

Rattan Kumar Vs. D.D.A.

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Court : Delhi

Decided On : Nov-22-2012

Judge : G. S. Sistani

Appellant : Rattan Kumar

Respondent : D.D.A.

Judgement :

35. \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 7278/2011
% Judgment dated 22.11.2012 RATTAN KUMAR Through : Petitioner Mr.R.K. Saini and Mr.Vikram Saini, Advs. versus D.D.A. Through : Respondent Ms.Shobhana Takiar, Adv. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J (ORAL) 1. Present petition has been filed by petitioner under Article 226 of the Constitution of India seeking the following prayers: a) A writ of Certiorari calling for the records of the case for peruse the same; b) A writ of Certiorari quashing the action of the respondent/DDA in cancelling the allotment of the LIG flat made in favour of the Petitioner under NPRS 197 after receiving back the allotment letter sent at the residential address given by him at the time of registration without trying to serve the same at the occupation address, despite the fact that the occupational address was also given at the time of registration and was available on record and then declining to make alternative allotment being illegal, arbitrary, discriminatory, unjust and in violation of the Rules, Regulations and policy and the principles of equity, natural justice and good conscience; c) A writ of Mandamus directing the Respondent to allot an alternative LIG flat in

Dwarka in the same area/Sector and issue a demand letter to the petitioner in respect thereof, charging him for the same at the old cost with interest, as per policy. d) A Writ of mandamus commanding the respondent to pay the cost of the petition to the petitioner.

2. Rule. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.

3. The necessary facts, to be noticed for disposal of the present writ petition, are that Sh.Dhruv Kumar, father of the petitioner, registered himself with the respondent DDA under the New Pattern Registration Scheme, 1979, for allotment of a 4. LIG flat on making payment of the registration. At the time of registration, the father of the petitioner had informed DDA about his residential address as House No.5/3, Nehru Nagar, Delhi, where he was living at that time. The father of the petitioner had also informed the DDA with regard to his occupational address as 2166-E, Gali Ravi Dass, Teliwara, Delhi, where he was carrying on his business as a sole proprietor. Thereafter, the petitioner shifted his residence to Dilshad Garden, Delhi, however, he did not inform the DDA with regard to change of his residential address, however, there was no change in his occupational address. In the year 1999 priority number of Sh.Dhruv Kumar matured and his name was included in the draw held in which he was allotted an LIG flat bearing no.159, Pocket-13, Dwarka, New Delhi. A demand-cum-allotment letter was issued by DDA at his residential address, available in the record of the DDA, however, the same was returned undelivered. The DDA did not send the demand-cum-allotment letter to Sh.Dhruv Kumar at his occupational address and, thus, on account of non-payment of the amount, the allotment made in his favour was cancelled by the DDA.

5. As per the writ petition, at the end of the year 2010, Shri Dhruv Kumar, learnt that allotment has since been made to all the LIG Registrants of NPRS 1979 He attended a public hearing on 13.1.2011 to inquire about the status of his registration and allotment when he was shocked to learn that he was allotted a flat in Dwarka in the year 1999 and the said allotment was cancelled due to non-payment. Petitioner thereafter made a representation to the DDA on 19.1.2011

pointing out that he had not received the allotment-cum-demand letter as the same was not sent at his occupational address by the DDA. Petitioner requested that an alternative flat be allotted to him. Since the father of the petitioner had grown old and physically weak, on 23.2.2011 he made an application to the DDA to transfer his registration in the name of the petitioner (his son) and prayed that all the benefits should be given to his son. Along with the said application, the petitioner submitted all the necessary documents required for transfer of registration on the same day. As per the request made by the father of the petitioner, finding all the documents in order and having completed all the formalities the DDA transferred the registration of the father of petitioner i.e. 47152 in the name of the petitioner, which was duly informed to the father of the petitioner vide letter dated 4.8.2011. It is the case of the petitioner that DDA without any reason or basis and in a most illegal, arbitrary, discriminatory, unjust and unwarranted manner also added the words for refund of registration money, which was never asked for by the father of the petitioner and rather the transfer of registration was sought prior to the request for an alternative flat having been rejected. Thereafter the petitioner made a representation to the DDA on 10.8.2011 requesting DDA to look into the matter and allot a LIG flat in Dwarka. The petitioner also pointed out in the representation that despite availability of the occupational address of Sh.Dhruv Kumar with the DDA, DDA did not send the allotment letter either to him or Sh.Dhruv Kumar. The representation was duly received by the DDA. The petitioner waited till the end of August, 2011. Thereafter he visited the office of the DDA in the month of September, 2011, and enquired about the representation made to the DDA when he learnt that transfer of registration had been carried out in his favour only for the purpose of refund of registration amount and therefore the question of alternative allotment being made to him did not arise.

6. Learned counsel for the petitioner submits that grievance of the petitioner is that despite the occupational address available with the DDA, the DDA did not send the demand-cum-allotment letter to the petitioner at his occupational address and, thus, the case of the petitioner is fully covered under the Wrong Address policy of the DDA. Counsel further submits that the petitioner belongs to a middle class strata and he has been waiting for a number of years in the hope of owning a property in Delhi. It is further contended that a consistent view has been taken by

this Court in number of cases that where alternate addresses are available with the DDA, DDA is duty bound to issue demand-cum-allotment letter to the applicant at all the addresses available in their record.

7. Present writ petition has been opposed by learned counsel for the DDA primarily on the ground of delay and laches. Counsel for the respondent has relied upon *Banda Development Authority, Banda, v. Moti Lal Agarwal and Others*, reported at (2011) 5 SCC 394, more particularly para 17, which reads as under:

17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitioners filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

8. Learned counsel for the respondent submits that petitioner has been sleeping over his rights. Counsel further submits that petitioner has not rendered any explanation explaining as to why since the year 1999 the petitioner did not enquire from the DDA or approach this Court earlier. Counsel next submits that New Pattern Registration Scheme, 1979, already stands closed by the DDA and due publication, in this regard, was also made by DDA in leading newspapers from time to time.

9. I have heard learned counsel for the parties and considered their rival contentions. The basic facts of this case are not in dispute that the petitioner applied for allotment of a flat under New Pattern Registration Scheme, 1979, for allotment of a LIG flat. At the time of registration the petitioner had mentioned his residential address as House No.5/3, Nehru Nagar, Delhi, he had also informed DDA with regard to his occupational address i.e. 2166-E, Gali Ravi Dass, Teliwara, Delhi. It is also not in dispute that thereafter the petitioner shifted his residence, however, he did not inform the DDA with regard to change of his residential address. It is also not in dispute that demand-cum-allotment letter sent

to the petitioner at his old residential address i.e. 2166-E, Gali Ravi Dass, Teliwara, Delhi, was returned to the DDA undelivered and thereafter the demand-cum-allotment letter was not sent at the occupational address of the petitioner.

10. In this case, at the time of registration under the New Pattern Registration Scheme, 1979, the petitioner had informed DDA with regard to his occupational address. The petitioner continued to work with the same office and in case the demand-cum-allotment letter was issued to the petitioner at his occupational address there is every likelihood that he would have received the same. There is no explanation forthcoming as to why DDA did not issue demand-cum-allotment letter at the occupational address, which was available in their record. This has resulted in delay for the petitioner to own a flat for which initial payment was made as far back as in the year 1979.

11. The DDA, which is a statutory body, has failed to perform its duty. The Court cannot lose track of the fact that a condition of eligibility for allotment of a flat under New Pattern Registration Scheme, 1979, is that the applicant should not own any residential property in Delhi. Resultantly the petitioner would not have taken any step to acquire another property in Delhi. Another factor, which cannot be lost track of, is that allotment under this scheme were made over a span of more than two decades and thus the petitioner could well have been misled that his allotment would mature in times to come. DDA was well aware of the various judgments passed by this Court from time to time that DDA is duty bound to inform an allottee with regard to the allotment at all the addresses available in their record. The internal policy is also to the same effect.

12. A consistent view, in this regard, has been taken by the High Court in various judgments including *Sudesh Kapoor v. DDA*, W.P.(C)8174/2006; *Hridayapal Singh v. DDA*, W.P.(C) 15002/2006; and *Prem Bhatnagar v. Delhi Development Authority* W.P.(C) 592/2011. I am informed the judgments rendered by this Court in *Mohinder Singh v. Delhi Development Authority*, W.P.(C) 1096/2011, and *Prem Bhatnagar v. Delhi Development Authority* W.P.(C) 592/2011 have been upheld by Division Bench.

13. While there is no quarrel to the proposition laid down by the Apex Court in the case of Banda Development Authority, Banda (supra), learned counsel for DDA is unable to satisfy this Court as to how this judgment would be applicable to the facts of this case, when DDA has been responsible for delay in making the allotments of the flats for reasons, which may or may not be justifiable. There is also no explanation as to how the rights, in this case, of the parties stand settled or crystallized since there is no third party involved in the present case.

14. As far as the submission made by learned counsel for the DDA with regard to publication in the newspapers with regard to maturity of numbers and closure of scheme is concerned, this submission stands rejected by a judgment dated 28.1.2008 passed by this Court in the case of Usha Saikia v. DDA, W.P.(C) 266/2007.

15. At this stage, learned counsel for the petitioner submits that petitioner is willing to accept the flat at the cost which prevailed in the year 2011, when he had approached this Court.

16. Since the case of the petitioner is fully covered by the judgment as mentioned in para 11 above, present petition is allowed. Rule is made absolute. To balance the equities the petitioner will be allotted a flat preferably in the same area, if available, at the cost which prevailed in 2011, subject to petitioner completing all the formalities within two months from today.

17. Writ petition stands disposed of. G.S.SISTANI, J NOVEMBER 22 2012 msr

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