

1.

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

%

Judgment delivered on: 18th January, 2011

+

LPA 169/2010

NARAIN DAS ARORA

..... Appellant

Through Mr. R.K. Bhardwaj & Mr. Dheeraj
Bhardwaj, Advocates.

versus

DDA & ORS.

..... Respondents

Through Ms. Sangeeta Chandra, Advocate
for DDA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

- | | |
|--|------|
| 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. |

DIPAK MISRA, CJ

The present intra-Court appeal is directed against the order dated 9th December, 2009 passed by the learned single Judge in Writ Petition (Civil) No. 7822/2009.

2. The facts which are requisite to be stated for adjudication of this appeal are that the original writ petitioner-Narain Das Arora (since deceased) pursuant to an advertisement issued by the respondent-DDA dated 6th June, 2004 published in 'Hindustan Times', Delhi applied for allotment of a two bed room flat under the Housing Scheme-2004 vide application form No. 096652 on 30th June, 2004. On 3rd July, 2004, he

deposited the application form No. 096652 along with the bank draft of Rs.50,000/- with the UTI Bank.

3. As set forth, the results of the computerized draw held by the DDA was published in 'Hindustan Times', Delhi on 13th August, 2004 in which the application form number of the original writ petitioner was reflected and the petitioner was declared successful. When he contacted the competent authorities of the DDA, he found that against his application a wrong name had been shown. It was contended before the writ Court that despite being successful, the name against the application form was incorrectly mentioned and, therefore, he was entitled to get benefit of allotment. That apart it was also urged that the initially deposited amount had not been refunded. In this backdrop prayers were made for issue of command to allot a flat and also to grant compensation for the inaction of the respondents.

4. The stand put forth by the late Narain Das Arora was combated by the DDA on the ground that at the stage of scrutiny of the application forms it was noticed that the two forms were received by the bank, one form bearing No. 096652 that was received from the said late Narain Das Arora and another application form from one Mr. Amar Deep Singh. It was put forth that while accepting the forms, the bank allotted identical number to both the forms. The application form number of the petitioner was 096652 and the application form number

of Mr. Amar Deep Singh was 96652. The system department of the DDA reported the error which crept in on the mistake committed by the bank. It was contended by the respondent-DDA that such a situation had arisen in the past as well and in order to solve the problem, prior to processing, as per the practice adopted by the DDA, a digit 7 is added to one of the application form number and thereafter a check list was generated. It was submitted that pre-fix '7' was added by the computer itself against the application of the writ petitioner as per the software and the form numbers could not be manually changed. To put it differentially, various justifications were given to highlight that the writ petitioner could not have gained any kind of advantage because of inadvertent acknowledgement of an identical number.

5. The learned single judge upon hearing the learned counsel for the parties and taking note of the factual matrix in toto came to hold as follows:-

6. The DDA in turn did not make any correction in the list, which was received from the Bank in view of the difficulty expressed on account of the software. However to resolve the issue before the draw of lots and to give a separate identity to both the application forms, a digit '7' was added to the form of the petitioner. No doubt the name of the petitioner appears in the list of successful applicants in the Hindustan Times, daily, however, in reality the digit '7' was added before the form of the petitioner prior to the number being added in the draw of lots. I am

satisfied that the name of the petitioner appeared in the list of the successful applicants by mistake. Except for the inconvenience which may have been caused to the petitioner, I find there is no infirmity in the steps taken by DDA, the name of both the applicants were added in the draw of lots and the petitioner was not found successful. ..”

6. Questioning the correctness of the order, learned counsel for the appellant- Mr. R.K. Bhardwaj submitted that DDA had created a piquant situation as a result of which the appellants, who are the legal heirs of the original writ petitioner, have suffered and hence, they are entitled to the flat in question. It is further urged by him that the amount which was deposited towards the registration fee has not yet been refunded. It is his worthy submission that though the learned single Judge has noted the fact that some inconvenience might have been caused to the writ petitioner but the allotment in favour of the Amar Deep Singh is not incorrect and in any case the allotment would not have been in favour of the original writ petitioner but did not proceed to deal with the issue of grant of compensation. The learned counsel propounded that the amount has so far not been refunded and the withholding of the amount by the respondent is absolutely inexplicable and exposes the apathy of the respondent to deal with justified grievance of the appellants.

7. Resisting the aforesaid submissions, Ms. Sangeeta Chandra,

learned counsel for the respondent-DDA has submitted that the order passed by the learned single Judge is absolutely infallible inasmuch as when excessive applications seeking allotment are received, a mistake can occur at the hands of the bank and hence, no right can be said to have been created in favour of the original applicant. It is also contended by her that the order passed by the learned single Judge is in accordance with the order dated 23rd August, 2008 passed by the another learned single Judge in a similar circumstance in Writ Petition (Civil) No. 16025/2004 and, therefore, it has to be regarded as flawless. The learned counsel also canvassed that there was no manipulation and there could not have been any inasmuch as the whole thing is systematically computerized and, therefore, there is no remote possibility for any kind of individual machination. As far as the amount of refund is concerned, learned counsel submitted that the DDA has entered into correspondence with the bank for refund of the amount and it might have been refunded in the meantime.

8. As far as the first aspect is concerned, we are inclined to agree with the view taken by the learned single Judge inasmuch as in the case of ***Pramod Kumar versus DDA*** (Writ Petition (Civil) No. 16025/2004 decided on 23rd August, 2005), the learned single Judge in paragraphs 8 to 11 in the similar draw has dealt with the controversy elaborately and in the ultimate eventuate has held as follows:-

“8. Record of the respondent, however, showed that this has ultimately resulted in no prejudice. As per the practice and procedure stated to be adopted for conducting a draw of lots, it is contended that the draw of lots and allotments thereof are never made through the application numbers. The procedure which is stated to be followed for the said draw of lots is that each of the applicant who submit the application in a scheme, is allotted a “Random Number” which is not in seriatum to the application numbers but is totally different from the same. It is stated that an application number say, 1500 (which is higher in seriatum) may be allotted random number 45000 while the application number 750 may be allotted random number 47000. This Random Number is stated to be allotted by the computer in which application numbers are fed. After the allotment of said Random Numbers to each of the applicants, the records maintained by respondent/DDA is stated to reflect all the details of a particular applicant including the application number, random number, name, father’s name, preferences etc.

9. The Random Numbers so assigned to each applicant are then stated to be arranged in seriatim, in ascending order, starting from serial number 1 till the last total number of applicants, which in the present case was 93775. Thus, each Random Number is assigned a “Random Serial Number” in accordance with its configuration assigned while juggling the application numbers for the assignment of a “Random Number”. This process is stated to be adopted to avoid any mischief and foul play and to eradicate chances of collusion or fraud during the holding of draw of lots, whereby the application numbers are known to several

persons and officials.

10. The process does not end here. After the Random Serial Numbers are assigned, the next step is stated to be picking up of "Lucky Random Serial Number". This Lucky Random Serial Number is stated to be picked, one from each of the five boxes (in the present case) containing certain tokens/coins bearing numbers from 0 to 9, depending upon the total number of applicants placed in the draw. One number is stated to be picked from one of the said boxes by independent Judges, who are stated to be Senior Government Officers. The numbers picked from each of the boxes is joined together to form, what is known as a "Lucky Random Serial Number". This Lucky Random Serial Number is stated to form the basis of the allotment to be made to the applicants. The first allottee is stated to be the one having the said "Lucky Random Serial Number" and thereafter each "Random Serial Number" placed after the said Lucky Serial Number is picked up and depending upon the preferences given by the said applicant, allotment continue to be made in ascending order from the said Random Serial Numbers.

11. In the present case, the Random Number assigned to the petitioner against his erroneously assigned application No. 736565 was 40271, whereas the Random Number assigned to Sh. Mohan against his erroneously assigned application No. 036565 was 110010. While arranging the said Random Numbers in seriatum, the Random Serial Number allotted to the petitioner was 28755 while the Random Serial Number allotted to Sh. Mohan was 78546. The Lucky Random Serial Number which was picked up in the draw of lots was

76840. Thus, the petitioner whose random serial number was prior to the lucky random serial number picked in the draw was automatically excluded, since the successful applicants were considered in ascending order after the lucky random serial number. Consequently, Sh. Mohan was picked up in the ascending order according to the availability of flats and on account of his random serial number assigned to him.”

9. We are in agreement with the aforesaid view. Thus, we are not in a position to accept the submission of Mr. R.K. Bhardwaj, learned counsel for the appellant that the original writ petitioner, the predecessor-in-interest of the present appellants was entitled to a flat on the basis of the draw.

10. The controversy does not rest here. As is evident, the learned single Judge has appositely observed that inconvenience was caused to late Narain Das Arora. Apart from the inconvenience, as we find the lis in hand projects a scenario which cannot be ignored or its impact on a common man cannot be marginalized. The original writ petitioner had deposited a sum of Rs.50,000/- in the bank on 3rd July, 2004. There is no dispute that the DDA had a tie up with the UTI Bank as DDA had chosen the said bank. Whether fault lies with the bank or with the DDA is totally inconsequential. What is required to be determined is whether there has been refund of the amount and further by virtue of inconvenience caused, the original writ petitioner suffered

and thereafter his widow and other legal heirs have also suffered loss, agony, languish and the inconvenience and whether they would be entitled to any compensation. As is evident from the material brought on record, late Narain Das Arora had approached the DDA on 16th August, 2004 by entering into a correspondence. The said letter reads as follows:-

“ I am shocked to know that wrong name has been shown against the successful draw in r/o Application form No. 96652 for DDA's Two Bed Rooms Housing Scheme-2004 with preference at Mayur Vihar, Delhi.

I submit that I had submitted my application form no. 96652 in the UTI Ltd. Bank, Main Branch, Barakhamba Road, Statesman House, New Delhi with preference of Mayur Vihar, Delhi.

I look forward for immediate action in the matter please.”

11. As is luminescent, no reply to the same was given and as it appears it had fallen on deaf ears. Thereafter, as is demonstrable on 28th February, 2006 late Narain Das Arora visited the office of the DDA and handed the following communication:-

“ Kindly refer to my repeated requests in person as well as in written on the above mentioned subject but to no response towards my allotment till this date from your goodself/DDA.

I bring to your notice that I had

submitted my application form No. 96652 in the UTI Bank Ltd., Main Branch, Barakhamba Road, Statesman House, New Delhi with my preference at Mayur Vihar Phase-I. The amount of application money still stands deposited with the Bank.

I once again request for an immediate action in the matter within one month before I refer my case to the Hon'ble Chief Justice/Hon'ble High Court of Delhi as I smell a foul play in the allotment of flats by the DDA officials to their favourites who please them.

I fail to understand as to why the allotment has not yet been made to me when I have since been declared successful in the draw of lot against my application form No. 96652 as on record.

Looking forward for the needful for the allotment of flat please.”

12. Though the said letter was received in the office, the DDA chose to maintain a sphinx like silence possibly thinking golden silence should be the “Rule of the Day”. As nothing happened, the writ petition was filed on 2nd March, 2009. A stand was taken in the writ petition that the amount has not been refunded. The DDA in its counter affidavit in paragraph 9 has stated so:-

“9. That the contents of para 9 of the writ petition pertains to the Respondent No. 3/UTI Bank. However, it is submitted that DDA has written a letter dated 21.7.2009 to the Manager, Axix Bank (Formerly UTI Bank), Statesman House, Bara Khamba

Road, New Delhi to furnish the status report of confirmation of refund of registration money in respect of Application Form No. 96652 to Shri Narain Dass Arora under Two Bedroom Housing Scheme-2004 and the reply of the Bank is still awaited. Copy of the letter dated 21.7.2009 is annexed hereto and marked as **Annexure R2.**”

13. In the rejoinder affidavit in reply to said paragraph, it has been mentioned that the letter dated 21st July, 2009 written by the DDA to Manager, UTI Bank now known as Axis Bank is an afterthought and further the bank has not refunded the registration amount against application form No. 96652.

14. Be it noted, the lot was drawn on 12th August, 2004. The mistake as is the admitted position, was found immediately. As has been indicated hereinbefore, late Narain Das Arora entered into correspondence at the earliest but no action was shown. Inaction by a statutory authority specifically in a case of this nature is inconceivable. The mistake with regard to allotment may be a genuine one but definitely non-refund of the amount cannot be regarded as a sanguine act. There is total indifference. The letters were not replied. It is absolute impassivity and reflection of attitude of non-concern by the authorities who are required to act in quite promptitude being argus-eyed. The alertness or vigil is entirely absent. It would come within the realm of total inaction whereas statutory authorities are required to

act with sensitivity and not deal with the citizens who are aspirant to get some accommodation may be with the process of lottery and retain their registration amount for such a long period.

15. The learned counsel for the DDA would submit that the mistakes of this nature do crop up. The learned single Judge has held that some inconvenience might have been caused. True it is, there is no material to hold that the amount has not yet been refunded but there can be no scintilla of doubt that the amount was not refunded, till the DDA communicated with the bank in the later part of July, 2009. The bank also has not stated anything that the money has been refunded. Regard being had to the inconvenience caused and taking note of the fact that Rs.50,000/- has been withheld by the DDA for a period of more than five years, we are inclined to grant compensation of Rs.1lac apart from the amount that has been deposited. Thus, the entire sum would come to Rs.1,50,000/-. Be it noted, while fixing the said sum, we have taken note of the inconvenience caused to the original petitioner and the present appellants, the apathy of the respondents which compelled the appellants to be dragged into a litigation of this nature, the expenses occurred in litigation, the retention of the amount and above all the inaction on the part of the authorities of the respondent. The amount shall be paid by way of bank draft drawn on a nationalized bank within a period of four weeks. The draft shall be sent in the name of the wife,

viz., Smt. Raj Kumari Arora and the same shall satisfy the claim of the legal representatives.

16. Consequently, the appeal is allowed in part without any order as to costs of this appeal.

CHIEF JUSTICE

SANJIV KHANNA, J.

JANUARY 18, 2011
VKR