

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

Reserved on: August 08, 2012

Decided on: August 16, 2012

+ W.P.(C) No. 7077/2008

BHAGIRATH CHOUDRI (DECEASED) THROUGH LR

..... Petitioner

Through: Ms. Medha Sachdev, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Sangeeta Chandra, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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1. Allotment of an MIG Flat at the cost prevalent in March, 2004 under the '*Tail End Priority Policy*' is sought by the petitioner in this petition.

2. Respondent- DDA vide its Communication of 10th October, 1990 (Annexure P-4) had cancelled the allotment of flat No. 686, Block/Pocket *GH-14 G-17* in Paschim Vihar, Delhi (*henceforth referred to as the 'flat in question'*), while permitting the petitioner to pay the cancellation charges within a fortnight so that petitioner's registration in respect of the flat in question is kept intact while keeping the petitioner's seniority at the '*Tail End*'. In pursuance to the aforesaid Communication, the petitioner had deposited the cancellation charges. In the explanation for the delay in depositing the cancellation charges, the petitioner had urged the respondent-

DDA to allot an alternate flat to the petitioner in next draw of lots instead of at '*Tail End*'. In this regard, Representations/ Reminders were sent by the petitioner in December, 1990 and April, 1991 (Annexures- P-8 & P-9) to the respondent-DDA, which according to the petitioner were not responded to.

3. Through Indian Express newspaper of 12th February, 1994 petitioner claims to have learnt about the advertisement of the respondent requiring the registrants to start pooling their financial resources for making timely payments and accordingly, the petitioner had made Representations in February, 1994 and December, 1994 (Annexure P-10 & P-11) followed by a Reminder in August, 1995 (Annexure P-12). When according to the petitioner, there was no response to the aforesaid Representations/Reminders, further Reminder was sent by the petitioner in September, 1996 (Annexure P-13) and again in February, 1998 (Annexure P-14) to the respondent-DDA but with no response. As per the petitioner, he had retired in December, 2000 and after a lull of about four years, he had again sent another Reminder in July, 2004 (Annexure P-15) to the respondent but to no avail.

4. Instead of availing of the legal remedies, the petitioner had sent a Representation in March, 2005 (Annexure P-16) to the Public Relation Wing of the respondent-DDA, who had forwarded petitioner's Representation/Complaint to the Director (Housing) of the respondent-DDA vide communication of May, 2005 (Annexure P-17). Again the petitioner had sent Reminders in July, September and October, 2005 (Annexure P-18 *colly*) to the respondent -DDA but in vain and after waiting for a period of about two years, the petitioner claims to have personally visited the office of the respondent -DDA in the year 2008 and had learnt that all the '*Tail End*' registrants have been allotted flats way back in the year 2004-05 and as per

the petitioner, his name was mistakenly missed from inclusion in the list of *'Tail End'* draw.

5. In September, 2008 petitioner had sought transfer of the registration of the flat in question in the name of his son and the acknowledgement slip of the respondent-DDA of September, 2008 (Annexure- P-19) has been relied upon being in token of petitioner's request of the aforesaid registration sought.

6. Regarding the missing priority, petitioner relies upon the Policy/ Guidelines of 25th May, 1995 (Annexure P-20) and the subsequent Policies of March, 2004 (Annexure P-23); December, 2004 (Annexure P-24) and June, 2006 (Annexure P-26) of the respondent-DDA and the precedents [Annexures- A-21 (*colly*), A-22 & A-27 (*colly*)] to assert that the petitioner was entitled to be considered under the draw for MIG Category of Flats by the respondent-DDA under the *'Tail End Scheme'* in the year 2004 but since the respondent-DDA due to their own fault had failed to include the name of the petitioner in the said draw of lots, therefore, the petitioner is entitled to allotment of an alternate flat at the cost prevalent in March, 2004.

7. Respondent-DDA in the counter affidavit to this petition is silent in respect of the Representations/ Reminders sent by the petitioner and what is emphasized in the counter affidavit by the respondent is that during the pendency of this petition, the case of the petitioner was put up for consideration for allotment of an alternate flat under the *'Tail End Priority Policy'* before the Chief Legal Advisor Committee (hereinafter referred to as the *'CLA Committee'*) on 4th December, 2009 and there the petitioner was also given a hearing and thereafter, by a speaking order (Annexure R-1) petitioner's case stands rejected, as the documents purportedly submitted by the petitioner in respect of the plea of change of address were not

authenticated or verified and that after formal closure of the *New Pattern Registration Scheme, 1979* (hereinafter referred to as the '*NPRS, 1979*') in question, respondent had advertised several times in the newspapers to invite the persons who had missed out their priority and such announcements were made by the respondent-DDA in the newspaper after every two to three years and thus, there is no explanation or justification for the delay of about thirty years in approaching the Court by the petitioner herein and infact, the petitioner is having driving license of Himachal Pradesh and voter identity card from Haryana, which fortifies the view of the decision making Committee of the respondent-DDA that the petitioner is not in need of a flat in Delhi and such efforts to revive the stale claims is at the instance of unscrupulous property dealers and so, belated allotment of flat to persons like the petitioner would defeat the essential obligation of the respondent-DDA to provide housing at concessional rates to the deserving residents of the city.

8. It stands noted in the order of 4th December, 2009 (Annexure R-1) of CLA Committee of the respondent that the petitioner was called upon to give an undertaking to not to sell the flat to be so allotted for a period of five years and the petitioner had refused to give the said undertaking, which had persuaded the CLA Committee to form a unanimous opinion that the petitioner was not in need of a flat in Delhi but is in greed of resale consideration. On the above noted premise, petitioner's claim of an alternate allotment of a MIG flat under the '*NPRS, 1979*' stands rejected by the CLA Committee of the respondent-DDA.

9. When this writ petition was heard, learned counsel for the petitioner had vehemently reiterated the stand taken by the petitioner in the writ petition and to assail the order of the CLA Committee (Annexure R-1) of the

respondent-DDA, it was urged that the condition not to sell the flat to be so allotted for a period of five years is unwarranted in view of the unreported decisions in W.P.(C) No. 9779/2009 '*Manjeet Bhalla Vs. DDA*' rendered on 21st December, 2009; W.P.(C) No. 13109/2009 '*Rattan Lal Vs. DDA*' rendered on 10th February, 2010; W.P.(C) No. 15822/2006 '*Mrs. Prem Kataria Vs. DDA*' rendered on 5th November, 2009; W.P.(C) No. 763/2007 '*Tej Pal Vs. DDA*' rendered on 24th November, 2008; W.P.(C) No. 8705/2006 '*Deepak Gaba Vs. DDA*' rendered on 2nd February, 2009. It was also urged by learned counsel for the petitioner that since the petitioner had been making the Representations from time to time and had been sending reminders, therefore, the plea of delay and laches cannot be raised against the petitioner and that it already stands noted in the order of the CLA Committee (Annexure R-1) that the case of the petitioner comes under the '*Tail End Policy*' and so, the petitioner was required to be considered in the draw of lots as per the aforesaid policy and due to fault of the respondent in not putting petitioner's name in the said draw of lots, the petitioner cannot be made to suffer, especially when the cancellation charges had been deposited by the petitioner and so, this petition on the strength of the aforesaid decisions deserves to succeed.

10. To strenuously oppose this petition, implicit reliance was placed by learned counsel for the respondent-DDA upon the order (Annexure R-1) of the CLA Committee of the respondent-DDA, to assert that this petition deserves to be thrown out being highly belated and it was pointed out that where the delay was of seventeen years, a Division Bench of this Court in LPA No. 484/2012 '*Brinda Ghosh Vs. DDA*' rendered on 11th July, 2012, has upheld the rejection of a similar petition.

11. The respective submissions advanced by both the sides have been duly considered in the light of the afore-noted decisions and the material on record was perused with the assistance of learned counsel for the parties at the hearing of this petition. In the considered opinion of this Court, this petition cannot be thrown out on the plea of delay and laches for the reason that the petitioner had been diligently sending Representations/ Reminders from the year 1990 to 1998 (Annexures P-8, P-9, P-10 to P-14) and again in the year 2004-05, Representations/Reminders (Annexures P-15 & P-16) were sent by the petitioner to the respondent-DDA, which were forwarded by respondent's own Communication of May, 2005 (Annexure P-17) to Director (Housing) of the respondent-DDA to look into petitioner's grievance but with no response and again in the year 2005, Representations/ Reminders [Annexure- P-18 (*colly*)] were sent by the petitioner to the respondent-DDA regarding which the counter affidavit is completely silent.

12. Even for the intervening period from October, 2005 till the filing of this petition in September, 2008 the delay would not be fatal for the reason that the respondent-DDA is completely silent in its counter affidavit regarding the persistent Representations/Reminders sent by the petitioner to the respondent during the period from 1990 till the year 2005. Therefore, the Division Bench decision in *Brinda Ghosh (Supra)*, would be of no avail to the respondent – DDA, as in the said case, there was persistent default and lack of diligence on the part of *Smt. Brinda Ghosh*, which cannot be attributed to the petitioner herein and thus, on the plea of delay and laches raised by the respondent –DDA, petitioner cannot be thrown out as for the lapse on the part of the petitioner in approaching the Court in the year 2008 after the last representation in the year 2005, the petitioner can be put to terms i.e. he would not be entitled to be considered for an alternate allotment

of MIG Flat at the rate prevalent in the year 2004, but at the prevalent rate of MIG Flat in September, 2008 i.e. the date of filing of this writ petition.

13. Now what falls for consideration is the order of CLA Committee of the respondent-DDA (Annexure R-11). What has heavily weighed with the respondent's CLA Committee in rejecting petitioner's case for consideration for an alternate allotment of an MIG Flat under the 'NPRS, 1979' , as reflected in the order (Annexure R-1) is the refusal of the petitioner to give an undertaking that he will not sell the flat so allotted for a period of five years. There is a wholesome basis for asking for such an undertaking and as noted in the decision of *Tejpal (Supra)*, a Division Bench of this Court in LPA No. 372/2006 had asked such allottees to give an undertaking and though such a requirement was not a general direction but this Court finds that there is a logical basis to obtain such an undertaking to counter malpractices of obtaining alternate allotment after a substantial period of time for monetary gain and with a view to ensure that such proposed allottees regain the flat for their own bonafide use.

14. In the instant matter, obtaining of such an undertaking assumes importance in view of the fact that the petitioner's voter identity card is of Haryana, his driving license is from Himachal Pradesh and the address disclosed by him in his Representations/ Reminders is of Panchkula in Haryana. In this background, refusal of the petitioner in giving an undertaking to not to sell the flat so allotted for a period of five years assumes importance and the requirement of making the payment for the flat so allotted from the bank of such allottee and to disclose the source of income as well, as noted in *Manjeet Bhalla (Supra)*, is well founded.

15. Neither it is disclosed in the respondent's order (Annexure R-1) nor in the counter affidavit as to what were the documents regarding the change of

address which were required to be authenticated and from which department and so, rejection of petitioner's case for an alternate allotment of flat was not justified, especially when in the order (Annexure R-1) itself it stands noted that the CLA Committee is of the unanimous opinion that petitioner's case is covered under the '*Tail End Priority Policy*'.

16. Since petitioner's case is covered by the policies/ circulars (Annexures P-20, 23, 24 & 26) and as the petitioner had approached the respondent-DDA with Representation (Annexure P-8) in the year 1990 i.e. within three years from the right of allotment accrued in the year 1987, so, the respondent is under the legal obligation to consider petitioner's case for allotment of alternate plot but not at the cost prevalent in the year 2004 because the petitioner had not taken note of the advertisements of the respondent- DDA regarding allotments to persons missing priority, which were regularly appearing in the newspaper every second or third year since the year 2004. Thus, the petitioner would be entitled to be considered for an alternate allotment by the respondent –DDA at the cost prevalent in September, 2008 i.e. the date of filing of this writ petition.

17. Accordingly, this petition is disposed of with direction to the respondent-DDA to consider petitioner's case for an alternate allotment of a plot under the 'NPRS, 1979' for an MIG Flat at the cost prevalent in or around September, 2008, subject to the petitioner submitting an undertaking to the respondent-DDA to not to sell the flat so allotted for a period of five years and to make the payment against the proposed flat from his own bank account while disclosing the source of his income in respect of the payments so made. Upon petitioner doing the needful within four weeks, let the respondent-DDA consider petitioner's case for an available alternate MIG

flat under the '*Tail End Priority Policy*' preferably within a period of twelve weeks by holding a mini draw of lots for such applicants/persons.

18. This petition is disposed of in aforesaid terms, with no order as to costs.

(SUNIL GAUR)
JUDGE

AUGUST 16, 2012

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