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

+ W.P.(C) 4420/2013

HARNARAIN SINGH Petitioner
Through: Mr. Gaurav Arora, Adv.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Manika Tripathy Pandey, Adv.,
Mr. Ashutosh Kaushik, Adv. and
Ms. Raveena Tandon, Adv. for DDA

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **30.05.2018**

Present petition has been filed by the petitioner with the following prayers:

“That in the above noted circumstances; it shall be in the interest of justice that this Hon’ble Court may be pleased to:

- a) Rule be issued;*
- b) Issue a writ of mandamus or a writ in the nature of mandamus or any writ, order or direction directing the Respondent to set aside the impugned order of Cancellation of Allotment of Flat No.30, Sector 22, Pocket 13, Ph-3, Rohini; (Annexure P-7)*
- c) Alternatively, Refund the entire amount paid by the Petitioner towards instalments along with interest @ 18% p.a.;*
- d) Pending the hearing and final disposal of the present writ petition, withhold the allotment of Flat No.30, Sector 22, Pocket 13, Ph-3, Rohini or cancelling the allotment if the same has already*

- been done;*
- e) Alternatively, pending the hearing and final disposal of the present writ petition, deposit a sum of Rs.6,72,342/- being the sum paid by the Petitioner towards the instalments of the flat along with interest @ 18% p.a. with this Hon'ble Court;*
 - f) For ad-interim reliefs in terms of clause d) and e);*
 - g) For costs;*
 - h) Any other order which this Hon'ble Court may deem fit in the interest of justice in favour of the petitioner and against the Respondent. ”*

It is the case of the petitioner that in the year 2010, DDA launched “DDA Housing Scheme-2010” for allotment of approximately 16,000 flats. In November, 2010, petitioner applied for allotment of a flat by depositing registration amount of Rs.1,50,000/-. In the form, the category code referred to as “PH”. The application was accompanied by a copy of the medical certificate certifying the disability as 30%. On September 30, 2011, petitioner received an allotment letter declaring the petitioner to be successful candidate for allotment of the flat. It is the case of the petitioner that being successful, he started arranging money in the form of loan from friends, family and savings. On November 29, 2011, he deposited an amount of Rs.4,69,500/- with the respondent DDA. Thereafter, he deposited Rs.17,614/- on three different occasions, i.e., on January 9, 2012, February 10, 2012 and March 10, 2012 respectively. In the month of April 2012, when he visited the office of the respondent / DDA to enquire about the possession letter, he was informed that the allotment of the flat in favour of petitioner was cancelled. It is his case that the same was done unilaterally and without any show-cause notice.

Counter-affidavit has been filed by the respondent DDA wherein apart from admitting the facts as noted above, they have stated that in terms of Clause 23 (H), it is not possible to check the eligibility of the applicant at the time of acceptance of forms. It is stated that the allotment was subject to the terms and conditions as given in DAL, Brochure and also DDA (Management and Disposal of Housing Estates) Regulations, 1968. There is a condition in the DAL for automatic cancellation of allotment and registration, if the initial amount was not paid. It is stated, those who are not eligible would register their names at their own risk and would not be entitled for allotment of flats, if at a later stage, it is detected that they are not eligible under the scheme. It is the case of the respondent / DDA that on successful scrutiny of the documents submitted by the applicant for specified category "PH" it was found that the applicant was having 30% disability as per the medical certificate. As per the provisions of Disability Act person with disability means "person suffering from not less than 40% of any disability". In other words, it is their case that the petitioner was not eligible for being allotted a flat under the PH category. Accordingly, the allotment of the flat in favour of the petitioner was cancelled.

When the matter was listed on July 16, 2013, this court had expressed a prima-facie view that the ends of justice would be met if the amount paid by the petitioner to respondent / DDA is refunded back with interest. In fact today also, learned counsel for the petitioner submit, he will be satisfied if the complete amount deposited by the petitioner is refunded back with interest. He states, there is no concealment of fact by the petitioner which would result in denial of refund of the complete amount as deposited by the petitioner. So, he is entitled to the refund with interest.

On the other hand, learned counsel for the respondent would contest the refund of the amount as according to her it is the petitioner who had misrepresented that he is a physically handicap person. She states, the petitioner is not entitled to the refund that too with interest. She has drawn my attention to some of the provisions of the Brochure of the Housing Scheme.

Having heard the counsel for the parties, at the outset, it may be stated here that the petitioner in his application submitted to the DDA has only stated the category under which he is applying as “PH”. There is no dispute that the petitioner had submitted the application form along with medical certificate showing the degree of disability as 30%. No doubt, the person with disability as defined under the Disability Act is a person who does not have a disability of less than 40%. It is not such a case here. Be that as it may, petitioner may not be entitled to seek the benefit of allotment of flat under “PH” Category, but the question which arises for consideration is whether he is entitled to the refund of the amount as deposited by him at the time of application and even thereafter with interest. In fact, a perusal of the cancellation letter dated January 30, 2012, clearly reveals that DDA has accepted its mistake by stating that the flat has been inadvertently allotted to the petitioner under the “Physically Handicapped” category. It is noted DDA has vide letter dated January 30, 2012 had asked the petitioner to seek refund of the amount by submitting certain documents / information (the petitioner denies the receipt of the letter). The said letter of the DDA is clinching and should be read to mean that the petitioner is entitled to the refund of the amount as deposited by him along with the application and thereafter. Accordingly, it is directed that on the petitioner submitting

documents / information as stated in the letter dated January 30, 2012, Annexure R-2 within a period of four weeks from the date of receipt of this order, respondent shall refund the total amount deposited by the petitioner within four weeks thereafter with interest @ 9% per annum computed from the date of cancellation of allotment, i.e., January 30, 2012.

The petition stands disposed of.

No cost.

CM No. 14875/2018 (for direction)

In view of the order passed in the petition, the application has become infructuous.

V. KAMESWAR RAO, J

MAY 30, 2018/jg