

\$~26

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C)No.1034/2013

Date of decision: 29.01.2020

PARVINDERJIT KAUR

..... Petitioner

Through : Mr. Abhishek Paruthi and Mr. Sachin
Kumar, Advs.

versus

D.D.A. AND ANR

..... Respondents

Through : Ms. Shobhana Takiar, Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

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

“(a) Issue a writ in the nature of mandamus or any order or any appropriate direction commanding the Respondent authorities i.e. Respondent No.1 & 2 to allot a MIG Flat under the Registration Scheme 1979;

(b) Issue a writ in the nature of mandamus or any order or any appropriate direction directing the Respondent to consider and allow the application of petitioner and include the name of petitioner in the draw to be held for allotment of MIG Flat and;

(c) The Respondent be directed to pay a sum of Rs. 5,000/- per month for the delayed period to the Petitioner as compensation for the harassment, inconvenience and agony suffered by the Petitioner on account of the failure and omission and illegal acts of the Respondent.”

2. The principal grievance of the petitioner is that the demand-cum-

allotment letter which was issued in favour of her deceased husband, one, Shri Harbans Singh was not received and therefore, allotment could not have been cancelled.

3. The broad facts which are required to be noticed in order to rule on the writ petition are as follows :

(i) The petitioner's husband had applied for allotment of a MIG flat under the New Pattern Residential Scheme, 1979 (hereafter referred to as "the Scheme").

(ii) This application was preferred with the respondents on 19.09.1979.

(iii) The application was issued a registration certificate bearing no.44806 dated 24.06.1980. The priority number accorded to petitioner's husband request was 32181.

(iv) Based on a computerised draw of lots held on 13.02.2002, a demand-cum-allotment letter dated 11.03.2002/18.03.2002 was issued in favour of the petitioner's husband. The petitioner's husband was, accordingly, allotted a flat described as: MIG Flat No.7, 2nd Floor, Sector-17, Pocket-E, Phase-II, Dwarka.

(v) Unfortunately, in the interregnum i.e. the date of the application and the issuance of aforementioned demand-cum-allotment letter, the petitioner's husband expired on 22.12.1992.

4. It would be relevant to note that the demand-cum-allotment letter which was sent in the name of the petitioner's husband i.e. Harbans Singh was directed to the following residential address i.e. "4/13A, *Moti Nagar, New Delhi.*"

5. It is not disputed by Ms. Shobhana Takiar, who appears on behalf of the respondents, that the demand-cum-allotment letter was received back by

the respondents with an endorsement “no such person” was available at the said address.

6. Ms. Takiar has brought the case record to court which shows that, in and about May 2002, a decision was taken to dispatch the demand-cum-allotment letter to the “occupational address” given in the application form submitted at the time of registration. The occupational address given in the said application form was : New Modern Goods Transport Company, 118, Najafgarh Road, Near SBM, New Delhi-110015.

7. This time around as well the demand-cum-allotment letter was sent *via* speed post; DDA’s record contains a receipt which establishes this fact. More importantly, the receipt does not disclose the name of the person who had taken delivery of the demand-cum-allotment letter, although, it bears signatures, *albeit*, of an unidentified person.

8. Based on this document and the fact that the change of address was not communicated by either the petitioner or her husband, Ms.Takiar says that the DDA was not at fault.

9. According to me, no service of the demand-cum-allotment letter has taken place in this particular case. Concededly, first time around, the demand-cum-allotment letter was sent to the petitioner’s husband at his residential address. The same was returned with an endorsement that “no such person” was available at the given address. Notably, this notice was not placed on record.

9.1 The second time around, i.e. in and about May 2002, a decision was taken by the respondents’ officer to serve the original allottee/Harbans Singh at his occupational address not knowing that he had already expired.

9.2 Pertinently, the original record of the respondents, which was brought

to the court, shows that a certificate was issued by the person managing New Modern Goods Transport Company evidencing the fact that the allottee/Harbans Singh was working in the said entity as a Manager.

9.3 The said certificate is dated 15.09.1979. Therefore, apart from the fact that when the demand-cum-allotment letter was sent to the original allottee/Harbans Singh, when, he had already expired, the certificate exemplifies the fact that the occupational address was not the business premises of either the Harbans Singh or that of the petitioner.

9.4 Pertinently, this document was also not filed by DDA along with its counter affidavit.

10. I may indicate herein that Ms. Takiar has contended that the petitioner's representation dated 11.04.2012 shows that she continued to reside in the same residential address which was given in the application.

10.1 Based on this, Ms. Takiar says that it should be deemed that the service was effected on the allottee in the very first instance.

10.2 I am unable to agree with the submissions advanced by Ms. Takiar. As indicated hereinabove, for whatever reason the demand-cum-allotment letter which was sent to the original allottee/Harbans Singh, in the first instance, was returned unserved. The petitioner or her deceased husband could, possibly have, had no control over the endorsement made by the postal authorities. As a matter of fact, in the rejoinder filed on behalf of the petitioner, she has asserted that between 13.02.2002 and 2012, she was residing at the residential address given in the application i.e. 4/13A, Moti Nagar, New Delhi.

10.3 Since, in my view, there was no service of the demand-cum-allotment letter, the petitioner or her husband cannot be faulted for not responding to

the same.

10.4 As indicated above, it is not the petitioner's case that she had changed her address. Her grievance is that cancellation of allotment on 15.03.2004 was carried out without notice to her.

10.5 Furthermore, Ms. Takiar says that notice of allotment *via* publication was also given.

10.6 Unfortunately, the notice is not on record. The petitioner cannot be taken by surprise. Every document which is filed in the court has to be backed by an affidavit. A bare assertion that a notice was published without the same being placed on record will not suffice.

11. Ms. Takiar's argument that the change of address was not communicated by the petitioner to the DDA, and, therefore, no fault could be attributed to the DDA cannot be sustained as it proceeds on the premise that the petitioner had changed her address.

12. I must also record that Ms. Takiar had sought to demonstrate that the petitioner had given different addresses in different places and, hence, no reliance could be placed on her version of the case that she had not changed her address. In this behalf, reference was made to petitioner's representation dated 11.04.2012 and the affidavit dated 30.01.2012 filed by her son, one, Mr. Tajender Pal Singh. I have brought up this aspect as this was, euphemistically speaking, another string to Ms. Takiar's bow of arguments.

12.1 In my opinion, there is no discrepancy for the reason that the representation dated 11.04.2012 was filed by the petitioner whereas the affidavit giving a different address is that of her son. There is nothing on record, at least nothing is brought to my notice, which would show that the petitioner was residing with her son Mr. Tajender Pal Singh. Pertinently,

what the DDA was required to demonstrate, which it has failed to do, was, as to whether or not the demand-cum-allotment letter was, in fact, served on the petitioner's husband or on the petitioner at the address given in the application form.

12.2 The record shows that there has been no service.

13. Given the foregoing, the reliefs sought in prayer clauses (a) and (b) would have to be granted. It is ordered accordingly. The relief sought in prayer clause (c) is declined as there is no proof of injury or damages suffered placed on record, notwithstanding the difficulty the Court would face in ascertaining the same in writ proceedings.

13.1 The DDA will consider the petitioner for allotment of a flat which was described in the demand-cum-allotment letter in case the same is available.

13.2 In the event the said flat is not available, then, the DDA will consider the petitioner for allotment of a similar flat in the next mini-draw.

14. The writ petition is, thus, disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

JANUARY 29, 2020/aj