

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 6276 OF 2000

DELHI DEVELOPMENT AUTHORITY

Appellant (s)

VERSUS

G. AKASH & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 16/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s) Mr. Vishnu.B. Saharya, Adv.
For M/S Saharya & Co.For Respondent(s) Mr. Romy Chako, Adv.
Mr. G.Pandey, Adv.
Mr. Rajiv Mehta, Adv.Mr. Sunil Agarwal, Adv.
Mr. Ashwini Bhardwaj, Adv.
Mr. S.P. Sharma ,Adv
Mr. K.P.Singh, Adv.
Mr. Abhishek Atrey, Adv.
Mr. Shishir Singh, Adv.UPON hearing counsel the Court made the following
O R D E R

Appeal is disposed of in terms of the signed order.

(Parveen Kr. Chawla)
Court Master(Kanwal Singh)
Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6276 OF 2000

Delhi Development Authority

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Versus

G.Akash & Others

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O R D E R

This appeal, by grant of special leave, is directed against the judgment of the Division Bench of the High Court of Delhi in C.W. No. 1493 of 1991 wherein the High Court has allowed the writ petition filed by respondent No.1 and a direction has been to the Delhi Development Authority, appellant herein, to allot a flat to the respondent No.1 of area similar to the flat that was allotted to his father in a colony similar to Seikh Sarai where he was originally allotted without demanding any extra money.

Appellant floated Second Self-financing Scheme for allotment of flats under various categories. G.Balakrishna Rao, father of the respondent No.1, got himself registered for allocation of SFS Category-II flat on a deposit of Rs.10,000/- towards registration charges on 9.1.1979. He was issued an allocation letter of a Category-II flat under the Scheme on 21.5.1980 at Seikh Sarai. The estimated cost of flat was Rs.76,000/-. The allottee was required to deposit the said amount in three equal installments. G.Balakrishna Rao being a Professor in School of Planning and Architecture sought permission of Delhi Development Authority to mortgage the flat with his employer

which was granted by the appellant. On 2.2.1981, The School of Planning and Architecture, New Delhi passed an order for the grant of mortgage permission and a tripartite agreement between G.Balakrishna Rao, Delhi Development Authority and Registrar, School of Planning and Architecture was executed for mortgage of flat and the employer gave the assurance to make payment of the installments of the flat. The agreement contained various clauses for payment of installments for the flat, clause 6 of the agreement provided:

"(6) If the borrower wants to withdraw from the scheme or fail to pay the balance amount representing the difference between the House Building Advance sanctioned by the School and the actual cost of the flat, or quits the service of the School or dies, the amount of the House Building Advance will be refunded forthwith to the School. The amount of initial deposit of Rs.10,000/- (Rupees Ten Thousand only) will be refunded to the borrower or his legal heirs, as the case may be, by the authority after deducting such amount as may be payable by him as communicated in the brochure."

G.Balakrishna Rao paid through his employer four installments. On 9.8.1983, appellant issued a demand letter for payment of the 5th and final installment of Rs.46,069.50. Before the payment could be made, unfortunately, G.Balakrishna Rao died on 15.8.1983.

G.Akash, respondent No.1 was a minor at the time of his father's death. A letter was addressed at the instance of his natural guardian i.e. his divorced mother through an advocate informing the

appellant about the death of G.Balakrishna Rao and seeking extension of time to deposit the amount due to the appellant. In turn the Delhi Development Authority asked her to report about the grant of succession certificate. As the natural guardian of respondent No.1 failed to produce the succession certificate for about 1½ years, the allotment made was canceled on 27.3.1985 and the amount deposited on behalf of G.Balakrishna Rao by his employer was refunded to the employer. It is pertinent to mention here that natural guardian had already taken steps to get the succession certificate. Succession certificate was granted on 30.1.1990 and immediately thereafter respondent No.1 through his natural guardian sent the same to the authorities for allotment of the flat. On 20.4.1990, the amount of Rs.45,069.50 was deposited by respondent No.1 with the appellant voluntarily. On 4.2.1991, respondent No.1 further deposited a sum of Rs.53,000/-.

As the appellant failed to allot the flat, respondent No.1 filed writ petition No. 1493 of 1991 in the High Court of Delhi under Article 226 of the Constitution of India for quashing the cancellation order dated 27.3.1985. High Court after recording detailed reasons allowed the petition and quashed the cancellation order dated 23.7.1985. Appellant was directed to allot a flat of area similar to the flat which was allotted to the father of respondent No.1 in a colony similar to Seikh Sarai without charging any extra money.

This case was heard initially on 18.8.2004. After hearing counsel for the parties at length, we indicated to the counsel for the parties that we were not inclined to interfere with the well reasoned order of the High Court which was just and equitable in the given circumstances of the case. The appellant once having asked the respondent No.1 to produce the succession certificate could not cancel the allotment without waiting for the grant of succession certificate. Respondent No.1 had taken immediate steps for the grant of succession certificate and soon after the grant of succession certificate, approached the authorities for allotment of the flat. There was no lapse on the part of respondent No.1. The delay in producing the succession certificate occurred for the reasons beyond his control.

Counsel for the appellant was directed to supply a list of vacant flats of similar nature available for allotment and price thereof.

Sl. No.	FLAT NO.	PKT.NO.	FLOOR	COST OF FLAT
1.	185	D&E	S.F.	Rs.16,56,200/-
2.	221	D&E	T.F.	Rs.15,40,900/-
3.	48	D	F.F.	Rs.15,94,700/-
4.	59	F&G	T.F.	Rs.13,50,700/-
5.	147	K&L	S.F.	Rs.16,56,800/-
6.	199	K&L	S.F.	Rs.16,56,800/-
7.	28	K&L	T.F.	Rs.16,54,200/-

Counsel for respondent No.1, after taking instructions, stated that he was

willing to take flat No. 147 on the Second Floor, mentioned at Serial No.5 above, in Sarita Vihar. The costs of the flats had been worked out as on September, 2004.

Counsel for the appellant was again directed to work out the cost of the flat as on 1983 when the original allotment was made in favour of the father of respondent

No.1 in Seikh Sarai area. As the flats in the Sarita Vihar area were constructed in the year 1990, the equivalent price as it existed in the year 1983 could not be worked out.

Accordingly, counsel for the appellant has supplied the cost of Flat No. 147 (K & L),

Sarita Vihar, on the basis of construction in the year 1990. This has been worked out

on the basis of the total covered area of the flat. The same comes to Rs.2,68,400/-.

After adding interest @ 18% & 15% from 1.8.1990 till March, 2005, i.e.

Rs.7,33,963.00 and free hold charges to Rs.34,650.00, the total cost of the flat comes

to Rs.10,37,013.00.

After hearing counsel for the parties, we are of the view that the appellant is not entitled to charge interest on the cost of construction. Respondent No. 1 cannot be made to suffer for no fault of his. If at all the fault lay with the appellant in acting contrary to the assurance given to respondent No.1. We are, therefore, of the

considered view that in the given circumstances of the case, respondent No.1 is only

liable to pay a total sum of Rs.2,22,980/- which has been worked out as under:

(i)Cost of Construction	Rs.2,68,400.00
(ii)Free Hold Charges	Rs. 34,650.00
	<hr/>
	Rs.3,03,050.00

(-) paid upto 4/90	Rs. 80,070.00

	Rs.2,22,980.00
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Accordingly, this appeal is disposed of with a direction to the appellant to issue a letter of allotment to respondent No.1 of Flat No. 147, Block K & L, Second Floor, Sarita Vihar within a period of eight weeks from today at the price determined by this court, as above. Respondent No.1 is also directed to pay the amount of Rs.2,22,980.00 within four weeks of the receipt of the letter of allotment. There shall be no order as to costs.

Appellant would be at liberty to dispose of the flats other than 147 in accordance with law. This order is limited to the facts of the present case and shall not be taken as a precedent in any matter in future.

.....J.

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(ASHOK BHAN)

New Delhi;
.....J.
February 16, 2005.

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(A.K. MATHUR)