

**Rajesh Kumar Saxena Vs. Dda**

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**Court :** Delhi

**Decided On :** Apr-30-2013

**Judge :** V. K. Jain

**Appellant :** Rajesh Kumar Saxena

**Respondent :** Dda

**Judgement :**

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

30. 04.2013 W.P.(C) 6854/2011 RAJESH KUMAR SAXENA ..... Petitioner Through:Mr.Kishore M.Gajaria with Mr.Omkar Srivastava and Mr.Piyush Sachdeva, Advocates. versus DDA .... Respondent Through:Mr.Rakesh Mittal with Ms.Kamlesh Anand, Advocate. CORAM: HON'BLE MR. JUSTICE V.K.JAIN JUDGMENT V.K.JAIN, J.

(ORAL) 1. Late Shri Anand Swarup Saxena, father of the petitioner, got himself registered for allotment of a residential flat from DDA under its New Pattern Registration Scheme (NPRS) 1979. Late Shri Anand Swarup Saxena expired on 15.1.1990. Since no information with respect to demise of late Shri Anand Swarup Saxena was given to DDA, a residential flat came to be allotted in his name and a Demand Letter dated 22.6.2006 was sent in his name at the address available in the record of DDA i.e. 151, Devi Nagar, Suraj Kund Road, Meerut. On coming to know of the aforesaid allotment, the petitioner being a legal heir of his father, applied for transfer of the mutation and registration in his name, on 15.12.2006. A

perusal of the above-referred application, available in the file of DDA brought to the Court, would show that the petitioner specifically referred to the allotment of LIG flat bearing not E-272, Pocket-3 in Sector 18, Rohini to his father and requested DDA to transfer the registration and allotment in his name. Pursuant to the aforesaid letter, DDA sent a communication to the petitioner on 29.12.2006 requesting it to submit the mutation documents, as per Mutation Booklet available in DDA Office, so that his case could be processed accordingly. In response to the aforesaid communication from DDA, the petitioner submitted certain documents, vide its letter dated 16.4.2007 but did not submit the original FDR and the copy of the bank challan. This was conveyed to the petitioner, vide letter of DDA dated 11.5.2007. The petitioner, vide letter dated 16.10.2007, furnished the fourth copy of the challan but did not furnish the original FDR. The respondent sent another communication dated 29.10.2007 to the petitioner requiring him to submit the original FDR but, instead of submitting the original FDR, the petitioner submitted an Indemnity Bond which indicated that the original FDR had lost. The respondent thereupon asked the petitioner, vide letter dated 31.7.2008 to discharge the Indemnity Bond and submit the FIR regarding missing FDR. Vide another communication dated 27.1.2009, the respondent asked the petitioner to submit NCR regarding lost of the FDR. This requested was repeated, vide subsequent letter dated 30.7.2009. The NCR, as required by DDA, came to be submitted by the petitioner only on 10.12.2009. In reply thereto, respondent asked the petitioner to visit its office for clarification with reference to legal heirs, so that the case could be finalized. Thereafter, vide letter dated 3.2.2011, DDA mutated the registration in favour of the petitioner though for refund of registration money, not for the purpose of allotment of the flat.

2. The petitioner, vide letter dated 6.6.2011 again requested the respondent for allotment of Flat not E-272, Pocket-3, Sector-18, Rohini to him. The counteraffidavit filed by DDA shows that the request was rejected on the ground that complete mutation documents were furnished more than three years after the date of communication sent by DDA on 29.12.2006.

3. A perusal of the documents submitted by the petitioner to DDA on 16.4.2007 would show that one of the documents submitted by him was an Indemnity Bond

stating therein that the original FDR had been misplaced and that he had requested for issue of duplicate FDR. Yet another document submitted by the petitioner to DDA was the acknowledgment from SHO Nochandi Thana, Meerut on his application informing that an FDR of Rs.1500/- issued to his father late Shri Anand Swarup Saxena for registration of a flat with DDA was missing and late Shri Anand Swarup Saxena had expired on 15.1.1990. It would, thus, be seen that all the documents which were really required by DDA for mutation of the registration/allotment in the name of the petitioner were actually submitted by him within three years from the date the communication was sent to him by DDA on 29.12.2006. What the petitioner submitted with his letter dated 10.12.2009 and was acceptable to DDA, was a copy of the D.D. recorded by Police Station Civil Lines in Meerut, referring to the earlier report lodged with the police station on 13.4.2006. This letter dated 13.04.2006 is the same document which was submitted to DDA by the petitioner on 16.4.2007. There is no difference between the report lodged vide document submitted by the petitioner along with letter dated 16.4.2007 and the report contained in the document submitted with the letter dated 10.12.2009 as far as the purpose of DDA was concerned, since what DDA wanted to verify, by asking for a copy of the NCR, was that the petitioner had intimated loss of the FDR to the concerned police station and this could be seen from the application dated 13.4.2006, acknowledgment of which was submitted to DDA on 16.4.2007. Asking for a copy of the D.D. instead of accepting the acknowledgment dated 13.4.2006 which bears the signatures as well as the stamp of the concerned police station was really not necessary and to say the least, was a hyper technical approach on the part of the concerned officials of the DDA.

4. The only reason given by DDA in its counter-affidavit for not acceding to the request of the petitioner for allotting the flat in question to him was that he did not submit all the documents within three years from the date of issue of communication dated 29.12.2006, meaning thereby that had the petitioner submitted all the requisite documents within three years from the issue of the aforesaid communication, his request for allotment of the aforesaid flat to him would have been acceded to. Since the only document, which according to the DDA, was not submitted by the petitioner within a period of three years from the date of issue of communication dated 29.12.2006 was the NCR in respect of the

FDR and, in my opinion, the report lodged with police station on 13.4.2006 very much served the purpose which could be achieved by obtaining the NCR, DDA was not justified in not acceding the request of the petitioner.

5. There is yet another reason why the petitioner should not be deprived of the allotment made to his father. DDA lost nothing by the delay on the part of the petitioner in submitting the documents since it could very well have asked for the price as prevailing on the date, the NCR was submitted by the petitioner.

6. The learned counsel for the respondent DDA submits that the Demand-cum-Allotment letter dated 22.6.2006 carried a clause for automatic cancellation of the allotment in case the payment was not made within the time stipulated in the said letter. As noted earlier, the father of the petitioner died way back on 15.1.1990. The allotment having been made in the name of a dead person, the petitioner was not in a position to deposit the price of the flat with DDA without the aforesaid registration/allotment being transferred/mutated in his name. Therefore, no blame can be placed upon the petitioner for not depositing the price of the flat within the time stipulated in the Allotment Letter dated 22.6.2006.

7. Moreover, as already noted earlier, the only reason given by DDA in its counter-affidavit for not acceding to the request of the petitioner, for allotment of the aforesaid flat to him is non-submission of the documents within a period of three years from the date of issue of communication dated 29.12.2006 requiring the petitioner to submit all the documents, as per its booklet. Therefore, nothing really turns on the failure of the petitioner to deposit the price of the flat in terms of the Allotment Letter dated 22.6.2006.

8. The learned counsel for the petitioner, on instructions from the petitioner, who is present in the Court, states that the petitioner is ready to pay the price of the flat as prevailing on the date of the filing of this writ petition i.e. 19.9.2011. This statement made by learned counsel for the petitioner adequately takes care of the financial interest of DDA since it would be getting the price of flat prevailing as on 19.9.2011 and not the price, as demanded vide Allotment Letter dated 22.6.2006.

9. Vide interim order dated 20.9.2011, this Court directed that if the flat which was earlier allotted to the petitioner has not been allotted to any other person, the same be not allotted to any other person during the pendency of the writ petition. Therefore, it is directed that in case the flat which was earlier allotted to the father of the petitioner is still available and has not been allotted to some other person, the same would be allotted to the petitioner within a period of eight weeks from today. The payment in terms of the Demand-cum-Allotment Letter to be issued by DDA, in compliance with this order, would be deposited by the petitioner within such time as DDA may stipulate in the said Demand-cum-Allotment Letter. In case the aforesaid flat is not available having been allotted to some other person, the DDA would allot an LIG flat to the petitioner by holding a mini draw in this regard within a period of eight weeks from today. The writ petition stands disposed of, in terms of this order. V.K. JAIN, J APRIL 30 2013 ks

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