

**Delhi Development Authority Vs. Ameet Kumar Khandelwal`**

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**Court :** Delhi

**Decided On :** Dec-20-2012

**Judge :** Rajiv Sahai Endlaw

**Appellant :** Delhi Development Authority

**Respondent :** Ameet Kumar Khandelwal`

**Advocate for Def. :** Mr. N. Kinera

**Advocate for Pet/Ap. :** Ms. Sangeeta Chandra

**Judgement :**

\*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

20. h December, 2012 % + LPA No.624/2012 DELHI DEVELOPMENT AUTHORITY ..... Appellant Through: Ms. Sangeeta Chandra, Adv. Versus AMEET KUMAR KHANDELWAL ..... Respondent Through: Mr. N. Kinera, Adv. CORAM :HONBLE THE CHIEF JUSTICE HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J 1.This intra-court appeal impugns the order dated 07.02.2011 of the learned Single Judge allowing W.P.(C) No.7245/2010 preferred by the respondent and directing the appellant Delhi Development Authority (DDA) to hold a mini draw and allot an MIG flat to the respondent as per the old cost, together with interest as per the DDA Policy.

2. The writ petition was filed pleading, i) that the deceased father of the respondent was a registrant with the appellant DDA for an MIG flat under the New

Pattern Registration Scheme of the year 1979; ii) he however expired on 14.05.1999, before any allotment was made in his favour pursuant to the said registration; iii) that in the draw of lots held on 31.05.2002, against the aforesaid registration, flat No.318, Pocket-B, cum-allotment letter addressed to the deceased father of the respondent was sent at the residential address furnished at the time of registration but which was received back with the postal endorsement house remaining locked from long time and returned; iv) that even though the deceased father of the respondent had at the time of registration also furnished his occupational address but no copy of the demand-cum-allotment letter was sent at the said occupational address, though required to be sent as per Policy of the DDA; v) that though after the demise of the father of the respondent no one was staying in the house of which residential address was given, but had the demand-cum-allotment letter been sent at the occupational address of the deceased father of the respondent, the respondent would have learnt of the same; vi) that the respondent on 04.04.2005 had a personal hearing with the Assistant Director (MIG) of the DDA in which intimation of the demise of the father, allotment in the year 2002 and request for mutation in the name of the respondent was made; vii) that in the public hearing on 30.10.2006 held by the Director (Housing) of the DDA also, the respondent made representation; viii) that the respondent similarly participated in another personal hearing on 05.02.2007 but receiving no response, on 10.07.2008 sent a representation by registered post; ix) still not getting any response, another representation was personally delivered on 06.10.2009; x) that in response dated 14.01.2010, the respondent was asked to furnish the necessary documents and on 13.05.2010 registration was mutated from the name of the father (only for the purpose of refund of registration money) to his name; xi) however still no flat was allotted. LPA No.624/2012 respondent in the circumstances, in the year 2010, filed the writ petition from which this appeal arises, contending that the cancellation of allotment of the year 2002 owing to the demand-cum-allotment letter remaining uncomplied was bad since the demand-cum-allotment letter was not sent at the occupational address of the deceased father of the respondent inspite of being so required to be sent as per the Policy of the DDA. Relief, of commanding the appellant DDA to allot alternate flat to the respondent was claimed in the writ petition.

3. The appellant DDA contested the writ petition pleading that since no payment was made in terms of the demand-cum-allotment letter, the allotment was cancelled and intimation thereof sent vide letter dated 25.11.2003 and which letter did not come back undelivered. It was further pleaded that press notices were also issued in newspapers intimating the priority numbers which had matured for allotment under the MIG category and requesting any allottee who has not received demand letter to come and collect the same from the appellant DDA, but still no response was received from the respondent. The appellant DDA in its counter affidavit denied that the respondent had approached the DDA in the years 2005, 2006, 2007 and 2008 as pleaded in the writ petition and further denied that there was any record of any such visits or representations. It was yet further pleaded that the first letter received from the respondent was of 06.10.2009 and in pursuance whereof mutation for refund purpose only was allowed on 13.05.2010. The appellant DDA further pleaded that no intimation of demise of the registrant in the year 1999 was given till 2002 when the allotment in pursuance to the said registration was made and even if demand-cumallotment letter had been sent at the occupational address, it would have served no purpose. It was yet further pleaded that there was no explanation in the writ petition as to how the respondent suddenly in the year 2009 learnt that an allotment had been made in favour of his father in the year 2002.

4. It appears that no rejoinder was filed by the respondent to the aforesaid counter affidavit.

5. The learned Single Judge has in the impugned judgment, relying on judgments of this Court that DDA is bound to send demand-cumallotment letter at the occupational address and observing that the DDA had not sent the same, held the cancellation as bad and granted the relief aforesaid.

6. This appeal has been filed along with an application for condonation of delay of 450 days in filing the appeal. Notice of the application for condonation of delay and subject to the outcome thereof, of the appeal, limited to the aspect as to whether the respondent should pay the cost of the flat as of 2012 or as of the date of filing of the writ petition (which was filed in the year 2010), was issued.

7. Though the respondent has filed a reply to the appeal, has neither filed any reply to the application for condonation of delay nor did the counsel for the respondent, though vehemently opposing the appeal on merits, has opposed the application for condonation of delay in filing the appeal. The appellant DDA in the said application has given cogent plausible reasons duly supported by the affidavit not only of the Director (Housing) of the appellant DDA but also of the Advocate for the appellant DDA and we are satisfied as to the sufficiency of the reasons given and condone the delay in filing the appeal.

8. As far as the merits are concerned, as aforesaid we had issued notice of the appeal confined to the costing of the flat to be allotted. The appeal insofar as challenging the order of the learned Single Judge to the extent it directs the appellant to allot a flat to the respondent, thus stood dismissed on 10.09.2012 itself and need is thus not felt to discuss that aspect.

9. As far as the aspect of costing is concerned, we do not find any discussion whatsoever in the impugned judgment. The counsel for the respondent has however not F.2(10)/2002/Coord.(H)/49 argued dated that as 25.02.2005 per of Office the Order Housing Department of the appellant DDA, upon the registrant approaching DDA within a period of four years from the date of issue of demand letter at the wrong address, the DDA is to allot the flat at the cost as on the date of original allotment plus 12% simple interest with effect from the date of original allotment till the date of issue of fresh demand-cum-allotment letter. He has thus argued that the order of the learned Single Judge is in consonance with the said Office Order containing the Policy of the DDA.

10. We are unable to agree. Though the said Office Order pertains to cases where demand-cum-allotment letter is issued at the wrong address inspite of request for change of address having been submitted, but even if we were to apply the principle thereof, the same has no application to the facts of the present case. The original demand-cum-allotment letter in the present case bears block dates 25.06.2002 to 05.07.2002. Though the respondent in the writ petition claimed to have approached the appellant DDA on 04.04.2005, 30.10.2006, 05.02.2007 and 10.07.2008 but DDA has denied the same and has claimed that the respondent

approached it for the first time only on 06.10.2009. The respondent in support of his said pleas, has filed copies of letters dated 04.04.2005, 30.10.2006 and 05.02.2007 to different officials of the appellant DDA. However there is nothing to show delivery of the originals of the said letters to the appellant DDA. The contents of the said letters also do not show the respondent to have therein applied for mutation, from the name of his father to his own name, as would have been the case had the respondent then approached the appellant DDA. We on the basis of the unacknowledged copies of the said letters are unable to hold the respondent to have approached the appellant DDA. As far as the letter dated 10.07.2008 is concerned, again only a photograph of a postal receipt of dispatch is relied upon and which also does not inspire confidence. Rather, the falsity of the stand of the appellant of having approached the appellant DDA in the years 2005, 2006, 2007 and 2008 is established from the letter dated 06.10.2009 of the respondent, to which the appellant DDA has responded. In the said letter, the respondent did not refer to any of the earlier letters and / or visits to the officers of the appellant DDA. LPA No.624/2012 Rather, the respondent in the said letter candidly Page 6 of 9 admitted having written that letter only after receiving a call from a broker last year. We strongly deprecate the false plea taken by the respondent of having approached the appellant DDA in the years 2005, 2006, 2007 and 2008, perhaps on legal advice, to avail of the Policy aforesaid of the DDA.

11. The learned Single Judge in the impugned judgment has also held that it was not open to the appellant DDA, after mutation in favour of the respondent, to contend that it was not liable for not sending the demandcum-allotment letter at the occupational address. The learned Single Judge however did not notice that the mutation carried out was only for the purpose of refund of the registration money. Even otherwise, we fail to see the co-relation between mutation and the failure of the appellant DDA to send the demand-cum-allotment letter at the occupational address of the father of the respondent. Though the learned Single Judge in the impugned order has also observed that the petitioner is continuing his fathers business at the occupational address and would have received the demand-cum-allotment letter if had been sent at the said address but we do not find any pleading in the writ petition to that effect. Rather in the writ petition it is pleaded that someone in the respondents relation is still running the factory at the

said address. The said averment is also vague. No particulars of the relationship with the person who is carrying on the business at the said address have been given.

12. On the contrary, the delay, laches and waiver on the part of the respondent are writ large. LPA No.624/2012 Not only did the respondent not give Page 7 of 9 intimation of the demise of his father to the appellant DDA, for a period of three years before the registration matured into allotment, but the respondent continued to sleep over the matter for further six years and has in the letter dated 06.10.2009 admitted to have woken up from his slumber, only upon being approached by a broker for sale of the registration. In these circumstances, we do not find any justification whatsoever for the direction in the impugned judgment to the appellant DDA to allot the flat to the respondent at the cost of 2002 plus simple interest at 12% per annum. It is also significant that public notices were brought out by the appellant DDA in the year 2003 inviting registrants who had not been made allotment, to approach the appellant DDA. The respondent did not react even then.

13. There is merit also in the plea of the appellant DDA that absolutely no explanation whatsoever has been furnished in the writ petition of how the respondent in the year 2009, learnt of the allotment of the year 2002. That leads us to believe that the respondent was in receipt of the letter dated 25.11.2003 of cancellation of allotment and still slept over his rights if any.

14. In these circumstances considering the peculiar facts, need is not felt to refer to the various orders / judgments of this Court relied upon by both the counsel for the appellant DDA and the counsel for the respondent, all of which have turned on their own facts.

15. We therefore partly allow this appeal by modifying the impugned order by directing that the cost to be paid by the respondent would be of the year 2010, when the writ petition was filed. For the evident false pleas taken by the respondent of having approached the appellant DDA in the years 2005, 2006, 2007 and 2008, we also direct the respondent to in addition pay costs of these proceedings in the sum of Rs.25,000/- to the appellant DDA. The mini draw in accordance with the directions of the learned Single Judge be now held within

eight weeks of today and a fresh demand-cum-allotment letter in accordance with this order be issued within four weeks therefrom. Needless to state that upon the respondent complying therewith, he would be put into possession of the flat. The appeal is disposed of. RAJIV SAHAI ENDLAW, J CHIEF JUSTICE DECEMBER 20 2012 gsr

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