

Ashok Kumar Khandelwal Vs. Delhi Development Authority

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Court : Delhi

Decided On : Dec-12-2001

Reported in : 96(2002)DLT61

Judge : Manmohan Sarin, J.

Appeal No. : CW No. 827/97 and CM 496/2000

Appellant : Ashok Kumar Khandelwal

Respondent : Delhi Development Authority

Advocate for Def. : J.K. Sinha, Adv.

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

Disposition : Petition allowed

Judgement :

Manmohan Sarin, J.

1. The petitioner had applied for allotment of a MIG flat under the New Pattern Registration Scheme 1979. The application of the petitioner is bearing the Serial No. 2057 and registration No. 45131. Petitioner in due course was issued an allotment-cum-demand letter dated 11/13.11.1987. By the said allotment letter Flat No. 120-A, Group-I, Dilshad Garden was allotted to the petitioner on cash down

basis vide the aforesaid allotment-cum-demand letter dated 10.4.1986.

2. The petitioner claims to have duly deposited the amount of Rs. 1,07,200/- as demanded on cash down basis after adjustment of the initial deposit. Petitioner claims to have furnished the requisite documents required for taking possession of the flat vide a covering letter dated 19.2.1988. Petitioner was required in terms of the allotment-cum-demand letter to make the payment of the amount demanded on or before 11.2.1988 and the petitioner duly made the payment on 10.2.1988. Petitioner in the present writ petition impugns the action of the DDA vide its communication dated 26.3.1991 in cancelling the allotment of the flat.

3. Notice to show cause in the writ petition was issued on 26.2.1997. Despite repeated opportunities being given counter affidavit had not been filed by DDA. On 7.8.2000, again a complete set of paper book was supplied to the new counsel of DDA. On 13.12.2000 finally the new counsel was asked to obtain instructions in the matter and to ensure representation on behalf of the DDA. This led ultimately to Mr. J.K. Sinha, the present counsel being assigned the brief. Copies of the judgment relied on by Mr. Saini were supplied to Mr. Sinha and matter was adjourned to enable him to address the court. The cancellation letter dated 26.3.1991 is a cyclostyled one. It does mention any particular ground, rather it states

'.... allotment of the above said flat has been cancelled on your request/ due to non-submission of documents and payment within due date.

The cancellation charges will be intimated to you in the due course.'

4. Petitioner replied to the same, stating that petitioner had duly made the payment within time and all documents except the surrender slips of the FDR have been submitted on time on 19.2.1988. As regards FDR it was submitted that since the same had been misplaced, it could not be deposited with DDA along with other documents. The petitioner nevertheless furnished an indemnity bond for the said FDR on 14.12.1989. The delay is sought to be explained on account of serious illness during the relevant period.

5. Be that as it may, the position emerges is that the payment had been made within time. Most of the documents had been supplied except the FDR and indemnity bond, which was supplied after some delay. In any case it was supplied much before the order of cancellation. Reliance in this connection may be placed on the decision of this court in Dhani Ram Kapoor v. D.D.A. reported at 1997 1 AD (Delhi) 578 as well as on a Division Bench decision of this court in Ms. Asha N. Madnani v. D.D.A. reported at 1997 1 AD (Delhi) 385. In Dhani Ram's case it was held that issuance of an allotment letter creates a vested right and interest, which cannot be determined without providing him an opportunity to show cause against the proposed action. In the Ms. Asha N. Madnani's case the Division bench noticed the distinction between default in making payments which were essential and the non-submission or delayed submission of documents. The Division Bench observed as under:

'10. A distinction has to be drawn between the consequence flowing from the default in payment by the allottee in accordance with the terms and conditions of allotment and a default merely in furnishing proof of payments and filing of the documents within the prescribed period. The letter of allotment provides for automatic cancellation of the allotment in both the cases. In the case of default in payment of installments automatic cancellation of allotment has to be sustained because of the consequences flowing there from.

10.2. In case of a mere default in filing of the documents (having no material bearing on eligibility or qualification for allotment) and proof of payments within the prescribed period the considerations are different. Even the respondent-DDA is aware of the payment having been made. It is merely a question of convenience that allottee is required to furnish proof of payment so that collective information as to payments is available at one place and the DDA is not required to scan its records time and again in respect of each allottee. Having made the payments - all and in time - it is primarily the allottee who suffers by his failure to furnish the documents and proof of payments. Execution of lease and delivery of possession to the allottee would be delayed in spite of his having parted with money and the flat lying ready for delivery of possession. Situation may be different if third party interest or any other similar factor has intervened which would render it inequitable

or impossible to accommodate the allottee on his original allotment.

10.3. therefore, the term as to payment as per schedule must be held to be mandatory while the terms as to submission of all the relevant the terms as to submission of all the relevant documents Along with proof of payment within the prescribed period should be held to be directory.'

6. In the instant case learned counsel for the petitioner submitted that all documents together with indemnity bond have been furnished. He urges that even the FDR for which the petitioner had initially believed to have been misplaced by him, was ultimately found to be with the DDA as the same had not been issued to the petitioner. In any case that would not make a material difference in the light of the judicial pronouncements noticed above.

7. Learned counsel for DDA Mr. J.K. Sinha submitted that non-submission of FDR was not the only ground rather even the application was incomplete as it did not have the petitioner's signatures affixed and the petitioner had not submitted the income certificate for the financial year 1978-99. The irregularity in the application was not a ground taken by the respondents for cancelling the allotment and the show cause notice on which reliance has been placed by the learned counsel is dated 23.7.1993, which is issued after the order of cancellation. In any case it is not disputed that all formalities have been complied with, prior to the impugned cancellation on 26.3.1991.

8. In view of the foregoing discussion, writ petition deserves to be allowed. Learned counsel for the petitioner very fairly states that the said flat is no longer available. The order of cancellation dated 26.3.1991 is hereby quashed. The subsequent notice dated 23.7.1993 is also quashed. Writ of mandamus shall issue to the respondents to allot to the petitioner a flat in the same zone, if available at the old cost. In case the flat is not available in the same zone, then the petitioner be allotted a flat in any proximate zone at the old prevailing cost applicable for the zone in question.

9. Writ petition stands allowed in the above terms.

