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

% **DECIDED ON: 01.10.2013**

+ LPA 633/2013
CM APPL.13404, 13405/2013

DELHI DEVELOPMENT AUTHORITY Appellant
Through: Ms. Shobhna Takiar, Advocate.

versus

SHRI B S BHALLA Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The present appeal is directed against the judgment and order of the learned Single Judge dated 24.09.2012 allowing W.P. (C) 9059/2011. The respondent (hereafter referred to as 'writ petitioner') sought for directions to the appellant (hereafter referred to as 'DDA') for allotment of an LIG Flat under the New Pattern Registration Scheme (NPRS) 1979.

2. Briefly, the facts are that the petitioner had applied under the NPRS, 1979. Till 1989, no allotment was made in his favour; upon the DDA launching another scheme, i.e., Awas Sakar Yojna (hereafter referred to as 'Yojna') in 1989 - which enabled the existing NPRS registrants to migrate to the latter programme, he opted for the said Yojna. Despite registration in the Yojna, the DDA included the

petitioner's name in the NPRS Scheme for a draw in 1990; he was allotted an LIG flat. At that stage, the petitioner was not issued the allotment letter. He also could not secure any benefit in the 1989 Yojna. The Yojna was closed on 17.10.1992 and those like the petitioner who had migrated, were transferred back to NPRS, 1979 with their entitlement for allotment of a flat intact at the old cost. In these circumstances, the petitioner urged to DDA that since no allotment was made under Yojna, the benefit of LIG flat given to him in 1990 should be extended. The learned Single Judge in the impugned order noticed that similarly situated people had approached the Court and the matter was finally resolved in favour of such registrants in *Frontier Avas Sakar Cooperative Group Housing Society and Ors. v. DDA* decided on 1st July, 1996. The DDA had stated in those proceedings that registration of those who could not get any benefit under the Yojna would be transferred to the NPRS with the seniority in the original NPRS intact.

3. Apparently, the petitioner represented to DDA in 2003-04 and explained the facts of his case with the further request that he should be allotted a flat in the same zone and at the same cost in tune with the original allotment made to him in the draw held in 1990 at a time when he was part of the Yojna. The petitioner repeatedly represented to the DDA in this regard and stated that allotment of a flat at Lok Nayak Puram in March, 2006 made in his favour had not been conveyed to him. Unsuccessful in securing any relief he approached the Court. In other words, the petitioner's case was that in 2006, the allotment had been made in his turn under the NPRS scheme but that

its benefit could not be availed since he could not receive the allotment letter. Therefore, the petitioner approached this Court for relief.

4. In the writ proceedings, the DDA did not dispute certain facts such as the registration of the petitioner in NPRS scheme; his migration to the Yojna in 1989; the allotment made in 1990 even when he was a part of the Yojna as well as the various representations received from him. The DDA, however, relied upon the letter dated 12.06.2003 said to have been written by the petitioner stating that he was no longer interested in any flat in Delhi. The petitioner, however, disputed this fact. After considering the submissions, the learned Single Judge taking note of the previous ruling in *Frontier Avas Sakar Cooperative Group Housing Society and Ors. v. DDA* (supra) and also noticing that since the petitioner's priority had matured in 1990 but he was not allotted a flat due to the fortuitous circumstances of his having applied and secured the Yojna registration held that the allotment ultimately made in 2006 should be released in his favour at the 1990 rates. The learned Single Judge took strength from the DDA's policy in this regard formulated on 28.05.2003 directing that the old cost, as of 1990 would apply. The operative portion of the impugned directions are as follows: -

“11. Admittedly, the priority of the petitioner matured in the year 1990, and the petitioner was not allotted a flat. Thus, the allotment made in favour of the petitioner in the year 2006, had to be according to prevailing rates at the time, when the petitioner was entitled for allotment as per his priority number, which would mean the year 1990. DDA did not raise any demand on the petitioner, as per the circular of 28th May,

2003, which forced the petitioner to make repeated representations to the DDA which were not replied to, but simultaneously the allotment made by the DDA in favour of the petitioner was cancelled on account of non-payment of money. Ordinarily, the effect of non-payment of money and cancellation of allotment would lead to cancellation of a flat and DDA would not be faulted for the same, however, in this case the non-payment by the petitioner was on account of the fact that DDA had allotted a flat in favour of the petitioner at the current rate, which the DDA could not have done in view of their own circular of 28th May, 2003. While, on the one hand the petitioner would be entitled to allotment as per the prevailing rates of the year 1990, when petitioner's priority number matured and he was entitled for allotment, and the petitioner cannot take benefit for the period 2006 till the date, when the writ petition was filed. Else the petitioner should have approached the Court within a reasonable time and the DDA cannot be put to disadvantage for the period between 2006 and 2012.

12. The petitioner belongs to the lower income group and was aspiring to own a property in Delhi and thus he applied for an LIG flat, as far back in the year 1979. His anxiety to have the roof over its head is borne out from the fact that he changed his category from NPRS to ASY Scheme in the hope of an earlier allotment, which did not happen. Petitioner had to revert back to the NPRS Scheme and he waited patiently for allotment in the NPRS Scheme with the hope that his first allotment of the year 1990 would not go completely waste. The only mistake committed by the petitioner was that he kept insisting for a flat in the same area i.e. East Zone, as was allotted to him in the year 1990.

13. In view of the Policy of 28th May, 2003, and the peculiar facts of this case, the writ petition is allowed. The petitioner would be entitled to allotment of an LIG flat either at Lok Nayak Puram or in any other area at the cost prevailing in the year 1990, subject to petitioner paying interest from July, 2006, till 30th September, 2012 @ 12% p.a. The cost of the flat and 12% interest will be deposited by the petitioner within one

month of raising of the fresh demand-cum-allotment letter.”

5. The DDA argues that the learned Single Judge fell into error in not giving any importance to the letter issued by the petitioner in 2003 expressing his lack of interest in any flat. It was urged that this aspect was pleaded in the counter affidavit and the Court did not attach any significance to it. Learned counsel further argued that the application form originally submitted by the petitioner contained signatures which differed from the signatures in the latter letter. She also sought to urge that the petitioner’s address was entirely different; in this regard DDA highlighted that the letters written later particularly from 2006 onwards were from a different address which had been never notified to the DDA and thus fuelling suspicion as to the genuineness of the claim to the flat.

6. This Court has considered the pleadings, materials on record and submissions of the DDA. That the petitioner was an original registrant in 1979 and after a long wait elected to migrate to the Yojna but was nevertheless allotted the flat in 1990 on the assumption that his NPRS registration was intact is not in dispute. Subsequently, his rights as a NPRS registrant and entitlement to the same seniority crystallized by the DDA, also formulated in the wake of the *Frontier Avas Sakar Cooperative Group Housing Society* matter (supra) in 1996. That the subsequent allotment was made in 2006 in terms of the NPRS is also not denied by the DDA. In these circumstances, it is apparent that the DDA’s approach in somehow obstructing the allotment is not only arbitrary, it is in fact a facade. The arguments

sought to be advanced today that there is some suspicion as to whether the petitioner is the same individual who had applied for NPRS was never voiced before the learned Single Judge. This argument and the stand of the DDA is deprecated in the strongest terms. On the merits, the Court holds that the learned Single Judge's appreciation of the facts and application of the principle underlying the NPRS scheme especially in the light of the winding up of Yojna of 1989 - with the consequential entitlement of its registrants to the original seniority and all benefits under the NPRS was appreciated in the correct perspective. As regards the petitioner's later (un) notified address, the argument is insubstantial. It is unsurprising that someone denied basic housing for nearly three decades lacks a stable address, and most likely would have shifted residences. His omission in not notifying the existing address should not visit him with such consequence as to deny the long awaited flat altogether. The findings of the learned Single Judge in restoring what was originally due to the petitioner are unexceptionable. They require no interference.

7. The appeal is devoid of merits and is accordingly dismissed along with all the pending applications.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

**OCTOBER 01, 2013
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