

Amarjit Sharma Vs. Dda

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Court : Delhi

Decided On : May-19-2014

Judge : Hima Kohli

Appellant : Amarjit Sharma

Respondent : Dda

Advocate for Def. : Ms. Shobhana Takiar

Advocate for Pet/Ap. : Mr. R.K. Saini

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 7436/2012, 7779/2012 and 7843/2012 Decided on :

19. 05.2014 IN THE MATTERS OF AMARJIT SHARMA SUMAN CHOUDHRY GAINDHAR KUSUM JAIN Through: Petitioner in W.P.(C) 7436/2012 Petitioner in W.P.(C) 7779/2012 Petitioner in W.P.(C) 7843/2012 Mr. R.K. Saini, Advocate versus DDA Respondent Through: Ms.Shobhana Takiar, Advocate CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.

(ORAL) 1. The present writ petitions have been filed by the petitioners challenging the action of the respondent/DDA in cancelling the allotment of a MIG/LIG flat made in their favour under the New Pattern Registration Scheme, 1979 (hereinafter referred to as NPRS-1979) without making any effort to serve them at

their occupational addresses that were furnished by them at the time of registration and further, for issuance of directions to the respondent/DDA to allot them an alternative MIG/LIG flat, as per entitlement in the same area/sector as had been allotted earlier, at the old cost with interest as per policy.

2. As the issue raised in all the three petitions, is common, with the consent of the parties and for the sake of convenience, the facts as narrated in W.P.(C) 7436/2012 are being referred to and taken into consideration for deciding the petitions.

3. As per the averments made in WP(C) No.7436/2012, Shri Om Prakash Sharma, father of the petitioner was registered under the NPRS-1979 for allotment of a MIG flat. At the time of registration, the petitioners father had given two addresses, one being the residential address, i.e., House No.D-14, Sham Nagar, P.O. Tilak Nagar, New Delhi, where he was residing at the relevant point in time and the other being his occupational address, i.e., C/o Air India, GSD, Delhi, where he was employed as a Junior Operator and had continued to serve there till his retirement in the year 2000. After registering himself under the NPRS-1979, Shri Om Prakash Sharma had shifted his residence from the address furnished to the respondent/DDA in the registration form but admittedly, he did not intimate the new address to the respondent/DDA. It is an undisputed position that on the turn of his priority number, the petitioners father was allotted a MIG flat bearing No.157, 3rd Floor, Pocket-1, Sector-23, New Delhi, on cash down basis, in a draw of lots that was held on 26.03.1997. Pursuant thereto, a demand-cum-allotment letter with block dates 10.07.1998-14.07.1998 was dispatched by the respondent/DDA to the allottee at the residential address mentioned in his application form. However, the said letter was received back undelivered with the postal remarks, shifted.

4. Shri Om Prakash Sharma had retired from service in the year 2000 and expired after ten years, on 07.09.2010. On his demise, he was succeeded by the petitioner as one of his legal heirs. After about two years from the date of his demise, the petitioner attended a public hearing in the office of the respondent/DDA on 30.10.2012, when he came to know that the allotment of a flat in Rohini had been made in favour of his father in the year 1998 but later on, it had been cancelled

due to non-payment. On the very same date, the petitioner had submitted a representation to the respondent/DDA stating inter alia that his father was employed with the Air India till his retirement in the year 2000 and he had expired in the year 2010. He had further stated in the letter that even though Shri Om Prakash Sharma had furnished his occupational address in the registration form, the respondent/DDA did not take any step to dispatch the demand-cum-allotment letter to him at the said address.

5. On 07.11.2012, the petitioner submitted some documents to the respondent/DDA for mutation of the registration in his favour alongwith NOCs issued by the other legal heirs of late Shri Om Prakash Sharma. In the end of November, 2012, when the petitioner visited the office of the respondent/DDA and met the concerned officers, he was informed that his application for mutation would not be processed and his request would be entertained only for the limited purpose of refund of the registration amount. The respondent/DDA took a stand that the terms and conditions contained in the demand-cum-allotment letter had stipulated that if the payment is not made by the allottee within the stipulated time and the allottee does not respond to the demand-cum-allotment letter, then his allotment/registration would stand cancelled automatically. Aggrieved by the aforesaid decision of the respondent/DDA of declining to allot an alternative MIG flat to the petitioner, the present petition came to be filed by the petitioner.

6. The only question raised in all the three petitions for the consideration of this Court is that upon receiving back the demandcum-allotment letters as undelivered with the postal remarks, shifted, should the respondent/DDA have made an attempt to serve the allottees at their occupational addresses/other addresses furnished by them at the time of submitting their registration forms.

7. Mr. R.K. Saini, learned counsel for the petitioner states that the issue raised in the present petitions is no longer res integra for the reason that the very same question had come up for consideration before a co-ordinate Bench in the case of Hirdayapal Singh vs. DDA reported as 2007 (II) AD (Delhi) 705, wherein, on almost similar facts, it was held that once the demand-cum-allotment letter had been dispatched at the residential address of an allottee and it was returned

undelivered and a permanent address of the said allottee was available in the file, then it was incumbent on the part of the DDA to have made every effort to reach the allotment letter to the petitioner at his permanent residential address. Further, it was observed that while it was the obligation of the applicant to inform the DDA of the change of his address, there was a corresponding obligation placed on the DDA to have made an attempt to dispatch the allotment letter to every available address of the applicant, as had been intimated to it and was available on the record.

8. It is submitted that the aforesaid decision in the case of Hirdayapal Singh (supra) was followed in the cases of Sudesh Kapoor vs. DDA in W.P.(C) 8174/2006 decided on 25.05.2007, Prem Bhatnagar vs. DDA in W.P.(C) 592/2011 decided on 19.05.2011 and Mohinder Singh vs. DDA in W.P.(C) 1096/2011 decided on 19.05.2011. Reliance has also been placed by learned counsel on the following decisions:(i) Ravi Dass vs. DDA in W.P.(C) 5554/2011 decided on 16.02.2012 (ii) Anurag Sahai vs. DDA in W.P.(C) 7247/2011 decided on 22.11.2012 (iii) Dev Raj vs. DDA in LPA6252013 decided on 19.02.2014 9. Referring to all the aforesaid decisions, learned counsel for the petitioners states that the petitioners herein claim parity with the applicants/allottees, subject matter of the aforesaid writ petitions and they are entitled to similar relief of allotment of alternate flats in their favour in the category applied for in the same area/sector as was allotted earlier, as per policy.

10. Per contra, Ms. Shobhana Takiar, learned counsel for the respondent/DDA vehemently opposes the present petitions on the ground of delay and laches and states that as per the facts set out in W.P.(C) 7436/2012, while the allotment had matured in favour of Mr.Om Prakash Sharma in the year 1998, the petitioner has chosen to approach the Court after about fourteen years, without explaining the enormous delay in seeking his legal remedies. To bring home the aforesaid objection, learned counsel relies on a decision of the Division Bench in the case of DDA vs. Sunil Kumar Jain in LPA2772013 decided on 11.03.2014, wherein it was observed that the applicant could not sleep at his leisure and approach the Court after an inordinately long period and if an allottee was not receiving any satisfactory response from the officers of the DDA, he ought to have approached

the Court at the earliest.

11. Counsel for the respondent/DDA further states that the NPRS- 1979, whereunder the parties had registered themselves, had closed down long ago, and as recently as on 22.11.2012, the respondent/DDA had issued a public notice in this regard in all leading newspapers informing the registrants that those of them, who had not taken the refund of the registration money, may approach the DDA to do so and further, that any request for refund after the expiry of 30 days from the date of publication of the notice, would not be entertained. It is submitted by the learned counsel that the petitioners had not responded to the aforesaid public notice and considering the fact that NPRS-1979 has been closed, at best, they would be entitled to refund of the original registration amount on completion of requisite formalities.

12. On merits, it is submitted by the counsel for the respondent/DDA that there is no practice of dispatching the undelivered demand letters at the occupational addresses of the allottees for the reason that their occupational address is required only for the limited purpose of verification of the salary certificate of a registrant , from the point of view of eligibility and not for any other purpose. She further states that in the case of WP(C)No.7436/2012, the applicant had been allotted the subject flat on a cash down basis in a draw of lots that was held on 26.03.1997 and as per the demand-cum-allotment letter with block dates 10.07.1998-14.07.1998, sent to the applicant at his residential address as mentioned in his application form, he was called upon to deposit the demanded amount in terms of the schedule provided therein. She submits that the said demand-cum-allotment letter had been received back undelivered with the remarks shifted and as per the terms and conditions stipulated in the said letter, the allotment would stand cancelled automatically if the payment was not deposited within the stipulated time. W.P.(C) 7436/2012 and connected matters She petitioners father having failed to respond to the allotment letter, the said allotment stood automatically cancelled.

13. Though it has not been specifically stated so in the counter affidavit, learned counsel for the respondent/DDA seeks to refer to Section 43(d)(i) of the Delhi

Development Act, 1957 and states that as per the said provision, if a document is addressed to a person to be served and sent by registered post to that person, then he would be deemed to be duly served. She states that in the present case, it is an admitted position that the demand-cum-allotment letter despatched by the DDA was received back undelivered from the postal authorities with the remark, shifted and in such circumstances, Section 44 of the Act which prescribes the manner in which public notices are to be issued and stipulates that advertisements be issued in local newspapers, came into play and the said provision having been duly complied with, the DDA cannot be faulted in any manner. In support of her submission that service on the petitioners at the residential address furnished in their application forms was sufficient to discharge the onus cast upon DDA under Section 43 of the Act, learned counsel relies on a decision in the case of Dev Raj vs. DDA in W.P.(C) 7842/2012, decided on 11.07.2013.

14. It is further submitted on behalf of the respondent/DDA that ever since the year 2003, DDA had been issuing public notices in the leading newspapers in Hindi and in English, wherein the successful allottees of various draws, whose demand-cum-allotment letters had been received back undelivered, were requested to collect the same from the Department within fifteen days from the date of the publication. Learned counsel submits that as no response was received from the cancelled petitioners herein, Subsequently, when their the allotments/registrations NPRS-1979 was were closed on 22.11.2012, the DDA had once again issued public notices in all leading newspapers as has been mentioned earlier, and therefore no blame can lie at the door of the DDA when the petitioners have remained in default and failed to act after issuance of the public notices.

15. In opposition to the aforesaid argument that the Scheme itself has been closed down and therefore, the petitioners are not entitled to any relief, in his rejoinder arguments, learned counsel for the petitioners relies on a decision in the case of Sanmukh Singh vs. DDA in W.P.(C) 400/2011, decided on 12.01.2012, wherein similar arguments had been addressed on behalf of the respondent/DDA that the NPRS-1979 had been closed down after issuance of public notices in all leading newspapers and the petitioner therein was only entitled to refund of the registration money admissible under the DDA policy, but not to an alternative

allotment of a flat, the writ petition had been allowed and the Court had directed the respondent/DDA to hold a mini draw of lots by including the name of the petitioner therein for allotment of a flat. It is submitted by learned counsel for the petitioners that the aforesaid decision was challenged by the DDA in an appeal but the Appellate Court had dismissed the said appeal and the matter rested there as the DDA had chosen not to prefer any appeal before the Supreme Court against the said decision. that finally, the petitioner therein was allotted a flat by the respondent/DDA in terms of the decision of the Single Judge. As a result, learned counsel urges that the decision in case of Sanmukh Singh (supra) having attained finality, in the present case too, the respondent/DDA cannot be permitted to non-suit the petitioners on the ground that the NPRS-1979 had been closed after issuance of public notices and consequently, they are disentitled from being allotted any flats.

16. The Court has heard the counsels for the parties and carefully considered the arguments advanced by them in the light of the precedents cited.

17. Coming first to the case law cited by learned counsel for the petitioners, in the case of Ravi Dass vs. DDA (supra) on similar grounds as have been taken by the petitioners herein, it was observed that the respondent/DDA was unjustified in cancelling the allotment made in favour of the petitioner therein by arguing that he was under an obligation to keep a track of the status of his registration and in the same breath claiming that DDA was not under any obligation to make an attempt to dispatch the demand-cum-allotment letter at the permanent address of the allottee, as available in its records. In the aforesaid context, it was held that every possible effort ought to have been made by the respondent/DDA to dispatch the demand-cum-allotment letter to the petitioner therein at all the addresses available in its records. It has been submitted by learned counsel for the petitioners that the aforesaid decision has attained finality as the same was not taken in appeal by the respondent/DDA.

18. Learned counsel for the petitioners further points out that the decision in the case of Prem Bhatnagar (supra) had been assailed by the respondent/DDA by filing an intra-court appeal, registered as LPA10982011, which was partly allowed

by the Division Bench vide judgment dated 14.02.2012, by upholding the findings returned by the learned Single Judge but interfering only on the aspect of the costing of the allotted flat on the ground that as the applicant was at fault for having failed to intimate the change of his residential address to the DDA and further, having failed to enquire about the status of his registration for a long time, he ought to pay the cost of the flat as on the date, when the writ petition had been allowed by the Single Judge.

19. The aforesaid decision of the Division Bench was followed by a Single Judge in the case of Anurag Sahai vs. DDA in W.P.(C) 7247/2011 decided on 22.11.2012, wherein it was noticed that at the time of registration under the NPRS-1979, the petitioner therein had not informed the DDA of his occupational address but he had enclosed an income certificate issued by his employer along with his application, that had mentioned the address of his employer. It was observed that the petitioner therein had continued working in the very same business establishment, and had the demand-cum-allotment letter been dispatched by the DDA to the petitioner at the given occupational address, there was every likelihood of his having received the same. In the above case, the Court had also considered the objection taken by the respondent/DDA with regard to delay and laches on the part of the petitioner therein in filing the writ petition and the stand of the counsel for the respondent/DDA that DDA had taken steps to issue publications in the newspapers with regard to maturity of numbers and closure of the Scheme, which ought to have been treated as service of notice on the petitioner, but the said argument was turned down by relying on a decision dated 28.01.2008 in the case of Usha Saikia vs. DDA in W.P.(C) 266/2007. Following the decision in the case of DDA vs. Mohinder Singh in W.P.(C) 1096/2011 decided on 19.05.2011, it was held in the case of Anurag Sahai (supra) that the cost of the flat would be reckoned as that which was prevalent in the year 2011, when the writ petition had been filed.

20. Pertinently, the decision in the case of Anurag Sahai (supra) alongwith other connected matters was challenged in appeals preferred by the respondent/DDA and the same were ultimately dismissed by the Division Bench vide judgment dated 28.11.2013 holding inter alia that once the occupational addresses of the petitioners were available on the files of the DDA, it was under an obligation to

attempt to inform them at all the available addresses about the maturity of the allotments rather than substituting the said obligation for a press notice. Thus, the respondent/DDA was faulted for having failed to take any steps to dispatch the undelivered demandcum-allotment letters to the occupational addresses of the writ petitioners as was available in their records.

21. A recent decision on the aforesaid issue is that of the Division Bench in the case of Dev Raj vs. DDA in LPA6252013, decided on 19.02.2014, wherein the appellant/applicant had assailed the judgment dated 11.07.2013 passed by the Single Judge, dismissing his writ petition, challenging the action of the respondent/DDA in cancelling the allotment of a flat made in his favour and declining to restore the same or make an alternative allotment on the ground that the letter of allotment sent to him had been returned undelivered and the said letter was not sent to his permanent address. Before the learned Single Judge, the DDA had taken a plea that the writ petition was liable to be dismissed not only on the ground of delay and laches, but also on the ground that after the demand-cum-allotment letter had been issued to the petitioner and despatched to his residential address, it had been returned with the postal remarks no such person resides at the said address. As for the permanent address furnished by the petitioner therein with his application form, it was stated by the DDA that the said address was incomplete. The learned Single Judge considered the objection raised by the DDA about delay and laches and rejected the same by observing that the writ petitioner had not received the demand letter and therefore, he could not have approached the Court earlier. But the second objection taken by the DDA was upheld and the writ petition was dismissed with the observation that the petitioner had made a false averment to the effect that he had mentioned his complete permanent address in his registration form, whereas the records had revealed to the contrary.

22. The appeal preferred by the aforesaid petitioner was allowed by the Division Bench vide judgment dated 19.02.2014, wherein it was observed that in the said case, the Scheme of the DDA was of the year 1989, whereas the allotment had been made in the year 2003, after 14 years from the date of the launch of the Scheme, which is a long span in the lifetime of an individual and the explanation

offered by the writ petitioner that he had shifted his residence but did not remember to inform the DDA, was accepted as a plausible one. It was further observed that the DDA was under an obligation to send the demandcum-allotment letter at the W.P.(C) 7436/2012 and connected matters permanent address by the writ petitioner in his application form and when the same had been returned unserved from the residential address, at least some attempts ought to have been made by it to dispatch the allotment letter to his permanent address. For arriving at the aforesaid conclusion, reliance was also placed by the Division Bench on a decision dated 03.03.2013 in LPA1372013 entitled DDA vs Banwari Lal Arya, wherein it was held that cancellation of allotment without making an attempt to send the allotment letter at the permanent address of the allottee as was disclosed in the application form, was unsustainable.

23. The facts of the case in WP(C)No.7436/2012, that has been treated as the lead matter, are undisputed. At the time of registration, the petitioners father had furnished two addresses alongwith his application, the first one being his residential address at Tilak Nagar and the second one was his occupational address. Pertinently, till the year 2000, the petitioners father had continued to remain employed with the same employer, namely, Air India. When the allotment of a flat in his favour had matured in the year 1998-1999, he was still employed with Air India. However, the said letter of allotment was returned undelivered by the postal authorities with the remark that the addressee had shifted from the given address.

24. It is not disputed that when the petitioners father had shifted his residence, he had not approached the respondent/DDA for recording the change of address. A perusal of the records produced by learned counsel for the respondent/DDA reveals that only one attempt was made by DDA to serve the Demand-cum-allotment letter on the petitioners father and that too at his residential address. However, the registration form submitted by Shri Om Prakash Sharma had clearly mentioned his occupational address as well and the said address had remained unchanged till he retired in the year 2000, but no attempt whatsoever was made by the respondent/DDA to resend the undelivered letter to the occupational address of the allottee.

25. Even in the other two petitions, the registrants had furnished two addresses, one being the residential address and the other being the occupational address. In fact, the petitioner in W.P.(C) No.7779/2012 had furnished three addresses. The facts stated by the petitioner in W.P.(C) No.7843/2012 reveal that after her husband had changed the residential address, he had intimated the current address to the respondent/DDA on 22.12.1995, but despite the same, the cancellation letter dated 27.2.1996 issued by the DDA was not despatched at the said address.

26. When the Scheme itself stipulates that for being eligible to apply for allotment of a flat under the NPRS-1979, an applicant should not own a permanent residence in Delhi, it is not understood as to how can it be expected that an applicant would continue to remain stationed for years on end at the very same residential address as was furnished by him at the time of submitting the application for registration, particularly when the timeline of maturity of the allotment itself runs into several years. This would be all the more difficult to envisage when a registrant happens to be a government servant, whose exigencies of service include the possibility of frequent transfers within or even outside the city. Even the registrants, who are employed in the private sector and would have taken a residential premises on rent are not expected to remain in occupation of the very same premises for a prolonged duration and it is not unusual to find that they have to shift their residence from time to time for various practical reasons. In such circumstances, the second address made available by a registrant, be it occupational or permanent, gains greater significance. The Court cannot overlook the fact that in most cases, including the present ones, the applications for allotment submitted in the year 1979-80, had remained pending for long and had actually matured after waiting for over a decade and a half or even a couple of decades.

27. If a registrant has omitted to update the records of respondent/DDA by furnishing his current address but had originally furnished more than one address in his registration form, and the allotment letter despatched at the residential address available in the records is returned undelivered by the postal authorities, then the respondent/DDA cannot take refuge of Sections 43 & 44 of the Act and

insist that after issuing public notices, its responsibility stands discharged. As observed by the Division Bench in the case of Sanmukh Singh (supra), issuance of a public notice does not absolve the DDA from its duty of sending the Demand-cum-Allotment letter at the correct address disclosed by a registrant and such a public notice could have been in addition to and not in substitution of a personal notice required to be sent to an allottee at the address disclosed by him.

28. As long as there is any other address of the applicant available in the records of the respondent/DDA, it remains its obligation to make every effort to direct the said letter to the said address as well. Even after making such attempts if the allotment letter is returned undelivered, then the respondent/DDA would be justified in stating that it cannot be blamed by a registrant for cancellation of the allotment.

29. In the facts of the present cases, the court is not convinced by the explanation offered by learned counsel for the respondent/DDA that the petitioners ought to have remained vigilant and kept a track on the status of their pending applications and having failed to do so, are disentitled to any relief. It is not as if the respondent/DDA has made allotments of flats to the registrants with promptitude or within a reasonable span of time. The allotments under a Scheme that was floated in the year 1979, had matured after almost a couple of decades. In such circumstances, it would be unreasonable to expect a registrant to remain alert and attentive all the time, while absolving the respondent/DDA of its duty to ready the flats within a reasonable time and upon the allotment maturing, make every effort to redirect an undelivered allotment letter, at such other addresses of the allottee as may be available in its records.

30. If a duty is cast on the registrant to inform the respondent/DDA about a change in his residential address, then the respondent/DDA being a statutory authority, is equally duty bound to make an endeavour to ascertain from its records if any other address of the allottee is available with it and forward the undelivered allotment letter to the said address. The reciprocity of obligations between the parties cannot be converted into a one way lane by the respondent/DDA by taking a stand that the occupational address furnished by the registrant is only asked for to verify his

salary certificate and it is not duty bound to redirect an undelivered allotment letter to such an address. The much cherished dream that every registrant nurtures in his heart of one day being able to display his nameplate at the entrance of his very own abode in the city cannot be dashed to the grounds, by taking such a technical plea. Nor can the allottees be deprived of their rights in such a cavalier fashion 31. The Court finds substance in the submission made by the counsel for the petitioners that public notices are not a substitute for individual notices and the Scheme had never envisaged public notices to be issued to the registrants and nor are the registrants under an obligation to constantly scan the newspapers so as to verify whether the DDA had inserted an advertisement for allotment of a flat. Any argument advanced on behalf of the respondent/DDA that in case a registrant does not respond to the public notice within the stipulated period, the DDA would be well entitled to deny him allotment of a flat, runs contrary to the terms of the Scheme, which could not have been unilaterally modified by the Department, to the detriment of the registrants. The aforesaid view is fortified by a similar view taken in the case of Usha Saikia (supra).

32. As for the objection taken by the counsel for the respondent/DDA about the writ petitions suffering from delay and laches, it may be noted that when the petitioners/their predecessors-in-title were not even aware of the fact that the allotment of a flat had matured in their favour or for that matter a subsequent cancellation had taken place, then it cannot be stated that the present petitions are liable to be dismissed on the ground of delay and laches. There is no plausible reason for the Court to disbelieve the petitioners when they state that they have approached the Court for appropriate relief within a reasonable time from the date of their gaining knowledge of the cancellation of the flats.

33. In view of the aforesaid facts and circumstances, the present petitions are allowed. It is directed that the respondent/DDA shall allot flats to the petitioners as per their entitlement, preferably in the same area, if available. As for the cost of the flats, keeping in mind the fact that the present petitions have been filed in the year 2012, it is directed that the flats shall be allotted at the cost that was prevalent on the date of filing of the respective petitions. The petitioners shall complete all requisite formalities as required within four weeks from the date of intimation and

the allotments shall be made within three months from today.

34. The parties are left to bear their own costs. (HIMA KOHLI) JUDGE MAY19
2014 rkb/sk

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