

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

Date of decision: 20th September, 2011.

+ **W.P.(C) 3645/2010 & CM No.7286/2010 (for stay)**

RAM GOPAL SHARMA Petitioner

Through: Mr. K. Kinra, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Somesh Chandra, Adv. for Mrs.
Madhu Sharan, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 price of ₹10,88,643.99p demanded by the respondent DDA from the petitioner in the demand-cum-allotment letter dated 25.02.2009-03.03.2009 for an LIG flat No.727, First Floor, Block-B, Pocket-B1 of Loknaya Puram, Delhi.

2. Notice of the petition was issued and vide order dated 22.07.2010 which continues to be in force, the respondent DDA was directed to maintain *status quo* in respect of the flat in question. Pleadings have been completed.

3. The petitioner was a registrant in the New Pattern Registration Scheme (NPRS) of the year 1979 of the respondent DDA. He was in the year 1992 allotted a flat but did not opt for the same and opted for allotment at the tail end and deposited the cancellation charges therefor. It is his case that though the draw for tail end registrants was held on 27.09.2007 but the demand-cum-allotment letter was issued to him only on 25.02.2009-03.03.2009 and owing whereto the cost of ₹10,88,643.99p has been demanded from him. It is his case that others who were successful in the draw held on 27.09.2007 have been issued demand-cum-allotment letter for identical flats of ₹9,19,378/-. He thus claims that the respondent DDA is discriminating and charging from him about ₹1,70,000/- in excess than what has been demanded from others identically situated as him. The petitioner in this regard invites attention to a demand-cum-allotment letter dated

23.01.2009-29.01.2009 issued to one Sh. Joginder Sehgal.

4. However, the demand-cum-allotment letter of the petitioner shows the date of draw in pursuance to which demand has been made from the petitioner, as 17.11.2008; on the contrary, the letter in favour of Sh. Joginder Sehgal shows the date of draw as 27.09.2007. The pre-determined rates are charged by the respondent DDA as per the cost of land and cost of development as in the year of holding of the draw pursuant to which the demand-cum-allotment letter is issued. It is thus found that the year of draw in which Sh. Joginder Sehgal succeeded, is different from the year of draw in which the petitioner has succeeded. Though the petitioner claims that he was also successful in the draw held on 27.09.2007 but there is nothing to show so. There is nothing to doubt the date of draw as indicated in the demand-cum-allotment letters issued to the petitioner and Sh. Joginder Sehgal and the difference in price is found to be owing to the difference in the year. It may also be mentioned that the flat allotted to Sh. Joginder Sehgal is on the third floor and in a different pocket and block as against the flat allotted to the petitioner on the ground floor.

5. The counsel for the petitioner with reference to the schedule of payment prescribed in the two demand-cum-allotment letters contends that the dates thereof overlap and there is no justification for demanding different prices from allottees who are to make payment at the same time.

6. There undoubtedly appears to be a delay in the issuance of the demand-cum-allotment letter to Sh. Joginder Sehgal aforesaid on 23.01.2009-29.01.2009 when the draw was held on 27.09.2007. However, the reason for the said delay is not subject matter of the controversy herein. The Policy of price fixation according to the year of the holding of the draw of lots is not under challenge in the present petition. Merely because there has been a delay on the part of the respondent DDA in raising the demand on Sh. Joginder Sehgal is no reason for the petitioner to contend that the petitioner is not liable to pay the pre-determined rate of the year of his allotment. No merit is therefore found in this contention also of the petitioner.

7. It has been enquired from the counsel for the petitioner whether the petitioner has paid at least the admitted amount to the respondent DDA

within the stipulated date. The last date for payment by the petitioner was 30.08.2009 and whereafter there was to be an automatic cancellation of the allotment.

8. The counsel for the petitioner states that since there is an interim order in favour of the petitioner, the petitioner was justified in not making payment of the admitted amount also and the automatic cancellation provided for in the demand-cum-allotment letter would not come into force.

9. I do not agree with the reasoning / justification given by the counsel for the petitioner. The interim order of this Court was only to restrain the respondent DDA from allotting flat to any other person. The petitioner did not seek any stay of cancellation of his allotment notwithstanding non payment by him of even the admitted amount. The petitioner has clearly filed the present petition merely to delay the payment of the price. This is further evident from the fact that the counsel for the petitioner today also seeks three months time to make the payment averring that the petitioner has to arrange for the loan.

10. The counsel for the petitioner relies on the order dated 27.01.2010 in

W.P.(C) No.11380/2009 titled ***Jit Ram Vs. DDA*** but is unable to show as to how the same lays down any law holding the petitioner to be entitled to any remission in price.

11. However, since the possibility of ambiguity in view of the omnibus interim order of this Court cannot be ruled out and to prevent any further litigation, it is deemed expedient to grant an opportunity to the petitioner to make the payment. As per the demand-cum-allotment letter, a sum of ₹11,28,909/- was payable by the petitioner by 30.08.2009. Accordingly, subject to the amount of ₹11,28,909/- being paid together with interest at the rate of 12% per annum with effect from 01.09.2009 and till the date of payment, not later than 20.12.2011, the petitioner shall be entitled to the flat aforesaid. It has been made clear that no further extension of time shall be given and any default in payment and/or payment of a deficit amount shall entitle the respondent DDA to immediately allot the flat to some other person. It is further clarified that the cancellation which has automatically come into force shall stand restored only upon payment within the said time else shall remain.

12. The aforesaid is further subject to the petitioner depositing cost of this petition of ₹10,000/- with the respondent DDA within 10 days of today.

Dasti.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 20, 2011

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