



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

Date of decision: 21st APRIL, 2022

IN THE MATTER OF:

+ **W.P.(C) 1814/2021**

DEV RAJ

..... Petitioner

Through: Mr. R. K. Saini, Mr. Ankit Singh,
Advocates

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Ashim Vachher, Standing
Counsel for DDA with Mr. Kunal
Lakra, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

1. The instant petition has been filed challenging the condition mentioned on top of the conveyance deed dated 23.12.2020, whereby Flat No. 178, GF, GRP-2, Pocket 07, Sector No. 23, Rohini, Delhi was conveyed to the Petitioner, stating that the property in question is "not eligible for sale by way of executing sale deed/ agreement to sell within five years of restoration of allotment".

2. Shorn of details, the facts leading to the instant petition are as follows:-

- i. The Petitioner was an applicant under the Special Housing Registration Scheme for SC/ST known as Ambedkar Awas Yojana for allotment of MIG flat. An application for allotment



under the Scheme was made by the Petitioner in the year 1989. The Petitioner deposited a registration fee of Rs.12,000/-.

- ii. Material on record discloses that at the time of the registration, the Petitioner provided two addresses in the Registration Form:
a) a current address A-4/548, Paschim Vihar, Delhi, and b) Permanent address: Dalhousie Raod, Nehru Nagar, House No.83, Pathankot. It is stated that 14 years thereafter, a draw of lots was held on 30.07.2003 and the Petitioner was allotted Flat No. 275 (GF), Pocket 6, Sector 83, Rohini, Delhi.
- iii. An Allotment-cum-Demand Letter was issued by the DDA at the current address of the Petitioner in Paschim Vihar. In the interregnum, the Petitioner had shifted and the allotment letter was returned as undelivered. Since the Petitioner did not take further steps in accordance with the Allotment-cum-Demand Letter, allotment of the Petitioner was cancelled.
- iv. Material on record discloses that in November 2012, the Petitioner came across a public notice regarding completion of allotment of flats under the Ambedkar Awas Yojana and that those persons who had not been allotted flats under the Scheme could approach DDA for refund.
- v. On enquiry, the Petitioner was made aware that allotment had been made in his name and then it was subsequently cancelled. The Petitioner gave a representation thereafter to the DDA, informing them that he had shifted from the current address, but the representation was rejected.
- vi. The Petitioner thereafter approached this Court by filing



W.P.(C) 7842/2012 for allotment of the flat. The writ petition was dismissed vide order dated 11.07.2013.

- vii. The Petitioner challenged the order dated 11.07.2013 before the Division Bench of this Court. Vide order dated 19.02.2014, the Division Bench set aside the order passed by the learned Single Judge stating that it was the duty of the DDA to send the requisite information even to the permanent address of the Petitioner at Dalhousie Raod, Nehru Nagar, House No.83, Pathankot, especially in view of the fact that 14 years had lapsed from the date of registration till the date of allotment of the flat. The Division Bench found fault with the DDA in not sending the allotment letter to the permanent address of the Petitioner on the ground that the address was incomplete. The Division Bench observed that the permanent address as given in the address form was a family house of the Petitioner and the DDA was obliged to send the intimation letter to the permanent address as well. It was also observed that the local postal authorities were normally quite familiar with the occupants of different houses, especially old residents, and were known to deliver communications which were dispatched to incorrect or incomplete addresses based on the name of the addressee.
- viii. The LPA was allowed and the DDA was directed to allot the same flat in the same area, at the rates as applicable on the date the Petitioner had filed W.P.(C) 7842/2012. Pursuant to the order of the Division Bench, the Petitioner was given possession of Flat No. 178, GF, GRP-2, Pocket 07, Sector No.



23, Rohini, Delhi.

- ix. The conveyance deed was executed for the said flat by the DDA on 23.12.2020. On the top of the conveyance deed, a handwritten condition stipulated that the flat allotted to the Petitioner is not eligible for sale by way of executing sale or agreement to sell within five years of the restoration of allotment.
- x. Aggrieved by the same, the Petitioner has approached this Court by way of the instant writ petition.

3. Mr. R. K. Saini, learned counsel for the Petitioner, contends that there is no circular/policy of the DDA which permits the DDA to impose such a condition. He states that the Petitioner ought to have been allotted the flat way back in the year 2003 and because of the lapse on the part of the DDA, the allotment was cancelled. The mistake committed by the DDA was rectified by the order dated 19.02.2014, passed by the Division Bench of this Court in LPA 625/2013 and the Petitioner was thereafter allotted the property in question. A conveyance deed was executed pursuant to the order passed by the Division Bench. Mr. Saini states that the Petitioner was the original allottee and there is no doubt about the allotment being given to the Petitioner. He, therefore, states that the stipulation restraining the Petitioner from selling the flat is contrary to law.

4. *Per contra*, Mr. Ashim Vachher, learned Standing Counsel for DDA, places reliance on a circular dated 13.09.2013 issued by the DDA. The circular reads as under:-

“The allegations in respect of fraudulent allotment of flats under 'Wrong Address' Policy' of NPRS-1979



have brought to the notice of the undersigned. Few FIRs have been registered by CBI and the specific cases of allotment are under investigation. Though several circulars have been issued by the Housing Department from time to time, yet it is felt that there is scope for further improvement and all efforts should be made to plug any loophole in the restoration of cancelled registration for allotment of flats, so that attempts by property dealers to revive the registration on the basis-of forged documents are defeated.

The following guidelines are being suggested based on the material available before the undersigned to be followed by Housing Department while dealing in such cases:

- 1. Most of the applications for revival of registration are based on two types of pleas i.e. (a) the address of the registrant mentioned in the Demand-cum-Allotment Letter (DAL) was typographically incorrect vis a viz the address mentioned in his/her application or (b) the change of address applied by the registrant subsequent to for future communication has not been taken into account by DDA while issuing the Demand-cum-Allotment Letter (DAL). Since the revival of the registration is based on the genuineness of these facts, it is of utmost importance to verify the genuineness of the facts raised by the registrant. Before revival, these Demand-cum-Allotment Letters should be invariably verified from the designated Govt. Forensic Labs to ensure that the addresses are not tampered with at any stage.*
- 2. The registrants be asked to produce documentary evidence to establish the fact that they were residing at the changed address at the time of issuance of Demand-cum-Allotment Letter in the earlier available addresses. If required*



these documentary evidences like Ration Cards/Voter Photo Identity Cards/Passport/Driving Licence issued at the changed address be also verified from the issuing Authority.

3. To ensure that some unauthorized person is not making the payment on behalf of the registrant towards the cost of the flat at the time of restoration, the source of fund for making the payment to DDA by the registrant be also verified.

4. To ensure that the restoration of registration is not being made on behalf of the property dealer for re-sale in the market, sufficient safeguards should be put in place. Since the restoration of a cancelled registration is being sought after a gap of 10-15 years of cancellation and on the ground of long standing housing requirement of the registrant, adequate conditions like not allowing prompt resale of flat need to be imposed, so that the purpose of restoration is not defeated. The allottees in such restoration cases not to be allowed to resale their flats by way of executing Sale Deeds/Agreement to Sell within 5 years of the restoration of allotment.

5. Since the CBI is already investigating into these allegations of fraudulent revival / restoration of registration, all existing applications and new applications be thoroughly scrutinized to verify the genuineness of Demand-cum-Allotment Letters and other facts like actual addresses of residence/occupational addresses) and the identities of the applicants.

6. Similarly, if any new petition is filed in the Hon'ble High Court for restoration under Wrong



Address Policy, CBI be intimated immediately for appropriate action at their end.

7. It is informed that 48 cases under MIG Category and 11 cases under LIG Category have been finalized for restoration of registration and a mini draw is to take place for allotment of specific flats to the registrants. Before carrying out the mini draw, the genuineness of all these cases be verified from CBI within a reasonable time frame.

8. It has also come to my notice that enough precautions have not been taken towards verification of the claims made by the Petitioners before admitting the same by DDA in its Counter Affidavits. Before admitting any fact in the court cases, the documents need to be thoroughly verified. If required, physical verification of the addresses be also made on site. The grounds behind undue delay in reviving the registration from the date of cancellation be also examined and should be satisfied before filing affidavits in the courts. All affidavits to be filed in the courts on the revival/restoration of cancelled registration be approved by the Commissioner (Housing).

9. The concerned Dy. Directors of the Housing Department are hereby made personally responsible for verification of the facts and genuineness of the registrants before including the case in the mini draw.”

5. Mr. Ashim Vachher, learned Standing Counsel for DDA, contends that the circular applies for all cases where the address of the applicant mentioned in the demand-cum-allotment letter was typographically incorrect



or where a change of address supplied by the applicant had not been taken into account by the DDA while issuing Demand-cum-Allotment Letter. He further states that the allotment was cancelled in the year 2003 itself and the Petitioner did not take any steps till 2012 to revive the allotment and, therefore, the circular dated 13.09.2013, issued by the DDA, would apply to the instant case and the condition restraining the Petitioner from selling the property or entering into an agreement to sell the property is justified in accordance with the circular dated 13.09.2013.

6. Heard Mr. R. K. Saini, learned counsel for the Petitioner, Mr. Ashim Vachher, learned Standing Counsel appearing for the DDA, and perused the material on record.

7. A perusal of the circular dated 13.09.2013, issued by the DDA, indicates that the circular had been issued because of several cases which have been brought to the notice of CBI, where persons had sought restoration of their allotment after a long period of time and the restoration was for dubious reasons. Paragraph number 1 of the said circular states that it was issued to verify the genuineness of the facts before the revival of the Demand-cum-Allotment Letter.

8. The said circular cannot be applied to the present case. In the instant case, the original allotment was made to the Petitioner and there is no doubt that the Petitioner was the original allottee. The Division Bench has categorically noted that the DDA erred by not issuing a letter to the permanent address of the Petitioner and allowed the Petitioner's writ petition directing the allotment of the flat to the Petitioner. The present case is not one of revival of the allotment letter but a case where the Court has struck down the cancellation of the plot and restored the allotment. The said policy,



therefore, cannot be made applicable to the Petitioner.

9. Had the Petitioner not come to the Court and the DDA had revived the allotment without any interference of the Court, then this circular may have applied. However, in view of the fact that this Court has restored the allotment of the flat, and the allotment has been given only to the original allottee from the original date, i.e. in the year 2003 or at least from 19.02.2014, this circular cannot be said to be made applicable to the facts of the present case.

10. The condition stipulated in the conveyance deed restraining the Petitioner from selling the flat by way of executing a sale deed/ agreement to sell for a period of five years from the restoration of allotment cannot be made applicable in the instant case.

11. Accordingly, the writ petition is allowed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 21, 2022

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