

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 17, 2018

Judgment delivered on: July 02, 2018

+ W.P.(C) 2451/2015

JITENDRA KUMAR JHA

..... Petitioner

Through: Mr Ajay Kumar Jha, Adv. with
petitioner in person.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Kunal Sharma, Adv.

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 by the petitioner with
the following prays:

*“In view of the above stated facts and circumstances, it is,
therefore, most respectfully prayed that this Hon’ble Court may
graciously be pleased to issue the writ of Mandamus to the
following directions:-*

*i. Call the relevant records from DDA relating to
application No. 0039247 Dt. 01.03.1995 of Expendable
Housing Scheme 1995;*

- ii. *Direct the respondent to allot a new house under Expendable Housing Scheme 1995 in original/earlier price/rate and in the same area/locality where the petitioner had earlier allotted and handover the same to the petitioner;*
- iii. *Direct the respondent to pay the compensatory damages/compensation of Rs.20,00,000/- (Rupees twenty lacs) only to the petitioner towards monetary loss, mental pain and suffering of the petitioner;*
- iv. *Direct the Respondent / concerned authority to hold a domestic enquiry & take appropriate action against the delinquent employee;*
- v. *In Additional/alternative:- Direct the respondent to allot a new House under the expendable Housing Scheme 1995 at old/earlier price along with interest as per rule, in the interest of justice & fair play or equity;*
- vi. *Pass any other or further suitable orders of directions which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, in favour of the petitioner and against the respondent.*

2. The facts as noted from the writ petition are that in the year 1995 the respondent DDA launched an Expandable Housing Scheme 1995 for the general public. On March 01, 1995 the petitioner applied for an allotment of a house under the said scheme by depositing a demand draft with number 569821 dated February 28, 1995 for Rs.15,000/- drawn on State Bank of India G T Karnal Road, Delhi. It is his case, that his marriage was solemnised at his native place in Bihar. In the year 1996 the petitioner got admission in LLB course in Muzaffarpur (Bihar).

The petitioner shifted from Delhi to his native place, for attending the classes and completing the course. It is his case, in the month of September 2000, he got enrolled with the Bar Council of Delhi. Pursuant thereto he continued to reside in a tenanted accommodation in Delhi. In the absence of a permanent accommodation of his own he was shifting from one place to another and has been using the address of his cousin at Vasant Kunj as correspondence address. Because of frequent shifting / packing of his goods, documents, books and files etc. the acknowledgement slip of the application through which he had applied for allotment of house to the respondent DDA got misplaced and could not be traced despite his best efforts. It is his case that the respondent did not inform him regarding the status of his application for allotment of the house either at the Delhi address being Sector C, Pocket 8, Flat No. 8467 Vasant Kunj, New Delhi or at the address of his native place i.e. Village and post-Pagra Via / Police Station Dalsingh Sarai, District Samastipur Bihar, 848114. It is averred that between the 2003-04 he approached the respondents two or three times for ascertaining the status of his application but without any success. In the year 2010 the petitioner was allotted a chamber 526-b in Dwarka

Court, New Delhi and after completion of wood work he shifted his office to his chamber in the year 2011. In the year 2013 when he was separating the unwanted papers in his chamber, he found misplaced documents including Brochure / booklet of the housing scheme 1995 along with the acknowledgment slip of the application. Thereafter, he approached the respondent on July 5-8, 2013 but he could not find out the actual status of his application despite giving the application number.

3. It is averred that the respondent has not taken any interest in the petitioner's request. According to him, as per his information all the applicants under the said scheme were allotted their desired house. He made a reference to a legal notice issued through his Advocate on August 14, 2013 which was returned back as undelivered. A reference is also made to legal notice dated September 24, 2013. On October 01, 2013, the respondent in response to the legal notice dated September 24, 2013 of the petitioner had sought documentary proof of the application submitted by the petitioner.

4. On October 10, 2013 the petitioner through his Advocate sent the documentary proof i.e. copy of acknowledgement slip

and copy of Brochure booklet of the scheme. No reply was received from the DDA. The petitioner after waiting for some time, on May 06, 2014 filed an application under the RTI Act regarding his claim. It is averred that the concerned department did not give any information regarding the same. Accordingly, July 05, 2014 he filed an appeal before the first Appellate Authority under the RTI Act. On August 06, 2014 the Appellate Authority under the RTI Act in the DDA directed the Public Information Officer to furnish the requisite available information to the appellant / petitioner. Despite such direction, the petitioner did not receive any information till the filing of the writ petition. It is his case that he, having no other alternative remedy, has filed this writ petition.

5. The respondent DDA has filed their counter affidavit wherein it is stated that the petitioner has provided his correspondence address as:

“Jitendra Kumar Jha Sector C, Pocket 8, Flat No.8467 Vasant Kunj, New Delhi-110070”.

6. According to the DDA no alternate address for correspondence was provided by the petitioner. The DDA has

referred to clause 13 of the terms and conditions for allotment under the Scheme which according to DDA clearly stipulated that the allottee has to deposit the cost of the flat in equated quarterly installments. Further clause 13 (iv) of the terms and conditions for allotment under the scheme clearly stated that in the event of default the allotment of house will be automatically stand cancelled.

7. It is averred that the petitioner was declared successful for the allotment of Flat No. 1089, Pocket-3, Block-D, Type-A in Dwarka (Bindapur) in the draw of lots held on March 28, 1995. It is averred that draw of lots held on March 28, 1995 was published in the leading Newspapers as well as on the Notice Board in D- Block, Vikas Sadan, INA, New Delhi. The demand cum allotment letter was issued on block dates May 15, 1995- May 30, 1995 alongwith the intimation to deposit the cost of the plot as per schedule mentioned therein. No response was received from the petitioner in respect of the said allotment nor was any payment in lieu of the same ever deposited by the petitioner. It is averred that the petitioner also did not furnish / deposit the requisite documents, in accordance with the terms

and conditions of the said scheme. Subsequently, a show cause notice dated July 05, 1996 was issued to the petitioner asking him to show cause why the allotment of the said flat be not cancelled in the absence of the payment in respect of the same. However, no reply to the said show cause notice dated July 05, 1996 was given by the petitioner to the respondent. Accordingly, the allotment of the plot was cancelled by the competent authority due to non compliance of the terms and conditions of the scheme.

Submissions:

8. Learned counsel for the petitioner at the outset has stated that an adverse inference has to be drawn against the DDA for not producing the original records despite specific orders of this Court dated May 17, 2016, August 29, 2016 and February 01, 2017. According to him, the averments made in the writ petition more specifically in paras 12 to 16 are deemed to have been admitted and the relief be granted in favour of the petitioner.

9. According to the learned counsel for the petitioner, the DDA has never informed the petitioner regarding the status of the house / flat applied under the scheme of 1995 either at the

correspondence address at Delhi or at the permanent address in Bihar. According to him, had the original records been produced it would have been clear that the demand-cum-allotment letter / show cause notice and the cancellation letters have not been dispatched / delivered to the petitioner. In other words, the respondent has not made any attempt to dispatch these communications to the petitioner's correspondence address or permanent address at Samastipur Bihar, due to which the petitioner has suffered immensely and in view of the law laid down by this Court, the petitioner is entitled to the relief as prayed for in the writ petition.

10. On the aspect of delay and laches he submitted that there is sufficient cogent bona fide explanation given by the petitioner inasmuch as after he left Delhi for his native place in the year 1996 and shifted back to Delhi only in the year 2000. Further immediately on locating the relevant documents the petitioner took up the issue with the respondent. He stated that even in absence of any communication from the DDA the delay and laches could not be taken against the petitioner and petition needs to be entertained for the relief sought.

11. Learned counsel for the petitioner relied upon the following judgments of this Court in the ***W.P. (C) 15002/2006, Hridaypal Singh vs. DDA*** decided on February 06, 2007, ***W.P. (C) 5554/2001, Ravi Das vs. DDA*** decided on February 16, 2012 and ***W.P. (C) 592/2011, Prem Bhatnagar vs. DDA*** decided on May 19, 2011.

12. On the other hand, learned counsel for the respondent would reiterate the facts as averred in the counter affidavit, the contents of which have been narrated above. That apart on the aspect of delay and laches, he would rely upon the judgment of the Supreme Court in the case of ***Banda Development Authority vs Moti Lal Aggarwal & Ors. (2011) 5 SCC 394***. She would also rely upon the judgment of Madras High Court in the case of ***Mrs. Divya J. Dolia & Mrs. Beena K. Dolia vs. The Secretary Government of Tamil Nadu Industries Department & Ors. MANU/TN/1810/2009*** in respect of her case. She reiterates her submission that communication was sent to the correspondence address given by the petitioner at the time of registration. According to her, in the judgment of the Supreme Court in case of ***Madan and Co. vs. Wazir Jaivir Chand (1989) 1 SCC 246*** it

is held that a party, who is required to serve a notice by post is required to do nothing more than to post a letter at the residential address of the other party. Therefore, accordingly demand-cum-allotment letter was issued on the correspondence address as mentioned above as there was no alternative address given by the petitioner. She has during the course of her submissions placed before the Court a photocopy of the relevant pages of dispatch register depicting the dispatch of letters on 3-6 June, 1995 and July 11, 1996 respectively in the name of the petitioner.

13. Having heard learned counsel for the parties, there is no dispute that the petitioner had applied for allotment of a house under the scheme of 1995. It is the case of the petitioner that he left Delhi for his native place on account of his marriage on June 21, 1995 and his admission in LLB course.

14. From the counter affidavit, it is noted that the draw of lots was held on March 28, 1995 when the petitioner was in Delhi. It is also averred that the demand-cum-allotment letter was issued to the petitioner on May 15-30, 1995 when the petitioner was in Delhi. But it is the case of the petitioner that no such correspondence was made by the DDA. That apart, it is the

case of the petitioner that no correspondence was sent at his permanent address at his native place i.e. Samstipur Bihar. But on a perusal of the writ petition, it is noted that the petitioner has nowhere stated that he has also mentioned his permanent address of Samastipur (Bihar) in the application form. In fact the petitioner has not produced his application form as submitted to the DDA.

15. In the absence of an application form it is difficult to conclude that the petitioner had given his permanent address of Samastipur (Bihar) in the application form. At the same time, the respondent has also not produced the original record, on the ground that the same is not traceable, which is very surprising.. Be that as it may in the absence of a positive averment in the writ petition that the petitioner had given his permanent address also in the application form, the plea of the petitioner that the respondent had not sent the intimation regarding allotment of house / notice / cancellation letter at his permanent address, is of no consequence. In other words the said communications were not sent to the permanent address as the same was not given in the application form. Insofar as his plea that communications

had not been sent to his correspondence address is concerned, the respondent has annexed as Annexure A-I copy of the demand-cum-allotment letter which depicts the address of the petitioner as Sector-C, Pocket-8, Flat No. 8467, Vasant Kunj, New Delhi-110060. Similarly, the show cause notice / cancellation letter were sent to the same address. The same were sent in the month of June 1995 / 1996. Learned counsel for the petitioner stated that the said communications may not have been dispatched. The reliance placed by the learned counsel for the respondent on the photocopies of the relevant pages of dispatch register, would be of no help to her as the photocopies cannot be relied upon in the absence of originals of the same. But what is relevant here is that it is the case of the petitioner that he during the relevant period i.e. 1995-2000, was not in Delhi but at Muzaffarpur / Samastipur. It is also not his case that he had informed the DDA about his relocating to his native place and had informed the address of that place.

16. Even if communications were sent at the correspondence address in Delhi, the same may have been delivered or returned back to DDA. There is no averment in the writ petition;

imputing a statement to his relative, who was staying at the said address, or his own statement, that they have not received any communication from the DDA, on the allotment or otherwise. That apart it is noted that it is only in the year 2013 that the petitioner after locating the documents like Brochure / booklet of the scheme 1995 along with acknowledgement slip of his application form, had approached the respondents, which is after a period of 18 years (approx). It is in this context the submission made by the learned counsel for the respondent, that the petition is barred by delay and laches, would become relevant.

17. Learned counsel for the petitioner had relied upon the judgment of this Court in the case of ***Ravi Das (supra)***. In the said case, the facts were DDA notified housing scheme known as Ambedkar Awas Yojana, 1989 which was specifically meant for applicants under the category of Scheduled Castes and Scheduled Tribes. At the time of registration the petitioner therein had furnished two addresses in columns 7 and 8 of the application form. In column 7, the postal address furnished by the petitioner therein had given the address as “DDA Flat No. 16 Pocket A3, Sector 7 Rohini, Delhi”. In column 8, the permanent address

furnished by the petitioner was “Municipal Corporation of Delhi, Town Hall, Chandni Chowk, Delhi”. On October 23, 1996, the petitioner had communicated to the respondent DDA that he had shifted his residence from the previous residential address to “Flat No.A-3/79, Sector, Rohini Delhi”. The DDA had dispatched the demand-cum-allotment-letter at the old address as given in the registration form and not to the changed address informed by the petitioner.

18. The petitioner’s case was that when he had attended a public hearing on June 25, 2009 in the office of the DDA it was only then he came to know that the draw of lots had been held by the DDA on November 16, 1998 and his name was included in the said draw. A demand-cum-allotment letter was dispatched at his old address. On coming to know of the allotment, he made a representation to the DDA inter alia stating that despite having been informed of the change in his residential address in the year 1996, the demand-cum-allotment letter had been wrongly dispatched by DDA to his old residential address due to which he did not receive the same. It was argued that the petitioner therefore, be allotted a flat. The DDA in its counter affidavit had

taken a stand that the demand-cum-allotment letter was sent to the postal address mentioned by the petitioner therein in the registration form but the same was received back as undelivered. On October 19, 2002 a press notice was issued by the DDA whereby all successful allottees who had not received their respective demand-cum-allotment letters were called upon to collect the same from the office of the DDA within 15 days. It was the case of the DDA that despite such a notice the petitioner did not come forward to collect the demand-cum-allotment letter. A plea of delay and laches was also taken in the judgment relied upon, inasmuch as for almost two decades the petitioner therein did not bother to enquire about the status of his registration nor did the DDA received the letter dated October 23, 1996 purportedly written by the petitioner informing the DDA about the change of his residential address. This Court had concluded that the DDA has a duty to make every effort to ensure that the demand-cum-allotment letter reached the petitioner at the address as available in its record. The permanent address of the petitioner admittedly remained the same inasmuch as, at the time when petitioner had got himself registered with the DDA he was working as an Executive Engineer and then as Engineer in Chief.

Therefore, permanent address furnished by the petitioner was his occupational address. The Court held in the facts of the case it was incumbent on the part of the respondent DDA to have made efforts to dispatch the demand-cum-allotment letter at all the addresses of the petitioner as available in their records and set aside cancellation letter dated November 20, 2000.

19. Suffice to state, the said judgment is distinguishable inasmuch as, the petitioner therein had placed before the Court the application form wherein reference was made to two addresses including the permanent address. Insofar as the case in hand is concerned, in the absence of an application form being on record and also in the absence of any positive statement in the petition that he had given his permanent address in the application form, the judgment as relied upon by the learned counsel for the petitioner is not applicable. Insofar as the judgment in the case of **Ravi Das (supra)** is concerned the same is also distinguishable inasmuch as in the said case also the application form produced before Court had the permanent address though incomplete, but still having been mentioned the Court allowed the appeal in favour of the petitioner therein.

20. Similarly, insofar as the judgment in the case of ***Prem Bhatnagar (supra)*** is concerned, the same is also distinguishable as the Court had held the respondent was required to send the demand-cum-allotment letter to all the addresses available in their file, including alternative address other than the address given in the registration form. Similarly, the case of ***Hirdayalpal Singh (supra)*** is also distinguishable on the same ground that the Court has held that the occupational address was found mentioned in the salary slip issued to the petitioner therein which was annexed with the application form, and the demand-cum-allotment letter was required to be sent there also.

21. In the facts and circumstances of this case, this Court is of the view that this is not a case where this Court more specifically in exercise of its jurisdiction under Article 226 of the Constitution of India interfere with the decision of the DDA, cancelling the allotment. The petitioner is not entitled to the relief as prayed for in this petition. The petition is dismissed. No costs.

V. KAMESWAR RAO, J

JULY 02, 2018/aky