

**(2001) 11 DEL CK 0065**

**Delhi High Court**

**Case No:** CW No. 5458/98 and CM 9627 of 2000

Sudhan Pande

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

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**Date of Decision:** Nov. 8, 2001

**Citation:** (2002) 96 DLT 568

**Hon'ble Judges:** Manmohan Sarin, J

**Bench:** Single Bench

**Advocate:** Parijat Sinha, for the Appellant; Anusuya Salwan and Pawan Mathur, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Manmohan Sarin, J.

Rule

2. With the consent of the parties, writ petition is taken up for disposal.

3. The petitioner by this writ petition seeks a writ of mandamus to be issued to DDA to allot a category-II flat. Pursuant to the Petitioner's registration under the Sixth Self financing Scheme interim directions were also sought for reservation of Category-II flat. It may be noticed that the petitioner had earlier filed a writ petition bearing CW No.4436/98. The said writ petition was withdrawn with liberty to file a fresh one, since petitioner wanted to incorporate certain additional grounds.

4. The controversy involved in the present writ petition is a short one. Petitioner, resident of Calcutta, submits that he was not aware of the publication of the notice inviting applications for allocation of the flats as per the advertisements taken out in the newspapers.

5. Counsel for the petitioner submits that such notices were published only in the Delhi Edition of the national newspapers. Hence the petitioner remained oblivious of the same. Learned counsel for the petitioner submits that the petitioner being

resident of Calcutta did not know about the said advertisements/publications of the notices. He further submits that registration under the scheme was not confined to those domiciled in Delhi alone.

6. Counter affidavit in this case has been filed. I have heard the counsel for the respondent Ms. Anusuya Salwan as also Mr. Pawan Mathur. Ms. Anusuya Salwan submitted that the following terms of the brochure of the registration scheme are relevant for the present controversy.

"Registration under the scheme is only the first step to become eligible for allotment of a flat. As and when "release of flats" is announced by the DDA through press advertisements in the leading newspapers the Registrants shall have to apply for allocation/allotment exercising his/her option."

12. As and when the flats are released for allocation DDA will notify the estimated cost taking into consideration the location, specifications, designs and sizes of flats. The estimated cost will be decided on the basis of cost of construction prevailing at the time of execution of the scheme taking into account fluctuations in various costs factors etc."

13. Applicants shall not be allowed to exercise option for a particular floor or a particular type within the same category. Mutual exchange between allottees of the same category in the same category. Mutual exchange between allottees of the same category in the same colony may be considered on such terms and conditions as may be decided by DDA. Allotment of specific flats will be made on the basis of "Draw of Lots" which the DDA will hold as and when the flats are completed. All persons registered under the scheme, irrespective of the date of Registration, will be treated "at par".

7. Learned counsel further submits that applications for allocation were published six times and allocations were made during the period 1987 to 20.6.1994 when the scheme was finally closed. It is stated that it is the petitioner's own fault that the petitioner was not vigilant and did not apply for allocation. The scheme now stands closed and as a matter of fact the respondent/DDA has already been refunding the amounts to the applicants. She orally submitted that as per the recent instructions, DDA has already refunded the applications amounts of 5000 applicants. Counsel Therefore submits that this is not a case where any exception should be carved out for persons who were not residents of Delhi. The scheme itself stands closed.

8. After hearing the counsel for the parties, I find considerable merit in the position taken by the respondents. It is unfortunate that the petitioner, who happens to be a resident of Calcutta, was not vigilant enough to make arrangement for keeping track of the eligibility list of allottees, which were being displayed. In fact the advertisements carried the legend that eligibility list would be displayed on the notice board.

9. It is not in dispute that petitioner himself over the period 1985 to 1994 did not feel impelled to make any enquiry or enquire from the DDA about the fate of his application. Petitioner only in the year 1998, which is two years after closure of the scheme made the enquiry. In these circumstances, I find no ground to interfere in writ jurisdiction. While parting with the case, it may be noticed that for the future, atleast while entertaining applications of applicants, who are not residents of Delhi, a caution note can be appended that it would be the responsibility of these outstation applicants to keep track of the notifications inviting applications for allocations.

10. Writ petition is dismissed with the aforesaid observations. Counsel for the petitioner submits that petitioner would like to pursue his claim for market rate of interest on the application/registration amount in the appropriate forum. It is for the petitioner to avail of such remedies, as may be available at law to him.