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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 12.12.2023

Judgment pronounced on: 01.03.2024

+ W.P.(C) 6883/2016 & CM APPL. 28272/2016, CM APPL. 27108/2021

BHAGWAN DASS

..... Petitioner

Through: Mr. Brijballabh Tiwari, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY & ORS

..... Respondent

Through: Ms. Nandadevi Deka, PC with Mr.
KS Jaggi, Mr. Z Haider, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is a petition seeking the following prayer:-

“It is therefore, respectfully prayed that this Hon’ble Court may be pleased to issue the writ of mandamus, direction, order or any other appropriate writ thereby directing the respondents to allot LIG flat bearing No. 93, Third Floor, Sector-F, B-2, Narela, New Delhi under the scheme NPRS 1979 on its old/previous allotment rate of 1994 (30.03.1994) i.e. the old date of allotment to the petitioner, in the interest and furtherance of justice.”

Brief Facts

2. The brief facts, which are undisputed, giving rise to filing of the present petition are as under:-
3. The petitioner on 24.09.1979 deposited a sum of Rs. 1500/- as a



registration fee for the allotment of LIG Flat under the Delhi Development Authority/respondent No.1 (hereinafter “DDA”) *vide* serial No. 75777 as per the New Pattern Registration Scheme, 1979 (hereinafter “NPRS 1979”) published by the DDA.

4. The respondent-DDA issued a certificate of registration in favour of the petitioner bearing serial No. 20201 for allotment of the LIG Flat under NPRS 1979.
5. On 10.02.1987, the petitioner admittedly sent a letter to Assistant Director (R), Housing, DDA regarding change of his address from Railway Quarters, Narela, Delhi – 110040 to House No. 296/12, Arjun Nagar, Gurgaon, Haryana – 122001.
6. The petitioner was allotted Flat No. 68, Pocket 6, Sector-A-10, Narela, Delhi (hereinafter “Flat No. 68”), but since the letter was sent to the old address, the petitioner did not receive the same. The allotment of the petitioner for the said flat was subsequently cancelled.
7. On 05.06.1995, the petitioner sent a letter to the Deputy Director (N.P.) LIG, DDA regarding cancellation of the Flat No. 68 due to non-payment being without any fault of the petitioner and due to the negligence of the office of the respondent Nos. 1 (DDA) and 2 (LIG Housing DDA).
8. The respondent in a mini draw subsequently allotted another LIG Flat bearing No. 72, Sector-10, Pocket-6, 3rd Floor, Narela, Delhi (hereinafter “Flat No. 72”) to the petitioner on 31.03.1998.
9. However, since the services in Narela were awaited at that time, no demand-cum-allotment letter (“DAL”) could be issued to the petitioner in this regard. Hence, the allotment of 31.03.1998 was only a paper



allotment in favour of the petitioner. It has been stated by the DDA that on 27.12.1996, the allotment of the flat had been intimated to the petitioner.

10. The office of the respondent No. 2 published a circular vide its No. F.2(10)02/N&C(H)/114 dated 06.06.2006 that the principal of costing as laid down in the office orders No. F.2(10)02/Coord(H)/49 dated 25.02.2005 with its amendment vide office order No. F.2(10)02/N&C(H)/Pt./22 dated 13.02.2006 applicable in the cases of missing priority and change of address will be applicable in the cases of registrants of NPRS 1979, who had opted for Awas Sarkar Yojna but had not been identified as members of the society. These registrants would continue to remain members of NPRS 1979 and would be entitled to the allotment of prevailing rates at that time, when they were entitled for allotment according to their priority, if the registrants have approached DDA within a period of 4 years. In the cases where registrants have not approached DDA within a period of 4 years, the registrants shall be considered for allotment of a flat at the old cost prevalent at the time when he/she was entitled for allotment + 12% simple interest till the date of issue of fresh DAL or the current cost prevailing at the time of issue of fresh DAL, whichever is lower.
11. On 30.01.2013, the petitioner filed an RTI application to the office of Dy. Director (Housing) LIG regarding allotment of flat to the petitioner vide its registration No. 20201 and the department replied on 20.02.2013 that the file in question is not traceable in the records, however, the department assured that best efforts would be made to trace out records and required information will be supplied to the



petitioner shortly.

12. The petitioner, through RTI (reply dated 12.09.2013 from the respondent), was able to obtain information from the office of DDA that the DAL was issued at the old address of Railway Narela, Delhi-110040.
13. In the file noting of 17.12.2014, the Director (H), DDA considered the entire dispute and directed that the DD (LIG) may examine the case in totality and give recommendations to finally resolve the issue in controversy.
14. As per the file noting of 08.05.2015, the Commissioner, LA (Housing) was of the opinion that the claim of the petitioner appeared to be genuine as the petitioner could not deposit the amount due to non-receipt of the DAL, the fault was on the part of DDA.
15. The petitioner was subsequently allotted LIG Flat bearing No. 93, 3rd Floor, Sector-F, B-2, Narela (hereinafter "Flat No. 93") under Registration No. 20201 and Priority No. 30845 through demand letter No.118821 dated 10.02.2016 subject to the payment of Rs. 15,91,505/- (calculated as per the new rates) before 08.08.2016, on which date the allotment was to stand automatically cancelled if the deposit was not made.
16. It is this rate of allotment that the petitioner is challenging in the present writ petition, stating that the flat should be allotted to the petitioner on the previous allotment rate of 30.03.1994 (i.e. the date of first allotment to the petitioner) and not the new rate, on the ground that it was not the petitioner's fault of not making payment for his allotment in the first place.



17. On 08.08.2016, when the petition came up for hearing, the respondents were restrained from selling or cancelling allotted LIG Flat No. 93, Third Floor, Sector F, B-2, Narela, New Delhi subject to the petitioner depositing Rs. 4 lakhs with the respondent-DDA.

Submissions (Petitioner)

18. It is stated by the learned counsel for the petitioner that it is the respondents who did not send the first allotment letter for Flat No. 68 at the right address. On the petitioner's request, another flat was allotted i.e. Flat No. 72, but the said allotment letter was never issued. Hence, the petitioner cannot be held liable for the delays caused by the respondents themselves.
19. It is stated that the respondent Nos. 1 and 2 cannot claim a new rate for their own wrongs, when they have admitted that it was their mistake. Thus, the petitioner is not liable to pay a sum of Rs. 15,91,505/- for the fault of respondent Nos. 1 and 2, and it is the duty of the respondent Nos. 1 and 2 to allot Flat No. 93 on the previous allotted rate of 1994, on which date the first DAL was issued.
20. It is stated that the flats should be allotted by DDA to the registrants on its previous cost if there is no fault of the registrants. For this, reliance is placed upon ***M.P. Nauriyal v. DDA*** 2015:DHC:2293.

Submissions (Respondent)

21. The respondent-DDA in its counter-affidavit has stated that the petition is barred by delay and laches, as the petitioner herein has approached this Court after approximately more than 18 years. Reliance is placed upon the judgment in ***Banda Development Authority v. Moti Lal Agarwal***, (2011) 5 SCC 394.



22. Ms. Nandadevi Deka, learned Panel Counsel for the DDA has stated that in the present case, the petitioner is at fault and did not take any steps towards finding out the status of his allotment from the year 1998 to 2013. In addition, she also relies upon the circular of the DDA (Housing Department) dated 13.10.2011 which reads as under:-

“1. In partial modification of Office Orders/Circulars issued from time to time regarding cost of the flats allotted under NPRS-79, Ambedkar Awaaz 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 i.e. 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.”

Analysis

23. I have heard learned counsels for the parties and perused the materials on record.
24. In the present case, the basic facts are not in dispute. Admittedly, the petitioner was registered under NPRS 1979 and made the initial deposit.
25. The DAL for Flat No. 68 was sent to the old address of the petitioner (despite changed address of the petitioner being available in the file of the respondent), and hence was never received by the petitioner. The



allotment was thereafter cancelled. On petitioner's representation/protests, another flat was allotted to the petitioner being Flat No. 72. The DAL for the said flat was not sent to the petitioner as the services in Narela were awaited at that time. The same is evident from the file noting of the Director (H), DDA of 17.12.2014:

“2. Sh. Bhgwan Dass was declared successful for allotment of LIG flat No.68, Sec.A-10, Pkt.6, Gr/II 3rd floor, Narela on 30.3.1994. Due to 'changed address' applied vide letter dated 10.2.87 duly acknowledged by DDA, the demand-cum-allotment letter could not reach him, the allotment stood automatically cancelled.

3. It is further seen that DDA considered his request and decided to allot him a Flat through mini draw. He was declared successful for Flat No.72, Sec10, Pkt.6, Gr.II, 3rd floor, Narela in the draw held on 30.3.98. However, it was decided that before issuance of demand-cum-allotment letter, the status of services in the area was sought from Executive Engineer vide letter No.F54(702)94/NA/400 dated 22.8.96. No reply to this letter is seen placed in the file. It is seen that Sh. Bhagwan Dass has been agitating through various forms for early resolution of his grievance.”

(emphasis supplied)

26. In ***Mohinder Singh v. DDA*** 2011:DHC:2834, this Court was of the view that the onus is upon the DDA to ensure that the DAL is sent to all available addresses of the allottee, while acting in the interest of the allottee. Consequently, it was directed that allotment be made on the



amount of initial demand made by the DDA. It was observed as under:

*“13. In the case of Hirdayapal Singh (supra), applicant (petitioner in the case) had mentioned only one address in the application form, but subsequently he informed the DDA about his permanent address and **the court was of the view that once demand letter was returned undelivered the DDA should have sent the demand letter at all the addresses available in the file of the DDA.** To my mind the case of the petitioner is on a better footing as at the time of registering herself for allotment of a LIG flat the petitioner along with the application form had enclosing his salary certificate issued by the school where the petitioner was working, filing of a copy of the salary certificate was a mandatory requirement and thus has to be considered to be a part of the form. No doubt the petitioner has been careless in filling up the application form and not providing his occupational address in the column provided, but the file of the DDA would comprise not more than seven pages, which include four annexures and two pages of the application form. **The DDA should have acted in the interest of the allottee, a common citizen, who has been waiting for more than two and a half decades for a flat in his name. In such a situation when the allotment letter was received back, DDA was duty bound to go through the entire file to ascertain if any other address was available and the demand-cum allotment letter should have been sent at the occupational address which was available in file of the DDA.** The common man must derive the*



benefit of the policy dated 25.2.2005 and in my view in the facts of the present case, once demand-cum-allotment letter was received back to the DDA undelivered, the DDA should have carefully perused the file and ensured that demand-cum-allotment letter is sent at all the addresses available in the file.

14. Accordingly, petition is allowed. Rule is made absolute. DDA is directed to issue a demand-cum-allotment letter in favour of the petitioner within eight weeks from receipt of the order with 12 % simple interest on the amount of the initial demand made by the DDA.”

(emphasis supplied)

27. In the present case, the first DAL of Flat No. 68 was sent at the wrong address. The second DAL for Flat No. 72 was never sent to the petitioner. Hence, the petitioner at no point in time was in default of not making the payment as demanded by the respondents.
28. The entire defence of the respondents is two-fold. First, that the petitioner did not follow up with the respondents from 1998-2013, and thus his petition is barred by delay and laches. Second, that the plea of the petitioner is not maintainable and is against the policy/circular of the DDA dated 13.10.2011 which has been reproduced above.
29. Both the contentions of the respondents are misplaced. As regards the first objection, the petitioner, on payment of necessary charges, was issued certificate of registration bearing Sr. No. 20201. Once the flat had been allotted, it was the duty of the respondents to issue a DAL crystallising the amount due and payable by the petitioner and in case the petitioner does not make the said payment, DDA would be very



much within its rights to cancel the allotment made to the petitioner. In the absence of the respondents issuing any DAL, which in this case was firstly, sent on the wrong address (in regard to Flat No. 68), and secondly, never sent (in regard to Flat No. 72), the respondents cannot be permitted to state that the petitioner should have come to the respondents and asked for a DAL. In my opinion, there is no inaction on part of the petitioner.

30. The respondent-DDA has relied upon ***Banda Development Authority*** (supra) to argue that the limitation period for approaching this Court has expired. The relevant portion of the judgment reads as under:

“17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.”

31. In the present case, there was no cause of action for the petitioner to approach the Court prior to 10.02.2016 when the respondent allotted Flat No. 93 to the petitioner vide Demand Letter No. 118821. The petitioner is aggrieved by this letter and filed the present writ petition on 03.08.2016 on accrual of cause of action. The petitioner cannot know that there were two earlier DALs as the first was sent to a wrong



address and the second was never issued. Hence, the petition is well within the limitation period. Every effort must be made by the DDA to ensure that the DAL is issued at the right address.

32. As regards the second objection is concerned, the circular is clear that in case where the DDA sends the DAL at the wrong address, the rate prevalent on the date of issue of DAL is the rate that is to be charged by the DDA. In the present case, the first DAL was issued in 1994, and the second DAL was never issued. Since the respondents were rectifying their own mistake of not issuing the DAL, they cannot ask the petitioner to make payment of the value of the flat as per the rates of 2016 i.e. when the Demand Letter No. 118821 for Flat No. 93 was issued.
33. I am of the view that there is no fault attributable to the petitioner. The words appearing in the circular dated 13.10.2011, “*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 i.e. Date when demand letter under above policy is issued*” has to mean the date when the DAL was first issued i.e. when it was issued on the wrong address in 1994.
34. There is a reference to the 2011 circular in the judgment of **Subodh Kumar v. DDA** 2019:DHC:432, wherein a Coordinate Bench of this Court has observed as under:

“21.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....”

35. I agree with this observation. The earlier wrong address policies of the DDA stipulate that where change of address was intimated by the registrant but was not recorded by DDA and thereupon the letters were sent at the wrong address and the allottee approached the DDA within a stipulated time, he shall be allotted the flat on the cost prevalent at the time when his priority matured and no interest would be charged. Thus, being in interest of registrants, the wrong address policy afforded the registrants the benefit of not having to pay for the mistakes committed by a government body. If the interpretation of the circular dated 13.10.2011 as submitted by the respondents is to be accepted, then the same would take away the said benefit from the registrants, which, in my opinion, is unjust. The respondents, *vide* this circular, have attempted to shirk their responsibilities even in genuine/deserving cases. However, since the circular is not in challenge before me, I refrain from going any further.
36. DDA is dealing with State largesse and cannot be permitted to take advantage of its own wrong. Once the DAL has been issued and the same has been issued at the wrong address, the respondents cannot be permitted to charge a premium on their oversight/mistake by charging cost of the flat on the date when the new DAL is issued.
37. Hence, it is not the petitioner who was at fault in not making the



payment towards allotment of his flat. It was the respondents who had misplaced the file of the petitioner, and also did not send the letter to the right address in the first place. As per the judicial precedents on this issue, the respondents were required to take all possible efforts in making sure that the DAL reached the petitioner, and in the absence of the same, the cancellation of allotment was untenable in law.

38. The reliance of the petitioner on the judgment of ***M.P. Nauriyal vs. DDA*** 2015:DHC:2293 is well placed, holding that the petitioner's case must succeed when the fault lies on the part of DDA. The operative portion of the same reads as under:-

“25. Admittedly, DDA neither informed the petitioner about any pending balance towards cancellation charges to be paid nor gave any information that his name was not included in the tail-end priority list. The DDA has also not disputed that as per the policy/guidelines dated 21.05.1995 regarding cases where allotment was not made due to non-inclusion of the name of the registrants in draw, in such cases, the allotment shall be made in the next draw at the rates prevailing at that time when the registrants would get the allotment according to priority position.

...

*31. In view of the above discussion and the legal position, **I am of the considered view that since the fault lies on the part of DDA, the petitioner must succeed.***

32. Accordingly, the respondent/DDA is hereby directed to allot a flat of the same category, if left out from the draw held



in February, 2008 or any other flat of the same category in Delhi, within six months from receipt of this order.”

39. For the said reasons, the present writ petition is allowed and the writ of mandamus is issued directing the respondents to allot LIG Flat No. 93, 3rd Floor, Sector-F, B-2, Narela, Delhi to the petitioner on the old/previous allotment rate of 1994.

JASMEET SINGH, J

MARCH 01st, 2024
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