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HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7489/2013

Decided on : 19th February, 2015

RAM DITTI & ANR

..... Petitioner

Through: Mr. Saurabh Kansal, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ORS

..... Respondents

Through: Mr. M.K. Singh, Advocate for the DDA.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. The petitioners by virtue of which they have sought quashing/modification of the allotment-cum-demand letter dated 07.08.2013 whereby a sum of Rs.9,16,473.71 has been demanded from them towards the cost of the flat bearing No.107, Ground Floor, Sector-17, Block-B, Pocket 7, Rohini, Delhi.

2. Briefly stated that the facts of the case are that Sh.Krishan Lal Bhatia, husband of the present petitioner No.1 and father of petitioner

No.2, had applied for allotment of a flat under New Pattern Registration Scheme, 1979 ('the said Scheme' for short) of the DDA vide registration No.24317. Sh.Krishan Lal Bhatia expired on 31.01.1988. It has been averred in the petition that after many years from the date of death, the petitioners while going through the papers came to know that Sh.Krishan Lal Bhatia had booked a flat with the DDA, but there was no way in which the aforesaid information could be traced.

3. It is alleged that in 2005-06, the Parliament passed Right to Information Act, 2005 ('the said Act' for short) which made it possible for the present appellant to apply to the concerned authorities for the purpose of finding out the actual allotment of flat to Sh.Krishan Lal Bhatia. On 21.02.2007, the petitioner No.2 filed an application under the said Act with the DDA whereupon it was learnt by him that his father had applied for registration of a flat under Registration No.24317.

4. Some time in March, 2007, the respondent No.1/DDA sent a reply to the petitioners stating that Flat No.255, 1st Floor, F-5, Sector 16, Rohini, New Delhi – 110085 (referred to as 'first flat') was allotted against the Registration No.24317 to one Sh.Krishan Lal Bhatia (stricken for the word Batra) on 29.01.2003 for a sum of Rs.1,32,100/-. It is stated

that in response to the said RTI in the month of March, 2007 for the first time, the petitioners learnt that Sh.Krishan Lal Bhatia had been allotted Flat No.255, 1st Floor, F-5, Sector 16, Rohini, New Delhi – 110085. However, the said flat was thereafter cancelled. It has been alleged that during the pendency of the present petition, the petitioners had filed an appeal before the Central Information Commission against the respondents who intimated to the petitioner that he has been allotted a fresh Flat No.107, Ground Floor, Sector-17, Block-B, Pocket 7, Rohini, Delhi (referred to as ‘second flat’) on the ground that the petitioners had taken a plea that they were entitled to a flat under the wrong address policy.

5. It may be pertinent to mention here that the respondent No.1 had stated that due intimation with respect to allotment of Flat No.255, 1st Floor, F-5, Sector 16, Rohini, New Delhi – 110085 was given to Sh.Krishan Lal Bhatia by speed post though the said letter does not seem to have been received by him as it was alleged that the word ‘Bhatia’ had been manually scored off and the word ‘Batra’ was written.

6. It was stated that because of the wrong address policy the said allotment cum demand letter was not received by late Sh.Krishan Lal

Bhatia, the respondent No.1 allotted a fresh flat being Flat No.107, Ground Floor, Sector-17, Block-B, Pocket 7, Rohini, Delhi for which they were demanding Rs.9,16,473.71 by way of cost which has been the ground for challenge in the instant writ petition.

7. The respondent No.1/DDA contested the claim of the petitioners and took the plea that the petitioners themselves are guilty of delay and laches on account of the fact that although Sh.Krishan Lal Bhatia had died on 31.01.1988, but the factum of allotment of a flat in his name, a dead person, in the year 2003 was never intimated by the petitioners to the respondent No.1. However still, pursuant to the enquiries made by the petitioners from Central Information Commission, the respondent No.1 had allotted a flat in the name of late Sh.Krishan Lal Bhatia to which he was not entitled. In any case, it was contended that although the second flat was allotted in the name of late Sh.Krishan Lal Bhatia in 2010-2011, the price of the flat could not be reduced so as to charge the petitioners cost of 2003.

8. I have considered the respective submissions and gone through the record. The learned counsel for the petitioners has contended that the petitioners ought not to be made to suffer because of the mistake on the

part of the respondent No.1 inasmuch the respondent No.1 had sent a letter of allotment of the first flat in the name of wrong person inasmuch as the word 'Bhatia' had been scored off and the word 'Batra' had been written. Secondly, it was stated that even this allotment letter of 2003 was never received by the petitioners and, therefore, there was hardly any occasion for them to make the payment or challenge the same. It is contended by the learned counsel that the petitioners had learnt about the registration of a flat in the name of late Sh.Krishan Lal Bhatia after many years when they were going through the old papers whereupon the petitioners were constrained to get even the basic information by approaching the Chief Information Commission.

9. It has been contended that under the wrong address policy, the petitioners were entitled to get the flat at the cost at which the first flat was allotted to the deceased Krishan Lal Bhatia in 2003 which was at a cost of Rs.1,32, 100/- while the respondent No.1 has charged the cost of the flat at Rs.9,16,473.71.

10. The learned counsel for the petitioners in order to support his contention has relied upon two judgments of this court in WP(C) No.7163/2009 Parwati v. DDA & Anr. decided on 09.05.2013 and in

WP(C) No. 343/2012 Madhu Arora Alias Hony Monga v. Delhi Development Authority decided on 26.02.2013, to contend that in a case of wrong address policy, the view of the court has been that a private citizen should not be made to suffer by making him to pay the enhanced cost of the flat and it should be the same cost which was originally payable in respect of the flat which was allotted to the registrant/applicant.

11. The respondent No.1 has contended the claim of the petitioners on the basis that the petitioners themselves are guilty of delay and laches in not getting their names substituted within a reasonable period of time on account of death of Sh.Krishan Lal Bhatia. It has been contended that he died on 31.01.1988 but till 2006-07 that is for more than 17 years, the petitioners had kept silent and not approached the respondent No.1/DDA for substitution of names of the legal heirs according to the procedure prescribed by the DDA.

12. It has been contended that because of this mistake on the part of the petitioners, the respondent No.1 cannot be made to suffer by compelling them to accept the payment of the flat in question at a lesser price than the one at which it has been allotted.

13. I have carefully considered the submissions made by the learned counsel for the parties and I have also gone through the record. So far as the judgments which have been relied upon by the petitioners are concerned, the facts of those two cases are totally different from the facts of the present case. It is true that in both these cases, the court has held that the petitioner is liable to pay the price at which the flat was originally allotted to him in case of a flat being re-allotted to him under the wrong address policy meaning thereby where a party has been wrongly allotted a flat which is in contravention of the master plan/zonal plan and the letter of allotment received by the party or the name of the party is wrongly written, then notwithstanding the fact that the flat which is allotted to such a party, the price of the flat which will be available would be that of the first flat.

14. In both these cases, admittedly the facts were different than the fact of the present case. In one, the flat was allotted to a dead person whose son within a period of two years, had approached the DDA for mutation of the flat in his own name and also paid the charges which makes it different from the present case where admittedly the registrant had died in 1988, but till 2006-07, the petitioners did not intimate the respondent

No.1/DDA about the factum of his death nor did they take any steps for getting their names substituted in place of the name of their predecessors in interest. No amount of money was deposited by the petitioners.

15. Similarly, in the second case also, the name of the party was wrongly shown and, therefore, on being approached, the DDA was not able to respond to the queries of the said party in a cogent and reasonable manner as file itself was not traceable. In the present case, there was no occasion for the respondent to have not replied to the petitioners. On the contrary, the petitioners themselves are to be blamed for not approaching the respondent No.1 within a reasonable time for the purpose of substitution of their names in place of late Sh.Krishan Lal Bhatia and for not keeping the track of the allotment. It is curious that even in the writ petition the petitioners, having given the time lag after which they had woken up and found the old papers of the late Sh.Krishan Lal Bhatia containing the documents of registration, have simply tried to take advantage of the mistake of the respondent No.1 and moved the Chief Information Commission as a consequence of which the second flat was allotted to the petitioners under the wrong address policy, while as in my opinion it ought not to have been allotted at all. If seen in the proper

perspective, the prayer of the petitioners is essentially to get the flat in 2009-2010 at the cost which was prevalent in 2003 when the first flat was allotted in the name of Sh.Krishan Lal Bhatia, who was not alive at that point of time. This cannot be permitted to be done as the flat has to be allotted to the petitioners at the current cost that is the cost of the second flat on the date of allotment and not the price of the flat which is payable initially at the time when the first allotment was made which was not taken advantage of by the party concerned. I feel that this is a fit case where no relief deserves to be given to the petitioners by reduction of cost of flat or quashing the allotment-cum-demand letter so far as the cost of the flat is concerned.

16. I accordingly dismiss the writ petition.

17. Since the cost of the flat in question is still not paid, the petitioners are given 60 days time to pay the cost of the flat to the respondent No.1 failing which the respondent No.1 shall be free to take such action as may be deemed fit by them in line with the terms and conditions of allotment.

V.K. SHALI, J.

FEBRUARY 19, 2015/dm