

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

+ W.P.(C) 5542/2012

PUSHPA KHATKAR Petitioner
Through: Mr. Ram Kavar, Advocate

versus

D.D.A. AND ANR Respondents
Through: Mr. Tanmaya Mehta, Advocate
for DDA.

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. Rule. With the consent of the counsel for the parties, the present petition is set down for final hearing and disposal.

2. The Petitioner in the present writ petition had applied in the year 1979 for allotment of LIG flat under the IVth Registration Scheme on New Pattern, 1979 and was given LIG/Registration No.34799, vide deposit receipt serial No.102982, dated 9th October, 1979, from Book No.1030. She was assigned priority No.51102 in the Scheme. In the application form, the Petitioner had mentioned her residential address as: "WZ-1408, Rani Bagh, Shakur Basti, Delhi-110034", as is evident from the copy of the deposit receipt dated 9th October, 1979. On 20th January, 1986, the Petitioner on change of her

aforesaid address intimated the DDA of her new correspondence address as: “Pushpa Khatkar, C/o J.P. Sheokand, 401/15, Mahaveer Park, Bahadurgarh (Haryana).” A copy of the intimation letter dated 20th January, 1986 bearing No.7787, signed, sealed and acknowledged by the Receipt Clerk of DDA has been annexed along with the present petition as *Annexure P-2*.

3. The Petitioner was successful in the draw of lots held by the DDA on 20th March, 2006. Intimation of such allotment was allegedly made to the Petitioner on 20th July, 2006. However, the Demand-cum-Allotment Letter (DAL) dated 20th July, 2006 was admittedly sent on the old address of the Petitioner, as mentioned in the application form, despite intimation by the Petitioner about the change in her correspondence address. The Demand-cum-Allotment Letter (DAL) was therefore received undelivered. Thereafter, according to the Respondents, the DAL was again sent through speed post, but the same was received back undelivered with the remarks “no such person”. Since no response was received from the Petitioner, the allotment was cancelled as per terms and conditions of the Demand-cum-Allotment Letter.

4. The Petitioner being in the dark about the events leading to the cancellation of her allotment, approached the DDA. Her oral representations were made in person to DDA on 29th August, 2008 and again in October, 2008, 30th April, 2009, 11th June, 2009 and even afterwards, all of which went unheeded. The Petitioner thereupon moved an application under RTI Act dated 29th August, 2008 to know the status of the allotment of flat to her. The Deputy

Director (LIG)-H through letter dated 9th September, 2008 informed the PIO/Director (H)II of DDA, who then apprised the Petitioner by his letter dated 11th September, 2008 that *“in this case against her above Registration, allotment of LIG Flat No.934, Third Floor, Pocket DDA at Lok Nayak Puram was made to her on Cash Down Basis in the Draw held on 23/3/2006. Demand-cum-Allotment Letter was also issued to her in the Block End Dt.20-Jul-2006 at her available address through UTI Bank. DAL received back undelivered from the Bank with the remarks that ‘No such co./C’nee at given address’. Thereafter, DAL was again sent through Speed Post but this time also returned undelivered from the Postal Authorities with the remarks that ‘No Such Person’. Accordingly, Call letters, Show Cause Notices, but they were also received back undelivered. Allotment stood cancelled as per terms and conditions of the DAL.”*

5. The Petitioner thereupon moved an appeal dated 22nd September, 2008 under the RTI Act seeking further information from the Commissioner(H) of DDA as to which was the available address on which Demand-cum-Allotment Letter was sent to her, which she followed up with a reminder letter dated 28th November, 2008, and was informed through letter dated 19th December, 2008 that the Demand-cum-Allotment Letter in respect of the flat allotted to her was sent to her at her old address of Rani Bagh, Shakur Basti, Delhi-34. On being so informed, the Petitioner made a representation dated 23rd January, 2009 to the Lieutenant Governor, Delhi. Pursuant to the said representation, the then Deputy Director LIG, Housing of DDA called upon the Petitioner for verification of the

genuineness of the original documents through his letter dated 25th May, 2009. The Petitioner personally visited his office on 11th June, 2009 and submitted all the required documents and got the same verified with the originals. The Petitioner was then assured by the office of the Deputy Director LIG, Housing of DDA that a communication with regard to the allotment of LIG flat to the Petitioner would be sent within a period of one month. The Petitioner, however, did not receive any such communication despite a reminder sent by her on 31st August, 2009.

6. Ultimately, on 11th September, 2009, the Deputy Director (LIG)-H of the DDA informed the Petitioner with reference to her letter dated 31st August, 2009 that her request for allotment of LIG flat, under Wrong Address Policy, had been put up before the Committee, which had examined the same and taken the view that the case needed to be checked thoroughly again, particularly the genuineness of the receipt of change in address and that the same was under process; that the final outcome of the same would be intimated to her. Thereupon, the Petitioner informed the Deputy Director (LIG)-H of the DDA, through a letter dated 20th December, 2009, that she had personally visited his office on 11th June, 2009 and got verified all the relevant documents with the originals including the receipt of address change letter and requested to get the matter expedited. The Assistant Director (LIG)-H of the DDA thereafter required the Petitioner to furnish further documentary evidence. The Petitioner also made further applications on 5th October, 2011 and 15th March, 2012 under the RTI Act to know the reasons for which her

allotment had been cancelled. When all this went in vain, the Petitioner preferred the present writ petition praying for issuance of a mandamus to the DDA to allot her LIG flat, in lieu of the cancelled one at the cost prevailing at the time of the original allotment on 23rd March, 2006, without payment of interest thereon.

7. In the Counter-Affidavit filed on behalf of the DDA, the aforesaid facts have not been disputed and the only contention of the DDA is that the Demand-cum-Allotment Letter dated 20th July, 2006 was sent to the Petitioner at her residential as well as occupational address as mentioned in the application form through UTI Bank, but was received back undelivered. Thereafter, the DAL was again sent through speed post, but the same was received back undelivered with the remarks “No Such Person”. The call letters and show cause notices were also returned back undelivered. Since no response was received from the Petitioner nor any amount was deposited in terms of the rules and regulations, the allotment was cancelled as per the terms and conditions of the Demand-cum-Allotment Letter. It is also stated in the Counter-Affidavit that since the 1979 Scheme has already been closed, the Petitioner is not entitled for any allotment, but is rather entitled for refund of registration money subject to furnishing of original documents.

8. As regards the reliance placed by the Petitioner upon a letter of 20th January, 1986 purporting to inform the DDA of the change of address and the case of the Petitioner being put up before the Committee for consideration under the Wrong Address Policy, it is submitted in the Counter-Affidavit that the diary register for the year

1986 is not traceable in the records of DDA and hence the said averment of the Petitioner is denied and the Petitioner is put to strict proof thereof.

9. It is submitted by the DDA that the Committee was of the view that the case needed to be checked thoroughly, particularly the genuineness of the receipt of change in address relied upon by the Petitioner. The records were checked and the diary register of the year 1986 was not found traceable in the concerned branch. In the absence of the diary register for the year 1986 being traceable, the Respondent could not confirm receipt of the letter dated 20th January, 1986.

10. So far as the claim of the Petitioner for allotment of a flat at the old cost is concerned, it is submitted that even assuming without conceding that the Petitioner is entitled for allotment, the allotment be made at the cost as per applicable policy. It is however not denied that under the Wrong Address Policy and Office Order dated 25th February, 2005, where demand letter is sent at the wrong/old address and the allottee approaches the DDA within a period of 4 years from the date of allotment, the flat is allotted at the old cost prevalent at the time when the priority of the allottee matured, without charging of any interest. Where however, the allottee approaches the DDA beyond the period of 4 years from the date of allotment, the allotment is made at the old cost along with simple interest at the rate of 12% per annum with effect from the date of original allotment letter till the date of issuance of fresh demand and allotment letter.

11. The Petitioner in the Rejoinder filed by her to the aforesaid Counter-Affidavit has reaffirmed and reiterated the assertions made by her in her petition and submitted that it stands admitted in the Counter-Affidavit that she is entitled to the allotment of LIG flat in lieu of the cancelled one and the lower of the two costs, - as between the cost at the time of the original allotment and the current cost, - ought to be charged.

12. I have heard learned counsel for the parties and perused letter dated 20th January, 1986 (*Annexure P-2* to the petition) informing the Respondents about the change in the Petitioner's correspondence address. On the margin of the said letter, there is a stamp of the DDA acknowledging the receipt of the said letter on 30th January, 1986. Clearly, therefore, the Respondent/DDA was at fault in sending the allotment letter at the Petitioner's old address of Rani Bagh, despite having receipt of information regarding change of address. The plea raised in the Counter-Affidavit that the Respondents' diary register for the year 1986 is not traceable in the Branch and, therefore, the Petitioner is put to strict proof of the communication being relied upon by her, as the Respondent cannot confirm receipt of the letter dated 20th January, 1986 without the diary register for the year 1986, deserves outright rejection. A bare glance at the letter dated 20th January, 1986 shows that it bears the seal of the DDA, which fact has not been denied by the DDA in the Counter-Affidavit filed by it. The onus of proving that the said letter was not received by it was upon the DDA, which the DDA has miserably failed to discharge. The Petitioner has discharged the initial onus placed upon her of proving

that she had intimated the DDA about her change of address by placing on record a copy of *Annexure P-2* in the writ petition showing the diary register No.7787 and the seal of the Respondent/DDA, and the onus thereupon shifts to the Respondents to prove that no such intimation was received by it. The Petitioner is not the custodian of the records of the DDA and of the diary register of the DDA, and therefore, she cannot be asked to produce the same. It is now for the Respondents to produce the relevant entry in the diary register for the year 1986, for which adverse inference is liable to be drawn against the Respondents in case they fail to produce the same. The plea of the DDA that it has complied with its obligations by sending communications to all available addresses of the Petitioner is also of no avail to the DDA in the absence of proof of non-receipt of *Annexure P-2* to the petition.

13. The law is well settled on the issue of sending intimation at wrong address due to fault of DDA inspite of correct address being available in the record. Reference in particular may be made in this context to the judgment of this Court rendered in *Shri Balkishan Sharma vs. D.D.A. and Others, 2003 (67) DRJ 265*. The facts in the said case were identical to the facts in the present case. While granting the relief prayed for by the Petitioner, it was observed as follows:-

“6. I have perused the letter dated 30th January, 1989. On the margin of the said letter, there is a stamp of respondent/DDA acknowledging the receipt of said letter on 24th February, 1989. The respondent/DDA was, thus, at fault in sending the

allotment letter at the old address despite having receipt of information regarding change of address.”

14. In the present case also, as noted above, there is a stamp of the Receipt Clerk of the Respondent/DDA acknowledging the receipt of the letter of intimation of the new address of the Petitioner for correspondence. The Respondents notwithstanding the same issued the Demand-cum-Allotment Letter at the previous address only and thereafter proceeded to cancel the allotment even after the Demand-cum-Allotment Letter had been returned undelivered at the said address. The Respondents had a duty to search in the files of the Petitioner for any other address for correspondence after receiving the report that no such person was residing at the Delhi address of the Petitioner. It failed to do so and that too in circumstances when a long time had expired between the date of the registration of the Petitioner and the date of the issuance of the Demand-cum-Allotment Letter. As held by this Court in the case of ***B.K. Mehta vs. DDA, 145 (2007) DLT 244***, a registrant cannot be expected to remain at the same address when the allotment was made after a long lapse of time, and the DDA has a statutory duty enjoined upon it to act fairly and reasonably and reasonableness mandates taking all adequate steps to ensure communication to the registrant of the allotment.

15. Reference may also be made to the policy of the DDA in this regard, which was framed pursuant to the decision of this Court dated 16th December, 2004 rendered in connected writ petitions, including W.P.(C) No.19095/2004. This policy which is contained in Office Order dated 25th February, 2005, and is commonly known as Wrong

Address Policy of DDA mandates certain procedure required to be followed by the DDA in such cases as follows:-

“.....1. In cases, wherein change of address was intimated by the registrant but erroneously not recorded by DDA and thereby demand letters were sent at wrong/old address and the allottee approaches DDA within a period of four years from the date of allotment, he/she shall be allotted flat at the old cost, prevalent at the time when the priority of allottee matured and the allotment letter issued, and no interest will be charged. The allotment will be made at old cost subject to following:

- (a) He should approach DDA within a period of four years from the date of issue of demand letter at the wrong address.*
- (b) He should have proof of having submitted a request for change of address to DDA duly signed by the allottee himself/herself i.e. proof of receipt at DDA counter.*
- (c) He should have documentary proof of change of address viz. Ration Card/Election Card/Identity Card/Passport, etc. (duly attested by the Gazetted Officer).”*

16. Having regard to the facts of the case, I am satisfied that the aforesaid policy of the DDA is applicable in the case of the Petitioner. The admitted position is that no Demand-cum-Allotment Letter was ever served upon the Petitioner, who thus had no information either of the allotment or of the fact that she was required to make any payment to the DDA. It is also the admitted position that the cancellation of the Demand-cum-Allotment Letter was also not

communicated to the Petitioner. The Petitioner on coming to know of the cancellation through an RTI application made by her repeatedly approached the DDA, but no efforts were made by the DDA to rectify its mistake and thus the Petitioner was deprived of the use and enjoyment of a flat even though she had succeeded in the draw of lots in the year 2006 itself. The Petitioner approached the DDA in 2008, immediately on being informed on 11th September, 2008 about the cancellation of her allotment. Admittedly, under the Wrong Address Policy contained in Office Order dated 25th February, 2005, where demand letters are sent at the wrong/old addresses and the allottee approaches the DDA within a period of 4 years from the date of allotment, the flat is allotted at the old cost prevalent at the time when the priority of the allotment matured, without charging of any interest. Even where the allottee approaches the DDA beyond the period of 4 years from the date of the allotment, the allotment under the policy has to be made at the old cost along with simple interest at the rate of 12% per annum from the date of original allotment letter till the issuance of fresh Demand-cum-Allotment Letter.

17. In the instant case, as noticed above, the Petitioner had approached the DDA within a period of around 2 years from the date of allotment and is clearly therefore entitled to the allotment of a flat at the old cost, prevalent at the time when her priority matured and the allotment letter was issued, and no interest is liable to be charged. Accordingly, a direction is issued to the DDA to allot and issue a Demand-cum-Allotment Letter for LIG flat of the same size and in the same locality as the flat which was allotted to the Petitioner in the

year 2006, and preferably of the same flat unless it has been allotted to any other person. Such allotment shall be made at the cost prevailing at the relevant time, i.e., on 20th July, 2006 and as set out in the Demand-cum-Allotment Letter of the said date. The said Demand-cum-Allotment Letter shall be issued by the Respondent latest within two months of the receipt of this order. On receipt of the Demand-cum-Allotment Letter, the Petitioner shall make payment of the demanded amount set out in the said letter within one month. The possession of the flat shall thereupon be handed over to the Petitioner immediately upon completion of all formalities by the Petitioner and latest within four weeks thereafter.

18. W.P.(C) 5542/2012 is allowed in the above terms.

**REVA KHETRAPAL
(JUDGE)**

February 15, 2013
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