

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

% Judgment reserved on : 22.04.2013
Judgment pronounced on : 29.04.2013

+ W.P.(C) 4895/2011

PINKI PUNIA Petitioner
Through: Mr. Nishant Datta, Advocate.
versus

D.D.A. Respondent
Through: Mr. Rajeev Bansal and Mr. Rahul
Bhandari, Advocates.

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

V.K.JAIN, J.

1. The petitioner before this Court applied for allotment of residential flat from Delhi Development Authority ('DDA') in its Housing Scheme, 2008. No allotment was made to the petitioner in the draw of lots held on 16th December, 2008. The name of the petitioner, however, appeared at serial No. 9 in the waiting list prepared by DDA, in the category of schedule caste applicants. The aforesaid waiting list was meant for allotment of those flats which were surrendered or became available on cancellation of the allotment to the successful applicants. The demand-cum-allotment letters to the successful applicants, who had applied under the aforesaid scheme, were issued sometimes in December, 2009. No

allotment, however, was made to the petitioner, though as many as 172 flats are stated to have become available for allotment on account of surrender or cancellation. Instead of allotting the above referred flats to the waitlisted applicants, DDA included them in its housing scheme of 2010. Being aggrieved from the non-allotment of the flat to her, the petitioner is before this Court by way of this writ petition. The following are the reliefs claimed in the writ petition:

“(i) Issue a writ in the nature of Certiorari or any other writ, order or direction inter-alia quashing the decision of the Respondent No.1/D.D.A. in merging the 172 cancelled flats from the 2008 Housing Scheme into the draw of lots held for the 2010 Housing Scheme;

(ii) Issue a writ in the nature of Mandamus or any other writ, order or direction inter-alia directing the Respondent to hold a draw of lots for waiting list applicants of the 2008 Housing Scheme and allot flats to them in accordance therewith.”

2. Clause 7 (III) of the DDA Housing Scheme, 2008 reads as under:

“A separate waiting list of 200 applicants will also be declared in order of priority. The waiting list will be valid only for 9 months from the date of issue of demand letters. The registration money of the wait listed registrants shall be refunded along with unsuccessful registrants. However, before going for the draw in case the same takes place for filling up the vacancies, all such eligible waitlisted shall be asked to deposit the registration money. 15 days time shall be given to them to do so and only those names shall be

included who would be depositing their registration money prior to the draw. A draw will be held only once after six months from the date of issue of demand letters, for allotment of the surrendered flats to the waitlisted registrants as per the priority decided initially. Only those flats which are surrendered within six months from the date of issue of demand letters would be included for allotment to waitlisted registrants. The waiting list is created just to ensure that the surrendered flats (if any) are allotted to same registrants rather than keeping them vacant and the list will be valid only for 9 months, hence it doesn't create any right of the waitlisted registrants if they fail to get a flat from the surrendered ones. If successful, the cost would be the cost of the flat on the date the demand cum-allotment letter is issued.”

It would thus be seen that the aforesaid scheme envisaged a draw of lots, after six months from the date of issue of the demand letters, for allotment of the flats which were surrendered and such an allotment was to be made only to the wait-listed applicants. Yet another condition stipulated in the scheme was that the draw of lots would be restricted to only those flats which were surrendered within six months from the date of issue of demand letters. The aforesaid wait listing was to remain valid for nine months from the date of issue of demand letters.

3. In its counter affidavit the respondent/DDA has admitted that it had prepared the waiting list of 200 applicants under DDA Housing Scheme 2008 and the said scheme was valid for a period of nine months from the

date of issue of demand letter. It is also stated in the counter affidavit that the demand-cum-allotment letters to the successful applicants under the aforesaid scheme were issued only around December, 2009. Thus, the waiting list prepared by DDA was valid till September, 2010. It is also admitted in the counter affidavit of DDA that the name of the petitioner was placed at serial No. 9 in the waiting list of 200 applicants. The case of the DDA in the counter affidavit is that the waitlisted applicants had no right for allotment of the flat which were initially allotted under the 2008 scheme, later came to be surrendered were included by it in its housing scheme of the year 2010 and were later allotted under the said scheme.

4. It has come in the writ petition that there were as many as 172 surrendered flats which came to be included in the housing scheme of 2010. This has not been disputed in the counter affidavit filed by DDA. The following facts, therefore, emerge from the pleading of the parties:

- (i) The housing scheme of 2008 envisaged preparation of a waiting list of the successful applicants and such a list was actually prepared by DDA.
- (ii) The name of the petitioner appeared at serial No. 9 in the waiting list in the category of schedule caste applicants.

(iii) Since the allotment letters under the scheme of 2008 came to be issued by DDA only on December, 2009, the aforesaid list was valid from September, 2009.

(iv) DDA did not hold draw for waitlisted applicants of the 2008 scheme and rather included the surrendered flats in its 2010 scheme.

5. It is also not the case of the respondent/DDA that the above referred 172 flats came to be surrendered more than six months after the issue of demand letters by it or that the number of flats surrendered within six months from the issue of demand letters in December, 2009 was less than 172. It is also not the case of DDA that had it held a draw for allotment of the flats which were surrendered within six months from the date of issue of demand letters, the petitioner would not have been successful in getting allotment.

6. The only plea taken by DDA is that the waitlisted applicants did not have legal right for allotment of surrendered flats and therefore it was entitled in law not to hold a draw in terms of Clause 7 (II) of the 2008 scheme and include such flats in its 2010 scheme. Therefore, the question which arises for consideration in this writ petition is as to whether the waitlisted applicants had a legal right to be considered for allotment of the

surrendered flats by way of holding of draw of lots after six months from the date of issue of demand letters.

7. Referring to the stipulation that “the waiting list is created just to ensure that the surrendered flats (if any) are allotted to same registrants rather than keeping them vacant and the list will be valid only for 9 months, hence it doesn’t create any right of the waitlisted registrants if they fail to get a flat from the surrendered ones. If successful, the cost would be the cost of the flat on the date the demand cum-allotment letter is issued”, the learned counsel for the respondent/DDA contended that DDA could, in its discretion, include these surrendered flats in the next scheme instead of holding the draw for the waitlisted applicants.

I, however, find no merit in the contention made by learned counsel for the respondent/DDA. The only reasonable interpretation which can be given to the above referred stipulation is that if the draw in terms of the aforesaid scheme was held by DDA and a waitlisted registrant was not successful in obtaining allotment in such a draw, that would not create any legal right in his favour to seek allotment of another flat from DDA merely on the strength of waiting list in which his name was included. This clause, in my view, does not give discretion to DDA not to hold the

draw of lots at all, despite the waiting list having been prepared and certain flats having been surrendered within a period of six months from the date of issue of the demand letters. These surrendered flats, in my view, could have been included in the next scheme only in the event of the waitlisted applicants not depositing the registration money within 15 days which was to be given to them by DDA, but DDA was certainly obliged to hold the draw after six months from the date of issue of the demand letter and call upon the waitlisted applicants to deposit their registration money within a period of 15 days. The name of only those who were to deposit the registration money within the stipulated period of 15 days were required to be included in the draw of lots envisaged in the scheme for the benefit of the waitlisting applicants.

8. DDA having invited applications and then prepared a waiting list for the unsuccessful applicant in terms of Clause 7 (III) of the scheme cannot be allowed to get out of its legal and contractual obligation envisaged in the scheme and therefore the inclusion of the flats, which were surrendered within the period of six months from the date of issuance of demand letters, in the scheme of 2010, without first calling upon the waitlisted applicants to deposit the registration money, was contrary to the provisions of 2008 scheme. Even otherwise, it would be

unethical and unreasonable on the part of the DDA to prepare waiting list of unsuccessful candidates and then not hold any draw for them without there being any justification for adopting such a course of action.

9. It was contended by learned counsel for the petitioner that there was delay on the part of the petitioner in approaching the Court and that in case she was aggrieved on account of inclusion of the surrendered flats in the 2010 scheme she ought to have approached the Court when the scheme of 2010 was announced. I, however, find no merit in this contention. The demand letters under the scheme of 2008 having been issued only in December, 2009, the petitioner had no cause of action to approach DDA at any time before June, 2010. The waiting list being valid till September, 2010, the petitioner was justified in approaching DDA between July to September, 2010. A perusal of the communication dated 15th November, 2010 sent by DDA to the petitioner would show that vide application dated 27th August, 2010 filed under Right to Information Act, 2005 ('RTI Act'), the petitioner sought information with respect to allotment of the surrendered flats to the waitlisted registrants of 2008 scheme and she was informed that the matter of allotment of flat to the waitlisted registrants was under consideration and would be intimated shortly. As regards surrendered flats of schedule caste/schedule tribes

allottees, the petitioner was informed that such flats had been kept in reserve for the wait listing candidates and the procedure for such allotment was under process. In view of the above referred communication from DDA, which held out assurance to hold the draw for allotment of the surrendered flats for the waitlisted registrants of 2008 scheme, the petitioner had no good reason to approach the Court instead of waiting for the assurance given by DDA to materialize. It was only by way of the letter dated 30th June, 2011 that the respondent/DDA informed one Mr. Ritesh Bhardwaj, in reply to an application made under RTI Act, that the list prepared for the waitlisted applicants of 2008 scheme had been scrapped. The writ petition having been filed in July, 2011, it cannot be said that the petitioner is guilty of laches in approaching the Court.

10. It was lastly submitted by learned counsel for DDA that since the petitioner did not approach the Court when 2010 scheme was open from 25th November, 2010 to 24th December, 2010 and the surrendered flats have already been allotted to the applicants under the Housing Scheme of 2010, no allotment can be made to the petitioner at this stage. I have carefully perused the brochure of DDA Housing Scheme 2010 whereby as many as 16,000 flats were offered by DDA. There is absolutely no indication in the brochure that the flats which were surrendered by the

allottees of 2008 scheme had been included in the aforesaid scheme. The details of the flats offered under the 2010 scheme have been given in Annexure A to the brochure. But the said annexure gives no indication that these flats included those which were surrendered by the allottees of 2008 scheme. Since the petitioner was not aware of DDA scrapping the waiting list and including the flats surrendered by allottees of 2008 scheme, in the scheme notified by it in the year 2010, it would be difficult to accept the plea that no allotment can be made to the petitioner.

11. The learned counsel for the respondent/DDA has placed reliance upon an order dated 2nd June, 2011 passed by this Court in W.P.(C) No. 4046/2011 titled as *Vaibhav Gupta v. Delhi Development Authority* where this Court observing that by September, 2010 it was clear that DDA had not held the draw of lots for the waitlisted applicants and that the petitioner had failed to make any written representation to the DDA in this regard, declined to grant any relief to the petitioner in that case. During the course of arguments, the petitioner in that case referred to an interim order passed by this Court in W.P.(C) 2396/2011. That case, however, was distinguished noticing that the petitioner in that case had been informed by the DDA that the draw in respect of the waitlisted allottees under the Housing Scheme 2008 was under process, whereas no such

written assurance had been given to the petitioner Vaibhav Gupta. In the case before this Court, the petitioner was specifically informed vide communication dated 15th November 2010 that the allotment of flats to the waitlisted registrants of 2008 scheme was under consideration and would be intimated shortly. As regards allotment of the flats surrendered by schedule castes/schedule tribes category applicants, the petitioner was informed that such flats had been kept in reserve for allotment to the waitlisted candidates and the process for allotment to such candidates was not the right process. Therefore, the case of the petitioner before this Court is thus clearly distinguishable from the case of the petitioner in W.P.(C) No. 4046/2011. Moreover, the attention of the Court was not drawn to the fact that the brochure for 2010 scheme had no indication that the surrendered flats which were meant for allotment to the waitlisted applicants of 2008 scheme had been included amongst the flats offered under the scheme of 2010. Yet another material fact which was not brought to the notice of the Court was that the neither the waitlisted applicants were informed that the waiting list had been scrapped by DDA and the surrendered flats were sought to be included in the 2010 Scheme nor was any public notice given by DDA in this regard for the benefit of the waitlisted registrants of 2008 scheme.

12. In view of the aforesaid discussion, I am of the view that, if a flat of the category in which the petitioner had applied in the scheme of 2008 is available with DDA or becomes available at a later date, such a flat would be offered to the petitioner, on the price prevailing on the date on which the allotment is offered to him. If a flat of the appropriate category is currently available to DDA it shall be offered to her by DDA within a period of four months from today and if no such flat is available with DDA, it would offer a flat of an appropriate category to the petitioner within four weeks of such a flat becoming available with it.

The writ petition stands disposed of in the above-referred terms.

V.K. JAIN, J.

APRIL 29, 2013

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