

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

Date of Decision: 10.12.2014

+ **LPA 307/2014, CM APPL. 6521/2014**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Ms. Mrinalini S. Gupta with
Ms. Ruhi Chopra &
Ms. Mrinmoyi Chaterji, Advs.

Versus

SANTOSH SHARMA & ORS Respondents

Through: Mr. Amit Anand Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns a judgment dated 18.11.2013 passed by the learned Single Judge, whereby the respondent's petition was allowed and the appellant/DDA was directed to allot an MIG flat to the respondent (hereinafter 'the petitioner') as far as possible in the same locality (Sector-15, Rohini) at the cost that was prevalent in December, 2002 (along with simple interest @ 12% per annum from 1.1.2003 till date) within a period of three months. It was further directed that upon the said payment having been made, the flat shall be handed over to the petitioner within thirty days thereafter.

2. The petitioner's case was that he had applied for an MIG flat

under the New Pattern Registration Scheme, 1979. He was issued a demand letter on 3rd October, 1991. Since it was sent at the wrong address, it could not be received in due time. However, before anything could fructify in terms of the aforesaid demand letter, the petitioner's request for conversion of the said allotment under the MIG Scheme to SFS Category-II was acceded to by the DDA's letter dated 24th September, 1993. The said letter further intimated him that the demand note would be communicated to him and he could apply for the SFS Category-II flat of his own choice, as and when flats are released under the said scheme. However, since he did not receive any demand note in this regard he pursued the matter before the Public Grievance Cell, before which the DDA, through its note of 29.5.2002 had conceded as under:

“However, Applicant never got any demand for conversion from MIG to SFS ever since the conversion is allowed. As per record available, no entry in respect of conversion was made either in the Management or accounts Branch record. The Applicant could not apply under SFS Category without conversion letter.

In December 2000, the case was examined and it was observed that registrant could not get the flat due to the fault of the department, and since SFS Category is no more live he may be allotted a MIG flat at current cost after seeking his consent, refer note at page 10/N.

Applicant has now approved the DPG for relief. The

Deputy Secretary (PG), Cabinet Sectt. has now raised certain queries in his letter dated 2.5.2002 and requested to convey comments of VC on the decision to allot an MIG flat at current cost.

In view of the above, it is clear that the fault on the part of DDA. To deal with such cases we have clear policy to allot the flat at old cost + 12% interest. In this case also, we may offer MIG flat to Shri R.K. Sharma, at the rates prevalent in the financial year 1991-92 – 12% interest.

Submitted for orders pleased.”

3. As noted hereinabove, it was conceded that although the registration was converted from MIG to SFS Category-II but a corresponding entry was not made either in the Management or Accounts Branch of the DDA, therefore, the petitioner was not issued the requisite demand note due to fault on part of the DDA's official concerned. It was suggested that as per policy, the petitioner could be allotted an MIG flat at the cost prevailing in 1991-92 plus 12% interest. This proposal of the Director (Housing) was not approved by the Competent Authority, therefore the petitioner was offered an MIG flat at the current cost subject to him giving his consent for the same. Through another letter dated 19.02.2001, the petitioner was also informed that since the HIG and SFS flats schemes had been closed, therefore, it was not possible to allot him a flat under the SFS scheme. The petitioner was

offered a flat in the MIG Scheme at the cost prevailing on 26.12.2002 on cash down basis. The petitioner refused the offer as he was not willing to suffer due to fault of the DDA in failing to issue him the requisite demand note after conversion of his application to SFS Category-II. In his letter dated 20.02.2003, addressed to the Secretary, Public Grievance Cell, Government of India, the petitioner had sought fixation of responsibility on the official concerned for the negligence. He had also sought allotment of an SFS Category-II /newly constructed MIG flat, at the cost prevailing in the year 1993.

4. Before the learned Single Judge, the petitioner had relied upon the DDA's letter dated 29.9.1993, pursuant to which he was kept waiting for the demand note, which never reached him. It was submitted that he could not be asked to compromise his right and that he could not be faulted for refusing allotment of an MIG flat. However, the DDA's stand was that since the petitioner/applicant had not accepted the two offers of the MIG flat made in the year 1991 as well as on 27.9.2002, he could not be permitted to approach this Court for getting a flat under any category after so many years. The letter dated 29.09.1993 reads as under:

“Please refer to your office letter No.151/DDA/VIP/93-DDIIA dt. 4.5.93 on the subject cited above, I am

directed to inform you that Sh. R.K. Sharma has been allowed conversion from MIG to SFS Category II. A Demand Note will be communicated to him to deposit the amount of change of Category.

He can apply for the SFS Cat. II flat of his choice, as and when the flats are released under SFS.”

5. The learned Single Judge was of the view, which reads as under:

“10. Since the demand note was not issued and the registration number was not given to the petitioner for SFS Category II, he was not eligible to apply for allotment of any specific flat under the SFS scheme. Thus, it was the DDA who was to be blamed for placing the petitioner in a predicament where he lost his allotment not only under SFS Category II but also under the MIG scheme. The learned counsel for the DDA relied on a Division Bench judgment of this Court in Naresh Kumar Kataria vs. Delhi Development Authority, (LPA No.1094/2006) decided on 17.05.2012 to canvass that the petitioner himself was guilty of delay and laches and was thus not entitled to the allotment of an MIG flat now. However, the facts of the instant case are entirely different. His registration was converted to SFS Category II but neither a demand note was issued nor the registration number was allotted so as to enable him to apply for allotment in pursuance of any advertisement for allotment of a flat under SFS Category II.

11. The learned counsel for the petitioner submits that the petitioner expired on 30.11.2011 after waiting for a roof on his head for about 31 years. His widow, who is one of the LRs, would be happy even if an MIG flat is allotted to the legal representatives of the deceased petitioner at current cost. Since there was no fault of the petitioner in not applying for allotment of a flat in pursuance of any public advertisement under SFS Category II and since the scheme has since been closed,

the petitioner can be allotted only an MIG Flat. Although, the learned counsel for the petitioner has stated that the MIG flat may be allotted to the legal heirs at current cost, but this contention will not bind me to do injustice to the petitioner who valiantly fought for his right till he was alive. Although, the proposal dated 29.9.2002 made by the Director (Housing) to allot an MIG flat to the petitioner at the current cost plus 12% interest did not find favour with the competent authority, yet considering the fact that the petitioner was always vigilant, he (now his legal heirs) cannot be penalised by allotment of a flat at current cost.”

6. It is in these circumstances that the learned Single Judge directed for the allotment of a flat to the petitioner. The appellant has challenged the judgment of the learned Single Judge on the ground that there was a lapse of nearly seventeen years when the petitioner approached the Court; that the rates prevalent in December, 2002 have been made applicable which was not justified in view of the fact that the petitioner was offered an MIG flat in December 2002, therefore, such refusal would have to be construed against the petitioner; the petitioner's assertion that the demand letter of 18.2.1991 was sent at the wrong address was not proven; the appellant could not be faulted in not sending a demand note of conversion of SFS Category-II because the petitioner made no effort whatsoever to pursue his case for issuance of the requisite demand note; the impugned judgment is erroneous to the extent that it was for the petitioner to have applied for the SFS

Category-II flat of his own choice but he failed to do so and in any case, the petitioner could not apply or insist upon an SFS flat because neither a demand note was issued to him nor a registration number was given to him in the said category. Finally, the learned counsel for the appellant submits that the petitioner was not entitled to any relief on the basis of the office noting dated 29.5.2002, as it is contrary to the law laid down in *Sethi Auto Service Station v. DDA, 2009 (1) SCC 180*.

7. We have heard learned counsel for the parties.

8. This Court is of the view that the petitioner's application for an MIG flat was not cancelled after the so-called letter of allotment and demand letter was issued to him on 3.10.1991. Indeed, his registration was agreed to be converted into SFS Category-II allotment by DDA's own letter of 24.9.1993, but the requisite demand note was never issued to him. Therefore, if anything further was to be done in this regard, it was at the instance of the DDA. The petitioner would not required to do anything further till the requisite demand note was raised in this regard. It is a most illogical and indeed an untenable argument that the DDA could not be blamed if the petitioner did not pursue the matter with the DDA for issuance of the demand note. This argument betrays a callous attitude of the organization, which would expect an applicant to run

after and implore their officials for issuance of the demand note, a document which they were in any case duty bound to prepare and issue. There is no place for such an attitude in the constitutional scheme of an independent sovereign Republic of India. An applicant seeking allotment of a flat from the DDA cannot be at their mercy. Once an applicant is registered in the scheme, it becomes a matter of right for him/her to be issued an allotment as per the individual's seniority or in the draw of lots. The records reveal that the petitioner, despite having applied for allotment of a flat way back in the year 1979 and having waited for three decades did not have the opportunity to own one or live in such an abode. While pursuing for the allotment, he passed away. It is an irony of fate that the petitioner, a school teacher, who taught the virtues of pride, diligence and discipline, had to suffer at the hands of the indolent and the callous attitude of the DDA. Such actions can neither be condoned nor can the petitioner be denied of his right to the allotment of a flat. The DDA failed to act as per its own assurance by not raising a demand note, after the petitioner's request for conversion from MIG flat to SFS Category-II flat had been acceded to. The subsequent formalities could have been done only after further communication from the DDA and an applicant could not be faulted for

inaction of the DDA. This Court finds no reason to interfere with the reasoning of the learned Single Judge. This appeal is without merit and is accordingly dismissed.

9. The judgment of the learned Single Judge dated 18.11.2013 shall be complied with by the appellant within a period of five weeks from today, failing which the petitioner/respondent shall not be liable to pay any interest, which he is otherwise required to pay as per the aforesaid impugned judgment. In the event of the burden of interest being lifted from the petitioner/respondent, the entire liability in this regard shall shift upon the defaulting officer of the DDA and the requisite amount shall be recovered from such officer.

10. Dasti, under the signature of the Court Master.

NAJMI WAZIRI, J

KAILASH GAMBHIR, J

DECEMBER 10, 2014/ak