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Ashwani Kapoor Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Mar-27-2000

Reported in : 2000VAD(Delhi)689; 86(2000)DLT50; 2000(56)DRJ366

Judge : C.K. Mahajan, J.

Acts : Constitution of India - Article 226

Appeal No. : C.W.P. No. 4019 of 1998

Appellant : Ashwani Kapoor

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Ms. Jyoti Singh, ; Mr. Sanjay Poddar and ; Mr. Randhir Jain

Advocate for Pet/Ap. : Mr. Rakesh Munjal, Adv

Judgement :

C.K. Mahajan, J.

1. Rule.

The learned Counsel for the parties agree that this petition can be finally disposed of at this stage.

2. The petitioner prays for directions to the respondents to allot a flat of Category-I (3 bed room category) in his favor and for award of damages for the delay in the allotment of flat.

3. The petitioner is a member of respondent No.3 Society and has paid the entire amount of the costs of the flat totalling Rs. 3,73000/- by 17th July, 1995. He was expelled from the Society on 2nd November, 1992. He filed an appeal against his expulsion. The appeal was allowed on 31st July, 1995 and the expulsion order was set aside. The Registrar, Cooperative Societies rejected the proposal of expulsion and cleared the name of the petitioner for allotment of flat vide letter dated December 4, 1995. The DDA/respondent No.1 was informed by the Registrar, Cooperative Societies. The petitioner approached the DDA for allotment of the flat. Till the filing of the petition allotment was not made to the petitioner.

4. The petitioner contends that he is entitled to allotment of Category-I flat. Entire costs of the flat including interest has been paid. At present eight category-I flats are lying unallotted and the allotment has to be made by the DDA which is not taking any steps for allotment.

5. Respondent No.1 in its counter affidavit concedes that a proposal was received from the Society after the clearance of the name of the petitioner. The Society has not cleared all the dues including ground rent etc. The draw of lots can only be held after the Society deposits the dues.

6. The Society in its affidavit has taken up the plea that all the 109 flats have been allotted to various members and the petitioner's name could not be included in the draw of lots for the reason that he was expelled from the membership. The membership was restored only on 31st July, 1995. A draw was held on 9th April, 1995 and allotment was made in favor of 99 members out of which 75 members were of category-I and 24 members were of category-II. Eight flats of category-I and 6 flats of category-II remained to be allotted. On 30th July, 1995 another draw of lots was held by the Society in the presence of the President and members of the Society and remaining 14 flats were also allotted to various members. Now no flats is left with the Society for allotment. It was conceded by the respondent Society that one category-II flat bearing No. 82 is being used for office purposes

by the welfare association and the same could be allotted to the petitioner subject to his clearing all the dues.

7. The petitioner in his rejoinder affidavit stated that eight flats of category-I are still lying vacant and the draw of lots dated 30th July, 1995 was not held in accordance with the provision of the Act and the Rules. The allotment is thus bad and is liable to be struck down.

8. I have heard learned Counsel for the parties.

9. It is not in dispute that the petitioner is eligible for allotment of flat in category-I. His name was cleared and the entire cost of the flat Along with interest was deposited by him. He was thus entitled to category-I flat. The respondent-Society has taken the plea that all the 109 flats have been allotted and now there is no flat of category-I is available with the Society for allotment to the petitioner. The respondent has not been able to explain how 14 flats were allotted without following the procedure laid down for allotment by the Registrar, Cooperative Societies, in the Directive dated 31.5.1984 issued under Rule 77 of the Delhi Cooperative group Housing Societies Rules.

10. The relevant portion of the Directive reads as under:

'It is directed that the allotment of flats shall be held by the D.D.A. through draw of lots and no society shall allot the flats itself. After clearing the list of members by the Cooperative Department, the DDA in consultation with the office bearers of the Society shall fix the date, time and place of draw and would intimate the same to the Society and the Registrar. The draw shall be held in the presence of the office bearers and members of the Society and the representative of the Registrar, Cooperative Societies should also be invited.

11. It is thus clear that the above procedure was not followed in so far as allotment of 14 flats was concerned. The DDA was not approached for fixing the date, time and place of draw. The draw of lots was to be conducted by the DDA in the presence of the representatives of the Registrar, Cooperative Society and not by the Society itself.

12. In these circumstances the action of the Society with regard to allotment of remaining 14 flats is bad in law and cannot be sustained as the same was not in conformity with the above procedure. The draw of lots held by the Society on 30th July, 1995 is set aside.

13. The petition is allowed.

14. The Society is directed to submit a proposal to the DDA within two weeks for conducting the draw of lots in respect of 14 flats after clearance of dues of ground rent.

15. In case the Society has already handed over physical possession of the 14 flat to some other persons who were not valid allottees, it is the responsibility of the Society to get these flats vacated and make them available for fresh allotment in accordance with the procedure laid down in the Directive issued by the Registrar on 31.5.1984.

15. Petition allowed.

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