

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: February 28, 2018

Judgment delivered on: April 03, 2018

+ W.P.(C) 4288/2014

KRISHAN GOPAL BAKSHI

..... Petitioner

Through: Mr. Kundan Kumar, Adv.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Dhanesh Relan, Ms. Akshita
Manocha and Ms. Kajri Gupta, Advs.
for DDA

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:

“(a) Issue of a writ, order or direction in the nature of mandamus directing the respondent to allot any Janta flat to the petitioner at the cost prevalent in February 1996.

(b) Pass such order or further order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The facts as noted from the writ petition are, the petitioner herein got registration under New Pattern Registration

Scheme, 1979 of DDA for allotment of a Janta flat vide Registration No. 10148 and was assigned priority No. 31001. Subsequently in the year 1992 the priority of the petitioner matured and he was allotted a specific flat bearing No. 8-B, 63, Sector-D, Pocket-2, Kondli-Gharoli, Delhi vide the draw of lots held on May 13, 1992. The petitioner was also issued the demand letter having block dates November 25, 1992 – November 30, 1992 in respect of the flat.

3. It is the case of the petitioner, as contended by his counsel that the petitioner requested for cancellation of allotment vide his letter dated March 4, 1993 and for letting his name in waiting list for next draw of lots. That since no action was taken by the respondent, petitioner sent a reminder letter dated September 2, 1993 and asked to update him as to the quantum of cancellation charges. Respondent vide letter bearing no. 207(1089)92 dated September 26, 1994 intimated petitioner to deposit cancellation charges within 60 days of issuance of the letter which was dispatched on October 4, 1994. The petitioner deposited the cancellation charges vide challan no. 016585 on December 5, 1994. It is the case of the petitioner that he intimated the respondent about the factum of deposit of cancellation charges.

As no response was received from the respondent, the petitioner sent a reminder letter dated June 29, 2000 and visited the office of DDA numerous times but got the same response time and again that his case is under consideration. It is the submission of the Id. Counsel for petitioner that DDA, as per their practice and policy, on cancellation of the flats prior to December 31, 1993, assigned tail end priorities to the registrants who did not avail of the allotment made in their favour prior to December 31, 1993. This practice of DDA continued upto 1994.

4. It was contended by the Id. Counsel for petitioner that the respondent had framed a policy dated May 25, 1995 with regard to cases where allotment is not made due to non-inclusion of the name of registrant in draw for fault of DDA. In such cases, the DDA has taken a policy decision that the allotment shall be made in the next draw at the rates prevailing at the time, when the registrant would have got the allotment according to his/her priority position. The Id. Counsel for petitioner further stated that the respondent DDA itself had also framed a policy in the year 2004, which has been duly approved by its Vice Chairman, wherein it has been decided to allot flats to the allottees of NPRS, 1979 who did not accept the allotment made to them from time to

time and opted for placement of their priority at the tail end to be considered for next allotment uptill December 31, 1993. In effect as per the said policy, the registrants who sought cancellation prior to December 31, 1993, their right to allotment and registration remained intact and DDA decided to allot the flat to such allottees at tail end after charging cancellation charges with interest. Thus the registrants whose priorities were relegated to tail end and who have not been put in draw in tail end because of fault of DDA, are entitled to be allotted alternative flats at cost prevalent when their priority was missed by DDA at tail end i.e. on September 29, 2007 in the case of the petitioner.

5. It was also the contention of the Id. Counsel for the petitioner that the respondent Authority has drawn a policy dated February 25, 2005 wherein it was decided that aggrieved registrant if approaches the Authority within four years from the date of maturity of the priority, he would be allotted a flat at the old cost of the year, when the same matured or else DDA will charge 12% on old cost. That since the petitioner has approached the respondent Authority with the prescribed period, from date of DDA committing fault and missing the priority of petitioner from consideration of petitioner's case in tail end draw of

September 29, 2007, therefore, he is entitled to the benefit of the aforesaid policies of missing priority and the respondent is duty bound to allot a flat to the petitioner at the cost prevalent in February 1996, when his priority was missed for consideration for allotment of flat by the respondent.

6. It is also contended by the learned counsel for the petitioner that a policy decision was taken by the respondent DDA for Awas Sarkar Yojana, which scheme was subsequently closed and the registrants who sought transfer from NPRS-1979 to ASY were relegated back to NPRS with the same priority vide circular dated June 6, 2006. It is the contention of the learned counsel for the petitioner that DDA is estopped from denying the benefit of the scheme / policy as referred to above inasmuch as the right has accrued in favour of the petitioner to be considered in tail end draws for allotment of LIG flat. He relied upon the judgments of this court in the case of *Attar Kaur v. DDA, LPA No. 184/2002* decided on February 8, 2002; *Mohinder Malik v. DDA, W.P.(C) 4859/2000* decided on August 29, 2002; *Kishan Swaroop Sharma v. DDA, W.P.(C) 4887/2005* decided on March 18, 2005; *Surender Kumar Mehta v. DDA and connected matters, W.P.(C) 19095/2004* decided on December 16, 2004;

Jay Prakash v. DDA, W.P.(C) 20250/2005 decided on July 21, 2006; *Subhash Chander Sethi v. DDA, W.P.(C) 11654/2006* decided on March 20, 2007; *Usha Saikia v. DDA, W.P.(C) 266/2007*, decided on January 28, 2008; *DDA v. Raj Kumar Malhotra, LPA 373/2007* decided on July 2, 2008; *Usha Mahajan v. DDA, W.P.(C) 2600/2007* decided on July 17, 2008.

7. It is the case of the petitioner and as contended by his Id. Counsel that the contents on web page of the respondent, still talk of scheme being alive with fixed number of registrants. The learned Counsel also stated that as per the NPRS scheme, the registrant has deposited the cancellation charges on December 5, 1994 and the name of petitioner shall continue in the list for next allotment.

8. It is the case of the respondent in the short-affidavit and the additional affidavit that the allotment in favour of the petitioner was cancelled due to non payment, as allottee could not deposit payment due to his financial hardship as acknowledged by him in his several communications.

9. The learned Counsel for the respondent further contends that under NPRS-79 Scheme, the allottees whose allotment was cancelled on account of non-payment, were asked to deposit

cancellation charges to keep their registration alive for next allotment. Following the procedure, ex-allottee petitioner vide Respondents' office letter dated September 26, 1994 was also duly communicated for depositing Rs. 1133.53 towards cancellation charges within 60 days from the date of issue of letter so that his registration could be kept alive. But ex-allottee deposited the amount on December 5, 1994, i.e., after 69 days from the date of issue of letter dated September 26, 1994. It is averred and contended by the counsel for the respondent that the Scheme of NPRS-79 was closed in the year 1996 after advertising widely in leading newspapers. The main allotment file No J-207(1289)92/NP/KG vide which flat No. 8B, FF, Pocket-2, Sector-D, GRP-II, Kondli Gharoli, Delhi was allotted to the petitioner is not traceable in the records.

10. The learned Counsel for the respondent states that on perusal of Annexure P-11 filed by the petitioner, it is seen that the annexure is a print out taken from DDA website wherein it is mentioned that "a total of 2468 registrants are awaiting allotments which included 976 registrants of Janta Housing Scheme-1996, 1043 registrants of the New Pattern Housing Scheme-1979 and rest 449 registrants under the Ambedkar Awas

Yojna-1989”, whereas Annexure R1 clearly shows that no scheme has been listed under the head of live schemes. He has referred to two advertisements dated November 22, 2012 and May 15, 2014 to contend that DDA has represented that all allotments under the scheme have already been made and all eligible applicants have been allotted flats and no allotment is pending as on date and all the schemes have already been closed. He would also state that the advertisement also stipulated that the registrants who have not taken any refund of their registration money are advised to approach the DDA and apply for refund with all requisite documents, viz., FDR, Registration Card, Challan and change of address etc. He has drawn the attention of the court to additional affidavit filed by respondent DDA to contend that Annexure P-11 which was filed by the petitioner along with the rejoinder is a print out of a web page, which was uploaded in the year 2007. He reiterates that the closure of old schemes including the scheme of NPRS-79 were widely publicized and advertised in the leading newspapers.

11. Having heard the learned counsel for the parties, the issue which arises for consideration is whether a mandamus can be issued to the respondent to allot a Janta Flat to the petitioner at

the cost prevalent in the month of February, 1996.

12. There is no dispute of the fact that the petitioner had applied for allotment of a Janta Flat under the Scheme of NPRS - 1979. In the year 1992 the priority of the petitioner matured and he was allotted a specific flat bearing No. 8-B, 63, Sector-D, Pocket-2, Kondli-Gharoli, Delhi vide draw of lots held on May 13, 1992. A demand letter was issued to the petitioner for deposit of money. It is seen that in view of the financial constraints, the petitioner could not deposit the amount and he vide his letter dated March 4, 1993 had asked for the cancellation of allotment and requested that his name be put in the waiting list for the next draw. The request of the petitioner was accepted by the respondent DDA vide its letter dated September 26, 1994 calling upon the petitioner to deposit an amount of Rs.1133.53 towards cancellation charges within 60 days, which he deposited after 69 days.

13. Be that as it may, assuming the registration of the petitioner would still hold good as the petitioner had deposited the amount within 60 days of the date of dispatch of the letter on October 4, 1994, it is seen that petitioner even after the deposit of the money as sought for by the respondent DDA, had only sent a

reminder in the year 2000 after a period of six years and even thereafter a further representation under the RTI Act that too in the month of May, 2013. In response to the RTI application of the petitioner, respondent / DDA in its communication dated June 21, 2013 had taken the following stand:

*“Sir,
This is with reference to your RTI application dated 30 & 31 May, 2013 regarding status of registration No. 10148/NPRS.*

In this regard, it is to inform that a Press Notification was released by the DDA on leading News Papers of 27.02.1996 for the allottees of Janta flats under NPRS-79 Scheme wherein it was announced that Janta flats have already been allotted under NPRS Scheme and who those have not accepted the allotment due to some reason and paid the cancellation charges, list are placed at Vikas Sadan and for them draw will be conducted shortly and those who found their name not listed in the notice board may give complaint in writing. Those who responded to the Press Notification and furnished their options, were only considered for allotment in next draw of lots.

Scheme of NPRS-79 has already been closed way back in the year 1996, hence is nothing is feasible at this stage. For further clarification, you may refer to the endorsement recently made by DDA in the leading News papers dated 22.11.2012.”

14. From the perusal of the said communication, it is revealed that Scheme of NPRS-79 was closed in the year 1996. It is the case of the petitioner that he had been visiting the office of the DDA from time to time when he was told that his matter is under

consideration. Surely, such a plea cannot be accepted as no such stand has been taken in the representation dated June 29, 2000 (Page 36) and RTI application made in the month of May, 2013. Now the issue which falls for consideration is whether the stand of the respondent DDA that the Scheme of NPRS-1979 has already been closed way back in the year 1996 is correct, if not what is the effect thereof. Petitioner has relied upon Annexure P-11, which is a print out of the year 2007 taken from the web page of the DDA, which reveals that 2468 registrants are awaiting allotments, these include 976 registrants of Janta Housing Scheme – 1996, 1043 registrants of the New Pattern Housing Scheme – 1979 and the rest 449 registrants under the Ambedkar Awas Yojana – 1989. In response to this, two additional affidavits have been filed by the respondent / DDA. In the first additional affidavit filed on November 9, 2016 it is represented by the DDA by relying upon Annexure-R1 which is a web page of the official site of the respondent DDA of the year 2011 to contend that no scheme has been listed under the head of live schemes. In other words, DDA represents by necessary implication as the 2011 scheme does not depict the NPRS-79 scheme as a live scheme, the scheme stood closed and no benefit

can accrue to the petitioner. Respondent DDA has also referred to two advertisements issued on November 22, 2012 and May 15, 2014 wherein it was represented, by giving reference to NPRS-79 also, that the schemes have already been closed and DDA had asked the registrants who have not taken any refund of their registration money to approach the DDA and apply for refund with all requisite documents. No doubt, petitioner had relied upon the print out of web page of the DDA of the year 2007 to contend that NPRS-79 is still a live scheme but the subsequent print out of the web page of the official site of the DDA of the year 2011 and the advertisements of the year 2012 and 2014 would surely depict that the NPRS-79 has since been closed. It must be conclusively proved that the NPRS-79 Scheme is not in vogue as of 2011/2012/2014, if not since 1996. In the absence of the Scheme being in vogue, no benefit can accrue to the petitioner. That apart, this court is of the view that except one representation made on June 29, 2000 and RTI application made in the month of May, 2013, nothing has been placed by the petitioner to contend that he has been following up with the DDA for allotment of flat in his favour. The writ petition has been filed in the year 2014, which suggest that petitioner was sleeping over his rights, if any, and

had not cared to pursue with the DDA his entitlement under various policies referred to by the petitioner in the petition. As per his own averments, his missing priority was because of the fault of the DDA in the year 1996/2007 and filing of the representation only in the year 2000 and also after a further gap of 13 years when the petitioner filed an RTI application in the year 2013 and the filing of the petition in the year 2014 would surely suggest that the present petition is hit by delay and laches. It is not the case of the petitioner that even after 1996, persons similarly placed like the petitioner have been allotted flats, except in cases where directions have been given by the courts. Reference to all the judgments of this court by the learned counsel for the petitioner in different writ petitions / intra-court appeals seeking parity are of the years 2002, 2004, 2005 and 2008 which are at least six years before the filing of the writ petition and also much before the advertisements issued by the DDA in the years 2012, 2014. So at this point of time, it is too late in the day for the petitioner to seek benefit as claimed in the writ petition. In this regard, I refer to a judgment of the Coordinate Bench of this court in the case of **Brinda Ghosh vs. DDA W.P.(C) 6871/2009 decided on February 13, 2012** wherein

in Paras 7 to 12, this court has on delay and laches held as under:

“7. The Court finds force in the aforesaid submission made by the counsel for the respondent/DDA. It is not denied by the petitioner that upon demise of her father on 31.12.1991, he was survived by his wife (mother of the petitioner) as his legal heir and that she did not take any steps whatsoever to approach the respondent/DDA for getting the registration mutated in her favour. It is also an undisputed fact that the mother of the petitioner expired on 2.3.2008, which was after a period of seventeen long years from the date of the demise of Late Amal Chandra Biswas and after a period of 6 years from the date of issuance of the demand-cum-allotment letter to the original registrant. It was only after the demise of the mother of the petitioner that it is alleged that the petitioner started to make efforts to locate papers for the registration and she sought to approach the respondent/DDA to intimate them about the death of the original registrant and also his wife and to inquire about the status of the allotment under the NPRS 1979.

8. The aforesaid explanation offered for approaching the Court so belatedly cannot cut any ice for the reason that it was incumbent on the part of the predecessor-in-interest of the petitioner, i.e., her mother, to have approached the respondent/DDA within a reasonable period from the date of the demise of her husband for getting the registration mutated in her favour. However, no such steps were taken by her during her lifetime.

9. Merely because the petitioner now claims that upon the demise of her mother in the year 2008, she had discovered some documents relating to the registration, that in itself cannot mean that she can approach the respondent/DDA at any odd time asking for mutation of the registration in her favour. Furthermore, a perusal of the letter dated 7.8.2010

addressed by the respondent/DDA to the petitioner which forms the basis of the claim of the petitioner that the respondent/DDA had carried out mutation of the registration in her favour, falsifies such a stand. Rather, a perusal of the original records produced by the learned counsel for the respondent/DDA, which contains the carbon duplicate of the letter dated 7.8.2010, bears out the submission of the counsel for the respondent/DDA that the said letter was issued calling upon the petitioner to furnish the necessary documents only for the purposes of refund and not for „reference purposes“ as wrongly typed out in the typed version of the document placed by the petitioner at page 28 of the paper book.

10. Counsel for the petitioner submits that even if the successor-in interest of the original registrant had not taken any steps to get the registration mutated in her name, the respondent/DDA is under an obligation to mutate the registration in the favour of the petitioner upon the demise of her mother.

11. The aforesaid argument is completely fallacious and liable to be turned down. It is not permissible for an applicant to keep sleeping over her rights for an inordinately long duration and wake up one fine morning to claim a statutory right against a Government authority. Both, the petitioner as also her deceased mother ought to have shown some diligence on their part to keep the registration of Late Amal Chandra Biswas alive. However, they have miserably failed to demonstrate that they were vigilant. It is pertinent to note that the NPRS 1979 in question was floated in the year 1979 and three decades have already passed and still the petitioner and many others like her keep approaching the Court seeking allotments under the said Scheme.

12. No doubt, delay and laches have been found to have occurred for genuine reasons in some cases pertaining to allotment of MIG Flats under the said

Scheme right upto the year 2004, which also dates back to almost eight years, but such a situation cannot be permitted to continue forever. Every Housing Scheme that is floated by a Government agency has a life and timeline and it ought to exhaust itself thereafter. It is not that a successor-in-interest of an original registrant can rise from his/her slumber as per his/her convenience and approach the Court claiming to be a legal heir and thus seek entitlement to mutation of the registration in his/her favour. The present case is one such case where the Court declines to exercise its discretion in favour of the petitioner for the reason that the petitioner has failed to offer a just or a sufficient reason to explain the delay of about seventeen years in approaching the DDA with a request for mutation of the registration in her favour.”

15. Being hit by delay and laches, I dismiss the petition. No costs.

V. KAMESWAR RAO, J

APRIL 03, 2018

jg