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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP(C) 592/2011

% *Judgment Delivered on: 19.05.2011*

PREM BHATNAGAR Petitioner
Through : Mr. Vikas Saini, Mr. Sitab Ali Chaudhary,
and Mr. Vikas Saini, Advs.
versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through : Ms. Rajdipa Behura and Mr. C.S. Chauhan,
Advs. for respondent DDA.

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 learned counsel for the parties writ petition is set down for final hearing and disposal.
2. Brief facts, necessary for disposal of the present writ petition, are that petitioner had applied to the DDA under New Pattern Registration Scheme, 1979, for allotment of a LIG (Lower Income Group) flat. At the time of registration, petitioner had mentioned her residential address in the column provided in the application form, being Flat No.15-X, Chitra Gupta Road, Paharganj, New Delhi. Since, till the end of the year 2002 no allotment has been made to the petitioner, the petitioner shifted from the abovesaid residence to another house in Pahargang, New Delhi, difference being House no.2092, Chuna Mandi, Pahargunj, New Delhi. Admittedly, the

petitioner did not inform the DDA about the change of address. Meanwhile, as the priority of the petitioner had matured her name was included in the draw, which was held in the year 2003, she was allotted a LIG flat bearing No.176, Pocket C-2, Sector 17, Rohini, New Delhi, and a demand-cum-allotment letter was issued to her at the residential address provided in the application form i.e. Flat NO.15-X, Chitra Gupta Road, Paharganj, New Delhi. Since the petitioner had shifted her residence, the allotment letter was not received by her and the same was returned back to the DDA undelivered. This led to automatic cancellation of the allotment made in favour of the petitioner as she did not make the necessary deposit.

3. Learned counsel for the petitioner submits that after waiting till 2010 and not having received any letter/intimation from the DDA, the petitioner visited the office of the DDA and also attended a public hearing where she learnt that she had been allotted a flat as far back as in the year 2003 and which allotment stood cancelled on account of non-payment by her. Counsel further submits that thereafter on 27.10.2010, petitioner made a representation to the DDA requesting them to allot an alternate flat to her since the DDA had not followed their own policy and did not send the demand-cum-allotment letter at all the addresses available in their file in case the initial demand letter sent was returned undelivered.

Representation made by the petitioner did not find favour with the DDA, which has led to the filing of the present petition.

4. Learned counsel for the petitioner admits that in the application form, a copy of which has been filed on record by the DDA along with the counter affidavit, the petitioner has not mentioned the occupational address and instead only mentioned 'teaching' in the column provided for occupational address in the application form, however, the petitioner along with the application form has enclosed the following annexures:

- (i) Income certificate;
- (ii) Challan form;
- (iii) Option form;
- (iv) SC/ST Certificate.

5. Learned counsel for the petitioner submits that in the income certificate, which was filed along with the application form, and which would form part of the application form, the occupational address of the petitioner was mentioned and in the year 2003 the petitioner was working in the same school, which had provided the salary certificate to the petitioner.

6. While relying upon in the case of *Sudesh Kapoor v. DDA*, W.P.(C)No.8174/2006 and *Hirdayapal Singh v. DDA*, w.p.(c)No.15002/2006, learned counsel for the petitioner has strenuously argued before this Court that DDA should have sent the demand-cum-allotment letter at the addresses available in their

file once the initial letter addressed to the petitioner was returned back undelivered.

7. Learned counsel for the petitioner submits that petitioner had applied a flat in the LIG category and has waited all these years in the hope of getting a roof over her head and her family and in case a harsh view is taken of the matter the petitioner would not be in a position to fulfill her dreams.
8. Learned counsel for the respondent has opposed this petition primarily on the ground that DDA cannot be faulted as the petitioner has been careless and callous in filling up the application form for allotment of LIG flat. Counsel further submits that the application form has clearly provided two columns – one for residential address and the other for occupational address. Counsel next submits that above judgments relied upon by counsel for the petitioner would show that the facts of those cases do not apply to the facts of the present case as in those cases both the addresses were provided by the applicant in the application form and, thus, DDA was bound by its own policy dated 25.2.2004, as per which, in case the demand letter is not sent at the alternate address and the allottee approaches the DDA within four years the allotment is to be made in favour of the allottee at the rate in the demand letter and in case allottee approaches the DDA after four years DDA is entitled to charge simple interest at the rate of 12% per annum. Counsel next submits that even otherwise the DDA had published a

notice in all the leading newspapers informing the public at large giving details of successful allottees and thus no further notice was required to be sent to the petitioner.

9. Learned counsel for the petitioner in turn has submitted that the aforesaid policy would be applicable to the facts of this case as well and the petitioner would be ready to pay 12% simple interest as per the policy of the DDA dated 25.2.2005.
10. I have heard counsel for the parties and also carefully perused the petition as also the annexures filed along with the petition. The basic facts are not in dispute that in the year 1979 the petitioner had applied for a flat in the LIG category under New Pattern Registration Scheme. In the application form the petitioner only mentioned residential address and instead of mentioning the occupational address in the column provided in the application form she mentioned 'teaching'. The priority of the petitioner matured only in the year 2003 i.e. after a gap of 24 years.
11. The last contention raised by counsel for the respondent is addressed first in view of the fact that this Court has taken a consistent view that a general notice in all the leading newspapers was published is in fact no notice at all as it is not expected that people would be looking at the public notices each day when the allotments are not made sometimes for twenty to twenty five years. This argument of the DDA already stands rejected and the same is rejected once again.

12. Even otherwise, it has been noticed that after making the applications some of the allottees after endlessly waiting either after retirement go back to their villages or more to go their home towns where they do not have the benefit of a national daily of Delhi.
13. In the case of *Hirdayapal Singh* (supra), applicant (petitioner in the case) had mentioned only one address in the application form, but subsequently he informed the DDA about his permanent address and the court was of the view that once demand letter was returned undelivered the DDA should have sent the demand letter at all the addresses available in the file of the DDA. To my mind the case of the petitioner is on a better footing as at the time of registering herself for allotment of a LIG flat the petitioner in the application form had mentioned her occupational address by enclosing her salary certificate issued by the school where the petitioner was working, filing of a copy of the salary certificate was a mandatory requirement and thus has to be considered to be a part of the form. No doubt the petitioner has been careless in filling up the application form and not providing her occupational address in the column provided, but the file of the DDA would comprise not more than seven pages, which include four annexures and two pages of the application form. The dealing clerk should have acted in the interest of the allottee, a common citizen, who has been waiting for more than

two and a half decades for a flat in her name. DDA was duty bound to go through the entire file to ascertain if any other address was available and the demand-cum-allotment letter should have been sent at the occupational address which was available in file of the DDA. As the DDA has not acted diligently, in such a situation the benefit must go to the common man and the policy dated 25.2.2005 should also apply in the facts of the present case. In my view in the facts of the present case, once demand-cum-allotment letter was received back to the DDA undelivered, the DDA should have carefully perused the file and ensured that demand-cum-allotment letter is sent at all the addresses available in the file.

14. Accordingly, petition is allowed. Rule is made absolute. DDA is directed to issue a demand-cum-allotment letter in favour of the petitioner within eight weeks from receipt of the order with 12 % simple interest on the amount of the initial demand made by the DDA.

15. Petition stands disposed of in view of above.

G.S. SISTANI, J.

MAY 19, 2011
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