

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

Date of decision: 19th September, 2011

+ W.P.(C) 19016/2006

% SHRI DEV DUTT Petitioner
Through: Ms. Richa Kapoor & Ms. Anupama
Singh, Advs.

Versus

D.D.A. Respondent
Through: Mr. Yeeshu Jain, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the letter dated 06.06.2006 of the respondent DDA to the petitioner and seeks a mandamus to the respondent DDA to issue Demand-cum-Allotment Letter in respect of flat No.419, Sector-17, Pocket-A, Phase-II, Dwarka, Delhi to the petitioner at the cost prevalent in March, 2004 or in the alternative, a mandamus to the respondent DDA to

allot any other MIG Flat in the same zone at the cost prevalent in March, 2004.

2. Notice of the petition was issued, though no interim relief sought restraining the respondent DDA from allotting the flat to anybody else granted.

3. Pleadings have been completed. The counsels have been heard.

4. The petitioner was a registrant with the respondent DDA in the New Pattern Registration Scheme (NPRS) of the year 1979 for an MIG flat. He claims that the priority number allotted to him matured in the year 1986 when he was allotted an MIG flat in Nand Nagri but being not interested in availing the said allotment, he requested the respondent DDA to cancel the allotment and opted for his name to be put at the tail end of the Scheme. It is further the case of the petitioner that the respondent DDA so put his name at the tail end and in a draw held in the year 2004, he was allotted the flat aforesaid at Dwarka. The grievance of the petitioner in the petition is that notwithstanding the same, he was not issued the demand-cum-allotment letter with respect to the aforesaid flat.

5. The respondent DDA in its counter affidavit has stated that the

demand-cum-allotment letter dated 25.08.1986 with respect to the Nand Nagri flat was dispatched to the petitioner at the address given by the petitioner but the same was returned undelivered with the remarks “left without address”. It is further pleaded that the petitioner neither requested the respondent DDA to cancel the allotment nor to put his name at the tail end priority, though the respondent DDA claims to have issued a letter dated 29.07.1988 to the petitioner as under:

**“Sub: Cancellation of Allotment of Flat No.58A, Pkt. A in
Nand Nagri Resdl./Scheme under MIG/NP.**

Dear Sir/Madam,

With reference to your application dated Nil on the subject cited above, I am directed to inform that allotment of the above mentioned flat has since been cancelled on your request.

You are, therefore, requested to arrange to deposit a sum of ₹4,610/- @ 20% on account of cancellation charges. In case the said charges are not paid within 15 days from the date of issue of this letter, your registration will be deemed as cancelled and cancellation charges will be adjusted against your registration deposit and interest accrued thereon. However, in case you pay cancellation charges in time your registration will be kept intact but your seniority will be at the tail end.”

6. It is further the case of the respondent DDA that the petitioner did

not deposit the said cancellation charges also; however since the petitioner had remained to be allotted any flat, the name of the petitioner was included in the draw held in the year 2004 and the petitioner vide letter dated 13.08.2004 of the DDA, was asked to produce the request if any made for cancellation, the letter issued for deposit of cancellation charges and the proof of payment of cancellation charges. It is contended that since none was shown, the petitioner was not eligible for issuance of demand-cum-allotment letter and which fact was intimated to the petitioner vide letter dated 06.06.2006 impugned in this petition.

7. The counsel for the petitioner has contended that the respondent DDA till 31.12.2003 had a Policy of putting all the cancellations at the tail end and without payment of any cancellation charges. It is contended that the flat was denied to the petitioner inspite of inclusion of the petitioner in the draw in 2004 only for the reason of the petitioner having not paid the cancellation charges. It is yet further contended that the said issue is no longer *res integra* having been settled by the Division Bench of this Court in judgment dated 04.06.2008 in LPA No.179/2008 titled **DDA Vs. Abhay Prakash Sinha**, SLP whereagainst being SLP (Civil) No.25731/2008 by

the respondent DDA has been dismissed. It is argued that it has been held in the said judgment that non payment of cancellation charges does not come in the way of allotment at the tail end and the respondent DDA is only entitled to charge interest at the rate of 15% on the cancellation charges from the date when it ought to have been paid and till the date of payment.

8. Per contra, the counsel for the respondent DDA contends that the present is not a case of non payment of cancellation charges and thus not covered by the judgment aforesaid. It is argued that upon the petitioner neither intimating the change of address nor availing of the allotment made in the year 1986, the same got cancelled / lapsed and the only right of the petitioner was for refund of the registration amount by the petitioner; it is further contended that this petition filed after twenty years of the allotment of 1986 is highly belated. With respect to the inclusion of the name of the petitioner in the draw-of-lots held in 2004 and the issuance of the letters asking the petitioner to produce the documents, it is contended that the same were issued on the premise that the petitioner had sought cancellation and paid the cancellation charges and infact the petitioner was called upon

to produce proof of the same and upon failure of the petitioner to produce the same, the respondent DDA is fully justified in holding the petitioner not entitled to any allotment.

9. Neither counsel has produced before this Court the Policy of the respondent DDA of putting the cancelled cases at the tail end of the Scheme.

10. It has been enquired from the counsel for the respondent DDA that if the petitioner had not applied for cancellation (as is evident from the respondent DDA in the letter dated 29.07.1988 referring to the application dated Nil of the petitioner) and was under the Policy not entitled to be placed at the tail end, why was the letter dated 29.07.1988 (supra) issued to the petitioner. The counsel states that the same was mistakenly issued to the petitioner. It has next been enquired whether it has been so pleaded by the respondent DDA in its affidavit that the letter dated 29.07.1988 (supra) was issued mistakenly. The answer is in the negative.

11. In the absence of the Policy to show that the petitioner without applying for cancellation was not entitled to have his name placed at the tail end and in the absence of any pleading that the said letter dated

29.07.1988 was issued mistakenly, there is no option for this Court but to believe that as per the Policy then prevalent, the petitioner even if remaining quiet in pursuance of the allotment letter and not complying with the same, was entitled to have his name placed at the tail end and which has evidently been done, as is apparent from the inclusion of the name of the petitioner in the draw held in the year 2004. There is a presumption that the officers of the respondent DDA at the contemporaneous time acted in accordance with the Policy, rules and regulations and without it being pleaded that they did not, this Court, cannot believe the oral argument addressed today.

12. Once it is found that the petitioner was entitled to and had his name included in the tail end, the letter dated 06.06.2006 of the respondent DDA holding that the petitioner is not entitled to a demand-cum-allotment letter is misconceived. Once the name of the petitioner had been put in the tail end, the refusal thereafter to issue the demand-cum-allotment letter can only be perceived as for the reason of the non payment of the cancellation charges and which issue is no longer *res integra* as aforesaid.

13. The question which next arises is as to the price on which the

petitioner is to be so allotted the flat. The counsel for the petitioner states that the price has to be as of 2004. It has however been enquired from the counsel for the petitioner as to how the petitioner can have the flat at the rate of 2004 when the price which would have been paid therefor in 2004 has remained in the pocket of the petitioner. The counsel for the petitioner contends that since even the demand-cum-allotment letter has not been issued and which has been held to be erroneous, the default is of the respondent DDA and the petitioner is entitled to pay the price as of 2004.

14. However, what is peculiar about this case is that the petitioner has not succeeded on the case made out by the petitioner but owing to the respondent DDA having produced the letter dated 29th July, 1988 supra along with its counter affidavit. The petitioner came to this Court with a false case of knowledge of the allotment in 1986 when the allotment letter of 1986 had been returned undelivered to the respondent DDA. The counsel for the petitioner of course contends that the petitioner had gone to the office of the respondent DDA and had orally requested for cancellation and the demand-cum-allotment letter was not issued owing to the said oral request. However, I find it difficult to believe that on such verbal request

of the petitioner for cancellation, the respondent DDA would have cancelled the allotment and put the name of petitioner in the tail end category. Even otherwise, once the petitioner has not parted with the money and has continued to enjoy the same, the petitioner cannot have the price of 2004 without paying interest thereon.

15. In the circumstances, the petition is allowed with the direction to the respondent DDA to allot to the petitioner either the flat No.419, Sector-17, Pocket-A, Phase-II, Dwarka, Delhi if still available or any other equivalent flat at the rates of 2004 but with interest therefrom at the rate of 12% per annum till the date of payment. The interest as directed to be paid be computed in the demand-cum-allotment letter to be issued to the petitioner. The cost earlier imposed on the respondent DDA is waived.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 19, 2011

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