

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

% *Judgment Reserved on : November 17, 2015*
Judgment Delivered on : November 18, 2015

+ **LPA 501/2015**

DELHI DEVELOPMENT AUTHORITY Appellant
Represented by: Mr.Arun Birbal, Advocate with
Mr.Sanjay Singh, Advocate

versus

HARISH CHANDER Respondent
Represented by: Mr.Ujjwal Kumar Jha, Advocate
with Mr.B.P.Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Harish Chander : the respondent, submitted application No.9534 on December 29, 1989, to the Delhi Development Authority when applications were invited for allotment of a flat in the Janta Category under the Special Housing Registration Scheme for SC/ST Persons-1989. As required, Harish Chander deposited Rs.4,200/- with the Delhi Development Authority. In the application form he gave his residential address as A-330, DDA Janta Flats, Jahangir Puri, Delhi – 110023 but claims that on December 15, 1997 he intimated change of address to A-405, Shastri Nagar, Ashok Vihar, Delhi - 110052 by sending a letter under ordinary post. Obviously, he has no proof of having sent said

letter. He claims that he sent another letter on September 14, 1999 by ordinary post intimating by way of abundant precaution the change of address. He claims that on July 23, 2010 he learnt in response to his application filed under the Right to Information Act that flat No.116-D, Sector-D, Kondli, Gharoli had been allotted to him but the allotment had been cancelled due to non-payment of money under the demand-cum-allotment letter. He claims that he never received the letter.

2. Case pleaded by the Delhi Development Authority is that large number of applications being received, a priority number was assigned to the applications based on the date when the application was received. Flat No.116-D, Sector-D, Kondli, Gharoli came to be allotted to Harish Chander at a draw of lots held in the year 1992 resulting in allotment of the flat being made on December 23, 1992 in respect whereof demand-cum-allotment letter was issued on January 11, 1993. As per Delhi Development Authority the matter being old the relevant record was not available and whatever information Delhi Development Authority could gather was with reference to the residual record concerning the scheme. It was pleaded by the Delhi Development Authority that the scheme had been closed after giving wide publicity requesting persons who were omitted under the scheme to apply for allotment of a flat, in respect of which plea by Delhi Development Authority we find no proof furnished of the wide publicity given.

3. Listed before the learned Single Judge since Delhi Development Authority could not produce the record showing that the demand-cum-allotment letter was ever sent to Harish Chander, relief has been granted to Harish Chander by directing allotment of a flat in the Janta Category at the same rate which prevailed when the scheme was in force.

4. Since as per Delhi Development Authority the Flat No.116-D, Sector-D, Kondli, Gharoli was allotted to Harish Chander at a draw held in December and demand letter dated January 11, 1993 was issued, it is of no consequence to discuss Harish Chander's claim of intimating change of address by letters sent by ordinary post on December 15, 1997 and September 14, 1997.

5. Delhi Development Authority has lost before the learned Single Judge because it could not produce its record concerning having dispatched the demand-cum-allotment letter to Harish Chander, a finding which overlooks the fact that the writ petition was filed in the year 2013 and Delhi Development Authority was not expecting to preserve its dispatch registers as of the year 1993. 20 years had gone by.

6. How was then the impasse to be broken?

7. Reason becomes the law in the absence of any legislation or a guideline issued. Therefore, reason would guide us to the destination.

8. As is usual in India, for a single post thousands apply and for a few flats to be built by Housing Boards, in Delhi the Delhi Development Authority, more than a hundred thousand people apply. Since all the flats cannot be constructed together because at different locations flats are constructed, priorities are assigned to the applicants with reference to the date of receipt of application by them. This allocation of priority to the registrants solves the administrative problem faced by the Delhi Development Authority because otherwise the names of all registrants would have to be entered at a draw of lots whenever a batch of flats which are ready for delivery are offered possession of. Henceforth, the Delhi Development Authority would enter a limited number of names based on priority assigned for determination of specific flat being allotted. This created a problem. The problem which got created was

that people who found their names low down in the priority list went into a slumber, they claimed that this slumber was induced by the Delhi Development Authority. Allotments were taking place at a snail's pace. Those who found their names way down in the priority list had no clue whether they would get a flat after a decade or may be two decades. These people were not expected to keep a track each year of what the Delhi Development Authority was doing. It was reasonable to expect that these persons would find out the status of their registration, may be every 2nd or 3rd year in the beginning and thereafter depending upon in what manner the list moved, keep track with periodic frequency thereafter.

9. Similar issue had cropped up before this Court on many occasions pertaining to a New Pattern Registration Scheme – 1979 floated by the Delhi Development Authority under which scheme more than a hundred thousand applications were filed and allotment of flats continued for nearly two decades.

10. In one of the earlier decision dated November 06, 1995 passed in WP(C) 203/1995, T.R.S. Vardhan Vs. Delhi Development Authority, a Division bench of this Court noted that petitioner had applied for change in address in 1988. Allotment was made on March 25, 1989 but demand-cum-allotment advise was sent at old address. Petitioner had made a representation on June 11, 1990 pointing out to the Delhi Development Authority its mistake. It was held that petitioner was not to suffer due to the mistake of the Delhi Development Authority, and accordingly, directions were issued to the Delhi Development Authority to allot to the petitioner a flat at the rate of March 25, 1989.

11. It has to be noted that petitioner of WP(C) 203/1995, T.R.S.Vardhan, was diligent in following up his claim.

12. Decision dated August 10, 2000 in LPA.No.26/2000, DDA Vs.

Jaspal Singh, following decision of the Division Bench in WP(C) No.203/1995 held that allottee could not be made to suffer due to default of DDA. Facts noted were that on February 21, 1989, Jaspal Singh, the allottee had intimated change in address to the Delhi Development Authority. In the year 1990 a flat was allotted to him and demand-cum-allotment letter was issued at old address. He learnt about this in the year 1998, whereupon he submitted a representation to be allotted a flat at the rates of 1990.

13. Decision of the Division Bench shows that issue of contributing negligence and stand taken by the Delhi Development Authority was not considered.

14. One Smt. Attar Kaur was a registrant under NPRS-1979. The priority was missed as her name was not included at a draw held on January 20, 1994 though names of persons lower in priority to her were included in the draw of lots. On learning about the fact that her name was wrongly excluded when draw was held on January 20, 1994, she filed a representation on September 15, 1998. The Delhi Development Authority did not remedy the wrong. She filed a writ petition praying that flat be allotted to her on the price as of January 20, 1994. Learned Single Judge dismissed the writ petition. In appeal, being LPA No.184/2000, Attar Kaur Vs. DDA, Division Bench, while directing that flat be allotted to Attar Kaur at rates prevalent on January 20, 1994, observed:-

“Rather the registrant must be allowed to pay the rates prevailing at the time when the mistake occurred unless it is established by the DDA that the mistake was known to the registrant and he/she did not bring it to the notice of the DDA within one year of the draw. In the instant case, there is nothing on record to show that the allottee, who is a widow, was aware of the mistake of the DDA. The mistake was

discovered by the appellant only in September 1998. The observation of the learned Single Judge that the appellant knew that persons junior to her in the priority list have been included in the draw of lots held earlier in 1994 for allotment of a flat is not supported by the record. Nothing was shown to us by the respondent from the record that the appellant knew that persons junior to her in priority list had been included in the draw of lots held on January 20, 1994. We cannot allow the DDA to penalise the registrant for the mistake committed by it. The DDA must take care that a registrant is allotted a flat as per the rates which were prevalent at the time when he ought to have been allotted the same but for the mistake of the DDA. It is well settled that even for the fault of the court no litigant must be allowed to suffer. The same principle with greater force applies to the action of the administrative bodies.” (Underlining added).

15. A learned Single Judge of this court, S.K. Kaul, J., in the decision dated September 16, 2003 in WP(C) No.6536/01 Gopal Krishan Vs. DDA noted that priority of the petitioner had matured in February, 1998 when draw was held and petitioner made representation in April, 2000. Refuting defence of the Delhi Development Authority that petitioner should have kept a watch as to how the priority list moved, it was observed that:-

“It has to be appreciated that the scheme in issue is of the year 1979 and it took almost 19 years for allotment of the petitioner to mature. This is also the position with a number of registrants. I fail to appreciate how an allottee is expected to keep a tab on the priority numbers over almost two decades.”

16. In WP(C) No.1530/02 Mange Ram Vs. DDA, S.K. Kaul, J. considered the decision of the Division Bench in Attar Kaur's case. It was noted that name of the petitioner was wrongly excluded when draw of lots was held in the year 1990. It was further noted that petitioner, for the first time made representation to DDA in the year 2000. Contributory

negligence of the petitioner in sleeping over his rights was considered.

Following was observed:-

“There is no doubt that insofar as the period post April 2000 is concerned, the petitioner had approached the respondent authorities and the delay is on the part of the respondent authorities. Further, it has been held that the petitioner should have been included in the draw of lots in 1990. In my considered view, though the duty is on the respondent/DDA to inform in case of an allotment, it cannot be said that an allottee is absolved of all responsibility to make any enquiry for all times to come. A pointed query was raised to the counsel for the petitioner as to what would be the repercussion in case the petitioner had not approached the respondent for another ten years. Learned counsel states that still the petitioner would be entitled to the allotment at the 1990 price, as long as the scheme remains in force. It is also relevant to note that no separate draw of lots has been held for the SC/ST category after 1990. I am unable to accept the contention that the petitioner has no responsibility to make any enquiries for all times to come specially once it is known that no draw of lots has been held for the specific category after 1990. It cannot be said that the petitioner can come even after decades and state that if the scheme is in force, there is no obligation on the petitioner. In my considered view taking into consideration that similar persons as the petitioner were allotted the plots in 1990 and no allotment had been made for the said category, the petitioner is liable to pay interest at the rate of 12 per cent per annum, excluding a reasonable period of time to be granted to the petitioner after 1990 up to April, 2000 which the petitioner approached the respondent. Taking into consideration the facts and circumstances of the present case, I am of the considered view that the petitioner should pay interest from 1st April, 1992 to 31st March, 2000 for a period of eight years at the rate of 12 per cent per annum.”

17. Decision of learned Single Judge in Mange Ram's case was challenged by Mange Ram in W.A. 248/03 Mange Ram Vs. DDA. Vide order dated February 09, 2004, Division Bench held that there was delay on part of Mange Ram in approaching the authorities. Decision of the

learned Single Judge requiring him to pay interest was affirmed. However, rate of interest was reduced to 7% per annum from 12% as directed by the learned Single Judge since it was noted by the Division Bench that the Delhi Development Authority was paying 7% interest on late payment tendered by the Delhi Development Authority.

18. Issue cropped up again in WP(C) 7061/02 Sudha Gupta Vs. DDA. Petitioner missed her priority at the draw held on March 21, 1991. She detected mistake of the Delhi Development Authority in December, 1991. She submitted a representation on December 23, 1991. She claimed that she was following up the matter with officers of the Delhi Development Authority and getting no relief approached the State Consumer Forum in June, 1998. S.K. Kaul, J. vide order dated 26.8.2003 while directing allotment as on date when her priority matured directed interest to be paid @ 12% per annum from 1991 till March 31, 1997. We may note that counsel for the petitioner therein made a concession that petitioner was willing to pay the interest. The Delhi Development Authority challenged the decision of the learned Single Judge in W.A. 469/04 DDA Vs. Sudha Gupta. Challenge failed. Writ Appeal was dismissed vide order dated July 14, 2004.

19. Reasoning to be found in the aforementioned decisions is that the Delhi Development Authority would be liable to charge the price as on date when priority of the registrant matured and the Delhi Development Authority was negligent in either not entering the name of the registrant at the draw of lots or posted the allotment letter at the wrong/previous address. Further, wherever the allottee, responded to the Delhi Development Authority with promptness and brought to notice of the Delhi Development Authority its mistake and did not approach court belatedly, interest liability was not fastened on the allottee. Where

allottee was negligent in not enforcing his right within reasonable time, interest liability was saddled on the allottee. It is true that in Attar Kaur's case, Division Bench observed that it was for the Delhi Development Authority to show negligence of the allottee, but that would not mean that the Delhi Development Authority must lay before the court positive evidence of negligence. Negligence can be culled from a given set of facts.

20. In T.R.S. Vardhan's case, allottee missed benefit of allotment made on March 25, 1989 but brought the same to notice of the Delhi Development Authority on June 11, 1990. He acted with promptness. Similarly, in Gopal Krishan's case, allottee missed benefit of allotment as of February 17, 1998 but acted with promptness by approaching the Delhi Development Authority in April, 2000. It has to be noted that S.K. Kaul, J. opined that two years' delay was reasonable since allotment had matured after 19 years of registration and it was not expected for a registrant to keep a tab for 19 years. In Sudha Gupta's case, she conceded to recompense the Delhi Development Authority with interest for the period she contributed in the delay. In Mange Ram's case, learned Single Judge as well as Division Bench required him to recompense the Delhi Development Authority with interest for the delay occasioned by him in pursuing his rights.

21. None may be expected to read the newspaper regularly but it would be expected of literate persons that they read the newspaper infrequently. Whenever the Delhi Development Authority proposes to hold a draw of lots under a particular scheme the same is notified in newspapers and we take judicial notice of said fact. De-hors that, it is expected of a person to follow up his claim with the authority concerned. A rough idea as to when entitlement would mature could be formed by

the registrants when priority numbers were assigned to their applications. Such of them who were high up in the priority list would have no justification to say that they realized that the Delhi Development Authority had wronged them after 20 years of the wrong being committed. They would be expected to keep a tab on yearly basis. Those who were lower in the priority list would have some justification for delay in approaching the court for the reason that they would be justified in not keeping a tab each year as to what the Delhi Development Authority was doing. They would be expected to keep a tab on bi-yearly basis or at least every third year. In other words, the position at the priority list would determine the quantum of contributory negligence.

22. In the instant case the Harish Chander's priority assigned was fairly high evidenced by the fact that having applied under the scheme in the year 1989 flat was allotted to him within three years i.e. by December, 1992. He racking up the issue by filing an application under the Right to Information Act in the year 2009 shows his supine indifference and negligence. He approaching the Court in the year 2013 has resulted in the prejudice being caused to the Delhi Development Authority because the Authority is not expected to maintain its dispatch record as of the year 1993 for two decades. The issue whether Harish Chander intimated change of address in the year 1997 and 1999 is irrelevant because the demand-cum-allotment letter as claimed by Delhi Development Authority was posted at his given address in January, 1993. Besides, the scheme in question has been closed long back. The facts of the instant case do not justify any direction that Harish Chander should be allotted a flat in the Janta Category as and when one is constructed under a different scheme and that too at the price prevailing of the year 1993.

23. The appeal is allowed. Impugned order dated February 04, 2015 is

set aside. W.P.(C) No.636/2013 filed by Harish Chander is dismissed.

24. Parties shall bear their costs all throughout.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 18, 2015

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