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

Reserved on 27th November, 2018
Pronounced on: 7th December, 2018

+ W.P.(C) 1418/2012

INDER MOHAN SINGH Petitioner

Through: Mr. R. K. Saini, Mr. Harpawan
Kumar Arora and Mr. Rishi
Khanna, Advs.

versus

DDA Respondent

Through: Mr. Arun Birbal, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. In 1979, the Delhi Development Authority (hereinafter referred to as “the DDA”) announced a scheme [which came to be known as the “Rohini Residential Scheme” and is referred to, hereinafter, for the sake of convenience, as “the Scheme”], for allotment of flats to applicants, under the Janta, Low Income Group (LIG) and Middle Income Group (MIG) categories. The petitioner applied for allotment of an MIG flat, under the said scheme, and was registered *vide* the Registration No. 23995. At the time of registration under the said scheme, the petitioner provided his residential address as Flat No.13, Block No. 64, CPWD, Quarters, M.B.Road, Malviya Nagar Extension-110017, where he happened to be residing at that time.

2. It appears that, in 1982, the petitioner shifted to Sector-12, Flat

No 884, R.K.Puram, New Delhi-110022 (hereinafter referred to as “the RK Puram address”). An intimation, to this effect, is averred to have been submitted at the Receipt & Dispatch counter of the DDA, *vide* letter dated 17th May, 1982, which requested that the necessary changes be recorded, in respect of the registration of the petitioner under the Registration Scheme and that all his future correspondence in that regard, be sent to his new address.

3. The petitioner shifted residence, yet again, in 1995, to Flat No. 10-H, CPWD Flats, Vasant Vihar, New Delhi-110057 (hereinafter referred to as “the Vasant Vihar address”), and duly intimated the DDA, of the said shift of residence, *vide* letter dated 24th January, 1995, which was, for all intents and purposes, similar to the letter dated 17th May, 1982 (*supra*).

4. Draw of lots, for allotment of flats, under the aforementioned residential scheme, took place in July, 1997. The petitioner was allotted Flat No.32, Pocket-B/2, Sector-18, Rohini, Delhi. The allotment-cum-demand letter in respect thereof, was sent by the DDA, however, to the address of the petitioner at the R. K. Puram address.

5. As a result, the writ petition avers, the petitioner never received the said letter, and never came to know of the issuance thereof.

6. In September, 2007, the petitioner, consequent to his voluntary retirement from service, proceeded to Canada to stay with his children, who were permanently settled there.

7. On 18th March, 2011, the Government of India issued, to the petitioner, an Overseas Citizen of Indian (OCI) Card w.e.f. 18th March, 2011, entitling the petitioner, thereby, to own and hold property in India.

8. The petitioner visited India, thereafter, in February, 2012, whereupon he claims to have come to know that flats have been allotted to the applicants under the Scheme. On accessing the website of the DDA, the petitioner avers that he learnt, to his chagrin, that the status of allotment of the flat, to him, was reflected as “cancelled”.

9. Reference may be made, here, to the Office Order, dated 25th February, 2005, issued by the Housing Department of the DDA, relating to the case in which letter was issued at the wrong address of the allottee of the Flat. The said circular merits reproduction, *in extenso*, as under:

“ The Delhi High Court vide its order dated 16.12.2004, in W.P.(C) No. 19095/2004 and in other 15 Writ Petitions, has decided issues relating to issuance of demand letter at wrong address and missing priority cases of DDA flats. In view of the directions/orders of the High Court, Office Order No. F.2(10)/2002/Coord.(H)/148, dated 21.11.2002 is hereby amended as under:-

1. In cases, wherein change of address was intimated by the registrant but erroneously not recorded by DDA and thereby demand letters were sent at wrong/old address and the allottee approaches DDA within a period of four years from the date of allotment, he/she shall be allotted flat at the old cost, prevalent at the time when the priority of allottee

matured and the allotment letter issued, and no interest will be charged. The allotment will be made at the cost subject to following:-

- (a) He should approach DDA within a period four years from the date of issue of demand letter at the wrong address.
 - (b) He should have proof of having submitted a request for change of address to DDA duly signed by the allottee himself/herself i.e. proof of receipt at DDA Counter.
 - (c) He should have documentary proof of change of address viz. Ration Card/Election Card/Identity Card/Passport etc. (duly attested by the Gazetted Officer).
2. In cases, where such an intimation has been made but the allottee has not approached the DDA within a period of four years from the date of allotment, the allottee shall be considered for allotment of flat at the old cost prevalent at the time of original allotment + 12% simple interest w.e.f. the date of original allotment till the date of issue of fresh Demand-cum-Allotment Letter.

The same principle will be applicable in the cases of missing priority cases.

Commissioner (Housing) shall be the Competent Authority in all such cases.

This issues with the approval of Vice Chairman, DDA.

Sd/-
(Aasma Manzar)
Commissioner (Housing)”

10. The petitioner, therefore, approached the DDA, seeking allotment of an alternative plot in Rohini, at the same cost, at which

allotment had earlier been made to him, relying, for the said purpose, on the afore-extracted office order dated 25th February, 2005, of the DDA.

11. Having failed to convince the DDA of the merits of his case, the petitioner has moved this Court, by means of the present writ petition, praying for issuance of

“(a) Writ of Certiorari calling for the records of the case for perusal.

(b) a Writ of Certiorari quashing the action on part of the respondent in first sending the allotment cum demand letter at the old address and then canceling the allotment of MIG Flat in Rohini allotted to the petitioner and then refusing to make alternative allotment of a similar flat in the same area and at the old cost + interest as per the policy of DDA, being illegal, arbitrary, discriminatory, unjust and in violation of the Rules, Regulations and policy and the principles of equity, justice and good conscience;

(c) a Writ of Mandamus commanding the respondent to forthwith allot through a mini draw a suitable/similar MIG Flat in Rohini (in sector 18 or nearby) to the Petitioner at the old cost + interest, as per the policy of DDA without any interest;

(d) any other writ, order or direction which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.

(e) a Writ of Mandamus commanding the Respondent to pay the costs of this petition to the Petitioner.”

12. The counter affidavit filed by the DDA, in response to the writ petition, asserts that the petitioner never intimated, to the DDA, the fact of him having shifted to Canada and having acquired Canadian citizenship. It is further asseverated, in the counter affidavit, that the allotment-cum-demand letter, allotting Flat No. 32, Third Floor, Pocket-B/2, Rohini, to him, in the computerized draw of lots held on 8th July, 1997, was sent, to the petitioner, at his Vasant Vihar address, by registered post, as that was his last known address. The said communication was, however, returned, undelivered, with the postal remark “*Bar bar ittala dene par prapt-karta nahi milta, lihaja wapis jaaye*” (“despite repeated intimation, the recipient is not found, hence be returned”). As such, the counter affidavit denies the assumption, of the petitioner, in his writ petition, that the letter of allotment had been sent to the R.K.Puram address of the petitioner.

13. The counter affidavit, states that, in these circumstances, the allotment of the above mentioned flat, to the petitioner, was cancelled on 24th February, 1998, owing to non-receipt/non-payment, on the part of the petitioner, and that a cancellation letter was issued to the petitioner, on the same date i.e. 24th February, 1998, requesting the

petitioner to apply for refund of the registration money deposited by him.

14. The counter affidavit also throws up the issue of delay and laches, pointing out that the petitioner never sought to ascertain the status of his allotment for fifteen years, and has filed the present writ petition in or around March, 2012, impugning the communication dated 24th February, 1998.

15. The petitioner, in his rejoinder, asserts, in response to the submission of the respondent, that the allotment letter had been dispatched to the Vasant Vihar address of the petitioner, that he had continued to reside at the said address even after his retirement on 1st May, 1997 and that he had surrendered possession of the said flat only in February, 1998. The rejoinder also expresses discomfiture at the fact that the allotment of the flat, to the petitioner, was cancelled, on the ground of non-payment, pointing out that there could be no question of payment, by the petitioner, against a demand letter which was never received by him.

16. Detailed submissions were advanced, before me, by Mr. R.K.Saini, learned counsel for the petitioner, and Mr. Arun Birbal, learned counsel for the respondent.

17. Mr. Saini's submission is that the respondent was also aware of the petitioner's office address and that, in view of the postal endorsement evidencing that service of the allotment letter had not

been effected, on the petitioner at his Vasant Vihar address, the respondent ought to have effected service, on the petitioner, at his office address. It is contended that, even after his retirement, the petitioner used to be paid repeated visits to his Delhi office for settlement of his pensionary benefits and other miscellaneous expenses till January, 1998.

18. Mr. Saini also draws my attention to the order dated 16th January, 2013, passed by this Court, in the present proceedings, which reads thus:

“1. In the course of hearing, learned counsel for the petitioner seeks to rely upon an office noting from the records of DDA dated 18th August, 1993 as well as a document entitled "MODIFICATION OF OFFICE INSTRUCTIONS REGARDING THE PROCEDURES FOLLOWED FOR CARRYING OUT DIFFERENT ACTIVITIES RELATING TO ALLOTMENT OF FLATS BY HOUSING DEPARTMENT, DDA" dated 25.05.1995. Learned counsel for the DDA, however, objects to the same. Accordingly, the said documents be placed on record with an affidavit. The petitioner shall also state in his affidavit the date on which he shifted to Canada in the first instance.

2. The aforesaid affidavit be filed by the petitioner within two weeks with advance copy to counsel for the respondent, who may file response thereto within two weeks thereafter.

3. List on 20th February, 2013.”

19. It is contended that, in compliance with the directions contained in the above extracted order, dated 16th January, 2013, an additional

affidavit was, in fact, filed by the petitioner, on 21st August, 2013, in this Court, wherein it was deposed that, after his retirement on 1st May, 1997, the petitioner had continued to reside at the Vasant Vihar address till the last week of January, 1998 and had surrendered the said government accommodation, allotted to him, on 2nd December, 1998, whereafter he had shifted to Canada.

20. Reliance has been placed, by Mr. Saini, on the judgment dated 22nd November, 2012, of a coordinate Bench of this Court in ***Anurag Sahai v. DDA, 2012 SCC OnLine Del 5839.***

21. Arguing in response, Mr. Birbal submits that, having applied for allotment of the flat on 27th March, 1997, on priority basis, as he was going to superannuate, the petitioner ought to have been aware of the fact that the allotment was forthcoming. It is contended that allotment was made, to the petitioner, within four months, in July 1997, as contrasted to the position obtained in the decision on which Mr. Saini relies, which dealt with allotments made after several years' delay. Mr. Birbal further seeks to submit that immediately after his superannuation, the petitioner proceeded to Canada and that, having returned and found that prices of real estate had appreciated, the petitioner sought to make a quick buck by claiming the flat, the right to which he had effectively abandoned.

22. Mr. Saini submits, by way of rejoinder, that his client did not stand to gain anything by asking for the flat, as the flat would be available at the rate existing on the date of filing of the writ petition.

Mr. Saini also refutes the plea of laches by stating that his client got to know about the cancellation of the allotment of flat only when he returned from Canada.

23. Mr. Saini further places reliance on the judgment dated 16th February, 2012 of a coordinate Bench of this Court in ***Ravi Dass v. DDA, 2012 SCC Online Del 987*** and of the judgment of the Supreme Court in ***V. N. Bharat v. DDA, (2008) 17 SCC 321***.

24. Having thus recorded submissions of learned counsel, as well as submissions advanced in the pleadings, I am of the view that the case of the petitioner is bound to succeed, in view of the judgments of this Court in ***Anurag Sahai (supra)*** and of the Supreme Court in ***V. N. Bharat (supra)***, on which Mr. Saini rightly relies.

25. The controversy in ***Anurag Sahai (supra)*** is substantially similar to that which arises in the present case. The petitioner, in that case (who would hereinafter be referred to as “Anurag”) had registered himself, with the DDA, under a Registration Scheme, 1979, for allotment of an LIG flat. At the time of registration, the petitioner intimated his residential address, to the DDA, as House No. B-60, Kidwai Nagar, where he was residing at that time. He had also intimated, to DDA, his “occupational address”, which was contained on an income certificate, issued by his employer, which was annexed to the application. Anurag, thereafter, shifted residence from Kidwai Nagar, but did not inform the DDA regarding the said change. He continued, however, to work in the same business establishment. His

priority number, for allotment of flat, matured in the year 2000, whereupon flat was allotted. The demand-cum-allotment letter was issued, to Anurag, at the aforementioned Kidwai Nagar address, but remained undelivered. No attempt was made to serve him at his “occupational address”. As in the present case, on account of non-payment, DDA cancelled the allotment made to Anurag. Again, as in the present case, Anurag made enquiries, regarding the status of his application, several years later, in June, 2011, whereupon he came to know that the allotment had been cancelled. On failing to obtain any relief from the DDA by making representations to it, Anurag moved this Court, under Article 226 of the Constitution of India.

26. As in the present case, the DDA raised, before this Court, the issue of delay and laches, stating that Anurag had been sleeping over his rights, and that he had provided no explanation for making no enquiry, whatsoever, from the DDA, since 2000, or having sought judicial redressal earlier. It was sought to be pointed out that the process of allotments, under the Scheme, stood closed

27. This Court, speaking through a learned Single Judge, held thus, in paras 10 to 13 of the judgment:

“10. I have heard learned counsel for the parties and considered their rival contentions. The basic facts of this case are not in dispute that the petitioner applied for allotment of a flat under New Pattern Registration Scheme, 1979, for allotment of an LIG flat. At the time of registration, the petitioner had mentioned his residential address as House No. B-60, Kidwai Nagar, New Delhi, and he had also informed DDA with regard to his occupational address. It is also not in dispute that thereafter the petitioner changed his residence,

however, the petitioner did not inform the DDA with regard to change of his residential address. It is also not in dispute that demand-cum-allotment letter sent to the petitioner at his old residential address i.e. Kidwai Nagar was returned to the DDA undelivered and thereafter the demand-cum-allotment letter was not sent at the occupational address of the petitioner.

11. In this case, at the time of registration under the New Pattern Registration Scheme, 1979, the petitioner had not informed DDA with regard to his occupational address, however, an income certificate from his employer was placed on record, on the letter head of the employer where the address was mentioned. The petitioner continued to work with the same business establishment and in case the demand-cum-allotment letter was issued to the petitioner at his occupational address there is every likelihood that he would have received the same. Accordingly, the present case is fully covered by the decision rendered by the Court in the case of *Mohinder Singh v. DDA* (supra) which has been upheld by the Division Bench.

12. There is no explanation forthcoming as to why DDA did not issue demand-cum-allotment letter at the occupational address, which was available in their record. This has resulted in delay for the petitioner to own a flat for which initial payment was made as far back as in the year 1979.

13. The DDA, which is a statutory body, has failed to perform its duty. The Court cannot lose track of the fact that a condition of eligibility for allotment of a flat under New Pattern Registration Scheme, 1979, is that an applicant should not own any other permanent residence in Delhi, resultantly the petitioner would not have taken any step to acquire another property in Delhi. Another factor, which cannot be lost track of, is that allotment under this scheme were made over a span of more than two decades and thus the petitioner could well have been misled that his allotment would mature in time to come. DDA was well aware of the various judgments passed by this Court from time to time that DDA is

duty bound to inform an allottee with regard to the allotment at all the addresses available in their record.”

28. This decision effectively demolishes the submission, of the DDA, that the present writ petition ought to be dismissed on the ground of delay and laches, on the part of the petitioner, in prosecuting the application submitted by him, during the period he was in Canada. If this Court did not feel, in *Anurag Sahai (supra)*, that the delay of eleven years, in the petition, in that case, taking up the issue of non-allotment of the flat, to him, inhibited his claim, there is no reason for this Court, in the present case, to hold otherwise.

29. On facts, too, the judgment in *Anurag Sahai (supra)* applies to the present case on all fours. As in that case, in the present case, too, the office address of the petitioner was known to DDA; yet, no efforts were made to serve the petitioner at the said address. Even otherwise, once the DDA realised that efforts, to serve the petitioner, at his Vasant Vihar address, had failed, it was, in my view, not reasonable, on the part of the DDA, to cancel the petitioner’s allotment without making any other efforts to serve the petitioner. In *V. N. Bharat (supra)*, the Supreme Court held that, where the petitioner denied the fact of service of notice, the onus shifted to the DDA to establish the fact of such service. In the present case, there is no denial of the fact that service of the demand-cum-allotment letter had not been made on the petitioner, as the letter had been returned undelivered by the postal authorities. It was incumbent, therefore, on the DDA, to make efforts to serve the petitioner, before cancelling his allotment.

30. Mr. Saini has, on instructions, submitted that his client would be willing to accept the alternate flat, at the rates prevalent at the time of filing of the writ petition.

31. The DDA is directed to allot, to the petitioner, a flat similar to the flat which had been allotted to him in 1997, preferably, in the same area. The allotment would be subject to the petitioner making payment, for the said flat, at the rates prevalent on the date of filing of the writ petition.

32. Needless to say, the petitioner would be required to fulfill all requisite formalities in order to secure possession of the flat.

33. Respectfully following the example set by *Anurag Sahai (supra)*, this writ petition is also allowed.

34. There shall be no order as to costs.

DECEMBER 07, 2018

dsn

C. HARI SHANKAR, J.