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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1266/2010

% ***Judgment Delivered on: 19.05.2011***

SH.PARDEEP KUMAR

..... Petitioner

Through : Mr. N. Kinra, Adv.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through : Mr. M.K. Singh, 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 writ petition is set down for final hearing and disposal.
2. Petitioner had applied for a MIG flat under the New Pattern Registration Scheme, 1979, of the DDA, vide registration no.13311. In the application form the petitioner had mentioned his residential address as 273 Bharat Nagar, New Delhi. The petitioner thereafter shifted from 273 Bharat Nagar, New Delhi, to 128-A, Block- QU, Pitam Pura, New Delhi, and an intimation in this regard was sent to DDA on 15.11.1988 vide diary no.5405. A copy of this letter with the rubber stamp of the DDA has been placed on record. The

Signature Not Verified

Digitally Signed

By:AMUT, WA(C)No.1266/2010

allotment of the petitioner matured and a flat bearing no.128, 3rd Floor, Sector 12, Pocket 5, Phase I, Dwarka, was allotted in favour of the petitioner in the draw held on 31.5.2002. A demand-cum-allotment letter was sent to the petitioner at the address mentioned in the application form, which was returned back to the DDA with the postal remark '*person has left the address after selling the house*'.

3. Learned counsel for the petitioner submits that despite petitioner having informed DDA with regard to change of address the DDA sent the demand letter at the wrong address, thus, the case of the petitioner would be covered under the Wrong Address Policy of the DDA. Counsel further submits that petitioner has approached the DDA within four years of issuing the demand letter as per DDA'S policy and accordingly the petitioner would be entitled to the same rate at which cost the flat was allotted to the petitioner in the year 2002. Counsel also submits that on 6.11.2003 petitioner has sent a letter to the DDA under the certificate of postal calling upon the DDA to inform the status of his application, however no reply was received. Counsel next submits that after the petitioner learnt that a flat had been allotted in the year 2002 in his favour, he met the Deputy Director on 17.11.2005 to find out the reasons for cancellation of the allotment. Thereafter the petitioner made a representation to Deputy Director, which was handed over vide diary no.11464. The petitioner again met the Assistant Director in a

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personal hearing on 12.10.2006 and also on 14.12.2006. The representations were made on 12.4.2007, 13.4.2007 and thereafter the petitioner made an application under the Right to Information Act on 1.2.2010, however, no reply was received from the DDA.

4. Learned counsel for the respondent DDA has opposed this petition primarily on the ground that communication dated 15.11.1988 was not received by the DDA. Original record has been produced in Court in support of the plea of the DDA that this letter was not received by the DDA. Counsel for the DDA also denies receipt of communication dated 6.11.2003 alleged to have been sent under certificate of posting. Counsel for the DDA further submits that DDA issued the demand-cum-allotment letter at the only address available in the file and since petitioner did not inform DDA about the change of address, the action of the DDA cannot be faulted.
5. Learned counsel for the DDA has drawn the attention of the Court to the counter affidavit and has relied upon para 4 (a) and (b), which read as under:

“(a) The request for change of address vide diary number 5405 from 273, Bharat Nagar, New Delhi – 110052 to 128-A, Block-QU, Pitampura, New Delhi-110034 is not available on original record file.

(b) Diary number 5405 dated 15 November 1988 is badly tempered with where all the diary number from 5410 to the 5421 is written in one handwriting and from diary number 5405 – 5409 is in the different handwriting. Diary number 5407 is totally different from the rest of the diary number. Diary number 5408 has been tempered to make it appear as diary number 5409. Signature of receiving clerk on diary register dated 15 November 1988 does not match with the signature on annexure P-1 at page 10 of the writ petition as

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request for change of address letter. It is also to be noted that Annexure P-1 address of Mr. Pradeep Kumar shown as U-128, LIG Flats, Pitampura, Delhi-110034 dated 15 Nov, 1988 while in para number 4 change of address claimed address as 128-A, Block-QU, Pitampura, New Delhi."

6. I have heard counsel for the parties and also carefully perused the petition, counter affidavit and the annexures filed along with the pleadings. The basic facts of the case are not disputed that petitioner had applied for a MIG flat under the New Pattern Registration Scheme, 1979, of the DDA, vide registration number 13311. It is also not in dispute that DDA has formulated what is known as Wrong Address Policy dated 25.2.2005. As per this policy of the DDA in case the demand-cum-allotment letter is returned to the DDA undelivered the DDA is to send the demand-cum-allotment letter at all the addresses available in the file. Further, as per this policy of the DDA if the allottee approaches the DDA within four years of the allotment no interest is to be charged from the allottee, however, in case the allottee approaches the DDA after four years 12% simple interest is to be charged from the allottee. The sole question, which has arisen for consideration, as to whether petitioner informed DDA with regard to change of address.
7. Learned counsel for the respondent submits that in view of the fact that original letter is not available on the record, the record was carefully scrutinized and the entry of diary no.5405 was found to be badly tampered with. Counsel further submits that the surrounding circumstances, as stated in the counter affidavit, would only lead to

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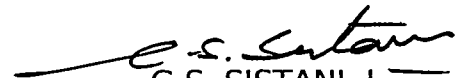
one conclusion that petitioner in connivance with other staff of the DDA has got the stamped affixed on the letter on a subsequent date. Counsel next submits that silence of the petitioner since the year 1988 to 2003 is unexplained and why the petitioner has been extremely active after 2003.

8. Learned counsel for the petitioner on the other hand submits that petitioner cannot be made to suffer on account of the inaction or dishonest staff of the DDA. Counsel further submits that diary number and the rubber stamp have not been disputed by the DDA.
9. Having regard to the facts the bone of contention between the parties is the communication dated 15.11.1988. If this communication is a genuine document and in case the same is received by the DDA the case of the petitioner would surely be covered under the Wrong Address Policy of the DDA but in case this communication has not been received by the DDA or is a forged and fabricated document, no relief can be granted to the petitioner. In my considered view, the writ petition raises disputed questions of fact.
10. In the instant case the questions whether the communication dated 15.11.1988 is a genuine document or not and whether DDA in fact has received this document and also whether the rubber stamp of the DDA on this document is genuine or not can only be decided on evidence. Accordingly, in view of the facts of the case and the settled position of law I am of the opinion that the issue requires

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evidence, and accordingly no relief can be granted to the petitioner in these proceedings.

11. Accordingly, writ petition is dismissed.


G.S. SISTANI, J.

MAY 19, 2011
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