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

+ W.P.(C) 9059/2011

% **Judgment dated 24.09.2012**

BS BHALLA Petitioner
Through: Mr. R.K. Saini, Advocate.

versus

DDA Respondent
Through: Mr. Arun Birbal, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL).

1. Rule.
2. At the request of the counsel for the parties, writ petition is set down for final hearing and disposal.
3. Necessary facts to be noticed for the disposal of this writ petition are that the petitioner had applied to the DDA under the New Pattern Registration Scheme, 1979 (NPRS-1979) for allotment of an LIG flat at Kondli Gharoli, Delhi vide registration No.13405. Till the year 1989, no allotment was made in favour of the petitioner, at the same time the DDA introduced another scheme titled Awas Sakar Yojna (ASY) 1989. Under this scheme, the registrants of NPRS – 1979 could get their registration transferred from a cooperative society and get allotment of a plot of land to build multi - storyed Cooperative Group Housing flats. On account of the long wait, the petitioner was tempted to take the benefit of the ASY scheme. At the request of the petitioner, the registration of the petitioner stood transferred to ASY 1989. Despite the registration of the petitioner

having been transferred, the DDA included the name of the petitioner in the draw held under the NPRS 1979 Scheme in the year 1990. The petitioner was successful and he was allotted an LIG flat in Kondli Gharoli, Delhi. Despite this allotment having been made, the demand-cum-allotment letter was not issued to the petitioner. The petitioner also could not get any benefit under the ASY-1989 Scheme upto the year 1991. On 7th October, 1992, the ASY scheme was closed by the DDA and the registration of the persons like the petitioner, stood transferred back to the NPRS, 1979 with an entitlement to get a flat thereunder as per their seniority. DDA even formed a policy later on stipulating that such persons will get the flat at the old cost when their entitlement become due. In the year 1991 itself, i.e. on 03.06.1991 the petitioner made a representation to the DDA that since no allotment was made in his favour under the ASY scheme, therefore, the benefit of the LIG flat allotted under the NPRS 1979 Scheme be handed over to him. No response was received from the DDA to the said representation. Similarly situated persons approached this Court, as the DDA had closed the ASY Scheme on the one hand and on the other hand the applicants were not being granted benefit of their priority under the NPRS 1979 scheme. This issue was finally resolved by a judgment delivered by this Court in the case of *Frontier Avas Sakar Cooperative Group Housing Society and Ors. Vs. DDA* decided on 1st July, 1996 in which the DDA made a statement that registration of all the persons, who could not get any benefit under the ASY 1989 Scheme would stand transferred back to NPRS 1979 Scheme and they will be entitled to get flats as per their seniority. According to the petition, the petitioner made two more representations to the DDA on 12th June, 2003 and 26th March, 2004, explaining the facts of his case and requesting that a flat be allotted in the same zone and at the same cost of the year 1991. To these representations also no response was received

from the DDA. After the judgment of this Hon'ble Court in the case of *Frontier Avas Sakar Cooperative Group Housing Society (Supra)*, the DDA approved the case of the petitioner for allotment in the same area and at the same cost. In March 2006, the name of the petitioner was included in the draw of lots and an LIG flat was allotted to the petitioner in Lok Nayak Puram, at the current cost, instead of Kondli Gharoli, in an illegal, arbitrary and mindless manner.

4. The petitioner on gaining knowledge about the said allotment made a representation to the DDA on 16th April, 2007, as the allotment – cum – demand letter was not received by the petitioner, pointing out to the DDA that he was entitled to an LIG flat in the East Zone/East Delhi as per the approval given in his case and that too at the cost of the year 1986. No response was received by the petitioner to the said representation as well. On personal visits and queries made by the petitioner in this regard, it was informed by the DDA officials to the petitioner that the matter was being looked into by the DDA and the petitioner should wait for some time for the DDA to take appropriate action in the matter and he would be informed by the DDA in due course of time. After patiently waiting for a period of about two years, the petitioner again made a representation to the DDA on 12th May, 2009, reference was given to the earlier representation dated 16th April, 2007. Another reminder was issued on 9th July, 2009. In the absence of any response from the DDA, the petitioner made an application under the Right to Information Act on 3rd June, 2010, to get information about his case, in response thereto, i.e. on 20.07.2010, the petitioner was informed that the original record of the file was not readily available, and as and when the same become available suitable reply would be sent to the petitioner. Thereafter the petitioner again made representations to the DDA in the matter, on 26.10.2010, 02.02.2011 and 21.4.2011 pointing out that the allotment letter in respect of the flat

allotted in Loknaya puram in March 2006 was not received by him and that his case was covered under the policy and he be allotted a flat in Kondli Gharoli.

5. In the absence of any response from the DDA, the petitioner has approached this Court. The main thrust of argument on the part of the counsel for the petitioner is that the act of the respondent DDA in allotting a flat in Loknaya puram, instead of Kondli Gharoli to the petitioner and that too at the current cost instead of the old cost, is not only in violation of the Rules, Regulations and Policy but also the principles of equity, justice and good conscience. It is also submitted that there is complete inaction on the part of the Respondent DDA in not responding to the representations made by the petitioner. It is submitted by the learned counsel for the petitioner that the conduct of the DDA shows the callous and insensitive attitude of the DDA towards the allottees and its inefficient and grossly negligent way of working while dealing with the allottees. Under these circumstances the petitioner prays that a flat be allotted to him at Kondli Gharoli, Delhi, instead of Lok Naya Puram at the old cost.
6. Learned counsel for the DDA has opposed this petition and submits that the petitioner was allotted a flat in the year 2006, despite the time granted, the payment was not made by the petitioner, which led to the cancellation of the flat and thus, no relief can be granted to the petitioner.
7. Elaborating his arguments further it is submitted by the learned counsel for the DDA that in the light of circular dated 28.05.2003 and in response to the representations of the petitioner, the competent authority vide order dated 05.04.2004 had approved the allotment of a flat in favour of the petitioner. It is further submitted that as on that date no vacant flat was available in Kondli Gharoli, thus with the approval of the competent authority, in the draw held on 23.03.2006, an LIG flat bearing No.

429, Ground floor, Pkt A, Block A, Lok nayak puram was allotted in favour of the petitioner. Counsel for the respondent next submits that an allotment letter was sent to the petitioner on the address mentioned in the NPRS 1979 registration application but the same came back as undelivered. Thereafter show cause notice dated 16.03.2007 and cancellation letter dated 22.06.2007 were also served by the DDA which also came back with an endorsement "left" by the postal authority. It is next contended by the learned counsel for the respondent DDA that as the allotment has already been cancelled vide letter dated 22.06.2007 the petitioner now at this stage cannot claim entitlement for allotment. It is further submitted that even otherwise, it is clear from the petitioner's own conduct that he was aware about the allotment of flat in Lok Nayak puram after due approval of the competent authority and he chose not to accept the same. It is also submitted by the learned counsel for the DDA that the action on the part of the DDA is therefore, legal and justified in all respects and the petitioner had no right of allotment of flat in the locality of his choice.

8. Mr. Birbal, however, does not dispute the existence of various representations made by the petitioner in the file of the DDA. In response to the representation dated 12.06.2003 made by the petitioner to the DDA, it is submitted by the learned counsel for the DDA that vide the said representation it was intimated to the DDA by the petitioner on an affidavit that he has not been allotted any flat in Delhi, by DDA or by any society and that he was not interested to take the flat. He submits that all the letters have been typed in the same font and thus, there is uncertainty about the authenticity of these documents. Mr. R.K. Saini, learned counsel for the petitioner, in response to the submissions made by Mr. Arun Birbal, learned counsel for the respondent, states that when he learnt about the issuance of a demand letter in the year 2006, the

petitioner immediately approached the DDA and made several representations. Mr. R.K.Saini, relies upon a policy of the DDA dated 28th May, 2003, to buttress his arguments that the petitioner was entitled to a flat in the same zone and on the prevailing rates at that time, when the petitioner was entitled for allotment as per his priority number in the NPRS Scheme and not about the East Zone. He further submits that the DDA cannot shift the burden of non-payment on the petitioner, as the petitioner has been waiting for a flat since the year 1979.

9. I have heard learned counsel for the parties and considered their rival contentions. Some of the undisputed facts in this case are; that the petitioner applied under the NPRS Scheme in the year 1979. In view of the ASY Scheme, which was launched in the year 1989, the petitioner transferred himself to the said scheme in the hope of an early allotment in his favour. It is during this period that the DDA included the name of the petitioner in the draw, which was held under the NPRS Scheme. The name of the respondent was included inadvertently. The petitioner, however, at that stage also requested the DDA to hand over the flat to him as in any case he had not derived any benefit of the ASY 1989 Scheme, which was not agreed to by the DDA. As per the judgment in the case of *Frontier Avas Sakar Cooperative Group Housing Society (supra)*, relied upon by counsel for the petitioner, and which position is not disputed on closure of the ASY Scheme, the application of the petitioner was reverted back to the NPRS 1979 Scheme. DDA thereafter formulated a policy dated 28th May, 2003, which is reproduced below:-

“It has been decided that all the registrants of original NPRS Scheme 1979 (LIG & MIG) who had opted for Awas Sakar Yojna but who had not been identified as members of the society would continue to remain the members of NPRS-1979 alongwith

their priority numbers and would be entitled to the allotment on the prevailing rates at that time when they were entitled for allotment according to their priority numbers.”

10. Reading of this policy would show that DDA decided that all registrants of the original NPRS Scheme and who had opted for ASY Scheme, but had not derived any benefit, would continue to remain members of the NPRS 1979 Scheme alongwith their priority numbers and they would be entitled to the allotment on the prevailing rates at that time, when they were entitled for allotment according to their priority numbers.
11. Admittedly, the priority of the petitioner matured in the year 1990, and the petitioner was not allotted a flat. Thus, the allotment made in favour of the petitioner in the year 2006, had to be according to prevailing rates at the time, when the petitioner was entitled for allotment as per his priority number, which would mean the year 1990. DDA did not raise any demand on the petitioner, as per the circular of 28th May, 2003, which forced the petitioner to make repeated representations to the DDA which were not replied to, but simultaneously the allotment made by the DDA in favour of the petitioner was cancelled on account of non-payment of money. Ordinarily, the effect of non-payment of money and cancellation of allotment would lead to cancellation of a flat and DDA would not be faulted for the same, however, in this case the non-payment by the petitioner was on account of the fact that DDA had allotted a flat in favour of the petitioner at the current rate, which the DDA could not have done in view of their own circular of 28th May, 2003. While, on the one hand the petitioner would be entitled to allotment as per the prevailing rates of the year 1990, when petitioner’s priority number matured and he was entitled for allotment, and the petitioner cannot take benefit for the

period 2006 till the date, when the writ petition was filed. Else the petitioner should have approached the Court within a reasonable time and the DDA cannot be put to disadvantage for the period between 2006 and 2012.

12. The petitioner belongs to the lower income group and was aspiring to own a property in Delhi and thus he applied for an LIG flat, as far back in the year 1979. His anxiety to have the roof over its head is borne out from the fact that he changed his category from NPRS to ASY Scheme in the hope of an earlier allotment, which did not happen. Petitioner had to revert back to the NPRS Scheme and he waited patiently for allotment in the NPRS Scheme with the hope that his first allotment of the year 1990 would not go completely waste. The only mistake committed by the petitioner was that he kept insisting for a flat in the same area i.e. East Zone, as was allotted to him in the year 1990.
13. In view of the Policy of 28th May, 2003, and the peculiar facts of this case, the writ petition is allowed. The petitioner would be entitled to allotment of an LIG flat either at Lok Nayak Puram or in any other area at the cost prevailing in the year 1990, subject to petitioner paying interest from July, 2006, till 30th September, 2012 @ 12% p.a. The cost of the flat and 12% interest will be deposited by the petitioner within one month of raising of the fresh demand-cum-allotment letter.
14. Writ petition is disposed of in above terms.

G.S.SISTANI, J

SEPTEMBER 24, 2012

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