

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

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Judgment reserved on:04.01.2013

Judgment pronounced on: 08.01.2013

+ LPA NO. 16/2013

SATNAM DASS NARANG

..... Appellant

Through : Mr. Sanjeev Narula, Adv.

versus

D.D.A.

..... Respondent

Through : Ms. Shobhana Takiar, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. The appellant got himself registered with Delhi Development Authority (DDA) for allotment of an LIG flat under its New Pattern Registration Scheme, 1979 (NPRS). At the time of registration, the appellant was residing at D-49, Sudarshan Park, New Moti Nagar, New Delhi and was working as a Pharmacist with Delhi Administration and posted at its dispensary at South Patel Nagar, New Delhi. Accordingly, at the time of registration, the appellant gave his residential address at D-49, Sudarshan Park, New Delhi and occupational address as Delhi Administration Dispensary, Patel Nagar, New Delhi. The appellant shifted from D-49, Sudarshan Park, New Delhi, to 242, Faridabad, Haryana and intimated the change of address to the respondent DDA, vide letter dated 12th March, 1985. The

change of address was duly incorporated in the record of the respondent. An LIG flat bearing No. 340, Category-L, Ground Floor, Bindapur, Delhi, was allotted to the appellant in the draw held on 5th October, 1993 and the demand-cum-allotment letter was issued to him at residential address given at the time of registration. Since the appellant had already shifted from that place, the said allotment letter was returned back undelivered. Later, the allotment at Bindapur was cancelled and another flat bearing No.49-H, Third Floor, S-A, Pocket-A1, Type-I, Kondli Gharoli, Delhi, was allotted to the appellant. The demand-cum-allotment letter dated 3rd August, 1995 was sent to the appellant at his residential address 242, Faridabad, Haryana, but since he had, by that time, shifted from that place as well, the letter was received back unserved. The demand-cum-allotment letter was then sent by the respondent to the occupational address given in the application form, i.e., 9, South Patel Nagar, New Delhi. Since the appellant had already been transferred from South Patel Nagar Dispensary and was at that time posted at Government Girls Senior Secondary School No.2, Kalkaji, New Delhi, the letter was returned back unserved. The respondent then issued a letter dated 28th November, 1995 to the appellant followed by a notice dated 19.01.1996. The letter as well as the notice were sent at Faridabad address from where the appellant had already shifted and, therefore, were received back unserved. Neither the letter dated 28.11.1995 nor the notice dated 19.01.1996 was sent at the occupational

address of the appellant. The allotment made to the appellant was eventually cancelled vide letter dated 6th March, 1996. Since the cancellation letter was sent to Faridabad address, it remained unserved.

2. The appellant claims to have verified the status of his allotment on the website of the respondent in March-April, 2012 and came to know about the allotment of flat at Bindapur. On visiting the office of respondent, he came to know that the allotment of flat at Bindapur had been cancelled and he was re-allotted a flat at Kondi Gharoli, which allotment also came to be cancelled in the circumstances mentioned above. The grievance of the appellant is that no effort was made by the respondent either to send the demand-cum-allotment letter to his Head Office, i.e. Directorate of Health Services or to ascertain the place of his posting from the Headquarter, though the address of the Head Office was available on the income certificate which he had filed along with the application for registration. Another grievance of the appellant is that the show-cause notice dated 19.01.1996 was not sent to his occupational address.

3. The cancellation of the allotment made to him, was challenged by the appellant by way of CWP No.6866/2012, which was dismissed by a learned Single Judge of this Court *in limine* on 2nd November, 2012. Being aggrieved from dismissal of his writ petition, the appellant is before us by way of this appeal.

4. The main contention of the learned counsel for the appellant is that on the demand-cum-allotment letter sent at Faridabad address and at dispensary in South Patel Nagar having been received back unserved, it was imperative for the respondent to either send the demand-cum-allotment letter to the headquarter of the appellant or to write to the headquarter seeking information about the place of his posting at the time demand-cum-allotment letter was issued. This, according to the learned counsel, could easily have been done since the address of the Head Quarter was written on the income certificate, which was already available in the record of the respondent. According to the learned counsel, all possible efforts should have been made by the respondent to serve the allotment letter to the appellant and the allotment could be cancelled only on all such efforts being failed. In support of his contention, the learned counsel for the appellant has relied upon the decision of the Division Bench of this Court in *Delhi Development Authority versus Prem Bhatnagar*, LPA No. 1098/2011 and *Delhi Development Authority versus Mohinder Singh*, LPA No. 1067/2011, both decided on 14th February, 2012.

5. The learned counsel for the respondent who appeared on advance notice submitted that besides sending demand-cum-allotment letter at the residential address as well as occupational address available in its record, the respondent had also issued public notices in newspapers, from time to time, giving registration

numbers of the allottees to whom the demand-cum-allotment letters could not be served, inviting the registrants to approach them for the purpose of allotment. She further submitted the status of all the registrations was also available on the website of the respondent. She also submitted that NPRS, the scheme, under which the appellant had got registered, has since been closed and, therefore, it is not possible to make allotment to him at this stage.

6. It can hardly be disputed that once the appellant had shifted from the Faridabad House, he ought to have informed DDA about change of his address and sought incorporation of the new address in its record. It is not as if the appellant was not aware of the necessity to intimate change of address to the respondent. At the time of registration, he was residing at D-49, Sudarshan Park, New Delhi, and when he shifted to Faridabad, he duly intimated the change of residence to DDA vide letter dated 12th March, 1985. There is no reason why the appellant should not have got the address changed in the record of the respondent, on his shifting from the House in Faridabad. Similarly, on his being transferred from the dispensary in South Patel Nagar, the appellant should have intimated DDA about change of his occupational address so that in the event of allotment, the demand letter could be sent to him either at his residential address or at his occupational address. Having not done so, the appellant was clearly negligent in taking care of his own interests.

7. The next question which comes up for consideration is as to whether despite negligence on the part of the appellant, the respondent ought to have either sent the demand-cum-allotment letter to his Head Office or ascertained the place of his posting from his Head Office. Admittedly, there is no legal or contractual obligation on the part of the respondent to send the demand-cum-allotment letter at any place other than the residential address and occupational address disclosed by the registrant. As noted earlier, in the application form, the appellant disclosed only one occupational address and that was Dispensary, South Patel Nagar, New Delhi. The head quarter was not disclosed by the appellant as his occupational address. Though the income certificate annexed to the application for registration was issued by Directorate General of Health Services, the place of posting of the appellant was shown as South Patel Nagar Dispensary, in that certificate. Admittedly, the appellant was not posted in the headquarter at the time of registration. Therefore, the head quarter was not his occupational address at that time. Since the headquarter of Directorate General of Health Services(DGHS) was not the occupational address disclosed by the appellant at the time of registration nor was he posted in the headquarter at the time of registration, it would be difficult for us to accept the contention that the respondent ought to have sent the demand-cum-allotment letter to the headquarter of the appellant. Also, we are unable to agree that the respondents should have make enquiry from the

headquarter about the place of his posting at the time demand-cum-allotment letter was sought be dispatched. Accepting such a contention would result in casting an onerous duty upon the officers of the respondent, which they would certainly find difficult to discharge, considering the number of the persons aspiring to obtain allotment from DDA. Trying to obtain the place of posting of the appellant from his Head Office would be making an external enquiry to ascertain the occupational address of the allottee. The appellant before this Court was a Government servant being an employee of Directorate General of Health Services, but every allottee need not be a Government Servant. If we accept the contention of the appellant, in the case of a private employee shifting from his place of residence as well as the occupational address, if any, disclosed by him to DDA, and not intimating the said change, he may, in the event of the allotment being cancelled on account of the allotment money not being paid, say that the respondent should have ascertained the place of his posting from his employer and in a case the allottee has also changed the employer, should have contacted his previous employer and made efforts to ascertain the name and address of the new employer. A registrant who does not disclose his occupational address either in the application or in any document and changes the residential address without intimating the change to DDA, may say that DDA should have made local enquiries at his last known address, in an attempt to verify his new address from the neighbours. A person

who is self-employed and changes the place of his business/profession as well as his residential address without intimating DDA, may say that the officers of DDA should have made enquiry in his business neighbourhood, to ascertain his new place of business/profession. Thus, the contention of the appellant, if accepted, will lead to serious consequences and cast a burden of making endless enquiries which DDA officers may not be in a position to undertake, except at the cost of derailing other duties required to be performed by them.

8. It was noted by this Court in **Prem Bhatnagar**(supra) that DDA had issued advertisements in newspapers calling upon registrants of undelivered demand-cum-allotment letters to approach them for allotment. If DDA has been issuing advertisements in leading newspapers asking the registrants of undelivered demand-cum-allotment letter to approach them for doing the needful and had also provided the facility of ascertaining the status of the registrations on its website, that also, in our opinion, be a relevant circumstance to be taken into consideration in cases of this nature. The purpose of issuing advertisements in leading newspapers, along with the registration numbers of those whose demand-cum-allotment letters were received back unserved is to bring it to the notice of the registrants, particularly those whose addresses have changed that the allotment letters dispatched to them having been received unserved, they should immediately contact DDA to make payment and obtain possession of the flat allotted to them.

To exclude such advertisements, issued at considerable expenditure, altogether from consideration, would, therefore, not be appropriate. Also, the registrants particularly those who are computer literate need to make use of the facility of verifying the status of their registration on the website of DDA. It can hardly be disputed that mere public notice would not be sufficient and reasonable efforts need to be made to deliver the demand-cum-allotment letter upon the allottee by sending it to the residential address as well as the occupational address, if any, available in the record of DDA. But, the obligation of DDA, in our opinion does not extend beyond sending such letters to the last residential and last occupational address disclosed by the registrants to it and no external enquiry needs to be made by it to ascertain the new place of residence or the new place of employment/business of the registrant.

9. In **Mohinder Singh** (supra), the respondent in the appeal had not intimated the change of his residential address to DDA, but his office address was very much available in the record of DDA and he had continued to work at that place till 2004. The allotment letter was sent by DDA in August, 2000 only to the residential address from which the registrant has already shifted. Thus, at the time the demand cum allotment letter was sent, he was working at the same address which was available in the record of the DDA. Despite that, no attempt was made to serve him at that address. A learned Single Judge of this Court accepted his had

contention that since the office address was available in the record of the DDA, attempt should be made to intimate him at that address. Same was the position in the case of **Prem Bhatnagar** (supra) and the registrant in that case had continued to work till the year 2004 at the same address which was available in the record of DDA as her office address. The demand cum allotment letter in that case was sent in August, 2003 only at the residential address from which the registrant had already shifted and no attempt was made to send the communication to her occupational address. In that case also, the learned Single Judge accepted the contention of the respondent that since occupation address was available in the file of DDA, the intimation ought to have been sent at that address. The appeal filed by DDA in the case of **Mohinder Singh** [LPA No. 1067/2011] as well as the appeal filed by it in the case of **Prem Bhatnagar** [LPA No. 1098/2011] came to be dismissed on 14.12.2012 and the following identical view was taken while dismissing the appeal:-

“10. We find that the learned Single Judge has allowed the writ petition exercising the equitable jurisdiction under Article 226 of the Constitution of India and in the peculiar facts and circumstances of the case. It cannot be lost sight of that the priority of the respondent had matured nearly 24 years after the registration. The respondent, who had waited for the flat for so long, ought not to be deprived thereof for his default in intimating the change of address. The exercise of discretion by the learned Single Judge is not interfereable in appeal unless found to be perverse. No perversity is found in the present case. On the contrary with the respondent

expressing willingness to pay the cost of the flat of the year 2011, the interest of the appellant DDA stands sufficiently protected.”

Thus on equitable ground, the Division Bench, in the peculiar facts and circumstances of the case, did not deem it appropriate to interfere with the discretion exercised by the learned Single Judge in favour of the registrant. However, in the case before us, DDA sent the demand cum allotment letter not only to the residential address available with it, but also to the occupational address of the appellant which he had given in the application form and which was also available in the income certificate filed by him at the time of registration. Therefore, the facts of the present case are altogether different from the facts of the case of **Mohinder Singh** (supra) and **Prem Bhatnagar** (supra). In neither of those cases this Court said that DDA should make an external enquiry to ascertain the changed address of the registrant and the duty cast upon DDA was not limited to send such letter at the residential address and occupational address available in its record. Therefore, neither of these judgments is of any help to the appellant.

10. Admittedly, the appellant was not posted in the Headquarter of DGHS at the time the demand cum allotment letter was despatched by DDA. Therefore, no useful purpose would have been served by sending the said letter to the Headquarter. In any case, the Headquarter was not the occupational address given by the appellant to DDA. As regards failure to send the letter dated 28.11.1995 and

the notice dated 19.01.1996 to the occupational address given in the application, since the demand cum allotment letter sent at the occupational address disclosed in the application form had already been received back unserved, no useful purpose would have been served by sending those communications to that address. Any such attempt would only have been an exercise in futility.

For the reasons stated hereinabove, we find no merit in the appeal and the same is hereby dismissed. There shall be no order as to costs.

V.K. JAIN, J

CHIEF JUSTICE

JANUARY 08, 2013
SN/BG