

Attar Kaur Vs. Delhi Development Authority

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Court : Delhi

Decided On : Feb-08-2002

Reported in : 2002IVAD(Delhi)200; 97(2002)DLT147; 2002(62)DRJ574

Judge : Anil Dev Singh and; R.C. Jain, JJ.

Appeal No. : Letters Patent Appeal No. 184 of 2000

Appellant : Attar Kaur

Respondent : Delhi Development Authority

Advocate for Def. : Rakesh Munjal, Senior Adv. and ; Arjun Pant, Adv.

Advocate for Pet/Ap. : R.K. Saini and; Hemant Arya, Advs

Disposition : Appeal allowed

Judgement :

Anil Dev Singh, J.

1. This is an appeal against the order of the learned Single Judge dated March 6, 2000 whereby the writ petition of the appellant seeking direction to the respondent to allot a flat to the appellant at the rates prevalent in the year 1994 was rejected. The facts giving rise to the appeal are as follows :-

In the year 1979 the appellant was registered with the Delhi Development Authority (for short 'the DDA') for allotment of a LIG under the New Pattern Registration Scheme, 1979 (for short 'the Scheme of 1979'). The appellant was given priority number 28509. In November 1988, the DDA announced a scheme called 'Awas Sakar Yojna'. According to the Awas Sakar Yojna, the registrants of MIG and LIG with priority numbers beyond 10,000/- willing to form co-operative group housing societies were to be allotted land on priority basis so that they could take up the construction of flats themselves. The appellant gave her willingness to be included in the Awas Sakar Yojna. Under the Awas Sakar Yojna, co-operative societies were formed and the Registrar, Cooperative Societies, was approached for seeking registration of nine societies only. The appellant was not a member of any of the nine societies. On October 7, 1992, the Awas Sakar Yojna was scrapped. It is not disputed that the registrants who opted for the Awas Sakar Yojna and had not received the benefit under it stood automatically reverted to the 'Scheme of 1979' under which they were originally registered. It appears that despite the fact that registration of the appellant stood reverted to the original 'Scheme of 1979', her name was not put in the draw of lots which was held on January 20, 1994, even though persons with priority numbers above her were included in it. In other words, while the appellant was ignored, names of her juniors figured in the draw of lots. Subsequently, when the appellant came to know about the mistake of the DDA, she filed a representation on September 15, 1998. The representation did not have the desired effect with the result the appellant filed a writ petition on November 24, 1999 in this Court to ventilate her grievance. The writ petition, however, was dismissed by the learned Single Judge. The appellant feeling aggrieved by the order of the learned Single Judge has filed the instant Letters Patent Appeal.

2. We have heard learned counsel for the parties.

3. It may be mentioned that during the pendency of the writ petition the DDA filed a counter-affidavit in which it was stated that the name of the appellant had since been considered for allotment of a LIG flat under the 'Scheme of 1979' and she has been allotted Flat No. 73, Ground Floor, Block A, Sector 2, Rohini, pursuant to computer draw held on December 3, 1999. It may also be pointed out that the rate

at which the allotment was made to the appellant was much higher than the one which was prevalent in the year 1994. The rates prevailing in 1994 were charged from the persons who were registered under the 'Scheme of 1979' after the appellant was registered and whose names were included in the draw of lots held on January 20, 1994. The parties are not at variance on this aspect of the matter. There is also no denial of the fact that the name of the appellant ought to have been included in the draw of lots held on January 20, 1994 in consonance with her priority position. The only justification for not allotting the flat as per the rate prevalent in the year 1994 is that the mistake was not detected within one year of the draw of lots held on January 20, 1994 in accordance with the policy dated May 25, 1995 of the D.D.A. The relevant part of the policy read as under :-

-----	Sl. Item Existing Modified provision.
No. provision. ----	----- xx xx xx 7. Cases where
Clear (i) Allotment shall be made	allotment has guidelines in the next draw at the
not been made do not rates prevailing at the	due to non- exist. time when the
registrant inclusion of would have got allotment	name of according to his/her
registrant in priority position. This draw to benefit	will, however, allotment. be
extended where the error has been detected within one year	of year of holding of
draw in which the registrant would have got the allotment.	(ii) In all such cases files
shall be put up to the Vice Chairman.	xx xx xx'

4. The aforesaid policy has to be read in a rational manner. A registrant in whose case allotment was not made due to non-inclusion of his/her name in the draw of lots due to the mistake of the DDA though as per the priority position his/her name ought to have been included, cannot be asked to pay more than what was paid by those who were registered under the 'Scheme of 1979' after he/she was registered. It is precisely for this purpose that the policy was framed. In case the mistake is of the DDA and it did not realise its mistake for one year, surely the registrant/allotter cannot be made to suffer otherwise it will compound latter's agony. In that even an allottee will have to pay for the mistake of the DDA and will have to suffer the injury not only on account of the mistake of the DDA but even for the amnesia of the DDA in failing to remember and recollect the fact that it had left out the name of the registrant from the draw wrongly. It is the duty of the DDA to

detect and rectify the mistake within one year, and in case the mistake is detected by the DDA after a period of one year there is no reason why the registrant should be asked to pay more. Rather the registrant must be allowed to pay the rates prevailing at the time when the mistake occurred unless it is established by the DDA that the mistake was known to the registrant and he/she did not bring it to the notice of the DDA within one year of the draw. In the instant case, there is nothing on record to show that the allottee, who is a widow, was aware of the mistake of the DDA. The mistake was discovered by the appellant only in September 1998. The observation of the learned Single Judge that the appellant knew that persons junior to her in the priority list have been included in the draw of lots held earlier in 1994 for allotment of a flat is not supported by the record. Nothing was shown to us by the respondent from the record that the appellant knew that persons junior to her in priority list had been included in the draw of lots held on January 20, 1994. We cannot allow the DDA to penalise the registrant for the mistake committed by it. The DDA must take care that a registrant is allotted a flat as per the rates which were prevalent at the time when he ought to have been allotted the same but for the mistake of the DDA. It is well settled that even for the fault of the court no litigant must be allowed to suffer. The same principle with greater force applies to the action of the administrative bodies. A person cannot be made to suffer for the wrongs of others. In *J.S. Rao (Prof) v. D.D.A. and Anr.*, 2001 I A.D. (Del) 235, a Division Bench of this Court held as follows:-

'10. In that view of the matter we are of the considered opinion that there is no take for not entering the name of the petitioner in the draw of lots held for allotment of a flat at Vasant Kunj was because the Delhi Development Authority inadvertently did not include his name in the draw of lots. therefore, for the mistake of the respondent the petitioner cannot be deprived of his right of allotment of a flat and cannot be saddled with higher liability. As SFS flat of similar nature has been kept reserved for the petitioner pursuant to interim orders passed by this Court. It is brought on record that the project for which the applications were invited in 1989 and 1990 were completed in the year 1992. The petitioner filed his applications for allotment of flat in 1989 & 1990 and the said project as against which he filed his applications came to be completed in the year 1992 and therefore, the petitioner is liable to pay the price of the flat prevailing in the year 1992.'

5. The above principle applies on all fours to the instant case.

6. Learned counsel for the appellant drew out attention to the decision of a Division Bench of this Court in *Frontier Avas Sakar Co-op Group Housing Society and Ors. v. D.D.A. and Ors.*, CWP No. 5628 of 1993, dated July 1, 1996, to show that the DDA had made a categorical statement before the Division Bench that the registrants of the 'Scheme of 1979' who have not draw any benefit under the Awas Sakar Yojna continue to remain members of the 'Scheme of 1979' along with their priority numbers and would be entitled to allotment of land in accordance with the Scheme. The Division Bench in its order dated July 1, 1996 recorded the assurance of the DDA as per below :-

'....Such of the registrants of the NPRS 1979 who have not been identified as members of the societies and allotted land would continue to remain member of the scheme (NPRS 979) along with their priority numbers and would be entitled to allotment of land in accordance with the scheme. It is thus submitted that the members represented by the three petitioner-societies are not going to suffer in any manner.'

7. In view of the aforesaid undertaking which was of general application, the DDA cannot be allowed to be heard that since the mistake was discovered after a period of one year, the appellant cannot be allotted a flat at the rates prevalent in the year 1994.

8. We also notice that in *Anoop Kumar v. Delhi Development Authority*, Appeal No. 277/95, decided on July 22, 1998, the State Commission while examining the case of a registrant whose name was wrongly not included in the draw of lots examined the effect of the aforesaid policy dated May 25, 1995. In this regard it was held by the State Commission that the detection of the error was the duty of the DDA and the DDA cannot take benefit of its own wrong by failing to detect the error which was too glaring to have escaped notice. In revision the National Consumer Disputes Redressal Commission by its order dated 17th May, 1999 upheld the order of the State Commission.

9. The decision of the National Commission was accepted by the DDA and no S.L.P. was filed. We may also note that the decision in fact was implemented by the DDA. We have referred to the decisions of the State Commission as also the the National Commission not for citing it as a precedent but to show that the decisions were accepted by the DDA. We fail to appreciate as to how the DDA having accepted the decisions not adhere to them in the subsequent cases.

10. In the circumstances, we accept the appeal, set aside the order of the learned Single Judge and direct that the appellant should be charged at the rates prevalent on January 20, 1994 when the draw of lots was held in which her name was not included by mistake.

11. The appeal is disposed of.