

Susheel Kumar Jain Vs. Dda

Susheel Kumar Jain Vs. Dda

SooperKanoon Citation : sooperkanoon.com/957512

Court : Delhi

Decided On : Apr-17-2013

Judge : V. K. Jain

Appellant : Susheel Kumar Jain

Respondent : Dda

Advocate for Def. : Mr. Arun Birbal

Advocate for Pet/Ap. : Mr. R.K. Saini

Judgement :

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

17. 04.2013 W.P(C)No. 5646/2006 SUSHEEL KUMAR JAIN Through:
Petitioner Mr R.K. Saini, Advocate versus DDA Respondent Through: Mr Arun
Birbal, Adv. CORAM: HON'BLE MR. JUSTICE V.K.JAIN JUDGMENT V.K.JAIN, J.

(ORAL) The petitioner Mr Susheel Kumar Jain got himself registered for allotment of a residential flat from DDA under its New Pattern Residential Scheme, known as NPRS, 1979. In a draw of lot held on 1.6.1987, a residential flat bearing number 114-B, in Pocket-F at Nand Nagri was allotted to him and a demand-cum-allotment letter bearing Block Date 7.7.1987 15.7.1987 was issued to him. The total cost of the flat sought to be charged from the petitioner was Rs.1,41,800/-. Since the allotment was made on hire-purchase basis, the petitioner was required to make payment of an initial sum of Rs.2,73,88.79 which was to get enhanced in case of

delay in making payment and the last date for making the payment was 13.10.1987, the amount to be paid on or before 13.10.1987 being Rs.28073.50. In addition to the initial payment, the petitioner was also required to pay 120 installments of Rs.1675.58, per month, commencing 10.9.1987. He was also required to pay the ground rent after two years, the amount of ground rent being Rs.130/-. The petitioner deposited Rs.31424.66 with the respondent on 12.10.1988 comprising Rs.28073.50 towards initial deposit and Rs.11351.16 towards two monthly installments. This was followed by the deposit of Rs.21782.54 on 19.11.1988 towards installment for the period from 13.10.1987 to 13.11.1988. The documents required in connection with the aforesaid allotment were submitted by the petitioner to DDA on 17.8.1989. However, the said allotment came to be cancelled by DDA solely on account of non-submission of requisite documents. Nonpayment of hire-purchase installment for the period subsequent to 13.11.1988 admittedly was not the ground of cancellation of allotment. On representation made by the petitioner, a fresh allotment was made to him vide allotment letter dated 13.10.2004 at the total cost of Rs.830820/-. After giving adjustment for the initial registration amounting to Rs.4500 and interest on that amount, a demand letter for Rs.818596.23 was issued to the petitioner. The last date for making payment in terms of this letter was 11.4.2005 and in case the payment was made between 13.3.2005 to 11.4.2005, the deposit had to be of Rs.848889.07, the balance between the amount of Rs.818596.29 and Rs.848889.07 being the interest for the intervening period. The petitioner did not make payment in terms of second allotment letter and requested DDA to allot flat to him at the previous rate. He also sought adjustment for the previous payment made by him, which had not been adjusted in the second allotment letter, along with interest on that payment.

2. Since DDA failed to comply with his request, this writ petition was filed on 31.3.2006 seeking the following reliefs: b. A writ of certiorari quashing the action of the respondent/ DDA in first cancelling the allotment of the petitioner, despite payment in time, without notice to show cause and opportunity of being heard and then making subsequent allotment to him at current cost and not old cost, being in violation of the Rules, Regulations and policy and the principles of equity, justice and good conscience as well as the law laid down by this Honble Court. c) A writ

of Certiorari consequently quashing the allotment-cum-demand letter dated 13.10.2004 (Annexure P-14) issued to the petitioner in respect of the demised flat at current cost. (d) a writ of mandamus directing the respondents to issue a revised demand letter to the petitioner in respect of the demised flat i.e. Flat No.499 (First Floor) Pkt.A, Sector-17, Phase-2, Dwarka, Delhi charging him for the same at the old cost and also give him credit adjustment of the amounts deposited in 1987-88 with upto date interest thereon. e) A writ of mandamus commanding the respondent to pay the cost of the petition to the petitioner.

3. The first question which comes up for consideration in this case is as to whether DDA was justified in cancelling the first allotment made to the petitioner solely on account of non submission of the requisite documents by him.

4. This issue came up for consideration before the Division Bench of this Court in *Asha N. Madnani v. D.D.A* 199.1 AD (Delhi) 385. In that case, the allotment made to the petitioner before this Court was cancelled for non submissions of relevant documents by him within the prescribed period of 90 days. After cancelling the first allotment made to the petitioner, DDA issued a second letter of allotment to him whereby another flat was allotted to him at a higher cost thereby requiring the petitioner to pay an additional amount of Rs.2,10,699.46/-. The petitioner filed a writ petition seeking quashing of second allotment letter and direction to DDA to allot a flat to him at the address which was fixed in the original allotment. Allowing the writ petition, this Court *inter alia* held as under: The respondent-DDA has not lost anything by such a technical default on the part of the petitioner inasmuch as price was fully received by the DDA. Merely for the technical deficiency in supplying the documents, the petitioner cannot be made to suffer by paying an additional amount of more than Rs. 2 lacks. (10) A distinction has to be drawn between the consequence flowing from the default in payment by the allottee in accordance with the terms and conditions of allotment and a default merely in furnishing proof of payments and filing of the documents within the prescribed period. The letter of allotment provides for automatic cancellation of the allotment in both the cases. In the case of default in payment of installments automatic cancellation of allotment has to be sustained because of the consequences flowing therefrom. 10.1. Each allotment is part of a composite scheme. By default

in payment the working of the scheme is disturbed and the Dda has to rearrange its financial affairs. An allottee defaulting in payment must give way to an aspirant waiting for an allotment and willing to make payment. 10.2. In case of a mere default in filing of the documents (having no material bearing or eligibility or qualification for allotment) and proof of payments within the prescribed period the considerations are different. Even the respondent-DDA is aware of the payment having been made. It is merely a question of convenience that allottee is required to furnish proof of payment so that collective information as to payments is available at one place and the Dda is not required to scan its records time and again in respect of each allottee. Having made the payments all and in time - it is primarily the allottee who suffers by his failure to furnish the documents and proof of payments. Execution of lease and delivery of possession to the allottee would be delayed inspite of his having parted with money and the flat lying ready for delivery of possession. Situation may be different if third party interest or any other similar factor has intervened which would render it inequitable or impossible to accommodate the allottee on his original allotment. 10.3. Therefore, the term as to payment as per schedule must be held to be mandatory while the term as to submission of all the relevant documents alongwith proof of payment within the prescribed period should be held to be directory. (11) For the foregoing reasons, the petition is allowed. The additional demand raised by the respondent is quashed. The respondent is directed to allot the flat described in the letter of allotment dated 22.9.92 (Annexure-K) at the same disposal cost at which she was previously allotted a similar flat vide letter of allotment dated 23/27.4.90 (Annexure-C).

5. In view of the decision of the Division Bench in the above referred case, the action of DDA in first cancelling the allotment solely on account of non submission of documents and then making a fresh allotment in the year 1994 at a substantially higher cost cannot be sustained.

6. It was contended by learned counsel for the respondents that despite the first allotment having been cancelled way back in the year 1987 and the said cancellation having been communicated to the petitioner vide letter dated 13.10.1989 and then again on 24.01.1990, the petitioner is guilty of laches since

the writ petition came to be filed by him only in the year 2006. I, however, find no merit in this contention. There could have been no automatic cancellation of allotment merely on account of non submission of the documents within the time stipulated by DDA in this Court. Moreover, the DDA vide its letter dated 03.08.1999 having asked the petitioner to submit documents such as photocopy of challan is precluded from taking such a plea. In any case, while making a fresh allotment to the petitioner on 13.10.2004 in terms against tale end policy, the delay in challenging the cancellation of the first allotment has become insignificant and it is only the validity of the second allotment letter dated 13.10.2004 which needs to be examined in this petition.

7. The learned counsel for the petitioner states, on instructions from the petitioner who is present in the Court that in order to avoid any controversy in this Court, the petitioner is ready to pay the revised cost as demanded by the DDA vide allotment letter dated 13.10.2004, along with appropriate interest on that amount, without prejudice to his contention that DDA was not entitled to revise the cost of the flat while making second allotment against the same registration. He further states that in case the flat allotted to the petitioner is no more available, he would not press for any relief other than refund of the amount which is still lying deposited with DDA, along with interest on that amount.

8. Considering the facts that:(i) the DDA could not have cancelled the first allotment solely on account of non submission of documents. (ii) DDA despite the petitioner not challenging the cancellation of the first allotment in appropriate legal proceedings, chose to make a fresh allotment to him vide letter dated 13.10.2004. (iii) the petitioner is ready to pay the higher cost demanded by DDA vide letter dated 13.10.2004. (iv) the petitioner is also ready to pay appropriate interest on the amount demanded by DDA vide allotment letter dated 13.10.2004, after adjustment of the amount which he had already deposited with DDA along with interest on that amount. I am of the considered view that there would be no justification to deny allotment of flat in terms of allotment letter dated 13.10.2004 to him.

9. The writ petition is, therefore, disposed of with the following directions. (1) If the flat allotted to the petitioner vide allotment letter dated 13.10.2004 has not been allotted to any other person and is still available with DDA, the possession of the said flat shall be handed over to the petitioner within four weeks, subject to his depositing the amount demanded by DDA vide letter dated 13.10.2004, after adjustment of such amount which the petitioner had already deposited with DDA prior to 13.10.2004 and which was not adjusted in the said letter, along with interest @ 10% per annum, on that amount and also paying interest on the balance amount payable to DDA @ 10% per annum with effect from 13.10.2004 till the date of actual payment. The petitioner shall also submit such other documents, if any, as DDA may require him to submit in this regard. (2) In case the flat allotted to the petitioner vide allotment letter dated 13.10.2004 is no more available with DDA, the petitioner would be entitled to refund of the entire amount which he has so far deposited with DDA, along with interest on the amount @ 10% per annum from the date of the deposit till the date it is refunded to the petitioner. The writ petition stands disposed of. V.K. JAIN, J APRIL 17 2013 rd/rb

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com