

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

Reserved on: 10.07.2014
Date of Decision: 21.08.2014

+ **LPA No.193 of 2014**

NANAK CHAND Appellant
Through: Mr. R.K. Saini, Adv.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Arun Birbal, Adv.

+ **LPA No.298 of 2014**

DELHI DEVELOPMENT AUTHORITY Appellant
Through: Mr. Arun Birbal, Adv.

versus

NANAK CHAND Respondent
Through: Mr. R.K. Saini, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. The appellant, Nanak Chand, has impugned the judgement and order of the learned Single Judge passed on 17.12.2013, which, by a writ of mandamus directed the DDA to “allot a flat of equivalent size preferably in the same area, i.e. Dwarka, New Delhi, at the price prevalent on the date of the order within a period of twelve (12) weeks”.

2. The appellant contends that the difference between the price prevalent on the date of filing the writ petition (20.12.2012) and the date of its disposal (17.12.2013) is substantial. He submits that the price has increased by Rs.7-8 lakhs, hence, he would be irretrievably prejudiced if he is asked to pay the higher price prevalent on the date of the impugned order. He contends that the learned Single Judge, in an earlier case, had directed a flat to be allotted to the petitioner at the price prevalent on the date of filing of the writ petition. He relied upon a judgement of this Court in LPA No.743/2013 titled ***Delhi Development Authority Vs. Mahinder Pal Sikri (Deceased) Through LRs*** decided on 28.11.2013 and on another judgement in LPA No.628/2013 titled ***Dev Raj Vs. Delhi Development Authority*** decided on 19.2.2014. Both the judgements held, in similar circumstances, that the flat should be allotted at the price obtaining on the date the writ petition had been filed.
3. The petitioner submits that in ***Mahinder Pal Sikri (supra)*** the Court held that the petitioner cannot be faulted because of delay in disposal of the writ petition on the basis of the established principle that, in terms of the price to be paid, the clock stops at the time of approaching the Court for the appropriate remedy, because thereafter the matter rests with the Court and not in the hands of the aggrieved petitioner. ***Dev Raj (supra)***, dealt with the issue of the allotment letter not being sent to occupational/permanent address of the applicant/petitioner after its being received back from his residential address. The Court directed that the effective date for determining the price of the flat would be the date of filing the writ petition.

Being equally placed, the appellant seeks to be treated equally, in terms of the aforesaid judgements.

4. In the present appeals the learned Single Judge held, that admittedly the allotment letter was not sent to the petitioner at his occupational/official address hence it had not discharged its obligation of intimation to the appellant/allottee, in its entirety. He reasoned:

“9. It is not in dispute that at the time of registration for allotment of the flat, the Petitioner had given two addresses and the permanent address was Nanak Chand, Sr. P.A. Ministry of External Affairs, New Delhi-110011. Admittedly, the allotment letter was not sent to the Petitioner at this address. Rather, the DDA has taken up the plea that although the occupational/office address was mentioned as Ministry of External Affairs, yet the allotment letter could not have been issued to him at this address as at the time of registration of the flat, the Petitioner was posted at Kathmandu, as per the income certificate. It is obvious that since the Petitioner was employed in the Ministry of External Affairs, his posting would have changed from one place to another and thus, the Petitioner had not mentioned his permanent address as the Embassy of India, Kathmandu, Nepal, rather, he has mentioned the address as Nanak Chand, Sr. P.A. Ministry of External Affairs, New Delhi-110011. The Petitioner rightly hoped that if any communication is sent to him at this address, the same will reach him irrespective of the place of his posting. Moreover, it is not in dispute that the Petitioner wrote a letter dated 04.10.2001 to record the change in his current address from House No.3985, Roshan Ara Road, Delhi-110007 to B-16, Pandara Road, New Delhi. In fact, the DDA by a letter dated 22.10.2001 had asked him to submit the attested copy of the ration card and election card so that his address could be changed in the office. It is true that there was slackness on the part of the Petitioner in as much as he did not provide any ration card/election card as demanded. The Petitioner says that

he was not in possession of the same. Even if it was so, the Petitioner was expected to inform the DDA about the same. The fact, however, remains that the DDA was very much aware that by a letter dated 04.10.2001, the Petitioner had informed about the change of his address.

10. Therefore, the question for consideration is even if the registrant under any scheme fails to supply copy of the ration card/election card to change his address, is the DDA justified in sending the allotment letter at the old address? Even if the DAL was initially sent at the old address and received back with the report of 'left', the DDA was under an obligation to send the same at the current address of the Petitioner which was duly provided in the year 2001. Not only this, admittedly, the information about the allotment of the flat was also not sent at Petitioner's occupational/office address. The learned counsel for the DDA relies on a judgment of this Court in *Dev Raj v. DDA*, W.P.(C) No.7842/2012, decided on 11.07.2013 to contend that the DDA was not under an obligation to send the communication at all the addresses. However, the contention raised on behalf of the DDA is misconceived.

11. In *Dev Raj*, the intimation was sent at the given address which was returned with the report of 'left' and the permanent address provided was incomplete and vague. It was in these circumstances that it was held that the DDA had performed its obligation of sending the information at the available address.

12. The instant case, on the other hand, is covered by the judgments of this Court in *Ravi Dass v. DDA*, W.P.(C) No.5554/2011, decided on 16.02.2012, *Sushil Kumar Jain v. DDA*, W.P.(C) No.7433/2012, decided on 12.11.2013, *DDA v. Mohinder Singh*, LPA No.1067/2011, decided on 14.02.2012, and *DDA v. Ms. Prem Bhatnagar*, LPA No.1098/2011, decided on 14.02.2012."

5. In *Mahinder Pal Sikri (supra)* this Court relied upon the principle of *Hirdayapal Singh v. DDA, 2007 (94) DRJ 741*, which held that: "the

respondent, who had waited for the flat for so long, ought not to be deprived thereof for her 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.” The Court went on to hold that:

“17. The DDA admits that the occupational address of all the writ petitioners was available on its file (with two exceptions, i.e. LPA 346/2013 and 369/2013). This being the case, it is clear that an obligation lay on the DDA to attempt to inform the writ petitioners’ at all available addresses, rather than substitute this obligation for a press notice. Indeed, neither the decisions of the Supreme Court in Wazir Chand (supra) and Banda Development Authority, Banda (supra) nor the various judgments of this Court relied upon by the DDA displace this principle, on which the learned Single Judge rightly based his decision. Indeed, as regards the two appeals mentioned above wherein there was only one address, it is admitted by the DDA that the letters were sent to the wrong addresses through mistakes of the DDA’s clerks, and crucially, for no fault of the writ petitioners. After those letters came back undelivered, the DDA did not, at any point, try to go into the matter to determine whether indeed the letters were sent to the wrong addresses. In such a case, it does not lie in the DDA’s mouth to claim that the writ petitioners’ are liable to suffer, and their allotments be cancelled, on account of a mistake committed by the DDA itself.

18. Equally, the holdings in the various decisions on the appeal present that that the payment for the plot will be made as per the price on the date of filing the writ, and not as per the Circular dated 13.10.2011, cannot be faulted, given the

established principle to the effect that the clock in terms of the price to be paid stops at the time of approaching the Court for the appropriate remedy, and the matter at that point rests with the Court and not in the hands of the writ petitioners.”

6. In *Dev Raj (supra)* this Court held that it was obligatory on the DDA to attempt to serve the appellant about allotment of the flat at his permanent address as given in the application form especially when the letter to the current address came back unserved. To arrive at this conclusion the Court relied upon the judgement of the Division Bench of this Court in LPA 137/2013 titled *DDA vs. Banwari Lal Arya* decided on 3.3.2013, wherein it was held as under:

“3. It is not in dispute that despite his permanent address having been disclosed by the respondent in the application form itself, no attempt was made by the appellant to send the demand letter at that address. No justification has been shown by the appellant for not sending the demand-cum-allotment-letter at the permanent address of the respondent. In our view, once the demand-cum-allotment-letter sent at the postal address of the respondent was received back unserved, it was obligatory for the appellant to send the said letter at the permanent address which had been disclosed in the application form. Cancellation of the allotment without making an attempt to send the allotment letter at the permanent address of respondent, disclosed in the application form, cannot be sustained and has rightly not found favour with the learned Single Judge.”

7. We notice that the learned Single Judge had fixed the date of passing of the impugned order as the cut-off date on which the price prevalent would be applicable. This was premised on the counsel for the petitioner offering his no objection in accepting the allotment on that basis. We also note that the query was put by the Court, but the

question remains: would it be fair to put a query to the petitioner's counsel which could compromise the petitioner's legal rights? This court is of the view that where the allotment was delayed on account of fault of DDA as has been held in *Mahinder Pal Sikri (supra)*, *Dev Raj (supra)* and *Ms. Prem Bhatnagar (supra)* the applicant/petitioner cannot be burdened with the cost prevailing on the day when the writ petition was disposed off. Instead the price payable ought to be one as on the day the doors of the court were knocked at.

8. The same principle would be applicable to the present appellant. On the application of principle and analogy of *Mahinder Pal Sikri (supra)*, *Dev Raj (supra)* and *Ms. Prem Bhatnagar (supra)* the petitioner's right is established. This right which was prejudiced, was sought to be enforced through a writ of mandamus. Such legal right cannot be modified by a concession of counsel. The petitioner would be entitled to seek the enforcement of his complete legal right. The learned Single Judge fell into an error in fixing the price prevalent on the date of the impugned order only on the concession of the petitioner's counsel. The courts would exercise caution and see that when the legal right is unqualified it ought not to be qualified or lessened because of a concession by the litigant because the grant or enforcement of the legal right is not contingent upon the petitioner's concession or her settling for something less. A litigant would ordinarily not make a concession unless he/she feels compelled to. Where a petitioner knows that his right against the State is absolute he would never forgo or settle for anything lesser.

The Courts would, therefore, enforce a petitioner's complete legal rights in full measure without any unwarranted mitigation.

9. The appellant is entitled to be treated as per the consistent view taken by this Court. The price for allotment of the flat would be the one prevalent on the date the writ petition was filed. The time taken in adjudication of the writ petition cannot be attributed to the petitioner thus causing him to pay higher cost of the flat, as far as a petitioner is concerned the clock stops ticking the day he filed the writ petition.
10. In view of the aforesaid, this Court directs that the appellant Nanak Chand be allotted a flat of equivalent size at the price prevalent on the date he filed the writ petition. The LPA No.193/2014 is allowed. Logically, therefore, DDA's LPA No.238/2014 which impugns the order against the Nanak Chand's established legal right, is rejected. No order as to costs.

NAJMI WAZIRI, J.

AUGUST 21, 2014
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KAILASH GAMBHIR, J.