

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: January 22, 2019

+ W.P.(C) 2117/2011

SURENDER SINGH DESWAL

..... Petitioner

Through: Mr. R.K. Saini and Ms. Vivya Nagpal,
Adv.

versus

DDA

..... Respondent

Through: Ms. Shobhna Takiar, Adv.

AND

+ W.P.(C) 2396/2011

CHHAVI AGRAWAL AND ANR.

..... Petitioners

Through: Mr. R.K. Saini and Ms. Vivya Nagpal,
Adv.

versus

DDA

..... Respondent

Through: Ms. Shobhna Takiar, Adv.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The writ petitions are filed by the petitioners with the following prayers:-

“PRAYERS IN W.P.(C) 2117/2011

In the premises aforesaid, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to issue:-

a) A Writ of Certiorari calling for the records of the case for perusal;

b) A Writ of Certiorari quashing the action of the respondent / DDA in allotting garages to the petitioners in not holding the draw for wait list candidates (after some flats had become available on account of surrender / cancellation), as promised in the brochure / scheme and rather offering them to the registrants of a new scheme introduced later, being illegal, arbitrary, malafide, discriminatory and unjust and in violation of the rules, regulations and the scheme and the Principles of Equity, Justice, Good Conscience, promissory estoppels and Fair Play;

c) A Writ of Mandamus directing the DDA to hold a draw for the willing wait list candidates of DDA Housing Scheme, 2008, like the petitioner, and allot them flats out of 172 flats which became available after surrender / cancellation of the allottees of the said scheme, before offering them for allotment to new registrants in a subsequent new scheme.

d) A writ of mandamus commanding the Respondents to pay the cost of this petition to the Petitioners.

e) Any other writ, order or direction, which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

“PRAYERS IN W.P.(C) 2396/2011

In the premises aforesaid, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to issue:-

a) A Writ of Certiorari calling for the records of the case

for perusal;

b) A Writ of Certiorari quashing the action of the respondent / DDA in not holding the draw for wait list candidates (after 172 flats had become available on account of surrender / cancellation), as promised in the brochure / scheme and rather offering them to the registrants of a new scheme introduced later (after the 9 months period of wait list was over), in violation of the rules, regulations and the scheme and the Principles of Equity, Justice, Good Conscience, promissory estoppels and Fair Play, being illegal, arbitrary, malafide, discriminatory and unjust and in violation of the rules, regulations and the scheme and the Principles of Equity, Justice, Good Conscience, promissory estoppels and Fair Play;

c) A Writ of Mandamus directing the DDA to hold a draw for the willing wait list candidates of DDA Housing Scheme, 2008, like the petitioner, and allot them flats out of 172 flats which became available after surrender / cancellation of the allottees of the said scheme, before offering them for allotment to new registrants in a subsequent new scheme.

d) A writ of mandamus commanding the Respondents to pay the cost of this petition to the Petitioners.

e) Any other writ, order or direction, which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. As the issue in these petitions is identical with similar facts, the same are being disposed of by this common order.

3. It is necessary to state here that W.P.(C) No. 2117/2011 was initially dismissed on April 04, 2011. Pursuant to an LPA No. 360/2011 filed by the DDA, a Review Petition No. 497/2011

was filed, which was allowed and the writ petition was revived and restored to its original number.

4. Some of the relevant facts are, the DDA introduced a Scheme for allotment of residential flats in Delhi titled as DDA Housing Scheme, 2008. The Scheme was in operation between August 06, 2008 to September 16, 2008. Some of the relevant features of the Scheme were; (i) a separate waiting list of 200 applicants will also be declared in order of priority; (ii) successful applicants shall have the option to surrender the flats before the issuance of the possession letter. There is no dispute that the petitioners had applied for allotment of flat under the Scheme. The application was accepted by the DDA but the petitioners were unsuccessful for allotment of a flat. However, they were included in the wait list of 200 candidates. It is a matter of record that 172 flats became available on account of surrender and cancellation by the applicants who had been issued the demand letters. The DDA did not hold a draw for allotment of the flats to the wait listed candidates. On the contrary, DDA included the said flats in the new Housing Scheme introduced in December, 2010. It appears, a representation was made by the petitioner in W.P.(C) No. 2117/2011 on December 30, 2010, which was

rejected by the DDA on March 01, 2011 stating that the list was valid only for nine months and issue of demand letters was delayed due to investigation of the DDA Housing Scheme, 2008 by Economic Offence Wing. The DDA Housing Scheme, 2010 was announced in November, 2010 and surrendered flats under the Scheme of 2008 have already been included in Scheme of 2010. Therefore, it does not create any right for allotment of flat to the wait listed applicants. The husband of the petitioner No.1 also made an RTI application regarding the allotment, procedure and steps with respect to waiting list of the DDA Housing Scheme, 2008 to which the DDA has informed him on October 18, 2010 that the draw in respect of waitlisted allottees under the Housing Scheme, 2008 is under process.

5. It was contended by Mr. R.K. Saini, learned counsel for the petitioners that the DDA had introduced a similar Scheme in the year 2003 titled as "Rohini HIG Housing Scheme, 2003". Despite there being no such provision, the DDA prepared a waiting list along with main draw of the Scheme, which was held in September, 2003 and thereafter held a draw for the wait list applicants on October 22, 2003 of the flats which had become available after surrender / cancellation of the successful

applicants and allowed the same. In other words, it is his submission that the impugned action of the DDA is arbitrary, mala fide and discriminatory. He had submitted that a bare perusal of the relevant clause of the Scheme clearly establishes the material fact that the condition with regard to the right of the wait listed candidates will only operate in case the wait listed registrants fail to get a flat from the surrendered ones that is only after the draw is held and not in a case where no draw has been held and as in the present case no draw with respect to the allotment of the cancelled 172 flats was held and no question of denying any right to the waitlisted registrants arose as alleged by the DDA.

6. He had also drawn the attention of the Court to the judgment in Writ Petition (Civil) No. 4895/2011 titled as ***Pinky Punia v. DDA***, which has already been decided in favour of the petitioner in that case. It was his submission that the said judgment squarely applies to the petitioners. He has also drawn the attention of the Court to an interim order passed by this Court on April 08, 2011, which directed that one flat should be kept vacant as per the preferences given in the applications by the petitioners in W.P.(C) 2396/2011. Even the Division Bench in

LPA 360/2011 has granted interim order in favour of Surinder Singh Deswal.

7. On the other hand, Ms. Shobhna Takiar, learned counsel appearing for the DDA, apart from reiterating the facts would submit that no draw was held as per brochure due to changed circumstances pursuant to the demand cum allotment letters were issued to successful allottees, late in December 2009. List of waitlisted candidates was required to be valid till September 2010 (i.e. 9 months). But all the vacant 172 flats were added in the Housing Scheme of 2010. As such due to changed circumstance and late issuance of demand cum allotment letters to successful allottees, no draw was held for waitlisted persons. Even after six months the waitlisted persons also did not deposit registration money for holding draw so have no vested right for even asking for holding a draw. She would state that the waitlisted persons had a right only to participate in draw and same relief has been sought in the petition as such the petitioners have no vested right for allotment of flat without holding a draw. After ten years when no vacant flat of the said Housing Scheme is available with the respondent DDA, the petitioners are not entitled for any draw without availability of flat of such Housing Scheme. Because this

criteria of waitlisted was incorporated in brochure so that flats of the said Scheme may not be kept vacant. But due to changed circumstances as mentioned above that demand cum allotment letters were issued to successful allottees after a year due to investigation by EOW and subsequent to that within two months on expiry of 9 months from December 2009 all vacant flats were added in the Housing Scheme of 2010. She would submit that the question which has been decided in the case of ***Pinky Punia (supra)***, the Court in para 5 of the said judgment dated April 29, 2013 is as to 'whether the waitlisted applicants had a legal right to be considered for allotment of the surrendered flats by way of holding of draw of lots after six months from the date of issue of demand letters. She has drawn the attention of the Court to para 7 of the judgment to contend that if draw in terms of the aforesaid Scheme was held by DDA and a waitlisted registrant was not successful in obtaining allotment in such a draw, that would not create any legal right in his favour to seek allotment of another flat from DDA merely on the strength of waiting list in which his name was included. In para 11 the ld. Single Judge has distinguished the case of ***Vaibhav Gupta*** by noticing that no written assurance was given to the petitioner Vaibhav Gupta but

in Pinky Punia under RTI she was given written assurance that waitlisted registrants of 2008 scheme was under consideration and would be intimated shortly.

8. On legal aspect, learned counsel for the DDA would state that on return of registration money there was no vested right to claim for holding draw of lots. Even draw of lots also does not create any vested right for allotment of flat unless successful. According to her, justification for not holding draw is that flats were already added in the next Housing Scheme of 2010. She would state, the present case is distinguished from the case of *Pinky Punia (supra)* because in the present case the petitioners were duly informed vide letter dated January 31, 2011 that the surrendered flats included in the flats offered under the Scheme of 2010 and no vacant flat is available for holding draw. It was also clear to the petitioner in November 2010 when the Housing Scheme 2010 was launched. Since demand letter was issued in December 2009 and waiting list was valid till June 2010 or September 2010 but the petitioners approached this Court in April 2011 much after announcement of Housing Scheme of 2010 and merger of flats of 2008 Scheme in the Housing Scheme of 2010. But in the connected case of W.P. (C) 2117/2011, the

petitioner did not submit any representation of seeking information from DDA and DDA also never gave any assurance to petitioner to consider waiting list on declaration of Housing Scheme of 2010. According to her, these cases are distinguishable from the case of ***Pinky Punia (supra)***. In the said case she was informed by DDA by a letter dated November 15, 2010 that the matter of allotment of flat to the wait listed registrants was under consideration. In the said case information under RTI given to petitioner was considered as an assurance by DDA by the Court. In the case of ***Pinky Punia (supra)***, the Id. Judge has also drawn a distinction between the case of ***Vaibhav Gupta vs. DDA*** and the case of ***Pinky Punia (supra)*** in para 11 and held that no written assurance was given to Vaibhav Gupta as is given to Pinky Punia. She would state that in the present case also no written assurance was ever given to the petitioners for consideration of waiting list registrants as such the judgment of ***Pinky Punia (supra)*** is not applicable in the facts and circumstances of the present case.

9. It was further her submission that it is well settled that mere draw of lots/allocation letter does confer any right to allotment. Even draw of lots is mere identification or selection of

the allottee which does not clothe an allottee with a legal right to seek allotment and above that allotment of a particular flat of his/her choice in transgression to the rights of others. Even otherwise mere direction of the court without considering the legal position does not amount to precedent to be applicable in each and every case. She submitted Courts should not place reliance on decisions without discussing how the factual situation fits in with the fact situation of the decision relied upon. Observations of courts not to be read as thereon. She would rely upon the judgment reported as **(2002) 3 SCC 496 Haryana Financial Corporation and Another v. Jagdamba Oil Mills and Another.**

10. Having heard the learned counsel for the parties, it is noted, there is no dispute that the Coordinate Bench of this Court in the case of **Pinky Punia (supra)**, which also relates to the same Scheme, an identical issue was decided in favour of the petitioner in that case, inasmuch as in para 12 of the judgment in the case of **Pinky Punia (supra)**, the Court has held as under:-

“12. In view of the aforesaid discussion, I am of the view that, if a flat of the category in which the petitioner had applied in the scheme of 2008 is available with DDA or becomes available at a later date, such a flat would be offered to the petitioner, on the price prevailing on the

date on which the allotment is offered to him. If a flat of the appropriate category is currently available to DDA it shall be offered to her by DDA within a period of four months from today and if no such flat is available with DDA, it would offer a flat of an appropriate category to the petitioner within four weeks of such a flat becoming available with it.”

11. In fact, I note that this Court on April 04, 2016 passed a very detailed order. The same is reproduced as under:-

“1. The petitioner’s applied for allotment of a flat under DDA Housing Scheme, 2008. The main draw was held on 16th December, 2008 in which the petitioners were unsuccessful. However, their names were kept in the waiting list of 200 candidates at serial Nos.4, 5 and 14. The allotment-cum demand letters were issued to the successful applicants in December, 2009 and they were directed to make the payment upto June 2010. 172 flats became available on account of surrender/cancellation in respect of which DDA was required to hold a draw of lots for allotment of 172 flats to the wait listed candidates. Instead DDA included the flats in the new Housing Scheme introduced in December, 2010. Aggrieved by the same, the petitioners have filed the present writ petition.

2. This case is squarely covered by the judgment dated 29th April, 2013 passed by this Court in W.P.(C) 4895/2011 in which this Court directed Delhi Development Authority to offer the flat on the price prevailing on the date on which the allotment would have been issued to him. Para 12 of the judgment dated 29th April, 2013 is reproduced hereunder:

“12. ...If a flat of the category in which the petitioner had applied in the Scheme of 2008 is available with DDA or becomes available at a later date, such a flat would be offered to the petitioner, on the price prevailing on the date on which the allotment is offered to him. If a flat of

the appropriate category is current available to DDA it shall be offered to her by DDA within a period of four months from today and if no such flat is available with DDA, it would offer a flat of an appropriate category to the petitioner within four weeks of such a flat becoming available with it.”

3. Learned counsel for the petitioner submits that three flats have been kept available by DDA in terms of orders of this Court.

4. Learned counsel for the petitioner submits that he is entitled to the allotment on the price in terms of Clause 7.3 of the Housing Scheme 2008 whereas learned counsel for the respondent submits that DDA would charge the price on the date of issue of the allotment letter.

5. Delhi Development Authority is directed to examine this issue and bring the allotment letter in Court on the next date of hearing. If the DDA does not agree with the contentions raised by the petitioner, the reasons thereof shall be recorded in the allotment letter.

6. The contentions raised by the petitioner shall be considered on the next date of hearing.

7. List on 16th May, 2016.”

12. Pursuant to the aforesaid order, a statement was made by the learned counsel for the DDA, which is noted in the order dated July 11, 2016 that the petitioners including the petitioners in other writ petition being W.P.(C) No. 2396/2011 shall be issued allotment letters within a period of two weeks. Thereafter, when the matter was listed on November 04, 2016, a submission

was made by the learned counsel for the DDA that she has instructions to file an application for recall / review of the order dated April 04, 2016. Accordingly, the Review Petition was filed in these writ petitions being Review Petition Nos. 524/2016 and 525/2016. The said Review Petitions came to be dismissed by this Court on May 08, 2018. So, the fact remains, the order dated April 04, 2016 has not been reviewed and the same has attained finality. A perusal of the said order would reveal that the Court had referred to the judgment in the case of *Pinky Punia (supra)* being W.P.(C) No. 4895/2011 and has also concluded that these cases are squarely covered by the judgment in that case. The only aspect on which the matter was referred to the DDA was, whether the petitioners are entitled to the allotment of the flat on the price in terms of Clause 7.3 of the Housing Scheme, 2008 whereas according to the learned counsel for the respondent, DDA would charge the price on the date of issue of the allotment letter. Be that as it may, it is a conceded fact that the judgment of the Coordinate Bench of this Court has attained finality till the Supreme Court, as the SLP filed by the DDA has been dismissed.

13. Insofar as the judgment of the Supreme Court relied upon by Ms. Takiar, learned counsel for the DDA is concerned, the

said judgment is on the proposition that the Court should not rely on earlier judgments on which reliance has been placed as a precedent without discussing how the factual situation fits in with the fact situation of the decision relied upon. With utmost respect, the judgment has no application in the facts of this case, more so when the judgment in the case of *Pinky Punia (supra)* relates to the same Scheme, which is subject matter of the present petitions. Hence, the said judgment relied upon has no applicability.

14. So, in view of the aforesaid position, since the case of *Pinky Punia (supra)* also relates to the same Scheme, for parity of reasons, the conclusion arrived at by the Coordinate Bench of this Court in the case of *Pinky Punia (supra)* shall also govern the present writ petitions as well. Accordingly, the writ petitions are allowed. It is directed that, in terms of the interim order, the flats of the category in which the petitioners had applied in the Scheme of 2008 and has been kept vacant by the DDA, such flats would be offered to the petitioners on the price prevailing on the date on which the allotment is offered to them within a period of four months from today. It is made clear, if the registration amount has been refunded back to any of the petitioners, the

same shall be repaid by the petitioners to the DDA with interest @ 6% p.a. within four weeks from today. The further follow-up action shall be taken by the petitioners accordingly. The writ petitions stand disposed of. No costs.

V. KAMESWAR RAO, J

JANUARY 22, 2019/ak

