

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

% Judgment reserved on : 04.03.2013
Judgment pronounced on : 06.03.2013

+ **LPA No.1250/2007**

DELHI DEVELOPMENT AUTHORITY Appellant

Through : Mr. Rajiv Bansal with Mr. Devvrat
Singh Raghav, Advs.

versus

BANDANA MUKHERJEE Respondent

Through : Ms. Richa Kapoor with Ms. Medha
Sachdev, Advs.

CORAM:

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

V.K. JAIN, J.

1. The respondent before this Court got herself registered for allotment of a flat under New Pattern Registration Scheme ('NPRS'), 1979. In the registration form, the respondent disclosed her address as F-2249, Netaji Nagar, New Delhi. The respondent being a housewife, no residential address of her own was disclosed in the application form, but she gave the occupational address of her husband in the application form. On death of her husband on 22.7.1991, the respondent shifted from

F-2249, Netaji Nagar to E-1500, Netaji Nagar, New Delhi. She, however, did not intimate the change of address to DDA. Subsequently, DDA announced a Scheme for 'Out of Turn Allotment of Flats to Widows'. The respondent applied for out of turn allotment of a Flat under the aforesaid Scheme giving her address as E-1500, Netaji Nagar, New Delhi. She also disclosed her NPRS Registration in the application form. No out of turn allotment was made to the respondent. However, in a draw of lot, held on 30.5.2002, the respondent was allotted a residential flat under NPRS, 1979 and the Allotment-Cum-Demand-Letter was sent to F-2249, Netaji Nagar, New Delhi. The said letter having been returned undelivered, a cancellation letter dated 1.2.2004 was sent to the respondent at the same address. The cancellation letter also remained unserved. On 18.8.2005, the respondent represented to DDA for allotment at the same location where she was allotted a flat in the draw held on 30.5.2002. This was followed by subsequent representations dated 1.9.2005 and 28.12.2005. Since the representations made to the appellant did not yield any result, a writ petition being W.P(C) No.16317/2006 was filed by the respondent, seeking direction to DDA to issue a Allotment-Cum-Demand-Letter to her, at the price prevailing in

the year 2002 when her priority had matured. The learned Single Judge, vide impugned order dated 23.7.2007, directed the appellant to hold a mini draw for the respondent, subject to availability of any other flat in Dwarka and issue a fresh Demand-cum-Allotment-Letter at the cost prevailing in January, 2006. Being aggrieved, the DDA is before us by way of this appeal.

2. When this appeal came up for hearing on 28.9.2007, the learned counsel for the respondent stated that she would not press for implementation of the impugned order. In view of her statement, no interim order was felt necessary.

3. It is an admitted position that though in terms of registration under NPRS, 1979, the respondent was required to intimate any change of address to DDA, no such intimation was given by her when she shifted from F-2249, Netaji Nagar, New Delhi to E-1500, Netaji Nagar, New Delhi. No explanation is forthcoming from the respondent for not intimating the change of address to DDA.

4. Admittedly, since the respondent is a housewife, no occupational address of her own was disclosed by her in the registration form under NPRS. However, she disclosed the occupational address of her husband

in the said form. No effort was made by the appellant-DDA to send the allotment letter to the occupational address of the husband of the respondent. The question which comes for consideration is as to whether the respondent is entitled to allotment of a flat on account of DDA not sending the Demand-cum-Allotment Letter at the occupational address of her husband. We agree that it is the duty of DDA to send demand-cum-allotment letter not only at the residential address disclosed in the registration form but also at the occupational address disclosed therein, in a case where the demand-cum-allotment letter sent at the address is received back unserved on account of change of address. Therefore, had the husband of the respondent been alive and working at the place disclosed in the registration form, at the time the allotment letter sent at the residential address of the respondent was received back unserved, and had the allotment letter not been sent at address, the grievance of the respondent would have been justified because, in that case, the allotment letter would have been served upon her husband, at his occupational address. However, in the case before us, admittedly, the husband of the respondent expired on 22.7.1991 and the allotment came to be made only on 30.5.2002 i.e. after about 11 years of the death of her husband.

Therefore, sending the allotment letter at the occupational address of the husband of the respondent would not have served any purpose and would have been an exercise in futility. We are not inclined to accept the contention of the learned counsel for the respondent that had the demand-cum-allotment letter been sent at the occupational address of the husband of the respondent given in the registration form, the persons working at the said office, could have given new address of the respondent to the Postman who then would have taken the demand-cum-allotment letter to the new address or would have sent the demand-cum-allotment letter back to DDA after noting down the changed address of the respondent. While examining such a contention, we have to keep in mind not only that the demand-cum-allotment letter would be in the name of the respondent and not in the name of her husband who was the employee at some point of time posted in that office but also that he had expired about 11 years before the demand-cum-allotment letter was dispatched. The employees working in the said office, after 11 years of the death of the husband of the respondent, would not even be knowing that the person to whom the letter was addressed is the wife of a former colleague who died 11 years ago. Therefore, in the present case, cancellation of allotment

cannot be challenged on the ground that the demand-cum-allotment letter was not sent to the occupational address of the deceased husband of the respondent.

5. The main contention of the learned counsel for the respondent was that since the changed address of the respondent was available in the application submitted by her for out of turn allotment of flat, the appellant ought to have sent the allotment letter on that address. In order to examine this contention, we called for the allotment file of DDA in respect of registration under NPRS as well as the file in which her application for out-of-turn allotment of flat was processed. We were informed that the file in which the application of the respondent for out of turn allotment of a flat was processed, is not available, the same having been destroyed. On a perusal of the file in which the allotment under NPRS 1979 was processed, we found that neither the copy of the application submitted by the respondent for out of turn allotment of a flat was available in that file nor was there any reference to such an application in that file. Since the officers of DDA dealing with the file pertaining to allotment under NPRS 1979, were not even aware of the respondent having applied for out of turn allotment and having submitted

an address different from the address given in the application for registration under NPRS, they had no occasion to send the demand-cum-allotment letter at the changed address. Even if the officers of DDA, dealing with the file pertaining to allotment under NPRS, were to be aware of the respondent applying for out of turn allotment, they would have no occasion to send the demand-cum-allotment letter under NPRS to the changed address, unless they are also aware that the address given by the respondent in the application seeking out of turn allotment was different from the address which she had given in the application for registration under NPRS. Therefore, we find no merit in the contention that since the respondent had given a changed address in her application for out of turn allotment, the demand-cum-allotment letter in respect of the flat allotted to her under NPRS, 1979 should have been sent at that changed address.

6. The learned counsel for the respondent has relied upon the decision of a learned Single Judge of this Court in W.P.(C) 9724/2006 decided on 10th August, 2009. In the aforesaid case, the petitioner before this Court got himself registered under NPRS 1979 and disclosed a particular address. Thereafter, he applied for out of turn allotment and disclosed a

new address in that application. The petitioner was allotted a flat in NPRS 1979 and the demand-cum-allotment letter was sent at the address disclosed by him in the application for registration under the said Scheme. No attempt was made to send the demand-cum-allotment letter at the new address given in the application seeking out of turn allotment. The petitioner, while seeking registration under NPRS had also disclosed an occupational address. No attempt was made by DDA to send the demand-cum-allotment letter at that occupation address. The contention of DDA before the learned Single Judge was that out of turn allotment, an MIG (Housing) are two different departments and the address known to one department cannot be construed as the address known to the other. The learned Single Judge noticed that the letter dated 14th February, 1992 was forwarded to the MIG(Housing) of DDA clearly stipulated that the petitioner was a registrant of NPRS 1979 Scheme and was residing at a new address. The said letter also disclosed old registration number as well as new registration number under the MIG category. Even the computer number was given. It was, in these circumstances, that the learned Single Judge was of the view that DDA should have checked the computer number to incorporate the new address given by the petitioner.

However, in the case before us, we have ourselves examined the file in which allotment under NPRS 1979 was processed and we have found that there is absolutely no reference in the said file to the application of the respondent for out of turn allotment of a flat. More importantly, the said file does not even have an indication that the respondent had submitted an application for out of turn allotment and in that application, she had disclosed an address different from the address disclosed in the application for registration under NPRS 1979. As regards the appellant not sending demand-cum-allotment letter at the occupational address of the husband of the respondent, as stated earlier in this order, considering the fact that the husband of the respondent died about 11 years before the allotment matured, no useful purpose would have been served by sending the said letter at that address.

7. For the reasons stated hereinabove, the impugned order dated 23.07.2007 is hereby set aside. In the facts and circumstances of the present case, there shall be no order as to costs.

V.K.JAIN, J

CHIEF JUSTICE

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