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Court : Delhi

Decided On : Sep-05-2003

Reported in : 2003VIIAD(Delhi)419; 107(2003)DLT13

Judge : Sanjay Kishan Kaul, J.

Acts : Constitution of India - Article 226

Appeal No. : Civil Writ No. 2795 of 1994

Appellant : indumati Pandey

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Anusuya Salwan, Adv.

Advocate for Pet/Ap. : Arun Bhardwaj, Adv

Disposition : Writ petition allowed

Judgement :
ORDER

Sanjay Kishan Kaul, J.

CW No. 2795/1994:

1. The property of the petitioner was demolished during the period 1975-76 and in terms of a policy of the respondent published in 1979-80, registration was invited for flats of the affected persons. The petitioner applied for registration under the scheme.

2. The only controversy which arises in the present case is as to whether the petitioner would be entitled to an LIG flat or an MIG flat. This entitlement is based on an income criteria which includes income of the husband and the wife. In case the basic salary of the husband of the petitioner is taken into consideration, the petitioner would be eligible only for an LIG flat. If however, the total income realised by the husband of the petitioner is taken into consideration, the petitioner would be entitled to an MIG flat.

3. Learned Counsel for the petitioner initially sought to contend that even the requirements for an MIG flat had been reduced in subsequent schemes by reducing the base level of income making a person entitled to an MIG flat. He, however, fairly stated that since the registration of the petitioner is under a particular scheme, it really cannot be canvassed that the parameters of another scheme could apply.

4. If the parameters of the scheme in question are applied, the income level has to be seen for the year 1979-80. The scheme is open not only to salaried persons but to all persons. The petitioner has claimed that the Over Time Allowance paid to the husband of the petitioner should be included in the income of the husband of the petitioner for purposes of eligibility in which case the petitioner would get an MIG flat.

5. Income has been defined as under in the scheme:

'Income means the total annual income (excluding house rent allowance) of husband/wife or any of his/her minor and/or dependent children or dependent parents or dependent minor sisters and brothers for the financial year 1978-79.'

6. A reading of the aforesaid clause shows that income means the total annual income excluding House Rent Allowance. Thus, if there are any other incomes

available to a person other than the basic salary, the same would also be liable to be added and included in the component of income to consider the eligibility of a person. Learned Counsel for the petitioner has also produced the Income-tax Guide for the Department of Telecommunications in which the husband of the petitioner works. Salary has been defined therein to include pay, bonus, DA, CCA, Fixed Medical Allowance, HRA, Over Time Allowance, pension, subsistence allowance and any other cash allowance etc. Thus Over Time Allowance is specifically included in the definition of salary.

7. In my considered view, in view of the aforesaid, it cannot be said that the Over Time Allowance cannot be included in the definition of income under the scheme for purposes of consideration of the eligibility of the petitioner.

8. This matter can be looked at from another point of view. If a person is not a salaried person and carried on a petty trade, the income may vary from month to month. It is the total income which has to be taken into account and thus whatever is received by the person for the relevant financial year would be income. I fail to appreciate how in such a case, can the Over Time Allowance of the petitioner not be taken into account in the definition of income under the scheme.

9. In view of the aforesaid, I am of the considered view that the petitioner would be entitled to an MIG flat. The consequence of the same is that the impugned order dated 21.1,1994 rejecting the request of the petitioner for an MIG flat is quashed.

The MIG flat is apparently available since in the additional affidavit dated 30.1.2001 it has been said that the stay granted for the MIG flat should be vacated.

10. A further aspect which has to be considered is the issue of the cost of the MIG flat. The petitioner had rightly claimed his eligibility for the MIG flat and kept on agitating about the same. This was finally rejected only on 21.1.1994.

11. Learned Counsel for the petitioner states that the petitioner is agreeable to pay the cost of the MIG flat at the time when the impugned rejection letter was issued. I consider this a fair solution taking into consideration that the matter has been

pending since then and the petitioner cannot be burdened with any additional cost other than the said cost since the petitioner would have become entitled to a flat much prior to that date. The petitioner has been in fact deprived of the enjoyment of the flat over these years. It is thus directed that the petitioner should be allotted the flat at the cost prevalent in January, 1994.

12. A writ of mandamus is issued directing the respondent to issue an allotment letter in respect of an MIG flat at the price of January, 1994 to the petitioner by holding a mini draw within a period of two months from today and on the petitioner making payment in pursuance thereof and completing necessary formalities, the possession of the flat be handed over to the petitioner.

13. Learned Counsel for the petitioner states that the petitioner has since expired and is survived by the legal heirs and the flat be allotted in the name of only one of the legal heirs. That being the position, it is open to the husband of the petitioner to approach the respondent with no objection certificate from other legal heirs and other documents for issuance of allotment letter only in favor of husband of the petitioner.

14. Writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.