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

+ W.P.(C) 1166/2010

% ***Judgment Delivered on: 30.10.2012***

SMT.RAMESHWARI Petitioner
Through: Ms.Richa Kapoor, Advocate

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms.Sangeeta Chandra, Advocate

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Rule. With the consent of counsel for the parties, present petition is set down for final hearing and disposal.
2. In this case in the year 1979, husband of the petitioner had registered himself under the New Pattern Registration Scheme, 1979 for allotment of an LIG flat vide registration No.6769 on payment of Rs.1500/- towards registration deposit. The husband of the petitioner had mentioned his residential address as A-37, Arya Samaj, Kirti Nagar, New Delhi – 110 015 for future correspondence. It is the case of the petitioner that since the number of flats available for allotment with the DDA were far less than the number of registrants under the Scheme, therefore, the allotments were being made at a very slow pace and it took DDA more than 17 years to exhaust the entire list of allottees registered under the LIG Category. It is also stated in the writ petition that the husband of the petitioner expired on 15.08.2006. During his lifetime, the petitioner's husband did not receive any communication from the DDA and it is only after the demise of her husband, when petitioner was going

through some old papers and documents in the year 2009 she learnt that her deceased husband had registered himself with the DDA for allotment of a LIG flat. The petitioner appeared in the public hearing forum of the respondent, to enquire about the status of her registration when she learnt that the priority had matured as far back as in the year 2000 and petitioner's husband had been allotted a LIG flat in the draw held on 11.02.2000, i.e., Flat No. 547, Ground Floor, Pocket-I, Phase-II, Sector 14, Dwarka, Delhi and the said flat stood cancelled on account of non-payment.

3. On enquiry she learnt that a demand cum allotment letter had been sent in the name of her husband at an incorrect address being A-37, Arya Samaj, Kirtnaga, New Delhi, instead of A-37, Arya Samaj, Kirti Nagar, Delhi. The demand cum allotment letter was returned back undelivered to the DDA. The petitioner approached the respondent and on respondent's advise applied for mutation in her own name and submitted all the requisite documents in regard to mutation along with a representation to the respondent on 13.11.2009. It is submitted that despite several oral requests and another representation made to respondent by the petitioner, the respondent DDA informed the petitioner that the said flat had been cancelled. Ms.Kapoor, submits that the case of the petitioner is covered under the wrong address policy of the DDA and she is entitled to allotment of a LIG flat.
4. Counsel for the petitioner has relied upon a decision rendered by a Division Bench of this court in LPA No.378/2008 [DDA Vs. Ganga Ram], relevant portion of which reads as under:

“3. It is sought to be contended by learned counsel for the DDA that the subsequent communication in the form of a show cause notice for cancellation of the allotment, also sent at the same

address with an incorrect pin code, was received by the respondent. Therefore, it should be presumed that the demand-cum-allotment letter was also received by the respondent.

4. We are unable to accept this submission. The mere fact that the subsequent communication sent to the respondent at the same address with an incorrect pin code was received by the respondent cannot lead to a presumption of deemed service as regards the allotment letter which was clearly not sent at the correct address. We find no infirmity in the conclusion arrived at by the learned Single Judge.”

5. Reliance is also placed by counsel for the petitioner in the case of **Krishan Lal Budhiraja Vs. DDA** [WP(C)No.4824/2007, and more particularly paragraph 5 in support of her plea that public notice is not a substitute for individual notice, which reads as under:

5. In Usha Saikia versus D.D.A (Writ Petition Civil No.266/2007) similar controversy had arisen before the Court. The contention of the DDA that by issuing public notices the registration was cancelled was rejected, inter alia, holding as under:-

“4. xxx

5. Further public notices are not substitute for individual notices. The scheme as such never envisaged public notices to the registrants. The registrants were not duty bound to scan newspapers, days after days to verify whether any advertisement has been taken out by the DDA for allotment. Admittedly, the residential address of the petitioner was available with the DDA and in case they had any query they should have written a letter before denying her allotment. Registrants cannot be denied their right of allotment, for which they have been waiting since 1979, for a period of more than 25 years, because they fail to respond to public notice, when the scheme itself never envisaged issue of public notice.”

6. Counsel for the petitioner has relied upon the policy of the DDA dated 25.02.2005, which reads as under:

“No.F2(10)/2002/Coord.(H)/49 Dated 25.02.2005

OFFICE ORDER

The Delhi High Court vide its order dated 16.12.2004, in W.P.(C)No.19095/2004 and in other 15 Writ Petitions, has decided issues relating to issuance of demand letter at wrong address and missing priority cases of DDA flats. In view of the directions /orders of the High Court, Office Order No.F.2(10)/2002/Coord. (H)/148, dated 21.11.2002 is hereby amended as under:

1. In cases, wherein change of address was intimated by the registrant but erroneously not recorded by DDA and thereby demand letters were sent at wrong/ old address and the allottee approaches DDA within a period of four years from the date of allotment, he/ she shall be allotted a flat at the old cost, prevalent at the time when the priority of allottee matured and the allotment letter issued, and no interest will be charged. The allotment will be made at old cost subject to following:

- (a) He should approach DDA within a period of four years from the date of issue of demand letter at the wrong address.
- (b) He should have proof of having submitted a request for change of address to DDA duly signed by the allottee himself/ herself i.e. proof of receipt at DDA counter.
- (c) He should have documentary proof of change of address viz. Ration Card/ Election Card/ Identity Card/ Pass Port etc. (duly attested by the Gazetted Officer)

2. In cases, where such an intimation has been made but the allottee has not approached the DDA within a period of four years from the date of allotment, the allottee shall be considered for allotment of flat at the old cost prevalent at the time of original allotment + 12% simple interest w.e.f. the date of original allotment till the date of issue of fresh Demand-cum-Allotment Letter.

The same principle will be applicable in the cases of missing priority cases. Commissioner (Housing) shall be the Competent Authority in all such cases. This issues will the approval of Vice Chairman, DDA.

(Asma Manzar)
Commissioner (Housing)”

7. Counsel for the respondent has opposed this petition *primarily* on the ground of delay and laches. Counsel for the respondent submits that petitioner has slept over her rights and there is no explanation for not approaching the DDA from the year 1979 till 2009. It is further submitted that it is common knowledge that the NPRS Scheme has also come to an end. Reliance is also placed by counsel for the respondent in the case of **Lakshmi Devi Vs. DDA** [LPA No.264/2011], wherein a Division Bench upheld the order passed by learned Single Judge, by which the learned Single Judge had dismissed the writ petition on the ground of delay and laches.
8. Counsel for the petitioner submits that the judgment sought to be relied upon by counsel for the respondent is not applicable, as in the case of **Lakshmi Devi (Supra)** the court was not inclined to interfere, as one of the factors which weighed in the mind of the Single Judge and the Division Bench was that on perusal of the original letters dated 29.11.1983 and 29.02.1984, the word ‘present’ against her name and further addition of the permanent address below that had been carried out by typewriter of a different font, which appeared to the Courts to be a subsequent addition.
9. I have heard counsel for the parties and considered their rival contentions. The basic facts are not in dispute that the husband of the

petitioner made an application to the DDA under the NPRS Scheme for allotment of a LIG flat in the year 1979. The husband of the petitioner died in the year 2006. It is upon his death the widow (petitioner herein) approached the DDA and learnt that a demand-cum-allotment letter had been issued way back in the year 2000. On enquiry she learnt that the demand cum allotment letter was issued at the wrong address, while it is the case of the DDA that the house number was correctly mentioned in the demand cum allotment letter and thus there is no fault on the part of the DDA. This submission of counsel for the DDA is unacceptable in view of the fact that even the postal authority did not consider this to be a minor irregularity, as the envelope containing the demand-cum-allotment letter was returned back to the DDA, which is available in the file of the DDA, thus the factual position which emerges is that the demand cum allotment letter was not received by the husband of the petitioner during his lifetime.

10. It is also not in dispute that the allotments under the NPRS Scheme (LIG category), which commenced in year 1979 were finally made upto 2007. If the DDA took 17 years for making allotments, a registrant cannot be blamed for waiting patiently. Even otherwise allotment was made in favour of the petitioner in the year 2000 and she approached the DDA in the year 2009, and thus delay cannot be calculated from the year 1979 as submitted by counsel for the DDA. Another factor which cannot be ignored is that the petitioner lost her husband in the year 2000 and it is not unusual in the Indian society that the widow would be in grief for a longer period and may not be aware of her husband's investments.
11. The original record which has been produced, shows that the fault in this matter lies really with the DDA in not issuing the demand cum allotment letter in favour of the petitioner at the correct address. Once the

demand-cum-allotment letter was received back, the DDA should have re-checked as to whether the demand-cum-allotment letter was sent at the correct address. It has been repeatedly held by this court that in case the demand cum allotment letter is not issued to the applicant at the correct address, the DDA is liable to issue a fresh demand cum allotment letter at every address available in the file of the respondent.

12. Having regard to the number of cases which were being filed, the DDA itself formulated a policy Dated 25.02.2005, for dealing with such cases where the demand cum allotment letters were sent at the incorrect address. On account of delay in approaching this court and yet to balance the equities, it is deemed appropriate if the name of the petitioner is considered for allotment of a LIG flat as per Circular dated 25.02.2005, but at the cost of 2012, within three months from today.
13. Writ petition is allowed in above terms. Rule is made absolute. No costs.

G.S.SISTANI, J

OCTOBER 30, 2012
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