

(2009) 08 DEL CK 0333

Delhi High Court

Case No: Writ Petition (Civil) No. 9724 of 2006

Bhagat Singh Manral

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision: Aug. 10, 2009

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Richa Kapoor, for the Appellant; Yesu Jain, for the Respondent

Final Decision: Allowed

Judgement

Anil Kumar, J.

The petitioner is seeking direction to the respondent to issue allotment-cum-demand letter in respect of Flat No. 112, Third Floor, Sector 9, Pocket 2, Dwarka at the cost prevalent in the year 1994, when his priority had matured.

2. The petitioner contended that he is a senior citizen and got himself registered under the New Pattern Registration Scheme, 1979 for allotment of a MIG flat. The registration number of the petitioner is 22282. The petitioner asserted that he had given his communication address as C/o The Oriental Fire & General Insurance Company Limited, 15-16, Scindia House, K.G.Marg, New Delhi and his residential address as G-293, Srinivaspuri, New Delhi.

3. The plea of the petitioner is that there was a scheme for out of turn allotment under which the petitioner was eligible and, therefore, he corresponded with the respondent pursuant to which a communication dated 10th June, 1992 was received from the DDA at the new address of the petitioner at 104, North Avenue, MP Flats, New Delhi-110001. Consequent to the letter dated 10th June, 1992 from the DDA for out of turn allotment, a communication dated 24th June, 1992 was sent which was duly received by the respondent where also the address of the petitioner was mentioned as 104, North Avenue, MP Flats, New Delhi- 110001.

4. According to the petitioner though the changed address, 104, North Avenue, MP Flats, New Delhi-110001 was available with the respondent, he however sent another letter dated 26th August, 2008 categorically indicating the change of his old address, which letter was duly received by the respondent as is apparent from the endorsement made on the copy of the letter bearing filing No. 192 OTA dated 26th August, 1998.

5. The plea of the petitioner is that in 1998, on enquiry about the status of his registration, it transpired that the petitioner was allotted a flat bearing No. 504, Pocket 3, Sector 19, Dwarka, New Delhi according to his priority position and an allotment-cum-demand letter was sent at the old address of the petitioner in place of his address 104, North Avenue, MP Flats, New Delhi-110001.

6. The petitioner consequently protested against cancellation of his allotment made in 1994 on account of sending the demand-cum- allotment letter at his old address by his protest letter dated 4th September, 1998 which was duly received by the respondent. The petitioner thereafter submitted more representations to the respondent for allotment.

7. On representations being made by the petitioner his name was included in the draw of lots in September, 2005, however, again according to the petitioner, the demand-cum-allotment letter was not sent. The petitioner's assertion is that he came to know in January, 2006 about inclusion of his name in the draw held on September, 2005, however, the intimation was not sent at his correct address. The petitioner again made representation but his request for allotment of flat has been declined on the ground that the petitioner had not applied within four years from the date of earlier allotment in 1994. The petitioner thereafter, has filed the present petition seeking allotment of flat which was drawn in his favor in 2005 at the rates prevalent in 1994 when his priority had matured but the intimation was sent at the wrong address on the basis of the policy of the respondent.

8. The writ petition is contested by the respondent contending inter- alia that the petitioner in his application form had mentioned his residential address as c/o.Sh.O.N.Sharma, G-293, Srinivaspuri, New Delhi and had also furnished another address as occupational address at c/o.The Oriental Fire and Insurance Company Limited, 15-16, Scindia House, K.G.Road, New Delhi and the intimation was sent to the petitioner at the said address. It is also contended that on 9th April, 1992 the respondent had received a letter forwarded by the office of Lt. Governor, Delhi to consider the case of the petitioner for an out of turn allotment of flat. It is stated that though the address of the petitioner in the said letter was written as 104, M.P.Flats, North Avenue, New Delhi, however, for change of address in the record, the procedure is to move a proper application intimating the answering respondent about the new address along with the previous one along with the documentary proof. In the circumstances, it is contended that the petitioner had not intimated the answering respondent regarding his change of address to be carried out in the

official records for further correspondence. Regarding out of turn allotment and MIG branches it is contended that the address intimated to out of turn allotment branch is not the address communicated to MIG branch. It is, however, not denied by the respondent that though the petitioner was allotted a MIG flat No. 504, however, the demand-cum-allotment letter dated 5.7.1994-9.7.1994 was issued to him and sent at the address, G-293, Srinivasपुरi, New Delhi which was returned with the remarks "no such person". It is further stated that even a show cause notice dated 29th January, 1996 was issued to the petitioner at the same address.

9. I have heard the learned Counsel for the parties. The respondent cannot dispute that at the time of registering for a MIG flat on 25th September, 1979 the petitioner had given two addresses. This is also not disputed that in 1994 allotment was made and demand-cum- allotment letter was issued at the address of the petitioner at Srinivasपुरi from where it was received back with the remark "no such person" is there. In such a case the respondent according to their own policies had to send the intimation at the other address i.e c/o.The Oriental Fire and General Insurance Company Limited, 15-16, Scindia House, K.G.Road, New Delhi. No reason is disclosed by the respondent as to why no communication regarding allotment of flat to the petitioner was sent at the other address mentioned in the application form when the demand-cum-allotment letter was received back from the address of the petitioner at `Srinivasपुरi".

10. The contention of the respondent that out of turn allotment and MIG Housing Department are two different departments and the address known to one cannot be construed as the address known to other is equally untenable and cannot be accepted. The plea of the respondent that MIG Housing is a different department cannot be accepted because the letter dated 14th February, 1992 was forwarded to the MIG (housing) of the respondent which categorically stipulated that the petitioner is a registrant of New Pattern 1979 scheme and his new address. The letter also stipulated old registration number as 22282 and new registration number 18083 dated 23rd March, 1980 under the MIG category on cash down basis. Even the computer number being 9817 was given. In the circumstances, the minimum which could be done by the respondent was to check at their computer number 9817 and to incorporate the address given by the petitioner as r/o.104, North Avenue, M.P.Flats, New Delhi. Considering the facts and circumstances it cannot be expected that out of turn allotment department and MIG Housing Department did not work in coordination with each other. The respondent cannot be selective about coordination as has been sought to be alleged by the respondent.

11. The learned Counsel for the petitioner has categorically emphasized that 2% of the flats constructed by the respondent are kept reserved for allotment under the out of turn allotment category which are for widows, handicapped, ex-servicemen, evictees and persons under the various other categories. It is asserted that in case out of turn allotment request is rejected, the case is transferred back to the parent

scheme of the applicant and no file is kept pending under the out of turn allotment department. The learned Counsel for the respondent is unable to deny this. Otherwise also it appears to be rational that if a special file is created for out of turn allotment, the same is to be sent back to the flat allotment department, in case out of turn allotment is rejected.

12. The incorrect stand taken by the respondent about out of turn allotment department being separate and not knowing anything about the MIG Housing Department is further belied by the fact that a letter dated 10th June, 1992 was sent by the respondent requiring the petitioner to submit the date of his retirement with proof was sent by the respondent at the petitioner's changed address at 104, M.P.Flats, North Avenue, New Delhi. In view of this the respondent cannot contend that the petitioner has to follow a particular procedure to move a proper application for change of address in the record of the respondent along with the documentary proof. The petitioner's name was included in the draw of lots in 1994 and he was allotted a flat, however, demand-cum- allotment letter was not sent at the correct address of the petitioner. Consequently, the petitioner is entitled for inclusion of his name in the draw of lots for a MIG flat and the petitioner shall be liable to pay the price of the flat at the rate which was prevalent in 1994. A Single Judge of this Court in W.P(C) No. 16317/2006 titled Bandana Mukherjee v. Delhi Development Authority had held that an applicant cannot be made to suffer for the lack of coordination between the departments of DDA. It was held that if the respondent was aware of the changed address on account of rejection of the request of the applicant for out of turn allotment and the case of the applicant was transferred back to the parent scheme, the DDA cannot be allowed to take shelter under the pleas that the two departments are different. In the similar circumstances the pleas of the respondent were turned down and it was held that the applicant could not be denied an allotment.

13. The plea of the respondent that the name of the petitioner was subsequently incorporated wrongly for draw of lots in 2005 also cannot be accepted in the facts and circumstances. In the draw of lots held in 2005 the petitioner was allotted flat bearing No. 112, 3rd floor, Sector 9, Pocket 2, Dwarka, New Delhi. The respondent again sent the communication regarding demand-cum-allotment of the said flat at the wrong address. The petitioner is entitled for allotment of flat and in the circumstances the respondent cannot be permitted to contend that the inclusion of the name of the petitioner in the draw of lots held in September, 2005 was not correct and/or was not according to the policy dated 25th February, 2005. On a perusal of the policy dated 25th February, 2005 it is apparent that the policy was for those applicants who had intimated the change of address but which was not recorded by the DDA erroneously and the demand letter were sent at wrong/old address and the allottee had approached DDA. The draw of lots was held in September, 2005 where the name of the petitioner was included and he has been allotted the flat bearing No. 112, 3rd Floor, Sector-9, Pocket 2, Dwarka, New Delhi,

however, the communication regarding allotment was again sent at the wrong address and, therefore, the petitioner has approached within a period of four years from the issue of demand letter at the wrong address. In the circumstances, the respondent cannot contend that the case of the petitioner is not covered under the said policy.

14. The learned Counsel for the respondent on instructions has contended that the flat No. 112, 3rd Floor, Sector-9, Pocket 2, Dwarka, New Delhi is still lying vacant and stands in the name of the petitioner and has not been allotted to any other person.

15. Consequently, for the foregoing reasons the writ petition is allowed. The respondent is directed to issue a demand-cum-allotment letter for the Flat No. 112, Third Floor, Sector 9, Pocket 2, Dwarka to the petitioner within four weeks. The demand-cum-allotment letter shall be at the cost prevalent in the year 1994, when the priority of the petitioner had matured and demand cum allotment letter was sent by the respondent at the wrong address of the petitioner. The respondent shall not be entitled to claim any interest as per its policy. On receipt of demand-cum-allotment letter and on petitioner paying the amount within four weeks thereafter, the possession of the flat be handed over to the petitioner on fulfillment of other formalities for taking over the possession of the said flat. The writ petition is disposed of in terms hereof. Considering the facts and circumstances, the parties are, however, left to bear their own cost.