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

+ **W.P.(C) 8796/2015**

ASHWANI GOYAL

..... Petitioner

Through: Mr. Ashwani Goyal, Mr. J.K. Hoon
and Ms. Tulika Bhatnagar, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. M.K. Singh, Adv. for DDA
Mr. Pankaj Kumar Sinha and Mr.
Kanishk Arora, Advs. for R1/GNCTD

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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15.03.2018

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

“It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to pass the following order / orders: -

- a) Issue a writ, order, directions and instruction in the nature of Mandamus directing all the Respondents to allot a flat in HIG or MIG category as preferred by the petitioner in its application form as per the clause -3 (IV) detailed in “DDA Housing Scheme 2014” to the Petitioner forthwith.*
- b) Direct the Respondents to cancel the draw of lots for flats conducted under DDA Housing Scheme 2014 dated:- 25/11/2014.*
- c) Grant the compensation of Rs.30 Lakhs to the Petitioners for keeping the Petitioner bereft of his rights without any mandate of law or Order by the Respondents;*
- d) Direct the Respondents to pay the cost of Rs.2*

- Lakhs for the litigation to the Petitioner;*
- e) *Pass such other and further order / orders as this Hon'ble Court may deem fit and proper in the interest of justice"*

The facts as noted from the writ petition are, the petitioner is an orthopedically handicapped person with disability of ankylosis of right elbow with restricted supination and pronation. The DDA has brought out a Housing Scheme called as “DDA Housing Scheme 2014”. Petitioner applied online through application form no. 3037158 dated October 4, 2014 under the category of “*person with disability*” having code ‘PD’ in the scheme brochure by paying an amount of Rs.1,00,000/- through net banking. It is contended by the learned counsel for the petitioner that the petitioner had given his preference for HIG category flat at Rohini, Sector-18 and for both HIG / MIG flats at Mukherjee Nagar. It is the case of the petitioner and also contended by the learned counsel for the petitioner that as per clause 3(IV) of the Scheme, persons with disability were to be provided 3% reservation in the allotment of flats. According to him, it was further clarified in a note forming part of clause 3 that in case number of flats in respect of the reserved category comes to a fraction, i.e., less than 0.5%, it would be rounded off to zero and if it is 0.5% or more, it would be rounded off to one. As per the scheme, DDA provided total number of 25034 flats, out of which in the category of HIG there were total 21 flats and in MIG there were total 561 flats to be allotted. He would state the reservation being 3% against 21 HIG flats, one flat should have been reserved for person with disability and similarly 17 flats out of 561 flats should have been reserved in the MIG category. However, no reservation in the HIG category was

provided. The Ld. Counsel contended, the allotment of flats to the persons with disability was decided contrary to the requirement of the scheme, spirit and the provisions of the Disability Act as the persons with disability have not been given appropriate reservation in all the categories and allotment has been done totally on the whims and fancies of the respondents. In other words, it is his contention that the persons with disability have only been considered fit for the lower grade of flats. That apart only 16 flats have been allotted in the MIG category. It is also his submission that the scheme of 2014 does not stipulate any reservation with reference to the number of flats available in a locality, which if stipulated would have allowed the petitioner to appropriately file an application giving preference of an area where the chances of getting allotted a flat were more. He states, this infirmity in the scheme was rectified by the DDA in the scheme of 2017. In substance, the submission of the learned counsel for the petitioner is that the scheme must entail reservation in each category of flats and in each locality. If such information is given there would be informed choice for an applicant more specifically persons with disability to apply appropriately as according to him, the reservation is a beneficial stipulation.

On the other hand, Mr. M.K. Singh, learned counsel appearing for the respondent / DDA would submit that the application submitted by the petitioner was with locality preference as referred above and the petitioner was not successful in the draw. He states, as per the locality preference only 3 flats were reserved that too in the MIG category and the same were allotted to the applicants with application nos. 413258, 397643 and 173501. It is his submission that the reservation in each category of flats is provided locality wise and allotments were made as per locality choice. He also

states, the plea of the Ld. Counsel for the petitioner that there was no reservation in HIG category of flats is because of limited number of flats available in a given locality. He also states the reservation as per locality is being given as per policy of Ministry of Urban Development, Govt. of India. He has also drawn my attention to a compilation of documents filed by the DDA to state in view of the preference of the locality (Rohini and Mukherjee Nagar), the number of HIG flats being limited i.e. 1 and 5 respectively, 3% reservation for PH category could not have been given even in view of the sub-clause 3, of the Clause 3(iv) referred above. He clarifies by stating the petitioner's application for allotment of MIG flat in Mukherjee Nagar is concerned there were 112 flats in that category, three flats were reserved under 3% quota under PH category. The name of the applicant was included in the draw, but was not successful therein. Mr. Singh also clarifies, if the reservation is to be given in the HIG category of flats by taking into consideration the total number of flats, then the preference of locality cannot be given. In other words, it is his submission that since the preference for the locality was given, reservation can be granted locality wise with regard to the number of flats available in each category in that locality.

Having heard the learned counsel for the parties, the issue which arises for consideration is whether the petitioner is entitled to the prayers as made in the petition. There is no dispute that petitioner had applied for HIG flats at Mukherjee Nagar and Rohini and for MIG category at Mukherjee Nagar. In view of limited number of HIG flats in Mukherjee Nagar and Rohini, the benefit of quota for physically handicapped has not been given. But as 112 MIG flats were available, 3 flats were reserved for persons

belonging to PH category, the draw of lots took place but the petitioner was not successful. To that extent, the action of the respondents cannot be faulted. During the course of his submissions the learned counsel for the petitioner contended that there should be reservation in each category of flats, cumulatively was answered by Mr. Singh by stating that it is not tenable as in such a situation there cannot be any preference of locality. In other words, preference to an applicant to choose area / locality, must necessarily means reservation shall be on the number of flats available in that area / locality. I may also state here, as informed during arguments the petitioner had applied for allotment of flat in the year 2017 as well, but was not successful in the draw of lots. This surely suggest, the allotment of flat even under the PH Category is not certain, but would dependent upon applicant being successful in draw of lots. So there is no infringement of any legal right.

I do not see any merit in the petition, the petition is dismissed.

CM No. 19513/2015

In view of the order passed in the writ petition, the application has become infructuous and dismissed as such.

V. KAMESWAR RAO, J

MARCH 15, 2018/jg