

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 17th January, 2012.

+ **LPA 480/2010**

% **DELHI DEVELOPMENT AUTHORITY** **...Petitioner**
Through: Mr. Rakesh Mittal, Adv.

Versus

VEENA ANDLEY **.... Respondent**
Through: Mr. Sumit Bansal, Mr. Arun K.
Sharma & Ms. Sumi Anand, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The challenge by the appellant DDA in this Intra Court Appeal is to the order dated 6th January, 2010 of the Learned Single Judge allowing W.P.(C) No. 6131/2007 preferred by the respondent and directing the appellant DDA to include the name of the respondent in mini draw of lots to be held within two months from the date of the order. Though this appeal was preferred after the delay of 45 days but the said delay was condoned and the notice of the appeal issued on 20th July, 2010 and the implementation of the order stayed. The counsels have been heard.

2. The undisputed facts are that the respondent is the widow of a former Acting Chief Justice of this Court who died in harness; it was decided that in lieu of *ex gratia* payment to which the respondent had so become entitled to, she be allotted a flat; a recommendation was forwarded by the Registrar of this Court to the appellant DDA and since allotment was to be made from a special quota, the matter was placed before the Lt. Governor of Delhi; the

Lt. Governor directed allotment of a flat under SFS Category-III to the respondent; pursuant thereto a flat in Dwarka was allotted to the respondent and a demand-cum-allotment letter dated 8th February, 2002 issued – in terms thereof the price demanded was to be paid within 120 days thereof. The said price was not paid, as according to the respondent she was then facing financial constraints on account of the marriage ceremonies of her daughter. It is admitted by the counsel for the appellant DDA before us also that the marriage of the daughter of the respondent was indeed scheduled for and held in December, 2002. The respondent on 8th March, 2006 represented to the appellant DDA for restoration of the allotment earlier made; upon receiving no response from the appellant DDA inspite of reminders, the writ petition aforesaid was filed.

3. The appellant DDA contested the writ petition pleading, delay on the part of the respondent in approaching the appellant DDA for restoration of the allotment; that the allotment earlier made stood automatically cancelled on non-payment of the demanded amount; the flat earlier allotted to the respondent having been allotted to some other registrant and the respondent being not entitled to restoration thereof or for allotment of any other flats.

4. The respondent rejoined by contending that the allotment having been made to her under the orders of the Lt. Governor could not have been cancelled without orders from the same authority which had not been obtained.

5. The appellant DDA also filed an additional affidavit before the Learned Single Judge contending that the then Policy of the respondent DDA ruled out any out of turn allotment. The respondent responded thereto by contending that she was merely seeking restoration.

6. The learned Single Judge has in the order impugned before us observed / held, that the appellant DDA had not denied the factum of the allotment in favour of the respondent being in lieu of *ex gratia* payment to which she was entitled to; that the respondent had not availed of the benefit of *ex gratia* payment in the hope that she would be allotted a flat by the appellant DDA; that the decision of the Lt. Governor for such allotment in favour of the respondent could not be and had not been withdrawn; that thus the right of the respondent to allotment would continue; however since the respondent had not availed of the allotment made in the year 2002 she could not be allotted a flat at the disposable costs of the year 2002. The Learned Single Judge accordingly taking into consideration the peculiar facts of the case, especially the financial hardship of the respondent, allowed the writ petition as aforesaid.

7. The counsel for the appellant DDA before us has again contended that the present Policy of the appellant DDA does not permit any such allotment. The appellant DDA in this regard referred to a letter dated 19th June, 2000. However a perusal thereof shows that though the same purports to abolish the special quota but nevertheless makes exception in favour of widows of government servants who die in harness. In our opinion, the respondent on parity would be covered in the said category also. Moreover, the question is not of entitlement of the respondent to a fresh allotment now but of restoration of the earlier allotment under the policy then in vogue.

8. We have in several other cases come across the Policy of the appellant DDA of allowing such restoration upon being approached within four years of cancellation. The respondent herein also having approached the appellant DDA within four years of cancellation, we have enquired from

the counsel for the appellant DDA as to why the respondent is not entitled to restoration under the said Policy also. The counsel however contends that the said Policy is not applicable to the respondent, the allotment in favour of the respondent being under a special quota. We are however unable to accept the said contention; merely because the allotment is made under a special quota would not deprive the respondent of the benefits made available by the appellant DDA to its other customers.

9. The counsel for the appellant has next contended that the respondent has available to her a house at Rajpur Road and is thus not entitled to any allotment. We do not find any merit in the said contention also. It is borne out from the documents of the time of allotment in favour of the respondent that the husband of the respondent was only one of several shareholders in the said house and which was incapable of being built upon and was unutilisable and the respondent had no accommodation available to her in the same residence. The appellant DDA having earlier made allotment in favour of the respondent notwithstanding the said house, cannot agitate the same in opposition to the claim of the respondent for restoration of the said allotment.

10. Though the counsel for the appellant DDA has also sought to dispute that the allotment in favour of the respondent was not against any *ex gratia* payment and the respondent had no financial constraints but the counsel for the respondent has demonstrated from the pleadings before the Learned Single Judge that the said facts stood admitted by the appellant DDA and have not been challenged in the memo of appeal also.

11. We are even otherwise of the opinion that the Learned Single Judge has in the peculiar facts and circumstances of the case exercised discretion

vested under Article 226 of the Constitution of India and has while exercising the said discretion safeguarded the interest of the appellant DDA by directing restoration of allotment at the rates of the year 2010. We have already in orders dated 18th October, 2011 in LPA 494/2011 titled ***DDA v. Amar Nath Hira*** and order dated 22nd November, 2011 in LPA 732/2011 titled ***DDA v. Darshan Kaur*** held that where the order is otherwise found to be equitable, the discretion exercised by the Learned Single Judge in the facts and circumstances of the case ought not to be interfered in a appeal. We find the order impugned before us to be an equitable one.

12. We do not find any merit in the appeal; the same is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JANUARY 17, 2012
‘PP’