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

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Decided on 07.11.2019

+ **W.P.(C) 1887/2019**

R P SARTHY (THROUGH SPA HOLDER SH. VARUN KR. JAIN)

..... Petitioner

Through Mr. Kartik Khanna, Mr. Lovish
Sharma and Mr. Gobind Malhotra,
Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through Ms. Aakansha Kaul and Mr. Prabudh
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. The substantive prayers made in the writ petition are as follows:-

“a. to issue a writ of certiorari or any other writ, order or directions thereby quashing the speaking order dated 19.12.2018 bearing no. L/483(578)/2008/NPRS/LN/4135 passed by the respondent;

b. to issue a writ of mandamus or any other writ, order or directions thereby directing the respondent to refund total amount of Rs. 9,07,133/- deposited by the petitioner qua booking and allotment of flat bearing no. 114, Pocket-D, Lok Nayak Puram, Delhi bearing file no. L/483(578)/2008/NPRS/LN to the petitioner;

c. to issue a writ of mandamus or any other writ, order or directions thereby directing the respondent to pay interest at the rate of 18% p.a. from 19.07.2010 on total amount of Rs. 9,07,133/- till its realization to the petitioner; ”

2. Notice in this petition was issued on 25.02.2019. The notice was made returnable for 06.05.2019. To be noted, on 25.02.2019, the respondent i.e. Delhi Development Authority (in short ‘DDA’) was represented by Mr. Dhanesh Relan, Standing Counsel.
3. Pertinently, on that very date, the Court had queried Mr. Relan as to the basis on which the forfeiture of the amount made over to the DDA had been effected. Mr. Relan had sought time to obtain instructions.
4. On the returnable date i.e. 06.05.2019, counsel for the DDA sought time to file a counter-affidavit in the matter. For this purpose, two weeks were granted to the DDA. On the next date of hearing, i.e. 09.08.2019 the matter could not be taken up and it is in these circumstances that the matter has been listed in Court today.
5. Though, Ms. Kaul has sought further time to file a counter-affidavit, given the fact that the only defence that has been put across the bar which is contained in the impugned order, I do not think any purpose will be served in granting further time. It is trite law that the State or instrumentalities of the State cannot furnish reasons other than those which are contained in the order impugned before the court. The impugned order should speak for itself.
6. Given these circumstances, I proceed to hear the matter.

7. Ms. Kaul, based on the record, says that the petitioner was allotted a flat based on an affidavit filed by him that he or his family members which included his spouse had not been allotted a flat by the DDA. Ms. Kaul says that inquiries conducted by the DDA revealed that the petitioner's spouse had been allotted a flat in 1989 prior to the date of the allotment of the subject flat in favour of the petitioner. For this purpose, Ms. Kaul has drawn my attention to the impugned order dated 19.12.2018.

8. Insofar as this aspect of the matter is concerned, there is no dispute that the petitioner does not raise a cavil concerning a finding returned to this effect in paragraph 5 of the impugned order. For the sake of convenience, paragraph 5 of the impugned order is extracted hereafter:-

“5. The petitioner had also submitted an affidavit to the effect that above mentioned eligibility condition has not been violated. But on perusal of record, it has been found that Flat No 37-A in South Traders CGHS, Sector-9, Rohini stood allotted in the name of the wife of the petitioner viz. Sh. R.P. Sarthy through draw of lots held on 24.02.1989.”

9. That being said, the question which needs to be answered is, as to whether the DDA has the power to forfeit the amount made over by the petitioner for allotment of a flat regardless of his conduct.

10. Ms. Kaul, fairly concedes, that there is no provision in the Scheme, that is, the New Pattern Housing Registration Scheme, 1979 (in short “Scheme”) which empowers the DDA to forfeit the amount made over by the petitioner, in the circumstances adverted to above.

11. Given this circumstance, in my opinion, the DDA will have to refund the amount to the petitioner. It is ordered accordingly. However, liberty is given to the DDA, if it so wishes to initiate an appropriate proceeding as per law, as it may be advised, qua the alleged conduct of the petitioner.

12. I may also indicate that though the petitioner had sought the refund of Rs.9,07,133/- with interest, I am not inclined to award interest having regard to the conduct of the petitioner. The DDA will, however, remit the Principal amount i.e. Rs.9,07,133/- to the petitioner within eight weeks from the date of receipt of a copy of this order.

13. The petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

NOVEMBER 07, 2019

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