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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5721/2011

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Judgment dated 22.08.2012

SHAKUNTALA DEVI

..... Petitioner

Through: Mr.Sarat Chandra and Dr.K. S. Bhati,
Advocates

versus

D.D.A.

..... Respondent

Through: Ms.Sangita Chandra, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

CM.10481/2012 (u/O.6 R.17 CPC)

1. On the last date of hearing detailed arguments were addressed by learned counsel for the parties, however, counsel for the petitioner sought an adjournment. This Court had reluctantly adjourned the matter.
2. The present application has been filed by petitioner under Order VI Rule 17 CPC. Although it seems that this application has been filed merely to delay the matter, however, in the interest of justice, the application is allowed. Additional grounds raised will also be considered by the Court.
3. Application stands disposed of.

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4. Rule. With the consent of counsel for the parties, the present writ petition is set down for final hearing and disposal.
5. The facts of the case as set out in the writ petition are that the husband of the petitioner applied under the New Pattern Registration Scheme, 1979,

for allotment of LIG flat on payment of Rs.1,500/-. The husband of the petitioner was allotted registration no.34318. At the time of registration, the husband of the petitioner furnished the residential address as 20A, Rajpura Road, New Delhi. By way of abundant caution, husband of the petitioner also provided an alternate address, being BBM Depot, Baba Banda Bahadur Marg Depot, Delhi Transport Corporation, Kingsway Camp, Delhi. The husband of the petitioner unfortunately expired on 29.09.2000. The petitioner immediately informed the DDA about the death of her husband and the change of her address. The petitioner and also submitted the necessary documents including death certificate, copy of certification of registration, deposit receipts, acknowledgement letter, challans. According to the petitioner, the respondent took notice of the change of address and made the requisite changes in their record.

6. The allotments under the NPRS was being made at snail's pace, as there were large number of registrants in comparison to the number of flats available for allotment. On 15.10.2004 a draw was held by the respondent whereby the petitioner was declared successful, however, the petitioner was not informed about the allotment. The allotment was cancelled and the flat was allotted to another person.
7. It is the case of the petitioner that despite the petitioner having informed the respondent about the change of address and an alternate address available in their file, no intimation was sent at the changed address or the alternate address, although the change of address was informed to the respondents, way back in the year 2000.
8. Counsel for the petitioner submits that on 10.06.2010 the respondent had addressed a communication to the petitioner at the new address, calling upon the petitioner to furnish details of legal heirs etc. Counsel further submits that only recently when the petitioner approached to the office of

the DDA, she was informed that her allotment had been cancelled. Petitioner relies upon the wrong address policy of the DDA, whereby if the letter is sent to the old or incorrect address, the applicant is to be allotted a flat at the old cost prevalent at the time when the priority of the allottee has matured, without any interest.

9. Counsel for the petitioner in support of his submissions has placed reliance on a judgment rendered by another Single Judge of this court in the case of *Sanmukh Singh Vs. DDA* [WP(C)No.400/2011].
10. Ms.Sangeeta Chandra, counsel for the DDA submits that the case of the petitioner is not covered under the wrong address policy. It is submitted that respondent duly sent the intimation of allotment to the petitioner at both the addresses supplied by the applicant/ allottee in the application form. It is submitted that despite the communication having been addressed to the petitioner, no response was received. DDA has vehemently denied that any fresh or change address was supplied by the allottee or the petitioner at any stage prior to allotment being made by the DDA. DDA, however, does not dispute that the applicant had supplied two addresses on the application form, a copy of the application has also been filed by the DDA. Counsel for the DDA contends that the applicant was allotted a LIG flat bearing No.118, first floor, Sector A-10, Pocket 4, Group –I, Narela, New Delhi in a computerized draw held on 15.10.2004, on hire purchase basis. The demand-cum-allotment was sent to the applicant at his residential address mentioned by him in the registration application i.e. 20-A, Rajpura Road, Delhi, however, the allotment letter was returned un-delivered with the postal remarks “*no such person resides at the said address*”. On receipt of un-delivered demand letter sent at the residential address, the DDA sent an intimation letter dated 15.04.2005 regarding allotment to the allottee both at the residential

address as well as the occupational addresses, supplied as per the application form. The said letter requested Shri Hari Chand, the allottee to appear in person in the office on any working Monday and Thursday between 2:30 p.m. to 5:30 p.m. along with original documents as well as proof of residence and attested photographs with signatures to collect the allotment letter. The letter sent at the occupational address was not received back undelivered by the DDA, and therefore, it was presumed that the said letter must have been served on the allottee.

11. The letter sent at the residential address was however, received back undelivered. Counsel for the DDA has drawn attention of the Court to the extract of the relevant page of the dispatch register, showing dispatch of letter dated 15.04.2005 at both the addresses. A show cause notice was also issued on 17.11.2005, which was returned undelivered as addressee had left without the address. The allotment of the flat in question was thereafter cancelled by the competent authority on account of non-payment and the cancellation letter was sent to the allottee on 21.12.2005.
12. Ms.Chandra, counsel for the DDA contends that till the cancellation of allotment was effected by the DDA, there was no request received from the allottee, at any stage, intimating change of address. It is subsequently that the petitioner vide letter dated 13.10.2008 requested for change in address of the applicant for future correspondence i.e. WZ-244/C, Hastal Road, Gali No.5, near Pooja Convent School, Uttam Nagar, Delhi. The request of the petitioner was examined by the competent authority, but the same could not be exceeded to as the allotment already stood cancelled way back in the year 2005, hence, vide letter dated 21.10.2008, petitioner was requested to furnish the documents for mutation, as per information booklet, but only for the purpose of refund. As no documents were furnished, petitioner was again informed by letter dated 10.06.2010, to

complete the documents, both the letters were addressed at the new address supplied by the petitioner.

13. Ms.Sangita Chandra, also submits that the petitioner has not approached this court with clean hands, as the petitioner did not inform the DDA with regard to the change of address, before allotment of the flat. It is further submitted that since the fresh address was not supplied to the DDA before allotment of flat, the letter sought to be relied upon by the petitioner, is of no relevance. In these circumstances, respondent prays that the writ petition be dismissed.
14. I have heard counsel for the parties and considered their rival contentions. The basic argument of counsel for the petitioner is that the petitioner had informed the DDA with regard to change of address and places reliance on an undated letter, copy of which has been filed at page 25 of the paper book.
15. Petitioner has not placed on record any proof of delivery of this letter to the DDA. The undated letter sought to be relied upon by the petitioner was in fact submitted by the petitioner to the DDA on 13.10.2008. The undated letter addressed by the petitioner to the DDA was in fact received by the DDA on 14.10.2008, a copy thereof has been filed by the DDA with the stamp of receipt by the DDA. In the absence of any date on the letter filed by the petitioner and in the absence of any proof of delivery filed by the petitioner, no reliance can be placed on the submissions made by counsel for the petitioner that DDA was informed about the change of address, prior to the allotment. In my opinion, the petitioner has made a false averment in the writ petition and concealed the actual date when this letter was sent to the DDA on this ground alone the writ petition should be dismissed.
16. The DDA has also placed on record, a letter which was sent by the DDA

at the second address which was mentioned in the application form after the first letter was returned back to the DDA undelivered. The said letter reflects the correct and second address of the petitioner. Copy of the dispatch register has also been placed on record which shows that the letter was sent to the petitioner at both the addresses which were available with them.

17. Based on the record which has been placed, it cannot be said that the DDA did not issue the letter to the petitioner, at the occupational address. The judgment sought to be relied upon by counsel for the petitioner in the case of *Sanmukh Singh (Supra)*, in my view is not applicable to the facts of the present case. In the aforesaid matter, court had come to the conclusion that the demand-cum-allotment letter was dispatched to the allottee at the wrong address, which never reached the petitioner and obviously he could not deposit the initial payment, whereas in this case the letter was sent to the allottee at the residential address, as the letter was received back undelivered, it was sent at the occupational address as well, proof of dispatch has been placed on record, thus the petitioner cannot derive any benefit of the wrong address policy of the DDA. The writ petition is without any merit and the same is accordingly, dismissed. No order as to costs.

G.S.SISTANI, J

AUGUST 22, 2012
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