

Sushil Kumar Jain Vs. Dda

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Court : Delhi

Decided On : Nov-12-2013

Judge : G.P. Mittal

Appellant : Sushil Kumar Jain

Respondent : Dda

Advocate for Def. : Mr. M.K. Singh

Advocate for Pet/Ap. : Mr. R.K.Saini, Ms. Seema Salwan

Judgement :

\$~6 * IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

12. h November, 2013 + W.P.(C) 7433/2012 SUSHIL KUMAR JAIN Through:
Petitioner Mr. R.K.Saini, Adv. with Ms. Seema Salwan, Adv. versus DDA
Respondent Through: Mr. M.K. Singh, Adv. CORAM: HON'BLE MR. JUSTICE
G.P. MITTAL

JUDGMENT

G.P. MITTAL, J.(ORAL) 1. The Petitioner who got himself registered for allotment of an MIG flat under NPRS-1979 Scheme of the DDA has approached this Court challenging the cancellation of the said allotment by a letter dated 19.09.2006 by the DDA. He seeks the following relief:

a) A writ of certiorari calling for the records of the case and peruse the same; b) A writ of certiorari quashing the action of the Respondent/DDA in cancelling the allotment of the MIG flat made in favour of the allottee under NPRS1979 after receiving back the allotment letter sent at the residential address given by him at the time of registration without trying to serve the same at the occupation address, despite the fact that the occupational address was also given at the time of registration and was available on record and then declining to make alternative allotment being illegal, arbitrary, discriminatory, unjust and in violation of the Rules, Regulations and policy and the principles of equity, natural justice and good conscience; c) A writ of Mandamus directing the Respondents to allot an alternative MIG flat in Rohini in the same area/Sector and issue a demand letter to the Petitioner in respect thereof, charging him for the same at the old cost with interest, as per policy.

2. It is admitted case of the parties that at the time of registering himself under the scheme, the Petitioner had given his residential as well as occupational address. According to the Petitioner, the Petitioner did not receive any allotment letter till the beginning of the year 2003. In the meanwhile, he shifted his residence from 3911, Roshanpura, Dai Wara, Nai Sadak, Delhi but forget to inform the DDA about the same.

3. The Petitioner alleges that as per his priority number, DDA included his name in the draw held sometime in the year 2003. He was allotted an MIG Flat bearing No.78, Pocket 11-A, Sector 23, Rohini, Delhi. It is stated that the demand-cum-allotment letter was perhaps send by the DDA at his old residential address but since he had shifted his residence, the same could not have been received by him. The Petitioner says that that the DDA did not make any effort thereafter to sent the demand-cumallotment letter at his occupational address. The Petitioner relies on the judgment of this Court in Anand Swaroop Goyal v. DDA, WP(C) No.7262/2011 decided on 22.11.2012 wherein it was held that the DDA is duty bound to inform the allottee with regard to the allotment at all the addresses available in the record of the DDA. Paras 8, 9 and 11 of the judgment in Anand Swaroop Goyal are extracted hereunder:

8. In this case, at the time of registration under the New Pattern Registration Scheme, 1979, the petitioner had informed DDA with regard to his occupational address. The petitioner continued to work with the same office and in case the demand-cum-allotment letter was issued to the petitioner at his occupational address there is every likelihood that he would have received the same. There is no explanation forthcoming as to why DDA did not issue demandcum-allotment letter at the occupational address, which was available in their record. This has resulted in delay for the petitioner to own a flat for which initial payment was made as far back as in the year 1979.

9. The DDA, which is a statutory body, has failed to perform its duty. The Court cannot lose track of the fact that a condition of eligibility for allotment of a flat under New Pattern Registration Scheme, 1979, is that an applicant should not own any other permanent residence in Delhi, resultantly the petitioner would not have taken any step to acquire another property in Delhi. Another factor, which cannot be lost track of, is that allotment under this scheme were made over a span of more than two decades and thus the petitioner could well have been misled that his allotment would mature in time to come. DDA was well aware of the various judgments passed by this Court from time to time that DDA is duty bound to inform an allottee with regard to the allotment at all the addresses available in their record.

10. 11. A consistent view, in this regard, has been taken by the High Court in various judgments including *Sudesh Kapoor v. DDA*, reported at W.P.(C)8174/2006; *Hridayapal Singh v. DDA*, W.P.(C) 15002/2006 and *Prem Bhatnagar v. Delhi Development Authority*, W.P.(C) 592/2011. I am informed the judgments rendered by this Court in *Prem Bhatnagar (supra)* and *Mohinder Singh v. Delhi Development Authority*, W.P.(C) 1096/2011 have been upheld by Division Bench.

4. The learned counsel for the Petitioner submits that following *Anand Swaroop Goyal*, the Petitioner may be allotted a flat at the price prevailing in the year 2012.

5. The writ petition is resisted by the DDA. In the counter affidavit, the DDA has taken up the plea that the demand-cum-allotment letter with block 26.09.2003 -

6.10.2003 was sent to the Petitioner at his residential address as mentioned in the application form. There was a condition in the demand-cum-allotment letter for automatic cancellation of allotment and forfeiture of registration amount, if the amount as mentioned in the demand-cum-allotment letter is not paid. It is stated that the demand-cum-allotment letter was received back from the postal authorities with the remarks that no such person was available at this address. By another letter dated 05.11.2003, the Petitioner was directed to visit office of the DDA and to collect the demand-cum-allotment letter. It is stated in the counter affidavit that this letter was also sent to the Petitioner at his occupational address along with at his residential address as given in the application for registration. The Petitioner, however failed to respond to the same.

6. The case of the DDA is that the Petitioner submitted certain documents. (The DDA has not given any date as to when and how these documents were submitted by the Petitioner.). Later, the allotment of the flat was cancelled and a cancellation letter dated 19.09.2006 was sent to him. He was also informed to apply for refund of the deposited amount, subject to submission of the original documents. It is stated that the cancellation letter was sent at the current address of the Petitioner.

7. In pursuance of the order dated 29.08.2013 passed by this Court, the DDA has produced the original file relating to the registration and cancellation of the Petitioner. In fact, the learned counsel for the DDA has also handed over the copies of some documents in the Court for the first time today, which are taken on record. Copies thereof have also been supplied to the Petitioner.

8. I have before me File No.353(1518)03/NP/RO produced by the DDA. It contains all the three copies of the demand-cum-allotment letter. Although the plea of the DDA is that this demand-cum-allotment letter was sent to the Petitioner at his residential address but the file does not even contain any returned envelope as is the case set up by the DDA. Not only this, it does not even contain any postal receipt through which the letter was allegedly posted to the Petitioner or any other proof of posting.

9. A perusal of the three copies of the demand-cum-allotment letter further reveals that there is only one fold at the bottom of the letter and there is no fold on the rest

of the first copy, which is measuring 8 inches x 10 inches. There are no folds on the second and the third copy.

10. Prima facie, it appears that the demand letter was never posted to the Petitioner. In any case, in the absence of any postal receipt or returned envelope, no presumption of service can be drawn against the Petitioner.

11. Furthermore, a letter dated 05.11.2003 through which DDA claims to have informed the Petitioner to collect the demand-cum-allotment letter from its office on any Monday or Thursday, between 2:15 p.m. to 5:00 p.m., is claimed to have been sent to the Petitioner at his residential address as also at the occupational address. The learned counsel for the DDA refers to the AD card, copy of which has also been placed on record with the list of documents and which has been handed over today in the Court. Again, no postal receipt of sending this letter on either of the two addresses is available on the file or has been placed on record of this case by the DDA. The AD card, which is claimed to be in respect of this letter bears the address only of 3911, Roshanpura, Dai Wara, Nai Sadak, Delhi. Thus, this does not pertain to the occupational address.

12. In the absence of any postal receipt and in absence of any stamp of the postal department on the AD card, I am not even inclined to believe that the letter dated 05.11.2003 through which the Petitioner was required to collect demand-cum-allotment letter from the office of the DDA, was posted either at the residential or the occupational address (alternative address) of the Petitioner. Similarly, there is no postal receipt or proof of posting of the cancellation letter dated 19.09.2006, purported to have been issued to the Petitioner at his current address.

13. Otherwise also, the issuance of the cancellation letter was of no consequence as it is not established that the demand-cum-allotment letter was sent either at the residential or occupational address of the Petitioner.

14. Thus, the writ petition is bound to succeed.

15. For the aforesaid reasons, there is no escape from the conclusion that the DDA was not justified in cancelling the allotment made to the Petitioner by letter

dated 19.09.2006. The Petitioner, therefore, is entitled to allotment of an MIG flat or a flat of about equivalent area preferably in Rohini, Delhi. Thus, by virtue of the writ of mandamus, the DDA is directed to allot a flat of about equivalent area preferably in Rohini at the price as was prevalent in the year 2012, (as per the concession given by the learned counsel for the Petitioner) within a period of 12 weeks.

16. On issuance of the demand-cum-allotment letter and on deposit of the allotment money, the possession of the flat shall be delivered to the Petitioner within a period of one month from the date of making payment, as demanded by the DDA.

17. The writ petition is allowed in above terms with costs quantified at `15,000/-.

18. Pending applications also stand disposed of. (G.P. MITTAL) JUDGE
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