

Shri Balkishan Sharma Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Aug-05-2002

Reported in : 2003(67)DRJ265

Judge : C.K. Mahajan, J.

Appeal No. : C.W. 2195/1992 and CM 4183/92

Appellant : Shri Balkishan Sharma

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Bhaskar Tiwari, Adv

Judgement :

C.K. Mahajan, J.

1. By way of present petition, the petitioner seeks quashing the order of cancellation of allotment of flat No. 32, First Floor, Sector 15, block F, Pocket 4, Rohini, Delhi. A direction is also sought to respondents to restore the allotment of said flat in favor of petitioner and deliver its vacant possession to the petitioner.

2. Briefly stated facts of this case are that petitioner applied for allotment of LIG flat under 'Registration Scheme on New Pattern, 1979 of Intending Purchasers of

Flats to be constructed by the Delhi Development Authority' in October, 1979. By letter dated 30th January, 1989 the petitioner informed the respondent/DDA about change in address from 1958, Kucha Chelan, Khari Baoli Delhi to House No. 6073, Gali Batshan, Khari Baoli, Delhi. The said letter was diarised at S.No. 3449 on 24th February, 1989. The petitioner was allotted flat No. 32, First Floor, Sector 15, Block 'F' Pocket 4, Rohini, Delhi on hire purchase basis in the draw of lots held on 14th March, 1990. Allotment letter dated 24th April, 1990-3rd May 1990 was however sent by respondent/DDA at the old address of the petitioner. According to the petitioner, he had received the said allotment letter through his old neighbour on 27th July, 1990. On 1st August, 1990, the petitioner deposited a sum of Rs. 20,063.02. On 14th September, 1990, the petitioner deposited all documents along with original challan in support of proof of payment. The Director, Housing Department, DDA vide letter dated 24th September, 1990 informed the petitioner about cancellation of flat due to non-compliance of instructions contained in the allotment letter. The petitioner informed the respondent that he had deposited all the documents, furnished affidavits and undertaking along with the copy of challan towards payments on 14th September, 1990 and requested for setting aside of cancellation and restoration of allotment. A request was made also that possession of the flat be given to the petitioner. The petitioner was directed to deposit a sum of Rs. 2651/- towards cancellation charges within 90 days from the date of issue of letter. In reply the petitioner requested respondent/DDA to waive of the cancellation charges on the ground that he had already furnished the documents along with challan as proof of payment. The prayer of the petitioner was rejected by respondent/DDA vide letter dated 5th June, 1991. He was directed to deposit the cancellation charges within 10 days from the date of letter. The petitioner deposited cancellation charges on 26th June, 1991. The petitioner was allotted another flat No. 10G, 3rd Floor, Pocket A-3, Group-II, Kirti Nagar, Delhi at a disposal cost of Rs. 1,94,900/- on cash down basis vide letter dated 24.2.1992-27.2.1992. According to the petitioner, he had deposited a sum of Rs. 1,94,744.05 on 27th May, 1992 including interest on delayed payment under protest. Hence the present petition.

3. There is no appearance on behalf of respondent/DDA. However counter affidavit was filed by the respondent/DDA on 4th February, 1993 wherein the

respondent/DDA denied receipt of letter of petitioner regarding change of address. The plea taken in the affidavit was that there was presumption that earlier allotment letter was served on the petitioner for the reason that second allotment letter, which was also sent to the petitioner at the old address, was never received back. It is stated that payment was not made within the prescribed time and documents as required were also not furnished in time. The allotment of petitioner was cancelled due to his fault in not making the payments and non-submissions of documents in time. It is also stated that petitioner had accepted the second allotment and made the payment.

4. The petitioner has placed reliance on the decision of this Court in *Asha N. Madnani v. D.D.A.* reported in : 65(1997)DLT538 wherein a Division Bench of this Court held that term of payment of Installments was mandatory and the deposit of documents was directory. Non-filing of documents could not entail cancellation of the allotment. At most, the respondents were liable to restore the allotment on payment of restoration charges unless third party interests or other equity had intervened.

5. Reliance is also placed on the decision of Division Bench of this Court passed in L.P.A. No. 128/98 titled as *Delhi Development Authority v. Dhani Ram Kapoor* on 20th November, 1998 wherein relying upon the decision of Division bench in *Asha N. Madnani's* case (supra), the court dismissed the appeal of DDA.

6. I have heard learned counsel for the petitioner. I have perused the letter dated 30th January, 1989. On the margin of the said letter, there is a stamp of respondent/DDA acknowledging the receipt of said letter on 24th February, 1989. The respondent/DDA was, thus, at fault in sending the allotment letter at the old address despite having receipt of information regarding change of address. The payment was made in time on 1st August, 1990 as allotment letter is dated 24th April, 1990-3rd May, 1990. Admittedly, the petitioner did not submit documents and proof of payment in time. The respondent could not cancel the allotment. The petitioner was entitled to restoration on payment of restoration charges. In case of mere default in filing documents and proof of payment within the prescribed period would not empower DDA to cancel the allotment.

7. By order dated 5th June, 1992, respondent DDA was directed not to allot flat No. 32, First Floor, Sector 15, Block-F, Pocket-4, if not already allotted to somebody else. By additional affidavit dated 8th November, 1993, the respondent/DDA stated that allotment of the said flat was made to one Bhawani Dass through draw of lots held on 26th March, 1992 and possession was delivered on 31st December, 1992. On 12th April, 1994, counsel for respondent made a statement in Court that flat No. 17, Pocket F-7, Sector-15, Rohini has been reserved for the petitioner on the direction of this court.

8. Having regard to the facts and circumstances of the case and drawing support from the decision of this Court in Asha N. Madnani's case (supra), the petition is allowed. Respondent-DDA is directed to allot Flat No. 17, Pocket-7, Sector-15, Rohini, Delhi to the petitioner on the same terms and conditions of earlier allotment in Rohini and at the cost prevalent on 24th April, 1990 within six weeks from the date of this order. The amount already deposited by the petitioner shall be adjusted.

No order as to costs.