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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgement reserved on 28.08.2019*

% *Judgement pronounced on 30.04.2020*

+ **W.P.(C) 6523/2017**

ROMESH KUMAR BAJAJ

...Petitioner

Through Mr. N. Kinra, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY

....Respondent

Through Mr. Abhimanyu Walia, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**RAJIV SHAKDHER, J.:**

1. The core issue which arises for consideration in the present matter is the costs at which flat ought to be allotted to the petitioner. The petitioner claims that the “tail-end policy” which was prevalent in 2004 should be made applicable to the flat allotted to the petitioner, whereas the DDA has taken the stand that the petitioner would have to pay for the flat described in the demand letter issued for block dates 21.02.2017 till 27.02.2017 on cash down basis.

1.1 To be noted, as per the said demand letter, the petitioner was allotted a flat bearing No.103, located on the 3<sup>rd</sup> floor, situate in Pocket-7, Sector-21, Rohini, Delhi (hereafter referred to as “the subject flat”).

1.2 As per DDA, this flat was allotted to petitioner in a draw-of-lots held on 29.11.2016.

2. Thus, to appreciate the controversy at hand, it would be necessary to refer to certain antecedent facts which led to the institution of the present writ petition.

2.1 The petitioner's father, one, Mr. Manohar Lal Bajaj had registered himself for allotment of a MIG flat under the New Pattern Registration Scheme, 1979 (in short "NPRS-79"). Accordingly, a registration No.26677 was allocated to Mr. Manohar Lal Bajaj.

2.2 As luck would have it, in a draw-of-lots held by the DDA on 07.12.1992, Mr. Manohar Lal Bajaj was declared successful. He along with his wife Mrs. Kailash Rani was allotted Flat No.63, situated on 3<sup>rd</sup> Floor, located in Block-A, Pocket-10, Sector-18, Rohini, Delhi.

2.3 Mr. Manohar Lal Bajaj did not take possession of the said flat and instead, on 06.04.1993, applied for cancellation of the allotment. Notably, Mr. Manohar Lal Bajaj paid cancellation charges and, thus, retained his "tail-end priority" with the DDA.

2.4 The DDA did not close the issue concerning the allocation of tail-end priority number up until 20.05.1997. It is on this date, Mr. Manohar Lal Bajaj was allotted a fresh priority No.38931 against his original registration No.26677.

2.5 Mr. Manohar Lal Bajaj expired on 01.09.1997. This intimation was furnished by the petitioner to the DDA on 24.11.1997.

2.6 However, it was only on 08.05.2000 that the petitioner requested the DDA to recognize him as a registrant in place of the deceased Mr. Manohar Lal Bajaj. This letter enclosed the necessary documents required for transferring the registration in favour of the petitioner.

2.7 It appears that, on 31.03.2004, the DDA held tail-end draw whereby Flat No.119, 1<sup>st</sup>Floor, Pocket-7, Sector-23, Rohini, Delhi, was allotted, *albeit*, in the name of the deceased father of the petitioner i.e. Mr. Manohar Lal Bajaj.

2.8 This allotment was made quite obviously without having regard to the fact that not only had the petitioner submitted the information about the demise of his father as far as on 24.11.1997 but also that the petitioner had applied, upon his father's demise, for being recognized as a transferee-registrant on 08.05.2000.

2.9 The DDA, it appears, in blissful ignorance of aforementioned facts addressed a letter to the deceased Mr. Manohar Lal Bajaj seeking submission of the documents referred to therein for taking forward the allotment made in his favour in the draw-of-lots held on 31.03.2004.

3. It is in this background that the petitioner attended a public hearing convened by the DDA on 01.09.2005. At the hearing, the petitioner sought the issuance of a demand letter.

4. The petitioner followed-up the demand made at the public hearing with representations dated 27.02.2006 and 16.06.2008. The record shows that DDA finally substituted the petitioner in place of the deceased Mr. Manohar Lal Bajaj on 30.06.2008.

5. Since the petitioner had not been handed over the demand-cum-allotment letter of the flat, allotted mistakenly in the name of his deceased father on 31.03.2004, he approached this court by way of a writ petition i.e. W.P.(C)No.7191/2008. This writ petition was disposed of by a short order

dated 16.02.2010. The order is brief and crucial to the petitioner's case is hence extracted hereafter:

*“1. Counsel for respondent-DDA submits that the case of the petitioner has been considered by a Committee headed by Chief Legal Advisor, DDA. The Committee has decided that the applicant is covered under the tail end policy of the DDA and, hence would be entitled to an MIG flat in the next draw of lots; and that the costing will be done as per the policy.*

*2. Counsel for petitioner submits that petitioner undertakes to file an affidavit to the effect that petitioner has not sold the registration, nor has he accepted the earnest money for the allotment; and that the payment shall be made through cheque or demand draft and in case of loan, details shall be furnished. In addition to this, petitioner shall also disclose his source of finance.*

*3. In view of the stand taken by the DDA and the undertaking given by the petitioner, nothing further survives in this petition and the same is disposed of with a direction to DDA to include the name of the petitioner in next draw of lot, which shall be held not later than three months from today. All formalities shall be completed as expeditiously as possible.*

*4. Petition stands disposed of, in above terms. DASTI”*

6. A perusal of the aforesaid order would show that a committee constituted by the DDA had considered the petitioner's case and, thereafter, concluded that he was entitled to a MIG flat under the tail-end policy.

7. Furthermore, DDA also informed the court that the petitioner's name for allotment of a MIG flat would be included in the next draw-of-lots and that costing will be done “***as per policy***”.

8. The court, based on the statement of the DDA, as noted above, disposed of the writ petition with the direction to include the petitioner's name in the next draw-of-lots which was to be held no later than three months from that date.

9. It appears that a draw-of-lots was held by the DDA on 20.07.2010. In this draw-of-lots, the petitioner was allotted a flat bearing No.333, situated on 2<sup>nd</sup> floor, located in Jahangirpuri, Delhi. Intimation in this behalf was given to the petitioner on 09.08.2010. This intimation was followed-up by the DDA with a communication dated 30.08.2010 whereby the petitioner was directed to appear before the concerned officer on any of the allotted days of the week and between time slots mentioned therein for document verification.

10. It is at this juncture that the petitioner filed a review petition [i.e. Review Petition No. 337/2010 in W.P. (C) 7191/2008] *qua* the order dated 16.02.2010, passed in W.P.(C)No.7191/2008. By an order dated 08.03.2011, the review petition was disposed of with the following operative directions:

*“3. As agreed the order of 16.02.2010 is modified to the extent that the DDA will include the name of the petitioner in the next draw of lot which shall be held not later than three months from today for allotment of a flat in favour of the petitioner in Rohini and if no flat is available in Rohini area, a flat will be allotted in any other nearby area. The flat allotted to the petitioner at Jahangirpuri, Delhi shall be treated as cancelled.*

*4. In view of the stand taken by counsel for the parties, the order dated 16.02.2010 is modified accordingly. The review petition is disposed of.”*

11. As would be evident from reading the aforesaid extract of the order dated 08.03.2011, the petitioner had sought review of order dated 16.02.2010 on the sole ground that, inadvertently, the court while disposing of the writ petition had not indicated that the flat which should be allotted to the petitioner ought to be located in Rohini or in an area which was close to the said locality.

12. The DDA, though, did not do what it was required to do which was to include the name of the petitioner in the draw of lots so that a flat could be allotted to him either in Rohini or in a locality which was nearby,

13. The record shows that the petitioner addressed several communications in this behalf to the DDA. The communications which were sent in this connection and which are placed on record are dated: 29.03.2011, 19.05.2011, 14.11.2014, 22.01.2016, 10.10.2016 and 06.01.2017.

13.1 The upshot of these representations was to call upon DDA to comply with the order passed by this court.

14. It appears that finally DDA relented and, as noted right at the outset, included the petitioner's name in the mini-draw held on 29.11.2016 and allotted him the subject flat. The intimation in this behalf was sent to the petitioner *via* letter dated 20.03.2017.

15. As per the aforesaid communication, the petitioner was directed to pay a net cost of Rs.46,04,566/- after adjusting Rs.4,500/- towards registration money and Rs.8,361.86/- towards interest on registration money.

16. Importantly, the petitioner was required to pay the said amount on cash down basis.

17. The petitioner, being unhappy with the turn of events vide letter dated 17.04.2017, wrote to the DDA seeking a downward revision in the cost demanded of him and the change in the level on which the flat was allotted.

18. It is this stand of the DDA that has constrained the petitioner to approach this court once again.

19. Mr. N. Kinra, who appears on behalf of the petitioner, says that the petitioner should be allotted a flat in Rohini or thereabouts in terms of this court's order dated 16.02.2010, passed in W.P.(C)No.7191/2008, read with the order dated 08.03.2011, passed in Rev.P.No.337/2010, *albeit*, at the cost calculated as per DDA's circular dated 07.10.2008.

20. On the other hand, Mr. Walia, who appears on behalf of the DDA, submitted that the petitioner had not paid the amount as demanded *vide* letter dated 20.03.2007 and, hence, this writ petition ought to be dismissed.

### **Analysis and Reasons**

21. Having heard the learned counsel for the parties and perused the record, it emerges, quite clearly, that even according to the DDA, the petitioner was entitled to a MIG flat under the tail-end policy. This aspect, as noticed hereinabove, comes through upon perusal of the order dated 16.02.2010, passed in W.P.(C)No.7191/2008. Since this order of the court did not advert to the location of the flat, the petitioner had moved a review petition (i.e. Rev.P.No.337/2010) which was disposed of on 08.03.2011. *Via* this order, the court modified with the consent of learned counsel for the parties its earlier order dated 16.02.2010.

22. Thus, the court on 08.03.2011, directed DDA to include the petitioner's name in the draw-of-lots which was to be held no later than three months from the date of the order so that a flat could be allotted to the

petitioner in Rohini and, if no flat was available in Rohini, in a locality which was nearby.

23. The DDA took its own sweet time in complying with the directions of the court. The petitioner's name was finally included in the draw-of-lots held by the DDA only on 29.11.2016.

24. Though this time around the DDA allotted a flat in the name of the petitioner (i.e. the subject flat) which is located in Rohini, it demanded from the petitioner, the cost prevailing on that date.

25. The moot question which arises for consideration is: whether it is now open to the DDA to demand current cost from the petitioner when on 16.02.2010, it had portrayed to the court that the petitioner was entitled to a MIG flat under the tail-end policy?

26. Concededly, the DDA had, in fact on 31.03.2004 allotted a flat under the tail-end policy, *albeit*, erroneously in the name of the petitioner's deceased father i.e. Mr. Manohar Lal Bajaj. The petitioner, in support of his plea, that he is entitled to pay the cost under the tail-end policy relies upon DDA's circular dated 07.10.2008. The circular being brief the relevant part is extracted hereafter:

*“The issue regarding allotment under the tail-end priority has recently been considered by the Hon'ble Single Judge and the Division Bench of the Delhi High Court in a number of cases.*

*The Department has considered the said judgment and it has been decided to adopt a uniform policy to avoid any confusion in such cases as per the decision henceforth, DDA shall charge the cost prevalent as on 31.07.2004, (four months after 31.3.2004, i.e. the date of draw along with 12% interest from 31/07.2004, till payment in terms*



*of demand letter, the policy will cover the following type of cases:-*

*i) Registrants who have paid the cancellation charges within stipulated period from the date of the cancellation and have been included in the draw but demand letters have not been issued or who are eligible for the allotment under the tail end priority but have not been included in the draw of lots held on 31.3.2004.*

*ii) Those MIG registrants who have paid the cancellation charges within time and approached the DDA for allotment of the flat under the tail - end priority within 30 days from the date of notification dated 5.2.2006, vide which DDA had requested all the allottees/registrants to contact DDA for allotment of the flat under MIG category of the New Pattern Scheme who had not been allotted the flat.*

*This issues with the approval of Vice Chairman, DDA.”*

27. The petitioner's case clearly falls within Clause (i) of the circular. The petitioner's late father had paid the cancellation charges as far back as on 06.04.1993. The petitioner's father's name was included in the draw-of-lots held on 31.03.2004, although, under the ignorance that he had already died and also a request had been made by the petitioner for transferring the registration in his favour and that despite the intimation, the DDA had not taken the next steps and issued a demand-cum-allotment letter in favour of the Petitioner.

28. Since the petitioner's case falls in the said circular, to my mind, the costing of the subject flat could have only been done as per the terms of the circular.

29. The petitioner's family has now waited for more than four decades for allotment of a flat. The DDA would do well, to, allot the subject flat to the petitioner based on the cost calculated as per the terms of the circular dated 07.10.2008.

30. If for any reason, the subject flat i.e. Flat No.103, 3<sup>rd</sup> Floor, pocket-7, Sector-21, Rohini, Delhi, is not available, the DDA will include the petitioner's name, once again, in a mini-draw which will be held no later than three months from the date of receipt of a copy of the judgment. While carrying out this exercise, the DDA will bear in mind the earlier order of this court [i.e. order dated 16.02.2010] passed in W.P.(C)No.7191/2008 and order dated 08.03.2011, passed in Rev. Pet. No.337/2010.

31. In other words, the flat to be allotted would be one which is located in Rohini or in an area that is nearby, in case flats are not available in Rohini. Given the fact the city is under lockdown on account of pandemic caused by Coronavirus, in case the DDA is unable to adhere to the timeline of three months indicated hereinabove for holding a mini-draw, it shall have the liberty to approach the Court for extension of time, if found necessary.

32. The writ petition is disposed of in the aforementioned terms.

33. Costs will follow the result.

**(RAJIV SHAKDHER)**  
**JUDGE**

**30 APRIL, 2020/aj**