

**Hari Mohan Gupta Vs. D.D.A.**

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**Court :** Delhi

**Decided On :** Jan-24-2005

**Reported in :** 117(2005)DLT178; 2005(80)DRJ5

**Judge :** S. Ravindra Bhat, J.

**Acts :** [Constitution of India](#) - Article 226

**Appeal No. :** WP (C) No. 7373/03 and CM 12264/2003

**Appellant :** Hari Mohan Gupta

**Respondent :** D.D.A.

**Advocate for Def. :** Anil Sapra, Adv.

**Advocate for Pet/Ap. :** Sumit Bansal, Adv

**Judgement :**

**S. Ravindra Bhat, J.**

1. Issue Rule. With consent of parties, the petition has been finally heard.
2. In these proceedings under Article 226 of the Constitution, a direction has been claimed for quashing the demand of respondent Delhi Development Authority ( DDA) in respect of a 60 square yard plot. Additionally, a direction has been sought to the DDA for charging the cost prevailing in 1989 in respect of the plot allotted to

the petitioner.

3. The petitioner had initially registered himself in the housing scheme of DDA, known as the MIG (Middle Income Scheme), in 1971. In the year 1981, DDA launched another scheme known as the Residential Plots for the Rohini Residential Scheme (hereafter called 'the Rohini scheme'). Existing registrants in other schemes, like the petitioner, were offered an option to apply under the Rohini Scheme, upon exercise of option, such registrants were given a 'priority number' in the scheme. It appears that the scheme, accommodated different categories, which included 12% for such transferees known as 'HUDCO' transferees. The petitioner opted, and was allotted a priority number. The petitioner did not, subsequently hear anything from DDA. A number of draw of lots were conducted by DDA, and several persons were allotted plots in the Rohini scheme. After a long passage of time, and on not being able to secure any plot, the petitioner applied for cancellation of his registration, in 2001, which was acceded to by DDA on 20-12-2001. A month later, the petitioner applied for restoration of his registration, upon becoming aware that the DDA was planning to make allotments to those who had waited for very long periods. The DDA acceded to this request, and restored the registration of the petitioner on 6th March, 2003.

4. There was some ambiguity as to whether the petitioner's name would be included in the draw of lots to be held on 11th June, 2003. The petitioner, filed a writ petition, seeking appropriate orders, in that regard. This court, by its order dated 9-8-2003, required inclusion of his name. The petitioner was allotted a plot, in September 2003, for which a demand of Rs. 6,53,520/- (Rupees Six Lakhs Fifty Three Thousand, Five Hundred and Twenty only) was raised.

5. The grievance made out by the petitioner is that he ought to have been allotted a plot by 1989, when the priority number allotted to him would have secured a flat. It has been averred that he has been denied the plot for no fault on his part; therefore, he cannot be made to pay the cost applicable in 2003. Instead, he alleges that he is entitled to the plot at the 1989 cost.

6. The DDA, in its return, has denied any fault on its part. It has averred that in the four major draw (of lots) held before 1989, viz. in 1982, 1983, 1984 and 1987,

6294 plots were allotted. During this period, the petitioner was not successful. It however, admits that

'It is submitted that due to oversight the Respondent Authority could not place the name of the Petitioner in the list of HUDCO transferees, due to which the Petitioner could not be allotted a plot.'

The main defense of DDA, however is that the petitioner too, slumbered, and never queried, or elicited any response from it, though draw of lots were held periodically, in 1989, 1991, 1994 and 1996. It is also averred by the DDA that the relative position of various registrants was indicated in a newspaper advertisement issued on 27th March 1991. In spite of this, the petitioner did not approach DDA airing his grievance regarding non-allotment. In this background, even though the petitioner had sought cancellation in 2001, the DDA permitted restoration of his registration, and subsequently allotted a plot in 2003. thereforee, according to DDA, the petitioner cannot claim any relief, and has to pay up the demand.

7. Mr. Sumit Bansal, learned counsel appearing for the petitioner, submits that the DDA cannot charge the 2003 rates. He states that the petitioner's name had been overlooked entirely due to the fault of DDA, which was under a duty to ensure that allotments were made as per priority. Having omitted to take note of the priority, particularly since the petitioner was originally registered in 1971, and belonged to a category of 'transferred' registrants, the onus was heavier upon the DDA to ensure that allotment was made in time. According to counsel, the petitioner's priority was such as would have entitled him to a plot in 1989, and he cannot be made to pay for the authority's mistakes. thereforee, he says that the petitioner ought to be charged the cost applicable as of that time. Mr. Bansal has relied upon the Division Bench judgment in Mange Ram v. DDA (LPA No. 248/03) decided on 9-2-04. According to counsel, a similar order is called for in the present case, and the petitioner should be issued with a demand letter based on the cost prevailing in 1989, with 7% simple interest until 2001.

8. Mr. Anil Sapra, learned counsel for the respondent submits that even though there was some mistake or omission on the part of DDA, the petitioner too had to share the blame. He did not care to respond to the advertisement made in 1991,

and failed to enquire with the DDA until after his own request for cancellation in 2001. When the mistake was realized, DDA promptly rectified it, by restoring the petitioners' registration, and later, including his name in the draw of lots. Considerable reliance has been placed upon the recent judgment of a learned single judge in a batch of 16 cases decided on 15th December, 2004 in WP 19095/04 and connected cases, viz Surender Kumar Mehta v. Delhi Development Authority. The court considered the decisions in Mange Ram, Sudha Gupta and certain other cases, where the DDA had been faulted for not including names of registrants in various draw of lots. The judgment discussed various facets of the issue, and indicated that a graded, case-by-case judicial response is called for.

9. In Mange Ram, a learned Single Judge had directed that the cost payable by a registrant, (in the quota earmarked for scheduled castes),- erroneously overlooked by the DDA, while making allotments, resulting in a long wait, ought to be as applicable when he would have got his turn, as per priority, but for the DDA's mistake. The learned Single Judge had, in addition, directed payment of interest at 12% per annum from that date till the date of DDA's action in placing his name for allotment. The direction was modified by the Division Bench, which reduced the rate of interest payable by the registrant to 7% with an express caveat that the order ought not to be quoted as a precedent. Another order brought to my notice is dated 14-7-04, in WA No. 469/04 (in DDA v. Sudha Gupta). There too, the registrant had been overlooked when his name ought to have been considered. The Division Bench affirmed a learned single judge's order, requiring the DDA to charge the 1991 cost, with a further direction to the registrant to pay 12% interest from that date, until 31.3.1997.

10. As stated earlier, Surender Kumar's case has dwelt upon the different nuances of the issue regarding omission to include a registrant's name be it because of a mistake, or negligence of DDA in not keeping in mind the quotas; or in noting the changed address of a registrant. It was held that:

'Reasoning to be found in the aforementioned decisions is that DDA would be liable to charge the price as on date when priority of the registrant matured and DDA was negligent in either not entering the name of the registrant at the draw of

lots or posted the allotment letter at the wrong/ previous address. Further, whenever the allottee responded to DDA with promptness and brought to notice of DDA its mistake and did not approach the court belatedly, interest liability was not fastened on the allottee. Where allottee was negligent in not enforcing his right within reasonable time, interest liability was saddled on the allottee.'

11. I have given my anxious consideration to the rival submissions. The admitted features that emerge are that the petitioner is an old registrant, having registered with DDA in 1971. Later, his registration was transferred to the Rohini scheme. The DDA did not include his name in the draw of lots, which took place since 1989. Equally, the petitioner has not placed anything on record to show that he was vigilant about his rights or that he elicited any information about his allotment, anytime prior to 2002. He initially sought cancellation, a decision that he sought reversal of. The DDA acceded to his request, and later, included his name in the draw of lots. Hence, as in the other cases, the appropriate order would be to direct DDA to recover the cost prevailing in 1989, when the petitioner was admittedly not included in the draw of lots. As in Mange Ram's case and Sudha Gupta's case, the petitioner's delay in seeking remedies too cannot be overlooked. The court, in that decision, required the registrant to pay interest for certain periods. Such a direction is based not only on the principle that a court, under Article 226 would mould the relief having regard to the circumstances, but also upon the consideration of good governance. The entire blame in such cases cannot be laid at the doorstep of the DDA. Admittedly, a newspaper publication was issued in 1991, when all registrants were informed about their position. The DDA could assume, at least to an extent, that all those interested would come forward. The petitioner has to share the blame at least from that date. Hence, the petitioner would have to pay interest at 12% per annum from 1-4-1991 (since the date of newspaper publication was 27-3-1991) until the date of his request for restoration of registration, namely 3.12.2002, on the cost of the plot, which shall be worked out at the 1989 rate.

12. I am conscious of the Division Bench ruling in Mange Ram where the direction was to pay interest at 7%. However, as expressly recorded in that order, it was not to be treated as a precedent. Counsel's plea to follow that order would naturally result in breaching that condition. Besides, the judgment, or that portion, is

discretionary. On the other hand, the all other judgments have directed payment of 12% interest by the registrant. An oft-repeated aphorism is that consistency is the cornerstone of the administration of justice and that consistency creates confidence in the judicial system. (Ref Government of Andhra Pradesh v. A.P. Jaiswal, (2001) 1 SCC 748. The hallmark of judicial functioning is even handed dispensation of justice. The rule of precedent based on consistency can be departed from only if leads to manifest injustice, (in which case, the public interest in following another principle would outweigh such a rule of precedent). Hence, the plea that a lower rate of interest ought to be charged by DDA in this case has to be declined.

13. In the light of the above discussion, I issue the following directions:

(a)The demand to the extent it requires the petitioner to pay Rs. 6,53,520/- for the plot allotted by DDA, is hereby quashed;

(b)The DDA is directed to issue a fresh demand letter, charging the prevailing cost as of the year 1989, together with simple interest on such cost worked out at 12% p.a. from 1-4-1991 to 3.1.2002,

(c)The above direction at (b) shall be complied within eight weeks from today.

14. The writ petition is allowed to the extent indicated above. The application for interim directions is also disposed off in the light of the above directions.

15. No costs.

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