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

% *Judgment delivered on: February 4, 2015*

+ **W.P.(C) No. 636/2013 & CM No. 1206/2013**

HARISH CHANDER Petitioner
Represented by: Mr. Ujjwal Kr. Jha and Mr. B.
P.Agarwal, Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent
Represented by: Mr.Arun Birbal and Mr. Sanjay
Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

W.P.(C) No. 636/2013

1. Vide present petition, the petitioner seeks directions thereby directing the respondent/Delhi Development Authority (DDA) to allot Flat No.D-116, First Floor, Kondli Gharoli, Delhi, or any other alternative flat announced by the respondent under Special Housing Registration Scheme for SC/ST Person, 1989 (for short 'Special Housing Scheme') under Ambedkar Aawas Yojna,1989, in favour of the petitioner.

2. Case of the petitioner is that on 29.12.1989, he had booked a Janta Flat vide application No.9534 under Special Housing Scheme

and in this regard deposited an amount of Rs.4,200/- by way of demand draft No.258083 dated 29.12.1989, drawn on Syndicate Bank, GTB Nagar, Delhi.

3. Thereafter, the petitioner had changed his residence from A-330, Jahangirpuri, DDA Janta Flats, Delhi, to A-405, Shastri Nagar, Post Office Ashok Vihar, Delhi-110052. In this regard, the petitioner had informed the respondent/DDA through communications dated 15.12.1997 and 14.09.1999 by ordinary post and again on 17.04.2009 by registered post.

4. The petitioner got information through RTI on 23.07.2010, whereby stated that the petitioner was allotted Flat No.116-D, First Floor, Sector-D, Kondli Gharoli, Delhi, but the same was cancelled as the payment of said Flat was not made by the petitioner.

5. Learned counsel appearing on behalf of the petitioner submitted that the petitioner never received the allotment letter or the demand letter in this regard, though he has been staying at the changed address since 1997, which was duly informed to the respondent/DDA vide aforesaid communications.

6. Learned counsel has pointed out that in the counter-affidavit filed by the respondent/DDA, it is nowhere mentioned that when the

demand letter was sent to the petitioner and by which mode. Therefore, vide order dated 19.03.2013, this Court directed the respondent to produce the Dispatch Register for the relevant period, however, the respondent stated in its affidavit filed on 22.05.2013 that the property allotment file bearing No.J/207(0253)93/AY/KG in relation to the petitioner was not traceable in the records of the respondent/DDA.

7. Learned counsel further submitted that if the respondent/DDA failed to establish by any material or evidence that the respondent Department had sent demand letter to the petitioner, in that eventuality, alleged communication made in this regard cannot be considered as valid communication and the petitioner is entitled to the same flat or any alternative flat.

8. Learned counsel for the petitioner has drawn the attention of this Court to the Housing Management Information System(Queries) form relating to NPRS-JHRS-AAY Data Detail, which is at page 46 of the petition, wherein it is specifically mentioned that the date of allotment was 23.12.1992 and date of demand letter was 11.01.1993. However, this information does not show when the demand letter was sent; and by which mode, to the petitioner.

9. To strengthen his arguments, learned counsel has relied upon the case of **V.N. Bharat Vs. DDA & Anr. 2008 Legal Eagle (SC) 1183**, wherein the Apex Court held that:

“19. The assertion of service of notice on account of such presumption has been denied by the appellant as a result whereof onus of proving service shifted back to the respondent. The respondent DDA has not led any other evidence in support of the presumption of service. In such circumstances, it has to be held that such service had not been effected. Therefore, when on the appellant's application for restoration of the allotment, the allotment was restored, the only conclusion that can be arrived at is that the earlier allotment continued as no cancellation and/or termination had, in fact, taken place in terms of Clause 4 of the Scheme in question.”

10. Also relied upon the case of **Sh. Sushil Kumar Jain Vs. DDA**, decided on 12.11.2013 by this Court in WP(C) No. 7433/2012, wherein held as under:-

“7. In pursuance of the order dated 29.08.2013 passed by this Court, the DDA has produced the original file relating to the registration and cancellation of the Petitioner. In fact, the learned counsel for the DDA has also handed over the copies of some documents in the Court for the first time today, which are taken on record. Copies thereof have also been supplied to the Petitioner.

8. I have before me File No.353(1518)03/NP/RO produced by the DDA. It contains all the three copies of the demand-cum-allotment letter. Although the plea of the DDA is that this demand-cum-allotment letter was sent to the Petitioner at his residential address but

the file does not even contain any returned envelope as is the case set up by the DDA. Not only this, it does not even contain any postal receipt through which the letter was allegedly posted to the Petitioner or any other proof of posting.

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10. Prima facie, it appears that the demand letter was never posted to the Petitioner. In any case, in the absence of any postal receipt or returned envelope, no presumption of service can be drawn against the Petitioner.

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12. In the absence of any postal receipt and in absence of any stamp of the postal department on the AD card, I am not even inclined to believe that the letter dated 05.11.2003 through which the Petitioner was required to collect demand-cum-allotment letter from the office of the DDA, was posted either at the residential or the occupational address (alternative address) of the Petitioner. Similarly, there is no postal receipt or proof of posting of the cancellation letter dated 19.09.2006, purported to have been issued to the Petitioner at his current address.”

11. Learned counsel further submitted that keeping in view the settled position of law and the admitted fact that the respondent/DDA failed to establish that the demand letter was sent to the petitioner, therefore, adverse inference may be recorded against the respondent/DDA.

12. On the other hand, learned counsel appearing on behalf of the respondent submitted that the petitioner was allotted the above noted

Flat against his registration No.9534 and priority No. 97 under Special Housing Scheme. However, the said allotment was cancelled in terms of the conditions of allotment due to non-payment of the demanded amount.

13. Learned counsel further submitted that at the time of filing the application, the petitioner was residing at Jahangirpuri, Delhi, and thereafter, he changed the said address and intimation to this effect was never given to the respondent/DDA. His priority No. was 97, therefore, he would have been vigilant about draw of the Scheme to which he failed to do. Moreover, the petitioner sent the alleged communications dated 15.12.1997 and 14.09.1999 through ordinary mail, which seems just to create the evidence in his favour as the respondent/DDA never received the said communications. However, the communication dated 17.04.2009 sent by the registered post was received by the respondent/DDA, whereby the petitioner had informed the respondent that he had shifted at A-405, Shastri Nagar, Post Office Ashok Vihar, Delhi. However, by that time, his allotment was cancelled. Accordingly, the petitioner was advised to apply for refund of registration money along with original documents.

14. Moreover, Ambedkar Awas Yojna, 1989, had already been closed after giving wide publicity through advertisements in leading Newspapers. On this ground also, the petitioner is not entitled for allotment of any flat.

15. I have heard the learned counsel for the parties.

16. Admittedly, the petitioner booked a Flat on 29.12.1989 vide application No.9534 under Special Housing Scheme and in this regard he deposited an amount of Rs.4,200/- by way of demand draft. Thereafter, the petitioner had changed his residence from A-330, Jahangirpuri, DDA Janta Flats, Delhi, to A-405, Shastri Nagar, Post Office Ashok Vihar, Delhi-110052. In this regard, the petitioner had informed the respondent/DDA through communications dated 15.12.1997, 14.09.1999 and 17.04.2009. However, the respondent/DDA admitted receipt of communication dated 17.04.2009 only.

17. It is pertinent to mention here that the petitioner got information through RTI on 23.07.2010 that he was allotted Flat No.116-D, First Floor, Sector-D, Kondli Gharoli, Delhi, but the same had been cancelled for non-payment.

18. Case of the petitioner is that he never received the allotment letter or the demand letter or any information regarding cancellation of the allotment. Whereas, case of the respondent/DDA is that since DDA never received the aforementioned communications dated 15.12.1997 and 14.09.1999, therefore, the demand letter and the cancellation letter in respect of the flat in question were sent to the petitioner at his initial address, i.e., at A-330, Jahangirpuri, DDA Janta Flats, Delhi. Since, the petitioner did not deposit the demand amount, the allotment of the flat in question was cancelled.

19. To ascertain whether DDA had sent the demand letter and the cancellation letter to the petitioner at his earlier address as noted above, this Court vide order dated 19.03.2013 directed the respondent to produce the Dispatch Register for the relevant period, however, the respondent stated in its affidavit filed on 22.05.2013 that the property allotment file bearing No.J/207(0253)93/AY/KG in relation to the petitioner was not traceable in the records.

20. Moreover, the respondent/DDA has failed to establish that when and by which mode the letter of allotment was sent to the petitioner and at which address. Also failed to establish the fact that on which date the allotment was cancelled and information regarding the same

was given to the petitioner by which mode and at which address. The only information available with DDA is that the allotment letter was of dated 23.12.1992 and the date of demand letter was 11.01.1993, however, this information do not establish when and how the demand letter was sent to the petitioner and at which address. In the case of **V.N. Bharat** (*supra*), the Apex Court held that if the DDA has not led any evidence in support of the presumption of service, in such circumstances, it has to be held that such service has not been effected.

21. On similar facts, a case bearing WP(C) No. 4237/2007 came up before this Court titled as '**Parwati Devi & Ors. Vs. Delhi Development Authority**' 2009 *Legal Eagle* (DHC) 481, decided on 02.04.2009, wherein held as under:-

“5. Counsel for the respondent/DDA states that pursuant to the order dated 22.7.2008, whereunder the DDA was directed to specifically state the manner and mode of dispatch and service of the demand-cum-allotment letter dated 17.8.1992, the department had tried to make efforts to verify the manner and mode of dispatch and service of demand-cum-allotment letter, but the relevant files were not traceable and hence no information with regard to the mode of dispatch and service can be made available. She further states that the relevant receipt register to establish the fact that the representation of the deceased registrant dated 24.12.1998, was duly received by the respondent/DDA,

is also not available though the link file does make a mention of the said letter.

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10. In view of the aforesaid position, the claim of the petitioners for allotment of a Janta Flat is held to be legal and valid. The respondent/DDA having failed to issue individual letter to the registrant at the address available with it in terms of the Scheme, cannot be permitted to claim that public notices are a substitute mode for personal intimation. The predecessor-in-interest of the petitioners cannot be faulted for non-receipt of the demand-cum-allotment letter dated 17.8.1992, more so, when the mode of dispatch thereof has also not been established in the present proceedings.”

22. Consequently, in the absence of any postal receipt, returned envelop or proof of posting of the cancellation letter, purported to have been issued to the petitioner at his earlier address, no presumption of service can be drawn against the petitioner.

23. In view of the above discussion, it is established that the respondent/DDA has never posted any demand letter or cancellation letter to the petitioner. Therefore, the petitioner cannot be made to suffer on account of the lapse or inaction on the part of the DDA.

24. Accordingly, I am of the considered view that since the fault lies purely on the part of the DDA, the petitioner must succeed.

25. Accordingly, the respondent/DDA is directed to allot a same category of flat, if left out under the same Scheme at Kondli Gharoli; or in such other areas where a similar flat under the same scheme or any other Scheme is available within six months from receipt of copy of this order. In case, no flat is available then the DDA shall include name of the petitioner in the Ist draw to be held after this order.

26. I here make it clear that the petitioner shall pay the same rate prevalent at that time under the Scheme in question.

27. Accordingly, the present petition is allowed on above terms with no order as to costs.

CM No. 1206/2013 (for stay)

With the disposal of the petition itself, the instant application has become *infructuous*. The same is dismissed accordingly.

**SURESH KAIT
(JUDGE)**

FEBRUARY 4, 2015
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