

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LETTERS PATENT APPEAL NO. 453/2010

% Reserved on: 9th August, 2011
Date of Decision: 27th August, 2011

DELHI DEVELOPMENT AUTHORITY Appellant
Through Mr. M.K. Sinha, Advocate.

VERSUS

SITA RAM Respondent
Through Mr. R.K. Saini and Mr. Sitab Ali
Chaudhary, Advocates.

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?
2. To be referred to the Reporter or not ? *Yes*
3. Whether the judgment should be reported in the Digest ? *Yes*

SANJIV KHANNA, J.:

In the present intra-Court appeal the challenge is to the decision dated 18th January, 2010 allowing W.P. (C) No. 7947/2009 filed by Sita Ram, the respondent herein against the Delhi Development Authority, the appellant. The learned single Judge by the decision, after balancing equities and to meet the ends of justice, has directed that the appellant shall charge cost of a ground floor flat as it was in October, 2005 and allot the same to the respondent.

13

2. The respondent had registered for allotment of a LIG flat under New Pattern Registration Scheme 1979. He was assigned priority No. 41540.

3. After nearly 24 years, in the draw of lots held on 30th July, 2003, the respondent was allotted a LIG flat on third floor in Sector 17, Rohini on hire-purchase basis. A demand-cum-allotment letter was issued by the appellant with block dates 16th September, 2003 - 22nd September, 2003 and the last date of payment was 19th February, 2004. The total cost of the flat was Rs.4,29,370/-. The respondent was given time to make payment of Rs.2,40,213/- by 19th February, 2004 and the remaining amount of the flat was payable in monthly instalments of Rs.3,188/- per month starting from 10th January, 2004. It was stated in the letter that in case payment was not made, the allotment/registration shall stand cancelled.

4. The respondent, on 12th February, 2004, wrote a letter to the appellant requesting for change of the flat from third floor to ground floor on the ground that his son was physically handicapped, having 75% disability, and as such, was incapable of climbing stairs. He deposited Rs.86,000/- with the appellant on 19th February, 2004, being 20% of the cost demanded.

14

5. On 3rd June, 2004 the appellant asked the respondent to submit an attested copy of the medical certificate of his son and proof of the relationship duly attested by a Gazetted Officer. These documents were submitted on 19th June, 2004. After another period of three months on 23rd September, 2004, the appellant called upon the respondent to submit photocopy of his ration card and attend the office of the Assistant Director (LIG) Housing with the documents. The respondent states that he attended the office of the Assistant Director (LIG) Housing on 11th October, 2004 and deposited a copy of the documents asked for. The appellant has disputed the said statement but we are inclined to accept the stand of the respondent as no such demand and failure was indicated/mentioned in the subsequent letters written by the appellant. On 29th November, 2004, the appellant called upon the respondent to submit the latest medical report of his son issued from a Government hospital. The respondent states that he had submitted a photocopy of the latest medical report on 21st April, 2005.

6. There was, thereafter, a hiatus on part of the appellant and no response or communication was addressed. The respondent made a representation on 20th November, 2007 and appeared in

the public hearing before the Director (Housing) on 27th March, 2008. Vide letter dated 9th April, 2008 the respondent was asked to meet the Commissioner (Housing) on 16th April, 2008. The said meeting as per the respondent was held and he was assured that needful would be done, but no response was received. The appellant thereafter moved an application under the Right to Information Act, 2005 on 27th March, 2008. In reply, the respondent was informed that the benefit of change of floor, as per the policy, for handicapped persons was available only to the registrants and not when their family members suffer from any disability. Thus the application for change of flat from third floor to ground floor stands rejected.

7. The respondent filed WPC No. 4850/2008 and the same was disposed of on 9th July, 2008 in view of the statement made by the counsel for the appellant that ground floor flats had become available in Rohini on account of cancellation/surrender. In these circumstances the following order was passed:-

"At the outset it is pointed out by the learned counsel for the respondent who appear on advance notice that the Lieutenant Governor has approved the case of the petitioner for allotment of a ground floor flat in Rohini. Ms. Chandra states that as per

the file noting a few ground floor flats have now become available in Rohini on account of cancellation or surrender by the erstwhile allottees. Considering the fact that the petitioner has been kept waiting for nearly five years for change of floor, I direct that the respondent should hold a mini draw of lots within weeks for allotment of a ground floor flat to the petitioner.

Mr. Saini submits that fresh allotment would mean that the respondent would raise fresh demands on the basis of the current cost. This issue will arise only when the demand-cum-allotment is given to the petitioner. As and when the demand-cum-allotment letter is issued, it shall be open to the petitioner to agitate his grievance, if any, in this regard.

With these directions petition stands disposed of."

8. In the draw of lots held on 17th November, 2008 the respondent was allotted a LIG flat on ground floor in Rohini Sector 16, Pocket J, but on a cost of Rs. 13,09,712/-. The respondent was supposed to make a payment of disposal cost of Rs. 4,29,370/- after giving benefits of all payment already made and pay the balance amount in installments as per the schedule fixed therein. This forced the respondent to again approach the court by way of W.P (C) No. 7947/2009 which has

been allowed by the impugned decision dated 18th January, 2010.

9. Learned Counsel for the appellant has submitted that there is no justification in directing the appellant to charge the cost of the flat as in October 2005. The respondent must pay the current cost as he had failed to make the payment in terms of the first demand-cum-allotment letter. The last date of payment was on 19th February, 2004 by which date the respondent was required to pay Rs. 2,40,213/- but only a deposit of Rs. 86,000/- had been made by the said date. It is stated that even installments payable with effect from 10th January, 2004 had not been paid.

10. There was some delay on the part of the respondent in making the request for change of floor after he had received the demand-cum-allotment letter with block dates 16th September, 2003-22nd September, 2003 requiring him to make payment of Rs.2,40,213/- by 19th February, 2004. The request for change of floor was made on 13th February, 2004 and only Rs.86,000/- was deposited on 19th February, 2004, whereas he was required to deposit Rs.2,40,213/- by the said date and pay the balance amount in monthly instalments of Rs.3,188/- per month starting

from 10th January, 2004. But this ground alone does not justify charging of cost in 2009 in view of the defaults and negligence on the part of the appellant. The facts in favour of the respondent are as under:

(a) Allotment of the respondent was not cancelled in spite of non-payment of the demand by 19th February, 2004. Letter dated 13th February, 2004 was replied by the appellant vide their letter dated 3rd June, 2004 and the respondent was asked to furnish medical certificate etc. By this letter the respondent was not asked to deposit the balance amount. This delay from 13th February, 2004 till 3rd June, 2004 is not explained. Even in the subsequent correspondence written by the appellant dated 9th August, 2004 and 23rd September, 2004 the respondent was not asked to deposit the balance amount. There is merit in the contention of the respondent that he was under the belief that no further amount was payable as the respondent had asked for cancellation of the allotment made vide demand-cum-allotment letter for the block period 16th September, 2003-22nd September; that the appellant was examining his request for change of floor and that a fresh demand-

19

cum-allotment letter would be issued for the ground floor and charges as applicable would be payable.

(b) The appellant, after receiving the documents as demanded, wrote a letter dated 29th November, 2004 calling upon the respondent to produce the latest medical record of his son duly certified by a Government hospital. The latest medical record was submitted by the respondent vide letter dated April, 2005. Thus, it is admitted that by April, 2005 all documents relating to medical record and disability of the son of the respondent were with the appellant. There is no explanation by the appellant why the case for allotment of the ground floor flat was not considered from April, 2005 onwards. This silence and inaction is not explained and is contrary to the principles of good governance. During this period, the respondent was not asked to deposit any payment and his request for consideration remained pending without any reply or response. This certainly amounts to negligence for which the appellant must be made answerable and face the consequences. Delay between April, 2005 and allotment made in 2009 is substantial.

(c) As per the appellant, vide letter dated 1st July, 2008 the respondent was informed that his request for change of floor has been accepted and the allotment would be made in the coming draw of lots. Earlier the appellant had taken the stand that as per the policy the disability or handicap of the respondent was to be considered and the disability or handicap of his son was not a ground to change the floor. This reason was also communicated to the respondent in response to his application under the Right to Information Act, 2005 vide letter dated 25th April, 2008. (This stand of the appellant is incorrect as the policy placed on record at page 78 onwards does not so stipulate.) Even if permission of the Lt. Governor was required, it was an internal matter of the appellant and they should have acted promptly and not slept over the matter. For the delay on the part of the appellant in accepting the request for change of the floor, the respondent cannot be penalised and punished by asking him to pay a higher cost.

(d) The respondent was forced to file a W.P. (C) No. 4850/2008, which was disposed of on 9th July, 2008 as it was decided and accepted that a flat on the ground floor

would be allotted. The said order has been quoted above and direction was issued to make allotment within three weeks. The allotment was not made within three weeks and the respondent was forced to file a contempt petition. Thereafter, the appellant issued demand-cum-allotment letter for block dates 23rd February, 2009 – 1st March, 2009. There was again delay between 1st July, 2008 and issue of the demand-cum-allotment letter with block dates 23rd February, 2009-1st March, 2009, for which there is no explanation.

11. In the written submissions filed by the appellant, reliance has been placed on ***Sat Paul Kalra versus DDA***, 2007 (96) DRJ 1, ***Balber Prashad Jain versus DDA and Others***, 101(2001) DLT 1, ***Skyline Contractors Private Limited and Another versus State of U.P. and Others***, (2008) 8 SCC 265 and ***DLF Universal Limited versus Ekta Seth and Another***, (2008) 7 SCC 585. These decisions according to us do not support the contention of the appellant or are not applicable.

12. In ***Sat Paul Kalra*** (supra), there was delay of over eleven years in approaching the Court and the appellant had remained quiet from 1993 to 2004 by not writing any letter or

communication. The scheme itself was scrapped in 2002 and the records had been destroyed. The facts recorded above show that there has been lapse and delay on the part of the appellant after April, 2005. There is no delay on the part of the respondent in approaching the Court.

13. In **Balber Prashad Jain** (supra), the allottee had registered himself under Self Financing Scheme and was required to make payment in installments as the construction progressed and on stipulated time. There was delay in making payment of the fourth installment, which was due on 10th February, 1992 and the said installment was not paid till the draw of lots in May, 1995. The registration was cancelled and the amount paid by the allottee was refunded. Thereafter, in April, 1998, the allottee filed the writ petition. The facts of the aforesaid case are hardly relevant and do not support the plea of the appellant. After April, 2005 till 2009 the delay is attributable solely to the appellant.

14. In **Skyline Contractors Private Limited** (supra), the applicant had deposited the initial amount but had failed to deposit the balance equal to 25% of the sale consideration. Remainder 75% of the sale consideration, which was required to

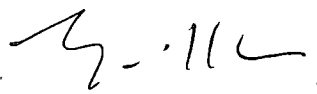
be deposited in ten equal half yearly installments along with interest @ 14% per annum, was also not deposited for a period of 2 ½ years after receipt of allotment letter. Thereafter, the allottee had written a letter to the authorities. Subsequently, the allottee deposited payments but the allotment was cancelled by the authorities. It was noticed that the belated payments after 2 ½ years were without approval of the authorities. Third party interest had been created. However, in the present case the respondent had made 20% payment of cost demanded of Rs.86,000/- and had asked for cancellation of the allotment on the third floor and had asked for a flat on the ground floor. Thereafter, the appellant and the respondent entered into detailed correspondence which has been referred to above and all relevant documents, including medical reports, proof of relationship, etc. were submitted by the respondent with the appellant by 21st April, 2005. The allotment/registration was not cancelled. The appellant thereafter kept quiet and did not act, as has been noticed in paragraphs 6 to 8 above. In 2009, allotment of the ground floor flat was made, but on the cost as prevalent in 2009. It is this lapse and delay on the part of the appellant, which has compelled us to direct them to charge the

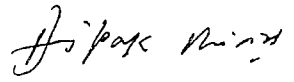
cost as was prevailing six months after 21st April, 2005. Similarly, the decision in the case of ***DLF Universal Limited*** (supra) is not applicable as the allottee had failed to pay the escalated cost on the ground that this was beyond her paying capacity. In these circumstances, the earnest money was forfeited and the balance amount was refunded. In view of the contractual terms and conditions, the Supreme Court allowed the appeal and set aside the order of the Monopolies and Restrictive Trade Practices Commission but exercising discretionary jurisdiction under Article 142 of the Constitution of India had directed that 50% of the amount forfeited should be refunded by the DLF Universal Limited.

15. The learned single Judge in our opinion has rightly proceeded on the basis that the appellant should charge cost of the flat as calculated six months after 21st April, 2005. As on 21st April, 2005, the respondent had deposited all papers which were required and thereafter it was for the appellant to proceed and act. Six months time was sufficient for the appellant to make fresh allotment of a ground floor flat to the respondent. Accordingly, we do not find any merit in the present appeal and the same is dismissed with costs which are assessed at

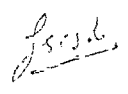
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Rs.10,000/-. The said cost will be adjusted from the demand-cum-allotment letter which will be issued by the appellant. Necessary formalities will be completed and a demand-cum-allotment letter will be issued within four weeks hence and the respondent will pay the balance amount within six weeks from the date of receipt of demand-cum-allotment letter. It is further clarified that the allotment will be on cash down basis and not on hire purchase basis as the respondent has already deposited Rs.4,29,370/- as per the directions of the learned single Judge.


(SANJIV KHANNA)
JUDGE


(DIPAK MISRA)
CHIEF JUSTICE

AUGUST 23rd, 2011
VKR ✓


-C.M.No. 3178/12- for direction to DDA for fresh allotment.

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

+ LPA 453/2010

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. M.K. Singh, Adv.

versus

SITA RAM

..... Respondent

Through: Mr. R.K. Saini & Mr. Vikram Saini,
Adv.**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW****ORDER****12.03.2012**

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CM No.3178/2012 (for direction).

As per the directions of this Court the appellant DDA has now issued Allotment-cum-Demand Letter with block dates 22nd December, 2011 to 28th December, 2011. However Mr. R.K. Saini has drawn our attention to para 15 of the judgment dated 23rd August, 2011 as per which, from the cost to be charged by the appellant DDA, the appellant DDA has to adjust ₹10,000/- which was the cost awarded of the appeal and also payment of ₹4,29,370/- which had already been deposited by the respondent with the appellant DDA.

We make it clear that the amount demanded by the appellant DDA in the Allotment-cum-Demand Letter shall be reduced by the aforesaid amounts.

The CM stands disposed of.


ACTING CHIEF JUSTICE**RAJIV SAHAI ENDLAW, J****MARCH 12, 2012/pp**