

Pradeep Dewan, Advocate Vs. Delhi Development Authority

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SooperKanoon Citation : sooperkanoon.com/703604

Court : Delhi

Decided On : Oct-28-2003

Reported in : 107(2003)DLT764

Judge : Sanjay Kishan Kaul, J.

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

Appeal No. : Civil Writ No. 3793 of 1997

Appellant : Pradeep Dewan, Advocate

Respondent : Delhi Development Authority

Advocate for Def. : C. Mohan Rao, Adv.

Advocate for Pet/Ap. : R.K. Watel and; Navin Kumar, Advs

Disposition : Writ petition allowed

Judgement :

ORDER

Sanjay Kishan Kaul, J.

1. This petitioner registered himself under the 5th SFS Scheme in August, 1982 and deposited the registration amount of Rs. 10,000/-. The petitioner thereafter kept on applying for allocation of a flat but was not successful in the draw of lots.

2. In December, 1993 a final opportunity was granted to the registrants of the 5th SFS Scheme to apply for a flat and the petitioner was found successful for allocation of a Category II flat in Dwarka in terms of the allocation letter dated 15.3.1994.

3. The petitioner was not willing to accept a flat at Dwarka and on 2.4.1994 sent a letter for refunding back the registration amount. This letter is dispatched on 4.4.1994 and the UPC receipted is annexed to the petition. The amount was, however, not refunded back and the petitioner has filed the present writ petition seeking reliefs of flat in a different locality or in the alternative for refund of the registration amount with interest.

4. Learned Counsel for the petitioner, on instructions, only presses the relief insofar as the refund of registration amount with interest is concerned and in this behalf has referred to the terms and conditions of the scheme. The relevant Clause 12 is as under:

'12. Surrender/Cancellation:

In case the allocation made to an applicant on the basis of the draw of lots is sought to be surrendered/cancelled by him/her, he/she shall have to pay penalty equal to 10% of the registration deposit, if the application for surrender/cancellation has been made within one month of the date of issue of demand-cum-allocation letter. In the event of cancellation of allocation/allotment in the above said manner, the applicant will have to pay the prescribed penalty within a fortnight of the demand letter sent to him failing which the amount of penalty will be deducted from the registration deposit and the balance will become refundable to the applicant. In this situation his/her registration shall stand cancelled.'

5. In the counter affidavit insofar as the aforesaid allocation is concerned, the receipt of letter dated 2.4.1994 is denied though the receipt of the subsequent letter dated 23.8.1995 surrendering the original letter of allotment is admitted. It is, however, stated that no amount is due to the petitioner since the registration amount with interest is less than the cancellation charges recoverable from the petitioner. This is on the basis that when the petitioner surrendered his allocation,

interest till that date on the demanded amount was due along with penalty and cancellation charges.

6. In my considered view, the aforesaid adjustment and demand of respondent is erroneous, more so in view of the letter dated 2.4.1994 of the petitioner. The petitioner has even annexed the proof of certificate of posting duly receipted.

7. In view of the aforesaid, the surrender of the allocation occurred within a period of one month in terms of Clause 12 as aforesaid and thus the only amount which the respondent could have deducted was cancellation charges of Rs. 1,000/- and the balance amount of Rs. 9,000/- was liable to be refunded to the petitioner but needful should have been done within a reasonable time. It is admitted that the necessary documents were submitted by the petitioner on 23.8.1995. The respondent cannot certainly take more than three months to process a case for refund and thus the amount should have been refunded at least by 30.11.1995.

8. In view of the aforesaid, a writ of mandamus is issued directing the respondent to refund the registration amount less cancellation charges amounting to Rs. 9,000/- with simple interest at the rate of 12% per annum from 1.12.1995 till date of payment. The amount be refunded within a maximum period of one month from today failing which, apart from any other remedy, the petitioner shall be entitled to interest at the rate of 18% per annum for the period of delay. The writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

9. duty to learned Counsels for the parties.