

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Judgment Delivered on: 11.05.2011***

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+ W.P.(C) 56/2011

RAM NATH DHIR Petitioner

Through : Mr. Nandan Kinra, Adv.

versus

DDA

..... Respondent

Through : Ms. Manika T. Pandey, Adv.

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+ W.P.(C) 89/2011

RAJESH KUMAR LOHMORE Petitioner

Through : Mr. Nandan Kinra, Adv.

versus

DDA

..... Respondent

Through : Ms. Manika T. 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, present petitions are set down for final hearing and disposal.
2. The petitioner in the W.P.(C) 56/2011, had applied in the year 1989, to DDA for allotment of a MIG flat under AAY registration in the SC/ST category vide application no.3683. The petitioner while filling the

registration form had supplied to the respondent, as per the requirements, two addresses – one for correspondence and the permanent address. The same is substantiated from a perusal of the photocopy of the registration form obtained on a RTI application by the petitioner. Petitioner on account of his transferable job thereafter shifted from his address supplied for correspondence.

3. The petitioner was allotted flat No.161, Ground Floor, Sector-17, Pocket-E, Dwarka, Delhi, vide draw held on 13.02.2002. The last date for making payment was 16.06.2002. The demand cum allotment letter informing the petitioner about the same was sent by the respondent DDA at the address for correspondence. As the petitioner had already shifted out of the said address as provided by him, the demand cum allotment letter was received back by the respondent, DDA with remarks “address incomplete”. Admittedly, the respondent did not send the demand cum allotment letter at the permanent address provided by the petitioner in the application form.
4. It is submitted by the counsel for the petitioner that petitioner approached the DDA on 14.11.2005 with reference to his allotment and during the personal hearing with the Dy. Director (vide serial No. 11415) he came to know that he was allotted a flat at Dwarka in the year 2002. He was further informed that the demand letter sent at the address for correspondence was returned back to the DDA on account of the address being ‘incomplete’. It is the next submitted by the counsel for the petitioner that thereafter, the petitioner again approached the DDA and had a personal meeting with the Director (Housing) on 26.05.2006 vide serial no.2180 and petitioner requested the Director (Housing) for a copy

of the demand letter as he had approached DDA within four years of the allotment. Petitioner is stated to have made a representation to the DDA, copy of the representation has been placed on record as an Annexure P3. The petitioner having received no response to the same once again visited the DDA on 23.10.2006. A representation was once again handed over by the petitioner to the respondents (copy of which has been filed and marked as an Annexure P4), at a personal hearing with the Director (Housing) vide serial No.2180, however the same yielded no result forcing the petitioner to attend another personal hearing on 04.01.2007 vide serial No. 28 when another copy of representation was handed over (copy of which has been filed and marked as an Annexure P5). Having received no response, the petitioner addressed a letter to the Assistant Director for allotment of flat on 18.11.2008 which was received by the DDA vide receipt No.36308. Further the petitioner made another representation to the DDA on 04.03.2009 vide DDA acknowledgement No.5549 and another representation dated 27.04.2010 was made, all of which fell on deaf ears. The petitioner is stated to have made an application under the RTI Act seeking copies of various documents on 25.08.2010 upon receipt of the relevant documents, the petitioner again approached the DDA on 15.10.2010 vide acknowledgement No. 34930 copy of which has been filed as Annexure P10.

5. The petitioner in the W.P.(C) 89/2011, had applied in the year 1989, to DDA for allotment of a MIG flat under AAY registration in the SC/ST category vide application no.227. The petitioner while filling the registration form had supplied to the respondent, as per the requirements, two addresses – one for correspondence and the

permanent address. The same is substantiated from a perusal of the photocopy of the registration form obtained on a RTI application by the petitioner. Petitioner on account of his transferable job thereafter shifted from his address supplied for correspondence.

6. The petitioner was allotted flat No.207, Third Floor, Sector-19, Pocket-1, Dwarka, Delhi, vide draw held on 31.05.2002. The last date for making payment was 03.10.2002. The demand cum allotment letter informing the petitioner about the same was sent by the respondent DDA at the address for correspondence. As the petitioner had already shifted out of the said address as provided by him, the demand cum allotment letter was received back by the respondent, DDA with remarks "the receiver left the house hence returned back to the sender". Admittedly, the respondent did not send the demand cum allotment letter at the permanent address provided by the petitioner in the application form.
7. It is submitted by the counsel for the petitioner that petitioner forwarded a representation dated 12.03.2004 to the PG Cell, DDA to ascertain about the status of his allotment which was acknowledged by the DDA vide letter dated 24.03.2004, but no status/information was given. Thereafter petitioner made a representation dated 28.07.2006 to Public Grievance Cell, Cabinet Secretariat and also to Ministry of Urban Development. The representation was replied by Public Grievance Cell, Ministry of Urban Development vide letter dated 31.08.2006, directing DDA to attend the grievance of the petitioner. The DDA vide letter dated 06.03.2007 admitted that the demand letter was sent at the address for correspondence and was returned back to the DDA on account of the remarks "the receiver left the house hence returned back to the sender".

It is the next submitted by the counsel for the petitioner that thereafter, the petitioner made another representation dated 22.11.2007 to PG Cell and PG Cell vide letter dated 17.12.2007 directed DDA to take necessary action to redress the grievance of the petitioner and inform the Ministry. The petitioner received letter of the DDA dated 22.01.2008, whereas there was no information about redressal of the grievance of the petitioner. The petitioner is stated to have made an application under the RTI Act seeking copies of various documents on 22.12.2009 upon receipt of the relevant documents, the petitioner again approached the DDA by making a representation dated 27.04.2010 vide acknowledgement No.17174 to the Commissioner (Housing), requesting for allotment under alternative address policy, but of no avail.

8. Mr.Kinra, counsel for both the petitioners submits that the petitioners through various representations and even during the course of personal hearings requested the respondents to handover the demand cum allotment letter to the petitioners, as the petitioners in accordance with the DDA's policy dated 25.02.2005 had approached the authority within 4 years of allotment.

9. Mr.Kinra, submits that the cases of the petitioners are covered by the various decisions of this Court and also in DDA's own policy in file No. 195 (155) 93 as per which in case the demand cum allotment letter was received undelivered by the department, it was decided by the DDA to send the demand cum allotment letter again on the same address and also at the occupation address given in the registration application and in case, no other occupational address is available, the allotment letter was to be sent to the allottee at his occupation/residential address by the

ordinary post. Counsel for the petitioners submits that in an identical manner in the case of **Vijender Kumar Verma Vs. DDA** in W.P. (C) No. 1030/2009 during the pendency of the writ petition, the matter was referred to a committee when the following stands was taken by the DDA:

It is the case of the Department that DAL was dispatched in September 2001 at the correspondence address. The same was returned unserved. DAL was not re-sent at the permanent address.

On the above said facts & circumstances, the applicant's case is covered by the policy of DDA which required DAL to be dispatched at all available addresses.

Committee, is therefore, of unanimous opinion that applicant's case is covered under the Policy and he is entitled to be allotted a flat under the Ambedkar Awas Yojana, as per policy.

The applicant also undertakes to withdraw his writ petition. He also undertakes that the cost of flat shall be deposited through cheque or demand draft and he shall furnish the details of bank account or loan, if any, availed by him to the DDA.

A copy of the Committee be communicated to the applicant within 15 days.

(O.P. Gupta)
Director-I

(Mahabir Singh)
Dy. Director (MIG)

(G.L. Sharma)
Sr. Law Officer
(H)

(Narottam Kaushal)
Chief Legal Advisor
29/1/10

10. It is next submitted by Mr.Kinra that the petitioners have approached the DDA within a period of four years from the date of allotment and thus in accordance with the DDA's policy flats are to be allotted to the petitioners without payment of any interest.
11. Counsel for DDA has opposed the present petitions primarily, on the ground that the DDA had sent the demand cum allotment letter at the address provided by the petitioners. It is next submitted that the petitioners had provided the DDA with incomplete address and thus DDA is not at fault. It is further submitted by the counsel for the respondent that a public notice was issued in the leading newspapers on 19.10.2002

calling upon the registrants to approach the DDA in case they had not received the demand cum allotment letter but the petitioners did not respond to the press notice. Ms. Manika Pandey, counsel for the respondent submits that the receipt of representations pursuant to the public hearings attended to by the petitioners have been disputed by the respondents. It is further submitted that it cannot be said that the petitioners approached the DDA within four years of the allotment having been made in their favor. She also contends that the present petitions are barred by delay and laches.

12. I have heard the counsel for the parties and also perused the pleadings and annexures filed along with the writ petitions. It is not in dispute that the petitioners had applied to the DDA under the AAY scheme in the year 1989. The photocopy of the original receipts received by the petitioners under the RTI Act have been placed on record which show that the petitioners had provided two addresses in the registration form postal address for correspondence and the permanent address. It has not been disputed that the demand cum allotment letter was sent to the petitioners only at the postal address for correspondence and not at the permanent address.

13. I also find no force in the submission for the counsel for the respondent that a public notice was sufficient notice to the petitioners in view of repeated judgments of this Court including **A.P. Sinha Vs. DDA** which decision has been upheld even by the Supreme Court by which this argument of the DDA stands rejected. The DDA for the reasons best known to them, did not issue the demand letter at the second address available with them and as per their own policy given in file

no.195(155)93 and Office Order dated 25.2.1995, which was being followed by DDA. Policy of the DDA is not disputed by counsel for the DDA. Having regard to the facts of the case I am satisfied that the aforesaid policy of the DDA would be applicable in the case of the petitioners.

14. In similar cases, this Court has repeatedly held that the DDA must endeavor to take all steps possible to serve the demand cum allotment letter at all possible addresses available in its file. It has been recognized by this Court that allotments are made at times after more than 20-25 years of the application. During the long period of waiting it is not unusual for a person to change his address and keeping this aspect in mind the DDA has made a specific column in the application form for disclosing the permanent address.
15. Copies of various representation proceedings have been placed on record. There is no explanation by the DDA as to why none of the representations made by the petitioners were responded to by them. The counsel for the respondents has denied the receipt of representations in the counter affidavit filed. As far as the public hearings are concerned and the representations made soon after public hearing, counsel for the respondent has drawn the attention of the Court to paras 4 to 6 of the counter affidavit wherein receipt of the representations have been denied. As far as the public hearings attended to by the petitioner are concerned, counsel for the petitioner clarifies that as per the procedure followed by the DDA, a person who attends the public hearing is given a serial number, a procedure which is obviously known to the respondent as it is being followed at their instance. The petitioner in

WP(C)No.56/2011 has been given a serial number for the public hearing attended by him on 14.11.2005 wherein he was granted serial No. 11415. On 23.10.2006 serial No. 7180 was granted on 04.01.2007 when serial No. 28 was granted. Further, the respondents have not made categorical denial that the aforementioned serial numbers were not issued to the petitioner. Counsel for the petitioner has submitted that even assuming without admitting that the petitioner did not attend the public hearing, the respondents have not disputed the letters written by the petitioner on 18.11.2008, 04.03.2009, 27.04.2010 and 15.10.2010, asking the respondent authority to grant the flat. Further there is no explanation on the part of the DDA as to why the demand cum allotment letter was sent to the petitioners only to the correspondence address and not all the addresses available.

16. It has been repeatedly held by the Court and more so in Hirdayapal Singh v. DDA, WP(C)No.15002/2006, that once the demand-cum-allotment letter is returned undelivered, DDA is duty bound and should send the demand-cum-allotment at all the addresses available in the file of the DDA. However, in the cases at hand, DDA has not sent the demand-cum-allotment letter to the petitioners at the permanent address mentioned in the application form; nor the DDA responded the letters/representations made by the petitioners.

17. The petitioners in the present cases had applied for allotment of the flats in the year 1989 and after 13 years it cannot be expected that owing to the fault of the respondent, DDA the petitioners are made to suffer. Accordingly, a Writ of Mandamus is issued to the respondent/DDA to allot a flat in favour of both the petitioners at the cost of the flat prevalent in

the year 2002 as per the policy. The petitioners have undertaken that they are ready to purchase the flats, subject to payment of interest as per the respondent's policy. The demand-cum-allotment letter shall be issued within eight weeks from receipt of the order. In case, the demand-cum-allotment is not issued within the time fixed, the petitioners would be entitled to costs of Rs.25,000/- each.

18. Accordingly, both the writ petitions [W.P.(C) 56/2011 & W.P.(C) 89/2011], stand disposed of, in above terms.

MAY 11, 2011
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G.S. SISTANI, J.