

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

+ **W.P.(C) 1789/2012**

C.P. INASU

..... Petitioner

Through: Ms. Maninder Acharya, Senior
Advocate with Mr. Yashish Chandra,
Advocate.

versus

DDA

..... Respondent

Through: Ms. Manika Tripathy Pandey and
Mr. Ashutosh Kaushik, Advocates.

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Date of Decision : April 08, 2013

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. The present writ petition is directed against the illegal and arbitrary action of the Respondent, Delhi Development Authority in allotting the flat No.B-5/9, Sarai Khalil under NPR Scheme, 1979 to the Petitioner despite being aware of the fact that the said flat already stood allotted in favour of one Mr. Satish Kumar Bhatia and against its inaction in not allotting a fresh MIG flat to the Petitioner in lieu of the wrong allotment made to him.

2. The Respondent in the year 1979 floated a residential scheme under the name of New Pattern Residential Scheme for allotment of flats, including MIG flats. The Petitioner applied for a MIG flat under the said Scheme and by depositing a sum of ₹ 4,500/- got himself registered under the Scheme vide challan dated 8th September, 1979 (*Annexure P-1*). On 18.03.1980, on receipt of the sum of ₹ 4,500/-, the Respondent issued a certificate of registration, thereby clearly certifying that the Petitioner stood registered at serial No.4489 (*Annexure P-2*). The Petitioner also got himself registered with the Respondent under a Scheme for priority allotment to the retired/retiring public servants. Copy of the receipt dated 10th March, 1997 acknowledging the receipt of the Petitioner's application is enclosed with the writ petition as *Annexure P-3*.

3. On 08.07.1997, after a long wait of 18 years, in a draw of lots held by the Respondent, the Petitioner was allotted a MIG flat, being flat No.B-5/9, Second Floor, Sarai Khalil, New Delhi. An allotment letter with block dates 25.09.1997 – 30.09.1997 was issued to the Petitioner informing him thereby that the aforementioned flat stood allotted to him as a result of the draw of lots held by the Respondent on 08.07.1997 (*Annexure P-4* to the writ petition). On the same day, a demand letter demanding a sum of ₹ 5,81,683.75 towards the cost of the flat was issued to the Petitioner. The last date for intimating the confirmation of the acceptance of the allotment and for making the payment of the abovementioned sum towards the cost of the flat was fixed as 30th October, 1997 by way of the said letter (*Annexure P-5*).

4. On receipt of the allotment letter and the demand letter, the Petitioner immediately visited the Sarai Khalil area with the object of inspecting the flat allotted to him and was shocked to find that the said flat was occupied by one Mr. Satish Kumar Bhatia. The Petitioner was informed by the said occupant of the flat that he had been in occupation for the last two years and was also in possession of allotment letter, possession letter, etc. issued by the Respondent in his favour. The Petitioner immediately vide his letter dated 17.10.1997 informed the Respondent that flat bearing No.B-5/9, Sarai Khalil allotted in his favour by the Respondent was already under the occupation of Mr. Satish Kumar Bhatia, who claimed himself to be a legal allottee of the flat (*Annexure P-6*). The aforesaid letter dated 17.10.1997 was sent by the Petitioner to the Respondent by registered post. Since, however, the Petitioner did not receive any response, the Petitioner did not deem it fit to deposit the cost of the flat allotted to him, more so when the Respondent neither made a fresh allotment in favour of the Petitioner nor assured him that the flat allotted to him will be restored to him.

5. Thereafter, the Petitioner submitted representations dated 13.12.1997 and 11.04.1998 (*Annexure P-7* Colly.) and forwarded the copies of these representations also to the Chief Vigilance Officer of the Respondent calling upon him to investigate the matter. Eventually, the Petitioner received a letter dated 12.01.2010 from the Respondent informing him that the allotment file relating to flat No.B-5/9, Sarai Khalil was not traceable, however efforts were being made to trace it. The Petitioner was called upon by the said letter

(*Annexure P-8*) to report to the office of the Respondent with all the original documents relating to the allotment of the flat in his favour against registration No.4489 on any working day. Immediately thereafter, the Petitioner forwarded the copies of his allotment letter and certificate of registration along with the covering letter dated 18.02.2010 to the Respondent, which along with the acknowledgment slips issued by the Respondent are annexed with the petition as *Annexure P-9* Colly.

6. Thereafter, the Petitioner made a spate of representations to the Respondent requesting its officials to make a fresh allotment against his registration number, but to no avail including representations dated 24.10.2011, 29.12.2011, 09.01.2012 and 05.03.2012, which representations along with the acknowledgment slips issued by the Respondent have been placed on record as *Annexure P-10* Colly. Till date, it is stated, the Petitioner has not received any response to the aforementioned representations made by him. The Petitioner has also come to know that in the vigilance enquiry conducted by the Respondent it has been established that double allotment of the flat was intentionally made by the officials of the Respondent and the Respondent in order to shield its guilty officials is not acting on the Petitioner's representations. The Petitioner has also placed on record the allotment letter and possession letter issued by the Respondent in favour of Mr. Satish Kumar Bhatia (*Annexure P-11* Colly.). Thus, the grievance of the Petitioner is that he has been made the victim of a double allotment, which he had brought to the notice of the Respondent's officials in 1997 itself, and gross injustice has been

caused to him due to the failure of the Respondent to make a fresh allotment of MIG flat in his favour.

7. The Respondent – Delhi Development Authority in the Counter-Affidavit filed by it has not disputed the aforesaid facts except to state that the representation of the Petitioner dated 17.10.1997 was received by it in the public hearing held on 06.11.1997 and that the AD(MIG) at the said public hearing had directed the allottee to deposit the confirmation amount as evidenced from the noting *Annexure R-1*, viz., copy of the public hearing performa dated 06.11.1997. It is submitted that when the double allotment was noticed, the matter was examined in MIG Branch and the file pertaining to the allotment made to Mr. Satish Kumar Bhatia was called for and the Daftri returned the file with the non-availability report. Left with no other option, part file was reconstructed and the appropriate authority referred the matter to the Vigilance Department and even a Committee was constituted to sort out the issue. In paragraph 6 of the Counter-Affidavit, it is further submitted:-

“But in absence of the file and without knowing the entire set of facts, the committee had no other option but to recommend the case of the petitioner for allotment of alternative flat in his favour.”

8. It is further submitted by the Respondent that subsequently the file was located and the investigation re-opened by the Vigilance Department, the scenario of double allotment was brought on record, and it was noted that the possession letter and NOC for water and electricity connection issued to Mr. Satish Kumar Bhatia were

without dispatch number and appeared to be forged. Insofar as the Petitioner is concerned, it is submitted that the Petitioner did not deposit the confirmation amount and it was assumed that he had no desire to take the flat/allotment. There was thus no double allotment made by the DDA. In fact, the flat was grabbed by mischief by one Mr. Satish Kumar Bhatia on the basis of forged possession letter.

9. In the course of hearing, the only ground sought to be urged on behalf of the Respondent/DDA was that the petition was liable to be dismissed on the ground of delay and laches on the part of the Petitioner. Reliance was sought to be placed in this regard upon the judgments rendered in LPA No.1094/2006 titled “***Naresh Kumar Kataria vs. DDA***” and LPA No.484/2012 titled “***Smt. Brinda Ghosh vs. DDA***”. It was also sought to be urged *albeit* half-heartedly that the NPR Scheme was closed long time back in 2004 and a publication to this effect was also made by the DDA.

10. As regards the aspect of delay and laches sought to be pressed into service at this stage, suffice it to note that this plea was raised by the Respondent for the first time by filing an Additional Affidavit on October 10, 2012 and such plea significantly absent in the Counter-Affidavit filed by the Respondent dated July 19, 2012. Perhaps, what led the Respondent to file the Additional Affidavit were the judgments of this Court in ***Naresh Kumar Kataria (supra)*** dated 17th May, 2012 and ***Smt. Brinda Ghosh (supra)*** dated 11th July, 2012. The reliance placed by the Respondent on the aforesaid judgments is, in my considered opinion, entirely misplaced. ***Naresh Kumar Kataria’s*** case (*supra*), it may be noted, was not a case of double

allotment on account of the fault of the DDA officials, but was a case where the Appellant had applied for change of floor, but upon the same being not acceded to, chose to let go of the allotment; after two years, though the matter was re-agitated but it was not on the ground of change of floor, but on the ground of the cost/price demanded by the DDA being not correct. The belated representation of the Appellant after one and a half year of being served with the Demand-cum-Allotment Letter were held to be an afterthought. Similarly, the judgment rendered in the case of ***Smt. Brinda Ghosh (supra)*** is not apposite to the present case. In the said case, no steps were taken by the Appellant for almost 17 years after the demise of her father and for 6 years from the date of issuance of the Demand-cum-Allotment Letter and in such circumstances it was held that there was a persistent default and lack of due diligence on the part of the Appellant.

11. The present case is on an entirely different footing. Here, the Petitioner was registered in 1979 and the draw of lots was held 18 years later, in 1997. Demand-cum-Allotment Letter was issued to the Petitioner advising the Petitioner to deposit a sum of ₹ 5,81,683.75 on or before 30th October, 1997. Before the expiry of the stipulated date of 30th October, 1997, the Petitioner sent a representation to the DDA dated 17.10.1997 to the effect that he had visited the flat in question which was already occupied by someone else, who was in possession of the necessary documents from DDA. In his aforesaid communication to the DDA, the Petitioner emphatically stated:-

“The offer of allotment should not be cancelled under such circumstances which is beyond my control and DDA is responsible for such lapses.”

12. The Respondent denies receipt of this letter which was sent by registered post till 06-11-1997, but has failed to substantiate its contention by producing its diary register for the relevant year. The Respondent states that it received this communication on 06.11.1997 and advised the Petitioner to deposit the confirmation amount of ₹ 20,000/-. Again, there is nothing on record to substantiate this contention of the Respondent, as admittedly no response was sent by the Respondent to the communication of the Petitioner dated 17.10.1997. There is also no explanation from the side of the Respondent as to why the subsequent representations sent by the Petitioner dated 13th December, 1997 and 11th August, 1998 were not responded to. It is the Respondent's own case that by a letter dated 12.01.2010 eventually the Petitioner was informed that the allotment file relating to the flat in question was not traceable and efforts were being made to trace out the same. It is also the Respondent's own case that a vigilance enquiry had been instituted with regard to the issuance of the allotment letter and possession letter issued by DDA officials in favour of Mr. Satish Kumar Bhatia in respect of the same flat. It is not understandable as to how the Petitioner was expected to deposit the amount demanded by the Respondent knowing fully well that he had been illegally granted double allotment of the flat in question and the said flat was occupied by another person who

professed to have valid documents issued by the Respondent in his possession.

13. It is thus more than apparent that the Petitioner was the victim of double allotment due to the error/fraud of the officials of the Respondent/DDA. The Respondent cannot be allowed to reap the benefit of its own wrong by now pressing into service pleas such as those of delay and laches, closure of the Scheme, etc. What is even more damaging to the posture adopted by the Respondent is that the Respondent till date has not been able to take a final decision regarding the double allotment. The Respondent's stand that the relevant file had been misplaced evidently was with a view to thwart the Petitioner's representations made from time to time for which the Petitioner has filed acknowledgment slips. The very same file was traced out for the purpose of Vigilance Enquiry subsequently, which Vigilance Enquiry for reasons best known to the Respondent is being endlessly dragged on.

14. In the aforesaid circumstances, this Court is of the considered opinion that the Petitioner is entitled to the relief prayed for by him, and it is in fact the Petitioner who ought to be recompensed for the delay caused by the Respondent from 1979 till date in the allotment of the flat. A writ of mandamus is accordingly issued directing the Respondent to allot and hand over to the Petitioner the possession of a MIG flat at the original cost of ₹ 5,81,683.75 in lieu of flat No.B-5/9, Second Floor, Sarai Khalil, New delhi, allotment of which had earlier been made in his favour. Demand-cum-Allotment Letter shall be issued by the Respondent not later than four weeks from today and

possession of the flat handed over to the Petitioner within four weeks from the date of his depositing the aforesaid amount. Needless to state that the flat shall be allotted to the Petitioner in the Sarai Khalil area and in case a vacant flat is not available in the said area, in any other commensurate area or zone.

15. W.P.(C) 1789/2012 is allowed in the aforesaid terms. The Petitioner shall be entitled to costs of ₹ 20,000/-.

**REVA KHETRAPAL
(JUDGE)**

April 08, 2013
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