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

Date of decision: 22nd January, 2019

+ W.P.(C) 5855/2013 & CM No. 12910/2013

SUBODH KUMAR Petitioner

Through: Mr. Ajay Verma and
Ms. Katyaini, Advs.

versus

DDA Respondent

Through: Ms. Monika Tripathy Pandey
and Mr. Ashutosh Kaushik,
Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. The Delhi Development Authority (hereinafter referred to as “DDA”) promulgated a scheme for allotment of flats in Delhi, which was titled the “New Pattern Registration Scheme, 1979” (hereinafter referred to as “NPRS”). Applicants, under the said Scheme, were entitled to be allotted flats, as per their priority, for which purpose a priority number was assigned to each applicant.

2. The petitioner applied, under the NPRS, for allotment of a flat. In acknowledgment thereof, deposit receipt was issued, by the DDA to the petitioner on 20th September, 1979. Registration certificate,

registering the petitioner under the NPRS, was also issued to the petitioner, by the DDA, on 1st May, 1980.

3. A draw was conducted, for allotment of flats under the NPRS, on 29th March, 1986, resulting in the petitioner being allotted MIG Flat no. A-60C, Nand Nagri (hereinafter referred to as the “Nand Nagri flat”), *vide* allotment letter dated 28th August, 1986.

4. The terms and conditions attending the allotment of the Nand Nagri Flat to the petitioner in 1986 included a clause [Clause (6)], which permitted unwilling allottees to surrender the flat allotted to them, on certain terms. The said clause may be reproduced thus :

“6. Surrender/Cancellation of allotment

In case the allotment is not acceptable to the allottee and is- sought to be surrendered or is cancelled. He/She shall have to pay surrender/cancellation charges equal to 20% of the Registration Deposit, provided the application for surrender/cancellation has been filed within one month from the date of issue of this letter. In the event of surrender/cancellation of allotment in the above said manner, the Registrant will have to pay the prescribed surrender charges within a fortnight to retain a right to be reconsidered for allotment on the new seniority position to be assigned as per rules in force, failing which the amount will be deducted from the Registration Deposit and the balance will become refundable to the Registrant.”

5. The petitioner opted to surrender the allotment, made to him, of the Nand Nagri flat, on 28th August, 1986, by exercising the option available to him in that regard, under the above-extracted Clause (6). 20% surrender charges were deposited, by the petitioner, for the said purpose, *vide* a challan dated 10th September, 1986, whereupon the DDA issued a letter, dated 10th October, 1986, confirming that the allotment, to the petitioner, of the Nand Nagri flat, stood cancelled.

6. Again, in accordance with the provisions of the NPRS, the petitioner opted for consideration of his name afresh, for allotment of a flat under the said Scheme.

7. It is not in dispute that as per the NPRS, the consequence of surrender, by the petitioner, of the allotment of the Nand Nagri flat as made to him, was that the application for allotment of flat, made under the said scheme was entitled to be considered afresh all at the tail-end.

8. The petitioner was not asked to participate in any draw, thereafter, and, pursuant to a query made, by him, under the Right to Information Act, 2005, was informed, in 2006, that the NPRS stood closed. Representations, by the petitioner to the DDA, regarding the fate of his application, for allotment of the flat, having met with no success, the petitioner moved this Court by way of **W.P.(C) 6663/2010** (**Subodh Kumar v. DDA**), for issuance of a writ of mandamus, to the DDA, for allotment of a flat, to the petitioner, at the rates prevalent at

the time of registration. It may be noted, here, that the petitioner claims, fairly, to be entitled to allotment at the rates prevalent only in 1986; not in 1979 when he originally applied, as, consequent to the surrender by him, of the allotment of the Nand Nagri flat in 1986, he was liable to be treated as a fresh applicant.

9. W.P.(C) No. 6663/2010 (*supra*) was decided by a learned Single Judge of this Court, *vide* judgment dated 19th September, 2011. Noting that the only defence put up by the DDA, in opposition to the petitioner's writ petition, was that the, NPRS stood closed *vide* Public Notice issued in 2006, and observing that no allotment had been made by the DDA, to the petitioner, this Court observed that, once the cancellation charges had been accepted, from the petitioner, in accordance with Clause (6) (*supra*), in the year 1986, the DDA was liable to allot a flat, to the petitioner, for which the petitioner had been waiting for three decades. Accordingly, this Court allowed W.P.(C) 6663/2010, and directed the DDA, to "within eight weeks from today process the case of the petitioner for allotment in accordance with law and as per the policy and *treating the priority number of the petitioner to be still in existence.*"

10. On 2nd November, 2011, the petitioner addressed a communication to the DDA, requesting the DDA to comply with the aforementioned judgment dated 19th September, 2011, passed by this Court in W.P.(C) 6663/2010. Continued default, on the part of the DDA, to do so, compelled the petitioner to move this Court once

again, for initiation of contempt proceedings against the DDA *vide* Contempt Case No. 516/2012 which was disposed of by this Court, as, in the interregnum, Flat no. 82-D, 3rd Floor, Pocket-6, Dwarka (hereinafter referred to as the “Dwarka flat”) had been allotted to the petitioner.

11. Consequent to the allotment of the aforementioned Dwarka flat to the petitioner in 2012, a demand letter dated 10th July, 2017 – which is the fulcrum of controversy in the present case - was issued to the petitioner, by the DDA, requiring the petitioner to pay, for the flat allotted to him, the current market cost, i.e. the cost of the flat as it existed on 10th July, 2013, in order to be granted possession thereof.

12. Aggrieved thereby, the petitioner has moved this Court by way of the present writ petition, seeking issuance of an appropriate writ, quashing the aforementioned demand-cum-allotment letter, and for issuance of a writ of mandamus, directing the respondent to issue a fresh demand-cum-allotment letter, to the petitioner, in respect of the Dwarka flat, as per the policy applicable on the date of maturity of the priority number of the petitioner, at the rate applicable on the said date of maturity.

13. I have gone through the record and heard learned counsel Mr. Verma appearing for the petitioner and Ms. Pandey, appearing for the respondent, at considerable length.

14. The main thrust of the submission advanced by Mr. Verma, is that, as this Court had, in its judgment dated 19th September, 2011, directed that the petitioner's case be considered in accordance with his pre-existing number, the petitioner was entitled to possession of the Dwarka flat at the rate applicable on the date when flats were allotted to other persons who had like priority numbers as the petitioner and who had applied in 1986. The blame for the delay in allotment of the flat to the petitioner, Mr. Verma would seek to contend, lies entirely at the door of the DDA and the DDA could not seek to capitalise thereon by demanding, from the petitioner, higher rates applicable in 2013.

15. Arguing *per contra*, Ms. Pandey, learned counsel for the DDA emphasised the fact that the judgment, dated 19th September, 2010, was conspicuously silent regarding the rate at which possession of the flat was to be granted to the petitioner and that, therefore, the DDA correctly applied the extant instructions, as applicable on the date of allotment of the Dwarka Flat to the petitioner. In this context, Ms. Pandey places reliance on a Circular, dated 13th October, 2011, issued by the DDA, which reads thus :

“DELHI DEVELOPMENT AUTHORITY
HOUSING DEPARTMENT

No.F.2(10)/2002/N&Cd(H)/Pt.II/643 Dated 13.10.11

CIRCULAR

1. In partial modification of Office Orders/Circulars issued from time to time regarding cost of the flats allotted under NPRS-79, Amebdkar Awaas Yojna and under various policies of DDA like wrong address policy, missing priority, tail-end priority etc., the cost of the flat in all the cases will be the standard cost of the flats based on the basis of the plinth area rate and land rates as prevalent on the date of issue of demand-cum-allotment letter ie. Date when demand letter under above policy is issued.

2. Old cases will not be opened i.e. it should be effective only from the date of issue.

This issues with the prior approval of Competent Authority.

Sd/-

(Asma Manzar)

Commissioner (Housing)

1. OSD to VC
2. OSD to FM
3. PC(H)
4. CVO
5. CLA
6. FA(H)
7. DIR (H)-I & II
8. SLO(H)
9. Dy.Dir. (Coordn.)
10. Dy.Dir. (system) with the request to upload on the website of DDA.”

The submission of Ms. Pandey, is that, as per the above Circular, “missing priority” cases were necessarily required to be costed at the

“standard cost of the flats based on the basis of the plinth area rate and land rates as prevalent on the date of issue of demand cum allotment letter”. This standard cost, according to her, is to be found in Office Order dated 4th/24th February, 2003 also issued by the DDA which deals with “Standard Costing”.

16. Ms. Pandey, therefore, submits that the Circular dated 13th October, 2011 (*supra*) read with the Office Order dated 25th February, 2002 (*supra*), issued by the DDA, justified the costing of the Dwarka flat, allotted to the petitioner, at the rates prevalent in 2013 when the allotment was made. Cases of “missing priority” and “tail-end priority” having been specifically included in the said Office Orders, Ms. Pandey’s contention is that the petitioner was bound by the terms thereof.

17. Ms. Pandey also seeks to rely on a judgment of the Supreme Court in ***DDA v. Ashok Kumar Behal, (2002) 7 SCC 135***, to contend that this Court should be circumspect in interfering in matters of costing of flats allotted by the DDA, especially in exercise of its jurisdiction under Article 226 of the Constitution of India.

18. Accordingly, Ms. Pandey submits that the writ petition deserves to be dismissed.

19. Having considered the submissions advanced by learned counsel at the bar, in juxtaposition with the material on record, I am unable to sustain the decision, of the DDA, as reflected in the impugned demand-cum-allotment letter dated 10th July, 2013, to the extent the said letter required the petitioner to pay the cost of the Dwarka Flat as it existed in 2013. The reliance, by Ms. Pandey, on the Circular dated 13th October, 2011 (*supra*) is, according to me completely misguided. As I read it, the specific stipulation, by this Court, in its judgment dated 19th September, 2011, to the effect that the petitioner's case would be entitled to be considered *as if his pre-existing priority number were still in existence*, necessarily entitled the petitioner to possession of the flat allotted to him, *as if it were allotted on the basis of the said priority number*. In other words, the petitioner would be entitled to be treated as a candidate who was allotted a flat in normal course as per his pre-existing priority number. Mr. Verma has drawn my attention to the allotment letter of the Nand Nagri Flat, issued to the petitioner on 28th August, 1986, reflecting his priority number as 17. The stipulation, in the judgment dated 19th September, 2011, of this Court in W.P.(C) 6663/2010, to the effect that the priority number of the petitioner was treated to be still in existence, in my view, can have only one meaning, i.e. that the petitioner was entitled to be treated as an applicant with priority number 17.

20. It was sought to be contended by Ms. Pandey , that the said priority number related to the allotment, to the petitioner, of the Nand Nagri flat and that, once the petitioner had surrendered the said

allotment, the allotment number, too, ceased to apply. I must confess that the submission is attractive at first blush; however, it cannot merit acceptance, in the facts of this case, for two reasons. Firstly, the judgment dated 19th September, 2011 never having been challenged by the DDA, and has attained finality and admits of no interpretation other than that outlined by me hereinabove. Secondly, there *is no other* “priority number” assigned to the petitioner by the DDA. The directions of this Court in its judgment dated 19th September, 2011, if they are to have any meaning and effect at all, must continue, in existence the priority number (17) reflected in the letter of allotment, to the petitioner, of the Nand Nagri flat. That being so, the petitioner would be entitled to allotment of the Dwarka flat at the rate at which he would have secured allotment of a flat, had his allotment matured in normal course treating his allotment as that of an applicant with priority number 17.

21. Though, in view of the expressed stipulation, contained in the judgment, dated 19th September, 2011 (*supra*) of this Court in W.P.(C) 6663/2010, that the petitioner’s erstwhile priority number was required to be treated as still in existence, the Circular dated 13th October, 2011 (*supra*) of the DDA, would obviously have no application, I may nevertheless mention that, *prima facie*, the stipulation, in the said Circular, that “missing priority” cases would have to pay the cost of the flat as on the date when the flat was actually allotted to the applicant concerned, may be perilously open to challenge as arbitrary. It is difficult to understand how, if the priority

of an applicant has been missed, the blame for which would squarely lie at the doors of the DDA – the applicant could be made to suffer by having to pay a higher cost for the flat. Ms. Pandey, however, points out that the Circular dated 13th October, 2011 is not under challenge. That is, no doubt, true and, in view thereof, I rest my observations, on the said Circular, at this point, without saying anything further.

22. I may also note, in this regard, that it is an admitted position that the flat allotted to the petitioner was not a newly constructed flat, but was a flat from the earlier constructed batch of flats, to which allotments were made to the applicants who had applied in 1986. Even on this ground, therefore, it is difficult to sustain the decision of the DDA to charge, from the petitioner, the cost of construction of the flat as it existed in 2013.

23. Adverting, finally, to the reliance, by Ms. Pandey, on the judgment of the Supreme Court in *Ashok Kumar Behal (supra)*, the said decision, quite clearly, can have no applicability, whatsoever, to the controversy in issue before me. There can be no cavil with the proposition, as enunciated in the said decision, that interference in matters of costing of flats is no part of the extraordinary jurisdiction, vested in a High Court by Article 226 of the Constitution of India. That proscription could apply, however, where the High Court chooses to interfere with the actual *costing* of construction, expressing its disagreement with the manner in which the costing had been arrived at. No such situation arises in the present case. There is no

dispute regarding the cost of the flat as it existed in 2013, or as it would have existed on the date when the petitioner would have secured allotment, had it come in normal course as per his earlier priority number. The dispute is only as to whether the petitioner was entitled to possession of the flat at the new rate or at the earlier rate. The manner in which the rates were required to be worked out is not in dispute. Consequently, the reliance by Ms. Pandey, on the judgment in *Ashok Kumar Behal (supra)* has necessarily to be characterised as misguided.

24. For the aforesaid reasons, the decision of the DDA, as reflected in the impugned demand-cum-allotment letter dated 10th July, 2013, to the extent it requires the petitioner to pay the cost of the Dwarka Flat as it existed in 2013, has necessarily to be quashed and set aside. It is ordered accordingly. The petitioner would, therefore, be entitled to possession of the Dwarka flat on the basis of the cost which would have been payable by him, had a flat been allotted to him in normal course, based on his pre-existing priority number of 17, in view of the direction contained in the judgment dated 19th September, 2011, of this Court, in W.P.(C) 6663/2010.

25. That however, is an exercise which the DDA would have to undertake, and I am not inclined to issue any specific directions regarding the cost that would ultimately have to be paid by the petitioner.

26. Mr. Verma also points out that he had specifically opted for payment of the flat on cash down basis, whereas he is being treated as a hire purchase allottee. The records of the case reveal that the petitioner had, indeed, opted for payment for the flat on cash down basis and would therefore, be entitled to pay for the flat on the said basis itself.

27. Resultantly, this writ petition is allowed in the following terms :

(i) The impugned demand-cum-allotment letter dated 10th July, 2013, insofar as it requires the petitioner to pay, for the Dwarka flat allotted to him, on the basis of the cost as it existed on the date of allotment, is quashed and set aside.

(ii) The DDA would assess the cost at which the petitioner would have to pay for the flat, had he been allotted the flat in normal course on the basis of his pre-existing priority number 17.

(iii) The DDA is directed to re-work the cost of the flat as would be payable by the petitioner on the above basis, and communicate a revised demand-cum-allotment letter to the petitioner or his counsel within a period of eight weeks.

(iv) In order to obviate a further challenge, the petitioner is directed to visit the office of the Deputy Director (Housing), MIG, DDA on 5th February, 2019 at 3 p.m. so that the cost at which the payment would have to be made by the petitioner could be appropriately worked out.

Needless to say, the said date and time are not gilt-edged, and are open to variance as per the convenience of both parties.

(v) The revised amount, as worked out by the DDA would have to be payable by the petitioner within a period of six weeks thereafter.

(vi) Possession of the flat would be handed over to the petitioner within two weeks of making of the said payment, subject, needless to say, to the completion of the requisite formalities by the petitioner in that regard.

28. There shall be no orders as to costs.

JANUARY 22, 2019/kr

C. HARI SHANKAR, J