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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 964/2010 & CM 1987/2010 (direction)

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Judgment dated 24.01.2013

HUKUM CHAND JAIN

..... Petitioner

Through: Mr.S.D. Singh, Advocate

versus

MCD

.....Respondent

Through: Mrs.Mini Pushkarna, Standing Counsel with
Mr. Shantanu Tyagi, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. With the consent of counsel for the parties, the writ petition is set down for final hearing and disposal. In the year 1984, the petitioner being fully eligible for the allotment of the plot/ shop under the scheme framed by the respondents to develop the plot at Sanjay Gandhi Transport Nagar, on "No profit no loss" basis, on self- finance pattern, applied for the allotment of a shop in Sanjay Gandhi Transport Nagar, Phase-II, Delhi, in accordance with the rules. As required the petitioner deposited a sum of Rs.15,000/- with the respondent no. 2 as initial amount towards the allotment and became eligible for the allotment in accordance with the rules. On 08.06.1982 after considering the eligibility of the petitioner, as per the criteria laid the application along with the initial amount deposited was accepted by the respondents. Thereafter, vide communication dated 24.05.1985 the petitioner was called upon to deposit a further sum of Rs.15,000/- by 10.06.1985 towards the cost of the plot/shop which was to be allotted to the petitioner after the development by using the money of

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the applicants. On 01.06.1985 in pursuance to the demand made by the respondents, the petitioner deposited the second instalment vide pay order no. 241622 with the respondents and a receipt no. 281039 was issued to the petitioner as regards the payment made. According to the petition, after deposit of Rs.30,000/- as demanded, the petitioner waited for the respondents to inform him with regard to the status of his application but no information was received by him. Meanwhile, according to the petitioner the petitioner shifted his office from 18/6, Shakti Nagar, Delhi to D-10, Prashant Vihar, Rohini, Delhi-110085 in the year 1997 the intimation of which was given by the petitioner to the respondents vide his earlier communications written in the year 1997. It is also the case of the petitioner that the petitioner made several visits to the office of the respondents to enquire about the development relating to the allotment of the plot/shop to the petitioner, however, he was informed that the petitioner would be communicated about the stage of development and the steps to be taken, in due course of time. Having received no communication for a long period from the respondents and on account of the various news items appearing in the newspapers stating that the delay is being caused by the respondent authorities in making the allotment of the plot/shop in Sanjay Gandhi Transport Nagar, Phase-II, Delhi, the petitioner made enquiry in the office of the respondents and it is only in the year 2006 that the petitioner learnt that the respondents has issued a notice to him in the year 2001 calling upon the petitioner to appear personally before the authority. The grievance of the petitioner is that firstly the said notice was not received by him and secondly, without granting any opportunity to the petitioner, the allotment was cancelled and petitioner was called upon to seek refund of the amount so deposited vide letter dated 22.12.2008. All representations made by the petitioner to the

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respondents stand rejected. It is the case of the petitioner that the petitioner was eligible for an allotment of a shop in the Sanjay Gandhi Transport Nagar, Phase-2 and he had complied with the requirements of the respondents. The allotment made in his favour has been illegally cancelled by letter dated 22.12.2008. It is also the case of the petitioner that after the change of his address, he informed the respondents about the same whereas the counsel for the respondents submits that the petitioner did not inform the respondents with regard to the change of the address prior to the order of cancellation.

2. It is submitted by Ms. Pushkarna, learned counsel for the respondents that on the basis of the original record which has been produced in Court, it is clear that the petitioner only informed the respondents in the year 2005 and there is no communication prior thereto with regard to the change of address. It is further submitted that since by that date, the allotment made in favour of the petitioner stood cancelled, the respondents cannot be faulted on account of the non-communication of the change of address by the petitioner to the respondents.
3. Mr. S.D. Singh, learned counsel appearing for the petitioner submits that assuming without admitting that the communication of the year 2001 was not received by the respondents, the respondents cannot take such a harsh view in the matter and further the petitioner is willing to accept a plot at the current rate, if available as the initial amounts deposited by the petitioner have not been accepted by him till date and continue to remain with the respondents.
4. Counsel for the respondents submits that all allotments in the Sanjay Gandhi Transport Nagar, Phase-2 have been stayed by the orders of a Division Bench of this Court. She further submits that there are large

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number of applicants while there are only a few plots which are available. Counsel for the respondents also submits that in addition to individual intimation, a public notice was also issued in a popular daily newspaper intimating public at large stating therein that a final opportunity was granted to those applicants who could not appear before the screening committee also stating the date when the applicants had to appear with supporting documents.

5. Counsel for the petitioner submits that the petitioner is an illiterate person and thus, he did not have the occasion to go through the newspapers.
6. I have heard counsel for the parties. It is not in dispute that the petitioner applied to the respondents for allotment of a plot at the Sanjay Gandhi Transport Nagar. Petitioner initially deposited a sum of Rs.15,000/-. Vide a communication dated 24.05.1985, the petitioner was called upon to deposit another sum of Rs.15,000/- by 10.06.1985 which amount also stands deposited. The original record which has been produced by the respondents does not support the case of the petitioner that the petitioner informed the respondents about the change of his address. Thus the respondents can not be faulted for the cancellation of the plot.
7. Having regard to the facts that the information to the petitioner regarding the cancellation of his allotment was given only in the year 2008 prior to the formal order of cancellation. To meet the ends of justice, the writ petition is disposed of with the following directions:-

- (i) The petitioner if found eligible would be considered for allotment of a shop at Sanjay Gandhi Transport Nagar, Phase-II, Delhi at the current rate subject to availability of plots and subject to orders which may be passed by the Division Bench with regard to the allotment.

- (ii) The seniority of the petitioner would be protected but he will be granted an allotment only at the current rate as agreed by the petitioner.

8. Accordingly, writ petition and the application are disposed of in above terms.


G.S.SISTANI, J

JANUARY 24, 2013/rs

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