

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

+ W.P.(C) 8436/2011

S.N. MALIK Petitioner
Through: Mr. Dilip Singh, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Shobhana Takiar, Advocate.

% Date of Decision : July 03, 2013

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

JUDGMENT

: REVA KHETRAPAL, J.

1. The present petition filed by the Petitioner seeks to assail the action of the Respondent/DDA in cancelling the allotment of Flat No. 24-A, Pkt. – A, Nand Nagri, Delhi made in favour of the Petitioner in the draw held on 18th February, 1991. The Petitioner also seeks a writ of mandamus directing the Respondent/DDA to restore/re-allot the aforesaid flat to the Petitioner or in the alternative any other flat in the same locality at the old rates, that is, at the same cost as mentioned in the original allotment letter.

2. The facts as culled out from the writ petition are that the Petitioner applied for allotment of flat in the year 1979 under the New Pattern Scheme in the MIG Category vide Registration No. 17793. He was assigned priority No. 9513 and was allotted a flat bearing No. 24-A, Pkt. – A, Ground Floor, Nand Nagri, Delhi in the draw held on 18th February, 1991 for which a demand-cum-allotment letter was issued with block dates 20.09.1991 – 24.09.1991 with the last date of making the payment with interest as 23.12.1991 and automatic cancellation thereafter. The Petitioner vide letter dated 22.10.1991 (erroneously mentioned as 22.08.92 in the writ petition) intimated that he had tried to locate Flat No. 24-A, Pkt. – A, Nand Nagri, Delhi but could not locate it in the absence of any Block number and also requested the Respondent/DDA “to withdraw this wrong/doubtful allotment” and include his name in the next draw. The Petitioner waited for a reply to the aforesaid letter but none was sent by DDA. Since the Petitioner had a transferable job, he shifted out of Delhi. However, his family continued to reside at the same address. A letter dated 02.06.1992 was received by a family member of the Petitioner in the month of December, 1992 with the subject “*Cancellation of*

*Allotment in respect of **Flat No. 28-A, Pkt. – A, Nand Nagri, Delhi**”.*

The Petitioner responded to the said letter vide letter dated June 27, 1992, the relevant portion of which is as under:-

“1. As per your demand letter you allotted me Flat No.24A, Nand Nagri which is incomplete address and hence you cannot expect me to pay for a flat which is not in existence as contended in my letter received by you on 22.10.1991(sic.). Therefore the question of any cancellation and imposition of penalty does not arise.

2. As per your letter dated 2.6.92 you have cancelled Flat No.28A, Pocket A, Nand Nagri allotment of which has never been intimated to me. I am surprised to receive the cancellation of the same.

3. In view of the position explained above, my suspicion that there is something wrong in your office pertaining to my allotment as mentioned by me in my previous letter is strengthened rather proved beyond anybody’s doubt.”

3. It is the case of the Petitioner that thereafter whenever the Petitioner came to Delhi, he visited the office of DDA and was told that cases of this nature would be taken at the end under the ‘Tail-End Policy’, so the Petitioner was advised to wait. However, when the Petitioner came to know that the Scheme under which the Petitioner was a registrant had come to an end in the year 2006, the Petitioner started pursuing the matter vigorously by filing a case before the Lok

Adalat. At one stage, when the matter was pending before the Lok Adalat, the case of the Petitioner was accepted by the Respondent/DDA and the Petitioner was asked to deposit the requisite affidavit and identity proof vide letter of the Respondent/DDA dated 15.05.2009 and those documents were accordingly submitted by the Petitioner. This is also evidenced by the order of the Lok Adalat dated 22.09.09 placed on record by the Petitioner to the effect that the Director (H) had agreed to reconsider the matter in the light of the recent judgment of the High Court.

4. A copy of the file noting dated 16.11.2009 showing that the matter was reconsidered by the Commissioner (Housing) has also been placed on record by the Petitioner which reads as under:-

“The present case was earlier examined and rejected by the competent authority on the ground that the allottee was aware regarding the allotment but did not make any payment or approach DDA from 1992 to 2008. Thus the request for restoration of flat under reference or allotment of alternative flat cannot be considered favourably.

The PLA has now again advised that case should be re-examined in the light of the recent judgment of Hon’ble High Court passed in the case of Raj Kumar Malhotra Vs. DDA.

In this connection, it is submitted that we have complied with the orders of Hon'ble High Court passed in the above referred case as the appeal filed by DDA in Hon'ble Supreme Court had been rejected and we were left with no other alternative except to comply with the orders of Hon'ble High Court. However, recently a policy decision has been taken by the competent authority to deal with such similarly placed cases. As per decision, only those cases will be included in the draw of lots for allotment of flat under 'Tail End Priority' where registrants have deposited cancellation charges upto 31.12.93 because the 'Tail End Priority' policy had been withdrawn w.e.f. 1.1.94.

In this case, the allottee had not deposited cancellation charges. The present case is not covered even under the recent policy also. The allotment was cancelled due to non-payment of demanded amount and it was clearly written in the cancellation letter dated 2.6.92 that allotment has been cancelled due to non submission of demanded amount and requisite documents within due date. Though in this case, DDA never intimated cancellation charges to the allottee but as per the condition of the brochure as well as demand letter, 10% of the registration amount was to be deposited as cancellation charges. Had he deposited cancellation charges prior to 31.12.93, he would have been eligible for allotment.

In view of above, the request of ex-allottee for reconsideration of case under 'Tail End Priority' policy cannot be considered favourably."

5. The Petitioner asserts that as a result of the aforesaid order of the Commissioner (Housing), the Lok Adalat was left with no option

except to close the case of the Petitioner. The Petitioner then made a representation to the DDA on 24.08.2011, copy whereof is placed on record, but no reply was received by the Petitioner to the aforesaid representation. The Petitioner was thus constrained to file the present writ petition.

6. In the Counter Affidavit filed by the Respondent/DDA, the aforesaid facts have not been denied. The Respondent/DDA, however, submits that in response to letter dated 22.10.1991, it had intimated the Petitioner vide letter dated 15.11.1991 that Flat No. 24-A may be read as Pkt. – A, Nand Nagri, Delhi and the Petitioner was requested to make payment as per demand-cum-allotment letter dated 20.09.1991 – 24.09.1991. Since the Petitioner failed to deposit payment in compliance with demand-cum-allotment letter, the Respondent issued a show cause notice dated 11.03.1992 but no response was received from the Petitioner. Resultantly vide letter dated 2nd June, 1992, the Respondent informed the Petitioner about cancellation of the flat on 15th May, 1992. The Petitioner acknowledged the cancellation vide letter dated 27th June, 1992. Thereafter, the Petitioner allowed the grass to grow under his feet and

approached DDA after 16 years, that is, in the year 2008 with the representation for considering allotment of another flat to him. The case of the Petitioner was by then hopelessly time barred. The present petition was, therefore, not maintainable and liable to be dismissed on the ground of delay and laches [See **Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd., (1996) 11 SCC 501, at page 517; State of Rajasthan v. D.R. Laxmi (1996) 6 SCC 445, at page 453; State of M.P. v. Bhailal Bhai, (1964) 6 SCR 261**].

7. The Petitioner filed Rejoinder to the Counter Affidavit categorically denying receipt of the letter dated 15.11.1991 and show cause notice dated 11.03.1992. The Petitioner submitted that there was no delay or laches on the part of the Petitioner. The Petitioner relied upon the orders of the Permanent Lok Adalat to urge that before the Presiding Officer of the Permanent Lok Adalat, the Respondent/DDA had admitted its fault and come up with one lame excuse after the other. Finally on 19.05.2009, the claim of the Petitioner was admitted by the DDA in principle. The noting dated 19.05.2009 of the DDA recorded that Deputy Director (Housing)

MIG had examined the matter and asked the Petitioner to produce certain documents. Thereafter, the Petitioner received a letter dated 15.05.2009 from Respondent/DDA, wherein DDA asked the Petitioner to deposit certain documents like Identity Proof and Photographs to show that he was a registrant under the NPRS Scheme. But after some time, DDA again arbitrarily rejected the claim on the ground that cancellation charges had not been deposited by the Petitioner, though the issue of cancellation charges already stood settled in several judgments of this Court. The Petitioner also contended that the Respondent/DDA had filed three letters allegedly sent by the DDA to the Petitioner, but two of the three letters i.e. letter dated 15.11.1991 and show cause notice dated 11.03.1992 were tampered with, wherein the flat number was changed from Flat No.28-A to Flat No.24-A. This apart, the Respondent/DDA could not even produce any document showing service of these letters upon the Petitioner.

8. I have heard learned counsel for the parties and scrutinized the documentary evidence on record.

9. It is not in dispute that the Petitioner vide application No. 030181 dated 25.09.79 had got himself registered for the allotment of MIG flat under NPRS Scheme, 1979. He was assigned Priority No. 9513. It is also not in dispute that on the turn of priority number, the Petitioner was allotted Flat No. 24-A, Ground Floor at Nand Nagri, Delhi under the draw held on 18.02.1991 on cash down basis. The demand-cum-allotment letter with block dates 20.09.1991 – 24.09.1991 was issued and sent to the Petitioner with last date of making the payment with interest as 23.12.1991 and automatic cancellation thereafter.

10. The Petitioner asserts and it is not disputed by the Respondent/DDA that the Petitioner vide letter dated 22.10.1991 intimated to the Respondent/DDA that he had tried to locate the said flat, but could not locate it in the absence of any block number and also requested to withdraw this wrong/doubtful allotment and include his name in the next draw. It is the case of the Respondent/DDA that in response to the letter dated 22.10.1991, it intimated the Petitioner vide letter dated 15.11.1991 that Flat No. 24-A may be read as Pkt. – A, Nand Nagri, Delhi and requested the Petitioner to make payment

as per demand-cum-allotment letter dated 20.09.1991 – 24.09.1991. The Petitioner has categorically denied the receipt of his letter and the DDA has placed nothing on record to substantiate the dispatch of this letter. In the course of hearing, the counsel for DDA was asked to produce the records including the dispatch register but the dispatch register unfortunately was not produced. The inevitable inference is that the DDA has failed to establish dispatch of letter dated 15.11.1991 to the Petitioner, the receipt of which has been squarely denied by the Petitioner. According to the DDA, since the Petitioner failed to deposit payment in compliance with demand-cum-allotment letter, the Respondent/DDA issued a show cause notice dated 11.03.1992. The receipt of this show cause notice dated 11.03.1992, as stated hereinabove, is also denied by the Petitioner and nothing has been placed on the record to suggest the dispatch of the said notice to the Petitioner. The Respondent/DDA has in fact failed to prove that any show cause notice for cancellation of the flat in question was given to the Petitioner.

11. There is also on record ample material to suggest that the Petitioner was vigorously pursuing his case before the Lok Adalat,

which had even prevailed upon the Respondent/DDA to re-examine the case of the Petitioner in the light of the judgments of this Court rendered in a batch of connected LPAs including **LPA No. 373/2006** titled as **DDA Vs. Raj Kumar Malhotra**, to which I shall presently advert. There is also material on record to suggest that the Respondent/DDA had acceded to the request of the Presiding Officer of the Permanent Lok Adalat for reconsideration of the case of the Petitioner and had even asked the Petitioner to get his documents verified. The case of the Petitioner was, however, again rejected by the Commissioner (Housing) on 16.11.2009 with the remark that:-

“.....Though in this case, DDA never intimated cancellation charges to the allottee but as per the condition of the brochure as well as the demand letter, 10% of the registration amount was to be deposited as cancellation charges. Had he deposited cancellation charges prior to 31.12.93, he would have been eligible for allotment.”

12. It may be noted that the aforesaid observations made by the Commissioner (Housing) are in the teeth of the judgments rendered by a Division Bench of this Court in **LPA Nos.179/2008, 1324/2007, 1032/2006, 459/2006, 468/2006, 469/2006, 470/2006, 679/2006, 682/2006, 776/2006 and 2325/2006** including **LPA No. 373/2006**

itled as **DDA Vs. Raj Kumar Malhotra** wherein the following apposite observations were made:-

“This Scheme was clearly for the common man having no residential house in Delhi. The main contention of the DDA is that the respondents are not entitled to the said flats on account of their failure to deposit the cancellation charges in time. The cancellation charges as per NPRS Scheme are 20% of the registration amount. The registration amount varies from Rs.250/- to Rs.4,500/- and accordingly, the cancellation charges of 20% would be in the range of Rs.50/- to Rs.900/-. The respondents cannot be deprived of the flats due to their failure to deposit the cancellation charges in time. DDA is a public body and is required to act fairly in discharging the public duty of providing the housing. It had been the policy of DDA to consider tail end priority allotment to all the registrants who could not avail the initial allotment. DDA cannot behave like a private builder by cancelling the allotment on account of minor violation and then selling the flats at present market price with a profit motive.”

13. In the light of the aforesaid judgment against which the DDA had filed a Special Leave to Appeal being **SLP No.25731/2008**, titled **“Delhi Development Authority Vs. Abhay Prakash Sinha”** before the Supreme Court, which came to be dismissed on 13.10.2008, the Petitioner cannot be deprived of the flat allotted to him merely on account of his failure to deposit the cancellation charges in time. The case of the Petitioner in fact stands on a better footing than the case of

Raj Kumar Malhotra (supra), in that, in the present case, it is not in dispute that no intimation was ever sent to the Petitioner with regard to the cancellation charges payable by him. Further, as noted in the said decision, it has been the consistent policy of the DDA to consider tail-end priority allotment to all the registrants, who could not avail the initial allotment. It is not in dispute that in the present case, the Petitioner could not avail of the initial allotment for no fault of his. The lapse, if any, was of the Respondent/DDA as is evident from the letter dated 22.10.1991, which was admittedly sent by the Petitioner to the DDA and received by Respondent/DDA. In the said letter, the Petitioner clearly stated that he had tried to locate Flat No. 24-A, Nand Nagri (the number mentioned in the demand-cum-allotment letter) but could not locate it in the absence of any block number. The Respondent/DDA states that it informed the Petitioner about the block number vide letter dated 15.11.1991 and subsequently issued show cause notice dated 11.03.1992 for cancellation of the flat in question, but it has failed to substantiate whether these letters dated 15.11.1991 and 11.03.1992 were actually sent to the Petitioner by registered post/speed post/courier and were received by the Petitioner.

On the direction of this Court, the DDA was required to produce the dispatch register, which also was not produced by the DDA leading to the inference that the letters dated 15.11.1991 and 11.03.1992 were in fact never received by the Petitioner. It is trite that the presumption under Section 114 of the Evidence Act sought to be relied upon by the Respondent/DDA is a rebuttable presumption in the light of the categorical denial of the Petitioner to the receipt of these letters from the DDA. The Petitioner discharged his onus and the onus shifted back to the Respondent/DDA to prove service of these letters, which onus it has miserably failed to discharge.

14. It may be noted at this juncture that the Respondent/DDA was asked in the course of hearing as to the current status of Flat No.24-A, Pkt.-A, Nand Nagri, Delhi and this Court was informed that the flat is still lying vacant in the name of the Petitioner and further that till date, no other person has staked a claim to the flat in question. There is thus, in my view, no impediment to the grant of relief prayed for by the Petitioner. The petition is accordingly allowed by issuing a writ of mandamus to the Respondent/DDA to allot Flat No. 24-A, Pkt. – A, Nand Nagri, Delhi to the Petitioner at the old cost together with

interest at the rate of 7% per annum as per the policy of the DDA. The fresh demand-cum-allotment letter of this flat shall be issued by the Respondent/DDA within a period of 60 days from the date of this order and the possession of the same shall be delivered in favour of the Petitioner within a period of 30 days after payment of the entire amount by the Petitioner against the said fresh demand letter.

15. Writ Petition stands allowed on the above terms.

**REVA KHETRAPAL
(JUDGE)**

July 03, 2013

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