

In the Matter of Vs. D.D.a

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Court : Delhi

Decided On : Feb-02-2012

Appellant : In the Matter of

Respondent : D.D.a

Advocate for Def. : Ms. Ranuka Arora

Advocate for Pet/Ap. : Ms. Neha Tanwar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) No.455/2007
Decided on : 2nd February, 2012 IN THE MATTER OF DIGVIJAY SINGH
Petitioner Through : Ms. Neha Tanwar, Adv. versus D.D.A. Respondent
Through : Ms. Ranuka Arora, Adv. CORAM HON'BLE MS.JUSTICE HIMA KOHLI
HIMA KOHLI, J. (Oral).

1. The facts of this case have been referred to and dealt with extensively in the order dated 16.9.2011. The said order is reproduced herein below : "1. The petitioner was a registrant with the respondent DDA for a self financing flat under the 6th Self Financing Scheme of the year 1992. The petitioner was vide letter dated 6-8 April, 1993 of the respondent DDA informed that he had been declared successful for allocation of a flat in Block-8, Category-II, Jasola, New Delhi on the ground floor at an estimated cost of `6,30,700/- payable in installments as under:-
INSTALLMENTS AMOUNT DUE DATE FIRST `157675.00 31/1/92 SECOND

`126140.00 31/7/92 THIRD `157675.00 31/1/94 FOURTH `126140.00 31/7/94.

2. The petitioner paid up to 4th installment W.P.(C) No.455/2007 *Page 1 of 7* though each time with a delay. The counsel for the respondent DDA informs that for the reason of non-payment by the petitioner of the 4th installment within time, the allocation in his favour was cancelled but subsequently restored..

3. It is the case of the petitioner that the balance cost of the flat was to be paid by him after allotment of an actual flat and on a Demand-cum-Allotment letter being issued to him and which was never issued. Ultimately this writ petition was filed in the year 2007 seeking mandamus for allotment of a flat..

4. Notice of the petition was issued..

5. The respondent DDA in its counter affidavit has inter alia stated that a Demand-cum-Allotment letter dated 1st August, 2000 was issued to the petitioner allotting flat no. 10-D, 3rd Floor in Siddhartha Extension to the petitioner and calling upon the petitioner to pay the balance price due of `6,48,111/- on or before 29th September, 2000 and upon the failure of the petitioner to pay the said amount the allotment was cancelled..

6. The petitioner of course controverts that the Demand-cum-Allotment letter was served on him..

7. The counsel for the respondent DDA was asked to produce the original records before this Court. The file has been handed over in the Court. A perusal thereof shows that after the Demand-cum-Allotment letter dated 1st August, 2000, a notice dated 17th April, 2003 of cancellation was also sent to the petitioner. The petitioner of course controverts the receipt thereof also..

8. The counsel for the respondent DDA has argued that the Demand-cum-Allotment letter and the cancellation notice are shown to have W.P.(C) No.455/2007 *Page 2 of 7* been sent by Registered Post AD and at the same address where other communications have been received. However proof of dispatch or delivery is not available..

9. It has been enquired from the senior counsel for the petitioner as to why the petitioner after having paid the last 4th installment on 18th April, 1996 waited for eleven years for filing this petition. The senior counsel for the petitioner invites attention to para 14 of the petition where instances are given of restoration of the allotments even after long delay of over five years. He contends that the petitioner has been discriminated against..

10. A perusal of the response, in the counter affidavit of the respondent DDA, to para 14 of the petition shows that the respondent DDA admits to restoration in the year 2005 of allotments in the year 2001 but contends that the allotment in the case of the petitioner was in the year 1993; however it is further stated that "the petitioner did not ever apply for restoration of the said allotment and has filed the present writ petition before this Hon'ble Court in the year 2007". From the aforesaid, the version of the respondent DDA appears to be that had the petitioner applied for restoration, his case would have been considered therefor..

11. It has been enquired from the counsel for the respondent DDA whether the flat allotted to the petitioner is still available. The counsel states that she has found on the file a noting requiring the flat to be put in the vacancy list but otherwise it is not clear whether the flat is still available or not..

12. Though there is a delay as aforesaid of nearly eleven years since the last payment but nevertheless it is found that there was no date fixed on which the allocation was to be made W.P.(C) No.455/2007 *Page 3 of 7* and the actual allocation itself was after nearly four years from the date of last payment and after six years from the stipulated date for payment of 4th installment. Even thereafter, notice of cancellation was issued in the year 2003, i.e. four years prior to the filing of writ petition. In the absence of any proof of dispatch or delivery of Demand-cum-Allotment letter and the cancellation notice, the possibility of the same having remained to be dispatched cannot be ruled out..

13. In the circumstance, the counsel for the respondent DDA to obtain instructions whether the flat is still available and on what term it can be restored in favour of the petitioner..

14. List on 24th October, 2011."

2. On 24.10.2011, counsel for the respondent/DDA submitted on instructions that the flat allotted to the petitioner was no longer available as it stood allotted to someone else. In view of the aforesaid statement, he was asked to confirm as to whether any other flat under the 6th SFS Scheme of the year 1992 was available for allotment. Respondent/DDA was also directed to file an affidavit indicating the localities in which flats of the same category were available for allotment and the terms and conditions under which such allotment could be made and the matter was adjourned for today..

3. The affidavit, as directed, has not been filed by the respondent/DDA in terms of the order dated 24.10.2011. However, counsel for the respondent/DDA states that she has obtained W.P.(C) No.455/2007 *Page 4 of 7* instructions from the department to the effect that there are two flats that are available in the 6th SFS Scheme, i.e., Flat No.E-115 (Second Floor) and Flat No.D-123 (Third Floor), both situated in Sarita Vihar, Delhi. She further states that the respondent/DDA is not in a position to restore the flat in favour of the petitioner on account of the delay on his part to approach this Court..

4. The aspect of delay has already been dealt with in para 12 of the aforesaid order dated 16.9.2011. It is also pertinent to note that the stand taken by the respondent/DDA, as mentioned in para 14 of its counter affidavit, is that, after cancellation, due to non-payment, the petitioner has not applied for restoration of allotment and instead he had filed the present writ petition in the year 2007. From the aforesaid stand of the respondent/DDA, a presumption was drawn in the order dated 16.9.2011 that had the petitioner applied to DDA for restoration, his case would have been duly considered..

5. In the aforesaid background, there is no impediment for the petitioner to apply to DDA for restoration of the allotment of flat made in his favour on 1.8.2000, particularly, since the aspect of delay has already been considered and gone into while passing the order dated 16.9.2011, wherein it was specifically noted that DDA had not fixed any date on which allocation was to be made to the petitioner and the allocation itself had matured after four years from the date of the last

payment made by the petitioner and after a period of six years W.P.(C) No.455/2007 *Page 5 of 7* from the date stipulated for payment of the fourth installment. Pertinently, the notice of cancellation came to be issued by the respondent/DDA only in the year 2003, i.e., about four years prior to the filing of the present writ petition..

6. Having failed to substantiate its claim that the demand- cum-allotment letter and the cancellation notice had been duly dispatched by the respondent/DDA and/or delivered to the petitioner, benefit of doubt ought to be given to the petitioner. In these circumstances, having regard to the submission made by the counsel for the respondent/DDA that the aforesaid two flats at Sarita Vihar are presently available for allotment under the 6th SFS Scheme, it is deemed appropriate to direct the respondent/DDA to restore the allotment of the flat in favour of the petitioner and allot him one from the aforesaid two flats available in Sarita Vihar..

7. As counsel for the petitioner states that the petitioner is ready and willing to accept the allotment of Flat No.E-115 (Second Floor), Sarita Vihar, Delhi, the respondent/DDA is directed to issue a fresh demand-cum-allotment letter to the petitioner in respect of the said flat. While issuing the demand-cum-allotment letter, the respondent/DDA shall take into consideration the installments already deposited by the petitioner. The cost of the flat shall be in terms of the earlier demand-cum-allotment letter dated 1.8.2000. However, the petitioner shall pay interest to the respondent/DDA along with the W.P.(C) No.455/2007 *Page 6 of 7* restoration charges in terms of the judgment passed by the Supreme Court in the case of Delhi Development Authority, N.D. and Anr. vs. Joint Action Committee, Allottee of SFS Flats and Ors., reported as AIR 2008 SC 1343..

8. The said demand-cum-allotment letter shall be issued by the respondent/DDA to the petitioner within a period of four weeks from today. Immediately upon the receipt of the said demand-cum- allotment letter, the petitioner shall make necessary compliances and fulfill all the requisite formalities, whereafter the respondent/DDA shall take necessary steps to handover possession of the flat in question to the petitioner within a period of four weeks from the date of completion of formalities..

9. The petition is disposed of, while leaving the parties to bear their own costs.
(HIMA KOHLI) FEBRUARY 02, 2012 JUDGE sk W.P.(C) No.455/2007 Page 7 of 7

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