

Madhu Arora Alias Hony Monga Vs. Delhi Development Authority

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Court : Delhi

Decided On : Feb-26-2013

Judge : Reva Khetrapal

Appellant : Madhu Arora Alias Hony Monga

Respondent : Delhi Development Authority

Advocate for Def. : Ms. Shobhana Takiar

Advocate for Pet/Ap. : Mr. Nanda Kinra

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 343/2012 MADHU ARORA ALIAS HONY MONGA Petitioner Through: Mr. Nanda Kinra, Advocate versus DELHI DEVELOPMENT AUTHORITY Respondent Through: Ms. Shobhana Takiar, Advocate. % Date of Decision : February 26, 2013 CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL JUDGMENT : REVA KHETRAPAL, J.

1. Rule.

2. With the consent of the parties, the Writ Petition was taken up for final hearing and disposal.

3. The facts leading to the filing of the present Writ Petition are that the Petitioner had booked an LIG flat in the year 1979 vide registration No.61175 in the New

Pattern Registration Scheme, 1979 (for short NPRS Scheme). From the year 1996 onwards, the Petitioner made several representations to the Delhi Development Authority to know the status of the allotment and attended several public hearings. Eventually, the Petitioner was informed that the record/file relating to her case were missing from 1996 and could not be traced out. On 13.11.2009, the Petitioner on moving an RTI application came to know that she was allotted a flat in the year 1991, being flat No.39, Pocket 3, Ground Floor, Sector 15, Block-G, at Rohini with block dates 09.01.1991 13.01.1991, but in the said demand letter her name was mentioned as Jony Monga instead of Hony Monga and hence the demand letter was received back by the DDA undelivered. It may be mentioned at this juncture that the Petitioner subsequently changed her name from Hony Monga to Madhu Arora upon being married to one Shri Ashok Arora.

4. On further enquiry from DDA, the Petitioner was informed that at every stage the Petitioner's name in the computer file had been shown as Jony Monga.

5. It is not disputed by the DDA that the name written on the demand-cum-allotment letter dated 9th/13th January, 1991 was incorrect. Admittedly also, the demand cum allotment letter was not received by the Petitioner and it was returned back to the DDA undelivered with the report that no such person was residing at the given address. That the DDA did not bother to send the communication again after checking and verifying the name and address of the Petitioner is also not in dispute. It is also admitted that in the computer record inadvertently against the name of Kr. Hony Monga the name Kr. Jony Monga has been fed, though it is stated that the priority number, registration number and postal address of the allottee are correct as per record.

6. The DDA contends that the present petition is not maintainable and liable to be dismissed on the ground of delay and laches. It is submitted that a show cause notice was issued, dated 08.04.1991, to the Petitioner but no response was received, therefore, the allotment was cancelled with the request to deposit a sum of ` 4,058/- on account of cancellation charges within 60 days so that her name would be considered at the tail end of the priority list for allotment of flat. It is stated that as per the policy of the Respondent, the flats under tail end policy are

to be allotted only in those cases where the registrants have at least deposited cancellation charges upto 31 st December, 1993. The present case is not covered by the aforesaid policy of the Respondent. Finally, it is stated that the case of the Petitioner is not covered under wrong address policy because the Petitioner had been sent the demand letter at the correct address and this is sufficient to presume that the communication would have been delivered at the address of the Petitioner.

7. The short question which arises is whether the DDA was justified in cancelling the allotment in the facts and circumstances of the case. I think not. Counsel for the DDA has opposed this petition primarily on the ground that the demand-cum-allotment letter was sent at the correct address. However, there is no denying the fact that the demand letter was not addressed to the registrant, i.e., the Petitioner, and was received back undelivered by the DDA. Counsel for the DDA has not disputed, as indeed she could not have, that the demand-cum-allotment letter was sent under the wrong name. This fact is also borne out from the records. The Petitioner, therefore, cannot be deprived of an allotment to which she is entitled on account of the lapse of DDA. The contention of the DDA that there is a presumption of service, the communication having been delivered at the address of the addressee is also of no avail to the DDA. The Respondent/DDA has admittedly received back the communication and hence is estopped from contending that there is a presumption of service.

8. The other objection raised by the Respondent/DDA that the petition is barred by laches is also of lacking in merit. This Court has time and again noted that applicants under the NPRS 197 have waited for two or more decades for their allotment to mature, and in such circumstances, the Petitioner in the instant case, who was in constant touch with the department and was told that her file was misplaced, cannot be faulted for sitting over the matter. As per the policy of the Respondent, the Respondent ought to have included the name of the Petitioner in the tail end priority cases. This too the Respondent failed to do.

9. In view of the aforesaid, this Court is satisfied that the Petitioner is entitled to the relief prayed for. The Petitioner cannot be deprived of her right of allotment for

which she has waited since 1979, merely on account of the fault of the DDA in sending the demand-cum-allotment letter in the wrong name. The contention of the Respondent that a public notice was issued by the DDA to which also the Petitioner did not respond and, therefore, the Petitioner is not entitled to the allotment of a flat is without merit. It has been held time and again reiterated by this Court that it would be both unreasonable and unfair to expect registrants to keep track of public notices issued by the DDA for years together and rely upon such public notices to deprive bonafide registrants who have been waiting for several decades for allotment of flats.

10. Resultantly, a Writ of Mandamus is issued to the Respondent directing the Respondent/DDA to hold a mini draw within a period of four weeks from today and make allotment of an LIG flat to the Petitioner, in the same area if possible. The Petitioner shall be allotted a flat in terms of the policy of the DDA dated 25 th February, 2005. Upon the Petitioner making payment in terms of the demandcum-allotment letter dated 9th/13th January, 1991 issued to the Petitioner, the Petitioner shall be handed over the possession of the flat within four weeks thereafter.

11. The Writ Petition is disposed of in the above terms. Compliance shall be made by the Respondent as expeditiously as possible and latest within the aforesaid period. REVA KHETRAPAL (JUDGE) February 26, 2013 km

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