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Attar Kaur Vs. Delhi Development Authority

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Court : Delhi

Decided On : Mar-06-2000

Reported in : 2000VAD(Delhi)376; 2000(53)DRJ513

Judge : DR. M.K. Sharma, J.

Acts : Constitution of India - Article 226; New Pattern Registration Scheme, 1979

Appeal No. : C.W. No. 7090/1999

Appellant : Attar Kaur

Respondent : Delhi Development Authority

Advocate for Def. : Mr. S.K. Kaul, Senior Advocate and ;Mr. Amitabh Marwaha Adv.

Advocate for Pet/Ap. : Mr. R.K. Sani, Adv

Judgement :
ORDER

Dr. M.K. Sharma, J.

1. In the year 1979 the Delhi Development Authority, the respondent herein, announced a Scheme for allotment of flats in Delhi to the citizens of India. The said Scheme was called the New Pattern Registration Scheme, 1979 (In short,

'N.P.R.S., 1979'). The petitioner applied for under the said Scheme for allotment of a LIG flat. On the basis of the application of the petitioner her name was registered under the aforesaid Scheme. A priority list was drawn up in the year 1985 by the respondent and the petitioner was allotted a priority number being No.28509. The respondent thereafter floated another Scheme known as 'Avas Sakar Yojna' in the month of November, 1988 wherein an option was given to the registrants of N.P.R.S. 1979 with priority number beyond 10000 to give their willingness to become members of Cooperative Group Housing Societies to be formed under the supervision of the Delhi Development Authority with a stipulation that such Societies would be allotted land on priority basis. Relevant portion of the Scheme having a bearing on the present case is extracted below:

'After grouping the applicants who have taken this option, into appropriate groups, DDA will assist them in the formation of Societies. Office bearers of the societies shall take all steps to register the groups as Co-operative Group Housing Societies with the Registrar of Co-operative Societies, Delhi. After completion of the formalities of registration, DDA will allot land as per prescribed norms to these Co-operative Group Housing Societies within one month.'

2. The petitioner requested for transfer of her registration to the aforesaid Scheme and accordingly on the basis of her request her registration was transferred to 'Avas Sakar Yojna'. Even in spite of the aforesaid facility granted under the Scheme of 'Avas Sakar Yojna' the petitioner Along with some other registrants who similarly exercised their options could not get benefits under the said scheme and could not get any allotment of land. Subsequently a policy was framed by the respondent to the effect that all the registrants who were transferred to 'Avas Sakar Yojna' for allotment of flats and could not be considered as member of the society and their priority numbers were covered in the N.P.R.S. 1979, they would again be considered once again in the N.P.R.S. 1979 Scheme. Pursuant to such policy, vide Resolution dated 7.10.1992, it was resolved by the respondent to close the aforesaid Avas Sakar Yojna Scheme and not to entertain any further case under the scheme for allotment of land. The petitioner, thereforee, in terms of the aforesaid policy of the respondent continued to be a registrant under the N.P.R.S. 1979 Scheme with her priority No.28509 remaining intact. The aforesaid

position is also in consonance with the Division Bench decision of this court in C.W.P. No. 5628/93 titled Frontier Avas Sakar C.G.H.S. Limited & Others v. D.D.A. & Others disposed of on 1.7.1996, which held that such persons like the petitioner would continue to be registrants under N.R.P.S. 1979 and that they would still have the priority number under the said scheme.

3. It is stated in the petition that LIG registrants of N.P.R.S. 1979 having priority above 28600 were covered in the beginning of the year 1994 and in a draw held on 20.1.94 names of registrants having priority numbers up to 28600 were included and allotment of flats were made to some of such registrants. It has been pleaded that the name of the petitioner with registration No.28509 was illegally not included in the said draw. The petitioner, thereforee, made a representation to the respondent on 15.9.98 bringing to the notice of the respondent the aforesaid position and requested that her name be put in the next draw and she be allotted a flat at the same cost. Even in spite of the reminders being issued no action was taken by the respondents and, thereforee, the petitioner filed the present petition in this court seeking for issuance of a writ of mandamus to the respondents directing the respondents to include the name of the petitioner in the next draw of lots and also to allot a flat to the petitioner at the rates prevalent in the year 1994 in terms of the policy of the respondent.

4. The aforesaid writ petition filed by the petitioner in this Court was contested by the respondent by filing a counter affidavit contending, inter alia, that the name of the petitioner had since been considered for allotment of L.I.G. flat in N.P.R.S. 1979 Scheme against Registration No.50492 and she has been allotted flat No.73, Ground Floor, Pocket 'A', Sector 2, Rohini vide computer draw held on 3.12.1999. It was also stated that the demand-cum-allotment letter would be sent to the petitioner in terms of the order of the High Court. It was also stated that the name of the registrants including the petitioner were considered for allotment as some clarifications were required from the office of Registrar, Society, Government of India and the same were obtained in November, 1999 and thereafter immediately the name of the petitioner was considered for allotment and she had been allotted the aforesaid flat.

5. In the light of the aforesaid pleadings of the parties, it is apparent that, a flat has since been allotted to the petitioner, the description of which is in the counter affidavit filed by the respondent. Thus one part of the reliefs sought for in the writ petition has become infructuous with the decision of the respondent to allot the aforesaid flat to the petitioner. The only question that, thereforee, survives for my consideration is, at what rate the said flat is to be allotted to the petitioner?

6. Counsel for the petitioner submitted that the rate applicable for the flat in question shall have to be the rate of the year 1994 when her juniors were considered having priority number above 28,600 and their names were included in draw held on 20.1.94 and allotment of flats were also made to them. In support of his contention the learned counsel relied upon the Circular issued by the respondent dated 25.5.1995 which is annexed as Annexure P-9 and also on the decision of this court in C.W.P. No. 7006/97 A.S. Sabharwal v. Delhi Development Authority disposed of on 14.12.1999.

7. Counsel appearing for the respondent however, refuted the aforesaid submissions and submitted that the circular relied upon by the counsel appearing for the petitioner in support of her contention is not applicable to the facts and circumstances of the present case. He also submitted that the decision of this court dated 14.12.1999, referred to by the counsel for the petitioner, is also distinguishable on facts. He submitted that although it is the specific case of the petitioner that her name should have been included in the draw held on 21.10.1994 she kept silent all along and never made any representation to the respondent alleging discrimination or violation of her rights and submitted such a representation for the first time only on 15.9.1998. Accordingly he submitted that delay and laches are apparent on the face of the records and, thereforee, the petitioner is not entitled to claim allotment of the flat at the rates prevalent in 1994 but, is liable to pay at the rates prevalent on the date of such allotment of the flat.

8. In order to appreciate the contention of the counsel appearing for the parties I have perused the records including the contents of the circular relied upon by the counsel appearing for the petitioner. The said circular was issued by the Delhi Development Authority laying down certain modifications regarding the procedures

followed for carrying out different activities relating to allotment of flats by the Delhi Development Authority. The relevant clause is clause 7 thereof, which reads as follows:-

S. No.	ITEM	EXISTING PROVISION	MODIFIED PROVISION
7.	Cases where allotment has not been made due to non-inclusion of name of registrant in draw for allotment	Clear guide-lines do exist at the time of registrant would have got allotment according to his/her priority position. This benefit will, however, be extended where the error has been detected within one year of holding of draw	(i) Allotment shall be made in the next draw at the rates prevailing at the time when the registrant would have got allotment according to his/her priority position. This benefit will, however, be extended where the error has been detected within one year of holding of draw

in which the registrant

would have got

the allotment.

(ii) In all such

cases files shall be

put to the

Vice Chairman.

9. The aforesaid provision of the office instruction dated 25.5.95 came to be noticed by this Court in the case of A.S. Sabharwal (supra). In the said case the petitioner was also registered under the N.P.R.S.-1979 and he also similarly migrated to the Scheme called 'Avas Sakar Yojna'. His name was so included under the said scheme but the said scheme was closed by the respondent and, thereforee, the petitioner could not get any benefit under the said scheme. In 1992 the petitioner therein also resumed registration under the N.P.R.S. 1979 Scheme with priority No. 22154. A draw of lots was held on 17.2.98 and the persons with priority No. 22657 were included in the draw of lots but the petitioner's name was not included and, thereforee, the petitioner represented against his non-inclusion in the draw of lots but no action was taken. The aforesaid writ petition was filed in this court and taking notice of the contents of the aforesaid office instructions, this court held that the name of the petitioner ought to have been included in the draw of lots held on 17.2.1998 which was not done and, thereforee, a direction was issued by this court that the respondents would comply with the office instructions dated 25.5.1995 and make allotment at the prevalent rates at that time when he was to be included in the draw of lots held on 17.2.1998.

10. Counsel for the petitioner placed strong reliance on the aforesaid provision as also on the decision rendered by this court. It was also submitted by him that according to the contents of the instructions of the Delhi Development Authority dated 25.9.1995 the limitation of one year for getting benefit extended to a person

is applicable only when the error is detected by the respondent. According to him, the said period of one year limitation would not apply to the petitioner and that even if the error is detected by the petitioner even after expiry of one year he would still be entitled to the benefit of the clause of the circular.

11. I have given my anxious consideration to the submissions of the learned counsel appearing for the petitioner. In my considered opinion, the facts of the case in A.S. Sabharwal (supra) are distinguishable for in that case the name of the petitioner was not included in the draw of lots held on 17.2.1998 through an error and the said error was pointed out by the petitioner by filing a representation on 6.5.1998.Therefore, the said error was pointed out and detected within a period of one year and, thereforee, the said benefit was made available to the petitioner therein as the error was detected within one year of holding of a draw in which the registrant could have got the allotment. In the present case, the petitioner claims that he could have got the allotment in case his name was entered into the draw of lots held on 20.1.1994. There is no denial of the fact on behalf of the respondents that person with priority number above 28600 was also included in the draw of lots held on 20.1.1994 and allotment of flats were made to some of them. The petitioner, thereforee, could or should have been included in the said draw held on 20.1.1994 but the said error was not pointed out and/or detected within one year of holding of the draw in which the petitioner could have got the allotment. The same was pointed out by the petitioner for the first time by filing a representation on 15.9.1998 when the aforesaid error was detected and the name of the petitioner was included in the next draw in which he was successful, consequent to which he has now been allotted a flat. The petitioner although 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, still the petitioner remained silent and did not approach the authority pointing out the error which for the first time was pointed out to the respondent after a long period of four years thereafter. There was apparent delay and laches on the part of the petitioner in making a representation to the respondent pointing out the error. The error, thereforee, could not be detected within one year of holding of a draw in which the name petitioner could have been included in the draw of lots and, thereforee, the petitioner is not entitled to get the benefit of the aforesaid clause of the circular, which is clearly not applicable to the

facts of the present case. In the facts and circumstances of the case no other interpretation, then what is recorded herein, is possible.

12. In my considered opinion, there is no merit in the contention of the counsel appearing for the petitioner that the petitioner is liable to be allotted the said flat at the rates prevalent in 1994 particularly, in view of the decision of the Supreme Court in Delhi Development Authority Vs . Pushpendra Kumar Jain; reported in : AIR 1995 SC1 , wherein it was held that mere draw of lots does not vest an indefeasible right in the allottee for allotment at the price obtaining on the date of draw of lots. It was further held that since the right to flat arises only on the communication of the letter of allotment, the price or rates pre-vailing on the date of such communication is applicable unless otherwise provided in the Scheme. The Supreme Court then went on to hold that if in case the respondent is not willing to take or accept the allotment at such rate, it is always open to him to decline the allotment.

13. I, thereforee, do not find any merit in this petition and the same stands dismissed. It is, however, directed that demand-cum-allotment letter shall be issued to the petitioner immediately as per the rates as prevalent on the date of draw wherein the petitioner was successful and on payment of the aforesaid amount within the stipulated period and on completion of all formalities, possession of the said flat shall be handed over to the petitioner, within two weeks thereafter. There shall be no order as to costs.

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