

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

+ W.P.(C) 4647/2008

Judgment dated 01.02.2010

KANTA SACHDEVA Petitioner
Through: Mr.N.Kinra, Advocate

versus

D.D.A. Respondent
Through: Ms.Manisha Tyagi, Advocate

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

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

G.S. SISTANI, J. (ORAL)

1. Rule. With the consent of counsel for the parties, present petition is set down for final hearing and disposal.
2. Husband of the petitioner booked an MIG flat vide registration No.39608 in the year 1979. In the year 1993 husband of the petitioner expired and the registration was transferred in the name of the petitioner on 28.10.1993. Petitioner also informed the DDA about the change of address. While filing up mutation application the DDA in response thereto addressed a letter dated 28.10.1993 to the petitioner which was also sent at the new address which would show that change of address of the petitioner was duly noted in the register/ record of the DDA. It is the case of the petitioner that

despite fresh and correct address available with the DDA a demand/ allotment letter was sent at the old address in the year 1994. The petitioner obviously did not receive the same.

3. In the year 1998 petitioner received a letter from the DDA calling upon the petitioner to submit original documents for refund of the amount so deposited. Counsel for petitioner submits this communication was addressed to the petitioner at the new address. The original record has been produced which shows that the demand/ allotment letter was sent at the old address. It is thus submitted that the case of the petitioner is fully covered by the change of address policy dated 25.02.2005. Counsel for petitioner relies on a decision rendered by Single Judge of this Court in **Meenakshi Kalra Vs. DDA** [WP(C)No.16633/2006], and more particularly to following paragraphs 7 to 9, in support of his submission that the case of the petitioner would be covered by the policy of the DDA dated 01.01.2007:

“7. When the matter was taken up on 21.5.2007, the counter affidavit had not still been filed. Instead Ms. Shobhana Takiar, learned counsel for the DDA submitted that the reason why the petitioner was not allotted a flat was on account of an Office Order dated 1.1.2001 whereby it has been stated as under:

“In case, death occurs prior to allotment of flat, time of two years would be counted from the date of issue of demand letter and where allotment is made after the death the period of two years will be counted from the date of issue of show cause notice for non-payment of due amount.”

Ms. Takiar submitted that since the petitioner claims to

have come to know of the earlier allotment having been cancelled on 18.5.2002 itself, the petitioner should have approached the DDA for restoration of the cancelled allotment at least within two years thereafter.

8. The Court finds the stand of the DDA not to be reasonable. The two years, period, within which the petitioner was to have approached the DDA, can at best be taken to have begun on 18.5.2002, when the petitioner's father first learnt of the cancellation of the allotment already made. It cannot be said that the petitioner delayed in approaching the DDA thereafter. First of all, the earlier writ petition was filed in 2003 and was disposed of on 3.3.2003 on contest. Clearly, the petitioner had by that process already brought to the notice of the DDA that the flat in question ought to be allotted in her name. Thus, the DDA already knew in 2003 that the petitioner was aggrieved by non- allotment of the flat. Further, on 3.11.2003, a representation was made to the DDA by the petitioner. This was followed by CM No.14049/2004 In the above circumstances, the stand taken by the DDA that the claim made by the petitioner is belated, is unacceptable.

9. The petitioner, having completed all the formalities, should be now given a flat of the same size in the same locality or in the nearest possible locality. It is directed that the DDA will hold special draw and make allotment of a flat of the same size, preferably in the same locality, within eight weeks from today and in any event not later than 30.7.2007."

4. Counter affidavit has been filed by the DDA. Counsel for DDA relies upon the *preliminary* submission of the counter affidavit. Paragraphs 1- 6 of the *preliminary* submission are reproduced below:

"1. That Shri Inder Lal Sachdeva got himself registered for allotment of a MIG flat under NPRS -1979. He was assigned registration No.39068 and priority No.18880.

2. That a MIG flat bearing NO.336, Third Floor, Pocket-4, Sector-A 10, Gr.II in Narela, Delhi was allotted to him in the draw held on 30.03.94 on hire purchase basis. A DA1 with block dates 03.05.94 – 10.05.94 was sent to the allottee at the

address "8/1, Chhoti Subzi Mandi, Janak Puri, New Delhi - 110058" available with the answering respondent.

3. That since no response was received from the allottee and date of automatic cancellation was already over, therefore, a show cause notice was issued on 22.11.1994 to the allottee at the "8/1, Chhoti Subzi Mandi, Janak Puri, New Delhi-110058". Addressee as why the allotment of the aforesaid flat be not cancelled for breach of terms and conditions. And he was requested to furnish the proof regarding depositing the demanded amount and submitted the requisite documents.

4. That in response to the said show cause notice dated 22.11.1994, neither the allottee appeared before the Dy. Director (MIG) H nor be furnished any proof regarding depositing the demand amount and submitted the requisite documents. Therefore, on 02.03.1995 the letter was issued to the allottee cancelling the allotment of the said flat and registration number under MIG category. The said cancellation letter was sent to the allottee at the address "8/1, Chhoti Subzi Mandi, Janak Puri, New Delhi-110 058".

5. That in the year 1998, some entries were detected by the then dealing Asstt. regarding change of address and he put up a note dated 30.07.1998 to AD (MIG) for sending a letter to the allottee to submit the documents for refund. Accordingly, a letter dated 28.08.1998 was issued to the allottee at the new address i.e. "JG-II/226, Vikas Puri, New Delhi".

6. But no correspondence was received from the allottee till 16.06.2008. Thereafter on 16.06.2008 one representation was received from the petitioner Smt.Kanta Sachdeva W/o. Sh.Inder Lal Sachdeva, stated that after the death of her husband, the registration of the MIG flat was transferred in her name by the DDA and in this regard she enclosed a photocopy of mutation letter no. 9A(39608)/79/ MIG dated 28.10.1993 in this regard. The said letter dated 28.10.1993 was sent at the change address i.e. "JG-II/226, Vikas Puri, New Delhi" with copies to Suptd. (HAU/IV) and Dy. Director (System) for necessary action. However, original file No.9A (39608)/ 79/MIG is not available in the record, as per the report of the Daftari (MIG)."

5. Counsel for respondent further submits that the present petition is barred by delay and laches. It is submitted that the demand/

allotment letter was issued at the address available and since the amount was not paid, a show cause notice dated 22.11.1994 was issued and not receiving any reply thereto, led to the cancellation of the allotment.

6. I have heard counsel for the parties. It is the case of the petitioner that her husband booked an MIG flat in the year 1979. The husband of the petitioner expired on 28.10.1993. Upon the death of her husband, petitioner changed her address and informed the DDA about the same. As per the stand of the DDA in the counter affidavit the demand/ allotment letter with block dates 03.05.1994 to 10.05.1994 was issued to the allottee at the Janakpuri address. A show cause notice was also sent at the Janakpuri address. The cancellation letter was also sent at the Janakpuri address. Further as per the stand taken in paragraph 5 of the *preliminary* submission of the counter affidavit that in the year 1998 some entries were detected by the then dealing assistant regarding change of address upon which he put up a note dated 30.07.1998 to AD (MIG) for sending a letter to the allottee to submit the documents for refund. This letter was sent at the correct address of the petitioner at Vikas Puri. Reading of para 5 of the *preliminary* submissions would show that DDA was aware of the change of address of the petitioner, but did not bother to send the demand letter, the show cause notice and the cancellation at the correct address, however, a letter calling upon the petitioner to submit documents for refund was sent at the correct address. The DDA has thus acted in a highly negligent manner

and deprived the petitioner of a flat from the year 1994 onwards. The DDA has not even shown mercy to a widow. The counter affidavit also reveals that upon the death of the husband of the petitioner, the registration of the MIG flat was transferred in her name by the DDA and a mutation letter dated 28.10.1993 was issued at the fresh address. Counsel for DDA submits that the original file of the petitioner is not available. For the inaction on the part of the DDA in not sending the demand/allotment letter at the fresh and correct address as it was duly informed by the petitioner to the DDA, the petitioner cannot be made to suffer. The case of the petitioner would be fully covered by the decision rendered by this Court in the case of **Meenakshi Kalra (Supra)**. The petitioner has approached the DDA within two years from the date of knowledge of cancellation of allotment made in her favour.

7. For the reasons aforesaid and in view of the judgment **Meenakshi Kalra (Supra)**, present petition is allowed. The name of the petitioner be included in the MINI draw, which shall be held not later than three months from the receipt of this order and the allotment shall be made in the same area, if available. The demand/ allotment letter shall be issued to the petitioner within a period of six weeks thereafter.
8. The petition stands disposed of, in above terms.

G.S. SISTANI, J.

February 01, 2010

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