

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

% Judgment reserved on : 16.05.2013
Judgment pronounced on : 20.05.2013

+ W.P.(C) 9274/2009

INDER LAL

..... Petitioner

Through: Mr R.K. Saini and Ms Minal
Sehgal, Advs.

Versus

DDA

..... Respondent

Through: Mr Sangram Patnaik, Mr
Umesh Yadav and Ms Swaym Siddha,
Advs.

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

V.K. JAIN, J.

1. The petitioner before this Court got himself registered with the respondent-DDA under its New Pattern Registration Scheme (NPRS), 1979, for allotment of an MIG flat. The flat bearing No. 269-B, Block J&K, Type-E, First Floor, Dilshan Garden, came to be allotted to him in the draw of lots held on 19.05.1985. Since the petitioner was not interested in the above-referred allotment, he applied to DDA to allot a vacant flat in Pitam Pura, Shalimar Bagh or Rohini to him, since his wife was under treatment of a doctor in Shalimar Bagh. The said request was

rejected by DDA vide letter dated 04.08.1986, followed by letter dated 17.10.1986. Vide application dated 14.01.1987, the petitioner again wrote to DDA that the allotment at Dilshan Garden was not acceptable to him and he had no objection if his name was brought at the end of priority list for fresh allotment. Pursuant to the request made by the petitioner, DDA informed him, vide letter dated 19.02.1987, that the allotment of the aforesaid flat had been cancelled, but his registration would be kept intact though his seniority would be at the tail end of the seniority list.

2. The subsequent request of the petitioner for making a fresh allotment to him were considered by a committee of DDA. The petitioner appeared before the said committee, which agreed to allot another MIG flat to him under tail-end policy in the next mini draw. The said decision of the committee was accepted by the petitioner, who agreed to withdraw the writ petition, which he had filed in the meanwhile. Pursuant to the recommendations made by the said committee, another flat bearing No. 473 in Sector A-10, Pocket-2, Narela came to be allotted to the petitioner, in the draw of lots held on 05.01.2010. An allotment letter dated 12.04.2010-18.04.2010 was then issued to the petitioner, requiring him to

deposit a net initial amount of Rs 6,09,666/- on or before 17.06.2010. The aforesaid amount could also be deposited up to 15.10.2010, subject to payment of interest stipulated in the demand-cum-allotment letter. Clause 12 of the said letter provided for automatic cancellation if the initial deposit was not paid by 15.10.2010. In addition to initial deposit, the petitioner was also required to pay the balance price of the flat in 120 monthly instalment of Rs 11,954/- commencing 10.08.2010.

3. The grievance in the present petition, which was filed before allotment of the flat at Narela, is that though a draw for tail-end priority cases of NPRS, 1979, was held by DDA on 31.03.2004 and the names of all the registrants, carrying tail and priority, were included in the said draw and they were allotted flats in Dwarka, his name was not included in the said draw. The following prayers were, therefore, made in the writ petition:-

“b) A writ of Certiorari quashing the action of the respondent in not including the name of the petitioner in the tail-end priority draw held on 31.3.2004 along with his contemporaries and thereafter, refusing to allot him a flat in the same area at the same cost, being illegal, arbitrary, discriminatory, unjust and in violation of the Rules, Regulations, Policy and the Principles of Equity, Justice and Good Conscience; &

consequently the rejection letter dated 7.10.08 (Annexure P-13A).

c) A writ of mandamus commanding the respondent to immediately allot an MIG flat in the same area and at the same cost, when his contemporaries were allotted in the tail-end priority held on 31.3.2004 in terms of the policy and the principles of equity, justice and good conscience, give him possession thereof immediately after payment and execute the conveyance deed in respect thereof in his favour.”

4. The learned counsel for the petitioner has drawn my attention to the Circular dated 25.05.1995, issued by DDA, which, to the extent it is relevant, reads as under:-

“Vice Chairman, DDA is pleased to approve modification, based upon recommendations made by Dr. Anand Committee, in respect of various items relating to discharge of work in Housing Department, DDA as under:-

7. Cases where Clear Guidelines do allotment has not been not exist made due to non-inclusion of name of registrant in draw of allotment	(i) Allotment shall be made in the next draw at the rates prevailing at the time when the registrant would have got allotment according to his / her priority position. This benefit will, however, be extended where the error has been detected
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within one year of holding of draw in which the registrant would have got the allotment.

(ii) In all such cases files shall be put up to the Vice Chairman.

5. The contention of the learned counsel for the petitioner was that in view of the above-referred circular, the name of the petitioner ought to have been included in the draw of lots held on 31.03.2004 and since all those persons, whose names were included in the draw of lots on 31.03.2004, were allotted flats in Dwarka, the petitioner also is entitled to allotment of a flat in the same colony and at the same price at which it was allotted to those persons.

In my view, there is no merit in the contention advanced by the learned counsel for the petitioner. The above referred decision of DDA refers to those cases where on account of mistake of DDA, the name of the registrant could not be included in the draw held for the purpose of making allotments. It does not apply to the case where the allotment is made, but cancelled on the request of the allottee on the ground that he wanted allotment in some other locality. The learned counsel for the

respondent, on the other hand, has drawn my attention to the tail-end policy dated 20.10.2008, which, to the extent it is relevant, reads as under:-

“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 judgments 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 31.7.2004 (four months after 31.3.2004 i.e. the date of draw along with 12% interest from 31.7.2004 till payment in terms of demand letter. The policy will cover the following type of cases:-

(i) Registrants who have paid the cancellation charges with 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 05.02.2006 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 been allotted the flat.”

6. In view of the above-referred policy, the petitioner was required to pay the price of the flat as on 31.03.2004 along with interest on the said amount, at the rate of 12% per annum. A perusal of the notings filed by the respondent would show that the cost computation is based upon the said tail-end policy and the cost of the flat has accordingly been worked out at Rs 7,73,400/-. On the said cost, DDA has charged interest at the rate of 12% per annum with effect from 2004 to 04th February, 2010, which comes to Rs 5,33,646/-, thereby making a total cost of Rs 13,07,046/-. Therefore, DDA was fully justified in requiring the petitioner to pay a sum of Rs 13,07,046/- towards cost of the flat allotted to him in Narela vide allotment letter dated 12.04.2010-18.04.2010.

7. The next contention of the learned counsel for the petitioner was that the petitioner was entitled to allotment of flat in Dwarka, where other persons, whose names were included in the draw of lots held on 31.03.2004, were allotted flats by DDA. In support of his contention, the learned counsel for the petitioner referred to an interim order sheet of this

Court dated 18.03.2011. The said interim order, relied upon by the learned counsel for the petitioner, reads as under:-

“1. The only point involved in this case is that the Petitioner’s tail end priority was missed in a draw held for the tail end priority registrants on 31st March 2004. In all such cases, this Court has been passing orders directing the DDA to hold a mini draw for tail end priority registrants whose names have been left out for allotment of a flat in the same area, i.e., Dwarka/Rohini and at the cost prevalent as on 31st March 2004 along with interest and cancellation charges as per DDA’s policy.

2. In the present case, during the pendency of this writ petition in a mini draw held by the DDA, the Petitioner has been allotted an MIG flat at Narela. The contention is that the Petitioner cannot be treated differently from other tail end priority registrants who were allotted an MIG flat at Dwarka/Rohini at the cost prevalent as on 31st March 2004. Counsel for the Respondent states that he will have to seek instructions on the availability of MIG flats in Dwarka/Rohini.”

8. The learned counsel for the respondent, on the other hand, has relied upon the decision of this Court on 16.07.2010 in W.P(C) No. 4641/2010, which was affirmed by a Division Bench of this Court in LPA No. 604/2010, decided on 03.03.2011. A perusal of the order relied upon by the learned counsel for the respondent would show that in the aforesaid case, the petitioner wanted allotment of a flat either at Dwarka

or Rohini though DDA had allotted a flat to him at Narela. Rejecting the contention, this Court, *inter alia*, held as under:-

“The petitioner had registered herself for allotment of flat under the New Pattern Residential Scheme-1979 (NPRS-1979) launched by the DDA and had deposited Rs.4,500/- at the time of registration in 1979. The application for allotment of flat was made by the petitioner not for a specified locality. It was a general scheme launched by the DDA in 1979 for allotment of flats to the prospective applicants who had applied under the said scheme. Since the DDA did not allot the flat for which application was made by the petitioner under the New Pattern Residential Scheme-1979, the petitioner filed a writ petition being W.P.(C.) No. 353/2007 which was disposed of by this court vide order dated 04.05.2009 directing the DDA to examine the claim of the petitioner and allot her a flat, if she was not allotted one under the scheme for which she had registered herself. Pursuant to the said directions of the court the flat has been allotted by the DDA to the petitioner. The grievance of the petitioner is that she should have been allotted a flat by DDA either at Dwarka or at Rohini. This submission is made on the basis that the name of the petitioner ought to have been included in the mini draw that was held within three months of the said order of this court. This court is of the opinion that the petitioner does not have any vested right for allotment of a flat at a place of her choice, i.e., either

at Dwarka or at Rohini. She had applied for a flat under the NPRS-1979 of the DDA launched in 1979 and she had got MIG flat on the basis of registration under the said scheme.

In the facts and circumstances of the case stated above, I do not find any merit in this writ petition which fails and is hereby dismissed in limine. The stay application being C.M. No. 9192/2010 is rendered infructuous.”

Rejecting the appeal filed by the writ petitioner in the aforesaid case, the Division Bench, *inter alia*, held as under:-

“On a perusal of the said draw sheet, it is revealed that the flats at Rohini and Dwarka were also put in draw on 5.1.2010 and in the said draw, the allotment of the flat situate at Narela was made in favour of the appellant. In view of the aforesaid, we are of the considered opinion that the claim of the appellant that she would have only been granted flat at Rohini or Dwarka is without any substance. That apart from, the DDA has stated that it was a composite scheme and, accordingly, a composite draw was made and it has been uniformly applied. In the result, we do not perceive any merit in this appeal. Accordingly, the same stands dismissed without any order as to costs.”

9. The proposition of law which emerges and which, in my view, can hardly be disputed is that no registrant has a legal right to allotment of a

flat in a particular locality, his registration being for allotment of a residential flat anywhere in Delhi and not in a particular locality. If the allotment made by DDA in a particular locality is not acceptable to the petitioner, he is under no compulsion to accept such an allotment and can seek cancellation of his registration, but, he cannot insist upon allotment in a particular locality merely because some other persons were allotted flats in the locality in which the petitioner is interested. Draw of lots for allotment of flats are held from time to time and such flats as are available with DDA for the purpose of allotment under a particular scheme, are included in such draws. Thereafter, it is a matter of chance as who gets allotment in which locality. No person has a legal right to seek allotment in a particular locality of his choice merely because allotment to some other person came to be made in that particular locality. Considering the pronouncement of this Court in W.P.(C) No.4641/2010, which has been affirmed by the Division Bench of this Court in LPA No. 604/2010, no reliance on the tentative observations made by this Court in order sheet dated 18.03.2011 can be placed. The said observations are not the final decision of the court in the matter, they being only a tentative opinion embodied in the order sheet.

10. Admittedly, the petitioner did not deposit the initial amount of Rs 6,09,666/- in terms of the demand-cum-allotment letter dated 12.04.2010-18.04.2010. Since the said letter carried a term for automatic cancellation in case the payment was not deposited by 15.10.2010 and admittedly, the petitioner did not deposit the aforesaid amount even by the last date stipulated in the demand-cum-allotment letter, even the allotment made to him at Narela got automatically cancelled on account of non-payment of the price of the flat. No relief, therefore, can be granted to the petitioner.

For the reasons stated above, I find no merit in the writ petition and the same is hereby dismissed. There shall be no order as to costs.

MAY 20, 2013
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V.K.JAIN, J