

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

% Judgment reserved on : 17.05.2013
Judgment pronounced on : 20.05.2013

+ **W.P(C) No. 1008/2012 & CM 2218/2012**

S.C KOHLI Petitioner
Through Mr. Rajat Aneja and Mr. Ishaan
Chhaya, Advocates

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through Mr. Arun Birbal, Adv. for DDA

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

V.K. JAIN, J.

1. The petitioner got registered for allotment of a flat under the New Pattern Housing Registration Scheme-1979 (NPRS-1979) of the DDA. On the turn of the petitioner maturing, the flat bearing number 383, Block M-3, Pocket-I, Sector A-9, Narela came to be allotted to the petitioner in a draw of lot held on 31.12.2003 and a demand-cum-allotment letter dated 24.3.2003/31.3.2003 was issued to him at the address A-127, Shankar Garden, Vikas Puri, New Delhi, which was the address disclosed by the petitioner in the registration application. The case of the petitioner is that the said letter was not received by him, whereas the case of the respondent-DDA is that the letter was sent through speed post, was duly received by the petitioner and the acknowledgment signed by the petitioner was also received by them from the post office.

2. W.P(C) No.2376/2006 was filed by the petitioner alleging therein that the said demand-cum-allotment letter had not been received by him. He sought direction to DDA to allot a house to him against his registration. The said petition came to be decided vide order dated 28.2.2006 and to the extent it is relevant, the said order reads as under:

“7. Record of DDA shows that the letter which was sent to the petitioner by registered post was not received back by DDA i.e. it did not come back unserved.

8. It is obvious that the petitioner has lost entitlement as he did not pay.

9. Learned counsel for the petitioner states that the petitioner did not receive the demand-cum-allotment letter.

10. However, what is relevant is that DDA posted the letter at the correct address and the said letter has not been received back unserved. There is a presumption of service.

11. But one fact weighs with me. Petitioner has waited for a flat since 1979. DDA is allotting flats at the tail end priority. There may be a possibility that after all the claims are satisfied, a flat may be available for allotment to the petitioner. If a flat is available, Vice Chairman, DDA may consider allotting the same to the petitioner provided petitioner pays the current cost when flat is allotted to him.

12. Writ petition stands disposed of directing that if the petitioner were to make a representation to the Vice Chairman, DDA within 4 weeks from today expressing his willingness to pay at the current cost for a flat if one is allotted to him, current cost being as on date of allotment, Vice Chairman, DDA would consider the representation and if after satisfying the claim of all the registrants, a flat remains unallotted to anyone, would

consider allotting the said unallotted flat to the petitioner.”

3. In view of the order dated 28.2.2006, the petitioner submitted a representation to DDA on 10.3.2006 whereby he sought allotment of an MIG flat at the current cost at the tail-end priority. During consideration of the case of the petitioner in terms of the order dated 28.2.2006, the acknowledgment card signed by the petitioner came to be located by DDA, whereby it was confirmed that the demand letter had been duly received by the petitioner. The request of the petitioner was rejected by the Vice-Chairman, DDA vide order dated 16.7.2009 and he was asked to submit documents required for refund of the registration money. The said order was conveyed to the petitioner vide communication dated 28.7.2009. Being aggrieved from the rejection of the allotment, the petitioner filed W.P.(C) No.6121/2010 which came to be disposed of by this Court vide order dated 9.9.2010.

The order dated 9.9.2010 passed in W.P(C) No.6121/2010, to the extent it is relevant, reads as under:

“This court vide its order dated 28.02.2006 in W.P.(C.) No. 2376/2006 had directed the respondent/DDA to consider allotment of an MIG flat to the petitioner, if one such flat is available after satisfying the claims of all other persons in the tail end priority. The respondent/DDA vide its impugned order dated 28.07.2009 has declined allotment of an MIG Flat to the petitioner on the ground that the request of the petitioner for restoration of allotment of MIG Flat No. 383, First Floor, Block M-3, Pocket-I, Sector A-9, Narela, Delhi, cannot be acceded to. The impugned order passed by the respondent/DDA was

prior to the order of this court dated 28.02.2006 in W.P.(C.) No. 2376/2006. Hence, the impugned order dated 28.07.2009 (Annexure P-10 at page 37 of the paper book) is hereby quashed.

Ms. Sangeeta Chandra, learned counsel appearing on behalf of the respondent/DDA, submits that the representation of the petitioner for allotment of an MIG Flat shall be decided by the respondent/DDA in terms of court order dated 28.02.2006 in W.P.(C.) No. 2376/2006 within such reasonable time as may be given by the court

In view of the foregoing and having regard to the facts and circumstances of the case, this writ petition is finally disposed of with directions to the respondent/DDA to decide the representation of the DDA dated 10.03.2006 (Annexure P-4 at page 28 of the paper book) in terms of court order dated 28.02.2006 in W.P.(C.) No. 2376/2006 after giving a personal hearing to the petitioner in the matter as expeditiously as possible but not later than four months from today.

Ms. Sangeeta Chandra, learned counsel appearing on behalf of the respondent/DDA, submits that the court may fix the date and time for appearance of the petitioner before the Director (Housing), DDA, for the purpose of giving hearing to him in the matter.

The learned counsel appearing on behalf of the petitioner says that the petitioner shall appear before the Director (Housing), DDA, on any date that may be fixed by the court. Accordingly, the petitioner is hereby directed to appear before the Director (Housing), DDA, for personal hearing at 03:00 P.M. on 28.09.2010.”

4. The petitioner made yet another representation to DDA referring to the order dated 9.9.2010 and seeking allotment under NPRS-1979. Since no allotment was made to him, a contempt petition being Cont. Cas ©

No.273/2011 was filed by him. During pendency of the contempt petition, an order dated 6.5.2011 was passed by Director (Housing)-I of DDA referring to the order passed by this Court on 28.2.2006 in W.P© No.2363/2006 and the order dated 9.9.2010 passed in W.P(C) No.6121/2010. The representation made by the petitioner was rejected with the following order:

“....The VC, DDA after taking note of all the factual aspects found that after the passing of the order dated 28.2.2006 the depts has found the POD (Proof of Delivery) which reveals that the demand letter had, in fact, been received by Shri Kohli and the contention of Shri Kohli regarding receipt of demand letter is, therefore, incorrect. The demand letter was sent at the correct address by DDA and was duly received by Shri Kohli, Shri Kohli did not make payment in terms of DAL and, therefore, the VC, DDA opined that no case was made out for allotment and, therefore, rejected the representation. A copy of the decision of the VC, DDA taken on 16.7.2009 is annexed hereto as ANNEXURE ‘A’ and a copy of the POD is annexed hereto as ANNEXURE ‘B’.

However, when the said decision was communicated by the DD (MIG)-H, it was not communicated properly and it reflected from the letter dated 28.7.2009 as if, the DDA has rejected the representation for restoration of the earlier flat. This resulted in the quashing of the said letter in W.P(C) No.6121/2010.

Shri Kohli in his representation has requested for allotment of a flat in pursuance of the directions/ observations of the Hon’ble High Court in W.P No.6121/2010 and CM 12016/2010. “The case of Shri Kohli even under the “Tail end

Category” cannot be considered as the benefit of availing the Tail End policy is available only to the applicants who have applied for cancellation of flat prior to 31.12.1993. On that relevant point of time an option was given due to the circumstances of that period that in case the allottee does not want to take the allotment then by depositing the cancellation charges, his case was considered under the Tail-end Policy.

No such benefit has been given to any person after December 1993. The allotment of a flat to the person who opt to surrender/cancel their flat after Dec., 1993 will have the serious consequences as hundreds of applicants will come and request for allotment/ re-allotment.

Having gone through the entire facts of the case especially with regard to the fact that POD (Proof of Delivery) was received back in the department and no payment was made by the allottee Shri Kohli, the case of Shri Kohli for allotment of flat cannot be considered under any of the policy of the Deptt.”

5. In view of the order passed by the then Director (Housing)-I on 6.5.2011, this Court, observing that the said order had been passed by Director (Housing) in compliance of the order of this Court dated 9.9.2010 dismissed the contempt petition as withdrawn with liberty to the petitioner to challenge the said order dated 6.5.2011 in independent proceedings.

6. The present writ petition has been filed for direction to DDA to allot an MIG to the petitioner under its NPRS-1979 at the costs prevalent on 28.2.2006.

7. The grievance of the petitioner while filing W.P© No.2376/2006 was that no allotment letter had been received by him from DDA. The stand taken by DDA in the said writ petition was that the allotment letter was sent to the petitioner by registered post and the registered cover had not been received back unserved. This Court while disposing of the said writ petition held that since DDA had dispatched the letter at correct address and the said letter had not been received back unserved, there was a presumption of service. Thus, the contention of the petitioner that the demand-cum-allotment letter had been received by him was not accepted by the Court. The AD Card duly signed by the petitioner since has been traced by DDA after disposal of W.P(C) No.2376/2006 and this document clearly shows that the petitioner made a false statement when he stated in W.P© No.2376/2006 that no demand letter had been received by him from DDA. The demand letters issued by DDA under NPRS-1979 carry automatic cancellation clause and if the payment in terms of the said letter is not made by the last date stipulated in the letter, the allotment stands automatically cancelled. Therefore, since the petitioner did not make payment despite receiving the demand-cum-allotment letter dated 24.3.2003/31.3.2003, the allotment made to him stood automatically cancelled on account of non-payment of the price of the flat. Thereafter the petitioner has no legal right to seek allotment of a flat from DDA under NPRS-1979.

8. As regards the order passed by this Court on 28.2.2006 permitting the petitioner to make a representation to the Vice Chairman of DDA, directing the Vice-Chairman DDA to consider the said representation and consider allotting a flat to the petitioner in case a flat remained un-allotted after satisfying the claims of all the registrants, this order, in my view, the said order does not mandate DDA to allot a flat to the petitioner. At best, it mandates DDA to consider the request of the petitioner for allotment of a flat after all the registrants under NPRS-1979 have been allotted flats by DDA. It can hardly be disputed that there are many registrants, who for one reason or the other, have not been allotted flats by DDA under NPRS-1979. The writ petitions filed by the registrants who were denied allotment of flats by DDA have been rejected by this Court and a number of writ petition seeking allotment of flats under NPRS-1979 are still pending disposal in this Court. So long as, there is even one registrant under NPRS-1979 waiting for allotment of a flat from DDA, the petitioner could not have been considered and cannot be considered for allotment of a flat under the said scheme, in terms of the order dated 28.2.2006.

I am in agreement with the learned counsel for the respondent-DDA that allotment of a person to a person who did not avail the offer made to him by way of an earlier allotment letter which was duly received by him would be wholly unjust and unfair to those who have in the past been denied allotment by DDA on account of non-payment of price of the flat and who either did not approach this Court or whose petitions were dismissed or are still pending adjudication.

9. It was contended by the learned counsel for the petitioner that the order dated 28.2.2006 required DDA to consider allotment of a flat to the petitioner after satisfying the claims of other registrants provided one or more flats remained un-allotted even after satisfying the claims of all the registrants, but DDA rejected the representation on grounds which were extraneous to the order dated 28.2.2006. A perusal of the order dated 6.5.2001 would show that the Director (Housing)-I specifically noted that if the benefit of allotment was given to the petitioner, this would result in hundreds of registrants coming to DDA with request for allotment/re-allotment. This observation made by the Director (Housing) clearly shows that there are many registrants who could not get allotment from DDA, implying thereby that the claims of all the registrants do not stand satisfied. In any case, as observed earlier, a large number of petition by the registrants of NPRS-1979 are still pending adjudication in this Court and, therefore, the occasion of considering the allotment of a flat to the petitioner in terms of the order passed by this Court on 28.2.2006, has not even arrived as yet.

10. Vide order dated 28.2.2006, this Court formed a prima facie opinion that the order dated 6.5.2011 had been passed in ignorance of the order dated 28.2.2006 and accordingly a notice was issued to Mr. S.K. Jain, Director (Housing) to show cause as to why action for contempt be not initiated against him. It would be pertinent to note here that a contempt petition filed by the petitioner was dismissed by this Court on taking a view that the said order had been passed in compliance of the

order dated 9.9.2010, which in turn, had been passed pursuant to the order dated 28.02.2006. Having heard the learned counsel for the parties, I am of the view that there was no deliberate disobedience of the order passed by this Court on 28.2.2006. If true import of the order was not correctly appreciated by the Director (Housing) of DDA, that by itself does not constitute a contumacious act amounting to willful disobedience of the order passed by the Court. Notice to Mr. S.K. Jain, Director (Housing) is, therefore, discharged.

For the reasons stated hereinabove, I find no merit in this petition and the same is hereby dismissed. There shall be no orders as to costs.

MAY 20, 2013/rd

V.K.JAIN, J

