

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

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Date of Decision: 02.05.2013

+ W.P(C) No. 965/2013 & CM No.1847/2013 (for stay)

SMT. KISHU

..... Petitioner

Through: Mr. R.K. Saini, Advocate
versus

DDA

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

**CORAM:
HON'BLE MR. JUSTICE V.K.JAIN**

JUDGMENT

V.K.JAIN, J. (ORAL)

Late Shri Rakesh Kumar Mathur, husband of the petitioner got registered himself with the respondent-DDA for allotment of an LIG Flat under its New Pattern Registration Scheme, 1979 (NPRS-1979). Late Shri Rakesh Kumar Mathur expired on 2.12.1994 and the petitioner before this Court is his widow. In his application form, late Shri Rakesh Kumar Mathur had disclosed his residential address as 2/C, Schedule-B, President Estate, New Delhi and his occupational address as, Bank of India, Shahdara Branch, G.T. Road, Shahdara, Delhi. He has also annexed his salary certificate issued to him by Bank of India, as proof of his income. No intimation to DDA was given when Shri Rakesh Kumar Mathur expired and no request was made by the petitioner for mutating the registration in her name.

2. On the turn of Shri Rakesh Kumar Mathur maturing for allotment of a flat from DDA, an LIG Flat bearing number 584, First Floor, GR-V, Sector-14, Pocket-

I, Dwarka, New Delhi came to be allotted in his name, in a draw held on 11.2.2000 and a demand-cum-allotment letter dated 30.3.2000/31.3.2000 was issued in his name at his residential address. The demand-cum-allotment letter was returned undelivered since the petitioner had, in the meanwhile, shifted from the place to which the letter was sent. No attempt was, however, made by DDA to send the demand-cum-allotment letter at the occupational address disclosed in the application form.

3. The demand-cum-allotment letter required the allottee to deposit the amount demanded therein latest by 12.7.2000 whereafter the allotment was to be got automatically cancelled. Since the aforesaid letter had not been received by the petitioner, no payment could be made by her, as a result of which, the automatic cancellation clause came into force.

4. The petitioner claims that in July, 2010, she came to know that all the registrants under LPRS-1979 had been allotted flats by DDA. Thereupon, she made a representation to DDA on 9.8.2010, informing DDA about the death of her husband on 2.12.1994 as also to the fact that the flat allotted to her husband in Dwarka in the year 2000 had been cancelled due to non-delivery of the demand letter at the residential address. DDA was requested to mutate the registration in her favour and also allot the flat to her in Dwarka. Vide letter dated 7.6.2011, DDA asked the petitioner to submit certain documents mentioned in the letter. Some clarification was also sought from her. Vide letter dated 7.10.2011, the DDA requested the petitioner to submit family details with documentary proof so that the case could be processed accordingly. The petitioner submitted various documents sought by the DDA and also provided the clarification sought by them. Vide letter dated 1.10.2013, the petitioner has again been asked to submit full family details, voter identity card, ration card etc. showing her as wife of late Shri Rakesh Kumar Mathur. This letter available on the file of DDA indicates that the purpose of

seeking these documents was transfer of registration for refund purpose. However, the earlier letters did not indicate that the documents were sought for the purpose of refund of the registration money to the petitioner. Mr. Saini submits that the letter dated 1.11.2013 has not been received by the petitioner till date.

5. It is an admitted position that the petitioner did not intimate the death of her husband to the petitioner. It is also an admitted position that prior to 9.8.2010, the petitioner did not request DDA for mutation of the registration or allotment in her name, though her husband expired way back on 2.12.1994, meaning thereby that she kept silent for almost 16 years.

It is also not in dispute that the allotment letter sent in the name of the husband of the petitioner at the residential address disclosed in the registration application was received back unserved because after the death of her husband, the petitioner had shifted from that place to some other place.

6. It is true that DDA did not make any attempt to send the demand-cum-allotment letter at the occupational address of late Shri Rakesh Kumar Mathur, which he had disclosed in the registration application. Ordinarily, when a registrant discloses residential address as well as the occupational address and the demand-cum-allotment letter sent at one address is received back unserved, DDA is expected to send the letter at the second address available with it. However, the facts in this case are somewhat different. The husband of the petitioner having expired on 9.12.1994, no useful purpose would have been served by sending the allotment letter at the occupational address disclosed by him in the registration application. Even if DDA had undertaken such an exercise, it would have been an exercise in futility.

7. A somewhat similar issue came up for consideration before the Division Bench of this Court in Satnam Dass Narang vs. DDA [LPA No.16/2013, decided on 8.1.2013]. In the above referred case, the demand-cum-allotment letter sent at

the residential address of the registrant was received back unserved since he had already shifted from the residential address disclosed at the time of registration. Another allotment was made to him by DDA and this time also, the allotment letter was received back unserved since the appellant in that case had by that time shifted from that address as well. The demand-cum-allotment letter was then sent at his occupational address but since he had shifted that place, the letter was returned back unserved. DDA issued a letter followed by a notice to the appellant at the residential address where he had already shifted, but the letter and notice were received back unserved. The letters and notice were not sent at the occupational address of the appellant. The allotment ultimately came to be cancelled by DDA. Being aggrieved on account of non-allotment of the flat to him, the appellant filed a writ petition. The grievance made by the appellant was that no effort was made by DDA to send the demand-cum-allotment letter to the Head Office, address of which was available on the income certificate filed by him in the application. The writ petition filed by the appellant having been dismissed, the aforesaid appeal was filed by him. Rejecting the appeal, the Division Bench of this Court held as under:

“6. It can hardly be disputed that once the appellant had shifted from the Faridabad House, he ought to have informed DDA about change of his address and sought incorporation of the new address in its record. It is not as if the appellant was not aware of the necessity to intimate change of address to the respondent. At the time of registration, he was residing at D-49, Sudarshan Park, New Delhi, and when he shifted to Faridabad, he duly intimated the change of residence to DDA vide letter dated 12th March, 1985. There is no reason why the appellant should not have got the address changed in the record of the respondent, on his shifting from the House in Faridabad. Similarly, on his being transferred from the dispensary in South Patel Nagar, the appellant should have intimated DDA about change of his occupational address so that in the event of allotment, the demand letter could be sent to him either at his residential address or at his occupational address. Having not

done so, the appellant was clearly negligent in taking care of his own interests.

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10. Admittedly, the appellant was not posted in the Headquarter of DGHS at the time the demand cum allotment letter was despatched by DDA. Therefore, no useful purpose would have been served by sending the said letter to the Headquarter. In any case, the Headquarter was not the occupational address given by the appellant to DDA. As regards failure to send the letter dated 28.11.1995 and the notice dated 19.01.1996 to the occupational address given in the application, since the demand cum allotment letter sent at the occupational address disclosed in the application form had already been received back unserved, no useful purpose would have been served by sending those communications to that address. Any such attempt would only have been an exercise in futility.”

8. There is no explanation from the petitioner for not intimating death of her husband to DDA, and not seeking mutation in her name for as many as 16 years. Since, the husband of the petitioner had died much before the allotment came to be made to him, no purpose would have been served by DDA sending demand-cum-allotment letter at the occupational address disclosed by him in the application. Therefore, the petitioner cannot seek allotment of a flat to her on account of failure of DDA to send the same at the occupational address disclosed by her husband in the registration form. The petitioner obtained compassionate appointment in the same bank in which her husband was working. The petition, however, does not disclose when she got the compassionate appointment. There is no averment that at the time demand-cum-allotment letter was issued, the petitioner was already working in the same bank in which her husband used to work in his lifetime. In any case, it is an admitted position that the petitioner was not posted in the branch in

which her husband was posted. Therefore, the employment of the petitioner with the bank in which her husband was working would also make no difference in the facts and circumstances of this case.

9. In my view, since the allotment stood automatically cancelled the petitioner is not entitled to any allotment from DDA on the strength of the registration of her husband, nor she is entitled to any of the reliefs claimed in this petition.

For the reasons stated hereinabove, no justifiable ground has been made out for allotment of a flat to the petitioner by DDA. The petition is devoid of any merit and is hereby dismissed. DDA is, however, directed to refund the registration money to her along with interest which has accrued on it within a period of eight weeks from today. There shall be no orders as to costs.

V.K. JAIN, J

MAY 02, 2013/rd