)2003/N&C (H)/113 dated 3.4.2004, it has been decided that all the registrants of original NPR Scheme-79 (LIG/MIG), who had adopted for Awas Sakar Yojana but had not been identified as members of the society would continue to remain members of NPRS-79 alongwith their priority numbers would be entitled to the allotment on the prevailing rates at the time when they were entitled for allotment according to their priority umbers.

This issues with the approval of Vice Chairman, DDA in File NO.F.2 (10)2001/ Coord (H) P.t."

10. A careful reading of the office order/ policy dated 28.05.2003 would show that not only the original registrants of the NPRS, 1979, who had opted for Awas Sarkar Yojna, 1989 but could not be identified as members of the society, would continue to be the members of the NPRS, 1979 along with their priority number, which would remain intact and would be entitled to the allotment at the prevalent rate at that time. In the absence of any communication to the petitioner that he has been declared successful in the draw held on 31.03.2004 and in the absence of any demand / allotment letter having been issued, the petitioner cannot be blamed for not making payment. It may also be noted that the demand / allotment letter was however issued to the petitioner in the year 2008. The case of the petitioner is also covered by the case of **Vinod Nagpal (Supra)**.

12. There is contradiction in the stand taken by the respondent-DDA in their counter affidavit in the two cases. Whereas in the case of Mr.Vinod Nagpal, costs

prevailing in the year 1991 has been taken as the basis and interest @ 12% per annum has been charged thereon for calculating the demand, in the case of Mr. Ram Rattan Bhudhiraja cost of the flat as on March, 2003 has been taken as the basis and the petitioner has been asked to pay interest @ 7% per annum in terms of Circular dated 12th April, 2005, which stipulates that interest @ 7% per annum is payable in cases where the allottee is not at fault.

13. During the course of arguments, learned counsel for the DDA in the case of Mr. Vinod Nagpal relied upon another Circular dated 6th June, 2006. Which stipulates that the registrants under N.P.R. Scheme, 1979 who had opted for ASY Scheme but could not be allotted any flat would be entitled to allotment of flat at the old cost prevalent at the time when they became entitled to allotment along with 12% simple interest till the issue of a fresh demand-cum-allotment letter, in case they had not approached DDA within four years. It is an admitted case Circular dated 6th June, 2006 has been made applicable/effective from 6th June, 2006. Reliance has not been placed on the said Circular in the case of Mr. Ram Rattan Bhudhiraja and was not applied in his case to calculate costs.

14. It is unfortunate that DDA has been issuing demand letters to allottees under the N.P.R. Scheme, 1979 calculating the costs on different basis and relying upon different Circulars/Office Orders. There is no uniformity and consistency. Different parameters and basis for calculation of demands have been adopted which is unjust and unfair. This should not happen in a public authority. Action of DDA is per se arbitrary, discriminatory and falls foul of Article 14 of the Constitution of India.

16. The petitioners are registrants under the N.P.R. Scheme, 1979 and it was the duty of the DDA to ensure that allotments are made when their priority numbers matured in the years 1991 and 1993. It is also an admitted fact that ASY Scheme was scrapped in 1992. Unfortunately they have been given possession of the flats after more than 14 years and have been deprived of a roof over their heads during this period. It will be unfair and unjust for the DDA to claim interest when they were at fault and had failed to make allotment to the petitioners when their priority number had matured. The petitioners should not be penalised for the default of the respondent-DDA. I may here refer to the judgment dated 29th

August, 2002 of the Single Judge of this Court passed in Writ Petition (Civil) No. 4859/2000 titled Mohinder Malik and others versus DDA wherein it was observed as under:-

The conspectus of the aforesaid judgments shows that there cannot be any doubt about the proposition that the innocent party cannot be made to suffer on account for the mistake and inefficiencies of the respondent DDA. In J.S. Rao's case (supra) it has been categorically held that the mistake of the respondent cannot deprive the right of allotment to the allottee and the allottee cannot be "saddled with higher liability". It is thus clear that there would be no higher liability other than the original cost of the flat. One nature of higher liability would be charging current cost of flat. However, higher liability would include the element of interest also sought to be imposed on the original cost of the flat. The principle, in my considered view, would not change."

11. In view of the fact that name of the petitioner was included in the draw held on 31.03.2004, the petitioner would be entitled to the rates prevalent as per circular dated 28.05.2003 and also office order 14.03.2005. Taking into consideration that demand/ allotment letter was issued during the pendency of the writ petition in the year 2008, however, the petitioner has not made the payment, petitioner is directed to make the payment with 12% interest from 14.07.2008 upto the date of making the payment. Let the fresh demand/ allotment letter be issued to the petitioner as per circular dated 28.05.2003 and also office order dated 14.03.2005, within eight weeks from receipt of the order.

12. Petition stands disposed of, in above terms.

CM NO.5641/2009

13. Dismissed, in view of the orders passed in the writ petition.

G.S. SISTANI, J.

May 19, 2010
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