

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2536-2537 OF 2010
(Arising out of SLP(C) Nos.21757-21758 of 2009)

Digambar Mall ...Appellant

Versus

Delhi Development Authority ...Respondent

O R D E R

1. Delay condoned.

2. Leave granted.

3. These appeals are directed against orders dated 4.11.2008 and 20.2.2009 passed by the Division Bench of Delhi High Court in LPA No.168/2008 and Review Application No.62/2009 whereby the respondent-Delhi Development Authority was directed to allot MIG flat to the appellant either in the same zone or in the similar zone with the rider that the latter shall have to pay current cost of the flat.

4. The appellant got himself registered with the respondent in

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1979 under NPRS scheme for Middle Income Group (MIG) flat.

After

11 years, he was allotted flat No.32-D, Pocket-A, Nand Nagri.

On

receipt of the allotment letter, the appellant sent demand draft dated 18.6.1988 for a sum of Rs.11,457.73/- representing initial instalment along with the necessary documents.

The demand draft

was received by the concerned branch of the respondent and the same

was encashed on 1.8.1988. Notwithstanding this, allotment made in

favour of the appellant was cancelled on the ground of delay in

payment of the price.

After 16 years, the appellant's name was

included in the draw held on 31.3.2004 for tail end priorities under MIG category and he was declared successful for flat No. 2, Sector 23, Pocket 11A, Rohini. However, no demand-cum-allotment letter was sent to him and on that account, he could not deposit price of the flat. The appellant made representations to the Vice Chairman, Commissioner (Housing) and the Assistant Director of the respondent complaining against the arbitrary cancellation of allotment of flat and for issuance of demand-cum-allotment letter, but without any avail.

5. The writ petition filed by the appellant, which was registered as W.P. (C) No.1637/2007 for directing the respondent to issue demand-cum-allotment letter was dismissed by the learned Single Judge on the ground of laches. On appeal, the Division Bench, after taking cognizance of the statement made by the learned counsel appearing for the respondent that the demand-cum-allotment letter in respect of the flat at Rohini was never issued to appellant, directed the respondent to allot MIG flat to him either

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in the same zone or a similar flat in any other zone within a period of eight weeks subject to his paying the current cost of the flat and completing other formalities. For the sake of convenient reference, paragraphs 8 to 14 of order dated 4.11.2008 passed by the Division Bench in LPA No.168/2008 are extracted below:-

"8. Mr. Sarin does not dispute the fact that the demand cum allotment letter in respect of the allotment of the flat at Rohini was never issued to the appellant and only a letter dated 13th August 2004 was issued in which the appellant was asked to furnish documents. We have perused a copy of the said letter dated 13th August 2004. It does not specifically refer to the allotment of a flat at Rohini to the appellant. It is a standard format communication calling upon the appellant to submit certain documents within 15 days of the receipt of the letter for examination of the case for allotment under NPRS 1979. The said letter further ends as under:

Please ensure that the above required documents be submitted as per stipulated period mentioned above, failing which it will be presumed that you are not interested in the allotment of flat under above mentioned scheme and thereafter no claim will be entertained.

9. An apprehension is expressed by Mr. Sarin that by directing the DDA to now allot a flat to the appellant a

premium would be placed upon the lack of diligence on the part of the appellant in following up his case for allotment. It is also apprehended that the appellant may not himself be requiring this flat as he is a resident of Orissa and it is likely that he might sell off the flat at a high profit soon after the possession of the flat is handed over to him.

10. We are unable to appreciate the stand of the DDA that the failure of the appellant to furnish documents, including the proof of payment of cancellation charges as demanded by letter dated 13th August 2004, constituted sufficient justification for cancellation of the allotment. The appellant never sought cancellation of the first allotment and so the question of payment by him of cancellation charges did not arise. As rightly pointed out by the learned counsel for the appellant, even if any amount was due to the DDA on account of cancellation charges, it could have easily been adjusted from the amount already deposited by the appellant with the DDA pursuant to the first

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allotment. Further, the Division Bench of this Court has in an order dated 4th June 2008 in LPA No.373 of 2008 (Delhi Development Authority v. Raj Kumar Malhotra) held that the non-payment of cancellation charges will not result in the defaulter losing the right to an allotment. We are informed that this judgment of the Division Bench has been affirmed by the Supreme Court by the dismissal of the special leave petition filed by the DDA.

11. The fact remains that the DDA never informed the appellant of the allotment of a flat at Rohini and no demand-cum-allotment letter in that regard was sent to him. Accordingly, as far as the present case is concerned, no cancellation of allotment could have ensued for the failure by the appellant to make payment towards the flat. No financial loss to the DDA could have resulted as a consequence thereof.

12. We are not impressed by the submission that the appellant may not be requiring the flat himself. The appellant who applied for a flat under the NPRS 1979 has thereafter kept pursuing the matter with the DDA. It would be unfair to deny an allotment to him on the basis of unsubstantiated apprehensions. It is not open to the DDA to blame the appellant for not making any payment when in the first place it never sent any demand cum allotment letter to him. On the other hand, the fault if any was on the part of the DDA in not including the name of the appellant in the draw of lots till 31st March 2004.

13. We are informed by Mr. Sarin that the flat allotted to the appellant in Rohini is no longer available. He further submits that keeping in view the facts and circumstances of the case the appellant should be asked to pay current cost. On the other hand it is contended by Ms. Kapoor, learned counsel for the appellant, that only the cost as prevalent on 31st March 2004, the date of draw, should be charged.

14. There is some merit in the contention of the DDA that the appellant did not approach this Court till 2007. Keeping in view of the facts and circumstances, we direct that the DDA will hold a mini draw and allot to the appellant an MIC flat either in the same zone or a similar flat in any other zone within a period of eight weeks from today. Subject to the appellant paying the current cost of the flat and subject to his completing other formalities, he will be put in possession of the said flat within a further

period eight weeks thereafter."

(emphasis added)

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6. Review Application No.62/2009 filed by the appellant for review of the order to the extent it contains a direction to the appellant to pay the current cost of the flat was dismissed by the Division Bench on 20.2.2009.

7. We have heard learned counsel for the appellant and perused the record. In our view, the appellant has been treated by the respondent unfairly and has been subjected to discriminatory treatment inasmuch as the first allotment made in his favour was cancelled under a mistake of fact i.e. non-payment of initial instalment and even though, he was found successful in the draw held in March, 2004, the demand-cum-allotment letter was not issued to him for more than three years whereas other successful applicants were allotted the flats.

8. Undisputedly, the allotment made in favour of the appellant in 1988 was cancelled by the respondent on the ground that he had not paid the initial amount and did not submit the documents. This was despite the fact that the demand draft sent by him on 18.6.1988 along with the documents was received by the concerned branch of the respondent and as per confirmation provided by the Andhra Bank, the demand draft was encashed on 1.8.1988. The appellant was not even informed about the cancellation of the allotment. After a gap

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of 16 years, his name was included in the draw held by the respondent for tail end priorities under MIG category and he was found entitled to flat No.2, Sector 23, Pocket 11A, Rohini. This time he was deprived of the flat because the demand-cum-allotment letter was not sent to him. He represented his grievance to the authorities of the respondent but none bothered to take remedial

measures. It was not the pleaded case of the respondent either before the learned Single Judge or the Division Bench that none of those who were successful in the draw held on 31.3.2004 was issued demand-cum-allotment letter. It is, therefore, reasonable to presume that other successful applicants got the flats and the appellant was deprived of the same without any tangible reason. This being the position, the learned Single Judge was not justified in dismissing the writ petition filed by the appellant on the ground of laches. The Division Bench did remedy his grievance, but half heartedly inasmuch as while directing the respondent to allot a flat to the appellant, a direction was given to him to pay current cost of the flat. In our view, once the Division Bench found that the appellant had been subjected to arbitrary treatment by not issuing demand-cum-allotment letter pursuant to the draw held in March, 2004, there was no valid ground much less justification to burden him with the additional liability by directing payment of current cost of the flat.

9. In the result, the appeals are allowed. Order dated 4.11.2008

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passed by the High Court in LPA No.168/2008 is modified by directing that the appellant shall not be required to pay current cost of the flat which may have been allotted to him as per the direction given by the High Court. Needless to say that if the respondent has not carried out the order of the Division Bench so far, the needful must be done within a period of eight weeks from the date of receipt/production of copy of this order and the appellant shall be charged the same cost at which the flats were allotted to other applicants who were successful in the draw held on 31.3.2004. If the appellant has already paid the price of the flat in terms of the direction given by the Division Bench of the High Court, then the respondent shall, within four weeks from the date of receipt/production of copy of this order, refund the difference between the price paid by the appellant and the price at which flats were allotted to other successful applicants of March,

2004 draw.

10. Since the respondent has not appeared to contest the appeal,
the costs are made easy.

.....J.
(G.S. SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI,
MARCH 19, 2010.

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ITEM NO.46

COURT NO.12

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).21757-
21758/2009

(From the judgement and order dated 04/11/2008 in LPA No. 168/2008
and order dt.20.02.2009 in RA No. 62/2009 of The HIGH COURT OF
DELHI AT N. DELHI)

DIGAMBAR MALL

Petitioner(s)

VERSUS

DELHI DEVELOPMENT AUTHORITY

Respondent(s)

(With appln(s) for c/delay in filing SLP and with prayer for
interim relief and office report)

Date: 19/03/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)

Ms.Richa Kapoor,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are allowed in terms of the signed order.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)