

Partap Singh Vs. Delhi Development Authority

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Court : Delhi

Decided On : Mar-07-2005

Reported in : 118(2005)DLT281; 2005(81)DRJ282

Judge : S. Ravindra Bhat, J.

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

Appeal No. : W.P.(C) No. 13314/2004 and CM No. 13377/2004

Appellant : Partap Singh

Respondent : Delhi Development Authority

Advocate for Def. : Anil Sapra and ; Neelima Tripathi, Advs.

Advocate for Pet/Ap. : R.K. Saini,; Abhay Chauhan,; Sumit Bansal and;

Disposition : Petition allowed

Judgement :

S. Ravindra Bhat, J.

1. In all these cases, the petitioners seek directions to the Delhi Development Authority (DDA) directing it to allot flats in lieu of those cancelled. The further relief claimed during the hearing is that the lower of two costs,- as between the cost at the time of the original allotment, and the current cost,- ought to be charged.

2. The petitioners in WP 13385/2004 and WP 19682/2004 had registered in the schemes known as the New Pattern Registration Scheme (NPRS) formulated by the DDA in 1979, and the petitioner in WP 13314/2004 had registered in the Ambedkar Avas Yojna, (Ambedkar Scheme) formulated in 1989. Such registrants were given a priority number in the scheme. As per the scheme, the DDA used to hold periodic draw of lots, and dispatch intimations, in the form of allotment cum demand letters, calling upon allottees to make payment, and complete formalities, as a condition for securing possession of the property.

3. The petitioners had changed their addresses, and intimated the DDA of the new address, where the intimation had to be dispatched. In WP 13385/2004, the intimation about change in address was made on 1-3-1989; in WP 19682/2004 the intimation was made on 12.6.2000, and in the case of WP 13314/2004, the intimation was made to DDA on 26-7-1999. In all the cases, the petitioners were successful in draws of lot, held by the DDA. The intimation of such allotment was made to the petitioners on different date in 2002 and January 2003. However, the demand letters were sent to the old, incorrect addresses, despite intimation by the registrant petitioners about change in their residence/ mailing address. As a result, the allotment letters never reached them. They were unable to comply with the conditions spelt out, and deposit the amounts demanded within time. The allotments, were therefore, cancelled.

4. All the petitioners, being in the dark about the events leading to cancellation of their allotments, appear to have approached the DDA within two years, from the dates when they were successful in the draw of lots/ date of dispatch of allotment letters. The common case is that they were apprised about the dispatch of allotment letters, non-deposit of amounts, leading to cancellation of allotments. Their representations to DDA went unheeded; hence they are before the Court, seeking relief. The petitioners have relied upon a policy of the DDA framed on 20th December, 2002, which stated inter alia, that in all cases where the DDA had not recorded the change of address or had sent the allotment to wrong addresses, eventually leading to cancellation of allotments, the allottee would be entitled to an allotment, at the old cost, when the original allotment was made, without charging any interest. This policy was also applicable in the case of other allottees, whose

allotments had been cancelled for certain other reasons.

5. This court, by several judgments, including *Mange Ram v. DDA* (LPA No. 248/03) decided on 9-2-04 taken the view that in such cases, the DDA ought to allot a flat to the registrant, on the basis of old cost, with interest having regard to the time taken to approach the court.

6. 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 mistake. The learned single judge had, in addition, directed payment of interest at 12% per annum from that date till the date of DDA 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 is dated 14-7-04, in *WA No. 469/04* (in *DDA v. Suda Gupta*). There too, the registrant had been overlooked when his name ought to have been considered. The Division Bench affirmed a learned single judge 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.

7. A learned single judge, decided 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 different aspects, and indicated that a case-by-case judicial approach is called for. The decision has dwelt upon the different nuances of the issue regarding omission to include a registrant 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.

It was further held that while determining whether the allottee was also guilty of negligence on the issue of claiming relief, (in order to assess whether a direction to pay any interest upon the old cost, was called for) a reasonable margin of up to 4 years could be given for the allottee as a time period for approaching the court. It was held that for any time beyond that period, the allottee would have to pay interest.

8. Earlier, during pendency of some of these petitions, in WP 16777/2004, by a decision dated 4th November, 2004, the DDA, in somewhat similar circumstances, had agreed to allot the flat. That statement was recorded, and the court also directed that the allotment ought to be made at the cost prevalent as on the date when priority of the petitioner matured or the price as on the date of allotment, whichever is less. A review of this part of the order, (vis--vis the direction to charge the lower amount, for the cost) was sought, by DDA, by filing RA 430/2004. The review petition was rejected on 16th February, 2005. The court noted the policy of the DDA itself to restore the allotment, and observed that at the time of formulation of the policy, the market trends apparently reflected a continuous rise in the value of the property, and that a reverse process was not envisaged. The conclusions, at directing the DDA to charge whichever is the lower cost, was based on the following reasoning:

To charge from this petitioner the higher cost of the year 2003, in my opinion, would be unjust to the petitioner for the reason that he would be put in possession of the flat in the year 2005. Petitioner would lose the benefit of use and occupation of the flat. DDA is a statutory authority and would be expected to act fairly, justly and equitably and not as a private citizen.

9. On 25th February, 2005, the DDA amended its policy dated 22.11.02/ 22.12.02 dealing with cancellation of allotment due to non receipt of intimation on account of change of address. The amendment incorporated conditions inter alia, regulating the manner in which the change of address had to be intimated, and the nature of documents required to be submitted by an allottee who suffered cancellation and more importantly indicated a time limit (4 years) for the purpose of exempting the requirement of payment of interest on the old cost of the flat. This policy stated that for any period beyond four years (taken by the allottee in approaching DDA) simple interest @12% would be charged.

10. Learned counsel strongly rely on the policy formulated by DDA in 2002, and state that the petitioners would be covered by it. All the petitioners applied to the DDA with promptitude, and there would be no question of payment of any interest. Counsel submit that although the petitioners have not claimed allotment on the payment of current cost, they would be entitled to that relief, in view of the directions of this court in WP 16777/04, to charge the lower cost, as between the cost at the time of allotment, and the current cost prevailing for such flats. They also submit that the petitioners cannot suffer for the fault of DDA, in dispatching allotment letters to wrong addresses, as a result of which payments could not be made in terms of the demand, leading to cancellation.

11. Counsel for the respondent DDA submitted that the element of cost, viz original cost, payable by persons whose allotments were cancelled due to dispatch of intimation to wrong addresses, was a matter of comprehensive policy or package. The object of that package was to ensure that justice was done to allottees adversely affected due to lapses on part of DDA. An integral element of that policy/ package was payment of the old cost, with interest, in the case of delay. The petitioners could thereforee no claim under the policy, and at the same time, claim reliefs outside it.

12. In all these cases, there is no dispute about the fact that the allotments were dispatched to the wrong address. In one case, it was argued, on behalf of the DDA that the petitioners were expected to be aware, of the allotment, since the priority till which draw of lots had been held, and the result, were published. That factor is

to an extent, but cannot mitigate the adverse impact of the DDA action in dispatching letters to wrong addresses and proceeding to cancel allotments, made after 20-25 years. Hence, the petitioners are entitled to relief.

13. The next question which arises is while directing the DDA to include the petitioners names in draw of lots, what ought to be the cost payable by them. It is well settled that in exercise of power under Article 226 of the [Constitution of India](#), it is open to the court to mould the relief, in the interests of justice, having regard to the peculiar circumstances of the case (Ref Food Corpn. of India v. S.N. Nagarkar, 0065/2002 : AIR 2002 SC808 . Hence, the fact that this relief was not specifically pleaded, can not, in my opinion, stand in the way of the petitioners securing it, if they are entitled to it.

14. I am of the view that there is no need to take a view that is different from the one taken by Nandrajog, J in WP 16777/04 and RA 430/05 so far as the relief of direction to recover the cost which is lower, is concerned. Apart from the reasoning advanced in that order, the position taken by DDA about the petitionersG?(tm) ineligibility to such relief, is not reasonable. DDA is a public, statutory body; each of its decisions has to measure up to the standards of fairness, non-arbitrariness and reasonableness, imposed by Article.

15. In my view, all allottees, at any given point in time, of any particular scheme, constitute a homogenous class (or classes, as the case may be). If, due to the fault of DDA, some allottees cannot get a flat, are compelled to approach the court for edressal, and are able to establish entitlement, as a result of which the court may have to direct fresh allotment, at a later date, denial of the benefit of lower cost, assessed for the same category of flats is unreasonable and arbitrary. Any other vie would mean that the DDA would be permitted to perpetuate injustice.

16. There is another perspective to the issue. The DDA does not have to re-open settled transactions, where allottees have paid an earlier cost and secured possession. The revision of costs, leading to lower cost applies to the same category of flats, awaiting allotment. There ought to be no differentiation between allottees, who are all required to follow the same conditions. Hence, the distinction made between the petitioners and similar allottees and others, is neither based on

an intelligible difference, nor does such difference (assuming it to be intelligible) have a reasonable nexus with the object sought to be achieved by the scheme.

17. In view of the foregoing, the petitions are entitled to succeed. A direction is issued to the Delhi Development Authority, to include the names of the petitioners in the next draw of lots. The DDA shall also include flats in the zone(s) where the petitioners were allotted flats in the first instance. The cost chargeable shall be the lower one, viz as between the cost which was originally chargeable from the petitioners (in the allotment letters cancelled) and the current cost. These directions shall be complied within a period of four weeks.

18. The petition and interlocutory applications are disposed off in the light of the above directions, with no order as to costs.

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