

(2008) 01 DEL CK 0220

Delhi High Court

Case No: Writ Petition (Civil) No. 2107 of 2007 and C.M. No. 3912 of 2007

Shri D.S. Sethi

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision: Jan. 30, 2008

Hon'ble Judges: Gita Mittal, J

Bench: Single Bench

Advocate: N. Kinra, for the Appellant; M.K. Singh, for the Respondent

Final Decision: Allowed

Judgement

Gita Mittal, J.

This writ petition has been filed by the petitioner seeking allotment of a MIG Flat. It is an admitted position that the petitioner had registered himself with the Delhi Development Authority for allotment of a MIG Flat under the new pattern registration scheme vide a registration No. 13754 in the year 1979 and was allotted priority No. 33301. After his registration the petitioner changed his address on 5th May, 1988 from E-201, Naryana Vihar, New Delhi to C-517, Pargati Vihar, New Delhi-110003. The petitioner informed of his changed address to the DDA by a communication of the 5th May, 1988 and requiring the DDA to confirm the change of address to him. There was a subsequent change in the petitioner's address to House No. 857, Sector-28, Faridabad (Haryana) which fact also was informed by the petitioner to the respondent by registered post on 21st February, 2002.

This letter had been received by the DDA in its MIG Section in the diary No. 138 at page 245 vide serial No. 254 and was so confirmed by the petitioner on 25th February, 2002.

2. The writ petition has been filed cont ending that the petitioner did not receive any letter of allotment of the flat and that he met the concerned deputy director with regard thereto in 2003 and again on 13th September, 2004. It was only in his second visit that the petitioner was informed that he had been successful in allotment of a

flat in draw held on 22nd February, 2002 but the allotment letter was sent to the old address of the petitioner.

3. The petitioner made a representation to the DDA firstly on the 6th of January, 2003 when he learnt of the allotment and then again on the 13th of September, 2004 seeking issuance of a demand letter and permission to deposit the payment in terms of the policy for delayed deposit. As no favourable response was received, the present writ petition was filed seeking a direction to the DDA for issuance of the demand cum allotment letter for the reason that the original letter was sent to the wrong address and issuance of a writ of mandamus directing the respondents to treat the petition as covered in its policy of "Recording of Wrong Address" and allotment of a flat in the area where he was allotted the flat on the same terms and conditions.

4. I find that in the counter affidavit which has been filed the DDA has stated that the demand cum allotment letter in respect of allotment of the MIG flat No. 221, Second Floor, Sector 19, Pocket II Dwarka through the computerised draw of lot held on 31st May, 2007 on cash down basis at a disposal cost of Rs. 13,26,366/- was issued to him in the block dates between 25th June, 2002 to 5th July, 2002. The last date for making the payment of the demanded amount even with interest was 3rd October, 2002. The DDA has stated this demand cum allotment letter was returned undelivered with the postal remark "addressee has gone on long leave house remained locked". Therefore the allotment was cancelled by the competent authority by an order passed on 6th February, 2004. It has also been contended that though the DDA has issued advertisement in leading newspaper in 2004-2006 before closing of the MIG scheme for allotment of flats to remaining/left out registrants, the petitioner did not approach the DDA from 2002 to 2007 on any occasion to collect the demand cum allotment letter and consequently had forfeited the right to allotment of a flat. It is also the submission that for this reason the petitioner's case is not covered under the policy of change of address.

5. I have heard learned Counsel for the parties. It is noteworthy that the petitioner has made specific averments with regard to communication of his change of address to the DDA by the letter dated 5th August, 1988 and the second change communicated to the DDA by the letter dated 22nd February, 2002. In clear and unequivocal terms the letters have been received by the DDA and diarised in its records.

6. The counter affidavit does not dispute receipt of these letters however a totally vague and unsubstantiated plea has been set up that the petitioner did not send documentary proof with his request for change of address.

Such a plea of such proof unsupported by any requirement under any law or policy of the DDA, is really unfortunate. Equally so, having received such communications, it was for the DDA to inform the petitioner that it needed proof in support thereof.

No such thing was ever done.

7. The demand cum allotment letter sent to the petitioner between the block dates of 25th June, 2002 to 5th July, 2002 was admittedly undelivered and returned with the postal remark to the effect that addressee was not available and the house remained locked. Clearly the DDA has acted without application of mind and contrary to its records wherein they had the correct address of the petitioner, communicated by the letter dated 22nd February, 2002, available with them.

8. In this background the petitioner certainly cannot be held to be a person who had received the demand cum allotment letter and failed to make payment of the demanded amount to the DDA. Not having received any such demand letter, there was certainly no default on the part of the petitioner. There could thus be no question of cancellation of the flat allotted to the petitioner for non-payment of an amount never demanded from him.

9. So far as public notices are concerned, the petitioner has pointed out that he had made a representation to the DDA on 6th January, 2003 referring to his meeting with the deputy director of the same date wherein he had learnt of the allotment of the flat to him in the draw held on 22nd February, 2002. The petitioner had clearly notified the DDA that the allotment letter had been sent to his old address. It was also pointed out that as per the demand cum allotment letter the last date of payment with interest was 3rd October, 2002 and consequently the petitioner was approaching the DDA barely within two months of the last date. This communication from the petitioner contains a specific request to the DDA to issue the demand letter and permit the petitioner to make payment so that there was no further delay.

Admittedly this request was not considered by the DDA.

10. The petitioner followed up the matter with another personal visit and yet another representation to the DDA on 13th September, 2004 again making the same request. Even this reminder did not evoke any response at all.

The writ petitioner has stated that between 2004-2005 he had visited the DDA at least ten times requesting issuance of the demand letter. Yet the DDA has failed to take any action or do justice to him.

11. My attention has been drawn to the DDA resolution No. 108 of 2002 which is dated 20th December, 2002 and the policy dated 25th February, 2005 applied by the DDA. Placing reliance on these policies of the DDA in similar facts this Court has allowed other matters wherein similar questions of fact and law had been raised. A copy of an order dated 16th August, 2004 passed in W.P. (C) No. 10983/2004 Gita Devi v. DDA has been placed on record.

12. The aforesaid perusal of the policy dated 25th February, 2005 has been framed to address cases where despite communication of change of address, demand cum allotment letters were sent to old address of the parties. The registrant is required

to submit proof of submission of the request for change of address with the DDA. There is no requirement of submission of proof of change of address. As per these policies, which have been placed on record, in a case where demand cum allotment letter has been sent to a wrong address, such person will be charged the original cost of the flat without interest.

13. So far as the public notices are concerned, it is clearly evident that these submissions have been made without even considering the representations made by the petitioner on 6th January, 2003 and 13th September, 2004. There is also no reason to disbelieve the petitioner that he has repeatedly approached the DDA to issue the demand cum allotment letter which it had failed to do so.

14. Even otherwise having received the demand cum allotment letter undelivered, the DDA was bound to have made efforts to serve the demand cum allotment upon the petitioner. The DDA, a statutory authority, is bound to act fairly. The representations of the petitioner received no consideration. The least the DDA ought to have done was to communicate a response thereof to the petitioner.

15. Admittedly there is a policy in vogue in cases applicable to instances where the demand cum allotment letters have not been communicated upon the allottee or where double allotments has been effected. The DDA has also a policy in place for condonation of delay in making payment. The registrants under the various schemes are entitled to know these policies.

16. In file No. 195(155) 93 pertaining to one Shri Jai Narayan, the demand cum allotment letter was returned undelivered by the postal department with the remarks that he had left the house and therefore the letter was returned. In this case the DDA had taken the decision that such demand cum allotment letter would be required to be sent again on the same address. It had also been proposed that the letter may be issued at the occupational address given on the registration application.

This person was allotted a flat in the draw of lots held on 26th March, 1993.

Yet no such thing has been done by the respondents in the instant case.

Therefore, so far as the petition is concerned, it has to be held that the petitioner has approached the DDA between 2002 and 2007 for the copy of the demand cum allotment letter which it has neglected to issue to him.

17. Be that as it may, the postal remarks itself had communicated to the DDA that the demand has not been served upon the petitioner. No punitive action could thus have been taken against the petitioner for non-compliance of the demand which has not even been served upon the petitioner.

In this background this writ petition is allowed.

Directions are accordingly issued to the DDA to allot the flat No. 221, Second Floor, Sector 19, Pocket II, Dwarka, Delhi if the same is available for allotment to the petitioner. In case the flat is not available the DDA shall include the name in the next mini draw of lots which the DDA would hold within a period of six weeks from today. The demand cum allotment letter shall be positively issued to the petitioner within a period of eight weeks from today upon the petitioner making payment in terms of the demand cum allotment letter and completion of all commercial formalities the petitioner shall be entitled to possession of the flat immediately thereupon. Since the earlier allotment of the flat of the petitioner was in Dwarka the petitioner's name be considered for allotment of flats in the same zone. The petitioner shall be liable to make payment of costs of the flat at the same cost as in terms of the demand cum allotment letter issued between the block dates 25th June, 2002 to 5th July, 2002. The petitioner shall be entitled to costs of the petition which are quantified at Rs. 10,000/-which shall be paid within a period of four weeks from today.