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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 241/2012

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Judgment dated 24.09.2012

RAVI KANT KAPOOR

..... Petitioner

Through : Mr.R.K. Saini and Mr.Arvind Kumar,
Adv.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through : Ms.Urvi Kuthiala, Adv. for Mr.Rajesh
Manchanda, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner under Article 226 of the Constitution of India seeking the following prayers:

- (a) A Writ of Certiorari calling for the records of the case for perusal;
- (b) A writ of Certiorari quashing the action on the part of the DDA in first sending the ACDL at the old address despite availability of the new/changed address and cancelling the allotment on ACDL having been received back and then declining to make alternative allotment of a flat in the same area/zone to the petitioner, being illegal, arbitrary, discriminatory, unjust, without jurisdiction and in violation of the Rules, Regulations and Policy and principles of equity, justice, good conscience;
- (c) A writ of mandamus commanding the respondent to forthwith allot a similar alternative flat to the petitioner in the same area/zone at the old cost + interest or current cost,

whichever is lower and given him possession thereof immediately after payment.

2. Learned counsel for the petitioner submits that he does not wish to file rejoinder and he relies upon the copies of the file notings received by him on a query raised by him under the Right to Information Act.
3. Rule. With the consent of counsel for the parties, writ petition is set down for final hearing.
4. The necessary facts to be noticed for disposal of the present writ petition are that the petitioner had applied to the DDA for allotment of a MIG flat under the New Pattern Registration Scheme, 1979. The petitioner deposited the initial registration amount with the DDA. As per the application form, the petitioner had mentioned his residential address as E-397, Dev Nagar Government Quarters, New Delhi, where he was residing at the relevant time.
5. It is the case of the petitioner that in the year 1994 the petitioner changed his residence from Dev Nagar to 25, Sharda Niketan, Saraswati Vihar, Pitampura, Delhi, and informed the DDA about the change of address. The priority of the petitioner matured and a demand-cum-allotment letter was issued to the petitioner with the block dates 3.5.1994 to 10.5.1994, however, the same was sent at the old address of the petitioner at Dev Nagar, despite the new address being available with the DDA. The demand-cum-allotment letter was returned by the postal authorities to the DDA with the remark 'left without address'.
6. Grievance of the petitioner is that the flat in question stands cancelled in spite of the fact that the DDA had knowledge about the change of address, which is evident from the copies of the record received by the petitioner under Right to Information Act.
7. Learned counsel for the petitioner submits that the DDA was aware of the

change of address of the petitioner, which is evident from the file notings of the DDA dated 5.8.1994 wherein the address of the petitioner has been mentioned as Sh.Rani Kant, 25, Sharda Niketan, Saraswati Vihar, Pitampura, Delhi-34. Counsel further submits that in the file noting dated 5.8.1994 it has been recorded that permission be granted to send the computerized demand-cum-allotment letter to the petitioner at the new address. Counsel contends that after the noting of 5.8.1994 there is nothing on the file of the DDA to suggest that the demand-cum-allotment letter was in fact sent at the fresh and correct address, however, the noting dated 28.6.1995 of the DDA shows that permission was sought to issue a show cause notice to the petitioner on account of non-payment. Counsel also contends that a show cause notice was issued to the petitioner. A copy of the show cause notice has been placed on record, which shows that initially the address mentioned therein was of Dev Nagar but on the side of the notice the Pritam Pura address has also been mentioned.

8. Learned counsel for the petitioner denies that the petitioner has received the show cause notice. Counsel further submits that there is a doubt as to at which address the show cause notice was sent. Counsel next submits that the petitioner is entitled to a flat under the Wrong Address Policy of the DDA and since he did not approach the DDA within four years of issue of demand-cum-allotment letter petitioner prays for allotment at the old rate with interest.
9. Learned counsel for the respondent DDA has opposed this writ petition on the ground that the demand-cum-allotment letter was sent to the petitioner at the correct address; the petitioner did not make the deposit; a show cause notice was issued; and thereafter allotment in favour of the petitioner was cancelled.
10. I have heard learned counsel for the parties, considered their rival

contentions and also perused the original record produced by the DDA including the Dispatch Register and copies of the notings obtained by the petitioner under Right to Information Act. It is not in dispute that the petitioner had made an application to the DDA for allotment of a MIG flat under New Pattern Registration Scheme, 1979. As per the original record produced by the DDA the address mentioned in the application form pertains to Dev Nagar. As the demand-cum-allotment letter was sent at the old address, the same returned undelivered to the DDA on 23.5.1994. There is nothing on record of the DDA to show that the petitioner informed the DDA about the change of address but the file notings of the DDA speak otherwise. The file notings of 5.8.1994 reads as under:

“Sh.Ravi Kant Kapoor has changed the residential address given as below:

Sh.Ravi Kant Kapoor
25, Sharda Niketan
Saraswati Vihar
Pritampura Delhi 34

Please allow for sending the computerized D/L on new residential address.”

11. The original record also shows that after 1994 there is nothing to suggest that the demand-cum-allotment letter was sent at the fresh residential address. The noting of 28.6.1995 shows that it was decided to issue a show cause notice to the petitioner as he did not deposit the amount. The file also shows a show cause notice having been issued to the petitioner, wherein initially the Dev Nagar address has been mentioned, which then has been scored off and the Pritampura address had been written. Copy of the Dispatch Register has also been produced in Court by the DDA which shows that the original address mentioned in the dispatch register is of

Dev Nagar and subsequently on the side Pritampura address has also been mentioned.

12. The file notings show that on 30.7.1998 a proposal was made that the allotment be cancelled in the absence of any reply to the show cause notice, however, there is no order of cancellation on the file of the DDA. On the basis of file notings of the DDA it is clear that the petitioner informed the DDA with regard to change of address. The records of the DDA shows that the DDA had suggested that the demand-cum-allotment letter be sent at the new address, which apparently was not sent at all at the new address. The petitioner must accordingly succeed, however, having regard to the delay, learned counsel for the petitioner was asked whether the petitioner would be willing to pay the current cost of the flat against the allotment with installment, to which he has agreed.
13. Accordingly, writ petition is allowed. Let the DDA allot a flat to the petitioner in Sector 28, Rohini, Delhi, or any other Sector of the Rohini, where the flat is available, at the cost of December, 2011, when the petitioner approached this Court, within two months from today.
14. Writ petition stands disposed of. No costs.

G.S.SISTANI, J

SEPTEMBER 24, 2012

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