

S.P. Khanna Vs. Dda

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Court : Delhi

Decided On : Apr-22-2013

Judge : V. K. Jain

Appellant : S.P. Khanna

Respondent : Dda

Advocate for Pet/Ap. : Mr. S.K. Rungta, Ms. Pratiti Rungta, Ms. Rashmi J

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

22. 04.2013 W.P.(C) No.2549/2013 & CM 4834/2013 (stay) S.P. KHANNA
Petitioner Through: Mr S.K. Rungta, Sr. Adv. with Ms Pratiti Rungta & Ms Rashmi
Jaoria, Advs. versus DDA Respondent Through: None CORAM: HON'BLE
MR. JUSTICE V.K.JAIN JUDGMENT V.K.JAIN, J.

(ORAL) The petitioner before this Court got himself registered with the respondent DDA for allotment of a residential flat under its Vth SFS Scheme, which is a self finance scheme. Vide letter dated 6/8.4.1993, the respondent allocated a flat on the first floor in C-7, Jasola to the petitioner. However, in the year 1999, a specific flat bearing number 37-T in Block-7 of Jasola was allotted to the petitioner, which was a third floor flat, though the allocation of the petitioner was on the first floor. The case of the petitioner is that he had come to know of the aforesaid allotment only in the year 2001 when he came back to Delhi after his treatment. According to

the petitioner, he immediately represented to DDA and informed that allotment of third floor flat was not acceptable to him on account of his age as well as the ailments he was suffering from.

2. Since there has been no change in the allotment made to the petitioner despite his repeated requests to DDA, he is before this Court seeking the following reliefs: C) Allow this writ petition; D) Issue a writ of certiorari or any other appropriate writ/order or direction thereby calling for the records relating to the allotment of specific flat no.37, Category-III on 3rd floor in Block-7, Jasola, Delhi against registration no.011979, examine the same and quash it to the extent it allots a specific flat to the petitioner on 3rd floor being in complete violation of his entitlement for allotment of a specific flat on 1st floor in terms of allocation letter dated 6.4.93-8.4.93 as well as in terms of resolution no.103/91 dated 13.9.1991 & resolution No.1/93 dated 19.2.1993 allowing the change of floor for those faced with specified medical problems and disability or elderly persons beyond the age of 70. Further, calling for the records relating to consideration of the representations of the petitioner for change of floor and declare that the request of the petitioner should have been acceded to and the petitioner should have been allotted a specific flat at least on 1 st floor in Jasola or elsewhere in South Zone both in terms of his allocation letter dated 6.4.93-8.4.93 as well as the said resolutions allowing change of floor on old cost without interest. (E) Issue a writ of mandamus or any other writ order of direction thereby directing the respondent to allot a specific SFS category-III flat to the petitioner at least on 1st floor in Jasola or elsewhere in South Zone against his allocation as detailed in allocation letter dated 6.4.93 on old cost and without interest and consequently deliver the possession of that flat so allotted to him and also to execute the conveyance deed in respect of the said flat in favour of the petitioner on his making the demanded payment as per old cost without interest and other legal charges. Further command that the petitioner be also given belated construction interest till the actual delivery of possession of the flat so allotted. F) Grant any other relief which Your Lordship deem fit and proper in the circumstances of the case. G) 3. Award the cost of the petition. In my view, the petitioner has not been able to explain the inordinate delay of 12 years in coming to the Court after he had come to know of the allotment made to him on the third floor. In the absence of positive response

from DDA, the petitioner could not have kept on representing to it from time to time instead of coming to the Court for redressal of his grievance. The period of 14 years from the allotment of a specific flat on the third floor and 12 years from the date when the petitioner claims to have come to know of the aforesaid allotment cannot be ignored in absence of any plausible explanation from the petitioner. By not remaining vigilant for enforcement of his legal rights and not availing the remedy available to him in law, the petitioner is clearly guilty of laches. Therefore, it would not be appropriate to entertain this petition in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution after such a long period.

4. In *Banda Development Authority, Band vs. Moti Lal Agarwal and others* [(2011) 5 SCC 394], the respondent before the Supreme Court did not make any complaint against acquisition of land or taking of possession by the State Government and delivery thereof to the respondent, his only prayer being to direct the defendants to undertake fresh acquisition proceedings so that he could also get his share of compensation. The writ petition questioning the acquisition proceedings was filed by him after about 9 years of publication of declaration under Section 6(1) of Land Acquisition Act and already six years of the pronouncement of award. During this interregnum, the appellant had taken possession of the land, prepared layout, developed the land and constructed as well as allotted plots and flats to eligible persons. No objection alleging delay and laches on the part of the respondent was taken in the affidavit filed on behalf of the appellant to the State Government. The Supreme Court was of the view that despite no objection from them, the High Court was duty bound to take cognizance of long time gap of nine years between the date of issue of declaration and filing of the writ petition and should have declined relief to him on the ground that he was guilty of laches. Allowing the appeal filed by Banda Development Authority, the Apex Court, *inter alia*, has held 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 petitions 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. Though, the case before the Supreme Court related to acquisition of land whereas the case before this Court involves the allotment of residential flat by DDA and, therefore, the two cannot be said to be at par, the proposition of law laid down by the Supreme Court to the effect that whenever a writ petition is filed after the expiry of the period prescribed for filing a civil suit, the Court in absence of a plausible explanation should treat such delay to be unreasonable and should not entertain such belated writ petitions.

5. Mr. Rungta, learned senior counsel states that since the petitioner did not receive any final demand letter in respect of first floor flat, he had no cause for coming to the Court. I, however, find no merit in the contention. The grievance of the petitioner being against allotment of flat on the third floor as against initial allocation made to him on the first floor, he should not have waited for the demand letter which in any case, according to him, has not been issued to him till date. Therefore, he should have come to the Court after expiry of a reasonable time from the date on which he first represented to DDA for changing allotment made to him. For the reasons stated hereinabove, the writ petition is dismissed. There shall be no orders as to costs. V.K. JAIN, J APRIL 22 2013/rd

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