

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

Date of decision: 28th MARCH, 2023

IN THE MATTER OF:

+ **LPA 147/2021 & CM APPLs. 14067/2021, 14069/2021**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Abhimanyu Walia and Mr.
Karmanbir Singh, Advocates.

versus

ROMESH KUMAR BAJAJ Respondent

Through: Mr. C. Mohan Rao, Sr. Advocate with
Mr. Lokesh Kumar Sharma,
Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The Appellant/DDA seeks to challenge the Judgment dated 30.04.2020 passed by the learned Single Judge in W.P.(C) 6523/2017 by which the learned Single Judge has allowed the writ petition and has directed the Appellant/DDA to allot a flat to the Respondent herein which is located in Rohini or in the area that is nearby, in case, flats are not available in Rohini at the rate prevalent in the year 2004 and not on the basis of the rate as applicable *vide* Circular dated 13.10.2011.

2. The facts, in brief, leading to the filing of the instant appeal are that the father of the Respondent Mr. Manohar Lal Bajaj had applied for allotment of a MIG flat under the New Pattern Registration Scheme, 1979.

Allotment letter was issued on 07.12.1992 in the name of the father of the Respondent. The Respondent's father surrendered the allotment on 06.04.1993 for inclusion of his name in the tail-end priority in terms of the prevalent policy.

3. After surrendering the allotment on 20.05.1997, the father of the Respondent was assigned a fresh priority No.38931 in place of earlier number for allotment of flat at tail-end policy. The father of the Respondent passed away on 01.09.1997.

4. It is stated that the Respondent intimated about the death of his father on 24.11.1997 and submitted all the documents for transferring the registration in his name. It is stated that despite the intimation of death of the Respondent's father and request for transfer of registration in the name of Respondent, the Appellant/DDA issued allotment letter in the name of Respondent's father.

5. It is stated that the Respondent, thereafter, made representations and appeared in public hearings for changing the name in the allotment letter and for issuance of demand-cum-allotment letter in his name.

6. It is stated that on 30.06.2008, the Appellant/DDA issued a letter merely changing the name in the registration but did not issue the demand-cum-allotment letter in the name of the Respondent.

7. The Respondent, thereafter, filed a writ petition being W.P.(C) 7191/2008 for issuance of demand-cum-allotment letter in his name. The said writ petition was allowed by Order dated 16.02.2010. The stand of the DDA before the learned Single Judge was that the case of the Respondent (Petitioner therein) had been considered by a Committee headed by Chief Legal Advisor, DDA and the Respondent herein would be entitled to an MIG flat in the next draw of lots and that the costing of the same would be

done as per the policy. After the undertaking given by the DDA, Respondent also undertook to file an affidavit to the effect that the Respondent has not sold the registration, nor has he accepted the earnest money for the allotment, and that the payment shall be made through cheque or demand draft and in case of loan the details of the loan shall be furnished and he shall also disclose his source of finance. In view of the stand taken by the Appellant/DDA and the undertaking given by the Respondent, the writ petition was disposed of by the learned Single Judge *vide* Order dated 16.02.2020 with a direction to the Appellant/DDA to include the name of the Respondent in the next draw of lot which was directed to be held not later than three months.

8. On 09.08.2010, the Respondent was allotted a flat in Jahangirpuri. The Respondent, being not satisfied by the allotment, approached this Court by filing a review petition for draw of lots for a flat to be allotted in Rohini area. This Court *vide* Order dated 08.03.2011 modified the Order dated 16.02.2010 to the extent that “the DDA will include the name of the Respondent in the next draw of lots which shall be held not later than three months from the date of the Order for allotment of a flat in favour of the Respondent in Rohini and if no flat is available in Rohini area, a flat will be allotted in any other nearby area, and the flat allotted to the Respondent in Jahangirpuri was directed to be treated as cancelled.

9. It is stated that the Respondent was allotted a flat in Rohini, however, in the demand-cum-allotment letter dated 20.03.2017 which was sent to the Respondent, the cost of the said flat was calculated as per the Circular which was prevalent in the year 2011 and not as per the Circular which was prevalent in the year 2008 when the Respondent filed the writ petition being W.P.(C) 7191/2008.

10. The Respondent, thereafter, filed another writ petition being W.P.(C) 6523/2017 for allotment of flat in his name at the rates prevalent in the year 2004. The learned Single Judge *vide* Judgment dated 30.04.2020 (impugned herein) allowed the writ petition on the ground that as per the Order dated 16.02.2010 passed in W.P.(C) 7191/2008, the case of the Respondent (Petitioner therein) had been considered by a Committee headed by Chief Legal Advisor, DDA and the DDA had accepted that the Respondent would be entitled to an MIG flat in the next draw of lots and that the costing of the same would be done as per the policy. The learned Single Judge, therefore, held that the Respondent is entitled to be considered for allotment of flat under the existing policy which was prevalent when the order was passed. The learned Single Judge held that the Respondent was to be considered for allotment of a flat in Rohini area has also been recognised in the Order dated 08.03.2011 by which the Review Petition filed by the DDA against the Order dated 16.02.2010 was disposed of. The learned Single Judge in the Order dated 08.03.2011 has directed that the Respondent be allotted a flat in Rohini itself and not in Jahangirpuri where the Respondent had been allotted a flat.

11. The learned Single Judge further held that material on record shows that despite various communications, the demand-cum-allotment at the first instance was not given in the name of the Respondent. The learned Single Judge allowed the writ petition and directed that the allotment of flat to the Respondent should be based on the cost calculated as per the terms of the circular dated 07.10.2008.

12. The Appellant has approached this Court by filing the instant appeal challenging the Judgment dated 30.04.2020 passed by the learned Single Judge in W.P.(C) 6523/2017.

13. Learned Counsel appearing for the Appellant/DDA submits that the flat in Rohini was allotted in the year 2017 and therefore, in the demand-cum-allotment letter, the cost of the flat has been calculated as per the Circular issued in 2011 which was the Circular prevalent on the date of demand-cum-allotment letter. He vehemently contends that the Respondent (writ petitioner) never intimated regarding the death of his father, and therefore, the allotment which has now been in the name of the Respondent herein after the Circular, the Respondent has to pay the cost as determined by the Circular issued in the year 2011.

14. Learned Counsel appearing for the Appellant/DDA further submits that there will be a loss to the public exchequer if the contention of the Respondent is accepted as there are many others who have been asked to pay as per the Circular issued in 2011.

15. *Per contra*, learned Senior Counsel appearing for the Respondent supports the impugned Judgment passed by the learned Single Judge and submits that the DDA had been intimated about the death of the father of the Respondent way back in 1997 and also all documents were submitted in the year 2000 and despite the intimation, the allotment letter was issued in the name of the Respondent's father in the year 2004. He submits that between 2005 and 2008, the Respondent made several representations for changing the name in the allotment letter and for issuance of demand-cum-allotment letter in his name and that the Respondent cannot be blamed for the inaction of the Appellant in not challenging the name of the applicant.

16. Heard learned Counsel appearing for the Parties and perused the material on record.

17. Admittedly, the Respondent's father passed away in the year 1997. Allotment letter was issued in name of the father of the Respondent in the

year 1992. The Respondent's father surrendered the allotment for inclusion of his name in the tail-end priority in terms of the prevalent policy. After surrendering the allotment, the father of the Respondent was assigned a fresh priority No.38931 in place of earlier number for allotment of flat at tail-end priority. The father of the Respondent passed away on 01.09.1997.

18. Even if it is assumed that the contention of the DDA is correct that no intimation was received regarding the death of the father of the Respondent who was the initial allottee, there is material on record to show that a letter was issued to the Respondent by the Appellant/DDA calling the Respondent for hearing on 01.09.2005 regarding issue of demand letter.

19. The Respondent filed a writ petition being W.P.(C) 7191/2008 praying for issuance of demand-cum-allotment letter in his name and the said writ petition was disposed of by the learned Single Judge by Order dated 16.02.2010 which was a consent Order where the DDA had submitted that the case of the Respondent (Petitioner therein) had been considered by a Committee headed by Chief Legal Advisor, DDA and that the Committee has decided that the Respondent is covered under the tail-end policy of the DDA and is entitled to an MIG flat in the next draw of lots. The Order notes that the Respondent's name be included in the next draw of lots and that the costing will be done as per the policy as on 16.02.2010. The Respondent was, therefore, entitled to a flat as per the costing applicable in the year 2010. The draw of lot was held on 20.07.2010 and the Respondent was allotted a flat bearing Flat No.333, Second floor, Jahangir Puri, Delhi. It, therefore, means that the Respondent had been allotted the flat at Jahangirpuri under the then existing policy. The Respondent, thereafter, filed a review petition for a flat to be allotted in Rohini area. This Court *vide* Order dated 08.03.2021 modified the Order dated 16.02.2010 and directed

that a flat be allotted in favour of the Respondent in Rohini area and if no flat is available in Rohini area, a flat would be allotted in any other nearby area, and the flat allotted to the Respondent at Jahangirpuri was directed to be treated as cancelled. It, therefore, cannot be considered a fresh allotment but only a change of area from Jahangirpuri to Rohini or any other nearby area if no flat is available in Rohini area.

20. The date on which the W.P.(C) 7191/2008 was disposed of by this Court, the Circular which was issued in the year 2011 was not in existence. The Circular of 2011 was issued on 13.10.2011. The Respondent had filed the review petition praying for change of the area was disposed of by this Court on 08.03.2011 by modifying the Order dated 16.02.2010 by way of consent. It, therefore, means that the rights of the Parties were crystallized at least on 16.02.2010 when the W.P.(C) 7191/2008 was disposed of by this Court. Therefore, the demand-cum-allotment letter should have been issued in favour of the Respondent only as per the existing policy as on date of the Order of this Court i.e., 16.02.2010.

21. Even if the Order dated 08.03.2011 disposing of the review petition directing the Appellant/DDA to have a draw of lots not later than three months from the date of the Order i.e., on or before 08.06.2011, the Circular under which the demand-cum-allotment letter was issued is dated 13.10.2011, three months period was over. The fact that the father of the Respondent had passed away was known to the Appellant/DDA at least in the year 2005 when a letter has been sent calling the Respondent for hearing on 01.09.2005 regarding issue of demand letter, the delay in changing the name in the allotment letter and for issuance of demand-cum-allotment letter in the name of Respondent from 2005 till 2008 is unacceptable. Even if, the delay on the part of the Appellant/DDA is ignored yet the fact remains that

as on 16.02.2010 when the W.P.(C) 7191/2008 was allowed by a consent Order where the DDA had accepted that the Respondent's name would be included in the next draw of lots, then the cost of the flat, therefore, ought to have been calculated only as per the policy which existed on the date when the Order was passed which is the 2008 policy.

22. In view of the above, this Court does not find any infirmity in the Order passed by the learned Single Judge.

23. The appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MARCH 28, 2023

S. Zakir