

(2012) 04 DEL CK 0333

Delhi High Court

Case No: Writ Petition (C) 8190 of 2011

Santosh Kumari Khanna

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision: April 12, 2012**Citation:** (2012) 189 DLT 28**Hon'ble Judges:** Hima Kohli, J**Bench:** Single Bench**Advocate:** R.K. Saini, for the Appellant; Arjun Pant, for the Respondent

Judgement

Hima Kohli, J.

The petitioner herein registered herself with the respondent/DDA under the New Pattern Registration Scheme, 1979 (in short "NPRS-1979") for allotment of a MIG flat on making payment of the registration deposit on 27.09.1979. At the time of submitting the application for registration, she had furnished three addresses. The residential address furnished by the petitioner was, House No.6/15-A, Vijay Nagar, Double Storey, Delhi, where she was residing at the relevant time. Two occupational addresses were given by the petitioner, one was MC Primary School, Masjid Tehwarkhan, Delhi-110006, where she was working as a teacher at that time and from where she had retired on 29.04.2002, the second occupational address was that of her husband, namely, Shri Khushal Chand Khanna, c/o India Shock Absorbers (Regd.), Shop No.45, Khanna Market, Tis Hazari, Delhi, where he was working at the relevant time and continues to work therefrom till date. In September, 1999, the petitioner had changed her residential address from House No.6/15-A, Vijay Nagar, Double Storey, Delhi, to C-1/46, Malka Ganj, Sabzi Mandi, Delhi, but admittedly, she did not inform the respondent/DDA about the change of address. In the meantime, the priority of the petitioner had matured and her name was included in the draw of lots held by the respondent/DDA on 27.09.1999. In the aforesaid draw of lots, the petitioner was allotted a MIG flat bearing No.13, Pocket-1, Sector-13, Dwarka, New Delhi and a demand-cum-allotment letter bearing block dates

29.12.1999-31.12.1999 was issued to her at the residential address provided by her in her application form, i.e., House No.6/15-A, Vijay Nagar, Double Storey, Delhi. As the petitioner had changed her residence from the aforesaid address in September, 1999, the said demand-cum-allotment letter was not received by her and instead it was returned undelivered to the respondent/DDA with the remarks, "left/not available". Learned counsel for the petitioner submits that upon receiving the undelivered allotment letter, the respondent/DDA did not make any effort to re-despatch the same to either the occupational address of the petitioner or that of her husband, which were available in its records. Instead of redirecting the allotment letter to the aforesaid occupational addresses, the respondent/DDA proceeded to cancel the allotment without even issuing a notice to show cause to the petitioner. He submits that sometime in July 2011, the petitioner came to know that all the registrants of the NPRS-1979 had been made allotments. She, therefore, visited the office of the respondent/DDA to enquire as to the status of her allotment and on 01.08.2011, she was informed that she had been allotted the MIG flat mentioned hereinabove in September, 1999 and thereafter it was cancelled by the respondent/DDA on account of non-payment of amount as demanded in the demand-cum-allotment letter.

2. On coming to know about the cancellation of the allotment of the flat made in her favour, the petitioner submitted representations to the Commissioner (Housing) and the Director (Housing), DDA, requesting that she be allotted an alternative flat since the cancellation of the earlier allotment done by the respondent/DDA was for no fault that could be attributed to her. The present petition is occasioned as it is the stand of the petitioner that the representations made by her did not find favour with the respondent/DDA and remained unanswered.

3. In support of his submission that the petitioner is entitled to an allotment of a flat at the old cost prevalent at the time of the original allotment alongwith simple interest payable from the date of the original allotment till the date of issue of a fresh demand-cum-allotment letter, learned counsel for the petitioner relies on an office order dated 25.02.2005 issued by the respondent/DDA (Annexure P-3). The case law relied upon by the counsel for the petitioner in support of the present case is as below:-

(i) Hirdayapal Singh vs. DDA in W.P. (C) 15002/2006 decided on 06.02.2007.

(ii) Prem Bhatnagar vs. DDA in W.P. (C) 592/2011 decided on 19.05.2011.

(iii) Ravi Dass vs. DDA in W.P. (C) 5554/2011 decided on 16.02.2012.

4. Counsel for the respondent/DDA opposes the present petition and submits that the result of the draw that was held on 27.09.1999 was displayed by the respondent/DDA on its notice board at its headquarters at Vikas Sadan. Apart from the above, the result was also published in the newspapers and displayed on DDA's website but the petitioner did not respond thereto. Besides the above, the

respondent/DDA is stated to have issued a public notice in leading newspapers requesting the successful registrants, whose allotment letters were returned undelivered, to collect their allotment letters from the concerned department, but as the petitioner did not respond to the said public notice and failed to collect the undelivered allotment letter, the flat that was allotted to her was subsequently cancelled on account of non-payment. He confirms the fact that the demand-cum-allotment letter bearing block dates of 29.12.1999-31.12.1999, whereunder she was called upon to deposit the cost of the flat as per the schedule mentioned therein had been issued to the petitioner, but the same was returned undelivered.

5. As regards the occupational addresses furnished by the petitioner at the time of registering herself under the NPRS-1979, it is stated by learned counsel for the respondent/DDA that the occupational address is required only for the purpose of verification of the salary certificate of the registrant and not for the purpose of despatch of letters. It is pointed out that since the petitioner had failed to intimate her changed address to the respondent/DDA, the allotment letter could not reach her and was returned to the respondent/DDA as undelivered, for which the respondent/DDA cannot be faulted. Counsel for the respondent/DDA lastly states that the present petition is hit by delay and laches and is not maintainable for the reason that the allotment in the present case had been made in favour of the petitioner way back in the year 1999, whereas, the present petition came to be filed in November 2011, and is therefore highly belated.

6. The Court has considered the rival submissions of the counsels for the parties and perused the judgments relied upon by the learned counsel for the petitioner.

7. The facts of the case are undisputed. It is an admitted position that at the time of submitting her application for registration under the NPRS-1979, the petitioner had furnished three addresses to the respondent/DDA. The first address was her residential address, the second address was her own occupational address and the third address was the occupational address of her husband, who is still stated to be employed at the same address.

8. Assuming that the petitioner had shifted her residence from the residential address as contained in the records of the respondent/DDA, and that she had not informed the respondent/DDA about the change of her residential address, it was still incumbent upon the respondent/DDA to have made efforts to re-direct the undelivered demand-cum-allotment letter issued to the petitioner at the occupational addresses available in its record. Considering the fact that the timeline between the submission of the application by the petitioner under the Scheme, i.e., the year 1979 and the date of maturing of her allotment, i.e., the year 1999, is almost two decades, it is not extraordinary to find that the petitioner had changed her address in this long duration, more so when registrants, like the petitioner herein, who are government employees, are likely to change their residential

premises and relocate themselves from time to time. In such circumstances, it was all the more imperative for the respondent/DDA to have made every attempt to serve the petitioner not only at the residential address available in its record but also at the two occupational addresses furnished by her in her application for registration. The submission made by the learned counsel for the respondent/DDA that the occupational addresses are required by the respondent/DDA only to verify the financial status of the applicant and not for the purpose of correspondence does not cut any ice and is untenable, for the reason that the format of the application required to be filled up by the registrants does not reveal any such intent of the respondent/DDA. Rather, the form is silent in that regard and it only sets out a requirement of filling up the addresses by the registrants by furnishing both, residential and occupational addresses. Moreover, there is force in the submission of the counsel for the petitioner that for the purpose of verifying the financial status of a registrant, the respondent/DDA requires a registrant to submit an income certificate, which requirement was duly complied with by the petitioner in the present case.

9. As regards the submission made by the counsel for the respondent/DDA that the petitioner was under an obligation to have kept a track on the status of her registration and once, the respondent/DDA had taken steps to display the results of the draw on its notice board at its headquarters as also issued a public notice, calling upon the successful registrants to collect their allotment letters, the same exonerated it from taking any further steps to intimate the petitioner at the occupational addresses available in its records as to the allotment made in her favour, is unjustified and is unacceptable. As observed by a co-ordinate Bench in the case of Prem Bhatnagar (supra), the courts have taken a consistent view that a general notice in leading newspapers even if published, is no notice at all as it is not expected that the registrant would be looking out for a public notice on a daily basis particularly when it takes a period of 20-25 years for an allotment to mature. In the case of Ravi Dass (supra), this Court had observed that efforts ought to have been made by the respondent/DDA to have dispatched the demand-cum-allotment letter to the petitioner therein at his permanent address as he was employed with a government agency and did not own a residential premises in the NCT of Delhi. It was thus observed that it was natural for the government employee to have shifted from his earlier residential premises and to have relocated himself from time to time.

10. In the present case also, it is not unnatural for the petitioner to have relocated her residence over past two decades as is apparent from a perusal of the averments made in the writ petition. The Court is also cognizant of the fact that the respondent/DDA itself has issued an office order dated 25.02.2005, which deals with the policy pertaining to issuance of a demand letter at wrong address and missing priority cases of DDA. Having regard to the fact that the respondent/DDA has circulated the said Office Order dated 25.2.2005, the same would apply to the

petitioner herein as well. Para 2 of the aforesaid Office Order is relevant for consideration and is reproduced hereinbelow:

2. In cases, where such an intimation has been made but the allottee has not approached the DDA within a period of four years from the date of allotment, the allottee shall be considered for allotment of flat at the old cost prevalent at the time of original allotment + 12% simple interest w.e.f. the date of original allotment till the date of issue of fresh Demand-cum-Allotment Letter.

11. The aforesaid office order would be applicable if the respondent/DDA does not dispatch the demand-cum-allotment letter to an allottee at the addresses as are available in its record. The present decision is therefore in line with the decision taken by a co-ordinate Bench in the case of Hirdayapal Singh (supra). In view of the aforesaid discussion, the present petition succeeds and is therefore allowed with directions to the respondent/DDA to hold a mini draw of lots for allotment of a flat to the petitioner in the same category, of the same size and in the same locality, within a period of eight weeks from today. Thereafter, a demand-cum-allotment letter shall be issued to the petitioner within a period of two weeks from the date of holding of the mini draw of lots. In the demand-cum-allotment letter, the cost of the flat shall be determined by the respondent/DDA in terms of its Office Order dated 25.2.2005 and the respondent/DDA shall assess the cost of the flat at the cost prevalent at the time of the original allotment along with simple interest @ 12 % per annum from the date of the original allotment till the date of issuance of a demand-cum-allotment letter. Upon receipt of such a demand-cum-allotment letter, the petitioner shall complete all the requisite formalities as stipulated by the respondent/DDA and thereafter, physical possession of the flat shall be handed over to her within a period of four weeks from the date of completion of such formalities. The petition is disposed of, while leaving the parties to bear their own costs.