

Prabir Kumar Bhattacharya Vs. Dda

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Court : Delhi

Decided On : Dec-11-2012

Judge : G. S. Sistani

Appellant : Prabir Kumar Bhattacharya

Respondent : Dda

Judgement :

10 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 8663/2010 %
Judgment dated 11.12.2012 PRABIR KUMAR BHATTACHRYA Petitioner
Through : Ms.Richa Kapoor, Adv. versus DDA Through : Respondent Mr.R.K.
Mittal, Adv. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J
(ORAL) 1. Rule. With the consent of counsel for the parties writ petition is set
down for final hearing and disposal.

2. The necessary facts, to be noticed for disposal of the present writ petition, are
that in the year 1979 the respondent launched a scheme, known as New Pattern
Registration Scheme, 1979, (NPRS), for providing flats to the residents of Delhi.
The petitioner made an application for allotment of a MIG flat. The petitioner
deposited the registration amount with the DDA. In the application form, the
petitioner mentioned his residential address, as LIG Flat No.15, DDA, Khanpur
(Madangir), New Delhi. In the application form, the petitioner had also provided
occupational address, being Indian Airlines, Second Floor, Chanderlok Building,
Janpath, New Delhi. Along with the application form, the petitioner also furnished
two salary certificates, one of which also mentions his occupational address as

Indian Airlines Headquarters, 113, Gurudwara Rakab Ganj Road, New Delhi.

3. As no demand cum allotment letter was issued by the petitioner, the petitioner approached DDA in the year 2010 to enquire about the status of his application, when he was shocked to learn that a MIG category flat was allotted to him in the year 2002 and the same was cancelled as he failed to deposit the amount demanded. The petitioner does not dispute that before 2012 the petitioner had shifted from the residential address so mentioned in the application form but no such information was given to the DDA.

4. Learned counsel for the petitioner submits that in the application form the petitioner had mentioned both his residential and occupational addresses. Counsel submits that the salary certificates of the petitioner also clearly shows that the petitioner was working with the Indian Airlines at the relevant point of time. Counsel next submits that despite the occupational address having been available in the records of the DDA, the DDA failed to send the demand-cum-allotment letter to the petitioner. Counsel contends that it is no longer res integra that if a demand-cum-allotment is returned undelivered to the DDA, the DDA is duty bound to send a copy thereof at all the addresses of the application available in the file of the DDA. In support of his submission, counsel has relied upon *Sudhesh Kapoor v. DDA*, W.P.(C) 8174/2006 and *Hirdaypal Singh v. DDA*, W.P.(C) 15002/2006. Counsel, thus, prays that a MIG Flat be allotted to the petitioner in the same zone i.e. Dwarka, if available, or nearest zone, at the cost as per the policy of the DDA, as the respondent did not send the demand-cum-allotment letter at all the addressees, which were available in the file of the DDA in view of the fact that demand-cumallotment letter was returned undelivered.

5. Present petition is opposed by counsel for the respondent on the ground that petitioner is to be faulted for not informing DDA with respect to change of his residential address. While producing the original record before this Court, learned counsel for the respondent submits that there is overwriting and cutting in the column of occupational address in the original application form and, thus, tampering of the application form cannot be ruled out. Counsel, thus, prays that writ petition is without any merit and the same is liable to be dismissed.

6. I have heard learned counsel for the parties, considered their rival submission, perused the pleadings and annexures placed on record, and the original record of the DDA. The record shows that in the year 1979 the petitioner applied for allotment of a MIG flat under the scheme launched by DDA, known as New Pattern Registration Scheme, 1979, (NPRS) and also deposited registration amount with the DDA. In the application form, the petitioner mentioned his residential address and occupational address. Along with the application form, the petitioner also furnished two salary certificates, one of which also mentions his occupational address as Indian Airlines Headquarters, 113, Gurudwara Rakab Ganj Road, New Delhi.

7. In the year 2010 the petitioner approached DDA and learnt that a MIG category flat was allotted to him in the year 2002 and the same was cancelled as he failed to deposit the amount demanded. It is not in dispute that the petitioner shifted from the residential address, however, no such information was given to the DDA. It is also not in dispute that the envelope containing the demand-cum-allotment letter was received back to DDA undelivered.

8. The original record, which has been produced in Court, also shows that the petitioner had mentioned his residential address as also the occupational address. There is no doubt that there are cuttings and some change of ink in the application form, however, the file of the DDA also shows that the salary certificate of the petitioner is issued from the Indian Airlines and the address mentioned in the salary certificate is Indian Airlines, Airlines House, New Delhi. Another salary certificate is also available in the original record of the DDA dated 29.8.2009, which mentions the address of Indian Airlines Headquarters as Airlines House, 113, Gurudwara Rakab Ganj Road, New Delhi.

9. This court in para 13 of *Prem Bhatnagar v. Delhi Development Authority*, W.P.(C) 592/2011 has held as under:

13. In the case of *Hirdayapal Singh (supra)*, applicant (petitioner in the case) had mentioned only one address in the application form, but subsequently he informed the DDA about his permanent address and the court was of the view that once demand letter was returned undelivered the DDA should have sent the demand

letter at all the addresses available in the file of the DDA. To my mind the case of the petitioner is on a better footing as at the time of registering herself for allotment of a LIG flat the petitioner in the application form had mentioned her occupational address by enclosing her salary certificate issued by the school where the petitioner was working, filing of a copy of the salary certificate was a mandatory requirement and thus has to be considered to be a part of the form. No doubt the petitioner has been careless in filling up the application form and not providing her occupational address in the column provided, but the file of the DDA would comprise not more than seven pages, which include four annexures and two pages of the application form. The dealing clerk should have acted in the interest of the allottee, a common citizen, who has been waiting for more than two and a half decades for a flat in her name. DDA was duty bound to go through the entire file to ascertain if any other address was available and the demand-cum-allotment letter should have been sent at the occupational address which was available in file of the DDA. As the DDA has not acted diligently, in such a situation the benefit must go to the common man and the policy dated 25.2.2005 should also apply in the facts of the present case. In my view in the facts of the present case, once demand-cum-allotment letter was received back to the DDA undelivered, the DDA should have carefully perused the file and ensured that demand-cum-allotment letter is sent at all the addresses available in the file.

10. The DDA has failed to explain as to why the demand-cum-allotment letter was not issued at the occupational address available or the address mentioned in the salary certificate. In view of the settled position of law the present writ petition is allowed. The only question which remains for consideration is the cost at which the flat is to be allotted to the petitioner. There is no explanation as to why the petitioner did not approach DDA between 2002-2010, however, to balance the equities, present petition is allowed. Let a flat be allotted to the petitioner, if possible, in the same area, at the cost, when the present writ petition was filed by petitioner, within three months from the date of receipt of the order.

11. Accordingly, writ petition stand disposed of in view of above. No order as to costs. G.S.SISTANI, J DECEMBER 11 2012 msr