

42.

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

+ W.P.(C) 6754/2008

% Judgment Delivered on: 05.04.2010

ANIL KUMAR Petitioner
Through : Ms. Richa Kapoor and Ms. Tanuja Rawat,
Advs.

versus

D.D.A Respondent
Through : Ms. Anita 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 for the parties, writ petition is set down for final hearing and disposal.
2. Brief facts of the case, as set out in the present petition, are that in the year 2004, DDA had launched a "Festival Housing Scheme 2004". Two categories of flats i.e. 'A' Janta Flats in Kondli Gharoli and 'B' General Category flats, were available for allotment. The registration amount fixed for Category 'A' Janta Flat was Rs.25,000/- and for General Category Flat was Rs.1,00,000/-. The petitioner, keeping in view his financial status, got himself registered under the said scheme for allotment of a flat under Janta Category vide application no.211120 dated 24.11.2004 and deposited a sum of Rs.25,000/- towards the registration amount. The name of the petitioner was included in the draw of lots held

on 28.1.2005 for a bigger flat under General Category and a flat bearing no.384, Ground Floor, Pocket 3, Block D, Type B, Bindapur, Delhi, was allotted to him under Category B. Petitioner was shocked to receive the demand letter dated 22.2.2005, as per which, the cost of the flat was fixed at Rs.8,50,080/-. Aggrieved by the action of the respondent, the petitioner approached the officials of the DDA and apprised them of the mistake committed by their office by allotting him a flat under the wrong category and raising a demand at an exorbitant cost. The petitioner, thereafter, made a representation to the Commissioner, DDA. The petitioner is stated to have also made number of visits to the office of the DDA. The petitioner also appeared in various public hearings of DDA including on 12.5.2005 when the Commissioner (Housing) directed for production of the file on the next date i.e. 19.5.2005 and assured the petitioner that a flat, as applied, would be allotted to him shortly as per his entitlement. Along with the writ petition, petitioner has filed photocopies of the public hearing slips dated 12.5.2005 and 26.5.2005. The petitioner has also placed on record photocopy of the letter dated 28.7.2005, which bears the acknowledgment stamp of the DDA as also the endorsements made by various officers of the DDA. The petitioner has also placed on record photocopies of various notings made by the various officers of the DDA from time to time.

3. Learned counsel for the petitioner submits that the case of the petitioner will be covered by the Wrong Address / Double Allotment Policy of the DDA. Counsel prays that the petitioner

should be allotted a janta flat at the cost prevalent in the year 2005 when a wrong allotment was made in favour of the petitioner. Counsel for the petitioner relies upon **Bankey Singh Two Ors. Vs. Delhi Development Authority**, reported at 92 (2001) DLT 362 and more particularly pars 3 and 4, which are reproduced below:

- “3. Counsel for the petitioner has urged before me that the petitioners had duly complied with their obligations under the scheme and they could not be faulted with if the DDA either made a wrong allotment or on account of malpractices it turned out to be a case of double allotment. In fact DDA itself has evolved a policy for dealing with cases of double allotment and wrong allotment. The earlier Resolution No.103/93 and Resolution No.144/93 dated 16.11.1993 embody the policy of dealing with cases of double allotment. It is not necessary to dwell on the policy embodied in these Resolutions. It is sufficient to notice that as per the policy, the DDA is to allot the flats at the old / original cost. In fact it is also required to pay interest on the registration amount.
4. It may also be noticed that Resolution No.144/93 was passed pursuant to the decision of this Court in **Suraj Bhan Chaudhary v. DDA**, CW.No.3827/92. In these circumstances, learned Counsel for the respondents very fairly states that he has instructions to state that the respondents would also allot flats at the old cost. As regards interest on the deposited amount, rather petitioners had approached the Court belatedly. Learned Counsel for the petitioner, in these circumstances does not press the claim for interest on the registration amount. Respondent shall take steps to allot the flats in Peeragarhi as proposed. The requisite formalities including the issuance of demand-cum-allotment letter for the flats to be allotted, if not done already, shall be completed and possession be handed over to the petitioners within a period of 2 months from today.”
5. It has strongly urged before this Court by counsel for the petitioner that the petitioner cannot be made to suffer on account of the lapse or inaction on the part of the DDA in making an

allotment in favour of the petitioner in the wrong category. Counsel has drawn the attention of the Court to the counter affidavit wherein the DDA has categorically stated that “inadvertently, the petitioner was allotted a Type B flat no.384, Ground Floor, Pocket 3, Block D, Type B, Bindapur, Delhi, for which he was not entitled as he had not paid the registration amount of Rs.1.00 lakh, which was meant for Type B Flat”. Respondent DDA detected its fault and rather the petitioner vide letter dated 12.5.2005 had himself requested to cancel the allotment of the above general category flat and refund of registration amount.

6. Learned counsel for the respondent DDA has opposed this petition on the ground that the petitioner had by a letter dated 12.5.2005 requested for cancellation of the allotment made in his favour and refund of the registration amount. Counsel for the respondent DDA submits that petitioner was repeatedly requested to seek refund of the amount deposited by him and, in fact, a cheque was issued in his favour, which apparently has not been encashed by the petitioner.
7. I have heard learned counsel for the parties. The basic facts are not in dispute that the petitioner had made an application to the DDA for allotment of a Janta Flat under Category ‘A’ in Festival Housing Scheme 2004, for which the registration amount in the sum of Rs.25,000/- stands deposited by the petitioner. The DDA inadvertently included the name of the petitioner in the draw of lots held on 28.1.2005 for a bigger flat. The DDA issued a demand letter dated 22.2.2005 at a cost of Rs.8,50,080/- to the petitioner.

The documents placed by the petitioner on record show that the petitioner has made repeated requests to the DDA bringing in their notice that an allotment in the wrong category of a flat has been made to him. The acknowledgment slip of the DDA dated 12.5.2005 filed by the petitioner shows the grievance of the petitioner as "Wrong Allotment of Flat". Another acknowledgment slip of the DDA dated 26.5.2005 filed by the petitioner shows the grievance of the petitioner as "Wrong Allotment of Flat". The petitioner has also placed reliance on a communication dated 28.7.2005 issued by him to the Vice Chairman, DDA, a copy of which has been received by him on making an application under the Right to Information Act. This communication shows the stamp of the DDA as well as the endorsement made by various officers of the DDA. In this communication, the petitioner has stated that he is a poor person and can only arrange funds up to Rs.2.00 lakhs to Rs.3.00 lakhs for a flat, which was to be allotted to him at Kondli Gharoli. In this communication, the petitioner has also stated that he had met with the Commissioner (Housing), but no reply has been received by him and also requested for allotment of a flat at Kondli Gharoli under EHS Category. Counsel for the petitioner has also drawn the attention of the Court to a noting dated 24.5.2005 in the file, copy of which has been filed along with the petition, which was obtained by the petitioner under the Right to Information Act. As per the noting dated 24.5.2005 in the file it has been noted that the allotment was made on account of negligence at the checking stage and, therefore, the lapse for

allotment of higher category of flat comes on the part of the DDA (Housing). The counter affidavit filed by the DDA also shows that the allotment was made to the petitioner in General Category flat at the cost of Rs.8,50,080/- inadvertently. The documents placed on record would show that soon after the receipt of allotment letter the petitioner has made a number of visits to the DDA, requesting the DDA for allotment of a flat at Kondli Gharoli under the EHS Category. Since the fault lies purely on the part of the DDA, the petitioner must succeed. Accordingly, present petition is allowed. The name of the petitioner will be included in the draw to be held not later than three months from the receipt of this order. DDA is directed to allot a Janta Flat to the petitioner at Kondli Gharoli or such other area where a similar flat may be available at the cost prevalent in the year 2005 taking into consideration that the allotment was made in favour of the petitioner in the year 2005 and thereafter he has been requesting the DDA to grant an alternate allotment to him. All other formalities shall be completed as expeditiously as possible.

8. Petition stands disposed of in view of above.

April 05, 2010
'msr'

G.S. SISTANI, J.