

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

Date of decision: 2nd September, 2011

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W.P.(C) No.6508/2008

RAM SHIROMANI PAL

..... Petitioner

Through: Mr. A.K. Thakur with Mr. Shashank
Prabhakar, Advocates.

Versus

D.D.A. & ANR.

..... Respondents

Through: Ms. Manisha Tyagi, Advocate.

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 petitioner was registered with the respondent No.1 DDA for an LIG flat under the Registration Scheme on New Pattern of the year 1979. It is the case of the petitioner and borne out from the records brought by the DDA to the Court today (in compliance of direction contained in order dated 30.03.2011) that the petitioner vide letter dated 1st February, 1990

informed the respondent DDA that he had changed his address from A-185 Aruna Park, Rathor Niwas, Shakarpur, Delhi-110092 given in the application for registration to B-29, Pandav Nagar, Patparganj, Delhi-110092 and asked the respondent No.1 DDA to send all future correspondence either at the new address or to M/s. Khaitan & Partners, Himalaya House, 7th Floor, 23, Kasturba Gandhi Marg, New Delhi-110001.

2. It is the case of the respondent No.1 DDA that in the draw of lots held on 23rd March, 2006, the petitioner was allotted flat No.15, Third Floor, Pocket-F, Sector B-2, Narela and was issued a demand-cum-allotment letter dated 23rd June, 2006 - 3rd July, 2006. A perusal of the records produced by the DDA shows, that the said demand-cum-allotment letter was sent to the address of B-29, Pandav Nagar, Patparganj, Delhi-110092 only; the same was returned back undelivered to the DDA with the remarks “no such person at the address”; that the DDA thereafter issued a letter dated 13th July, 2006 at the address of B-29, Pandav Nagar, Patparganj, Delhi-110092 as well at the address of M/s. Khaitan & Partners (supra) informing that the demand-cum-allotment letter had been issued

but had been received back as aforesaid. The records produced contain no proof of dispatch of the said letter at both the addresses but the office copy of the said letter in the file of the DDA bears only one dispatch number i.e. No.3779. Ordinarily, if the letter had been sent to two different addresses, the letter would have borne two dispatch numbers. The counsel for the respondent DDA also, on enquiry is unable to explain as to whether the letter should have borne two dispatch numbers or not if it had been sent to two addresses and as to why the office copy purportedly dispatched to two addresses, bears only one dispatch number. There is no other proof on record as to the fate of the said letter dated 13.07.2006. However, the office notings in the file of the DDA show that upon no response being received to the letter dated 13th July, 2006 also, a decision was taken to issue a show cause notice to the petitioner. The records contain a show cause notice dated 20th March, 2007 shown to have been sent again to the address of B-29, Pandav Nagar, Patparganj, Delhi-110092 only and not to the address of M/s. Khaitan & Partners. The said show cause notice also was received back with the postal remark “no such person at the address”. Thereafter cancellation letters dated 5th June, 2007 and 26th July, 2007 are

shown to have been sent, again at the address of B-29, Pandav Nagar, Patparganj, Delhi-110092 only.

3. It is the case of the petitioner, duly supported from the records of the DDA that the petitioner on enquiry in February, 2008 from the office of the DDA learnt of the allotment aforesaid in his favour and cancellation thereof for the reason of the petitioner having not complied with the demand-cum-allotment letter. The representations of the petitioner to the respondent DDA for restoration of the allotment having not met with any success, this writ petition was filed. Notice of the petition was issued.

4. The respondent No.1 DDA in its counter affidavit has pleaded that upon the petitioner not complying with the demand-cum-allotment letter, the allotment stood automatically cancelled in terms of the demand-cum-allotment letter and the petitioner has no right to allotment.

5. The counsel for the petitioner has argued that the respondent DDA, without issuing / dispatching the demand-cum-allotment letter at the address of M.s Khaitan & Partners also intimated by the petitioner, cannot claim cancellation. It is contended that the notice to show cause as well as the cancellation letters also have been issued at the address of B-29,

Pandav Nagar, Patparganj, Delhi-110092 only inspite of knowledge that the petitioner was not available at the said address. It is thus contended that no genuine effort to communicate the demand-cum-allotment to the petitioner was made. The receipt of the letter dated 13th July, 2006 at the address of M/s. Khaitan & Partners is denied.

6. The counsel for the petitioner relies upon the judgment dated 19th September, 2007 in **B.K. Mehta Vs. DDA** 145 (2007) DLT 244 laying down that a registrant could not be expected to remain at the same address when the allotment was being made after a long lapse of time and DDA as a statutory authority is enjoined to act fairly and reasonably and reasonableness mandates taking all adequate steps to ensure communication to the registrant of the allotment. Reference is also made to the policy of the DDA of making allotment at the old cost subject to the petitioner approaching the DDA within four years from the date of issue of demand letter at the wrong address. It is contended that the petitioner had approached the respondent No.1 DDA within two years, in the year 2008 only.

7. In this regard, it may also be noted that the respondent No.1 DDA

while rejecting the representation of the petitioner (made before instituting the petition) did not give any reasons. The file produced by the DDA, however, records that the representation was rejected for the reason of the demand-cum-allotment letter having been issued at the address of the petitioner available on the file of the DDA. The counsel for the respondent DDA has argued that the present being not a case of a wrong address, the policy aforesaid would not apply.

8. In the present case, the petitioner had furnished two addresses for communication to the respondents. The respondents notwithstanding the same issued the demand-cum-allotment letter at one of the addresses only and even after the demand-cum-allotment letter had remained undelivered at the said address, the same was not sent at the other address. Though, the letter dated 13th July, 2006 is stated to have been sent at the other address of M/s. Khaitan & Partners, but as aforesaid, the dispatch thereof to the other address is highly doubtful. Thereafter also, the respondent No.1 DDA continued to dispatch letters to the address from which communications were repeatedly being returned as undelivered. Had the respondent No.1 DDA made any effort to serve the petitioner at the

address of M/s. Khaitan & Partners, the possibility of the petitioner contacting the respondent No.1 DDA cannot be ruled out.

9. I am, therefore, of the opinion that the case of the petitioner is fully covered by the judgment in **B.K. Mehta** (supra). I find that this Court in **Bhagat Singh Manral Vs. DDA** MANU/DE/1803/2009 held that where two addresses have been furnished and the demand-cum-allotment letter dispatched to one of the addresses is received back with the remark “no such person”, DDA according to its policy is required to send the intimation at the other address and finding the DDA not to have done so, DDA was directed to make the allotment at the cost prevalent at the time of initial allotment and without payment of any interest. I also find this Court to have in **Sona Devi Vs. DDA** 2001 V AD (Delhi) 297 held that the letter of allotment being an important and valuable document affecting the rights of the allottee, is required to be sent by registered post and in the absence of being shown to have been sent by registered post, the petitioner’s contention on oath of having not received the letter of allotment deserves to be accepted. The same is the position here also. The petition is therefore entitled to succeed. The respondent DDA is liable to

include the name of the petitioner in the draw of lots to be held next within the next three months.

10. The next question which arises is as to the price. The counsel for the petitioner contends that in accordance with the policy aforesaid, the petitioner is liable to pay the price as prevalent in the year 2006 only.

11. The counsel for the respondent DDA opposes and contends that the present is not a case of wrong/incorrect address but of the petitioner being not available at the address furnished by him.

12. The aforesaid plea of the respondent DDA is to be balanced against the default of the DDA in not making attempts to serve the petitioner at the other address of M/s. Khaitan & Partners also furnished by the petitioner.

13. In my view, equity would be balanced by directing that though the petitioner is liable to pay the price as prevalent in the year 2006 but together with interest at 12% per annum till end of February, 2008 when representation was made by the petitioner to the DDA; the petitioner is not found liable to pay interest for the period thereafter since the rejection by the respondent No.1 DDA of the said representation has not found favour with this Court.

14. With the aforesaid directions, the writ petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 02, 2011
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