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Court : Delhi

Decided On : Apr-02-2009

Reported in : 159(2009)DLT467

Judge : Hima Kohli, J.

Appeal No. : W.P. (C) 4237/2007 and CM No. 7935/2007

Appellant : Parwati Devi and ors.

Respondent : Dda

Advocate for Def. : Rajdipa Behura, Adv.

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

Judgement :

Hima Kohli, J.

1. The present writ petition is filed by the petitioners praying inter alia for a writ of mandamus to be issued to the respondent/DDA to allot a suitable alternative Janta Flat to them in Rohini Zone in lieu of the flat allotted to the deceased registrant, their predecessor-in-interest, in the year 1992, at the cost as per the policy applicable in that regard.

2. Briefly stated, the facts of the case are that the predecessor-in-interest of the petitioners, Shri Sujjan Singh, was registered with the DDA under the New Pattern Registration Scheme, 1979 (in short 'the NPRS 1979') for allotment of a Janta Flat. At the relevant time, when Shri Sujjan Singh applied for registration, he was living at Jor Bagh, New Delhi. However, after the year 2000, he shifted his residence to E-100, Sector 36, Noida, UP. Much before that, in the year 1992, Shri Sujjan Singh was declared a successful allottee of a Janta Flat in a draw of lots, bearing No. 202, Ground Floor, Pocket-7, Sector 16, Rohini and a demand-cum-allotment letter dated 17.8.1992 was issued by the respondent/DDA. However, the said letter was not received by the registrant. As a result, the respondent/DDA cancelled the allotment.

3. On 21.12.1998, the deceased registrant being unaware of the allotment made in his favour, made a representation to the respondent/DDA pointing out that no flat has been allotted to him and requesting for an early allotment. However, he did not receive any response from the respondent/DDA. On 2.9.2006, the registrant expired leaving behind the petitioners as his legal heirs. The petitioners while going through the records, came across the registration papers of Sh.Sujjan Singh and approached the respondent/DDA by filing an application on 18.12.2006, under the RTI Act, 2005 for information regarding the status of the registration and allotment, if any. On 11.1.2007, the respondent/DDA replied to the aforesaid application of the petitioners by stating that a flat was allotted to the deceased registrant, and a demand letter was issued to him on 17.8.1992; however the allotment was cancelled on account of non-payment. The petitioners served a legal notice on the respondent/DDA informing it that the registrant never received the aforesaid demand-cum-allotment letter, stated to have been sent to him and that he was never granted an opportunity of hearing before cancelling his allotment. The respondent/DDA gave a reply dated 2.4.2007, denying the claim of the petitioners thus compelling them to file the present writ petition.

4. Counsel for the petitioners submits that the application made by the deceased registrant in the year 1998, was duly received by the respondent/DDA, vide Diary No. 2262 ADJ and hence there is sufficient proof to show that the registrant had been vigilant and approached the respondent/DDA to enquire about the status of

his application. He submits that it was incumbent upon the respondent/DDA to intimate the registrant about the status of his application in the said year and having failed to do so, the petitioners cannot be blamed for approaching the Court belatedly. He relies on the office order dated 25.2.2005 issued by the respondent/DDA to state that in the present case, the petitioners are entitled to allotment of a Janta Falt in Rohini Zone at the cost prevalent in the year 1992, along with simple interest @ 12% per annum from the date of the original allotment till the date of issue of fresh demand-cum-allotment letter. He further states that if the interest factor exceeds the current cost of the flat, then the same should be directed to be limited to the prevalent current cost.

5. Counsel for the respondent/DDA states that pursuant to the order dated 22.7.2008, whereunder the DDA was directed to specifically state the manner and mode of dispatch and service of the demand-cum-allotment letter dated 17.8.1992, the department had tried to make efforts to verify the manner and mode of dispatch and service of demand-cum-allotment letter, but the relevant files were not traceable and hence no information with regard to the mode of dispatch and service can be made available. She further states that the relevant receipt register to establish the fact that the representation of the deceased registrant dated 24.12.1998, was duly received by the respondent/DDA, is also not available though the link file does make a mention of the said letter.

6. On merits, it is stated on behalf of the respondent/DDA that the respondent/DDA issued a public notice dated 27.2.1996 in leading newspapers intimating the registrants under the NPRS 1979 that all the registrants had been offered flats and any person whose name had not been included in the list displayed on the notice board of DDA, could contact its office and were allowed to file their objections in writing before 4.3.1996. She contends that despite the same, the registrant did not bother to file his objections within the prescribed time and therefore, his name was not included in the further draw and the above scheme has been closed in the year 1996.

7. I have heard the counsels for the parties and considered their submissions. There is no denial to the fact that the predecessor-in-interest of the petitioners

made a representation to the respondent/DDA on 24.12.1998 requesting it to allot a flat to him as early as possible. Facts reveal that even after receipt of the said representation, the respondent/DDA did not reply thereto or intimate the registrant that the scheme in question had been closed down in the year 1996. Had that been the case, then the consideration would have been different. The registrant would then have been expected to have sought his legal remedies within a reasonable time from the date of the said intimation to him. However, the petitioners came to know about the status of the pending registration of the deceased and the allotment only in January, 2007, whereafter, the present writ petition came to be filed in May, 2007.

8. The contention of the counsel for the respondent/DDA that public notices issued in the press by the respondent/DDA in the year 1996 should be considered sufficient intimation to the registrant and that the deceased registrant ought to have been more vigilant by keeping a track on his application and ought to have approached the respondent/DDA by filing objections in terms of its public notice, is not sufficient to oust the claim of a registrant for an allotment, particularly when the time lag between the registration and the allotment is of over a decade. A registrant awaiting maturity his allotment since the year 1979, cannot be blamed for not responding to the public notice when the Scheme itself did not contemplate any such mode of intimation of allotment.

9. In any case, a perusal of the press notice issued by the respondent/DDA in 1996 shows that the same applied to such of the registrants under the NPRS 1979 for Janta Flats, who did not accept allotment due to various reasons but had deposited cancellation charges for re-allotment of Janta Flat. As the case in hand does not fall under the said category, the respondent/DDA cannot rely on it to derive any benefit therefrom.

10. In view of the aforesaid position, the claim of the petitioners for allotment of a Janta Flat is held to be legal and valid. The respondent/DDA having failed to issue individual letter to the registrant at the address available with it in terms of the Scheme, cannot be permitted to claim that public notices are a substitute mode for personal intimation. The predecessor-in-interest of the petitioners cannot be

faulted for non-receipt of the demand-cum-allotment letter dated 17.8.1992, more so, when the mode of dispatch thereof has also not been established in the present proceedings.

11. In view of the above, the present writ petition is allowed. A mandamus is issued to the respondent/DDA to include the name of the petitioners in a mini draw of lots for allotment of a Janta Flat in Rohini Zone to be held in the next eight weeks. A demand-cum-allotment letter shall be issued to the petitioners within a period of four weeks from the date of holding the draw of lots. The said demand-cum-allotment letter shall be raised on the petitioners in accordance with the guidelines as contained in the office letter dated 25.2.2005, by fixing the cost of the flat at the rate prevalent in the year 1992, along with simple interest payable @ 12% from the date of the original allotment, till the date of the institution of the present writ petition i.e., till 28.5.2007.

12. It is further directed that in case the old cost prevalent at the time of the original allotment along with the interest thereon exceeds the current cost of the flat as on date of the institution of the writ petition, the respondent/DDA shall not be entitled to recover from the petitioners, any amount beyond the current cost.

13. The writ petition is disposed of along with the pending application, with no order as to costs.

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