

3. The essential facts of the case are not in dispute. In 1979, the registrant Amar Singh booked a MIG flat vide registration No.36 under the New Pattern Registration Scheme, 1979 and died on 04.09.1985. On 09.02.1989, Smt. Jai Kaur, wife of late Shri Amar Singh submitted an application for mutation and transfer of registration and submitted the requisite documents, pursuant to which on 13.07.1989, the DDA transferred the mutation to her vide their communication of the same date (*Annexure P-4* to the petition). On 21.02.1990, Smt. Jai Kaur was allotted a flat at Rohini, being flat No.42, Sector 18, Block-A, Pocket-II, GRD Floor, Rohini vide allotment letter with block dates 14.02.1990 – 21.02.1990. Smt. Jai Kaur, however, opted for allotment of flat as per the tail end policy of the Delhi Development Authority prevalent in 1990 by paying the cancellation/tail end charges of ₹ 4,535/- vide challan No.0860921 dated 28.05.1990 (*Annexure P-5* to the petition). Smt. Jai Kaur died on 06.12.2003 and the Petitioner being the wife of the pre-deceased son of Smt. Jai Kaur applied for mutation and transfer of registration on 11.02.2004, submitting the requisite documents, acknowledgment receipt whereof has been placed on record as *Annexure P-6*.

4. On 31.03.2004, the tail end draw was held but the name of the Petitioner was missing in the draw. On 02.04.2004, the Petitioner visited the office of the DDA and was informed about the instructions issued by the Vice-Chairman dated 02.04.2004 enclosed as *Annexure P-7* to the writ petition and published in the newspapers, that the record of the DDA was not updated and all those who had paid the tail end charges will be allotted flats. Paragraph 2 of the said instructions provided for eligibility for allotment as under:-

“2. The registrants to whom tail end priority has not been assigned but they have deposited the cancellation charges making them eligible for allotment of tail end priority and also allotment of the flat.”

5. It would also be apposite to mention at this juncture that the aforesaid instructions of the Vice-Chairman, DDA dated 02.04.2004 took note of the fact that *“since there was no record of tail end priority of registration scheme of 1979 and now 22 years have passed, thus if any registrant to whom tail end priority is to be assigned is left then nobody should be held responsible and subsequently their case can be considered in the next coming draw.”*

6. No flat having been allotted to the Petitioner in the draw held on 31.03.2004, the Petitioner on 31.10.2007 submitted a

representation to the DDA followed by another representation dated 04.08.2008 (*Annexures P-8 and P-9* to the petition).

7. On 07.10.2008, pursuant to the Petitioner's representations, the DDA gave her a copy of the Circular dated 07.10.2008 issued by the Commissioner (Housing), being Circular No.F2(10)2001/Coord/H/Pt.I/236 dated 07.10.2008. The said Circular being apposite, for the sake of ready reference, is reproduced hereunder:-

***“DELHI DEVELOPMENT AUTHORITY
HOUSING DEPARTMENT (COORD.)***

NO.F2(10)2001/Coord/H/Pt.I/236 dated the 7/10/08

CIRCULAR

The issue regarding allotment under the tail-end priority has recently been considered by the Hon'ble Single Judge and the Division Bench of the Delhi High Court in a number of cases.

The Department has considered the said judgment and it has been decided to adopt a uniform policy to avoid any confusion in such cases as per the decision henceforth, DDA shall charge the cost prevalent as on 31.07.2004, (four months after 31.3.2004, i.e., the date of draw along with 12% interest from 31.07.2004, till payment in terms of demand letter. The policy will cover the following type of cases:-

- i) Registrants who have paid the cancellation charges within stipulated period from the date of the cancellation and have been included in the draw but demand letters have not been issued or who are eligible for the allotment under the tail*

end priority but have not been included in the draw of lots held on 31.3.2004.

- ii) Those MIG registrants who have paid the cancellation charges within time and approached the DDA for allotment of the flat under the tail-end priority within 30 days from the date of notification dated 5.2.2006, vide which DDA had requested all the allottees/registrants to contact DDA for allotment of the flat under MIG category of the New Pattern Scheme who had not been allotted the flat.
This issues with the approval of Vice-Chairman, DDA.*

***(Asma Manzar)
Commissioner (Housing) ”***

8. In 2009, the Petitioner in the course of personal hearing afforded to her by the DDA again requested for tail end allotment in accordance with the aforesaid Circular issued by the DDA, but no MIG flat was allotted to her. Hence, the present writ petition impugning the action of the DDA, which is stated to be contrary to its own missing priority policy dated 25.02.2005, the instructions issued by its Vice-Chairman dated 02.04.2004 and the Circular dated 07.10.2008.

9. In the Counter-Affidavit filed by it, the DDA has not denied that after the death of Shri Amar Singh, who was the original registrant, his wife Smt. Jai Kaur applied for mutation of the

registration which was allowed vide letter dated 13.07.1989, that Smt. Jai Kaur was allotted MIG flat in the draw of lots held on 14.02.1989; that Demand-Cum-Allotment Letter was issued to her with block dates 14.02.1990 – 21.02.1990 and that Smt. Jai Kaur requested to cancel this allotment and deposited ₹ 4,535/- towards cancellation charges. Thus, the case of the Petitioner in toto has been admitted by the Respondent/DDA.

10. In the course of hearing, however, learned counsel for the DDA argued that the case of the Petitioner was not included in the tail end priority cases, that there was inordinate delay on the part of the Petitioner in approaching this Court, that the NPR Scheme had been closed and that allotment therefore cannot be made to the Petitioner. It was submitted that if at all the Petitioner is held entitled to the allotment of a MIG flat, the same has to be in terms of paragraph 2 of the policy of the DDA dated 25.02.2005, i.e., at the old cost prevalent at the time of original allotment plus 12% simple interest with effect from the date of the original allotment till the date of issue of fresh Demand-Cum-Allotment Letter.

11. To counter the aforesaid submissions of DDA's counsel, Mr. Kinra, the learned counsel for the Petitioner has drawn the attention of this Court to the fact that cancellation charges were accepted and duly acknowledged by the DDA for tail end priority vide challan dated 28.05.1990. Mr. Kinra pointed out that the Petitioner vide her communication dated 31.10.2007 had made a grievance that her name had not been included in the tail end priority draw held on 31.03.2004 and categorically stated that *it was DDA's fault because she had earlier applied for mutation on 11.02.2004*. This communication is not denied by the DDA, as indeed it cannot be, in view of the acknowledgment of the DDA of the same date, i.e., 31.10.2007. This being so, clearly the DDA was not justified in not including the name of the Petitioner in the draw of lots held on 31.03.2004.

12. My attention has been drawn by learned counsel for the Petitioner to the case of "**Raj Kumar Malhotra vs. DDA**" being W.P.(C) No.5793/2005, which came to be decided by a learned Single Judge of this Court by judgment dated 18th October, 2005. The learned Single Judge held that mere failure to pay cancellation

charges would not deprive an allottee of the right to be included in the tail end priority cases and to be allotted flat on that basis. This judgment of the learned Single Judge was affirmed by a Division Bench of this Court on 4th June, 2008 in LPA No.179/2008 entitled ***“Delhi Development Authority vs. Abhay Prakash Sinha”*** and the decision of the Division Bench was further affirmed by the Supreme Court by dismissal of SLP filed thereagainst.

13. Learned counsel for the Petitioner has sought to press into service a number of decisions of this Court including judgments rendered by this Court in W.P.(C) No.20250/2005 titled ***“Jai Prakash vs. DDA”***, W.P.(C) No.11654/2006 titled ***“Subhash Chander Sethi vs. DDA”***, W.P.(C) No.266/2007 titled ***“Usha Saikia vs. DDA”*** and W.P.(C) No.8553/2008 titled ***“Harvinder Kaur vs. DDA”*** to urge that the present case is squarely covered by the aforesaid precedents. Learned counsel for the Respondent, on the other hand, cited two judgments of this Court, being W.P.(C) No.18837/2006 titled ***“Bhim Ram vs. DDA”*** and W.P.(C) No.7077/2008 titled ***“Bhagirath Choudri (Deceased) through LR vs. DDA”*** to contend that the cost prevalent as on date ought to be paid by the Petitioner even assuming

a flat was allotted to the Petitioner. Both the said cases, in my considered view, are not apposite to the present case. In ***Bhim Ram (supra)***, the learned Single Judge was dealing with a case where the Petitioner was a defaulter in payment of instalments. The Petitioner in the said case did not seek and pay any cancellation charges and thus the said judgment is not applicable. In the case of ***Bhagirath Choudri (supra)***, a direction was issued to the Respondent/DDA to consider the Petitioner's case for the allotment of a MIG flat at the cost prevalent in or around September, 2008 because the Petitioner had not taken note of the advertisements of the Respondent/DDA regarding allotments to persons missing priority, which were regularly appearing in the newspapers every second or third year since the year 2004. In the present case, on the contrary, the Petitioner herself approached the DDA on 2nd April, 2004 to complain that her name had not been included in the tail end priority draw held on 31.03.2004. Though this fact is denied by the DDA in the Counter-Affidavit filed by it, there is on record the acknowledgment of the DDA of the cancellation charges paid by the Petitioner vide challan dated 28.05.1990. There is also on record the representation

of the Petitioner dated 31.10.2007 and the acknowledgment of the DDA of the receipt of the said representation. Thus, the Petitioner cannot be said to be at fault as it approached DDA in less than four years with the request to allot to her a flat at the cost of the draw held on 31.03.2004.

14. The only other contention raised by the counsel for the DDA was that public notice had been issued. This aspect has been dealt with by a learned Single Judge of this Court in “**S.C. Sethi vs. DDA**”, W.P.(C) No.11654/2006. Paragraph 9 of the said judgment reads as follows:-

“9. The plea taken by the DDA cannot be accepted. The public notice issued by the DDA on 4.7.2003, was meant only to update the residential address in the records of the DDA. The said notice does not make it mandatory for all the applicants/registrants, whether or not there had been a change in their addresses given to the DDA, to update the address. In the circumstances, there was no obligation on the part of the Petitioner to update his address since there was no change in his address. Consequently, the DDA was not justified in not including the name of the Petitioner in the draw of lots held on 31.3.2004.”

15. In **Abhay Prakash Sinha vs. DDA**, W.P.(C) No.119/2007, on the aspect of public notices, the following observations made by a learned Single Judge of this Court are apposite:-

“10. Before this court, the sole reliance of the DDA is on the public notices which have been issued. It is apparent from the public notices that the DDA was conscious of the fact that several persons who were legitimately entitled to consideration for allotment of the flats on tail end priority or other priorities, had been overlooked. Certainly, the petitioner cannot be faulted for the failure of the DDA to consider the petitioner for allotment of the flat on a mere premise that they have issued public notices.

11. So far as the impact of such public notices effecting the private rights of the persons is concerned, it is required to be borne in mind that the applicants have been made to wait for decades for allotment of the flats. In the instant case, the petitioner has been waiting since the year 1979. Certainly, the citizens cannot be expected to be following newspapers of every single day for over 25 years keeping track of public notices which may be issued by the DDA. Such a plea on behalf of the DDA is both unfair and unreasonable. The respondent cannot be permitted to so avoid the responsibility and liability to consider the petitioner for allotment of a flat in an appropriate draw of lots especially in the facts which have been noticed hereinabove.

*12. My attention has been drawn to an order dated 20th March, 2007 passed in WP (C) No.11654/2006 entitled **Subhash Chander Sethi Vs. Delhi Development Authority**, wherein in similar circumstances, the court had rejected a plea taken by the DDA placing reliance on its public notices.*

*13. Another order dated 19th July, 2007 passed in WP (C) No.10570/2006 entitled **Tajinder Kaur Vs. DDA** has been placed before this court wherein the court has rejected the DDA's contention and reliance on the public notices which were issued by it to deprive the bona fide registrants who have been waiting for several decades, for allotment of the flats.*

14. Mr. Kinra, learned counsel for the petitioner, also places reliance on an order dated 21st July, 2006 in Writ Petition (C) No.20250/2005 Jay Prakash Vs. DDA passed by this court.”

16. This leaves me to consider the aspect of cost of the flat to be paid by the Petitioner and the contention of the DDA’s counsel that the Petitioner is liable to pay interest at the rate of 12% per annum for the intervening period. Suffice it to state that in a recent decision rendered by a Division Bench of this Court in LPA No.279/2008 titled “**Basu Dev Gupta vs. D.D.A.**”, the Division Bench after referring to the decision of learned Single Judge in **Raj Kumar Malhotra (supra)** and the Division Bench in **Abhay Prakash Sinha (supra)**, has repelled the contention of the counsel for the DDA to the effect that the DDA be permitted to charge interest at the rate of 12% per annum on the cost of the flat in view of the Circular dated 17th October, 2008 issued by the DDA. The Division Bench opined that it disapproved of this Circular insofar as it contradicts the mandamus issued by the learned Single Judge in **Raj Kumar Malhotra**, which has been approved both by the Division Bench as well as the Supreme Court. It held that no interest would be charged on the price of the

flat for the reason that DDA did not issue a Demand-cum-Allotment Letter to the Appellant when it was due. It further held that the registration amount with interest accrued thereon would be adjusted while calculating the amount due from the Appellant.

17. In view of the aforesaid discussion, I have no hesitation in issuing a mandamus to the DDA to allot a MIG flat to the Petitioner by issuing fresh Demand-cum-Allotment Letter to the Petitioner at the same cost at which demand was raised on others for the flats allotted at the draw of lots held on 31.03.2004. The needful be done by the DDA latest within six weeks from today. On the Petitioner's making payment of the demand within the time stipulated in the Demand-cum-Allotment Letter, possession of the flat shall be handed over to the Petitioner within two weeks.

18. W.P.(C) 3570/2010 stands disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

April 05, 2013/km