

(2013) 04 DEL CK 0334

Delhi High Court

Case No: LPA No. 989 of 2004

Delhi Development Authority

APPELLANT

Vs

V.S. Kasturia

RESPONDENT

Date of Decision: April 8, 2013

Citation: (2013) 6 AD 556 : (2013) 200 DLT 264 : (2013) 136 DRJ 619

Hon'ble Judges: Sudershan Kumar Misra, J; S. Ravindra Bhat, J

Bench: Division Bench

Advocate: Ajay Verma, for the Appellant; R.K. Saini, for the Respondent

Judgement

S. Ravindra Bhat, J.

This appeal by Delhi Development Authority (hereinafter referred to as "DDA") is directed against the judgment and order of a learned Single Judge by which CWP No. 2138/1995 was allowed. The DDA was directed to hand over possession of Flat No. 2115, Category III, Sector-D, Pockets-2/3, Vasant Kunj, New Delhi, to the respondent (hereinafter referred to as "petitioner"). The brief facts of the case are that the petitioner applied to the DDA for allotment of category III flat under its Vth Housing Registration Scheme and deposited Rs. 15000/- as registration charges. This was evidenced by deposit receipt (Registration No. 3399 dated 05.08.1982). In terms of the self financing scheme ("SFS" or "the scheme") of the DDA registrants had to apply to participate in the draw of lots, held periodically for allotment of units in different self-financing estates, provided they were also registrants. The petitioner applied through Form No. 05084 dated 04.01.1983 and disclosed his registration particulars. The result of the draw of lots revealed Flat No. 2115 Sector-D, Pockets 2/3 Vasant Kunj stood allotted against his name. The computer print-out result sheet however indicated that the residential address of the Petitioner was B-27 A, Asha Park, Tilak Nagar, New Delhi. His actual address however, was 18 Sheikh Sarai, DDA Flats, Malviya Nagar, New Delhi. A demand-cum-allotment letter dated 26/31.3.1983 was issued in respect of the said allotment. This was again addressed to Asha Park address. The sum of Rs.

10,17,004/- had to be paid in terms of the said letter within 60 days. The petitioner deposited the amount on 22.04.1983.

2. It was alleged in the writ petition that when he went to formalize other proceedings in respect of the allotment, the petitioner discovered that another application containing his name and particulars also adverting to the same registration No. (3399 dated 05.08.1982) had been taken on record.

This application, in response to the very same scheme, was numbered as 17298. The petitioner's application, however, was 05084. The DDA determined that since the petitioner was not the lucky applicant, he could not lay claim for the allotment.

It declined to process the allotment letter and sought to refund the amount received from the petitioner, by furnishing him the cheque dated 31.07.1995. It was in these circumstances that the writ petition was filed, seeking a direction that the allotment of the said flat ought to be made over to the writ petitioner.

3. The DDA, in its counter affidavit stated that the draw of lots declared the other application i.e. 17298 successful. It was claimed by DDA that: "it was found on a detailed enquiry that application No. 17298 had been filed by some person fraudulently; the same was forged application and it seems was filed to commit a fraud on the DDA. The petitioner cannot claim entitlement to allotment made on the basis of the application filed by some persons else other than the petitioner. Accordingly allotment of the said flat was cancelled/withdrawn by the competent authority. Certain amounts were deposited by the petitioner on his own without any express demand having been raised on the petitioner by the DDA. The same caused no right and entitlement to the petitioner."

4. The DDA further claimed that criminal action had been initiated by it to enquire into the fraud played on it and that a complaint had been filed. It also alleged that petitioner somehow obtained a copy of the allotment-cum-demand letter which was not sent to his address which in turn cast doubts on his bona fides.

5. During the course of the proceedings it was brought to the notice of the learned Single Judge that the petitioner had not encashed the cheque tendered by the DDA. After hearing the counsel for the parties and considering the materials on record, the learned Single Judge by his impugned judgment allowed the writ petition and directed the concerned flat to be handed over to the petitioner. The material and relevant portions of the impugned judgment are extracted below:

9. Facts aforesaid would reveal that the undisputed position is that it was the petitioner who had sought original registration in the year 1982 by depositing Rs. 15,000/- with DDA. Against the deposit so made, a registration deposit receipt No. 3399 dated 5.8.1982 was issued to the petitioner. Further admitted position is that in the year 1992, when DDA invited applications from the existing registrants to apply for their names being considered in the draw of lots, petitioner in reference to his

registration deposit receipt No. 3399 dated 5.8.1982, filed an application vide form No. 05084. Taking benefit of the registration deposit receipt of the petitioner, some other person also submitted application No. 17298. Both the applications were entered in a draw of lots. The lucky application was the one filed by the impostor.

10. It is true, as contended by Mr. J.M. Sabharwal, Senior Advocate, that petitioner's application was entered in the draw of lots in the year 1993 and he was unlucky. It is equally true that application No. 17298 which was the lucky application was submitted by an impostor. But, it cannot be lost sight of that had DDA processed the applications with little care, they would have noticed that two applications are seeking benefit of the same registration deposit receipt. This would have resulted in application No. 17298 being weeded out. If that was so, one application would have been less in the draw. The law of probability would mean that anything could have happened if one application was less.

11. Many cases of fictitious allotment have been brought to court. Instant case reveals a housing racket going on in the DDA. DDA is to blame for this. The instant case would reveal that the petitioner had got himself registered in 1982. Many such persons got themselves registered. After 11 years, a scheme was floated calling upon applicants who had registered 11 years back to have their luck tested. Why DDA seeks registrations when it knows that it has no house to offer in the near future is for the DDA to decide. However, this delay breeds corruption. The land sharks are aware that many a person may sleep over his rights flowing to him under the original registration. Fictitious applications are filed and allotment obtained. Fortunately in the present case, allotment to this fictitious person got detected.

12. It is true that petitioner's application No. 05084 did not mature into allotment. But, had the bogus allotment application not been entered in the draw of lots, fate of petitioner's application and so also of others would have been different. By no means am I holding that the petitioner would have been allotted a flat, but the possibility of allotment maturing cannot be ruled out.

13. DDA had to sell the flat. There is no other claimant. Amount demanded was tendered by the petitioner in May, 1985. DDA may have refunded the amount by issuing a cheque, but the petitioner has admittedly not encashed the same. Benefit of the sum of Rs. 10,17,003.99 plus original deposit of Rs. 15,000/- made by the petitioner has ensured to DDA till date. DDA has got its money due.

14. In the peculiar facts and circumstances of the case, since it is arising out of DDA not setting its house in order, I hold that the petitioner is entitled to possession of the flat in question and execution of conveyance deed in his favour.

15. Original cheque No. 015148 dated 31.7.1995 drawn on Central Bank of India, Vikas Sadan, New Delhi from the account of DDA in the sum of Rs. 10,26,704/- has been handed over in Court to Mr. B.B. Sharma, Advocate appearing for the DDA.

16. Mandamus is accordingly issued to the DDA to forthwith handover possession of flat No. 2115, Category-III, Sector-D, Blocks 2 and 3, Vasant Kunj, New Delhi to the petitioner. On the petitioner completing requisite formalities, necessary conveyance deed be executed in favour of the petitioner. It is clarified that as per latest policy of DDA, wherein land is to be converted into freehold, if any other amount towards conversion of land into freehold is required, petitioner would deposit the said amount without any interest within two weeks on a demand being raised.

6. During the course of the hearing in this appeal, on 31.01.2013, the DDA had stated that possession of the subject flat had been handed over to some other party. Consequently, the court had required the DDA to file a detailed affidavit outlining what compelled it to take such step which would have rendered the appeal infructuous. In the course of the affidavit subsequently filed on 11.02.2013 by the Director (Housing), it was revealed that since the operation of the impugned judgment and order had been stayed during the pendency of the appeal on 15.10.2004, when the question of complying with the court directions in another case being Contempt Case No. 1509/2007 came up for consideration, the DDA had to hand over the possession of a Category III flat in Vasant Kunj, that the matter was reviewed; and it was discovered that the flat which is the subject matter of the present case i.e. Flat No. 2115, Category III, Sector-D, Pockets-2/3, Vasant Kunj, New Delhi, was vacant. It was also stated that there was no record of the property or register available. The proposal to give possession of the said flat was examined and Vice Chairman signed the note on 24.01.2008 directing an advertisement should be given in a national newspaper stating DDA's intention to hand over that property. It was also deposed that a public notice was given and later one Shri Navpreet Singh Bhattal (the petitioner in the contempt case No. 509/2007) was handed over the property. A copy of the said public notice published in the newspaper was placed on the record. The DDA in its affidavit dated 11.02.2013 also stated that the police records pertaining to the year 1996, in respect of the complaint made regarding the fraud perpetrated by third party were not available as they were destroyed. However, the DDA has placed on record a copy of its complaint dated 20.02.1996 addressed to the Police Station Kotla Mukarakpur requesting investigation and necessary action against the person who tried to impersonate the writ petitioner Shri V.S. Kasturia.

7. Further to the orders of the Court, the original files of the case too were produced at the time of hearing in the appeal. These clearly reveal that two applications for participation in Vth Self Finance Registration Scheme, for allotment of flats in Vasant Kunj had found their way into the DDA files. One was petitioner's original application containing his photograph, registration particulars etc. The other was clearly that of an imposter since it contained the photograph of someone-else and signatures that are dubious.

8. At the outset learned counsel for the DDA urged that since the said Flat No. 2115, Category III, Sector-D, Pockets-2/3, Vasant Kunj, New Delhi is no longer available, another flat i.e. 404 Block N4, Pocket D-6, (HIG category) Vasant Kunj has been reserved to await the outcome of these proceedings. This was intimated to the Court through the learned counsel for the DDA by a written communication dated 20.03.2013. Learned counsel submitted that however, DDA wishes to press its appeal on merits and challenge the findings recorded by the learned Single Judge.

9. It was argued by DDA's counsel that the petitioner could not have claimed any right to any flat since admittedly his application 05084 was unsuccessful in the draw of lots. It was contended that the circumstance that the petitioner's name had been impersonated by an imposter by filing an application 17298, cannot, under these circumstances, confer any right on him to claim legitimate allotment of the flat. It was also contended that the circumstances under which the petitioner claims to have become aware of the allotment leading up to the deposit of money by him on 22.05.1983 are suspicious. It was urged that the petitioner did not and could not explain how he became aware of the allotment and how he could lay hands on a copy of the allotment-cum-demand letter issued pursuant to the fraudulent application, at the Asha Park address. Learned counsel stressed upon the averments made in the writ petition and its counter affidavit and urged that not having been successful in draw of lots leading to allotment pursuant to the genuine application, the petitioner could not have claimed any rights in respect of the fraudulent application made on his behalf by an imposter.

10. Counsel for the petitioner, on the other hand, relied upon the averments in the writ petition to the effect that contemporaneous letters written to the Director (Housing) DDA had clearly mentioned that he became aware of the allotment in his name as the result was published and put up by the DDA. It was stated in the letter dated 24.11.1993 that the result sheet mentioned the correct registration number and the petitioner's father name but had disclosed a different address. The petitioner had accordingly met the concerned dealing officer and pointed out the error. Pursuant to this, the petitioner submitted an affidavit. At that time it was noticed by him that someone else's photograph in another form was placed on the record. The petitioner, in these circumstances deposited the money pursuant to the demand letter, a copy of which had been furnished to him by the Dealing Assistant of the DDA on 22.05.1993. Reliance was also placed upon letters dated 24.05.1993, 24.11.1993 and other correspondence in this regard. It was also urged that the DDA did not deny these averments in its counter affidavit or the fact that the copy of the allotment letter had been furnished to him in the circumstances averred in the writ petition.

11. It can be gathered from the above discussion that the petitioner was undoubtedly a genuine registrant who had deposited amounts with the DDA and held a valid registration to participate in the draw of lots for allotment of Self

Finance Flats held periodically. In terms of the SFS scheme, mere registration is not sufficient to entitle the registrant to allotment; the individual also has to apply and indicate her or his choice, in schemes for which options are sought. At the same time, no application can be filed by a non-registrant. Such applications have to be made in terms of public notices; the applications would cite registration numbers and other details. The DDA does not dispute that the petitioner was a genuine registrant and did apply for allotment of a flat. However, to his utter misfortune someone impersonated and furnished another application citing his name but giving other incorrect details and particulars. Obviously, the impersonator had some access to the file of the DDA. It is not as if the public at large are informed as to who the registrants are and whether he or she has applied for one or the other SFS estates. It can be reasonably inferred the second application by the individual who wished to use the petitioner's name and registration number was possible only with the connivance and assistance of some official or employee of the DDA. The DDA too was aware that such a fraud had been perpetrated upon it and made a police complaint. However, the fact remains that it was the petitioner's name and registration number was used by the impersonator while filling the application form i.e. 17298 which was ultimately successful and matured into an allotment. Although the DDA is strictly correct in contending that the petitioner's application i.e. 05084 was not successful, the fact remains that his details, including the registration number and deposit made by him were used by someone else with the intention of fraudulently benefitting himself. The fraud-fortunately for the petitioner-did not succeed and he became aware of the allotment. In one sense, even though the application that ultimately succeeded was not filed by the petitioner yet it could not have been taken on record without the particulars of the registration; in this case it was that of the petitioner. That the DDA's system of allotment and scrutiny could permit a fraud of this kind was reason enough for the learned Single Judge to conclude that since there was no other rival allottee, ends of justice best sub-served by directing the petitioner to be the beneficiary of the allotment.

12. So far as the DDA argument - for the first time during the course of these proceedings casting aspersions on the petitioner's conduct go, not only is this Court unconvinced by it, but also is of the opinion that such submissions have been made in poor taste. None of the complaints made to the police were placed on record. Even the grounds urged in support of the appeal nowhere doubt the petitioner or his role. In these circumstances, the submissions made, have to be deprecated; they lack foundation in the appeal. Besides this, the Court notices that even on merits the submissions are utterly unwarranted because the averments in the writ petition explained how the petitioner approached the DDA and was given a copy of the allotment-cum-demand letter after which he sought for correction of the address and other particulars. It was thereafter he deposited the amounts and furnished the other documents such as affidavit, undertaking etc. The entire explanation in this regard is forthcoming in the petitioner's letter dated 24.01.1993, a copy of which

has been placed on record. The DDA in its counter affidavit did not deny having received such explanation. Furthermore, the original records shown by the DDA also bear out the petitioner's submission in this regard. In view of the above discussion, the Court is of the opinion that no infirmity can be found with the conclusions arrived at by the learned Single Judge. However, since the concerned flat i.e. No. 2115 Category III, Sector-D, Pockets-2/3, Vasant Kunj, New Delhi is no longer available, for being handed over to the writ petitioner, the DDA is hereby directed to handover the alternative flat indicated by it i.e. No. 404, Block N-4, Pocket D-6, (HIG category), Vasant Kunj, New Delhi within two weeks from today to the writ petitioner and complete all requisite formalities within the said period. The appeal LPA No. 989/2004 is accordingly dismissed.

The DDA is directed to bear the cost of the appeal determined at Rs. 25000/- which also are to be paid to the petitioner within the said period of two weeks.