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

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W.P.(C) 3042/2010 & CM APPL 6091/2010

BAL KRISHAN VOHRA

..... Petitioner

Through: Mr. S.K. Rungta, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. M.K. Singh, Advocate

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

ORDER
11.01.2011

1. The Petitioner is aggrieved by the impugned demand letter dated 18th March 2010 issued to the Petitioner in respect of the allotment in his favour by the Delhi Development Authority ('DDA') of Shop No. 62, Block-D, Local Shopping Centre, Prashant Vihar, Delhi under the quota for the disabled. The case of the Petitioner is that the cost of the shop in question should have been calculated at the rates prevalent in the year 1998, i.e. at the time when he became entitled to the allotment.

2. The admitted facts are that the Petitioner is a person with disability. He applied for an out of turn allotment ('OTA') against disability quota in terms of the policy of the DDA and he was allotted a shop in question pursuant to decision taken by the Empowered Committee at its meeting held on 8th

January 1998. By a communication dated 19th March 1998, the DDA informed the Petitioner that he has been allotted a shop through a draw held on 27th February 1998. The demand letter indicated the total amount payable as Rs. 6,99,765/-. The Petitioner made a representation on 31st July 1998 pointing out that at the same time the DDA had advertised about 1000 shops in a tender in the same locality i.e. Prashant Vihar, the reserve price for which was fixed at Rs. 4 lakhs and those shops were measuring about 20 sq. m whereas the size of the Petitioner's shop was only 9.70 sq.m. The Petitioner, accordingly, sought review of the amount demanded in the allotment letter. Thereafter, the Petitioner continuously represented to the DDA for issuing a revised demand letter.

3. The Petitioner further states that he filed an application under the Right to Information Act, 2005 ('RTI Act') on 19th July 2006 in response to which the DDA informed that the demand letter could not be issued as the Petitioner had objected to the earlier demand letter and further informed that a fresh demand letter would be issued as and when the matter was decided. The position was no different when the Petitioner filed another application on 5th February 2009 under the RTI Act. Thereafter, on 18th March 2010 the Petitioner received the impugned demand letter indicating the total premium for the shop in question as Rs. 12,07,720/-. The Petitioner again represented against the said demand letter on 20th March 2010. Thereafter, the present petition was filed.

4. In its counter affidavit, the DDA has stated that it had charged the average auction rate of 1998-99 received for tenders finalized in August 1998, after its updation together with appropriate rate of interest. It is maintained that no

excess amount has been charged.

5. Along with the rejoinder, the Petitioner has filed copies of the notings on the file. The noting dated 28th September 1998 of the Finance Member of the DDA pointed out that the market rate applied for the Petitioner's shop was Rs.68,537/- per sq.m. whereas for the shops intended to be disposed of by tenders, the market rate adopted was around Rs. 25,000/- per sq.m.

6. At one stage, the DDA had decided to charge the Petitioner the average tender rate which was charged for shops in Prashant Vihar . This worked out to Rs. 26,430/- per sq.m. The noting of 5th March 2009 of the Assistant Director indicates that in terms of a Circular dated 15th September 2000 where units had been allotted and a demand letter was either not issued or where issued but payment was not made, it had been proposed to charge the average tender rate of April 2000. However, it appears that the DDA subsequently decided to discard the said circular on the ground that the OTA policy had been discontinued.

7. This Court has perused the Circular dated 15th September 2000. It concerns not only the allotment of old undisposed commercial built up shops to the widows of DDA staff members who died in harness, but all cases where units were allotted on OTA basis. The said circular reads as under:

“The issue of fixing reserve price of old undisposed commercial built up units which have been allotted under O.T.A. category has been engaging our attention. It has already been decided that we will charge average tender rate of

April 2000 of the commercial complex where a particular unit is located and has been allotted on OTA basis to a widow of DDA employee dying in harness. However, there are some old cases where units were allotted on OTA basis but either the demand letters were not issued or the demand letters were issued but payments were not made. In such cases, a compassionate view was taken and a proposal to charge average tender rate (received by way of recent tenders in April 2000) for allotment of these old units to Staff widows was placed before the V.C., DDA for consideration who has kindly agreed as a matter of policy in this regard and it has been decided that on all pending cases in respect of old commercial built up units allotted to a person on OTA basis or under staff widow category where either the demand letters have not been issued or demand letters have been issued but the payments have not been made, the average tender rate for that commercial complex (as of April 2000) will be charged. All pending cases may be disposed of accordingly.”

8. Merely because the OTA policy was subsequently discontinued does not mean that the benefit of above circular dated 15th September 2000 would not be made available to the OTAs already made, which were not cancelled. The noting on file dated 18th May 2009 clearly shows that on the basis of the cost of the shop worked out by applying an average tender rate for April 2000 (i.e. Rs. 22,586.14 per sq.m.), the total cost worked out to Rs. 2,19,086/-. This is the amount that ought to have been charged from the Petitioner. There was no justification in the DDA persisting with charging the ‘auction’ rate. The benefit of the Circular dated 15th September 2000 ought to have been extended to the Petitioner and he should not have been charged in excess of the average tender rate as prevailing in April 2000. Consequently, this Court holds that the impugned demand letter dated 18th March 2010 issued by the

DDA is unsustainable in law. It is hereby quashed.

9. Pursuant to the interim order dated 5th May 2010, the Petitioner deposited a sum of Rs. 5 lakhs with the DDA without prejudice to his rights and contentions and there was a stay of cancellation of the plot in question in his favour. It is now directed that the DDA will issue a fresh demand letter in the sum of Rs. 2,19,086/- for the shop in question within a period of four weeks from today and within the same period, refund to the Petitioner the difference between the said amount and the sum of Rs. 5 lakhs deposited by the Petitioner. Subject to the Petitioner completing all the formalities, the Petitioner will be put in possession of the shop in question within a further period of four weeks. For any delay in the DDA making the refund beyond the said period of four weeks, the DDA will, on the differential amount, pay simple interest @ 6% per annum for the period of delay.

10. The petition is disposed of in the above terms. The pending application also stands disposed of.

S. MURALIDHAR, J

JANUARY 11, 2011
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