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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 17 .04.2013

Judgment pronounced on : 22.04.2013

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W.P.(C) No.9499/2007

MR.BHANU DUTT

..... Petitioner

Through : Mr.R.K.Saini, Adv.

versus

D.D.A.

.... Respondent

Through : Mr.Devvrat Singh Raghav, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. The petitioner got himself registered with the respondent/DDA for allotment of an MIG flat under its New Pattern Registration Scheme (NPRS) 1979. In a draw of lots held on 1st June, 1987, one flat bearing No.155-A(Ground Floor) in Pocket-F, Nand Nagri, Delhi was allotted to the petitioner and a Demand-cum-Allotment Letter bearing Block dates 7.7.1987 – 15.7.1987 was issued to him, requiring him to deposit the amount of Rs.150181.55 on or before 13.9.1987. The aforesaid amount could be deposited, with interest, on or before 13.10.1987. It was clearly stipulated in the Demand-cum-Allotment Letter that there would be an automatic cancellation of the allotment after 13.10.1987. The appellant did not deposit the aforesaid amount on or before the last date stipulated in the Demand-cum-

Allotment Letter. He, on the other hand, filed a Civil Suit challenging the demand on the ground that since the cost of the flat indicated in the brochure issued by DDA was only Rs.42,000/-, it was not competent to demand a higher cost of Rs.157400/- from him. In the aforesaid suit, the petitioner also filed an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure for grant of interim injunction. The learned Civil Judge directed stay of cancellation of the allotment pending disposal of the suit. During the pendency of the aforesaid suit, the petitioner deposited a sum of Rs.50,000/- with DDA towards the cost of the aforesaid flat. On 9.9.1997, on coming to know of the decision of the Supreme Court, holding that a Pricing Policy of DDA could not be challenged, the petitioner deposited an additional amount of Rs.101683/- with DDA, thereby depositing the entire amount of Rs. 151683/- which DDA had demanded, vide Demand-cum-Allotment Letter issued to the petitioner in the year 1987. On 6.3.2000, the learned Civil Judge, before whom the civil suit filed by the petitioner was pending, directed DDA to issue a Demand Notice to the petitioner regarding interest and other charges, if any. The civil Suit filed by the petitioner, however, came to be dismissed in default on 23.8.2004, thereby bringing to an end the interim stay against the cancellation which the learned Civil Judge had granted in the said civil suit. The petitioner kept on representing to DDA for giving possession of the above referred flat to him. He was informed by DDA that the aforesaid flat has

been allotted to some other registrant. Being aggrieved from cancellation of the allotment made to him, the petitioner has filed this writ petition for quashing the cancellation and a direction to DDA to refer his case to the Lt.Governor for condonation of delay in making payment and to give possession of the aforesaid flat to him.

2. In its counter-affidavit, the respondent DDA has stated that the cost of Rs.42,000/- given in the brochure issued by it was only the illustrative/tentative cost and not the final cost of the flats to be allotted by it under the NPRS 1979. It is further stated in the reply that the request of the petitioner for restoration of the allotment made to it was duly considered and was rejected.

3. It is an admitted position that the petitioner did not make payment of Rs. 151683/- to DDA on or before the last date stipulated in the Demand-cum-Allotment Letter issued to him. Since the Demand-cum-Allotment Letter contained a specific clause for automatic cancellation of the allotment after the last date stipulated therein for making payment of the balance price of the flat, the allotment made to the petitioner stood automatically cancelled on the expiry of the aforesaid time. The petitioner, in my view, was not justified in filing a Civil Suit obtaining an interim order of injunction on the ground that DDA could not have demanded Rs.157400/- as the cost of the flat allotted to him. If a person who otherwise not being entitled in law to the relief sought in a suit/petition, obtains an

interim order, he does so at his own risk and in the event of such suit/petition being dismissed, no benefit of the interim order can be claimed by him. Therefore, instead of filing a Civil Suit challenging the cost of the flat demanded by DDA, the petitioner ought to have paid the amount of Rs.151683/- on or before the last date stipulated in the Demand-cum-Allotment Letter. Having failed to do so, he has no legal right to seek restoration of the allotment made to him.

4. The issue involved in this petition came to be considered by a Division Bench of this Court in Asha N. Madnani v. D.D.A. 1997 I AD (DELHI) 385. In the aforesaid case, the petitioner got herself registered under NPRS 1979, for allotment of residential flat from DDA and deposited a sum of Rs.4500/- as the registration amount. She was allotted a flat in Rohini at the cost of Rs.209100/- . She sought extension of time for payment of the instalments which she was required to deposit with DDA from time-to-time. Such extension having been granted by DDA, the aforesaid instalments were paid by her in time. The allotment made to her, however, was cancelled by DDA on account of non-payment of dues. When the cancellation of allotment was challenged by the petitioner, it was stated on behalf of DDA that since the instalments had been paid by the petitioner in time, the cancellation was founded and could be supported only on the ground of non-submission of certain documents, which the petitioner was

required to submit within a period of 90 days. Allowing the writ petition, the Division Bench, inter alia, held as under:-

“(9) The petitioner has not defaulted in payment of the price. She did submit the documents also to the respondents. The copies of the covering letters accompanying the documents and filed by the petitioner with the petition go to show a genuine and sincere effort on the part of the petitioner to submit the documents. The documents were received by the respondent-DDA. At no point of time prior to the cancellation of allotment the petitioner was ever told as to how and in what manner the documents were deficient and if only the petitioner would have been told or advised of the deficiency by any one, she would have promptly supplied the deficiency. The respondent-DDA has not lost anything by such a technical default on the part of the petitioner inasmuch as price was fully received by the DDA. Merely for the technical deficiency in supplying the documents, the petitioner cannot be made to suffer by paying an additional amount of more than Rs. 2 lacks.

(10) A distinction has to be drawn between the consequence flowing from the default in payment by the allottee in accordance with the terms and conditions of allotment and a default merely in furnishing proof of payments and filing of the documents within the prescribed period. The letter of allotment provides for automatic cancellation of the allotment in both the cases. In the case of default in payment of installments automatic cancellation of allotment has to be sustained because of the consequences flowing there from.

10.1. Each allotment is part of a composite scheme. By default in payment the working of the scheme is disturbed and the DDA has to rearrange its financial affairs. An allottee defaulting in payment must give way to an aspirant waiting for an allotment and willing to make payment.

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10.3. Therefore, the term as to payment as per schedule must be held to be mandatory while the term as to submission of all the relevant documents Along with proof of payment within the prescribed period should be held to be directory.”

5. It would, thus, be seen that the view taken by the Division Bench was that in case of defaulting in payment of the price of the flat, DDA would be entitled to cancel the allotment and the allottee defaulted in making payment of the price has to make way for a wait-listed applicant who is willing to make payment to DDA. The Division Bench specifically held that the terms as to payment, as per Schedule are mandatory. Therefore, there is no escape from the conclusion that the petitioner having defaulted in making payment in terms of the Demand-cum-Allotment Letter issued to him, DDA was fully justified in treating the allotment as cancelled and allotting a flat to another wait-listed registrant.

6. In **Bhupinder Kumar vs. D.D.A. 71(1998) DELHI LAW TIMES 461**, the petitioner before this Court was allotted a flat under Ambedkar Awas Yojna, 1989 of DDA. The Allotment letter was issued to him demanding a sum of Rs.6,48,000/- towards the cost of the flat. He did not pay the disposal cost of the flat in terms of the Demand Letter on the ground that essential services and basic facilities having not been made available by DDA, the flat allotted to him was not habitable. The allotment made to him was cancelled by DDA. Noticing that the

petitioner had not paid the disposal cost of the flat within the stipulated period and further noticing that the Letter of Allotment itself postulated automatic cancellation if payment was not made within the stipulated period, it was held by this court that the allotment stood automatically cancelled in view of the petitioner having defaulted in making payment in terms of the Allotment Letter and there was no unfairness in the procedure adopted by DDA.

7. It was contended by the learned counsel for the petitioner that even in a case of the allottee making default in making payment of the price of the flat, the allotment could not have been cancelled without giving show cause notice to the allottee. In support of his contention, he has relied upon the decision of this Court in **Dhani Ram Kapoor vs. Delhi Development Authority 1997 1 AD (DELHI) 578.** I have perused the decision relied upon by the learned counsel for the petitioner. In the aforesaid case, the allottee had actually deposited the cost of the flat though he had failed to deposit certain documents within the time stipulated by DDA in this regard and, therefore, the allotment was cancelled on account of non-deposit of those documents. The contention of the petitioner before this Court was that cancellation of the flat without giving an opportunity of being heard was totally arbitrary and illegal, when the petitioner had deposited the full amount, as demanded by DDA and was also paying regular instalments. However, in the case before this Court, the allotment made to the petitioner was cancelled on account of

his failure to deposit the cost of the flat in terms of the Demand-cum-Allotment Letter issued to him and not on account of non-submission of documents. Therefore, reliance on this judgment is wholly misplaced.

8. For the reasons stated hereinabove, I find no merit in the writ petition and the same is, hereby, dismissed.

There shall be no order as to costs.

V.K. JAIN, J

APRIL 22, 2013

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