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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2362/2016 & C.M.No.10125/2016

RADHEY SHYAM GUPTA

..... Petitioner

Through Mr.Minal Sehgal and Ms.Vandana
Gupta, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through Mr.Shlok Chandra, Advocate for
DDA.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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22.02.2017

1 Petitioner before this Court is Radhey Shyam Gupta. Contention is that the DDA had announced a scheme of allotment of MIG, LIG and Janta flats in the year 1979. Petitioner got himself registered for allotment of an MIG flat vide registration no.15122. He had given his residential address as House No.1663, Gali Madarsa, Mir Jumla, Lal Kuan, Delhi. In the priority list prepared by the DDA the petitioner had been given priority No.31109.

2 In the year 1998 petitioner informed the DA about his new address i.e. C-1/330, Yamuna Vihar, Delhi. In the year 2001 petitioner was allotted Flat No.329, Sector-17, Pocket-A, Phase-II, Dwarka. The demand-cum-allotment letter was probably sent by the respondent at the old address of the petitioner at Lal Kuan as a result

of which the petitioner was unaware of this allotment. The DDA cancelled his allotment without any further intimation to the petitioner.

3 In the year 2009 petitioner made an RTI application to find out about the fate of his case. On a personal visit made to the office of the DDA on 23.9.2010 he learnt that he had been allotted a flat but no further information was provided to him. Petitioner again made an RTI application on 26.11.2010 followed by another RTI application dated 10.1.2011. He also wrote a letter to the Department asking for the allotment of his flat but no reply was received. On 14.3.2011 petitioner received a reply to his RTI application dated 10.01.2011 informing him that his allotment stood cancelled because of non-payment. He wrote a letter to the DDA enquiring as to why the DDA had cancelled his allotment without any notice/reminder to him; he wrote several letters again which were letters dated 04.5.2011, 30.12.2013 but to no avail. He finally sent a legal notice dated 05.4.2014 to the DDA through his counsel. He was awaiting the reply to this notice but again to no avail. Meanwhile the son of the petitioner suffered a heart disease and he was operated in August, 2014. The petitioner inspected the record of the Department in April, 2015. This was followed by an RTI application dated 22.9.2015. Meanwhile in October 2015, the petitioner suffered a paralytic attack. He also noted that no reply has been received to his RTI information which he had sought. He sent a reminder to the DDA in February, 2016. Since nothing was heard from the DDA he was constrained to file this petition. By way this writ petition the petitioner accordingly

prays that a flat of the MIG Category at Dwarka be allotted to him.

4 Counter affidavit/status report of the Department has been perused. This is dated 16.5.2016. The stand of the DDA is that the petitioner was declared successful for the allotment of an MIG flat in the draw held on 19.12.2001 on a cash down basis. The demand-cum-allotment letter was issued to him from 26.12.2001-31.12.2001 at his address at C-1/330, Yamuna Vihar, Delhi. This was the address shown of the petitioner in the up dated record of the Department. Annexure R-1 filed along with this counter affidavit evidences this. Further stand is that the result of the draw was published in all leading newspapers. The same was also communicated to the petitioner and duly dispatched on 14.8.2003 for which the relevant documents have been placed on record. Since no response was received from the allottee/petitioner, due to non-payment his allotment stood cancelled. The RTI application was filed by the petitioner after a delay of nine years. The MIG Flat No.329, Pocket-17, Ground Floor, Dwarka was allotted to Roshan Lal on 26.12.2003.

5 In the course of these proceedings additional affidavit was filed by the petitioner. In this affidavit the contention of the petitioner was that neither demand-cum-allotment letter dated 26.12.2001-31.12.2001 and nor any show cause notice dated 13.8.2003 were received by the petitioner. The petitioner was entitled to an allotment as per the earlier draw of lots held by the DDA. This right cannot be taken away arbitrarily without notice of demand/allotment letter or a show cause notice having ever been received by the petitioner.

6 Record has been perused.

7 At the first call, a request for Passover had been made. A request for Passover was again made at the second call. This Court has heard the arguments on behalf of the respondent. At this stage, counsel for the petitioner again requests for a passover/an adjournment. This Court is not inclined to adjourn the matter. Counsel Ms.Vandana has made her submissions.

8 This Court notes that on 16.5.2016 the matter had been listed for admission; on 18.3.2016 the Court was of the view that before this petition is admitted a preliminary hearing was required.

9 On the perusal of the record this Court notes the documents which have been filed by the DDA along with their status report. Admittedly, the petitioner was declared successful for allotment of an MIG flat at Dwarka at the draw held on 19.12.2001; this was on a cash down basis. He had been allotted priority No.31109. Annexure R-1 (Colly) is the list of documents evidencing that a demand-cum-allotment letter had been sent to the petitioner at his address at C-1/330, Yamuna Vihar, Delhi. This letter was dispatched to him through speed post on 08.01.2002. The true copy of the computer generated print out is on record. The second document, the show cause notice 14.8.2003, evidences its dispatch by the DDA at the same address of the petitioner by speed post on the same day i.e. on 14.8.2003. Both these documents had been sent by speed post. The presumption of law is that such a document had been received by the petitioner. Section 114(g) of the Indian Evidence Act comes to the aid of the respondent.

10 This Court also notes that the petitioner even as per his own

case had first made an RTI application to the DDA only on 22.6.2009. This is clear from the averments in para 8 of his petition. The other averments disclose that the petitioner had become successful and had been held entitled for allotment of an MIG Flat in the draw of lots held on 19.12.2001. The document (Annexure R-1) placed on record by the DDA shows that this demand-cum-allotment letter had been sent to the petitioner at his new address through speed post. Show cause notice dated 14.8.2003 had also been dispatched at the same new address of the petitioner by speed post on the same day; Annexure R-2 (colly) are the documents filed by the respondent in this regard. The petitioner was thus fully aware that he was a successful applicant; he was even aware of his priority number; this number was obtained through the RTI; it is thus obvious that that this number came to the knowledge of the petitioner on information from the Department. It is also not borne out from the record that the petitioner ever inspected the DDA record. All this was thus in the conscious mind of the petitioner.

11 Record further shows that after the draw of lots held on 19.12.2001, petitioner waited for nine years before first venturing to find out the fate of his allotment. Even as per his own showing, the petitioner for the first time in June, 2009 filed an RTI application to find out the fate of his case. Record further evidences that from June, 2009 up to the date of filing of the petition, the petitioner did nothing but to file RTI applications to obtain information on the status of his allotment. This long delay between the period of June, 2009 to February, 2016 (when the present writ petition was filed) appears to

be unexplained; if a right had vested in the petitioner he should not have waited for such a long period to find out the fate of his case. The unexplainable delay in approaching this Court is unjustified; he slumbered till February, 2016 when he chose to file this petition. Parties are not permitted to wake up at their own convenience to approach a court of law; if this is allowed and the parties are permitted to agitate their right (presuming that there was such a right) after such a long period of time, the statute of limitation which is a legislative enactment would necessarily have to be given a go by; this was not the intent of the legislation. This Court finds no merits in this petition. It is accordingly dismissed.

INDERMEET KAUR, J

FEBRUARY 22, 2017
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