

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

Reserved on: 30th October, 2013
Pronounced on: 18th November, 2013

+ W.P.(C) 6422/2010

RAM KISHAN SHARMA Petitioner

Through Mr. Amit Anand Tiwari with
Mr. Avinash Tripathi, Advocates

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through Ms. Manika Tripathy Pandey with
Mr. Ashutosh Kaushik, Advocates

CORAM:
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

1. This writ petition tells a gory tale of a school teacher who got himself registered with the Respondent (DDA) for allotment of an MIG flat(Registration No.34513, Priority No.9463) dying without getting possession of any flat till his death on 30.11.2011. Since he was a school teacher, he knew and had himself taught his pupils to fight for their rights.

2. The following prayers are made by the Petitioner in the writ petition:

“i) *issue a writ in the nature of mandamus directing the respondent to allot a SFS flat to the petitioner as his entitlement;*

ii) *issue a writ in the nature of mandamus directing the respondent to allot any suitable accommodation to the*

petitioner as per his entitlement.”

3. The Petitioner was allotted an MIG flat in Rohini as per his seniority in the draw held on 18.02.1991. Thereafter, he was issued a demand letter on 03.10.1991. According to the Petitioner, since the address was wrongly mentioned on the said letter, it was received by him through some of his neighbours though a little late. The same is not very much material in view of the fact that the Petitioner got the demand letter before expiry of the date for deposit of the amount as demanded in the demand letter.
4. One Sh. Kanshi Ram Sharma (uncle of the Petitioner), who was a freedom fighter and a Member of Parliament, Rajya Sabha perhaps thought that he can get a better accommodation for his nephew as he(the nephew) had a family of six children with whom he (Shri Kanshi Ram Sharma) could also live. Thus, Shri Kanshi Ram Sharma made a representation to the Hon'ble Lieutenant Governor of Delhi to convert the said allotment under the MIG Scheme to SFS Category II. After certain efforts, the conversion was allowed by the DDA. A communication dated 24.09.1993 was written to the Petitioner informing him that the demand note will be communicated to him and then he can apply for the SFS Category II of his choice as and when the flats are released under SFS. However, on non-receipt of the same, the Petitioner approached Public Grievance Cell of the Government of India. Since, SFS Category was no more live, ultimately, a note dated 29.05.2002 was prepared by the Director (Housing) II (Ms. Asma Manzar) proposing to allot an MIG flat again at old cost plus 12% interest. The note of Director (Housing) II is extracted hereunder:

“Reference letter of Shri Rajiv Talwar dated 2.5.2002 regarding grievance of Shri R.K. Sharma at page 85/C. The brief facts of the case are as under:-

Shri R.K. Sharma was registered under NPRS, 1979 for MIG Category. As per his priority his name was included in the draw held on 18.2.1991 and he was allotted a first floor flat in Rohini. The demand letter was issued on 3.10.1991.

Shri Kanshi Ram uncle of allottee Shri R.K. Sharma had requested for change of mode of payment from cash down to hire purchaser conversion of registration from MIG to SFS. The case was examined and it was decided by the then LG that the request of Applicant for conversion from MIG to SFS Category can be considered on usual terms and condition subject to payment of difference in the registration amount as well as interest and other charges. The conversion will have the effect of making him a registrant under the SFS and he will have to apply against the future release, refer page 2/N. In spite of clear orders of LG, a regret letter was issued to Shri R.K. Sharma on 29.5.92. He approached the Ministry of Urban Development and a letter was sent to Under Secretary on 24.9.93 informing him that Shri R.K. Sharma has been allowed conversion from MIG to SFS Category II. It was also informed that demand note will be communicated to him to deposit the amount for change of Category. Shri Sharma was also informed that he can apply for SFS Category II flat of his choice, as and when, the flats are released under SFS, page 21/C. Copy of this letter was sent to Shri R.K. Sharma.

However, Applicant never got any demand for conversion from MIG to SFS ever since the conversion is allowed. As per record available, no entry in respect of conversion was made either in the Management or accounts Branch record. The Applicant could not apply under SFS Category without conversion letter.

In December 2000, the case was examined and it was observed that registrant could not get the flat due to the fault of the department, and since SFS Category is no more live he may be allotted a MIG flat at current cost after seeking his consent, refer note at page 10/N.

Applicant has now approved the DPG for relief. The Deputy Secretary(PG), Cabinet Sectt. has now raised certain queries in his letter dated 2.5.2002 and requested to convey comments of VC on the decision to allot an MIG flat at current cost.

In view of the above, it is clear that the fault on the part of DDA. To deal with such cases we have clear policy to allot the flat at old cost + 12% interest. In this case also, we may offer MIG flat to Shri R.K. Sharma, at the rates prevalent in the financial year 1991-92 – 12% interest.

Submitted for orders pleased.”

5. In the note dated 29.05.2002, it was categorically stated by the Director(Housing) that although the Petitioner's registration was changed from MIG to SFS but no entry in respect of the conversion was made either in the Management or in the Accounts Branch. Thus, the Petitioner could not apply for allotment of a particular flat under SFS Category. The Director(Housing) therefore felt that the Petitioner was not to be blamed for the same as there was fault on the part of some official of the DDA only. Be that as it may, the proposal did not find favour with the competent authority and thus the Petitioner was offered a flat of MIG Category only on the current cost subject to giving of consent by him. Since the Petitioner was pursuing his matter through Public Grievance Cell of the Government of India, previously another letter dated 19.02.2001 was written to him stating that since the scheme HIG and SFS flats had since been closed, it was not possible to allot him(the Petitioner) a flat under SFS scheme. He was informed that his case has, however, been approved in an MIG scheme subject to his written consent. In fact, letter of allotment on current cost was also written to the Petitioner on 26.12.2002 informing him that he had been allotted Flat No.12, Pocket E-1/11, Sector 15, Rohini on cash down basis. The Petitioner refused to

accept the allotment on the ground that the Petitioner cannot be made to suffer for the fault of the defaulting official of the DDA in not sending him the demand note of conversion to SFS Category II in time by letter dated 20.02.2003, written by him to the Secretary, Government of India, Public Grievance Cell, and he sought the following relief:

“Sir, Letter No.F-24(291)/91/RO/MIG/NP/ dated 29.09.1993 for the Conversion from MIG to SFS Category II sent to me was duly signed by Shri S.D. Arora, the then Dy. Director(H) NP who must have fixed the responsibility on Erring Dealing Official/Assistant for this negligence of DUTY who did not send the DEMAND NOTE for the conversion to SFS Category II in time. But it seems that the Erring/Corrupt Official is defended and defence to such corrupt official gives birth to corruption for which DDA bears a BAD IMAGE.

Sir, in view of the above cited facts of the case, my submissions are as under:-

- 1. That responsibility must be fixed on the dealing official for his negligence of duty. I should not be penalised for no fault of mine.*
 - 2. I should be allotted the SFS Category II Flat/Newly constructed MIG Flat on **the cost prevailing in 1993**, as DDA is paying me the SIMPLE INTEREST on my Registration Deposit.”*
6. The Petitioner also forwarded various advertisements issued by the DDA through which the SFS flats were being offered after the letter No.F.24(291)/91/RO/NP/679 dated 19.02.2001 was written to him by the Director(Housing) II to the Director, Public Grievance Cell, Government of India that the schemes of HIG and SFS had since been closed.
7. The sum and substance of the case propounded in the counter affidavit

filed by the DDA is that the Petitioner having been allotted the MIG flat initially in the year 1991 and then again on 27.09.2002 and having not accepted the same cannot now be permitted to approach this Court in writ jurisdiction to get a flat under any Category.

8. The learned counsel for the Petitioner heavily relies on the letter dated 29.09.1993 to contend that the Petitioner cannot be blamed for not applying for any specific flat under SFS scheme as demand note as stated in the letter dated 29.09.1993 was never issued to him. He was also justified in refusing the allotment of the MIG flat offered by letters written in 2001 and 2002 as he had already demonstrated before the DDA as also before Public Grievance Cell that SFS flats were still being offered to the registrants under the scheme. For the sake of convenience, it will be apposite to extract the letter No.F.24(291)91/RO/MIG/NP dated 29.09.1993 whereby the conversion from MIG to SFS Category II was allowed in favour of the Petitioner:

“Sir,

Please refer to your office letter No.151/DDA/VIP/93-DDIIA dt. 4.5.93 on the subject cited above, I am directed to inform you that Sh. R.K. Sharma has been allowed conversion from MIG to SFS Category II. A Demand Note will be communicated to him to deposit the amount of change of Category.

He can apply for the SFS Cat.II flat of his choice, as and when the flats are released under SFS.”

9. As stated earlier, the Petitioner had been very vigilantly pursuing his case not only with the DDA but also approaching the Public Grievance Cell of the Government of India complaining about the highhandedness on the part of the DDA in not allotting him a flat under SFS Category II.

Although, the DDA wrote a letter dated 21.01.2001 that the Petitioner could be allotted an MIG flat on the current cost followed by a letter dated 19.02.2001(addressed to the Director, Public Grievance Cell, Government of India) that HIG and SFS schemes had since been closed, the Petitioner was justified in pointing out to the Public Grievance Cell that an advertisement was issued by OSD(Housing) (Page 21 of the paper book) that a draw of the eligible allottees of SFS Category II was going to be held on 23.02.2002.

10. The learned counsel for the DDA tried to justify its action on the ground that since the Petitioner never applied for allotment of flats being offered in pursuance of any advertisement for allocation of any particular flat under the SFS scheme, he himself was to be blamed for the same. This contention raised is fallacious. Admittedly, the Petitioner's registration was changed from MIG to SFS Category II. He was assured that a demand note will be communicated to him to deposit the amount of change of Category which was never done. Since the demand note was not issued and the registration number was not given to the Petitioner for SFS Category II, he was not eligible to apply for allotment of any specific flat under the SFS scheme. Thus, it was the DDA who was to be blamed for placing the Petitioner in a predicament where he lost his allotment not only under SFS Category II but also under the MIG scheme. The learned counsel for the DDA relies on a Division Bench judgment of this Court in *Naresh Kumar Kataria v. Delhi Development Authority*, (LPA No.1094/2006) decided on 17.05.2012 to canvass that the Petitioner himself was guilty of delay and laches and was thus not entitled to the allotment of an MIG flat now. However, the facts of the instant case are entirely different. His registration was converted to SFS Category II but

neither a demand note was issued nor the registration number was allotted so as to enable him to apply for allotment in pursuance of any advertisement for allotment of a flat under SFS Category II.

11. The learned counsel for the Petitioner submits that the Petitioner expired on 30.11.2011 after waiting for a roof on his head for about 31 years. His widow, who is one of the LRs, would be happy even if an MIG flat is allotted to the legal representatives of the deceased Petitioner at current cost. Since there was no fault of the Petitioner in not applying for allotment of a flat in pursuance of any public advertisement under SFS Category II and since the scheme has since been closed, the Petitioner can be allotted only an MIG Flat. Although, the learned counsel for the Petitioner has stated that the MIG flat may be allotted to the legal heirs at current cost, but this contention will not bind me to do injustice to the Petitioner who valiantly fought for his right till he was alive. Although, the proposal dated 29.09.2002 made by the Director(Housing) to allot an MIG flat to the Petitioner at the current cost plus 12% interest did not find favour with the competent authority, yet considering the fact that the Petitioner was always vigilant, he(now his legal heirs) cannot be penalised by allotment of a flat at current cost.
12. Therefore, I issue a writ of *mandamus* directing the Respondent to allot an MIG flat to the Petitioner as far as possible in the same area(Sector 15, Rohini) on the cost as was prevalent in December, 2002(along with simple interest @ 12% per annum from 01.01.2003 till date) within a period of three months. Upon the Petitioner making the payment, the possession of the flat shall be handed over to the Petitioner within 30 days thereafter.

12. The writ petition is disposed of in above terms.
13. Pending applications, if any stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 18, 2013
pst