

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 2094/2011, 1189/2011, 6307/2011, 3287/2011, 3302/2011, 5160/2011, 5283/2011, 5284/2011, 6306/2011 and 6715/2011**

Decided on: 26.04.2012

IN THE MATTER OF

MAHENDRI DEVI	 Petitioner in W.P.(C) 2094/2011
RAMNARAIN YADAV	 Petitioner in W.P.(C) 1189/2011
PITAMBAR PANDEY	 Petitioner in W.P.(C) 6307/2011
RAJESH SHARMA	 Petitioner in W.P.(C) 3287/2011
HARSHARAN KAUR	 Petitioner in W.P.(C) 3302/2011
RAMESH KUMAR	 Petitioner in W.P.(C) 5160/2011
RAJ KUMAR SHARMA	 Petitioner in W.P.(C) 5283/2011
SURINDER KUMAR SETHI	 Petitioner in W.P.(C) 5284/2011
NAVIN KUMAR	 Petitioner in W.P.(C) 6306/2011
VIMLA DEVI	 Petitioner in W.P.(C) 6715/2011

Through: Mr. C. Mohan Rao, Advocate with Mr. Lokesh Kumar Sharma, Advocate in W.P.(C) 1189/2011, 2094/2011, 3287/2011, 3302/2011, 5160/2011, 5283/2011 and 5284/2011.

Mr. R.K. Saini, Advocate with Mr. Sitab Ali Chaudhary, Advocate in W.P.(C) 6307/2011, 6306/2011 and 6715/2011.

versus

DDA Respondent

Through: Ms. Shobhana Takiar, Advocate in W.P.(C) 1189/2011, 6307/2011, 2094/2011, 3287/2011, 6306/2011 and 6715/2011.

Mr. Arun Birbal, Advocate in W.P.(C) 5284/2011.

Ms. Manika Tripathy Pandey, Advocate with Mr. Ashutosh Kaushik, Advocate in W.P.(C) 5160/2011 and 5283/2011.

Ms. Sweta, Advocate for Mr. Dhanesh Relan, Advocate in W.P.(C) 3302/2011.

**CORAM
HON'BLE MS.JUSTICE HIMA KOHLI**

HIMA KOHLI, J. (ORAL)

1. These batch of matters have been filed by 10 petitioners praying *inter alia* for issuance of directions to the respondent/DDA to issue fresh demand-cum-allotment letters to them in respect of flats situated in Rohini under the Expandable Housing Scheme (EHS) in terms of the decision dated 19.03.2008 taken in a batch of matters, lead matter being **W.P.(C) 3257/2007** entitled Madan Lal Nayak vs. DDA and the subsequent decision dated 26.11.2009 taken in a batch of matters, lead matter being **W.P.(C) 7809/2009** entitled Anil Kumar vs. DDA.

2. With the consent of the counsels for the parties, a common order and judgment is being passed in these cases as the factual matrix in all the 10 cases is almost similar. For the sake of convenience, the facts of W.P.(C) 2094/2011 are being noted and this petition is being treated as the lead case.

3. On 08.10.1996, the petitioner had deposited a sum of ₹15,000/- with the respondent/DDA for an allotment of a Type A category flat. The disposal cost of the flat was ₹4,46,000/-. The petitioner was issued a demand-cum-allotment letter having block dates 01.09.1998-10.09.1998 in respect of House No.44 (Type A), Pocket-16, Sector-22, Rohini, as per a draw of lots held by the respondent/DDA. Similar

demands were raised by the respondent/DDA on the other petitioners.

4. Thereafter, a large number of writ petitions were filed by the allottees challenging the demand-cum-allotment letters issued to them by the respondent/DDA on the ground that DDA could not have charged for the flats until the basic amenities were provided in the area, and further, the 20% escalation in the disposal cost of the flats that were allotted, was also challenged. The aforesaid batch of writ petitions were decided on 27.11.2003 by a common judgment rendered in the lead matter, registered as **W.P.(C) 2142/1999** entitled Raj Kumar vs. DDA. The operative para of the aforesaid judgment is as below:-

“34. In view of the foregoing discussion, the writ petitions have no merit in so far as challenge to the revision in disposal cost is concerned and the same fails. The writ petitions are disposed of with the directions that the petitioners shall pay interest @ 12% per annum on 50% of the amount from the date of allotment-cum-demand and at 100% of the amount from the date the amenities were made available. In the alternative the petitioners could also opt within a period of 45 days, for payment on the basis of current cost and to avail of the said offer.”

5. Pertinently, all the 10 petitioners herein were also petitioners in the aforesaid writ petitions that were filed in the year 1999. Therefore, all the petitioners herein were covered by the view taken in the aforesaid judgment, which view was reiterated in subsequent orders passed by co-ordinate benches. It is an admitted position that none of the petitioners gave their options for allotment within the stipulated period of 45 days in

terms of the judgment in the case of Raj Kumar (Supra). Instead, the petitioners had opted for allotment on current cost after 45 days. The facts on record reveal that the respondent/DDA did not reject the cases of those allottees who had exercised their options belatedly. Rather, DDA accepted the options exercised by them even after a lapse of 45 days considering that a large number of flats of the category were lying vacant at Rohini at the relevant time, but this acceptance was made subject to payment of current cost of flats and with a rider that no change in the locality of the flats would be permitted to the allottees. The noting dated 24.03.2005 at page N/24 of the file of the Department bears out the aforesaid position. The said noting appearing in the file of the Department has also been placed on record in **W.P.(C) 6715/2011** entitled Vimla Devi vs. DDA.

6. The decision to allot flats to even those who had approached the respondent/DDA with the option for payment of current cost after the expiry of 45 days, was taken by the DDA at the highest level and based on the aforesaid decision, the respondent/DDA prepared a list of 72 applicants, whose requests were received upto 24.03.2005, i.e., till the date of grant of approval by the Vice Chairman, DDA (Ref. Noting dated 31.05.2006 at page 62/N). Thereafter, the aforesaid decision taken by the respondent/DDA was initially implemented only in a singular case of one Mr. Praveen Prakash Tamta, who received a demand-cum-allotment

letter dated 25.05.2005 from the DDA. Apart from Mr. Praveen Prakash Tamta, some other applicants also received demand-cum-allotment letters after September 2006.

7. Aggrieved by the demand raised by the respondent/DDA by charging the price of the flats as per the costs prevailing on the date of issuance of the allotment letters, the said applicants filed a batch of writ petitions stating *inter alia* that the delay in issuing the demand-cum-allotment letters was entirely attributable to the respondent/DDA and that the applicants could not be burdened with higher cost due to the lapse on the part of the respondent/DDA. The aforesaid 18 writ petitions were collectively decided by a common order and judgment dated 19.03.2008 rendered in the lead matter registered as **W.P.(C) 3257/2007**, entitled Madan Lal Nayak vs. DDA. The operative para of the aforesaid judgment is as below:-

"8. In view of the above facts and the statements made by learned counsel for the parties, the following directions are issued:-

(i) DDA will make calculation and issue demand cum allotment letters to the petitioners on the basis of calculation sheet shown in the Court today, within 30 days. The petitioners will be liable to pay interest @ 12% till the date when demand cum allotment letter issued and payment will be made in terms of the payment Schedule mentioned in the demand cum allotment letter.

(ii) DDA will be entitled to verify and examine genuineness of the case of the petitioners.

The writ petitions are disposed of."

8. On 26.11.2009, three more writ petitions of such applicants came to be decided by a common judgment, lead matter being **W.P.(C) 7809/2009** entitled Anil Kumar vs. DDA, wherein it was claimed by the petitioners therein that they were identically placed as the petitioners in the case of Madan Lal Nayak (supra) but demand-cum-allotment letters were not issued to them. After considering the stand of the petitioners therein that they had not been issued any notice to show cause and nor was an opportunity of hearing afforded to them before DDA had rejected their cases, it was held that the said three petitioners could not have been condemned unheard. Consequently, directions were issued for the aforesaid three petitioners to appear before the Deputy Director (Housing), DDA on a notified date and time alongwith their original supporting documents and proof of identity, with further directions to the DDA that if it was satisfied with the genuineness of the petitioners, then demand-cum-allotment letters would be issued to them in accordance with law.

9. After the aforesaid decision dated 26.11.2009, five more writ petitions were filed by those allottees who claimed to be similarly placed as the petitioners in the case of Anil Kumar (supra). The aforesaid writ petitions were also disposed of vide order dated 28.01.2010 passed in the lead matter registered as being **W.P.(C) 5107/2008** entitled Manoj

Kumar vs. DDA with identical directions as issued in the case of Anil Kumar (supra). During the course of hearing, Mr. C. Mohan Rao, Advocate also handed over a copy of a recent order dated 11.03.2011 passed in **W.P.(C) 7693/2009** entitled Braham Prakash vs. DDA to state that the case of the petitioner therein was also treated at par with the petitioners in the case of Anil Kumar (supra) and accordingly, he was also directed to satisfy the DDA with regard to the genuineness of his case by appearing before the competent authority. A copy of the aforesaid order dated 11.03.2011 is taken on record.

10. It is the contention of the counsels for the petitioners that the facts of their cases are identical to the facts of petitioners in the cases of Madan Lal Nayak (supra), Anil Kumar (supra), Manoj Kumar (supra) and Braham Prakash (supra) and therefore, they are also entitled to identical relief.

11. Counsels for the respondent/DDA, however, dispute the aforesaid position and state that the petitioners in W.P.(C) 3149/1999, 4572/1999, 5217/1999 and 4569/1999 are not identically placed as the petitioners in the aforesaid cases. In support of the aforesaid submission, they predicate their claim on the noting file of the respondent/DDA, the relevant extracts of which have been placed in the file of W.P.(C) 6715/2011. The attention of this Court is first drawn to the list of 72

applicants, wherein the names of the aforesaid four petitioners find mention as below:-

S.No.	Petitioner's Name	W.P.(C) No.	Serial No. allotted in the List of 72 allottees
1.	Harsharan Kaur	3302/2011	10
2.	Raj Kumar Sharma	5283/2011	13
3.	Ramnarain Yadav	1189/2011	15
4.	Ramesh Kumar	5160/2011	16

12. It is submitted by learned counsels for the respondent/DDA that as per the decision dated 31.05.2006 taken by the Director (Housing), DDA and endorsed by the Vice Chairman, DDA on 15.07.2006, in the cases of applicants mentioned against Sr. No.5 to 17 of the list of 72 applicants prepared by the DDA, show cause notices were issued by the Expandable Housing Scheme Branch and as no replies were received from the said applicants, their allotments were cancelled. It is thus urged that the petitioners in W.P.(C) 3302/2011, 5283/2011, 6715/2011, 1189/2011 and 5160/2011 are on a different footing and ought not to be treated at par with the petitioners in the earlier cases.

13. Pertinently, the respondent/DDA has chosen to file counter affidavits only in W.P.(C) 3302/2011, 5160/2011, 5283/2011 and 2094/2011, wherein though it has taken a stand that the concerned petitioners had not filed replies to the notices to show cause, stated to have been served on them in the aforesaid cases, but the mode of

effecting service on the petitioners has not been placed on record in any of the aforesaid four cases. Therefore, making of a bald averment in the counter affidavit without substantiating it with relevant documents would not be of any assistance to the respondent/DDA.

14. Furthermore, it has been pointed out by learned counsels for the petitioners that two applicants from amongst the list of 72 applicants prepared by the respondent/DDA, namely, Mr.Nirankar Singh Tyagi at Sr.No.5 and Mr. Gurmukh Singh Arora at Sr.No.11 were a part of the list of petitioners in the case of Manoj Kumar (supra) and Anil Kumar (supra), respectively, and they were given identical relief as given to such of the other petitioners therein, who were not a part of the list of applicants mentioned from Sr. No.5 to 17. In such circumstances, it would be iniquitous for this Court to deprive the petitioners herein from the same relief, as granted to similarly situated applicants, i.e., afford them an opportunity of appearing before the competent authority of the DDA alongwith the relevant documents to establish their identity to the satisfaction of the respondent/DDA.

15. In view of the aforesaid facts and circumstances, it is deemed appropriate to dispose of the present petitions with directions to the petitioners to appear before the Deputy Director (Housing), Expandable Housing Scheme Branch, DDA on 16.05.2012 at 3 PM alongwith all the original documents and proof of their identity. The aforesaid officer shall

peruse the documents produced by the petitioners, verify their genuineness as also satisfy himself as to their identity and thereafter if satisfied, DDA shall hold a mini draw of lots within eight weeks from the date of production of documents by the petitioners for the allotment of flats to them in terms of the applications submitted by them. Thereafter, demand-cum-allotment letters shall be issued by the DDA in terms of the decision taken in the case of Madan Lal Nayak (supra), by fixing the cost of the flats as payable in January 2006, as the base cost with interest payable @ 12% per annum w.e.f. January 2006 till date.

16. The petitions are disposed of accordingly, while leaving the parties to bear their own costs.

APRIL 26, 2012
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(HIMA KOHLI)
JUDGE