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

Judgment reserved on : 16.03.2018

Date of decision : 03.04.2018

+ **LPA 285/2017 and CM APPL. 14646/2017**

RADHEY SHYAM GUPTA Appellant
Through : Ms. Vandana Gupta, Adv.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through : Mr. Dhanesh Relan, Standing Counsel
with Mr. Shlok Chandra and Ms. Kajri
Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

J U D G M E N T

A.K. CHAWLA, J.

1. Aggrieved of the order dated 22.02.2017 passed by the learned Single Judge, whereby, the writ petition seeking directions to the respondent to allot an MIG flat at Dwarka was dismissed, the appellant has preferred the appeal in hand.

2. The relevant facts are that the appellant got registered with the respondent (hereafter "DDA") for allotment of an MIG flat under IVth Registration Scheme on New Pattern, 1979 for allotment of flats to low and middle income registrants, under MIG, LIG and

Janta Categories on 22.09.1979 and deposited ₹4,500/- for an MIG flat. At that time, the appellant's declared residential address was no. 1663, Gali Madarsa, Mir Jumla, Lal Quan, Delhi-110006. He was issued the certificate of registration on 09.05.1980. DDA prepared the priority list in the year 1984 and the appellant's priority No. was 31109. By letter dated 06.08.1998, the appellant furnished his fresh residential address as C-1/330, Yamuna Vihar, Delhi-110053 to the respondent. A draw of lots was conducted by DDA on 19.12.2001 and flat no. 329, Sector 17, Pocket-A, Phase-II, Dwarka on cash down basis was allotted to the appellant. The DDA issued demand-cum-allotment letter dated 18.01.2002. As the appellant did not respond, DDA issued a show cause notice dated 13.08.2003 and dispatched it through speed post. The appellant complained that neither the demand-cum-allotment letter dated 18.01.2002 nor the show cause notice dated 13.08.2003 was received by him. He alleged that it is only on 23.09.2010 when he made a personal visit to the office of the DDA he became aware that he was allotted a flat but could not gather any further detail and that, it is only in response to an RTI application dated 10.01.2011, he was by communication dated 14.03.2011 informed that the allotment of the subject flat was cancelled due to non-payment.

3. The appellant filed the writ petition in March, 2016 claiming directions to the respondent/DDA. The learned Single Judge dismissed the writ petition on two counts, taking note of the status report filed on behalf of the respondent. Firstly, the material

furnished by the DDA in its status report reflected that the demand cum allotment letter dated 18.01.2002 and the show cause notice 14.08.2003 (actually 13.08.2003 and dispatched on 14.08.2003), were sent through speed post and they attracted the presumption in law of their due delivery. On the second aspect, learned Single Judge observed that the petition suffered from delays and laches inasmuch as the draw of lots was held on 19.12.2001 and according to the appellant, he had even moved an RTI application in June, 2009 to find the status and therefore, the delay in approaching the Court in the year 2016 was unexplained.

4. The appellant alleges that he never received either the demand cum allotment letter dated 18.01.2002 or the show cause notice dated 13.08.2003. Demand-cum-allotment letter, according to him, was not even sent at his correct address. As for the delay in approaching the Court, the appellant sought to explain the reason for it stating that he was gathering information regarding the status of allotment from time to time *inter alia* by filing RTI applications and that on 08.08.2014, his only son had suffered heart attack and was operated upon at Delhi Heart and Lung Institute and that on 03.10.2015, he (the appellant) himself suffered paralysis and was admitted to GTB Hospital. He also states that he is a senior citizen aged about more than 70 years. According to the appellant, there was no unjustifiable delay in approaching the Court.

5. In the submission of Ms. Gupta, learned counsel for the appellant, there was no material before the learned Single Judge to

conclude that the demand-cum-allotment letter was delivered/served upon the appellant. It was urged that the status report filed by the DDA before the learned Single Judge, itself indicated that the demand-cum-allotment letter was never sent at the correct residential address of the appellant inasmuch as, the correct residential address of the appellant was C-1/330, Yamuna Vihar, Delhi, whereas, as per the status report filed by the DDA, it was sent at C-1330, Yamuna Vihar. It was therefore contended that when the demand-cum-allotment letter itself was not sent to the correct address and there was no material to show that it actually came to be delivered to the appellant, no presumption could be drawn under Section 114 Illustration (f) of the Evidence Act and doing so was wholly erroneous. In support thereof, the reliance was placed upon *V.N. Bharat vs. Delhi Development Authority and Anr.*, (2008) 17 SCC 321. As for the delay in approaching the Court, Ms. Gupta, learned counsel for the appellant contended that the delay was not attributable to the appellant inasmuch as DDA did not make him aware of the allotment, despite best efforts made. She also urged that the only son of the appellant had fallen seriously ill and appellant, who is aged more than 70 years, had developed serious health issues and that, both were admitted in hospital. Therefore, the delay, if any, was unintentional. In support of such plea, the reliance was placed upon *Madhu Arora Alias Honey Monga vs. Delhi Development Authority*, 2013 SCC OnLine Del 814 and *Rajbal Singh Rathi vs. DDA*, 2013 SCC OnLine Del 1594. As for the public notice issued for the result of draw of lots published on

14.08.2003 it was contended that such publication cannot be construed to be a notice of allotment for an individual allottee. In support of the contention, reliance was placed upon *Usha Saikia vs. D.D.A.*, [WP(C) 266/2007 decided on 28.01.2008].

6. Learned counsel for DDA, adverting to the material on record strenuously contended that though the demand-cum-allotment letter according to the available records indicated for having been sent through speed post at C-1330, Yamuna Vihar, Delhi instead of C-I/330, Yamuna Vihar, there was nothing to show that the demand-cum-allotment letter so sent was received back undelivered and therefore, the presumption of due delivery to the appellant arose. In addition, during the course of hearing, learned counsel for DDA produced before the Court the acknowledgment due card in original for the show cause notice dated 13.08.2003 as having been delivered at the appellant's correct address i.e. C-I/330, Yamuna Vihar, Delhi. After considering the record, copy thereof was taken on record. As for the delay in filing the petition, it was strenuously contended that, at least, according to the appellant, he got to know of the cancellation of the allotment on 14.03.2011 and therefore, filing of the petition five years thereafter, is without any reasons much less justifiable. It was thus contended that the petition not only suffered from the delays and latches, there was no merit in the petition even otherwise.

7. Undisputedly, on the subject flat having been allotted, the appellant was sent demand-cum-allotment letter dated 18.01.2002

followed by show cause notice dated 13.08.2003. Both of these communications, equally undisputedly, were sent to the appellant through speed post. Though, the appellant asserts that he did not receive either of the two, the record and the Acknowledgement Due Card produced before this Court for the issuance of the show cause notice dated 13.08.2003 *prima facie* shows that it was sent and delivered at the correct address of the appellant i.e. C-I/330, Yamuna Vihar, Delhi. This show cause notice, copy whereof is on record, *inter alia* adverts to the draw of lots held on 19.12.2001 and the strict terms of payment under the terms of the allotment. In the face of this communication, which, as per the Acknowledgment Due Card, was duly delivered at the given address, there is no merit in the appellant's submission that neither the demand-cum-allotment letter dated 18.01.2002 nor the show cause notice was issued by the respondent to the appellant.

8. In *V.N. Bharat's case (supra)*, the Supreme Court reiterated that when the demand notice was sent at the correct address through registered post with acknowledgement due, it results in a statutory presumption of due service under Section 114 illustration (f) of the Evidence Act and that, such presumption is rebuttable. There cannot be any dispute about this basic proposition of law. In terms of the record produced by DDA, the show cause notice was sent at the correct address through speed post and the respondent even received back the Acknowledgement Due Card for its delivery at the correct address. Such material produced before this Court, does not invite

the drawing any presumption under Section 114 illustration (f) of the Evidence Act. In the event however, the appellant seeks to dispute such fact; this Court refrains to get into that aspect. So would be the case for the demand-cum-allotment letter dated 18.01.2002, which, in terms of DDA's plea was sent to the appellant through speed post. Though, prima facie, as per the material produced by the respondent in its status report before the learned Single Judge, the demand-cum-allotment letter was sent to the appellant at C-I/330, Yamuna Vihar, Delhi, *ipso facto*, that too does not necessarily imply that it was not delivered to the appellant. Suffice to say, it is not the case of the DDA that it was received back undelivered. Whether it was actually delivered to the appellant or not, is a matter of fact, which this Court desists from investigating in its limited writ jurisdiction. In the given factual conspectus, the reliance placed upon *V.N. Bharat's case (supra)* by the Id. counsel for the appellant is wholly misplaced. In view thereof, the reliance placed upon *Usha Saikia's case (supra)* which concludes that the public notices are not substitute for the individual notices, gets inconsequential.

9. As for the delays and laches, the allotment relates back to the year 2001. The writ petition out of which the instant appeal arises, was filed only in the year 2016. The appellant admits that he became aware of the cancellation of allotment on account of non-payment in March, 2011. Even thereafter delay of almost five years in approaching the Court is without any just explanation much less

reasonable. It is not the case that the petitioner was incapacitated by himself on any account whatsoever in approaching the Court within a reasonable time. In the given facts and circumstances, the reliance placed upon *Madhu Arora and Rajbal's cases (supra)* is misplaced.

10. In view of the foregoing discussion, we do not find any merit in the appeal and the same is dismissed. No order as to costs.

A. K. CHAWLA, J

S. RAVINDRA BHAT, J

APRIL 03, 2018

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