

Ranjit Dixit Vs. Delhi Development Authority

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Court : Delhi

Decided On : Nov-22-2002

Reported in : 102(2003)DLT782

Judge : C.K. Mahajan, J.

Appeal No. : CW No. 6075/2000 and CM 9317/2000

Appellant : Ranjit Dixit

Respondent : Delhi Development Authority

Advocate for Def. : Nemo

Advocate for Pet/Ap. : R.K. Saini,; Hemant Arya and; N.R. Sharma, Advs

Disposition : Petition allowed

Judgement :

C.K. Mahajan, J.

1. By way of present petition, the petitioner seeks quashing of allotment of flat No. 10, Block B, Pocket-5, Sector 15, Rohini, Delhi in favor of the petitioner vide allotment-cum-demand letter dated 24.9.1991 and prays for allotment of a similar flat in the same area on the same terms and conditions and price with fresh block dates for payment at which earlier flat was allotted to him.

2. The petitioner applied for allotment of an MIG flat under New Pattern Registration Scheme, 1979 in the year 1979. Registration number of the petitioner was 9959 and priority number was 9592. On 18th February, 1991, the petitioner was allotted MIG Flat No. 10, Block B, Pocket-5, Sector 15, Rohini on cash down basis. The petitioner did not receive the allotment-cum-demand letter. However, on 9.5.1991, the petitioner learnt that the said flat had been allotted to Kanwar Bhan Malik when he received the notice from the Court in CW 1509/91. This Court vide order dated 7.5.1991 had directed the DDA to maintain status quo in respect of the flat in question. On 21st August, 1991, the petitioner made a representation to the DDA asking it to settle the case with the earlier allottee before issuance of demand letter to him in respect of flat in question. Despite representation of petitioner, the respondent/DDA issued an allotment-cum/demand letter in favor of the petitioner on 24.9.1991 in respect of flat in question. The petitioner was asked to make payment of Rs. 379142.24 on or before 23.12.1991 failing which the allotment would be cancelled. On 3.10.1991, the petitioner made another representation to the DDA pointing out that he was not liable to make payment of the demand and he would deposit the money after getting confirmation that the dispute regarding the flat in question had been decided in favor of DDA. On 7th December, 1991 and 20.12.1991, two more representations were made by the petitioner. On 21.1.1992, the respondent/DDA issued a show cause notice to the petitioner asking him to show cause, within 15 days, as to why allotment of flat in question in his favor be not cancelled. According to the petitioner, the said letter was actually posted on 21.2.1992. On 26th February, 1992, the petitioner responded to the show cause notice. The petitioner made three more representations to respondent/DDA on 4.10.1992, 26.3.1993 and 9.11.1993. The respondent/DDA confirmed that the case regarding flat in question was pending in the Court and as soon as a decision was taken, the petitioner would be informed. During the period from 26.11.1993 to 18.7.1996, the petitioner made 8 more representations to the respondent but to no avail. During this period, the respondent/DDA gave possession of the flat in question to Mr. Kanwar Bhan Malik but did not allot a suitable alternative flat to the petitioner. On 25.10.1996, the petitioner filed a complete against respondent/DDA before the Consumer Dispute Redressal Forum-II, Delhi praying for directing to DDA to give him possession of

an MIG flat in Rohini having parity in all respect of the flat which was allotted to him in the draw of lots in February, 1991 and also pay compensation amounting to Rs. 4 lakhs. Notice was issued to the respondent/DDA. The respondent/DDA filed the reply on 10.7.1998. The DDA admitted that the possession of flat in question had been handed over to Mr. Kanwar Bhan Malik. The case of the plaintiff for allotment of an alternative flat was under consideration and allotment would be made in due course. However, the petitioner withdrew the complaint on the objection raised by the DDA with regard to jurisdiction and maintainability. The complaint was dismissed as withdrawn. Hence the present petition.

3. Notice was issued to respondent/DDA by order dated 12th October, 2000. Interim order as also passed directing the respondent/DDA not to allot flat No. 38, Block-C, Pocket-B, Sector-8, Rohini, Delhi to anyone else except the petitioner, if not already allotted. The respondent/DDA in its counter affidavit admitted that the petitioner was allotted a flat No. 10, Block-D, Pocket-5, Rohini through draw of lots held on 18.2.1991. Demand letter was issued to him on the block dates of 20.9.1991-24.9.1991. the petitioner was required to pay the amount latest by 23.12.1991. It was stipulated in the letter that if the demanded amounts were not paid by 23.12.1991, the allotment would be cancelled automatically. The petitioner failed to comply with the instructions contained in the allotment-cum-demand letter. Show cause notice was issued to him. Despite show cause notice having been issued to the petitioner, he failed to comply with the instructions contained in the demand letter. Thus, allotment was cancelled. The case of the petitioner did not fall under the category of double allotment. Status quo was directed by this Court in respect of flat No. D-5/10, Sector-15, Rohini and not for flat No. 10, Pocket-5, Block-B, Sector-5, Rohini. The petition filed by Kanwar Bhan Malik was dismissed in default on 19.2.1996. The petitioner has approached this Court after 9 years of cancellation of the flat and the petition being highly belated is liable to be dismissed on the grounds of laches.

4. In rebuttal of the averments made in the counter affidavit, the petitioner in his rejoinder stated that since the respondent/DDA was not in a position to give possession of the flat in question to the petitioner, therefore, petitioner did not made payments. Reliance is placed on Resolution No. 144/93 of respondent/DDA,

annexure P-13 to the writ petition.

5. I have heard learned counsel for the petitioner, perused the pleadings and considered the documents on record. There is no appearance on behalf of respondent/DDA.

6. The petitioner has placed reliance on the judgments of this Court in Subhash Chander Chadha v. DDA 72 (1998) DLT 413 and Dutt Raj Gupta v. DDA CW 587/95 decided on 31.1.1997 wherein this Court in similar circumstances directed the respondent/DDA to allot the flats to the petitioners on the same terms and conditions and at the same costs at which the earlier flat in the same area was allotted to them.

7. The DDA in the precis dated 16.11.1993 determined the scope of term of double allotment. The relevant portions of the same read as under:-

'The terms double allotment signifies a situation where one flat is allotted to two different registrants either inadvertently or due to inefficiency or corruption in the allotment process. It takes place because of incomplete property records and lack of coordination between various branches of the management wing. The process of allotment of a specific flat involves conduct of a draw by computer on the basis of information about vacant flats made available to it by the management wing. This information is fed into the computer by verifying the property registers which contains information about all the flats made available to management wing by the engineering wing after their completion. The management wing is supposed to keep it updated by filling details of allotment and possession. If property register is not updated there is every probability that a flat which is already allotted and where possession has also been taken over, would be shown as vacant and this is fed into the computer at the time of draw. It would again allotted to another registrant causing double allotment. The cases of double allotment take place only because a flat which is allotted is shown as vacant and fit for allotment by the management wing of the Housing Department. Such wrong information can be fed to the computer either inadvertently or deliberately by a corrupt official for harassing registrants. Whatever may be the case the registrant is not at fault and responsibility of double allotment solely lies with the DDA.'

8. Perusal of the allotment letters issued to the petitioner and Mr. Kanwar Bhan Malik shows that allotment was made to them in respect of flat No. 10, Pocket-5, Block-D, Sector-15, Rohini. The allotment of said flat was made in favor of Mr. Kanwar Bhan on 23-27.04.90 whereas the allotment in favor of petitioner was made on 20-24.9.1991. It appears that allotment of the Kanwar Bhan was cancelled and the said flat was allotted to the petitioner later on. Aggrieved by cancellation, Kanwar Bhan filed a writ petition in this Court and this Court passed an interim order in his favor on 7.5.1991 with regard to the flat which was allotted to him. In light of the same, the plea raised by the respondent/DDA in its affidavit that there was no stay with regard to flat in question cannot be sustained moreso, the respondent/DDA in its reply before the Consumer Disputes Redressal Forum admitted that flat in question was subjudice and possession of flat in question was issued in favor of Mr. Kanwar Bhan Malik as per directions of the courts.

9. The petitioner from the very beginning informed the respondent/DDA in writing that the matter pertaining to the flat allotted to him in the draw of lots held on 18.2.1991 was sub-judice and requested the respondent/DDA to settle the issue with the petitioner in CW 1509/91. However, the respondent/DDA issued a demand-cum-allotment letter to the petitioner in respect of flat in question requiring him to deposit the amount demanded within the specified period. By letter dated 7.12.1991, the petitioner requested the DDA that outcome of the petition be informed to him in order to make payment in terms of demand letter. By letter dated 19.12.1991, the petitioner again wrote a letter to the DDA to the effect that money would be deposited only after getting confirmation that the petition filed by Kanwar Bhan Malik has been decided and the allotment of flat in question was no more stand in the name of Kanwar Bhan. Since the title of the flat was not clear, the petitioner did not deposit the amount. Despite the fact that matter pertaining to flat in question was sub-judice, the respondent/DDA issued a show cause notice to the petitioner on 21.1.1992 asking him to show cause, within 15 days as to why allotment of flat in question in his favor be not cancelled and cancelled the allotment in favor of the petitioner thereafter. This act of the respondent/DDA was not justified for the reasons that respondent/DDA despite having knowledge that the matter pertaining to flat in question was sub-judice issued a show cause notice to the petitioner and cancelled the flat thereafter. The petitioner was not at fault in

not making the payment as he already informed the respondent/DDA that matter pertaining to flat in question was sub-judice and he would deposit the amount after outcome of the decision of the court case. The respondent/DDA ought to have allotted another flat to the petitioner or in the alternative deferred the demand. The respondent/DDA failed to do so. It is admitted by the respondent/DDA in the reply filed before the Consumer Forum that as per orders of Court, the possession of flat in question was given to Mr. Kanwar Bhan Malik. In light of this admission, it is clear that the respondent/DDA made an allotment of a flat which was in dispute and the offer to the plaintiff was no offer in the eyes of law. The plea of the respondent/DDA that petition is barred by time is also not sustainable in the facts and circumstances of the case. Moreover the petitioner was compelled to approach the consumer forum where DDA made admissions supporting the case of the petitioner. Possession of the flat was handed over the Mr. Kanwar Bhan Malik.

10. In light of the above discussion, the petition is allowed. The respondent/DDA is directed to allot flat No. 38, Block-C, Pocket-C, Sector-8, Rohini, Delhi to the petitioner on the same terms and conditions and at the same cost at which the earlier flat was allotted to him. If the said flat is allotted to some other person, the respondent/DDA shall allot another flat to the petitioner in the same locality/zone on the terms stated above.

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