

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% *Date of Judgment: 26.04.2011*
+ RSA No.51/2007

RAKESH KUMAR SACHDEVA

Through: Mr.G.P. Thareja, Advocate. Appellant

Versus

DELHI DEVELOPMENT AUTHORITY

Through: Ms. Geeta Mehrotra and Mr. Deepak Vashisht, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 13.11.2006 which had reversed the findings of the trial Judge dated 11.08.2005. Vide judgment and decree dated 11.08.2005, the suit filed by the plaintiff Rakesh Kumar Sachdeva seeking a decree of declaration against the defendant/Delhi Development Authority (DDA) that an LIG flat be allotted in his favour had been decreed. The impugned judgment had reversed this finding. Suit of the plaintiff stood dismissed.

2 The plaintiff had applied for allotment of an LIG flat vide registration No. 27865 on 31.05.1980. In July, 1994 he learnt that the allotment letter had been issued at his previous address at 2067/38, Naiwala, Karol Bagh, New Delhi. His contention was that he had changed his address and informed the DDA vide his communication dated 21.01.1992 but the DDA had not up dated his new address. This was a negligence on their part. He had thereafter requested the DDA to enlarge his period of payment as he was under financial constraint and could not pay the entire amount of Rs.2,49,515/-; he had admittedly paid the initial amount of Rs.15,000/- on 20.10.1994 but thereafter he had sought relaxation. However the DDA paid no heed; allotment of the plaintiff stood cancelled; suit was accordingly filed.

3 In the written statement, the stand of the plaintiff was contested; it was stated that the plaintiff himself was lackadaisical and negligent; he was not entitled to any relief.

4 On the pleadings of the parties, the following five issues were framed:-

1. Whether the suit is bad for want of notice under Section 53-B of the DD Act? OPD
2. Whether the suit is no maintainable in the present form? OPD
3. Whether the suit is barred by limitation? OPD
4. Whether the plaintiff is entitled for the relief claimed for? OPP
5. Relief.

5 Issues No. 4 & 5 are relevant for the controversy in issue.

The following facts are admitted:-

(i) The plaintiff had applied for allotment of an LIG flat on 31.05.1980

(ii) Vide Ex. PW-1/1 dated 21.01.1992, a communication had been written by the plaintiff to the defendant informing them of his change of address.

(iii) Vide Ex. DW-1/X3 dated 22.07.1994 communication was sent by the DDA at the old address of the plaintiff asking him to pay his installment in terms of the allotment of the LIG flat in his favour.

(iv) On 13.10.1994 Ex. DW-1/X3 was handed over to the plaintiff by hand

(v) On 18.10.1994-20.10.1994 a sum of Rs.15,000/- had been paid by the plaintiff.

(vi) On the same day vide Ex. PW-1/2 dated 18.10.1994-20.10.1994, the plaintiff wrote to the DDA requesting them that price of his flat may be reduced as the escalated price is a financial constraint on him; he had further requested that he be allotted the ground floor because of his aged parents.

(vii) Vide Ex. DW-1/2 dated 23.01.1995 show cause notice was issued to the plaintiff asking him as to why his allotment be not

cancelled.

(viii) Vide Ex. PW-1/3 dated 09.02.1995, the plaintiff wrote to the department requesting for enlargement of time as also with the request that he may be permitted to pay the money in installments of Rs.1,000/- as Rs.2,49,515/- which was the consideration for the allotment of the flat was causing a financial constraint to him.

(ix) Vide Ex. DW-1/1 dated 28.02.1995 the allotment of the plaintiff was cancelled.

(x) Vide Ex. DW-1/X2 dated 11.02.1995, the plaintiff requested the department to restore his allotment.

(xi) Suit was filed in September, 1995.

6 These are all admitted facts.

7 This is a second appeal. On behalf of the appellant it has been urged that the judgment of the trial Court was well reasoned and well formulated; the first appellate court had cursorily on mere surmises and conjectures reversed this finding which it could not have done so. This has raised a substantial question of law. To support this submission reliance has been placed upon a judgment reported in 137 (2007) DLT 437 Atma Ram Trust Vs. Dr. Chiranjil Lal & Anr; para 52 had been highlighted. It is submitted that in this case also a Bench of this

Court had held that where the Rent Tribunal had reversed the well-reasoned finding of the Rent Controller and had taken a contrary view on mere surmises and conjectures, a substantial question of law had arisen calling for an interference in a second appeal. Reliance has also been placed upon 2005 III AD (Delhi) 143 Surender Kumar Mehta And Others Vs. Delhi Development Authority to support his submission that in this bunch of writ petitions (which had been disposed of by a Bench of this Court) where communications had been sent to the petitioners at the wrong address, such petitioners for no fault on their part had been held to be entitled for allotment of their respective flats. It is submitted that on the same analogy the plaintiff is also entitled to his allotment.

8 Arguments have been rebutted. It is pointed out that the impugned judgment calls for no interference; in no manner can it be termed as based on mere surmises and conjectures; it had appreciated both facts and law to arrive at the aforementioned finding.

9 Record has been perused.

10 Before the first appellate court, issue no. 4 was the controversial issue. This finding had been reversed. Relevant extract qua this finding is returned as follows:-

"10 The findings of the Trial court in respect of Issue No.4 have only been challenged, however, on the other findings, there is no dispute between the parties. Thus, the findings of the Trial court on Issue No.4 have to be looked into. The main plea which has been taken on behalf of respondent/plaintiff is that inspite of letter in regard to request for instalment, the appellant/DDA has cancelled the allotment. However, the plea which has been taken on behalf of appellant/DDA is that respondent was required to make the payment within 90 days i.e by 20.10.1994 as per the allotment letter Ex.PW1/3. He was further required to deposit the confirmation amount within 30 days i.e by 21.8.1994. PW.1 has got collected this demand letter Ex.PW1/DX and made a representation on 18/20- 10.1994 as per Exhibit PW.1/2 to the defendant. Though the respondent has not given exact date of his getting the letter of demand collected from the office of DDA, however, this date has been stated by Shri BalRaj DW1 as 13.10.1994. This fact has also been confirmed by plaintiff in his testimony and the letter has been got exhibited as Ex.PW1/2. By this letter Ex.PW1/2, he is stated to have deposited an amount of Rs. 15000/- vide challan No. 10368 of dated 20.10.1994. Thus, he has deposited an amount of Rs. 15000/- before date i.e 20.10.1994 which was given in the allotment letter Ex.DW1/X2 as the outer limit for deposit the total amount was within 90 days.

11 When he got collected the letter on 30.10.1994, immediately on 18-20/10/94, he sent protest letter where he has objected to the total cost of the flat being arbitrary through letter Ex.PW1/2. By this letter, he has also deposited an amount of Rs. 15000/- confirmation of the allotment letter. After October, 18th/20th , 1994, he has sent another letter Ex.PW1/3 which has reference to letter dated 23.1.1995 which is a show cause notice issued by DDA Ex.DW1/2 as to why the allotment of the said flat not be cancelled for breach of the terms and conditions of the contract. This letter of dated 9.2.1995, Ex.PW1/3 where he has requested for payment of the balance amount of the demand in instalments to the tune of 1000/- per month. This request of the respondent/plaintiff has been rejected by DDA vide its letter dated 15.5.1995, which is Ex.DW1/3. Letter Ex.DW1/3 shows that this is for the first time that he made a request for instalments, whereas in the first letter Ex.PW1/2, he had only lodged a protest with regard to higher amount

being deposited by DDA. Allotment has been cancelled by DDA vide its letter dated 28.2.1995 which has been got exhibited in the testimony of Shri Balraj Singh as Ex.DW1/1X. Shri Bal Raj Singh DW1 has also stated in his cross-examination that they did not reply to the letter Ex.DW1/X2, wherein respondent/plaintiff had sought for restoration of the allotment on payment of full amount.

12 From the testimony of these witnesses, following facts emerge:-

- i The respondent/plaintiff has collected the allotment letter from the office of DDA on 13.10.1994;
- ii He deposited a sum of Rs. 15000/- vide challan No. 10368 of dated 20.10.1994 and he also wrote a protest letter to DDA vide Ex.PW1/2;
- iii show cause notice dated 23.1.1995 which is Ex.DW1/2 was issued to the respondent/plaintiff;
- iv Letter Ex.PW1/3 of dated 9.2.1995 written by respondent/ plaintiff for instalment of Rs.1,000/- per month;
- v the flat has been cancelled on 28.2.1995 through Ex.DW1/1 and
- vi his request with regard to change of mode of payment has been turned down vide letter dated 15.5.1995 vide Ex.DW1/3.

13 From the above facts, it is noticed that respondent/plaintiff made a request for instalment through letter of dated 9.2.1995 Ex.PW.1/3 in response to show cause notice of dated 23.1.1995 Ex.DW1/2 showing his willingness to deposit the balance amount. Appellant/DDA cancelled allotment of the flat on 28.2.1995 through letter Ex.DW1/1, whereas his request for change of mode of payment through letter dated 9.2.1995 Ex.PW.1/3 was turned down through letter of dated 15.5.1995 vide Ex.PW.1/3 and the flat was cancelled on 28.2.1995 through Ex.DW1/1. It means that the flat was cancelled before his request for instalment was considered or replied. The bone of contention between the parties is that

DDA/appellant should not have cancelled the flat before his request for instalment made through Ex.PW.1/3 was disposed of. Further, he should have been given a show cause notice before cancellation. The cancellation has been done pursuant to show cause notice of dated 23.1.1995 Ex.DW1/2 and

he has not been given the period of 90 days for deposit of the amount. The stand taken by DDA is that respondent/plaintiff has availed 90 days from the date of his collecting the notice Ex.DW1/2 and fresh notice was not called for.

13A If two letters Ex.PW1/2 and Ex.PW1/3 are closely examined, they show that respondent/plaintiff was not willing to deposit the amount of Rs. 2,49,515/- which he was asked to pay vide letter Ex.PW1/DX By depositing an amount of Rs. 15000/- on 18/20-10-94, he intended to block/keep the allotment in abeyance.

14 From the facts on record, it is also noticed that allotment has been cancelled after giving a show cause notice dated 23.1.1995 and that too after the expiry of 90 days from the day of collecting the letter from DDA on 13.10.1994.

15 If the crossexamination of Shri Rakesh Kumar Sachdeva PW.1 is looked into, he has denied that he received any show cause notice dated 23.1.1995, however, he has stated that he got this notice in February 1995, when he went to the office of DDA. He has also admitted in his crossexamination that the notice was sent at his new address. Though this witness has stated that he did not receive this notice and got the same when he visited the office of DDA, but no explanation has been given with regard to the notice Ex.DW1/2. Even no question has been put to Shri Balraj Singh, DW.1 for not having served this notice. The close examination of testimony of Shri BalRaj Singh DW.1 show that with regard to service of notice Ex. DW1/2, nothing has been put to this witness that DDA has not sent any notice and respondent/plaintiff has not received the same, whereas this witness has stated in his examination in chief that before cancellation a show cause notice dated 23.1.1995 was issued to respondent/plaintiff.

16 The fact that show cause notice Ex.DW1/2 was sent at the new address, the plea taken by respondent/plaintiff that he has got the notice collected from the office of DDA cannot be accepted. It is not that each and every time, the respondent/plaintiff will visit the office and get the letter collected. If he was so vigilant and interested in the allotment, he should not have protested,

but have made the payment as demanded. When notice Ex.DW1/2 was issued to the respondent/plaintiff, his request for change of mode of payment impliedly stands rejected. Even if DDA has replied to his letters dated 9.12.1995 and letter dated 15.5.1995 rejecting his request for change of mode of payment from cash down to hire purchase basis, after show cause notice Ex.DW1/2 and cancellation of flat through Ex.DW1/1 later on does not make any difference. Respondent/plaintiff has availed full 90 days for making the payment, even if, the period is counted from the date of his collecting the demand letter Ex.DW1/X3 from DDA on 13.10.1994 as the cancellation has been done on 28.2.1995 vide letter Ex.DW1/1."

11 This finding was returned after a detailed scrutiny of the oral and documentary evidence. It can in no manner said to be perverse.

12 Record shows that on 18.10.1994-20.10.1994 Rs.15,000/- had been paid by the plaintiff. This was in terms of the letter of allotment which had been issued to him. This document is Ex.DW-1/X3. The column on the left side clearly stipulates that confirmation/acceptance of the deposit has to be made within 30 days or if the amount is not paid within 90 days, there would be automatic cancellation of allotment and registration. The submission of learned counsel for the respondent is that in this circumstance, the question of sending a further notice by the department to the plaintiff did not arise. Admittedly the plaintiff had not made his payment even within the extended period of 90 days; a show cause notice dated 23.01.1995 (Ex. DW-1/2) had

been sent. The reply by the plaintiff Ex.PW-1/3 dated 09.02.1995 had set up a rider upon the payment; the plaintiff had sought payment of Rs.2,49,515/- by way of monthly installments of Rs.1,000/-.Even otherwise the period of 90 days even if counted from 20.10.1994 would expire on 19.01.1995. The cancellation of the allotment of flat of the plaintiff was vide document Ex. DW-1/1 dated 28.01.1995; this was much after the period of 90 days. The impugned judgment had correctly noted that the plaintiff is not entitled to the relief which he was claiming.

13 The judgments relief upon by learned counsel for the appellant do not advance his case. The judgment of Atma Ram Trust states the principle that a well reasoned finding of one court cannot be interfered with by the superior court if the finding of the superior court is based on surmises and conjectures. This was not so in this case. The impugned judgment is reasoned; 8 reasons have been assigned in the impugned judgment for upsetting the finding of the trial Judge. The second judgment of Surender Kumar Mehta also does not advance the case of the appellant. In this case the petitioners after having been registered as flat owners had changed their address; defendant DDA had admitted that they are at fault and had been sending communication to the petitioner at their

wrong address. Apart from the fact that these proceedings were in a writ petition, in the instant case admittedly the plaintiff had received Ex. DW-1/X3 on 13.10.1994; this was handed over to him in person. Even thereafter he chose not to comply with the requirements of making the balance payment in 90 days. It was purely his own fault. The communications sent thereafter i.e. letter dated 18.10.1994 (Ex.PW-1/2) contained a rider that the flat money be reduced and he be allotted the ground floor. The second letter dated 09.02.1995 (Ex.PW-1/3) sought payment of the amount of Rs.2,49,515/- in monthly installments of Rs.1,000/. The cancellation of the allotment of the plaintiff was rightly issued on 28.02.1995.

14 This is a second appeal. It has been admitted and on 22.02.2007, it had been recorded that the substantial questions of law as formulated on page 2 of the paper book shall read as the said substantial questions of law. They inter-alia read as follows:-

1. While exercising equity jurisdiction can an appellate court set aside well reasons findings of trial court without holding that the findings of the trial court are perverse or not based on sound principles of appreciation of evidence?
2. Whether well reasoned findings of trial court can be upset by an appellate court on surmises and conjectures or disturbed in a cavalier fashion?
3. Whether relief in equity can be denied to a citizen where State agency

meant for social justice has not acted in fair play and took fourteen years in making allotment & demanded 14 times the estimated cost within a week of issue of letter of allotment.

4. Whether relief in equity for allotment of a shelter (LIG flat) granted by the trial court on ground of discrimination and social justice under the directive principles of State Policy under the Constitution of India after 10 years of consent in suit and wait of 27 years from the date of application to the respondent should be upset by an appellate court under the circumstances of case?"

15 Impugned judgment calls for no interference. The findings of fact cannot be lightly interfered with unless and until a perversity is shown. No such perversity has been pointed; there is no scope for interference.

15 In view of the aforementioned discussion, substantial questions of law are answered in favour of the respondent and against the appellant. There is no merit in this appeal. Dismissed.

INDERMEET KAUR, J.

APRIL 26, 2011, a