

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

+ **LETTERS PATENT APPEAL NO. 426 OF 2011**

% **Reserved on : 10th August, 2011.**
Date of Decision : 9th September, 2011.

RUCHI SINGHAL Appellant
Through Mr. Rajesh Banati, Advocate.

VERSUS

DELHI DEVELOPMENT AUTHORITY Respondent
Through Ms. Manika Tripathy Pandey,
Advocate with Mr. Sudershan Kumar, Sr. Law
Officer, DDA.

CORAM:

HON'BLE MR. JUSTICE DIPAK MISRA, 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

SANJIV KHANNA, J.:

Ms. Ruchi Singhal has filed the present intra-Court appeal assailing the decision dated 18th February, 2011 dismissing her Writ Petition (Civil) No. 8485/2008. Mother of the appellant, late Arun Singhal, applied for an MIG flat and was registered under the New Pattern Registration Scheme, 1979. She deposited Rs.4,500/- vide receipt dated 17th September, 1979. She expired on 31st January, 1992. The appellant, who was the writ petitioner, is the daughter of late Arun Singhal.

2. In the draw of lots held on 15th July, 1998, late Arun Singhal was allotted an MIG flat. The appellant came to know about the said allotment and vide letter dated 31st October, 1998 informed the respondent-DDA about demise of Arun Singhal and requested the respondent to send the demand-cum-allotment letter in her name as she is one of the legal heirs. The appellant requested the respondent to inform her about the procedure and formalities for transfer of the registration. In spite of the said letter, the respondent issued demand-cum-allotment letter with block dates 15th January, 1999-20th January, 1999 in the name of late Arun Singhal. After a gap of about five months, on 12th March, 1999, the respondent wrote to the appellant to furnish several documents like indemnity bond, affidavit, consent letters, death certificate in original etc. as per the prescribed proformas which could be taken from the office counter No. 4 in the DDA office. There is no explanation for this delay in responding to the letter dated 31st October, 1998, vide letter dated 12th March, 1999.

3. The appellant responded vide letter dated 25th June, 1999 informing the respondent that she had repeatedly visited the counter No. 4 to obtain the proforma but was informed that the proforma was out of stock and the same had gone for printing

and that due to non-availability of the proforma she cannot submit the documents like indemnity bond, consent letters etc. The respondent by letter dated 17th August, 1999 again called upon the appellant to collect the booklet from the counter and apply for transfer of registration. The appellant protested vide letter dated 7th October, 1999 that she had visited the counter but the proforma and booklet was not available and hence she was not in a position to furnish the documents as per the required proforma. The file notings in the DDA file show that in fact the proforma or the booklet was out of stock and was not available at counter No. 4. We are reproducing below the file notings dated 11th August, 1999 and 29th October, 1999:

“ In response to our letter dt. 12-3-99 (R a/c). The applicant has intimated that proformas are out of stock. She has therefore, requested to send the set of proformas.

In this connection it is submitted that these proformas are not available with us. If agreed, we may request the applicant to get the proforma from counter and apply for transfer of Regn. Accordingly fair letter is added for sign pl.

11/8/99

Supdt -13/8/99

AD

PUC No. 11267 dt. 20.11.99

In this case the allottee has requested for performas in r/o transfer of Regn/allotment. She has also intimated that the booklet is out of stock. (R 10/C).

Under the above circumstances, we may request Supdt. (Counter) to please intimate whether booklet is available on the counter for sale if not please intimate the date on which the booklet will be available.

Supdt.-31/11/99
AD
Supdt. (Counter)"

4. As per the respondent, vide letter dated 17th January, 2000 photocopy of the proforma was sent to the appellant. The appellant doubts the dispatchment of the said letter and has stated that she had not received the said letter. The respondent has not placed on record any proof of dispatch for having sent the said letter to the appellant. We are inclined to accept the plea of the appellant that she did not receive the said letter for the reason that there was no occasion or cause for her not to furnish the documents as per the prescribed proforma as can be seen and is apparent from the facts noticed below. Delay or failure to furnish documents was not in her interest. There was no inter se dispute between legal heirs of late Arun Singhal.

5. On 8th June, 2000, the respondent wrote to the appellant stating that she had not submitted the documentation required vide letter dated 17th January, 2000. The appellant responded vide her letter dated 29th June, 2000 stating that she had not received the letter dated 17th January, 2000 and in fact quoted and referred to letters dated 25th June, 1999, 7th October, 1999 and 8th April, 2000 written by her under registered AD post that she had not been able to procure the proforma for the documents and in spite of her repeated requests the same had not been provided to her. The appellant's desperation and harassment is clear from the averments made in the letter dated 29th June, 2000 and for the sake of convenience we are reproducing the same below:

"It is strange that you are threatening to take action without any fault on my part. You have to supply me the proformas of the documents required to be submitted by me as per your letter dated 12.03.1999 but you have not so far supplied the same to me inspite of my repeated requests and reminders. In this connection please refer to my registered A.D. letter dated 25.06.1999, 07.10.1999 and 08.04.2000.

In my letter dated 08.04.2000 I even submitted that in case the required proforma documents are still not available with you, then please inform me if I can get the proformas prepared from my Advocate and you will have no objection in accepting the

same. But to my surprise instead of confirming the same or replying to my letter, you have threatened to take action if the formalities are not completed with a week period. You are fully aware that I have visited your office a number of times to collect the required proformas and complete the formalities immediately but every time I was told that the proformas are under print and therefore, were not available in your office. You have also not sent the same to me inspite(sic) of my repeated requests. You are, therefore, requested to please either send the proformas or inform me that I can get the Proformas prepared from my Advocate and you will have no objection in accepting the same, so that I may complete the formalities immediately.

However, I am once again visiting your office today to collect the Proformas and if these are available then I will submit the same without any delay.

From the above facts you will observe that the total fault of not providing the Proformas is of DDA and inspite of that if you will take any action which is detrimental to my interest then you will do so at your own risk and responsibilities and I will have every right to protect my interests at appropriate Forums.”

6. This letter was also marked to the Lieutenant Governor, Vice-Chairman, DDA and the Minister of Urban Development. DDA vide their letter dated 7th July, 2000 responded that the booklet should be collected from counter No. 4 and the documentation as per prescribed proforma should be submitted. The file notings do not show whether any query was made and it

was ascertained that the proforma was available at the counter No. 4. The respondent could have sent the prescribed proforma, even if as per their file notings they had been sent the proforma earlier but the appellant had claimed that the letter with proforma had not been received. The appellant responded by her letter dated 18th September, 2000 stating that the proformas were not available at counter No. 4 and nobody from the office of DDA was able to help her to get the required proforma. She was forced to get in touch with one of the touts, pay some money and secure the proforma. She enclosed therewith the following documents:

- “1. Affidavit regarding survived legal heirs from the Transferee on non-judicial stamp paper of Rs.2/- duly attested.
2. Relinquishment Deed on Rs.10/- non-judicial stamp paper from one of the legal heirs, Mr. S.C. Singhal, duly attested.
3. Relinquishment Deed on Rs.10/- non-judicial stamp paper from one of the legal heirs, Mr. Vineet Singhal, duly attested.
4. Undertaking from the Transferee on non-judicial stamp paper of Rs.2/- duly attested.
5. Indemnity Bond from the Transferee on non-judicial stamp paper of Rs.10/- duly attested.

6. Death Certificate of the allottee, Smt. Arun Singhal in original.

7. Documentary evidence of relationship i.e. attested photocopy of Ration Card.

8. Photograph and 3 signatures of the Transferee duly attested.

9. Registration Certificate No. 9425 dtd. 14.04.1980 in original.

10. Fixed Deposit Receipt NO. 137278 dtd. 17.09.1979 for Rs.4500/- in original.”

7. The said documents except the relinquishment deed of Mr. S.C. Singhal and Mr. Vineet Singhal, brothers of the appellant are available on record. The respondent vide letter dated 28th September, 2000 asked the appellant to rectify the following defects and submit the following documents:

- (i) Relinquishment Deed duly attested from Sub-Registrar.
- (ii) Declaration that in case the mother of the deceased was alive, submit a relinquishment deed/or consent letter duly attested by the Sub-Registrar.
- (iii) Attested copy of the school leaving certificate should be submitted.
- (iv) Fresh attested copy of the ration card where the name of late Arun Singhal was not mentioned should be filed.

8. The absurdity of conditions (ii) and (iv) is apparent. The death certificate in original of late Arun Singhal was furnished and is available on the file of the respondent. In the ration card if the name of Arun Singhal was still mentioned, it was not relevant and material as far as the allotment or transfer of registration is concerned. Regarding the first objection, the respondent did not return the original relinquishment deeds executed by S.C. Singhal and Vineet Singhal which were attested by an Oath Commissioner but were not registered with the Sub-Registrar. The appellant again protested and wrote letter dated 16th October, 2000 enclosing therewith her school leaving certificate mentioning her date of birth and a fresh attested copy of the ration card where name of late Arun Singhal did not exist. She requested the respondent to return the relinquishment deeds so that they could be registered with Sub-Registrar.

9. The case of the respondent is that vide letter dated 31st January, 2001 they had send/returned the relinquishment deeds to the appellant for registration with the Sub-Registrar. The appellant disputes and states that she did not receive the said relinquishment deeds. This is a disputed question of fact but we are again inclined to accept the plea of the appellant as she has

placed on record relinquishment deeds which was duly registered with the Sub-Registrar and executed by her two brothers S.C. Singhal and Vineet Singhal. These relinquishment deeds are dated 26th April, 2007. It is not the case of the respondent that there was any dispute between the appellant and her two brothers and there was a quarrel or dispute inter se them. The appellant has relied upon several letters written by her dated 14th February, 2001, 21st March, 2001, 25th April, 2001, 13th June, 2001 (UPC available), 26th September, 2001, 11th January, 2002 (UPC available) and 7th March, 2002 (UPC available). In these letters it was indicated that the relinquishment deeds had not been received by the appellant. Thereafter, the appellant wrote a letter dated 7th October, 2002 by registered AD to the Vice-Chairman, DDA requesting for return of the relinquishment deeds and transfer of allotment. In addition, the appellant has also relied upon letters dated 11th January, 2003 (UPC), 14th February, 2003 (UPC), 27th February, 2003 (UPC), 27th June, 2003, 30th December, 2003, 10th May, 2004, 30th November, 2004, 31st March, 2005, 29th August, 2005, 27th January, 2006, 20th April, 2006 (with acknowledgment from receipt cell), and 28th June, 2006 (with acknowledgment

from receipt and dispatch cell) and 7th September, 2006 sent via fax with confirmation.

10. The respondents vide their letter dated 6th March, 2007 responded and asked the appellant to submit relinquishment deeds duly registered with the Sub-Registrar, submit affidavit whether the mother of the deceased was alive or not and documentary proof of relationship with the deceased registrant duly attested. The last two documents were submitted vide letter dated 11th April, 2007 and the relinquishment deeds of S.C. Singhal and Vineet Singhal (acknowledgment from receipt and dispatch cell is available in both the cases) were submitted vide letter dated 4th May, 2007. On 5th June, 2007, the respondent informed the appellant that the mutation has been substituted in the name of the appellant. The appellant by her letter dated 21st June, 2007 requested the respondent to send a demand notice in her name to enable her to take possession of the flat. This letter was sent by registered post. The acknowledgment card received back after service has been enclosed. This was followed by reminders dated 7th August, 2007, 10th December, 2007 and 24th January, 2008. These letters were again sent under registered post and acknowledgement card of service have been enclosed.

11. The respondent for the first time by letter dated 3rd December, 2007 informed the appellant that the mutation which had been allowed was only for refund of the registration money of Rs.4,500/- and not for allotment of the flat which stood cancelled by the competent authority vide order dated 25th January, 2001 on account of non deposit of payment due and documents within stipulated period of two years as per the mutation policy. This stand was taken and communicated to the appellant by the respondent for the first time. She was asked to furnish documents for refund of registration money of Rs.4,500/-. The dreams and aspirations of the appellant came crumbling down. All her efforts over the years had gone waste. The harassment suffered by the appellant is apparent and do not require further elaboration.

12. Learned counsel for the respondent is right in his contention that the appellant could have furnished fresh registered relinquishment deeds from the two brothers, instead of asking the respondent to return the original relinquishment deeds already submitted. This is, however, a part of the story and does not absolve and justify the conduct of the respondent. The respondent has failed to repeatedly respond to the letters written by the appellant within a reasonable time. In spite of

proof of posting and acknowledgment cards etc., specious plea of fabrication of letters the respondent. The papers and proof placed on record show that the record and file maintenance in the office of the respondent is not upto mark. That apart, they kept on insisting on the documentation being furnished in the requisite proforma or booklet, when the proforma or booklet itself was not available. As a public authority it was their duty to ensure that the booklet or the forms were readily available or were furnished if required once again. Warning letter should have been written before cancellation. The appellant was not once asked to deposit payment, while her request for transfer of registration was pending consideration. The order dated 25th January, 2001 was never circulated and sent to the appellant. On the other hand, she was repeatedly called upon to furnish and give documents.

13. Mutation policy relied upon by the respondent dated 18th April, 2002 reads as under:

“Annexure ‘A’”

**DELHI DEVELOPMENT AUTHORITY
N&C BRANCH (HOUSING)**

No:F2(10)2000/N&C (H)/77

Dt: 18/4/02

OFFICE ORDER

SUB: Mutation of Registration/allotment in the name of Legal heirs/Legatee after the death of original registrant/allottee of DDA flats.

In supersession of previous order on the subject cited above, the following procedure shall be followed for dealing with such cases in future:

TRANSFER OF REGISTRATION

1. On the receipt of information about death of original registrant, the applicant – legal heir/legatee will be informed by the Jt. Director/Dy. Director of the concerned Housing Department regarding the details of the documents required for transfer of registration. The applicant legal heir/legatee shall further be informed that the said documents should be submitted at the earliest to enable the department to process the case of the transfer of the registration and to include the name of the transferee in the draw of lots to be held subsequently.

MUTATION OF ALLOTMENT

1. On receipt of information about the death of original allottee the applicant –legal heir/legatee will be informed by the Jt. Director/Dy. Director of the concerned Housing Department regarding the details of the documents required for mutation alongwith the following intimation-
 - i) That the required documents be submitted within a month.
 - ii) That in order to avoid cancellation/payment of interest, amount demanded in the letter should be deposited.
 - iii) That in case the required documents and amount demanded in the allotment letter will not be deposited within 6 months from the

date of receipt of the letter, interest @ 12% per annum will be charged from 7th month onwards.

2. In case the applicant-legal heir/legatee fails to submit the required documents or the demanded amount alongwith the interest upto a maximum period of two years from the date of the receipt of the letter referred above, the department shall issue a show cause notice to the applicant-legal heir/legatee as to why the mutation of allotment be not cancelled.
3. In case the applicant-legal heir/legatee fails to show any sufficient cause to the satisfaction of the Commissioner (Housing), the allotment shall be cancelled with the approval of the Vice-Chairman.
4. In case the allotment letter is issued in the name of original registrant, before intimation about the death of the registrant/allottee is received, there will be no automatic cancellation of the allotted flat and the above procedure shall be followed. Approval of VC has been obtained in file no. 21(misc)2000/Pt. Or 491/2001/Legal.

-sd-

(D.B Gupta)
Commissioner (Housing) DDA.

Copy to:

1. F.A. (H)
2. Dirs (H) I & II
3. All DDs/JDs of Housing Wing.
4. S.L.O. (H)/Sr.L.O. (H)
5. Councillor (Housing)
6. P.S. to Commr. (H).

-sd-

Commissioner (Housing)"

14. The said mutation policy is after the date of alleged cancellation, i.e., 25th January, 2001. It is not clear how the respondent can rely upon the said policy. Moreover, the terms of said policy have not been complied with by the respondent, as it requires issue of show cause notice why allotment should not be cancelled and thereafter only cancellation order can be issued. On the other hand, the relevant file nothings are as under:

“ This is a mutation case wherein the legal heir has not deposited any amount. As per death policy it has been decided that we may not tied up the flat in death case unnecessarily. While mutation case has been finalized the flat will be allotted to the legal heir in the next draw. We may therefore cancel the allotment pl.

AD- 24/1

Sr. AD- 25/1

JD- 25/1/2001

AD(MIG)- 29/1

PUC NO. 9886 dt. 18/12/2000

Vide PUC the applicant has requested to return the documents which were sent by her vide her letter dt. 18/9/2000 so that the same may be registered with Sub Registrar.

If agreed we may return the relinquishment deed as requested by her. Accordingly fair letter is added for sign pl.

AD-31/1/2001

Sr.AD- 31/1

Issued-31/1”

(emphasis supplied)

15. There is apparent contradiction in the file notings in January, 2001 and the stand taken by the respondent in the counter affidavit. By notings in January, 2001 only the existing allotment of the flat was cancelled and not the registration itself. The appellant was to be allotted a flat after mutation. As noticed above, as per the respondent the original relinquishment deeds were returned to the appellant only vide letter dated 31st January, 2001 for being registered with the Sub-Registrar. Date 31st January, 2001 is after the noting dated 25th January, 2001.

16. In view of the aforesaid, the alleged cancellation of allotment/registration dated 25th January, 2001 cannot be sustained and has to be quashed on the ground of clear non-application of mind and error in the decision making process by the respondent. In fact, the respondent has been negligent.

17. Keeping in view the aforesaid facts and balancing out equities and also keeping in mind the fact that the duly registered relinquishment deeds were furnished by the appellant only in May, 2007, it is directed that the respondent will include the name of the appellant in the next draw of lots and issue a fresh demand-cum-allotment letter. The appellant will be liable to pay cost of the flat as on December, 2007. This date has

been fixed as the appellant had furnished all the relevant documents in May, 2007 and the respondent should have made allotment to the appellant within a period of six months thereafter. In addition, the appellant will be liable to pay interest @ 8% per annum from December, 2007 till allotment letter is issued. Allotment letter should be issued within a period of six months from today. The appellant will also be entitled to cost, which are assessed at Rs.10,000/- and will be deducted from the amount due and payable towards the cost of the flat.

18. For the reasons stated above, the impugned judgment is set aside and the appeal is allowed to the extent indicated above.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

SEPTEMBER 9th, 2011
VKR