

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

%

Date of decision: February 12, 2018

+ W.P.(C) 11723/2016

GROUP CAPT. MUKESH PAUL

..... Petitioner

Through: Ms. Madhumita Bhattacharjee, Adv.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Manika Tripathi Pandey and
Mr. Ashutosh Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

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

“In the circumstances as stated above it is most humbly prayed that this Hon’ble Court may be pleased to:

a) issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the demand letter No.F.777(739)95/SFS/DW-II/05 dated 0.11.13 (Annexure-P 10) as illegal and void ab initio;

b) issue a writ of mandamus or any other appropriate writ order or directing the respondent to give possession of a Flat no. 169, GF, Pocket III, Sector-11, Dwarka, Delhi forthwith in compliance of orders of Hon’ble Lieutenant Governor of Delhi dated 18.03.2009;

c) issue a further writ of mandamus or any other appropriate writ order or direction directing the

respondent to compensate the petitioner by paying exemplary damages alongwith interest at the prevalent market rate to him for the harassment caused to him;

d) Grant costs in favour of the petitioner;

-AND-

e) Grant any further or other order or orders as deemed fit by this Hon'ble Court in the interest of Justice."

2. It is the case of the petitioner that he is a retired defence personnel and was posted at various places of the Country. He applied for a flat in Dwarka under the VIIIth SFS Scheme in July, 1995. The flat was allotted to the petitioner in Sector 22, Pkt/Block-1, Dwarka at a cost of ₹7,20,000/- in November, 2011. At the time of allotment, he was posted at Arakkonam (Tamil Nadu) and no information about allotment of flat was provided to the petitioner by the respondent. It is the case of the petitioner that he was totally ignorant about allotment of flat till February, 1999 when he received a letter dated October 09, 1998 from the respondent at his place of posting in Arakkonam asking him to apply for refund of registration deposit of ₹50,000/-. Upon receipt of the said letter, petitioner vide his letter dated February 24, 1999 requested the respondent for re-allotment of flat, which request was rejected by the respondent vide its letter dated August 18, 1999. On November 20, 1999, the petitioner applied for refund of the registration amount along with interest but till July, 2001 no refund was received by the petitioner. Vide letter dated July 21, 2001 the petitioner requested Lieutenant Governor for reconsideration of his case. On July 25, 2001, respondent asked the petitioner to forward his FDR number and any other documents pertaining to registration to its office. The petitioner

immediately complied with the same but no action was taken by the respondent.

3. It is the case of the petitioner that vide letter dated February 25, 2002, he again applied for reconsideration of his case for allotment of flat but the respondent through its letter dated June 10, 2002 once again advised him to apply for refund of registration amount. It is his case that in spite of several requests to the respondent, the petitioner did not receive any reply. On March 19, 2008, the petitioner moved a petition before the Lok Adalat. The Presiding Officer of Lok Adalat while observing that justice was not meted out to the petitioner, forwarded the case to Hon'ble Lieutenant Governor for decision. He referred to the order dated January 27, 2009 passed by the Lok Adalat in that regard.

4. It is the case of the petitioner that on March 18, 2009, Hon'ble Lieutenant Governor opined that there is no record with the DDA to establish that letter of allotment was ever issued to the petitioner in case of the first allotment in 1995 and ordered for allotment of Category-II SFS flat in Dwarka, at current cost to the petitioner. However, no action was taken by the respondent except sending a letter dated April 12, 2009 intimating the decision of the Hon'ble Lieutenant Governor. On August 18, 2009, petitioner wrote a letter to Hon'ble Lieutenant Governor asking him to issue directions to respondent authority to comply with its order dated March 18, 2009. The petitioner was allotted Flat No.13-C, Pocket 2, Sector-7, Dwarka vide demand letter dated February 19, 2010 but this time also the intimation related to allotment of the flat was not provided to the petitioner by any means and the petitioner had never received any allotment letter. The petitioner took a home loan and deposited the

amount of ₹29,42,878/- along with conveyance deed charges on July 12, 2010, which included interest amount of ₹1,57,000/- and ₹20,000/- towards restoration charges. It is the stand of the petitioner that the possession letter of the aforesaid flat was issued on March 29, 2011 i.e nine months after the payment of cost of the flat. It is also stated that the flat allotted to the petitioner was much smaller in comparison to the flat which was allotted to him in the year 1995. It is stated that at the time of handing over the physical possession of the flat in June, 2010 the flat was found unfit for human habitation and badly required repair work. The petitioner vide his letter dated June 08, 2011, requested the Executive Engineer, Western Division, DDA to carry out the repair works. It is his case that despite several reminders, nothing was done by respondent authority, which constrained him to request for change of accommodation at ground floor as the petitioner had a service injury leading to some difficulty in climbing the stairs.

5. It is the stand of the petitioner, in pursuance of the concurrent request of the petitioner, respondent issued a demand letter in November 2013 levying the restoration charges against and change charges in addition to cost of flat which amounted to ₹50,62,245/- for allotment of a flat on the ground floor being Flat No.169, GF, Pocket III, Sector-11, Dwarka. It is the case of the petitioner, that he was shocked after receiving the new demand letter as it was a mere change of allotment as the earlier flat was not fit for human habitation and for which he has made the full payment way back in 2010. Therefore, the petitioner wrote a letter dated August 27, 2013 to the Commissioner, Housing stating all the facts and requested him to be considerate while levying charges. As the respondent did not reply to the petitioner's letter dated August 27,

2013, the petitioner again wrote a letter dated January 31, 2014 to the Hon'ble Lieutenant Governor apprising him about the whole situation and how the respondent is acting arbitrarily by charging present rates for change of allotment and prayed that as he has already made the full payment way back in 2010, including restoration charges, therefore, he should not be charged any further amount for the delay caused by the respondent. It is his case that finally vide letter dated April 30, 2014, the respondent informed the petitioner that his case has been examined afresh and the cost of the newly allotted flat was levied as per approval of the competent authority as per the policy. It is his case that charging the cost of flat as per market value of year 2013, even though the order of Hon'ble Lieutenant Governor was passed on March 18, 2009 is absolutely arbitrary and unfair.

6. The respondent has filed its counter affidavit, wherein it is the stand, that the petitioner was successfully allotted a ground floor flat at Sector 22, Pocket 2 Dwarka in the draw held on October 10, 1995. However, the petitioner failed to deposit the demanded installments resulting in automatic cancellation of the allotment, which was restored by the Hon'ble Lieutenant Governor on current cost. The petitioner was allotted another flat bearing No. 13C, 2nd Floor, Sector 7, Pocket 2, Dwarka. The petitioner deposited the cost of the flat on issuance of Demand cum Allotment letter. It is the case of the respondent that the petitioner had requested for change of floor from 2nd to ground floor and also requested for waiver of interest and restoration charges. The matter was processed and examined at length. The Hon'ble LG ordered that he be allotted the ground floor as it was a genuine hardship case. Accordingly, another flat being No. 169, Pocket III, Sector 11, Dwarka

was allotted and earlier flat was cancelled. The costing of flat was done and intimated vide letter dated January 01, 2013 for ₹50,62,245/-.

7. It is the case of the respondent that the petitioner did not deposit the balance amount as per the Demand and Allotment letter and is liable to pay the interest after January 30, 2014. Instead of depositing the amount, the petitioner again represented before the Hon'ble Lieutenant Governor for waiving of interest and restoration charges. The matter was thereafter examined again by the Accounts Department regarding costing. The Accounts Department has clearly stated that the cost of new flat has been demanded as per policy in vogue, and with the approval of the Commissioner. It is stated that the petitioner has chosen not to pay the demanded amount and the balance cost of ₹20,99,367/- is attracting a compound interest @ 15% w.e.f January 30, 2014 to the date of actual payment. The respondent prayed for dismissal of the writ petition.

8. Ms. Madhumita Bhattacharjee, learned counsel for the petitioner apart from reiterating the stand of the petitioner in the pleadings would submit that the petitioner cannot be penalised for the wrongs of the DDA, inasmuch as the DDA initially not sent the communication about the allotment to the petitioner, which fact was considered by the Hon'ble Lieutenant Governor, resulting in a decision to allot a Category-II, SFS Flat in Dwarka. The actual costing of the flat at the time of application was only ₹7,20,000/-. It is her submission that the respondent could have claimed the said amount and not ₹29,42,878/- along with restoration and change charges. That apart, it is her submission that the flat, which has been allotted to the petitioner was inhabitable and badly required repair work. Unfortunately, despite several representations,

nothing was done by respondent authority, which constrained the petitioner to request for change of accommodation at ground floor as the petitioner had also a service injury leading to some difficulty in climbing the stairs, which request has been acceded to and the petitioner was allotted a ground floor flat bearing No.169, GF, Pocket III, Sector-11, Dwarka. According to her, the new flat was only in exchange of earlier flat No. 13C, 2nd Floor, Sector 7, Pocket 2, Dwarka and the respondent could not have recomputed the cost of the flat to be ₹50,62,245/-; and the restoration and change charges. She also submitted, the restoration charges could not have been claimed when there is no cancellation of flat.

9. On the other hand, learned counsel for the respondent would justify the action in terms of the stand already taken by the respondent in its counter affidavit. That apart, she also stated that the petitioner is now precluded from challenging the cost of the flat bearing No. 13C, 2nd Floor, Sector 7, Pocket 2, Dwarka as the petitioner has already paid the amount of ₹29,42,878/-. Even otherwise, it is her case that the said costing was made in the year 2010 and the petitioner paid the amount thereafter and the filing of the petition in the year 2016 should be hit by delay and laches.

10. Insofar as the other plea of the learned counsel for the petitioner seeking additional cost of ₹50,62,245/- and also restoration and change charges while allotting Flat No.169, GF, Pocket III, Sector-11, Dwarka is concerned, it is her submission that the said flat has been allotted on the asking of the petitioner, may be for his convenience because of an injury suffered by him. She stated, admittedly the petitioner had not applied

under any special category. Hence, the allotment of a ground floor flat was a general request made by the petitioner, which was acceded to and the same was agreed to by the Competent Authority on the payment of the current cost for the new flat as per the policy in vogue.

11. Having heard the learned counsel for the parties, suffice to state that the only relief sought for by the petitioner is with regard to the demand letter at Annexure P-10 whereby the respondent while allotting Flat No.169, GF, Pocket III, Sector-11, Dwarka has made a claim for ₹50,62,245/- apart from restoration charges of ₹20,000/- and change charges of ₹10,000/- and had called upon the petitioner to pay a net amount of ₹20,99,367/- before a particular date. If that being the limited relief claimed by the petitioner, he is precluded from challenging the costing of Flat No. 13C, 2nd Floor, Sector 7, Pocket 2, Dwarka, for which the petitioner has already paid the amount of ₹29,42,878/-. The plea of the learned counsel for the petitioner in that regard is unsustainable as the same is not the grievance made in this petition.

12. Now coming to the issue of costing of the flat No. 169, GF, Pocket III, Sector-11, Dwarka as ₹50,62,245/- (apart from restoration and change charges) is concerned, there is no dispute that the change has been effected on the asking of the petitioner as, according to him, he has a difficulty in climbing the stairs. If that be so, no doubt, the reasons for asking for a change of flat are compelling but such a request was not made by the petitioner at the first instance when his request was acceded to by the Hon'ble Lieutenant Governor and was allotted Flat No.13C, 2nd Floor, Sector 7, Pocket 2, Dwarka. No doubt, the petitioner has also made a grievance that the earlier flat allotted to him was inhabitable and

required lot of repair work but that ipso-facto would not have entitled the petitioner a change of flat. At the most, the petitioner could have insisted upon the respondent to make the flat habitable by making necessary repairs. Even assuming, it is the case of the petitioner that the petitioner had been allotted a ground floor in the year 1995, which order could not be conveyed to the petitioner but the same would not confer any right in favour of the petitioner for a ground floor as subsequent thereof the petitioner was allotted a flat on the second floor, which has been accepted by him by paying the cost of the said flat. It is a different issue that later the petitioner had felt the need to seek change of flat to a ground floor. This is at his own asking and if that be so, the stand of the respondent that they did the costing on the basis of the policy in vogue, cannot be faulted. Further, it is not the case of the petitioner that the market value of the ground floor flat would not be equivalent to an amount of ₹50,62,245/- as claimed by the DDA. I do not see any illegality in this action of the respondent. The issue raised in this petition is covered against the petitioner by the judgment of this Court in the case of ***Abnash Chander Chopra vs. Delhi Development Authority 68 (1997) DLT 858*** wherein in paras 6 and 7 this Court has held as under:

“(6) In Bareilly Development Authority v. Ajay Pal Singh, it was held by the Apex Court that : "When the contract entered into by the State is non-statutory and purely contractual the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter-se. In this sphere, the parties can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority in the said contractual field. It is also settled that no writ order can be issued under Article 226 of the Constitution of India so as

to compel the authorities to remedy a breach of contract pure and simple.

(7) It has to borne in mind that the scheme floated by the respondent-DDA is a non-statutory Scheme. The letter of allotment issued by the Dda is an offer which the allottee may or may not accept. If he accepts, then a concluded contract comes into existence and the allottee is bound by the terms contained in the letter of allotment including those relating to payment and delivery of possession. It is an admitted position that in a draw held on 15.12.1989, the flat No. 53, Block-B, Pocket- 11, (2nd floor) was allotted to the petitioner vide allotment-cum-demand letter Annexure-D. By that letter of allotment the petitioner was required to pay a sum of Rs. 1,54,700.00 towards disposal cost of the flat. On 2.2.1990 the petitioner requested for a change from 2nd floor to the ground floor on account of his wife's illness and on getting no immediate response from the respondent in this regard, he deposited the amount as demanded by the DDA. Thus, on such payment made in accordance with the terms of the scheme and the letter of allotment, a concluded contract had come into existence and the DDA was under obligation to hand over possession of the flat No. 53, Block-B, Pocket-11, Sector-18 (2nd floor) to the petitioner. However, it appears that on a consideration of the petitioner's representation dated 2.2.1990, the respondent-DDA took a sympathetic view on humanitarian ground by agreeing to include the petitioner's name in the next draw of lots for allotment of a flat at ground floor. Consequently, in a draw held on 3.7.1990, the petitioner was allotted a flat bearing No. 10, Block-B, Pocket-7, Sector 17, Rohini (Ground floor) vide allotment-cum-demand letter dated 5.2.1991. By that letter of allotment, the petitioner was required to deposit Rs. 2,60,438.67 towards the disposal cost of the flat. Thus, the allotment dated 5.2.1991 was a fresh allotment of flat or fresh offer for all intent and purposes and the petitioner was at liberty either to accept the offer or refuse it. In a transaction for sale of immovable property, among other material terms, the price/premium should be settled to conclude a valid and binding contract between the parties. Where the DDA enters into such a transaction, it is bound to charge premium/price only at the predetermined rates in force on the date of issue of the letter of allotment. If in case the petitioner is not willing to take or accept

the allotment at such rate, it is always open to him to decline the allotment.”

13. Insofar as the plea of the learned counsel for the petitioner that the respondent has claimed an amount of ₹20,000/- as restoration charges and ₹10,000/- as change charges, the respondent in their reply have not stated why restoration charges have been claimed. It is not a case where the allotment of the petitioner was cancelled, which need to be restored but it is a simple case of change of flat for which they have claimed an amount of ₹10,000/-. The learned counsel for the petitioner is justified in challenging the same. The claim of restoration charges of ₹20,000/- is not justified. To that extent, the impugned communication is set aside. The impugned communication is upheld except to the extent of demand for restoration charges. The writ petition is disposed of. No costs.

V. KAMESWAR RAO, J

FEBRUARY 12, 2018/ak

भारतमेव जयते