

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

% Judgment reserved on: 14.03.2013  
Judgment pronounced on : 18.03.2013

+ **LPA 1115/2007**

**DR. JASMINE CHAWLA SHARMA & ANR.** ..... Appellants

Through: Mr Dinesh Agnani, Senior Adv. with  
Mr Piyush Sharma and Mr Archit Yadav, Advs.

versus

**DR. REKHA & ANR.** ..... Respondents

Through: Mr S.N. Chodhari, Adv for R-1

**And**

+ **LPA 1116/2007**

**MCD** ..... Appellant

Through: Ms Manjira Dasgupta, Proxy Counsel  
for Mr Shyel Trehan, Adv for MCD

versus

**DR. REKHA & ANR.** ..... Respondents

Through: Mr S.N. Chodhari, Adv for R-1

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

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

**V.K. JAIN, J.**

1. Appellant No. 2 in LPA No. 1115/2007, namely, Dr. Kamla Sharma, was allotted Type V flat No.D-1/6, 10, Rajpur Road, Delhi by MCD. Vide allotment letter dated 14.06.2005, the aforesaid flat was allotted to Dr. Rekha, respondent No.1, in LPA No. 1115/2007 on medical grounds. Since Dr. Kamla Sharma was due to retire on 30.04.2007, she applied to MCD for regularization and allotment of the aforesaid flat in favour of her daughter-in-law Dr. Jasmine Chawla Sharma, appellant No. 1 in LPA No. 1115/2007. After turning down the said request on two occasions, MCD vide order dated 08.03.2006 regularized the aforesaid flat in favour of Dr. Jasmine Chawla. The order dated 08.03.2006 was followed by an allotment letter dated 05.04.2006 in her favour. Vide letter dated 10.4.2006, MCD withdrew the allotment which it had made to Dr. Rekha on 14.06.2005.

2. Being aggrieved from withdrawing the allotment made to her and regularizing the said flat in favour of Dr. Jasmine Chawla, Dr. Rekha filed W.P (C) No.642/2006. The learned Single Judge vide impugned order dated 31.05.2007 quashed the allotment letter dated 05.04.2006, issued in favour of Dr. Jasmine Chawla as also the cancellation letter

dated 10.04.2006, thereby restoring the allotment letter dated 14.06.2005 in favour of Dr. Rekha. She further directed MCD to allot any of the vacant Type IV flats on the ground floor either at 10, Rajpur Road, or in the nearby vicinity of Model Town and Naniwala Bagh, as specified in the list of vacant flats furnished to the Court, but in accordance with the extant Rules relating to housing accommodation, to Dr. Jasmine Chawla. It was also directed that on receipt of allotment letter, she would handover vacant possession of Type-V flat No.D-1/6, 10 Rajpur Road, to MCD within two months thereafter and MCD, in turn, shall handover that flat to the writ petitioner Dr. Rekha.

3. Being aggrieved from the aforesaid order, Dr. Jasmine Chawla and Dr. Kamla Sharma have filed LPA No. 1115/2007, whereas MCD has filed LPA No. 1116/2007. It is an admitted position before us that as per the relevant rules, Dr. Jasmine Chawla, appellant No. 1 in LPA No. 1115/2007 was not entitled to allotment of a Type V flat from MCD. The contention of the learned counsel for the appellants, however, is since Rules For Allotment Of General Pool Quarter, framed by MCD vide its Resolution No. 946 dated 14.03.1972, empowered the Commissioner, for reasons to be recorded in writing, relax all or any of the provisions or the

regulations in the case of any officer or residence or class or type of residence and in exercise of that power, the Commissioner had, vide his order dated 08.06.2005, approved the aforesaid allotment, the said allotment cannot be said to be illegal. The learned counsel for the appellants in this regard also drew our attention to SR 317-B-26 of Fundamental Rules framed by Government of India, which according to the learned counsel, have been adopted by MCD. A perusal of Government of India's orders issued vide G.I. M.W. & H., O.M. No. 12035(7) 79-Pol. II dated the 1<sup>st</sup> May, 1981 and M.U.D., Director of Estates, O.M. No. 12035(14)82-Pol.II (Vol.II) (i) dated the 19<sup>th</sup> November, 1987 would show that allotment to a dependent/relation of the Government servant occupying a Government residence was permitted, subject to certain conditions laid down in the said orders. Vide G.I., Min of U.D. & P.A. (Directorate of Estates), O.M. No. 12035/23/2000-Pol.II, dated the 26<sup>th</sup> December, 2000, the aforesaid decision was made applicable also to the daughter-in-law of the allottee Government servant in the event of his death/retirement.

4. The learned counsel for Dr. Rekha, however, withdrew our attention to the orders, issued by Government of India vide G.I, M.U.A.

& E. (Directorate of Estates), O.M. No. 12035/2/97-Pol.II (Pt. II), dated the 17<sup>th</sup> November, 1997. The aforesaid order was issued by the Government pursuant to the decision of Supreme Court in WP(C) No. 585/1997 *S.S. Tiwari vs. Union of India*, AIR 1997 SC 2725, directing the Government that discretionary/out-of-turn allotments be regulated and transparency maintained by framing appropriate rules in this regard which may also be duly notified. The Apex Court also directed that ceiling of discretionary allotments shall be 5% of the total number of vacancies occurring in each type of houses in a year. In the light of the aforesaid decision, Government of India decided to lay down detailed guidelines to regulate the discretionary allotment of Government accommodation in future and directed that such allotments shall be permitted only on medical, security and functional grounds and shall be made through two Committees of Officers duly constituted for the purpose, which shall consider each request within the laid down policy guidelines. The composition of two committees was also notified in the aforesaid order. Since the decisions taken by the Government of India have admittedly been adopted by MCD, the guidelines regulating the discretionary allotments would also apply to MCD, which after issue of

the aforesaid guidelines on 17.11.1997, was required to make discretionary allotments strictly in accordance with those guidelines. Thus, after 17.11.1997, discretionary allotments, which would include the allotments made in relaxation of rules, could be made only through the Committee of Officers, which the MCD was required to constitute in terms of Government of India's decision dated 07.11.1997, issued pursuant to the directions of the Apex Court in the case of S.S. Tiwari (*supra*). In our opinion, any allotment, if not made as per entitlement of the employee based on his pay, and at the time his number in the waiting list matures for allotment, would be an out of turn allotment, irrespective of whether such allotment is made by regularizing a flat already occupied by another employee or in any other manner.

5. Since the discretionary allotment in favour of Jasmine Chawla was made on 14.03.2006, without following the guidelines and the procedure laid down in the O.M. dated 17.11.1997, pursuant to decision of Supreme Court in S.S. Tiwari (*supra*), it was clearly in contravention of the aforesaid guidelines, issued by Government of India, which also stand adopted by MCD. A discretionary allotment made in contravention of such guidelines and procedure cannot be sustained in law and, therefore,

we find no merit in the appeals, to the extent they challenge the cancellation of regularization/allotment made in favour of Dr. Jasmine Chawla.

6. Coming to allotment made to Dr Rekha admittedly, the aforesaid allotment was made on 14.06.2005, which was much after the issue of guidelines dated 17.11.1997. Admittedly, the allotment made in favour of Dr. Rekha was out of turn allotment since she did not get the aforesaid allotment on maturity of her number in the waiting list of MCD employees seeking allotment of residential quarters from MCD, which clearly means a discretionary allotment. Since the aforesaid allotment admittedly was not made in terms of the OM dated 17.11.1997 and though a Committee of Officers in terms of the decision of Government of India, the aforesaid allotment was illegal and, therefore, we are of the view that the learned Single Judge was not justified in restoring the said allotment.

7. For the reasons stated hereinabove, we hold that the regularization made in favour of Dr. Jasmine Chawla as well as the allotment made in favour of Dr. Rekha were illegal. We, therefore, dispose of these appeals by upholding the order of the learned Single Judge to the extent she

quashed the regularization/allotment in favour of Dr. Jasmine Chawla in respect of flat No.D-1/6, 10, Rajpur Road. We, however, set aside the order of the learned Single Judge to the extent she restored the allotment of the aforesaid flat to Dr. Rekha and directed delivery of possession of the said flat to her. We, however, make it clear that this order shall not come in the way of MCD allotting a flat either to Dr. Jasmine Chawla or to Dr. Rekha, as per their entitlement and at their turn, in accordance with the Rules governing such allotments nor shall it come in the way of MCD making an out of turn/discretionary allotment through a Committee of Officers strictly in terms of the guidelines, issued and the procedure prescribed by Government of India in compliance of the directions of the Apex Court in the case of S.S. Tiwari (*supra*).

In the facts and circumstances of the case, there shall be no order as to cost.

**V.K.JAIN, J**

**CHIEF JUSTICE**

**MARCH 18, 2013**

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