

Ashok Kumar Vs. D.D.A.

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Court : Delhi

Decided On : Sep-20-2011

Judge : Rajiv Sahai Endlaw, J.

Appeal No. : W.P.(C) 7352/2008

Appellant : Ashok Kumar

Respondent : D.D.A.

Advocate for Def. : Mr. M.K. Singh, Adv.

Advocate for Pet/Ap. : Ms. Richa Kapoor; Ms. Anupma Singh, Adv.

Judgement :

1. The father of the petitioner was a registrant under the New Pattern Registration Scheme (NPRS) of the year 1979 of the respondent DDA for an MIG flat. He was in the year 1989 allotted a flat in Rohini on Hire Purchase basis and though the initial deposit was made but the said allotment was cancelled for the failure of the father of the petitioner having not submitted the documents showing proof of payment within the stipulated time. Be that as it may, the father of the petitioner deposited the cancellation charges and deposit whereof entitled him to be considered for fresh allotment.

2. Another flat in Mansarover Park was allotted to the father of the petitioner in the year 1991. Yet again cancellation was opted for by paying the cancellation

charges. As per the Policy of the DDA, the case of the father of the petitioner thereafter was to be considered for allotment at tail end and it was so stated by the respondent DDA also in its letter dated 17th January, 1992.

3. No allotment thereafter was made till the demise of the father of the petitioner in the year 1998.

4. The petitioner claims to have in the year 2006 learnt that all the pending registrants had been allotted flats way back in the year 2004-05 and on enquiry claims to have further learnt that the priority of his father was mistakenly missed by the DDA for inclusion in the draws held and therefore no allotment had been made in favour of the father of the petitioner. The petitioner then also applied for mutation of the registration to his name and for allotment and upon the representations of the petitioner not meeting with any success, the present writ petition was filed.

5. Notice of the petition was issued. Counter affidavit has been filed by the respondent DDA. The counsels have been heard.

6. The respondent DDA in its counter affidavit has not controverted the aforesaid facts. It is however stated that the draw of allotments of flats under the tail end priority were held in 2004 and the petitioner approached much later in the year 2006. It is further stated that public notices in this regard of all allotments under the said Scheme having been completed were also published in February, 2006.

7. The petitioner rejoins by contending that the petitioner within twenty days of the public notice had approached the respondent DDA.

8. The aforesaid would show that it is not in dispute that the father of the petitioner was to be considered for allotment in tail end category but was not so considered. The issuance of a public notice by the DDA cannot defeat the rights of the registrants specially with the allotments being made after 30 years. This Court has in judgment dated 28th January, 2008 in W.P.(C) No.266/2007 titled Usha Saikia v. DDA held that public notices are not substitute for individual notices. Thus the entitlement of the petitioner to an MIG flat pursuant to the registration stands

established.

9. The next question is as to the price payable by the petitioner. The counsel for the petitioner states that the price of the flat to be so allotted may be in accordance with the Policy in this regard of the respondent DDA. However it is not deemed expedient to leave the said dispute open and to invite another writ petition. The counsels have been asked to address on the said aspect.

10. Attention is invited to the office order dated 25th February, 2005 of the respondent DDA issued in pursuance to the directions contained in the order dated 16th December, 2004 in W.P.(C) No.19095/2004 and other connected writ petitions. The said directions are with respect to cases of issuance of demand letter at the wrong address and missing priority cases of DDA flat. The same provides for allotments at the old cost prevalent at the time of original allotment if approach within four years from the date of issuance of the demand letter and if approach after four years, together with 12% simple interest. It is further provided that the same principle would be applicable in the case of missing priority cases. The counsel for the petitioner contends that in the cases of missing priority, the date of allotment would be the date of allotment in tail end category and which in the present case was 2004. It is thus contended that the petitioner having approached in the year 2006 itself i.e. within four years from the draw held for tail end category and in which the petitioner/his father should have been considered and was not considered, is entitled for allotment at the costs as prevalent in the year 2004 and without payment of any interest whatsoever. Per contra, the counsel for the respondent DDA has contended that the question of allotment to the petitioner in the present case did not arise without the petitioner having the registration mutated from the name of his father to his own name and which admittedly happened in 2008. He thus contends that in the present case the price payable by the petitioner should be the prevalent price or the price of last allotment together with interest at 12% per annum.

11. The petitioner in the present case, notwithstanding the death of his father in the year 1998 did not seek mutation of the registration in his name and approached DDA for the first time only in the year 2006. Even otherwise, it is not

found equitable that the petitioner should be entitled to the price of 2004 without paying any interest whatsoever when the money remained in the pocket of the petitioner and he has continued to enjoy the benefits thereof.

12. It is therefore deemed expedient to direct that the price payable by the petitioner will be the price as prevalent on the date when the last demand cum allotment letter of the tail end category was issued together with simple interest at the rate of 12% per annum from that date and till the date of payment.

13. The demand cum allotment letter be issued to the petitioner within eight weeks of today.

The petition is disposed of. No order as to costs.

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