

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

+ **W.P.(C) 8582/2011**

PRASHANT KUMAR VERMA Petitioner
Through: Mr. R.K. Saini, Advocate

versus

D.D.A. Respondent
Through: Mr. Arun Birbal, Advocate

% Date of Decision : April 10, 2013

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. **Rule.** With the consent of the parties, the matter is taken up for final hearing.

2. The present writ petition has been filed against the wrongful cancellation of the registration and thereafter allotment of the LIG plot allotted to the Petitioner under the Rohini Residential Scheme, 1981 on the ground of non-eligibility under the terms and conditions of the Scheme and on the ground that the Petitioner was a minor at the time of registration, i.e. 25.4.1981, whereas the Petitioner had attained the age of majority at that time.

3. The facts which need to be noticed for the purpose of deciding the present writ petition are as follows.

4. In the year 1981, the DDA introduced a Scheme for allotment of residential plots and the Petitioner got himself registered thereunder for allotment of a LIG plot. In the brochure of the Scheme issued by the DDA, it was stipulated that any individual, who is not a minor, may apply for allotment of only one plot, if he/she fulfills the following conditions:-

*“1. **ELIGIBILITY***

Any individual who is not a minor may apply for allotment of only one plot if he/she fulfils the following conditions.

(i) The total annual income of the individual from all sources including the income of his wife/her husband and minor children should

(a) In the case of EWS/Janta: not exceeding Rs. 600 p.m.

(b) In the case of LIG: in excess of Rs. 600 but should not exceed Rs. 1000/- p.m.

(c) In the case of MIG: in excess of Rs. 1000 but should not exceed Rs. 2000/- P.M.”

5. For the purpose of deciding the eligibility of the registrant, regarding the category of plot to be allotted, on the basis of his income, it was stipulated in the brochure as under:-

“(2) “Income” in the case of salaried people includes Basic Pay, Dearness Allowance, Special pay, Dearness Pay, CCA, Bonus and other such emoluments reduced by the statutory deduction given under I.T. Act in respect of expenditure incidental to the employment of

the applicant but does not include H.R.A., Conveyance allowance, Over-Time and other such allowances given for special purpose.

(3) "Income" in other cases means net income after allowing expenses connected with business/profession.

(4) The salaried applicants will have to produce a certificate from the employer showing the income. In case of others having income upto Rs.600/- p.m. falling under EWS/Janta category, an affidavit duly attested be filled, and in case of LIG having, income upto Rs. 1000/- p.m. & MIG having income upto Rs. 2000/- p.m. an attested copy of assessment order or income tax return will have to be produced. Where he/she is not being assessed, a certificate from the Income Tax authorities that his/her income is below, taxable limit will have to be produced."

6. It would be apposite to notice at the outset that subsequently, the condition for production of income certificate for determining the category of plot to be allotted to the registrants of Janta and LIG category under the Scheme was given up by the DDA *from the first draw in 1982* vide order of the Vice-Chairman dated 24.3.1989 and the Resolution of DDA dated 20th January, 1995 enclosed with the petition as *Annexure P-4 Colly*. The relevant portion of the order of the Deputy Director, Rohini dated 28th February, 1989 subsequently signed by the Director on 18.3.1989, the Commissioner (L) on 19.3.1989 and approved of by the Vice-Chairman on 24.3.1989 reads as under:-

*".....in all cases whether the allotment is an old one **or would be a new one** no income certificate would be required in respect of LIG and Janta*

category and in case of MIG category, 50% enhancement will be given in all cases whether they are old or would be new ones i.e. from 1st draw held in 1982 onwards.”

7. The relevant portion of the Resolution dated 20th January, 1995 relating to exemption of income limit to the registrants/allottees of Rohini Residential Scheme 1981 dated 20.01.1995 reads as follows:-

“3. Since the allotment has already been delayed and keeping in view of practical difficulties and to give relief to weaker sections of the society, the then VC exempted the income limit in the case of LIG and Janta category vide his orders dated 24th March, 1989

4. As regards MIG category, we have been still insisting for submitting income proof

(i) In order to minimize hardship caused to Janta, MIG and LIG registrants/allottees in procuring the income certificate from the employer/assessment order, no objection certificate from income tax department and furnishing the same for issuing possession letter for plot under Rohini Residential Scheme may be dispensed with.”

Accordingly, the matter is placed before the authority.

RESOLUTION

Resolved that the proposals as contained in para 4(ii) of the item be approved. The new dispensation be given wide publicity so that the public at large is aware of those relaxation.”

8. Now, advertng to the Petitioner's case, in the backdrop of the brochure and the resolution of the DDA reproduced hereinabove, it is evident from the record that the Petitioner filed his application on 25.4.1981, by which time he had completed 18 years, his date of birth being 24.4.1963 and gave his address as under:-

(i) Present: C/o Ved Prakash Talwar, Qtr. No.1372, Sector IV, R.K. Puram, New Delhi.

(ii) Permanent: 9/454, Mahadev Gali, Motiakhan, Agra.

9. The Petitioner in the application/registration form filled up by him in the column of "*profession/occupation/vocation*", stated that he was studying and in column no.9, regarding size of the plot required, specified (i) 48 sq. mtrs. (ii) 32 sq. mtrs., i.e., LIG category. In column no.7 regarding his annual income, the Petitioner merely stated 'No', meaning thereby that he had no income. However, the Petitioner attached with the form an Affidavit stating therein that since he was a student he had no income/source of income.

10. Soon after the Petitioner applied for the registration, on 22.12.1982, the Respondent/DDA sent a letter to the Petitioner, stating that on scrutiny of his form, it was found that he had not submitted the following documents:-

(i) Affidavit/undertaking as required in the brochure.

(ii) Income proof for the year 1980-81 for the Assessment Year 1981-82.

11. The Petitioner was called upon to submit the aforesaid documents within 15 days, failing which it would be presumed that he was not eligible and his application would be cancelled without any

further reference to him. Thereafter, another similar letter was sent to the Petitioner on 23.6.1986, *inter alia*, stating that on the failure of the Petitioner to submit the following documents, his registration under the Rohini Residential Scheme had been cancelled:-

(1) No source of income.

(2) Studying during the year 1980-81.

12. On 2nd March, 1987, another letter seems to have been sent by the DDA to the Petitioner bearing subject: “*Cancellation of Rohini Registration and Refund of Earnest Money, Application No.37605*”, calling upon the Petitioner to submit documents for further necessary action for refund of the earnest money since registration had been cancelled.

13. It is the Petitioner’s case that none of the aforesaid letters, i.e., letters dated 22.12.1982, 23.6.1986 and 2.3.1987 were received by the Petitioner and, in fact, he subsequently obtained them through RTI reply dated 8.8.2011 given by the DDA. The Petitioner submits that the Petitioner had changed his address, i.e., the address given as “present address” in the registration form in the year 1982 and shifted to House No.6, Pkt. H-19, Sector-7, Rohini, and informed the DDA about it on 6.3.1997 vide acknowledgment receipt of the same date annexed with the petition. Pertinently however, his “permanent address” as given in the registration form, continued to remain the same. However, no effort was made by the Respondent/DDA to serve the aforesaid communications, i.e., letters dated 22.12.1982, 23.6.1986 and 2.3.1987 to the Petitioner at his permanent address.

14. As things turned out despite the aforesaid, the name of the Petitioner was included by the DDA in a draw held in the month of March/April, 2004 and a LIG plot bearing No.185, Blk-C, Pkt.1, Sector-27, Rohini was allotted to him. On coming to know about the same from the notice given in this regard by the DDA in the newspapers, the Petitioner waited for receipt of the Allotment-cum-Demand Letter from the DDA for about two months after the draw. When he did not receive the same, the Petitioner approached the DDA office and was informed that the Allotment-cum-Demand Letter had not been issued to him since his registration stood cancelled on account of his being a minor at the time of the registration in the year 1981. In the circumstances, the Petitioner immediately made a representation to the Commissioner, Director and Joint Director, DDA on 14.6.2004 stating that he was a major as per his educational certificate and requesting the DDA to restore the registration/allotment without any charge. A similar representation was addressed by him to the LG/Chairman, DDA on 4.7.2004/5.7.2004, attaching a copy of his senior secondary certificate to show that he was a major at the time of filling of the form on 25.4.1981 and requesting the LG to intervene in the matter. In response to the last representation, the Petitioner received a letter dated 23.9.2004 from the DDA informing him that his registration had been cancelled by the competent authority on account of non-submission of income proof for the year 1980-81; and he was asked vide letter dated 2.3.1987 to submit documents for refund. On receipt of the said response, the Petitioner made a representation to the

Commissioner (LD) in public hearing on 6.12.2004, in response whereeto he was informed that his request for restoration of registration had been examined and not acceded to. The Petitioner then filed various applications under the RTI on 14.7.2010, 26.10.2010, 4.4.2011 and 14.7.2011 and representations to the DDA dated 19.7.2010 and 24.11.2010, but to no avail.

15. The present petition was preferred by the Petitioner on 7th December, 2011, which is opposed by the Respondent/DDA primarily on the ground that the same is barred by delay and laches, inasmuch as in the instant petition the Petitioner seeks to impugn the communication dated 23.9.2004 whereas the present writ petition was filed in December, 2011. In the Counter-Affidavit filed by the DDA, it is also contended that the name of the Petitioner was *inadvertently* included in the computerized draw held on 26.3.2004 and he was allotted LIG plot No.185, Blk-C, Pkt.1, Sector-27, Rohini, but the same was cancelled/withdrawn as the registration of the Petitioner had already been cancelled on account of non-submission of income certificate for the year 1981. It is stated that the Petitioner in a subsequent representation dated 11.6.2001 to DDA had filed income certificate from an Advocate stating that he was working as an Assistant with him and was paid a sum of ₹ 6,000/- for the period from 1st April, 1980 to 31st March, 1981, i.e., ₹ 500/- per month. This was contrary to his own statement in the application form in which he had stated that he was a student and had no income at that time. As regards the order of the Vice-Chairman, DDA dated 24.3.1989 and the resolution dated 20.1.1995, it is stated that the same are not

applicable in the case of the Petitioner; moreover the Petitioner has not submitted the Affidavit or Undertaking as required.

16. In the course of hearing, Mr. R.K. Saini, Advocate on behalf of the Petitioner submitted that the cancellation of the registration of the Petitioner was done without any notice to show cause being served upon the Petitioner and/or opportunity of being heard to the Petitioner. Again, the allotment of the plot was cancelled without any notice to show cause and/or opportunity of being heard to the Petitioner. The Petitioner had furnished his residential address as well as his permanent address to the Respondent. The alleged communications dated 22nd December, 1982, 23rd June, 1986 and 2nd March, 1987 were admittedly sent on the residential address of the Petitioner and no attempt was ever made by the DDA to serve the Petitioner at the permanent address of the Petitioner. Even after the Petitioner had informed the DDA about his change of residential address vide his communication dated 6.3.1987, the DDA nevertheless chose to serve the Petitioner with the communication regarding cancellation of his allotment dated 23rd September, 2004 at his old address, and not at his fresh address or at his permanent address. The contention of the DDA that the present petition was barred on the ground of delay and laches was, therefore, without merit. It is submitted that whatever delay occurred in filing the instant petition is entirely attributable to the Respondent as the Petitioner was not given complete and proper information at the appropriate time and all that he received were cryptic replies and that too only through the RTI. Without prejudice to his aforesaid

submission, the Petitioner has already made a statement before this Court, on 8.12.2011, that if the Petitioner ultimately succeeds in the present petition, he would be ready to pay the current cost applicable for the year 2011 for the allotment of LIG plot to him.

17. Mr. Saini further submitted that apart from the fact that no cancellation letter was ever served on the Petitioner, the action of the Respondent of cancelling the registration of the Petitioner on unfounded grounds and not restoring the same is highly illegal and cannot be sustained, when the condition for production of income certificate had been given up by the DDA and in any event, the Petitioner was a student at the relevant time and could not have produced income certificate and the certificate from the Income-Tax Department was not mandatory at all. As regards the contention of the Respondent that the Petitioner had not submitted an Affidavit to the effect that he had not been allotted any flat or plot by the DDA, Mr. Saini submitted that apart from the fact that the same was factually incorrect, it is borne out from the record that the registration of the Petitioner had been cancelled as mentioned in the letter dated 23.6.1986 issued by the DDA due to “(i) No source of income. (ii) Studying during the year 1980-81.” and not on account of non-submission of any Affidavit.

18. Relying upon the judgment of this Court in W.P.(C) No.7247/2011 titled “*Anurag Sahai vs. DDA*” rendered on 22.11.2012 by a learned Single Judge of this Court, Mr. Saini contended that the Court in the said case had in similar circumstances repelled the contention of the Respondent/DDA with regard to delay

and laches. He stated that if at all different, the present case was on a better footing than the case of **Anurag Sahai (supra)** for the plea taken in that case was that the Scheme already stood closed by the DDA, whereas in the instant case the Scheme is still open and 600 registrants are still to be allotted plots. No third party right is affected and the Petitioner is ready to pay the current cost, i.e., the cost prevalent as in the year 2011. It would be apposite to refer to the relevant extract of the judgment in **Anurag Sahai (supra)**, which reads as follows:-

*“6. Present writ petition has been opposed by learned counsel for the DDA primarily on the ground of delay and laches. Counsel for the respondent has relied upon **Banda Development Authority, Banda, v. Moti Lal Agarwal and Others**, reported at (2011) 5 SCC 394, more particularly para 17, which reads as under:*

“17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.”

12. There is no explanation forthcoming as to why DDA did not issue demand-cum-allotment letter at the occupational address, which was available in their record. This has resulted in delay for the petitioner to

own a flat for which initial payment was made as far back as in the year 1979.

13. The DDA, which is a statutory body, has failed to perform its duty. The Court cannot lose track of the fact that a condition of eligibility for allotment of a flat under New Pattern Registration Scheme, 1979, is that an applicant should not own any other permanent residence in Delhi, resultantly the petitioner would not have taken any step to acquire another property in Delhi. Another factor, which cannot be lost track of, is that allotment under this scheme were made over a span of more than two decades and thus the petitioner could well have been misled that his allotment would mature in time to come. DDA was well aware of the various judgments passed by this Court from time to time that DDA is duty bound to inform an allottee with regard to the allotment at all the addresses available in their record.

*14. While there is no quarrel to the proposition laid down by the Apex Court in the case of **Banda Development Authority, Banda** (supra), learned counsel for DDA is unable to satisfy this Court as to how this judgment would be applicable to the facts of this case, when DDA has been responsible for delay in making the allotments of the flats for reasons, which may or may not be justifiable. There is also no explanation as to how the rights, in this case, of the parties stand settled or crystallized since there is no third party involved in the present case.”*

19. Ms. Shobhana Takiar, learned counsel for the DDA relied upon the following precedents to substantiate her case:-

- (i) LPA No.16/2013 titled “**Satnam Dass Narang vs. DDA**”, wherein it was held that advertisements issued by

the DDA in newspapers calling upon registrants of undelivered Demand-cum-Allotment Letters to approach them for allotment and for obtaining possession of the flat allotted to them were made at considerable expenditure and to exclude such advertisements altogether from consideration would, therefore, not be appropriate.

This judgment has no relevance to the facts of the present case since the Petitioner immediately on publication of the result of the draw of lots in the month of March/April, 2004 approached the DDA after waiting for about two months to receive the Allotment-cum-Demand Letter and even made a representation to the Commissioner, Director and Joint Director, DDA on 14.6.2004 submitting that he had been visiting the DDA time and again and after a lapse of 23 years it was known from the DDA in the public hearing attended by him that he had been successful in the draw held in the month of March/April, 2004.

- (ii) LPA No.1094/2006 titled “***Naresh Kumar Kataria vs. Delhi Development Authority***” decided on 17th May, 2012, wherein a Division Bench of this Court held that they agreed with the contention of the DDA “*that the fresh representation after three years and on the ground of price/cost was guided more by brokers/traders in such flats who after collecting data of forfeited allotments*”

approach the erstwhile allottees to acquire their rights, rather than for any bonafide grievance.”

The facts in the said case were altogether different in that the Appellant had applied for change of floor, but upon the same being not acceded to, chose to let go of the allotment itself; after two years, though the matter was re-agitated it was not on the ground of change of floor but on the ground of cost/price demanded by the DDA being not correct. In such circumstances, the Court was of the opinion that had the Appellant been aggrieved by the rejection of his request of change of floor, he would have immediately filed the writ petition impugning the same and offering to pay the price/cost *qua* which no grievance was then made. The facts of this case are thus not apposite to the facts of the present case.

- (iii) W.P.(C) No.6871/2009 titled “**Brinda Ghosh vs. DDA**”, wherein a learned Single Judge of this Court rejected the writ petition on the ground of unexplained delay of 17 years in getting mutation effected in her favour.

This case is altogether distinguishable for the reason that in this case the original registrant was the father of the Petitioner who had got himself registered for allotment of a flat under the NPRS 1979 in the year 1979. He expired on 31.12.1991 and was survived by his wife, i.e., mother of the Petitioner, who did not take any steps to approach the Respondent/DDA for transfer of

the registration in her name. The position remained the same right upto 2.3.2008, when she expired. It was the case of the Petitioner that as the sole surviving legal heir after the demise of her mother, she decided to follow up the pending registration of her father with the Respondent/DDA and made a request to get the same mutated in her name. In such circumstances, the Court held that it was not open to the successor-in-interest of an original registrant to rise from his/her slumber as per convenience and approach the Court claiming to be a legal heir and entitled to mutation of registration in his/her favour. No sufficient reason to explain the delay of 17 years in approaching the DDA with the request for mutation of the registration was forthcoming.

In the present case, the allotment itself has been made in March/April, 2004 and from the said date till the date of the filing of the petition, the Petitioner, as delineated above, has been diligently following up the matter. Inevitably, delay has been caused as the result of the fact that the information had to be dug out by the Petitioner through the RTI. The cryptic replies of the RTI appear to have further delayed the matter.

20. It is also evident that the DDA has been unable to substantiate its contentions that its communications dated 22nd December, 1982, 23rd June, 1986 and 2nd March, 1987 were served upon the Petitioner. On the other hand, the Petitioner has demonstrated that his permanent

address was available on the record. Yet, the DDA did not choose to serve him on the said address. The Petitioner has also proved on record that he had informed the DDA about his change of address on 6th March, 1997 vide acknowledgment receipt of the same date. Yet, the DDA again chose to serve him with a letter of cancellation of his allotment dated 23rd September, 2004 at his old address. The Petitioner has placed on record his CBSE Certificate to show that he had attained the age of majority on the date of the application and the said certificate is not disputed by the DDA. The DDA has also not disputed that he was a student on the date of his registration. Further, it is not disputed by the DDA that in order to avoid hardship to the registrants of Janta and LIG flats, the Vice-Chairman by his order dated 24.3.1989 had directed that in all cases whether the allotment was an old one or would be a new one, no income certificate would be required in respect of LIG and Janta category and this rule was to apply from the first draw held in 1982 onwards. The DDA has also not disputed its resolution dated 20.1.1995 whereunder it was resolved that in order to minimize hardship caused to registrants/allottees in producing the income certificate from the employer/assessment order and no objection certificate from the Income-Tax Department, apart from the Janta and LIG registrants even MIG registrants were exempted from producing the same. A bald plea has been raised by the DDA that this resolution was not applicable to the Petitioner though the resolution itself clearly mentions as subject: *“Exemption of income limit to the*

registrants/allottees of Rohini Residential Scheme 1981” viz., the Scheme under which the Petitioner was registered.

21. In order to balance the equities, this Court on the institution of the writ petition, i.e., on December 8, 2011 had asked the Petitioner if to counteract the delay in approaching this Court the Petitioner was willing to accept the plot as per the prevailing rate of 2011, when the Petitioner filed the writ petition. It was then submitted on behalf of the Petitioner that the Petitioner is willing to accept the plot at the cost prevalent in the year 2011 for allotment of LIG plot.

22. Accordingly, present petition is allowed. Rule is made absolute. The DDA is directed to allot the Petitioner a plot in the LIG category at the cost prevailing in 2011 by issuing a Demand-cum-Allotment Letter within one month from today, and on the Petitioner making the payment to handover the possession of the plot to the Petitioner within one month thereafter.

23. W.P.(C) 8582/2011 stands disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

April 10, 2013

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