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

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Date of Decision: December 6, 2016

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RSA 369/2016

RAJESH KUMAR

..... Appellant

Through : Mr.Anil Anand, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ANR

..... Respondents

Through : Mr.Arun Birbal, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

1. This Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment of the First Appellate Court dated September 05, 2016. The First Appellate Court dismissed the Regular Civil Appeal of the appellant concurring with the finding of the learned Trial Court that the plaintiff was not entitled to a decree of mandatory injunction directing DDA to allot a flat to him which was booked by his father under NPRS Scheme, 1979.

2. The facts are not in dispute.

3. Sh.Sharwan Kumar Sahni, father of the appellant applied for a Janta flat of DDA under the New Pattern Registration Scheme (NPRS) vide registration Slip No.10289 dated April 28, 1980. Sh.Sharwan Kumar Sahni

expired on April 07, 1991 and during his lifetime no allotment was made by DDA. Sh.Sharwan Kumar Sahni was survived by his widow and children details of which is as under:

- (i) Smt.Kewal Kumari - Wife.
- (ii) Sh.Yogesh Kumar Sahni - Son
- (iii) Sh.Rajesh Kumar - Son
- (iv) Smt.Anju Kohli - Daughter
- (v) Smt.Versha Sethi - Daughter

4. The mother of the appellant expired on January 25, 2012. It is admitted case of the appellant that during the lifetime of his father and mother, no communication was made to DDA in respect of allotment of Janta Flat having registration Slip No.10289 dated April 28, 1980. Even the factum of death of Sh.Sharwan Kumar Sahni or any change of address was not informed to DDA. The averments made by the appellant/plaintiff in the plaint is that in the year 2012 his brother Yogesh Kumar Sahni came across the registration documents and started communication with the DDA but without any positive response. Thereafter the appellant alone filed a suit for mandatory injunction directing the DDA to allot a flat to him for which his other siblings have 'no objection'. However, the impugned judgments do not refer to any such 'no objection' given by other legal heirs of Late Sh.Sharwan Kumar Sahni. None of them was examined as witness by the appellant/plaintiff in Civil Suit No.306/13. Even Sh.Yogesh Kumar, who is stated to have traced out the registration papers in the year 2012, was not examined.

5. The plea taken by the DDA in the written statement (in para 2) is to the following effect:-

‘That it is submitted that as per the available record (computerized Housing Management Information System), it is found that Shri Sarwan Kumar Sahni S/o Shri Ram Lal Sahni r/o C-129, Hari Nagar Clock Tower, Delhi 110064 was a registrant under the NPRS 1979 for allotment of a Janta flat, and as per his priority, he was allotted Janta flat number 59-D, ground floor, pocket SA B-7, Kondli, Gharoli, Delhi on 28.12.1992. The allotment made was subject to the terms and conditions as given in DAL, Brochure and also the DDA (Management and Disposal of Housing Estates) Regulations, 1968. Demand letter dated 22.02.1993 was sent to the allottee, and the total amount payable towards the said allotment was ₹1,15,312.58. However, the allottee failed to deposit the demanded amount, and the allotment in favour of the allottee hence was cancelled on account of non-compliance of the terms and conditions of the demand cum allotment letter. Thereafter, the allotment under the NPRS 1979 was closed after giving wide publicity in all the leading newspapers for the information of the public. It is submitted that the plaintiff is not entitled to any allotment against the above mentioned cancelled allotment, and is at the most entitled to refund of the registration amount subject to submission of the original documents and the fulfilling of the relevant requirements with the defendants.’

6. The issues settled by learned Trial Court read as under:

“1. Whether the plaintiff is entitled for the decree of Mandatory injunction? OPP

2. Whether Suit of the plaintiff is time barred? OPD

3. Relief.”

7. After considering the testimony of the plaintiff who examined himself as PW-1 and Sh.Brijesh Chander examined by DDA as DW-1, learned Trial Court held that the suit is not barred by time but declined to pass the decree for mandatory injunction for the reason that not only the flat was allotted against registration Slip No.10289 dated April 28, 1980, but demand letter

was also sent at the address furnished by the allottee with DDA i.e. C-129, Hari Nagar, Clock Tower, Delhi-110064.

8. Learned Trial Court also held that even if Sh.Sharwan Kumar Sahni who was allottee had expired in the year 1991 his family including the appellant/plaintiff were residing at the same address but till 2012 there was no communication by the legal heirs of the allottee either for change of address or for substitution of the legal heirs/or widow of the deceased. Learned Trial Court was of the view that since DDA cannot be faulted with, the appellant/plaintiff was not entitled to the relief of mandatory injunction especially in view of the fact that there was no malafide on the part of DDA in cancelling the allotment. Learned Appellate Court concurred with the finding of the learned Trial Court for the reasons given in para 13 to 16 of the impugned judgment dated September 05, 2016 extracted hereunder:

“13. The DDA could have sent this demand and allotment letter only to the available address i.e. C-129, Hari Nagar, Clock Tower, Delhi-110064. Admittedly as evident by the death certificate placed on record by the plaintiff/appellant, Shri Sharwan Kumar Sahni died on 07.04.1991. It was imperative for the plaintiff to have placed on record the cogent and clear evidence to show that they had informed the DDA about the death and the change in address. Admittedly, as the plaintiff claims that he had no knowledge of allotment, no such information was given to the DDA. In these circumstances, the DDA could not be faulted for sending communication only at the address available with them i.e. C-129, Hari Nagar, Clock Tower, Delhi-110064.

14. The plaintiff/appellant in his evidence has admitted that they had shifted from the said address after the death of his father but was shy in spelling out the year when they had shifted. This shows that he was not really transparent in giving details about the place of his residence as is clear from his

cross examination inasmuch as he first admitted that he had been residing at flat No.JD-40C, First Floor, G-8 area, Rajouri Garden, New Delhi belonging to his brother since 1990 and then claimed he was not sure. If he was residing in another premises since 1990, he could have not received any correspondence at C-129, Hari Nagar, Clock Tower, Delhi 100064 and know if any has been by his other family members, none of whom has come before this court to be tested on the anvil of cross examination, about the absence of any intimation sent by the DDA in the name of their father informing about the allotment of the Janta Flat and subsequently their letter of demand for final payment.

15. The plaintiff as PW-1 was evasive in cross examination that he stayed in the rented home for around two years and again changed the period to one year. In any case, he admitted that he had no document to show that he or his family members were residing at the given address i.e. C-129, Hari Nagar, Clock Tower, Delhi 110064 in the year 1992 or in the year 1993. He went on saying that he had no knowledge of the allotment letter and they had already left the Hari Nagar address by that time, that means in 1992-93, the plaintiff or his family members were not available at the only address furnished with the DDA by the father of the plaintiff at the time of registration.

16. Clearly therefore this is not a case where the DDA had sent the letters to the wrong address. The revival of the old scheme was only for the cases where despite intimation, DDA sent the letters at the wrong addresses, thus depriving the registree of an opportunity to comply with the conditions and received the flat. It is unfortunate that the plaintiff was not aware of what his father had done, but such a family issue cannot vest the plaintiff with any right to an allotment more than 20 years after the original allotment was made in the name of the plaintiff/appellant.”

9. There is a concurrent finding of the fact by the Courts below that the allotment has been cancelled on failure of the allottee Sh.Sharwan Kumar

Sahni to respond to the demand raised by DDA towards flat No.59D, Ground Floor, Pocket SA B-7, Kondli, Gharoli, Delhi allotted to Sh.Sharwan Kumar Sahni. It is relevant to mention here that though Sh.Sharwan Kumar Sahni expired in 1991, his wife survived till 2012. Registration papers for allotment Booking of a DDA flat is not something which is kept as a secret from the family members. On the death of Sh.Sharwan Kumar Sahni, within a reasonable time steps could have been taken to inform DDA about his death as well substitution of his name by his legal heirs. Nothing has been done. The address on which late Sh.Sharwan Kumar Sahni was residing remained occupied by his family till 1993 i.e. during the time when demand letter was sent by DDA. Even if the appellant or the other family were not aware of the booking, the receipt of the allotment letter cum demand letter served as an awakening call. But the appellant/plaintiff and his other family members preferred to ignore.

10. A Regular Second Appeal can be entertained if there arises a substantial question of law. Appreciation of evidence is within the jurisdiction of learned Trial Court and the First Appellate Court. It ought not to be interfered with in Second Appeal. This is for the reason that Second Appeal can lie not only on a question of law but on raising a substantial question of law.

11. Since no substantial question of law arises in this appeal, the same is hereby dismissed.

12. No costs.

PRATIBHA RANI, J.

DECEMBER 06, 2016

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