

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

+ **W.P.(C) No.5912/2013**

Decided on: 20 May, 2015

JAGDISH PRASADPetitioner
Through: Mr.Prag Chawla, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITYRespondents
Through: Ms.Manika Tripathy Pandey,
Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a writ petition filed by the petitioner seeking a direction that the respondent should allot flat No.672, Pocket-D, II Floor, Lok Nayak Puram, Delhi or any other LIG flat of the same category under the Ambedkar Awaas Yojna (AAY) on the same terms and conditions on which the earlier flat was allotted to him.
2. Briefly stated the facts of the case are that the petitioner had got himself registered under AAY-1989 for allotment of LIG flat vide

Registration No.19771/AAY-89. He was assigned priority No.19771.

3. It is the case of the petitioner that there was no communication from the respondent/DDA, thereafter, regarding the 'Demand cum Allotment Letter' (DAL). It is stated that the petitioner became aware of the draw and the subsequent allotment of the Flat No.672, Pocket-D, II Floor, Lok Nayak Puram Residential Scheme in his name on 23.03.2006 from the display board of the DDA.
4. It is alleged by the petitioner that he approached the DDA on several occasions through his son Jeet Kumar Sohra to inquire about the demand cum allotment letter (DAL), however in response the petitioner was told to wait for the same. Aggrieved, the petitioner vide communication dated 20.02.2007 to the respondent, again requesting for issuance of DAL. It is alleged that the respondent while responding belatedly vide an undated letter bearing no. 483 (968) 06/ LIG/ AV/LN-10400/26/6 communicated that the allotment of the petitioner stood cancelled on account of failure to comply with the terms and conditions of the allotment.

5. It is stated that the petitioner vide letter dated 01.04.2008 requested the respondent to restore the allotment but the same was declined by the respondent vide letter dated 25.04.2008 and the petitioner was further informed to apply for the refund of the registration amount.
6. The petitioner submitted an application dated 21.02.2012 to the Vice Chairman DDA under the RTI Act, stating therein that he had not received the DAL and further inquiring that on what address, if at all the DAL was sent by the respondent.
7. Having received no reply to the aforesaid RTI application from the respondent/DDA, on 05.03.2012 the petitioner filed an appeal with the First Appellate Authority, DDA. In response to the aforesaid, the respondent is said to have stated that the concerned CPIO/Dy. Director (LIG) H/DDA has been advised to provide information to the petitioner without any loss of time. It is stated by the petitioner that no formal reply was filed by the respondent and consequently he preferred an appeal before CIC on 02.04.2012. However, allegedly no hearing of the appeal was afforded to the petitioner till 26.03.2013.

8. Subsequently, the petitioner received a letter dated 18.04.2012 from SK Grover, Dy. Director, PIO/LIG (H) stating therein that the demand letter was sent at the petitioners available address i.e. House no. 9767, Gali no. 8, Multani Dhanda, Paharganj, New Delhi and the same was returned undelivered by the postal authorities. It was further stated that the DAL was again sent at the same address for the second time through speed post which was not returned back. Later a show cause notice was also issued and having received no response the allotment in the name of the petitioner was cancelled. The aforesaid stand is denied by the petitioner stating that the DAL or the show cause notice was never sent to him.
9. Vide letter dated 26.04.2012, the petitioner filed an application under RTI requesting the respondent/ DDA to furnish the information and provide the copies of the undelivered report by the postal authority. The petitioner again wrote to the respondent on 08.06.2012 and therein enclosed the letter dated 08.05.2012, whereby the Senior Research Officer, RTI, DDA, requested Sh.O.P

Gupta, Director (Nazarat) to furnish the information as sought by the petitioner vide letter dated 26.04.2012.

10. It is alleged that in response to the aforesaid the respondent vide letter dated 13.07.2012 provided the petitioner with the copies of the office notings dated 25.08.2006 to 25.04.2008 along with the copy of the show cause notice. However, allegedly the respondent still failed to provide the record of the undelivered endorsement by the postal authority and the speed post of the DAL and the show cause notice.

11. Subsequently, Central Information Commission (CIC) passed the orders dated 26.03.2013 directing the respondent to enable the inspection of the relevant file along with photocopies of the relevant documents within 30 days of the passing of the said order.

12. It is the case of the petitioner that the respondent never sent the DAL and the show cause notice to the address of the petitioner. It is alleged that the DDA dishonestly cancelled the allotment of the petitioner. It is further stated that the respondent has deliberately and with malafide intentions avoided giving the petitioner inspection of the relevant documents including the proof of

delivery of the DAL and the show cause notice. It is alleged that the respondent has taken dishonest stand even before the CIC stating therein that the records are old and to expect the proof of delivery at this stage would be difficult matter and this clearly establishes the malafides of the respondent, leading to the present writ petition.

13. The learned counsel for the respondent/DDA denying the aforesaid has stated that the DAL was sent to the petitioner on his residential / postal address as mentioned in the application form i.e. House no. 9767, Gali no. 8, Multani Dhanda, Paharganj, New Delhi with request to deposit the demanded amount as per schedule mentioned therein but postal authority returned the DAL undelivered with remarks “consignee shifted”. It is further stated that the copy of the undelivered envelope with remarks from postal authority have already been placed on records along with counter affidavits.

14. It is alleged by the DDA that the DAL was again sent by speed post but no response was received from the allottee. Reliance has been placed on the judgment titled Madan & Co. Vs. Wazir Jaivir

Chand 1988 SCR Suppl (3) 983, wherein it was held that posting a registered letter containing the correct address is treated to be served upon the addressee.

15. The learned counsel for the DDA has further relied on the judgement of this court in Dev Raj vs. DDA WPC 7842/2012 wherein it was observed that a heavier onus cannot be cast upon DDA to serve the DAL, than of sending it at the correct address.

16. It has been averred that the letter dated 01.04.2008 of the petitioner does not mention the non-receipt of the DAL or SCN. Further, it does not make reference to the cancellation letter, which is allegedly admitted to have been received by the petitioner. It has been contended that the aforesaid letter comes after a considerable delay of about 2 years from the date of allotment and therefore the case of the petitioner is barred by delay and laches.

17. It has been stated by the learned counsel for the respondent that the AAY Scheme, 1989 has already been closed after wide publicity through advertisement of the same in the leading newspapers and it has been observed in catena of judgments that the publication of notice in news paper is sufficient notice to the

party to come forward and get the formalities completed so that the allotment could be got done. Therefore, the petitioner is entitled only for the refund of the registration amount subject to the submission of the original documents.

18. I have heard the learned counsel for the parties and gone through the record. I have also requisitioned the original record of DDA and perused the same.

19. The controversy in the matter is a very narrow one. It is the case of the petitioner that he came to know about the allotment on 23.03.2006 from the DDA display board and thereafter made several inquiries with regard to the dispatch of the DAL to his postal address. Having received no response, the petitioner vide the alleged letter dated 20.02.2007 requested again, for the DAL. The receipt of the aforesaid letter has been disputed by the DDA. As a matter of fact there is no such letter on the record of the DDA. It is pertinent to note that thereafter the petitioner did not make further enquiries. It is only on 01.04.2008 that the petitioner sent a written communication requesting for re-allotment of the flat. The petitioner in the aforesaid letter makes no mention of the

non-receipt of the DAL or the SCN rather the re-allotment is sought on sympathetic medical grounds. In this letter, he states that he could not pursue the matter of allotment because of his eye ailment and therefore wanted a compassionate view to be taken. This itself casts a doubt on the stand taken by the petitioner in the present writ petition, since the ground on which the re-allotment is sought in the present case is contrary to the representation made to the respondent/DDA.

20. From the perusal of the letter dated 01.04.2008 of the petitioner it appears that the story of non-receipt of the DAL or the SCN is an after-thought. It is totally unbelievable that the petitioner would base his case on sympathetic ground when as per his own case he has allegedly not received the DAL or SCN on account of alleged default on the part of DDA and not mention the same in the representation seeking re-allotment. Further it is not in dispute that the address of the petitioner has not changed. One of the representations made by the petitioner acknowledges that he has received a cancellation letter. If he has received a cancellation letter, there is no reason to believe that he would not have received

DAL or show cause notice when the same is recorded as sent in the office notings of the DDA.

21. This conscious or inadvertent act of the petitioner in a way strengthens the stand of the DDA, whereby the DDA has stated that the DAL was second time sent by speed post and was not received back. Further the official notings of the DDA filed on record along with the envelopes of the first dispatch that came undelivered and the counter affidavits of the DDA officers further lend credence to the story making it a possible and plausible one.

22. It is pertinent to note that no copy of any application written to the respondent requesting for a copy of DAL has been placed on record by the petitioner especially when filing formal application is a common practice in the government department to obtain a copy of any document. Further the disputed letter dated 20.02.2007 which the petitioner claims to have written to the respondent requesting for the issuance of the DAL has curiously not been placed on record by the petitioner. It has already been observed that the letter dated 01.04.2008 does not make any mention of the non-receipt of the DAL. It appears that the aforesaid issue of DAL not

having been received was raised for the first time only in 2012 when an RTI query was made by the petitioner with respect to the same. As it crystallises from the aforesaid the case set up by the petitioner seems to be a far-fetched story and is full of holes and seeps.

23. Even if the aforesaid is ignored and the for a moment, the story of the petitioner, is assumed to be correct, still the conduct of the petitioner is grossly negligent and lacks *bonafides* as there is inordinate delay and laches on the part of the petitioner in approaching the court. There is no plausible reason as to why after having been put to notice with respect to the allotment of the flat the petitioner did not act upon the same with urgency as is reflected from the aforesaid reasoning. After having notice of the cancellation of the allotment vide letter dated 18.06.2007 the petitioner chose to wait till 01.04.2008 before making a request for re-allotment. It is inconceivable as to why the petitioner, on the decline of the request for re-allotment, waited till 2013 i.e. after a long gap of 5 years to approach the court. Even the request for RTI has been filed belatedly after almost 5 years when calculated from

the date of the cancellation letter. Further, the petitioner also failed to act upon the public notice published in the newspaper by which the closure of the scheme was announced. There was no justification or reasonable explanation given by him as to why he did not comply with the terms and conditions of the demand-cum-allotment letter by depositing the money. It is totally unacceptable and unreasonable for the petitioner to have waited till 2013 to approach the court and raise the grievance that the DAL was not sent to him. He ought to have rushed to the Court at the earliest possible opportunity. As is reflected from the aforesaid it appears that he has tried to take undue advantage by taking dishonest stand.

24. In any event, the factum of demand-cum-allotment letter appears to be known to him and he ought to have complied with the same. He defaulted in acting upon the DAL and as a consequence of which it has resulted in an automatic cancellation of the flat. Even after the said cancellation the petitioner could have been given the benefit of the allotment if he had rushed to the Court at the earliest possible opportunity. But in the facts and circumstances of the case, when a public notice is issued and the scheme itself is closed and the

conduct of the petitioner is such that he consciously chose to not respond to the same and rather waited for 5 years to approach the Court after the cancellation of the allotment even after being seized of the situation in 2008, when the request for re-allotment was denied shows that he lacks *bonafides* and is not sincere in protecting his right. Applying the maxim of '*vigilantibus non dormientibus jura subvertuntur*' that is equity aids the vigilant litigant and not those who slumber upon their rights, there are no two views that there has been gross negligence on the part of the petitioner which has resulted in the forfeiture of his claim to get any relief from the Court.

25. For the above mentioned reasons, I feel that the writ petition of the petitioner is totally misconceived as the same is prima facie devoid of any merit and is further barred by inordinate delay and laches and the petitioner is not entitled to any relief. Hence, the petition is accordingly dismissed.

V.K. SHALI, J.

May 20, 2015/ad