

Krishan Kumar Gupta Vs. Delhi Development Authority

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Court : Delhi

Decided On : May-29-2013

Judge : V. K. Jain

Appellant : Krishan Kumar Gupta

Respondent : Delhi Development Authority

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on :

22. 05.2013 Judgment pronounced on :

29. 05.2013 + W.P.(C) 2530/2012 KRISHAN KUMAR GUPTAPetitioner
Through: Richa Kapoor, Advocate Vs. DELHI DEVELOPMENT AUTHORITY
.....Respondent Through: Mr Kamal Nijhawan CORAM: HON'BLE MR. JUSTICE
V.K. JAIN V.K. JAIN, J.

The petitioner got himself registered for allotment of an LIG Flat from DDA, under its New Pattern Registration Scheme-1979 (NPRS1979). On DDA launching another Scheme called Awas Sakar Yozna1989, the petitioner applied for transfer of his registration from NPRS1979 to Awas Sakar Yozna-1989. Since all the persons who had got their registration transferred from NPRS-1979 to Awas Sakar Yozna1989 could not be allotted flat, the respondent-DDA decided to consider, for allotment of flats in the next draw, such registrants who had not been allotted flats under Awas Sakar Yozna-1989, but whose priority numbers under NPRS-1979,

had matured, after taking an affidavit from them to the effect that they had not been considered for allotment of flats under Awas Sakar Yozna-1989. It was also decided by DDA vide its Circular dated 28.5.2002 that the registrants of NPRS-1979 who had opted for Awas Sakar Yozna-1989 but had not been identified as members of the Society, would continue to remain as the members of NPRS-1979 at the priority numbers allocated to them and would be entitled to allotment at the rates prevailing at the time when they were entitled to allotment as per their priority.

2. The petitioner came to be allotted an LIG Flat No.214 in Pocket-D, Lok Nayak Puram in a draw of lot held on 27.9.2007. The DDA sent various letters to him to attend the office along with the documents mentioned therein but the said letters were received back undelivered with the report that no such person was residing there. According to DDA, the documents were furnished by the petitioner vide letter dated 4.8.2008. He also appeared in the office of DDA during public hearing on 23.8.2010 and furnished requisite documents. Thereafter, the demandcum-allotment letter was issued to the petitioner, requiring him to deposit cost of the flat as in the year 2012, though the said flat had already been allotted to the petitioner on 29.7.2007. Being aggrieved from the decision of DDA to charge cost of the flat as prevailing in the year 2012, the petitioner is before this Court with the following prayers: (A) Issue a Writ of Certiorari/ order/ direction quashing the demand cum allotment letter having block dates 3.1.2012-9.1.2012 in respect of demised flat no.214, Third Floor, Pocket-D, Loknaiak Puram, New Delhi issued by respondent malafidely at current cost contrary to policie; and (B) (C) 3. Issue a writ of mandamus/ order/ direction to the respondent-DDA directing them to issue revised/ fresh demand cum allotment letter in respect of demised flat noi.214, Third Floor, Pocket-D, Loknaiak Puram, New Delhi at the cost prevalent in the year 2006 when the priority of the registrant matured in terms of policies prevalent at the time of date of remedial draw i.e. 27.9.2007 with fresh block dates; and Issue a writ of certiorari quashing the Circular not F.2(10)/2002/N&C(H)/Pt.11/643 dated 13.10.2011 of respondent DDA; or declare that the circular dated 13.10.2011 is not applicable in the present case. In its additional affidavit dated 27.5.2013, DDA has stated that the petitioner was given priority number 49627 which matured on 23.3.2006, but his name was not included in the draw held on

23.3.2006, since he had opted for allotment under Awas Sakar Yozna-1989 and that required verification from the concerned branch as to whether he had already been allotted any flat under that scheme or not. Intimation in this regard was received on 25.6.2007 and thereafter his name was included in the next draw for allotment under Ambedkar Awas Yozna held on 27.9.2007. According to DDA though there were some mini draws between 23.3.2006 to 27.9.2007, no regular draw between these dates was held.

4. It would thus be seen that the turn of the petitioner for allotment of a residential flat from DDA matured on 23.3.2006. Therefore, DDA was required to include the name of the petitioner in the draw held on 23.3.2006. The reason given by DDA for not including the name of the petitioner in a draw held on 23.3.2006 i.e. delay in receipt of information from another branch of DDA as to whether any flat under the said scheme had been allotted to the petitioner or not, does not constitute a valid reason for not including the name of the petitioner in the draw held on 23.3.2006, the same being an internal matter of DDA, it was obligatory for DDA to include the name of all the eligible registrants in the draw of lot held on 23.3.2006. The report, if any, was required to be obtained before holding the draw and the registrants cannot be made to pay higher price on account of the time taken by another branch of DDA in furnishing requisite information to the branch which was entrusted with the task of holding of the draw on 23.3.2006. Since DDA failed to include the name of the petitioner in the draw of lot held on 23.3.2006, for no fault on the part of the petitioner, it cannot be charge the price prevailing on the date of issue of the allotment letter from him.

5. It is DDAs own case that the Flat No. 214, Third Floor, Pocket-D, Loknaiak Puram, New Delhi came to be allotted to the petitioner in the draw of lot held on 27.9.2007. Despite that, while issuing allotment letter bearing the date 3.1.2012-9.1.2012, it required to deposit the cost of the flat as prevailing at the time of issue of the said letter. The only reason given by DDA for seeking to charge the cost of the flat as prevalent in the year 2012 is that the petitioner failed to submit requisite documents to DDA and such documents came to be submitted only on 23.8.2010. In my view, the documents could have been obtained and in fact ought to have been obtained after deposit of the cost of the flat and issuance of demand-cum-

allotment letter should not have been held up awaiting such document. Had DDA issued the demand-cum-allotment letter to the petitioner soon after the draw was held on 27.9.2007, he would have come to know of the allotment and would have deposited the price of the flat demanded by DDA. Thereafter, any delay on the part of the petitioner in depositing the requisite documents would have been only to his detriment since the possession of the flat would not have been given to him without his depositing of the necessary documents. In my view, there could be no justification in demanding increased cost of the flat without giving an opportunity to the petitioner to pay the price of the flat in terms of the draw held on 27.9.2007.

6. The learned counsel for the respondent-DDA has placed reliance upon the Circular dated 13.1.2011 issued by DDA whereby it has been decided that the cost of the flats in all cases like wrong address, missing priority, tail-end priority etc would be the standard cost of the flat based on the basis of the plinth area and land rates as prevalent on the date of issue of demand-cum-allotment letter i.e. the date when demand letter under the above policy is issued. In my view, DDA will not be justified in charging the price of the flat prevalent on the date of issue of demand- cum-allotment letter in a case where the name of the registrant was not included in the draw of lot for no fault on his part, or in cases where despite holding a draw and the registrant being successful in the said draw, the dispatch of the demand-cum-allotment letter is delayed by DDA awaiting documents from the registrant. Since the details of the registrants are available with DDA and are in fact fed in the computer while holding draw, no documents are required for the purpose of issuing demand-cum-allotment letter to him. The documents required before giving possession to the allottee can be obtained in due course but, the dispatch of demand-cum-allotment letter cannot be withheld awaiting submission of such document. In any case, the aforesaid circular, having been issued on 13.01.2011, cannot be applied to the petitioner, who was allotted a flat in the draw held on 27.09.2007. In fact, Circular not F2(13)96-COORGN.P. Part-I dated 25.5.1995 issued by DDA clearly stipulates that in cases where the allotment has not been made due to noninclusion of the name of the registrants in the draw for allotment, the allotment shall be made in the next draw at the rates prevalent at the time when the registrant would have got allotment according to his/her priority position. Vide Circular not F-2(10)2003/N&C(H) dated 28.5.2003, DDA decided

that all the registrants of original NPRS-1979, who had opted for Awas Sakar Yozna-1989, but had not been identified as member of the society, would be entitled to allotment at the prevalent rates at that time when they were entitled for allotment according to their priority numbers. Vide office order number F2(10)2002/Coord.(H)/49 dated 25.2.2005, DDA decided that where change of address was intimated by the registrant but was not recorded by DDA and thereupon demand letters were sent at the wrong address and the allottee approached the DDA within a period of four years from the date of allotment, he shall be allotted flat at the cost prevalent at the time when his priority had matured and no interest will be charged. Vide office order number F2(10)02/N&CO/14 dated 6.6.2006. The aforesaid office order was made applicable also to the cases of missing priority in case of registrants of NPRS-1979 who had opted for Awas Sakar Yozna-1989 but had not been enrolled as members of the society. It was decided that these registrants would be entitled for allotment at the prevalent rates at the time when they were entitled for allotment according to their priority number if they had approached DDA within a period of four years. It was also decided to charge interest @ 12% per annum in cases the registrants approached the DDA after the aforesaid period of four years, or the current cost prevailing at the time of fresh demand-cum-allotment letter, whichever be lower. The aforesaid Circular dated 6.6.2006 was in force when draw was held on 27.9.2007.

7. In *Atar Kaur versus DDA* [LPA No.184/2000], the appellant before this Court was registered under NPRS-1979 and later migrated to Awas Sakar Yozna. He could not become member of any of the nine societies which were formed under Awas Sakar Yozna and, therefore, stood reverted to NPRS-1979. However, her name was not included in the draw of lot held on 20.1.1994 despite the fact that Awas Sakar Yozna had been scrapped on 7.10.1992. While omitting to include the name of the petitioner in the aforesaid draw names of his juniors in the order of priority were included in the draw. Being aggrieved from nonallotment of a flat to him, the appellant filed a writ petition. During pendency of the writ petition, DDA included the name of the appellant in a draw of lot held on 3.12.1999 and allotted a flat to her at the rates prevalent in the year 1999 which were substantially higher than the rates prevalent in the year 1994. Allowing the appeal, a Division Bench of this Court held that the registrants in whose case allotment was not made due to

non-inclusion of her name due to mistake of DDA, though as per priority position his name ought to have been included, cannot be asked to pay more than what was paid by those who were registered after she had been registered. Allowing the appeal, the Division Bench directed that the appellant should be charged at the rates prevalent on 20.1.1994, when draw of lot was held, in which her name was not included by mistake. In the case before this Court since non-inclusion of the name of the petitioner, in a draw of lot held on 23.3.2006, was solely on account of inefficiency of DDA and no fault can be attributed to the petitioner, DDA cannot charge cost of the flat more than what was prevalent at the time of holding of said draw on 23.3.2006.

8. For the reasons stated hereinabove, the writ petition is disposed of with the direction to DDA to issue a fresh demand-cum-allotment letter to the petitioner in respect of the flat number 214, Third Floor, Pocket-D, Loknaiak Puram, New Delhi at the cost prevalent on 23.3.2006. If for some reason the aforesaid flat is not available, DDA shall allot another flat of the same category by holding a mini draw for this purpose within a period of eight weeks from today and shall issue a demand-cum-allotment letter in respect of the flat so allotted to him, charging the cost as prevalent on 23.3.2006 in respect of the said flat. The petition stands disposed of accordingly. There shall be no orders as to costs. V.K.JAIN, J MAY 29.2013 RD

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