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

Judgment reserved on: 01.12.2023

Judgment pronounced on: 27.02.2024

+ **W.P.(C) 7714/2014**

ISHWAR CHAND JAIN

..... Petitioners

Through: Mr Praveen Kumar
Aggarwal and Mr. Abhishek Grover,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY & ORS.Respondent

Through: Mr. Ajay Brahme, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. In a State like Delhi, majority of Delhite's have one dream i.e. to own a property in their name. It is not easy for the middle and lower income groups to own a property in Delhi and Delhi Development Authority ("DDA") from time to time comes out with schemes of fulfilling this dream of owning a property. One such scheme was the New Pattern Registration Scheme – 1979 wherein the DDA floated flats for middle income group, lower income group and Janta category.
2. This is a writ petition filed by the petitioner under Article 226 of the



Constitution of India seeking the following reliefs:-

“a) issue an appropriate Writ/Order or Direction in the nature of mandamus to the DDA to issue a allotment letter to the petitioner of Flat No. 180, First Floor, Pocket No.13, Sector No. 22, Rohini, Delhi or any other Flat allotted to the Petitioner against receipt of allotment price and to deliver possession thereof and to complete all other necessary formalities in that behalf; and

THE FACTUAL BACKGROUND

3. The respondent no. 1 is the DDA and respondent no. 2 is the Director (Housing). Both the parties are collectively referred to as DDA.
4. The DDA floated a scheme called “New Pattern Registration Scheme– 1979” (“NPRS Scheme”) which was formulated with the object to reduce the sale price of Middle Income Group (MIG), Lower Income Group (LIG) and Janta Flats so as to be within the reach of common man. The NPRS Scheme was open for the period from 01.09.1979 to 30.09.1979.
5. Under the NPRS Scheme, a person was eligible if he or she did not own any residential house or plot in full or in part on leasehold or freehold basis in the name of his/her wife/husband or any of his/her minor and/or dependent children or dependent parents or dependent minor sisters and brothers.
6. Further, a person who was eligible, was required to make registration deposit and the allotment of flats was to be by way of draw of lots and all the applicants registering were to have equal seniority. As per the NPRS Scheme, the deposit made by an applicant was to carry interests



at the rate of 7 per cent per annum.

7. The petitioner being eligible under the aforesaid NPRS Scheme, deposited a sum of Rs. 1500/- *vide* Challan No. 015242 dated 03.10.1979 for LIG flat which was duly acknowledge by the DDA by issuing acknowledgement. Deposit receipt bearing No. 114369 Book No. 1144 dated 03.10.1979 was also issued in favor of the petitioner.
8. A certificate of registration bearing No. 57760 dated 08.07.1980 was issued by the DDA to the petitioner expressly providing the registration of the petitioner at Serial No. 57760 under the said NPRS Scheme in the category of intending purchasers of flat/house under the LIG category. The petitioner's addresses mentioned in the certificate of registration are:-
 - i. *IE/67, NIT, Faridabad (address 1)*
 - ii. *E-307, East of Kailash, New Delhi (address 2)*
9. The petitioner *vide* letter dated 15.05.1982 addressed to the DDA informed the new address i.e. A-38, Group Industrial Area, Wazirpur, Delhi-110052 (*address 3*) for further communication. Thereafter, the petitioner wrote another letter dated 04.10.1988 to the DDA informing the new address i.e. Shop no.9. New Cloth market, Hisar, Haryana (*address 4*) for further communication. Lastly, the petitioner wrote a letter dated 30.10.2010 to the DDA giving new address i.e. Pandit Ramphool Singh Ghar, Railway Road Rohtak, Haryana (*address 5*) for communication.
10. On 07.10.2013, when the petitioner visited the office of the DDA to communicate the change of his address, he also made request to the



Director of DDA personally that the petitioner was still awaiting allotment of flat despite expiry of 34 years.

11. The Director of the DDA called the concerned staff to bring the relevant file, however, the file was said to be untraceable but the concerned staff came up with a register and upon perusal of the same, it was found that the petitioner was allotted Flat No. 180, First Floor, Pocket 13, Sector No. 22, Rohini, Delhi (*"Rohini Flat"*). The director called the petitioner to come again on the next day.
12. Petitioner again visited the office of the DDA on 08.10.2013, where after waiting for the whole day, the petitioner was informed that the aforesaid flat was allotted to him but the file of the same was untraceable as either it might have been lost or might be among the files in custody of CBI in connection with some cases. Thereupon, the director of the DDA wrote on a sheet printed with the name of the DDA, aforesaid particulars of the flats as well as the registration number allotted to the petitioner.
13. As soon as the petitioner came to know about the said allotment of the flat, petitioner visited the flat in question and found that it was vacant and many other flats around it were also vacant. Upon enquiry from the habitants of the other flats of the said building, the petitioner came to know that the flats were constructed around the years 1995-96.
14. The petitioner issued a legal notice dated 23.06.2014 to the DDA calling upon the DDA to hand over the possession of the aforesaid flat with allotment letter or any other flat allotted to the petitioner by accepting the allotment price within two months.
15. Since nothing was happening, petitioner filed the instant writ petition



with the above mentioned prayer.

16. The DDA filed a counter affidavit wherein it was stated that the petitioner was declared successful for the allotment of the Rohini flat in draw held on 29th March, 1996. As petitioner failed to deposit the demanded amount within the stipulated period, the allotment stood cancelled due to non-payment of demanded amount. The aforesaid flat now stands allotted in the name of another person namely Shri Rampal Agarwal S/o Shri Sant Lal in the draw held on 20th October, 2000. It is also stated that the main allotment file of the petitioner is not traceable.
17. It is further stated that the petitioner approached the DDA after deep slumber and enquired about the allotment in the year 2013. Allotment under the NPRS Scheme was closed after giving *vide* publicity in the leading newspapers. Further all the allotments under the NPRS Scheme have already been made and all eligible applicants have been allotted flats. No allotment is pending as on date and all these schemes have already been closed. This position has been notified to all the registrant registered under those schemes by circulating them in the leading newspapers. The public notice was also available on the website of the DDA.
18. Hence, the NPRS Scheme has already been closed after *vide* publicity through advertising the same in the leading newspapers and therefore the petitioner is not entitled for the allotment.

SUBMISSIONS ON BEHALF OF THE PETITIONER

19. Mr Kumar, learned counsel for the petitioner argues that at the time of registration, the petitioner had given two addresses i.e. address 1 and 2



as noted above. Thereafter, the petitioner (who is now a senior citizen) was compelled to change his residence on various occasions and on each occasion the petitioner communicated his new address to the DDA i.e. in the years 1982, 1988 and 2010.

20. Learned counsel submits that the petitioner was residing at the address 3 prior to year 1988 and thereafter the petitioner shifted to address 4 which was duly communicated to the DDA *vide* letter dated 04.10.1988 and receipt of the letter was duly acknowledged by DDA *vide* entry no. 3996 dated 04.10.1988. On the other hand, it is the admitted case of DDA that the Demand cum Allotment Letter (“DAL”) was issued to the petitioner at his address 3 where the petitioner was not residing at the time of sending of DAL. Instead of sending the letter at the address provided by the petitioner, the DDA erred in sending letter at his previous address where it could not have been served. Not sending of letter to the petitioner at his address at the relevant time which was made available to the DDA *vide* letter dated 04.10.1988, made the act of DDA non est.
21. The DDA ought to have issued the DAL at the address 4 and in the absence of the same, DDA has failed to perform its duty to issue DAL to the petitioner at the last known address of the petitioner available in the file of the DDA. Also, there is nothing on record to substantiate that the DAL was ever received by the petitioner. Therefore in the absence of DAL to the petitioner, the plea of failure to deposit the amount is not sustainable.
22. Further, the DDA is endeavouring to cover up its failure to discharge its legal duty to issue DAL at the last known address under the guise



of unsustainable plea that the file of the applicant is untraceable. The petitioner should not be made to suffer for the defaults of the DDA as it is the duty of the DDA to maintain its records and keep file in safe custody.

23. It is respectfully submitted that so far as the plea of delay and laches is concerned, the NPRS Scheme in question is of year 1979 and the DDA admittedly made the allotment after about more than 18 years and thus it is the DDA who has been responsible for delay in making the allotment of the flats. The DDA cannot sustain the objection of delay and laches in view of the fact that the petitioner came to know about the allotment only in year 2013.
24. Learned Counsel submits that this Court in similar facts & circumstances has categorically held that the DDA is duty bound to send the DAL to the applicant in all the addresses available in its records and if the DDA has failed to perform its duty, the applicant cannot be made to suffer for the failure of DDA to perform its legal duty and thus the petitioner is entitled for an opportunity to pay the arrears to avail the allotment of flat for which he has been waiting for last more than three decades. Reliance is placed on the judgements passed by this Court in *Prem Bhatnagar*¹, *Inderjeet Singh Tosaria*² and *Hirdayapal Singh*³.

SUBMISSIONS ON BEHALF OF THE DDA

25. *Per Contra*, Mr Brahme, learned counsel argues that under the NPRS Scheme, the petitioner was declared successful for allotment of Rohini

¹ *Prem Bhatnagar vs. DDA*, 2011:DHC:2833.

² *Inderjeet Singh Tosaria vs. DDA*, 2012:DHC:6963

³ *Hirdayapal Singh vs. DDA*, 2007:DHC:58.



flat in draw of lots held on 29.03.1996. The allotment was subject to the terms and conditions as given in DAL, Brochure and Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968 (“*DDA Regulation 1968*”).

26. The petitioner failed to deposit the demanded amount within the stipulated period of time and the allotment stood cancelled under Regulation 8(3) of DDA Regulation 1968. The aforesaid flat is now allotted in the name of registrant Shri. Rampal Agarwal S/o Shri. Sant Lal in draw of lots held on 20th October, 2000. The main allotment file of the petitioner is not traceable.
27. The petitioner in the year 2013 approached DDA to enquire about his allotment on which DDA submitted that all the allotments under the NPRS Scheme have been made and no further allotments are pending as on date and the said scheme has been closed and the same had been notified to all registrants *vide* publication in Newspapers, viz. The Hindustan Times on 22-11-2012 in English. The same was also available on website of DDA as public notice dated- 22-11-2012.
28. The notice issued on the website specifically mentions the above and also that the registrants who have not taken any refund of their registration money are advised to approach DDA and apply for refund with all requisite documents viz. FDR, Registration Card, Challan, change of address along with proof, if any, etc within 30 days from the date of publication of the notice. Any refund request after the said time will not be entertained and summarily rejected. Since the allotments under the said scheme has already been closed after wide publicity through advertising the same in the leading newspapers, the



petitioner is not entitled to any allotment.

29. Further, learned counsel heavily relies upon the Office Order passed by the DDA being F.2(10)/2002/Coord.(H)/49 dated 25.02.2005 to submit that the petitioner failed to approach the DDA within 4 years, therefore the allotment stands cancelled. The Office Order dated 25.02.2003 reads as under:-

“1. In cases, wherein change of address was intimated by the registrant but erroneously not recorded by DDA and thereby demand letters were sent at wrong/old address and the allottee approaches DDA within a period of four years from the date of allotment, he/she shall be allotted flat at the old cost, prevalent at the time when the priority of allottee matured and the allotment letter issued, and no interest will be charged. The allotment will be made at old cost subject to following:

(a) He should approach DDA within a period of four years from the date of issue of demand letter at the wrong address.

(b) He should have proof of having submitted a request for change of address to DDA duly signed by the allottee himself/herself i.e. proof of receipt at DDA counter.

(c) He should have documentary proof of change of address viz., Ration Card/Election Card/Identity Card/Passport Etc. (Duly attested by the Gazetted Officer).



2. In cases, where such an intimation has been made but the allottee has not approached the DDA within a period of four years from the date of allotment, the allottee shall be considered for allotment of flat at the old cost prevalent at the time of original allotment + 12% simple interest w.e.f. the date of original allotment till the date of issue of fresh Demand-cum-Allotment Letter.

The same principle will be applicable in the cases of missing priority cases.”

30. The petitioner continued to sleep over the matter for further twenty-two (22) years and has in the letter dated 30.07.2010 admitted to have woken up from his slumber. Hence, the case of the petitioner is barred by delay and laches as the petitioner didn't act within the time specified under the terms and conditions.
31. Learned counsel relied on ***Banda Development Authority***⁴ and more particularly para 17 which 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

⁴*Banda Development Authority, Banda vs. Moti Lal Aggarwal, (2011) 5 SCC 394.*



entertain the grievance of the petitioner on merits.”

ANALYSIS AND FINDINGS

32. I have heard learned counsel for the parties and perused the material on record.
33. Admittedly, under the NPRS Scheme, Certificate of Registration was issued by the DDA *vide* letter dated 08.07.1980 to the petitioner. On perusing the letter, it acknowledges the address 1 and 2 of the petitioner which was given by the petitioner at the time of registration.
34. In 1982, the petitioner *vide* letter dated 15.05.1982 informed the DDA about the change of address as address 3 i.e. A-38, Group Industrial Area Wazirpur, Delhi-52. After lapse of 6 years, the petitioner again *vide* letter dated 04.10.1988 informed the DDA about his new address 4 i.e. Shop No.9, New Cloth Market, Hisar, Haryana for communication. Learned Counsel for the petitioner has drawn my attention to the original letter dated 04.10.1988 which is placed on record. It shows that the said letter is duly stamped by the DDA as Serial No. 3996 and also reflects the date of receipt as 04.10.1988. Hence, it can be safely assumed that the letter dated 04.10.1988 was duly received and acknowledged by the DDA.
35. After almost 18 years of the NPRS Scheme, on 29.03.1996, DDA held draw of lots wherein the petitioner was declared successful for the allotment of Rohini flat. There is no dispute to the fact that the petitioner approached the DDA in the year 2010 after 14 years of the allotment was made and thereafter in 2013 when he visited the office of DDA.
36. DDA has taken the stand that the DAL was issued to the petitioner at



his address 3 and thus the petitioner failed to pay demanded amount as per Regulation 8(3) of DDA Regulation 1968 within the time frame. Hence, the allotment of the LIG flat to the petitioner stood cancelled and the new allottee has been allotted the Rohini flat by the DDA. Para 2(iv) of the counter affidavit filed by the DDA reads as under:-

“2 (iv) In reply to contents of para 2(iv), it is submitted that DAL was issued at the address of the petitioner i.e. A 38, Group Indl. Area, Wazirpur, Delhi 52. The contents of Annexure P-5 are denied. The main file of the case is not traceable. The petitioner has not submitted cogent documentary proof regarding his changed address. Rest averments are matter of record.”

37. Rule 8(2) and (3) of DDA Regulation 1968 reads as under:-

“8. Manner of Payment of Disposal Price –

(1).....

(2) An applicant to whom the property has been allotted shall have to pay the balance amount of the disposal price (i.e. after adjusting the deposit) within such period as may be specified in the allotment letter.

(3) If the applicant fails to pay the amount within the specified period, the allotment shall be cancelled and a sum of money equal to 20 per centum of the deposit shall be forfeited and the balance refunded.

.....”

38. On perusing the Rule 8(2), it is clear that the balance amount of the disposal price is to be paid within such period as may be specified in the “allotment letter”.

39. The DDA in its counter affidavit has categorically stated that the DAL



was issued to the petitioner at address 3 i.e. A-38, Group Industrial Area, Wazirpur, Delhi-52. Further, there is no date of the issuance of the DAL. However, since the allotment itself was made in the year 1996, the DAL could not have been issued prior to 1996. Hence sending DAL to the address 3 was meaningless exercise as the petitioner himself on 04.10.1988 had given the letter informing the DDA about his new address 4 i.e. Shop 9, New Cloth Market, Hisar Haryana. The DAL sent to the petitioner on wrong address despite the right address being on record of the DDA, is no demand in the eyes of law. It was incumbent upon the DDA to issue DAL to the petitioner on the new given address 4 which was the last known address on the record of the DDA.

40. In the similar facts and circumstances as noted above, this Court on various occasions⁵ have held that when the DAL was issued on the wrong address or DAL was never communicated to the applicant, the registrants/petitioners therein were entitled to the allotment of flats.
41. The factual matrix of this case falls under category 1 of the Office Order dated 25.02.2005. In order to avail the benefit of the first category, the petitioner has to show that there was an allotment letter sent on the wrong address and the petitioner has approached the DDA within 4 years of the issuance of the DAL at the wrong address. In the present case, the DDA is totally silent of the date of issue of demand letter at the wrong address except an averment in the counter affidavit that the DAL was issued at the wrong address. There are no particulars of the date of the issue of DAL.

⁵*Hirdayapal Singh (supra)*.



42. Secondly, the stand of the DDA is that the main file of the petitioner is not traceable in their records. Hence, the DDA is unable to say on which date the DAL was issued except the statement that DAL was issued at address 3. DDA is an instrumentality of State and is required to act fairly, bonafidely, and in accordance with law. The actions of the DDA as noted above are malafide and arbitrary to the petitioner who has been in legitimate hope of getting a flat. The total silence on the material particulars by the DDA clearly shows the misconduct on behalf of DDA.
43. The argument of DDA that a notice was published in leading newspapers that the allotment in the NPRS Scheme is closed and no further allotments will be made is contrary to the observations of the Coordinate bench in **Prem Bhatnagar**⁶ and more particularly para 11 which reads as under:-

“11. The last contention raised by counsel for the respondent is addressed first in view of the fact that this Court has taken a consistent view that a general notice in all the leading newspapers was published is in fact no notice at all as it is not expected that people would be looking at the public notices each day when the allotments are not made sometimes for twenty to twenty five years. This argument of the DDA already stands rejected and the same is rejected once again.”

44. I am in agreement with the above observation as general notice is no notice in the eyes of law. Hence, the argument stands rejected.

⁶Prem Bhatnagar (supra)



45. The last argument of the DDA that the present petition is barred by delay and laches relying on the *Banda Development Authority (supra)* is misconceived as the petitioner came to know about his allotment of Rohini flat on 07.10.2013, when he visited the office of DDA. Therefore, the cause of action in favour of the petitioner arose on 07.10.2013 as prior to the said date, the petitioner had no information regarding allotment of the flat in his favour. The present petition was filed on 01.11.2014. Hence, there is no delay on part of the petitioner. DDA is also responsible for delay as the allotment in the present case is made after 18 years of the NPRS Scheme and thereafter failed to communicate the DAL at the last known address of the petitioner available in the record of the DDA.

CONCLUSION

46. For the reasons noted above, the writ petition is allowed.
47. The DDA is directed to allot a flat equivalent to Flat No. 180, First Floor, Pocket No. 13, Sector-22, Rohini, Delhi (LIG Category) at the prevalent rates on the date of allotment i.e. 29.03.1996 within 4 weeks from today.
48. With the above directions, the writ petition along with pending application(s), are disposed of.

JASMEET SINGH, J

FEBRUARY 27th, 2024/(MSQ)