

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

Date of decision: 12th September, 2011.

+ **W.P.(C) 732/2011**

% **ASHOK KUMAR** Petitioner

Through: Mr. Ram Dhan, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Renuka Arora, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. The petition seeks mandamus to the respondent DDA to charge from the petitioner, the cost of L.I.G. Flat No.B-2/350, IInd Floor, Lok Nayak Puram, Delhi allotted in the name of Sh. Sumer Chand, father of the petitioner, in the draw held on 23rd March, 2006, at the rates prevalent as on 23rd March, 2006 instead of at the rates prevalent as in the year 2009.

2. Notice of the petition was issued. Pleadings have been completed. Though interim order as sought restraining the respondent DDA from cancelling the allotment of the said flat and/or from allotting the same to any other person was not granted but on enquiry it is told that the said flat still exists and has not been allotted to any other person. The counsels for the parties have been heard.

3. The father of the petitioner was a registrant for an L.I.G. Flat in the New Pattern Residential Scheme of the year 1979 of the respondent DDA; he died on 3rd September, 2004 leaving behind the petitioner and petitioner's mother Smt. Champa Devi as the only surviving legal heirs; that the petitioner applied to the respondent DDA on 21st February, 2006 for mutation/transfer of the said registration in his own name. It is the case of the petitioner that notwithstanding the same, the registration was not mutated in his name.

4. In the meanwhile, as aforesaid, in the draw of lots held on 23rd March, 2006, the flat aforesaid was allotted against the said registration. According to the respondent DDA, a demand cum allotment letter dated 20th July, 2006

was issued in the name of the father of the petitioner and in terms of which letter the demanded price of the flat of ₹7,94,602.46 paise was payable by 18th October, 2006 and with interest latest by 16th January, 2007 and failing which the allotment was to automatically stand cancelled on 16th January, 2007.

5. It is the case of the petitioner that the aforesaid demand cum allotment letter was not received by him. The respondent DDA in its counter affidavit also admits that the demand cum allotment letter was returned “undelivered” to it with the postal endorsement that the address was incomplete even though the same was sent at the address furnished in the registration application.

6. It is however not as if the petitioner was not aware of the allotment aforesaid. The counsel for the petitioner has during the course of hearing handed over a bunch of letters which is taken on record and which contains a copy of the letter dated 14th September, 2006 delivered by the petitioner to the DDA and in which the petitioner has claimed himself to be the allottee of the said flat and asked for delivery of the demand letter.

7. It has been enquired from the counsel for the petitioner as to how, if the petitioner had not received the demand cum allotment letter, he was aware of the allotment. It is stated that the petitioner immediately after allotment, had started receiving phone calls from the brokers in the said flats and wherefrom the petitioner learnt of the same.

8. On enquiry as to why the petitioner did not make the payment if was aware of allotment, the counsel for the petitioner contends that the petitioner, prior to the allotment having applied for mutation of the registration from the name of his father to his own name, could not be expected to make the payment without the respondent DDA issuing the demand cum allotment letter in the name of the petitioner and the petitioner could not be expected to make payment in response to the demand cum allotment letter in the name of his father.

9. It is however the case of the respondent DDA that the respondent DDA had in response to the letter dated 21st February, 2006 supra of the petitioner, vide letter dated 20th March, 2006 asked the petitioner for some further documents to enable the respondent DDA to carry out mutation in

the name of the petitioner. Though the counsel for the petitioner during the hearing denied receipt of any such letter but I find on the file of the DDA produced before this Court, a reply dated 24th April, 2006 of the petitioner to the said letter dated 20th March, 2006 of the DDA.

10. The respondent DDA vide another letter dated 1st May, 2006 asked the petitioner to attend its office with the original documents in support of his claim for mutation. The record of the respondent DDA further shows that the deficiencies in the requirements for mutation persisted.

11. Thus while the petitioner continued to write for issuance for demand cum allotment letter in his own name, the respondent DDA continued to write to the petitioner to complete the formalities for mutation.

12. In the meanwhile, a notice dated 27th March, 2009 was issued in the name of petitioner to show cause as to why the allotment should not be cancelled for the failure to have made the payment within the time stipulated therefor in the demand cum allotment letter dated 20th July, 2006 in name of father of the petitioner.

13. The file of the respondent DDA shows that the petitioner completed

the documents for mutation only by 29th June, 2009. Thereafter a question arose whether the allotment on 23rd March, 2006 was liable to be cancelled for non-payment within the stipulated time. The respondent DDA then decided that since the allotment letter has been returned undelivered, mutation be effected and opportunity be given to the petitioner to avail of the allotment at current costs. Accordingly, a fresh demand cum allotment letter dated 5th August, 2010-11th August, 2010 was issued in the name of the petitioner demanding the price of ₹11,66,434/- payable by 9th November, 2010 and with interest latest by 7th February, 2011. The petitioner, instead of complying therewith has filed the present petition.

14. The counsel for the petitioner informs and is also borne out from the record that the petitioner has deposited with the respondent DDA a sum of ₹2 lacs on 17th February, 2011, a sum of ₹2 lacs on 23rd February, 2011 and ₹3,50,000/- on 28th February, 2011 i.e. beyond the stipulated time.

15. The contention of the petitioner is that since the delay in mutation is attributable to the respondent DDA, he cannot be charged the price of the year 2009 as charged from him and is liable to pay the price as originally

demand in the year 2006.

16. A comparison of the two demand letters shows that while the cost of land has remained the same i.e. ₹3,14,660/-, the cost of construction as per the letter of year 2006 was ₹4,65,447/-, now it is ₹8,36,343/-.

17. I have wondered whether respondent DDA can be permitted to charge the rate of construction of the year 2009-2010 when the construction admittedly is of the year 2006. The difference between the costs is of approximately three and a half lacs.

18. However one cannot lose sight of the fact that the money in all this time remained in the pocket of the petitioner. The petitioner had an option to even in the year 2006 deposit the price. The petitioner however chose not to do so taking the technical plea of the demand being in his father's name but under whom he claims. Moreover, it is not as if DDA charges as per the year of construction. The price demanded is as of the year of issuance of demand cum allotment letter not of the year of construction. Others, to whom such letters would have been issued in 2010, would also have been demanded the same price, even if the construction was of earlier year. I do

not find any reason to give any benefit to the petitioner when the petitioner did not avail of demand cum allotment in name of his father. Also, the amount of approximately ₹8 lacs even in savings bank deposit would have earned interest @ 10% i.e. in three years of about rupees two and a half lacs. The difference is thus not substantial.

19. As far as the ground urged by the petitioner is concerned, it is a disputed question of fact whether the delay in mutation is attributable to DDA or to the petitioner. The file notings of the DDA show that it was the petitioner who was not complying with the formalities for mutation inspite of being regularly called upon to do so. The said adjudication as to for whose default, mutation remained pending, can be done only by examination and cross examination of witnesses, which is not possible in this jurisdiction.

20. The counsel for the petitioner has relied on *Anju Ragtah Vs. DDA* 160 (2009) DLT 748. However in that case, on the material produced the fault was found to be of the DDA. In the present case as aforesaid, notwithstanding the delay attributable to whomsoever in mutation, the petitioner was aware of the allotment and could have very well paid the price

within the stipulated time but having chosen not to do so, DDA cannot now be directed to sell to the petitioner in the year 2010-2011 at the price of 2006.

21. In the entirety of the facts aforesaid, I do not find the petitioner to be entitled to payment of the price of the year 2006. The petition therefore fails. Even though there is no interim stay but since cancellation has not been effected till now and the petitioner has deposited a sum of ₹7,50,000/-, it is deemed appropriate to grant opportunity to the petitioner to pay the balance amount. Subject to the petitioner paying the balance amount with interest for delay as per the policy of DDA on or before 25th November, 2011, the petitioner shall be entitled to the flat aforesaid. Else, DDA shall be entitled to proceed in accordance with law.

22. The petition is dismissed save for the aforesaid directions. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 12, 2011

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(corrected and released on 26th September, 2011)