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Court : Supreme Court of India

Decided On : Mar-09-1998

Judge : Lokeshwar Prasad, J.

Acts : Constitution of India, 1950 - Articles 12 and 226

Appeal No. : CWP No. 2246 of 1996

Appellant : Subhash Chander Chadha

Respondent : Delhi Development Authority

Advocate for Def. : Ms. Mukta Sharma, Adv.

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

Judgement :

Lokeshwar Prasad, J.

1. The petitioner, named above, has filed the present writ petition under Article 226 of the Constitution of India averring that the petitioner applied for and got himself registered for the allotment of a Middle Income Group (MIG) flat under the 'New Pettern Registration Scheme, 1979 launched by the Delhi Development Authority (hereinafter refered to as the DDA). It is stated that after a long wait of 10 years, the petitioner, in the draw of lots, held by the respondent DDA on 31st August, 1989 was allotted a third floor flat, bearing No. 123-D, Pocket A and B, Group 3

and 4, situat- ed at Dilshad Garden, Delhi at a cost of Rs. 1,35,700/- on cash down basis. It is stated that after the draw of lots held on 31st August, 1989 a de- mand-cum-allotment letter was also prepared in the name of the petitioner in respect of the above mentioned flat but the same could not be sent to him as it was noticed by the concerned authorities that the above mentioned flat had already been allotted to one Shri Om Prakash Sadana much before, i.e., on 25th July, 1989 who had even taken possession of the same on 9th January, 1990.

2. It is averred that as per the policy of DDA a victim of double allot- ment is considered for an allotment of a new flat, on the same floor in the same area and in the same zone in the next draw and thereafter the allotted flat, drawn in his favour is given to him at the same cost at which the earlier flat was allotted to him.

3. It is further stated that the fact about the allotment of the above mentioned flat at Dilshad Garden was never intimated to the petitioner nor the petitioner was informed about the said allotment being a case of 'do- uble allotment'. It is alleged that the respondent DDA in violation of its own policy, did not even consider the petitioner for allotment of another flat in the subsequent draw of lots. It is stated that by the end of the year 1995 the DDA had made allotment of flats to practically most of the persons registered under the above said Scheme of 1979. On learning the same, the petitioner made a representation to DDA on 31st January, 1996 stating therein as to why he had not been allotted a flat. He requested that he should be intimated about the status of his registration. But no reply to his above said representation was given by the respondent DDA. The petitioner ultimately visited the office of the Vice Chairman of the re- spondent personally and to his utter shock and surprise he was orally informed by the official is of the respondent DDA about the allotment of the above said flat at Dilshad Garden in the draw of lots held on 31st August, 1989 and was also informed that the allotment-cum-demand letter thereof was not issued to him being a case of 'double allotment'. On learn- ing the above facts, the petitioner immediately made another representation on 2nd February, 1996 pointing out the above facts and requesting that as per the policy of the DDA, he should be considered for allotment of a flat on the same floor in the same area and in the same Zone immediately. The petitioner also stated in the above said representation that a number of third floor flats in Pocket-C, Jhilmil,

Phase-II, which fell in the same Zone, were lying vacant and therefore one of those flats be allotted in his favour. The grievance of the petitioner in nutshell is that no action has been taken by the officials of the respondent DDA on his above said repre- sentation. It has been inter-alia prayed by the petitioner that a mandamus be issued to the respondent DDA commanding the respondent to forthwith allot flat No. 65-D, Pocket-C, Phase-II, Jhilmil at the same cost at which the earlier flat in the same area was allotted to him in the draw of lots held on 31st August, 1989 and the possession of the same be also given to him immediately. The petitioner has also claimed the cost of these proceed- ings.

4. Notice of the petition was issued to the respondent and in reply an affidavit has been filed by Shri N.N. Puri, Director (Housing-II), DDA. In the reply filed on behalf of the DDA, it is stated that the present writ petition, filed by the petitioner, suffers from the vice of latches as the petitioner has filed the present writ petition after a gap of 8 years when the flat in question was allotted to him. The next objection taken by the respondent DDA in reply to show cause is that the petitioner was allotted the flat in question in the year 1989 and the policy on which reliance is being placed was formulated by the respondent DDA in 1993. It is stated that no benefit under the policy of 1993 can be extended to the petitioner because the policy framed in 1993 would have prospective application and retrospectively no benefit can be given to any one under the abovesaid policy. It is stated in the counter affidavit filed by Shri N.N. Puri, Director (Housing-II), DDA that the present writ petition, filed by the petitioner is liable to be dismissed with costs.

5. A rejoinder to the counter affidavit has been filed on behalf of the petitioner. In the rejoinder filed on behalf of the petitioner, the peti- tioner has controverted the pleas/contentions of the respondent DDA and has reiterated the averments made in the petition.

6. I have heard the learned Counsel for the parties at length and have also carefully gone through the documents/material on record. With a view to satisfy myself, I directed the respondent DDA to produce the original records relating to the case of the petitioner which the respondent DDA did produce and which too have been perused by me.

7. Admitted facts, on which there is no controversy between the parties in the present petition, are that the petitioner applied for and got him- self registered for allotment of a MIG flat under the 'New Pattern Regis- tration Scheme', 1979 announced and floated by the DDA. It is also not in dispute that in the draw of lots held on 31st August, 1989, the petitioner was allotted a third floor flat bearing No. 123-D, Pocket A and B, Dilshad Garden, Delhi at a cost of Rs. 1,25,700/- on cash down basis. It is also an admitted fact that thereafter a demand-cum-allotment letter was also pre- pared in respect of the above said flat in the name of the petitioner but the same could not be sent to him as the case was a case of 'double allot- ment' because the demised flat had already been allotted to one Shri Om Prakash Sadana on 25th July, 1989 who had even taken possession of the same on 9th January, 1990. The respondent DDA is also not disputing the fact that to take care of the cases of 'double allotments' the respondent DDA has formulated a policy in the year 1993. The main objection of the re- spondent DDA in the present writ petition is that the present writ petition suffers from the vice of latches and therefore no relief can be given to the petitioner in the present writ petition.

8. The second objection taken by the respondent DDA is that the policy framed by the DDA in 1993 to take care of the cases of 'double allotments' cannot be made applicable to the present case as the same would have no retrospective application and would be applicable prospectively, i.e., in respect of the cases after the year 1993.

9. Insofar as the first objection is concerned, the same in the facts and circumstances of the case of no consequence because though a flat was allotted to the petitioner in the draw of lots held in August, 1989 and on the basis of the draw of lots a demand-cum-allotment letter was also pre- pared but the same was never sent to the petitioner because the concerned officials of the respondent DDA themselves noticed that the case was a case 'double allotment'. No intimation/ information of the fact that the case of the petitioner was a case of 'double allotment' was given to the petition- er. It was by the end of the year 1995 when the respondent DDA made allot- ment of flats to most of the registrants of the Scheme 1979 and the peti- tioner was unaware of his fate, that the petitioner made a representation on 31st January, 1996 asking the respondent DDA as to

why an allotment has not been made in his favour. He also requested that an intimation/informa- tion be given to him about the status of his registration and allotment but no reply to the said representation was given by the respondent DDA. When the petitioner received no reply to his representation, referred to above, from the authorities of the respondent DDA, the petitioner personally visited the office of the respondent was orally informed by the officials of the respondent DDA about the allotment of the dismissed flat to him in the draw of lots held on 31st August, 1989 and also the fact that the demand-cum-allotment letter could not be issued to him because of double allotment'. Thereupon the petitioner made another representation on 2nd February, 1996 bringing all the facts to the notice of respondent DDA with request that as per the policy of the DDA, a third floor flat in Pocket-C, Jhilmil, Phase-II, which fell in the same Zone be allotted to him at the same price immediately. However, no action was taken by the respondent DDA on the above said representation dated the 2nd February, 1996. From the narration of the above facts, it is apparent that for the delay, that has been caused, no responsibility can be attributed to the petitioner. In the present case, as a matter of fact, on the basis of the above facts, it can be stated that the boot is on the other leg. Thus the first objection taken by the respondent DDA is devoid of substance and has to be rejected sum- marily.

10. The second objection taken by the respondent DDA that the policy formulated in the year 1993 cannot have retrospective application and no benefit under the above said policy can be given to the petitioner is also devoid of substance. Prior to the policy of 1993, a policy framed by the DDA in the year 1991 to deal with the cases of 'double allotment' was in existence and according to the above said policy in case of 'double allot- ment' while working the cost of subsequent flat, the current cost of con- struction was to be taken into account alongwith land premium at the rate at which it was included in the cost of the earlier flat. The above said policy of the year 1991 was assailed by the petitioners in different Forums including this Court. INCWP No. 736/92, entitled Smt. Krishna Sharda & Anr v. Delhi Development Authority decided on 27th April, 1993, a Devision Bench of this Court held:

'We find that the petitioner became entitled to a flat on Febru- ary 14,1990 i.e. the date on which the first allotment was made. We also find that in. respect of flats in Rohini draw of lot was held on December 15, 1989. In fact, in the adjoining flat in the same building as the second allotment, price of flat paid by the other allottees is much lower. It is, therefore, clear that the petitioner is asked to pay more because a mistake was committed by DDA by making double allotment. Of course, the DDA has suf- fered monetarily because of the double allotment but that mone- tary loss cannot be recovered from the petitioners because the petitioners have also suffered by not getting the flat though initial payment was made and flats were ready. Learned Counsel for the petitioners very fairly agreed that if he is charged at the rate as in December, 1989 he will not make any claim for damages against the DDA.

We are of the view that the DDA cannot charge any thing more than the price of the flat as on the date the draw of lots was held.'

11. It was on the basis of judicial pronouncements that the respondent DDA revised its policy of 1991 and formulated a new policy in the year 1993 to take care of the cases of 'double allotment' thereby providing that in the case of 'double allotment' cost of alternative flat should be the same as on the date of original allotment provided the allotment is made in the same locality and on the same floor. In the case of Smt.Krishna Sharda (supra) on the basis of which the respondent DDA revised its policy of 1991 and framed a new policy of 1993, the flat was allotted to the petitioner in the year 1990. In other words that case of 'double allotment' related to the year 1990. In that case, the benefit of 1993 policy was extended to said Smt. Krishna Sharda by the respondent DDA under the orders of this Court dated the 27th April, 1993, passed in CWP No. 736/92. There can be no denial of this fact that the respondent DDA falls within the definition of the word 'the State' as defined in Article 12 of the Constitution and therefore after extending the benefit to said Smt. Krishna Sharda under the orders of this Court and also as a consequence of the decision of this Court in the above said case after amending its policy in the year 1993, it is not open to the respondent DDA to take up the plea that the above said benefit cannot be extended to the petitioner in the present case.

12. The learned Counsel for the respondent DDA has placed reliance on a decision' of this court in case Sumitra Kawlra v. Delhi Development Au- thority, 1996 (3) RCR (Civil)347. I have gone through the abovesaid deci- sion. The same in no way helps the case of the respondent DDA in the present case. The facts of the case of Smt. Sumitra Kawlra (supra) and that of the present case are entirely different. In the above said case, relied upon by the learned Counsel for respondent no allotment of a flat was made to the petitioner at any point of time in Vasant Kunj and as a matter of fact the allotment of the flat was made not in favour of the petitioner but in favour of one Shri Arvind Kumar Mohindra. The Court in the above said case came to the conclusion that no flat at any point of time was allotted to the petitioner and the petitioner was under a misapprehension that a flat was allotted to her. Whereas in the present case in the draw of lots held on 31st August, 1989, a third floor flat bearing No. 123-D, Pocket A and B, Group 3 and 4, Dilshad Garden at a cost of Rs. 1,35,700/- on cash down basis was allotted in favour of the petitioner. Not only this after the draw of lots a demand-cum-allotment letter was also prepared in the name of petitioner but the same could not be issued to him as it was no- ticed by the authorities of the respondent DDA that the same flat had already been allotted to one Shri Om Prakash Sadana.

13. In view of the above discussion the writ petition filed by the peti- tioner is allowed and it is directed that the respondent DDA shall forth- with allot flat No. 65D, Pocket-C, Phase-II, Jhilmil to the petitioner on the same terms and conditions and at the same cost at which the earlier flat in the same area was allotted to him in the draw of the lots held on 31st August, 1989. The respondent DDA is also directed to hand over the physical possession of the above said flat at Jhilmil to the petitioner immediately on payment of fresh demand in terms of the above said order and on completion of usual formalities within 4 weeks. In the facts and circum- stances of the case the parties are left to bear their own costs.

Writ petition stands disposed of in above terms.

Writ Petition allowed.

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