

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

Date of decision: 17th May, 2012

+ **LPA No. 1094/2006**

% **NARESH KUMAR KATARIA** **....Appellant**
Through: Ms. Richa Kapoor, Advocate

Versus

DELHI DEVELOPMENT AUTHORITY **..... Respondent**
Through: Mr. Ajay Verma and Mr. Amit Mehra, Advocates

AND
LPA No.1096/2006

% **VINOD KUMAR SINHA** **....Appellant**
Through: Ms. Richa Kapoor, Advocate

Versus

DELHI DEVELOPMENT AUTHORITY **..... Respondent**
Through: Mr. Ajay Verma and Mr. Amit Mehra, Advocates

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. These two intra-court appeals though by different appellants and concerning different facts, albeit both against the DDA, are taken up for hearing together since the WP(C) No.200/2006 preferred by the appellant in

LPA No.1096/2006 was dismissed following the order of dismissal of W.P.(C) No.196/2006 preferred by the appellant in LPA No.1094/2006. Notice of both the appeals was issued and pleadings have been completed and the same were admitted for hearing. Counsels have been heard.

2. W.P.(C) No.196/2006 (the subject matter of LPA No.1094/2006) was preferred pleading that,

- i). the appellant therein was a registrant with the respondent-DDA under the New Pattern Registration Scheme (NPRS), 1979 with respect to an MIG flat;
- ii). that owing to the large number of registrants in the said scheme and the difficulties being faced in making allotments to all of them, the respondent-DDA in November, 1988 introduced Avas Sakar Yojana (ASY) whereunder the registrants in NPRS, 1979 with priority numbers beyond 10000 were given an option to become members of the Cooperative Group Housing Society (CGHS) to be formed under the supervision of the DDA and to be allotted land on priority basis;
- iii). that the appellant with priority No.24168, opted for ASY 1988;
- iv). that the appellant however on 4.7.1989 withdrew his request for transfer of his registration to ASY 1988 and sought restoration of registration under NPRS 1979 with original priority number;
- v). that even otherwise no optee for ASY 1988 could be accommodated thereunder which led the DDA to, in 1992, close ASY 1988;

- vi). that DDA in W.P.(C) No.5628/1993 filed by certain others represented that registrants of NPRS 1979 who though had opted under ASY 1988, but had not been allotted any CGHS flat thereunder, would continue to remain members of NPRS 1979 with original priority number;
- vii). that however no allotment in NPRS 1979 was made to the appellant though others having priority lower than that of the appellant were made allotment in the year 1998;
- viii). that on representation of the appellant, his name was included in the draw held on 16.3.2000 in which he was allotted flat No. 480, 4th Floor, Pocket-2, Sector 19, Dwarka and demand-cum-allotment letter dated 12.6.2000 – 19.6.2000 issued to him for Rs. 8,74,750/-;
- ix). that the appellant on 11.07.2000 applied to the DDA for change of floor since his wife is physically handicapped;
- x). no response was received from the DDA and the appellant continued to represent and ultimately on 2.1.2002, his request was declined;
- xi). that the appellant made further representation to the Ministry of Urban Development on 6.02.2002 to which no response was received;
- xii). that the appellant on 17.02.2004, 18.05.2004 and 3.11.2004 again represented to the DDA, this time on the ground of his being entitled to a flat at the cost as in the year 1998 when his priority had matured but he was left out;
- xiii). that no action was taken thereon.

Ultimately on 6.1.2006, W.P.(C) No.196/2006 was filed seeking a ground floor flat at the cost as in the year 1998.

3. The learned Single Judge, vide order dated 9.1.2006 dismissed the writ petition in *limine* holding that the representation made by the appellant on 11.07.2000, on receipt of demand-cum-allotment letter dated 12.6.2000-19.06.2000 was only for change of floor and not against the price/cost of the flat demanded by the respondent DDA and which issue was raised by the appellant for the first time in the representation made on 17.02.2004; that the writ petition filed in the year 2006 protesting against the cost/price demanded in the year 2000 was barred by delay and laches.

4. The facts in WP(C) No.200/2006 against the dismissal of which LPA No.1096/2006 has been preferred, are the same save that priority number therein was 27754 and had matured in the year 2000 but the appellant was left out and on representation, the appellant was included in the draw held on 31.7.2002 and in which flat No. 151, 1st Floor, Pocket 24, Sector 24 Rohini, New Delhi and allotment-cum-demand letter dated 26.9.2002 – 1.10.2002 was issued. This appellant also, instead of complying with the demand-cum-allotment letter or paying any amount whatsoever made representations for the first time on 16.2.2004 i.e., after nearly 1½ year of the demand-cum-allotment letter and thereafter in March, 2005 and filed the writ petition in January, 2006. This writ petition has been dismissed vide order dated 9.01.2006, again on the ground of delay and laches and also on the ground of the first representation itself having been made after 1½ years of the demand-cum-allotment letter.

5. Counsel for the appellants in both the appeals has urged on the merits, of the appellant in each case being entitled to a flat at the cost as on the date when their respective priority had matured but were left out on account of the default of the DDA, rather than on the reason for which the writ petitions have been dismissed. The learned Single Judge having dismissed the writ petitions on the ground of delay in preferring the same and having not gone into the merits, we have asked the counsel to confine her submissions to the said aspect of delay only. No plausible argument on that aspect has been made, save for invoking the sympathy on the ground of the wife of the appellant in LPA No.1094/2006 being disabled and the appellant therein being unable to avail of flat allotted on the fourth floor.

6. As far as the aforesaid argument is concerned, we find that though the appellant had applied for change of floor, but upon the same being not acceded to, chose to let go of the allotment; after two years, though the matter was re-agitated but not on the ground of the change of floor, but on the ground of the cost/price demanded by the DDA being not correct. We are of the opinion that had the appellant been aggrieved by the rejection of his request of change of floor, he would have immediately filed the writ petition impugning the same and offering to pay the price/cost qua which no grievance was then made. From the conduct of the appellant we tend to agree with the contention of the learned counsel for the respondent-DDA that the fresh representation after three years and on the ground of price/cost was guided more by the brokers/traders in such flats who after collecting data of forfeited allotments approach the erstwhile allottees to acquire their rights, rather than for any bonafide grievance. The argument of sympathy

raised by the counsel thus does not cut any ice with us.

7. We otherwise tend to agree with the learned Single Judge. The writ petitions were undoubtedly filed long after issuance of demand-cum-allotment letters and without any explanation for the delay. The demand-cum-allotment letters issued, required acceptance within 30 days payment thereunder to be made maximum within three months and clearly informed that upon payment not being made, allotment shall stand automatically cancelled. The appellants did not even accept the allotments and cannot claim thereunder. Had the appellants been genuinely concerned about the price, they would have deposited with the DDA at least the admitted price or would have availed of the allotment reserving their right to challenge the price. The belated representations and the writ petitions were clearly an after thought. The law in this regard has been exhaustively discussed by a Division Bench of this Court in ***Sudhir Kumar Sharma v. DDA*** 119 (2005) DLT 13. One of us (R.S. Endlaw, J) in ***Bhim Ram v. DDA*** MANU/DE/3689/2011 has also observed that sympathy to such defaulters is misplaced as the number of flats available is far less than the claimants and any direction of Court to make allotment to an otherwise undeserving person would always be to the detriment and prejudice of some other deserving claimant, allotment in whose favour will be further delayed.

8. We may notice that the counsel for the DDA has also argued that the scheme in which the appellants were registered has since been closed and no flats in any case are available thereunder.

9. We do not find any merit in these appeals and dismiss the same. We refrain from imposing any costs on the appellants.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MAY 17, 2012
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