

Shokeen Ali Vs. Dda

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Court : Delhi

Decided On : Feb-10-2005

Reported in : 117(2005)DLT707; 2005(80)DRJ295

Judge : S. Ravindra Bhat, J.

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

Appeal No. : WP (C) No. 17117/2004 and CM 12671/04

Appellant : Shokeen Ali

Respondent : Dda

Advocate for Def. : G.P. Thareja, Adv.

Advocate for Pet/Ap. : R.K. Saini, Adv

Judgement :

S. Ravindra Bhat, J.

1. Rule. Counsel for the respondent waives notice of Rule. With consent of parties, the matter is heard finally.

2. In 1981, the respondent (hereafter called 'DDA') announced a scheme for allotment of plots, known as the Rohini Residential Scheme (hereafter called 'the scheme'). The flats offered were in three categories, namely, Middle Income

Groups (MIG), Lower Income Groups (LIG) and Janta/EWS. Shri Rustam, father of the petitioner, registered himself under the scheme, for allotment of a plot in the Janta/EWS category. He was subsequently issued an allotment-cum-demand letter in respect of plot No. 201, Pocket-3, Block-F, Sector-16, Rohini, measuring 25.9 Sq.Mtrs. After adjustment of the amounts already deposited with the DDA, a demand was made for the balance, namely, Rs.1749/- payable by or before 31.09.1985. Rustam, however, was unable to pay within time and he deposited the amount on 14.02.1986 with interest. The total amount deposited was Rs.1874.49/- .

3. The original allottee, Rustam, passed away on 22.08.1989. The petitioner, his son and legal heir applied for transfer of registration and allotment in his favor. This request was permitted. On 19.07.1990, the petitioner, who had intimated earlier about his father's death, also informed DDA about the change of his address to a new place, namely, Mohalla Pipalwala, Village Badli, Delhi-42. Another letter was issued in regard to the change of address on 26.11.1990. Both these appear to have been acknowledged by the office of DDA. The petitioner, once again, reminded the DDA about his request for transfer of name/change in his favor on 02.05.1991.

4. On 16.07.1991, the DDA responded by issuing a letter requiring the petitioner to furnish documentary proof.

5. It is averred that the petitioner lost the documents relating to the registration and allotment of the plot; and that a First Information (FIR) was lodged with the police authorities on 03.08.1991. These along with certain other documents were furnished to the DDA on 26.08.1991 by the petitioner. Later, the petitioner submitted copies of other documents such as Indemnity Bond, Relinquishment Deed, Affidavit etc. with a request to effect the transfer of the plot to him.

6. On 29.07.1992, the respondent-DDA responded in petitioner's favor. However, he was not given possession. In the letter addressed by DDA, the petitioner was informed that he was recognised as allottee of the plot on the strength of the documents and information supplied and that he would step into the shoes of the original allottee, namely, Rustam, upon the same terms and conditions which

would be binding on him.

7. It appears that on 8th June 1993, the Vice-Chairman, DDA decided to cancel the allotment in respect of the petitioner's father which had been transferred in his name on the ground that the petitioner had, by his letter dated 17.08.1992, clarified that he did not belong to a Schedule Caste category. The letter stated that the DDA had decided to keep the registration of the petitioner alive and put his name at the tail end of the priority list under the general category of the scheme, as on that day, namely, June 1993.

8. The rationale for this position was that the original application made by the petitioner's father, the column with regard to reservation (namely, belonging to SC/ST category) was filled with a representation that the applicant, namely, Rustam belonged to a Schedule Caste and was a Dhobi. That application was not signed, it bore the thumb impression of Rustam.

9. The petitioner followed up his representations / requests for allotment of a plot by another letter dated 05.03.1998. finally, on 20.12.2001, he received a letter stating that the DDA had decided to assign him priority at the tail end and that he would be allotted a plot in the general category as per his turn of allotment.

10. In the circumstances, the petitioner has approached this Court with various claims including a direction to quash the letter of DDA of 2001 according to the priority at the tail end to the petitioner and in not allotting him a Janta / EWS plot immediately by a mini draw in the same sector/phase at Rohini where his diseased father had been allotted a plot. Further a direction to allot a plot at Rohini in the same phase, namely, Phase-I at current rates after giving adjustment of the amounts deposited by the late Rustam together with interest at 7% on registration deposit and 12% on amounts paid towards the cost of the plot in 1986, have been sought.

11. The DDA, in their return have not disputed the allotment made in favor of Rustam; however, it has been stated that documents required to be furnished were not submitted, therefore, possession was not granted after allotment in the year 1985. It is further averred that after the mutation / approval of transfer for

registration in the petitioner's favor, he was required to complete formalities, which included the furnishing of Schedule Caste Certificate. Since the petitioner was not able to show that his father was in fact member of a Schedule Caste, it was decided that the petitioner's name would be considered under general category at the tail end.

12. The DDA, therefore, denies any liability and suggests that no relief can be granted in the writ petition and that in any case, by virtue of the impugned letter dated 20.12.2001, the petitioner's case for allotment would be considered at the tail end.

13. Mr. R.K. Saini, learned counsel appearing for the petitioner, submits that the impugned letter and the stand of DDA are arbitrary. He states that the petitioner cannot be made to suffer on account of omissions and ignorance of his father. It is stated that Rustam, the petitioner's father, was an illiterate. Reliance is placed upon the application, which according to learned counsel, clearly shows that the petitioner's father was not able to sign. That apart, it is submitted that the said Rustam did belong to dhobi community but was a Muslim and, therefore, could not avail of the benefits of reservation. Under the circumstances, it is submitted that at the worst, his case for allotment ought to have been considered on the basis of his being a general category applicant. It is further submitted that when the occasion for scrutiny, in this regard, arose, the petitioner did not conceal any fact. It was the petitioner, who mentioned that being a Muslim, a Schedule Caste certificate was not forthcoming. As far as the other aspects of his being heir of the original applicant was concerned, the DDA has never disputed the position. Under the circumstances, the DDA's action is extremely unreasonable and amounts to penalizing the petitioner twice over.

14. Mr. Saini has relied upon a decision of a learned Single Judge in Kamla Devi v. DDA (WP(C) No. 2338/04 decided on 25th August 2004) where the DDA had cancelled the allotment of the petitioner-applicant there and decided to place her at the bottom of the seniority list in the general category on the ground that originally in the application form, it was claimed that she was entitled to reservation as a physically handicapped person whereas later it transpired that she was not so

entitled. There, too the petitioner, was not claiming the plot allotted originally in 1985; what was claimed was a new allotment on the basis of current cost/rate. In that decision, the Court, after balancing the equities, held that priority in the general category could not be given because that would result in upsetting the entire seniority and reassignment of all priority numbers. Instead, the DDA was directed to include the petitioner's name in the next draw of lots to be held in respect of allotment for EWS/Janta plots.

15. Mr. Thareja, learned counsel for the DDA submits that the petitioner is not entitled to any equitable remedy under Article 226 of the Constitution. His father had applied on the basis on the strength of a representation, namely, as a Schedule Caste applicant. Admittedly, that was a mis-statement. Hence, the DDA's decision in treating the petitioner's name as a general category registrant and directing it to be considered at the tail end, on 29.12.2001 is not unreasonable or arbitrary. It is also submitted that the petition is belated and hit by laches. Learned counsel for the DDA has also relied upon a decision in *Trilokchand Motichand v. H.B. Munshi* : [1969]2SCR824 to the effect that unreasonable delay and laches disentitles a litigant to relief under Article 226 of the Constitution.

16. The following are undisputed facts which emerge from the pleadings and materials before the Court :-

a) The petitioner's father, the original applicant was allotted a plot in 1985; full payment as stipulated by DDA was made in February 1986;

b) The original applicant died in 1989.

c) After the petitioner's efforts, his name was substituted in the place of his diseased father by the DDA, on 29.07.1992.

d) It later transpired that the petitioner's father had applied as member of a Schedule Caste. Admittedly, he was a dhobi but not entitled to claim the status of Schedule Caste, being a Muslim. It is also not denied that the petitioner's father was illiterate;

e) Upon being asked to produce a certificate, the petitioner informed the correct position to the DDA;

f) The DDA by a letter dated 08.06.1993, decided to keep the petitioner's name at the tail end of the seniority list.

g) A fresh decision to keep the petitioner's name at the tail end of the seniority list was again taken on 21.12.1991, by the impugned letter.

17. The above would show that even though the original applicant had claimed scheduled caste status, it is quite likely that the same was out of ignorance and not by design. Having regard to the fact that the petitioner and his father belonged to the dhobi community which is otherwise be a schedule caste community, their not being properly informed in that regard, cannot be entirely ruled out. Hence, the petitioner's case really, ought to have been considered as in the general category. Admittedly, the registration took place in 1981. When the mistake surfaced in 1993, the DDA decided to keep the name of the petitioner at the tail end. Under the circumstances, there is no Explanationn forthcoming as to why even in the year 2001, the petitioner's name was directed to be kept at the tail end.

18. The respondents have taken the stand that there is nothing wrong in the impugned letter deciding to keep the petitioner at the bottom of the seniority list, even in 2001. I fail to see any logic for this. As held in Kamla Devi v. DDA's case (supra) by a learned Single Judge, at worst the applicant would have been in all such cases entitled to be treated as a general category applicant. As regards the arguments with regard to delay, it is to be noticed that the claim is against the order/letter dated 29.11.2001, when the DDA once again reiterated that the petitioner's name would be considered at the end of the seniority list.

19. Considerable time, namely 24 years have elapsed since the registration. As stated by the petitioner himself, he is willing to pay current costs and he is not insisting upon allotment of the same plot. I am of the view, thereforee, that here too relief ought to be similar to that granted in the judgment in WP(C) No. 2338/2004, namely, Kamla Devi v. DDA viz. a direction to include the petitioner's name in a next mini draw for allotment of EWS/Janta plot, with a further direction

to adjust the amounts already deposited by the petitioner's late father when a fresh demand is raised, at current cost, on the date of issuance of the demand cum allotment letter.

20. In the light of the above discussion, I direct the respondent-DDA to include the petitioner's name in a mini draw for allotment of a Janta /EWS category flat in Rohini. The cost of the plot shall be on current cost basis, payable as on the date of allotment cum demand letter. The amounts lying with the DDA, with interest, (as permissible), shall be adjusted while issuing such demand cum allotment letter.

21. The above direction shall be carried out by the DDA as expeditiously as possible and in any case, not later than 10 weeks from today.

22. Writ petition disposed off accordingly with no orders as to costs.

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