

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

% *Reserved on: 19th November, 2012.*
Pronounced on: 4th December, 2012

+ **LPA No.751/2012**

BHAGIRATH CHAUDRI (DECD.) THR. LRs. Appellant
Through: Ms. Richa Kapoor, Adv.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Sangeeta Chandra, Standing
Counsel for DDA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

: **D. MURUGESAN, CHIEF JUSTICE**

1. This intra-Court appeal is directed against the order dated 16.8.2012 made in the writ petition. The short question that arises for our consideration is as to whether the learned Judge is right while directing the respondent-DDA to consider the appellant's case for an alternate allotment of an MIG flat under the New Pattern Registration Scheme, 1979 (hereinafter referred to as the 'NPR Scheme') with further direction for the cost to be fixed prevalent in and around September, 2008 subject to the appellant 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.

2. The appellant was allotted a flat bearing No.686, Block/Pocket GH-14 G-17 in Paschim Vihar, Delhi. Later, the said allotment was cancelled by the respondent-DDA vide the communication dated 10.10.1990 and the appellant was requested to arrange to deposit a specified sum of cancellation charges in a period of 15 days from the date of the issue of the said communication failing which the registration will be deemed as cancelled. The communication further stated that in case the appellant pays the cancellation charges in time, the registration will be kept intact and the seniority will be at the 'Tail End'. The appellant had paid the said amount, though belatedly. The appellant while depositing the said amount had also urged the DDA to allot an alternate flat in the next draw of lots instead of at 'Tail End'. The said request was reiterated by the appellant till the year 2000, but there was no response. In the meantime, the appellant retired during December, 2000, and a reminder was sent to the respondent during July, 2004 after a period of four years. It appears that there were subsequent reminders by way of various representations and ultimately, the appellant came to know that all the 'Tail End' registrants were allotted flats way back in the year 2004-05 and the name of the appellant mistakenly was missed from the inclusion in the list of 'Tail End' draw.
3. When the matter stood at that stage, the appellant wrote to the respondent-DDA during September, 2008 for transfer of the registration of flat in question in the name of his son. It was also

contended that as per the subsequent Policy/Guidelines of 25.5.1995, March 2004, December 2004 and June 2006 of the respondents DDA, his request for allotment of flat should be considered under the draw for MIG category of flats under the 'Tail End Scheme' of the year 2004. Since the respondent-DDA did not include the name of the appellant in the said draw of lots, the appellant is entitled for allotment of alternate flat at the cost prevalent in March, 2004.

4. As the request of the appellant was not considered, the writ petition came to be filed for a direction to the respondent-DDA to allot any MIG flat at the cost prevalent in March, 2004. The writ petition was defended by the DDA on the ground that during the pendency of the writ petition, the request of the appellant was registered for an alternate flat under 'Tail End Priority Policy' by the Chief Legal Advisor Committee and the appellant was also given a hearing. Thereafter, the request was rejected by speaking order on the ground that the documents submitted by the appellant in respect of the plea of change of address were not authenticated or verified and after formal closure of the NPR Scheme, the respondent advertised several times in the newspapers to invite the persons who had missed out their priority and in spite of that, the appellant did not apply. The writ petition was also opposed by the DDA on the ground of delay and laches.
5. The learned Judge did not agree with the stand of the respondent-DDA that the writ petition should be dismissed on the ground of laches and ultimately, proceeded to consider the request of the

appellant on merits. Ultimately, the learned Judge in Paragraph 17 of his order issued the following directions:

“17. Accordingly, this petition is disposed of with direction to the respondent-DDA to consider petitioner’s case for an alternate allotment of 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.”

6. As the question of laches/delay was considered in favour of the appellant and there has been no challenge made by the DDA, we are not inclined to go into that question and consequently, are inclined to consider the case on merits.
7. It is true that the appellant was allotted a flat, which was cancelled by the DDA far back vide its communication dated 10.10.1990. Admittedly, the appellant did not pursue the matter till 2004 initially and even thereafter till 2008 when he sought only transfer of registration of the flat in the name of his son. Though the request of the appellant for allotment of an alternate flat under ‘Tail End Priority Policy’ was rejected sometime during December, 2009, according to the appellant, the said rejection was made as the appellant opposed the condition imposed by the respondent-DDA to give an undertaking to

not to sell the flat to be so allotted for a period of five years and the appellant had refused to give the said undertaking. The question as to whether the CLA Committee was justified in insisting such an undertaking was considered by the learned Judge and it has been observed that the appellant's Voter Identity Card was issued in the State of Haryana, his Driving Licence was obtained from the State of Himachal Pradesh and the address disclosed by the appellant in his representation/reminder was of Panchkula in Haryana.

8. In view of the above, the learned Judge has correctly observed that the imposition of the condition of the appellant to give the undertaking to not to sell the flat so allotted for a period of five years was justified. It must be kept in mind that the allotment of the appellant was cancelled far back in the year, 1990 and only as per the scheme, he was allowed to pay the cancellation charges in order to keep intact the registration at 'Tail End' category. From 1990 onwards, the appellant was not diligent to prosecute the claim. Of course, the DDA had taken a lenient view and placed the request of the appellant before the CLA Committee sometime during the year, 2009. In these circumstances, coupled with the fact that particularly, when the appellant had produced the documents which disclosed his residence in at least two States, the condition cannot be held to be unreasonable and for reason, we are not inclined to entertain the challenge to the said direction.
9. As far as the fixation of cost prevalent in and around September, 2008 is concerned, it appears that the learned Judge has taken into consideration of the fact that the appellant had waited for almost 18 years to make a request for transfer only during September, 2008

which date could be taken for fixing the cost. Even though the appellant had defaulted in payment of the cost of flat allotted to him which resulted in cancellation and there has been a delay in payment of cancellation charges as well, a lenient view has been taken by the DDA. In such event, the appellant cannot now turn around and challenge the fixation of cost prevalent during the year, 2008.

10. For all these reasons, we find no merit in this appeal. Accordingly, this appeal is dismissed.

CHIEF JUSTICE

(RAJIV SAHAI ENDLAW)
Judge

DECEMBER 04, 2012

pmc