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

Judgment reserved on: 02.11.2023
Judgment pronounced on: 19.01.2024

+ **W.P.(C) 2544/2011**

RAM NATH

..... Petitioner

Through: Mr R.K. Saini and Mr Deepak
Sharma, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms Shobhana Takiar, Standing
Counsel for DDA with Ms Anja
Suresh Nair, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is a petition seeking amongst others, the following prayers:-

“(a)

(b) *Writ of Certiorari quashing the impugned letter dated 12.7.2010 (Annexure P-10) issued by Respondent to the Petitioner requesting him to apply for refund;*

(c) *Writ of Certiorari quashing cancellation of allotment of the demised flat (in case the same has been cancelled)*

(d) *Writ of Mandamus commanding the Respondent to forthwith issue final demand letter in respect of the demised*



flat bearing no. D-123, Sarita Vihar, New Delhi and hand over possession thereof after payment;
(e)”

BRIEF FACTS GIVING RISE TO THE PRESENT PETITION

2. Mr. Ashwani Kumar, the son of the Petitioner, registered for the allocation of SFS Flat *vide* FDR/ Registration No. 038110 dated 24.07.1985. In the draw of lots held on 31.12.1987, the Petitioner’s son was allotted a Category II SFS Flat in Pocket D and E of Sarita Vihar at an estimated cost of Rs. 2,89,000/-.
3. Thereafter, a public notice indicating the revised due dates of payment of installments in respect of flats allotted in Sarita Vihar, Pocket D and E was issued by the Respondent authority. In terms of the due dates, the Petitioner’s son paid all the installments before their respective due dates. However, there was a delay of three years in making the payment of the last installment.
4. The son of the Petitioner was unfortunately murdered on 07.07.1993, due to which his mother went into deep depression and passed away in 2008. The flat allotted to the Petitioner’s son was cancelled against which the Petitioner made a representation dated 01.12.1999. Upon this representation made by the Petitioner for withdrawal of the cancellation, the Respondent- Delhi Development Authority (hereinafter referred to as “DDA”) conceded to the request of the Petitioner and restored the allotment of Category II SFS Flat in Sarita Vihar, D Block *vide* letter dated 10.02.2000.
5. The Respondent intimated the Petitioner that a specific flat number will be allotted to him in due course through computerized draw. The Petitioner *vide*



letter dated 07.08.2000 requested the Respondent to intimate him about the particulars of the flat allotted to him. In response to this letter, the Respondent vide letter dated 30.10.2000 informed the Petitioner that in the draw held on 23.10.2000, he has been allotted a flat bearing No. 123, 3rd Floor, D Block, Sarita Vihar (hereinafter referred to as “demised flat”).

6. The Petitioner submitted documents for effecting mutation of the demised flat in his name. Based on the documents submitted by the Petitioner, mutation of the demised flat No. 123, 3rd Floor, D Block, Sarita Vihar was carried out in the name of the Petitioner by the Respondent vide letter dated 14.07.2008. Thereafter, since there was no communication from the Respondent regarding the demised flat, the Petitioner made a representation sometime in the year 2009 requesting the Respondent to issue a final demand letter and handover possession of the demised flat to him.
7. However, even after a passage of more than two years of effecting mutation of the demised flat in the name of the Petitioner, the Respondent did not issue the final demand letter regarding the demised flat. The Petitioner made a representation dated 25.06.2010 to the Respondent narrating the facts of the case and requesting them to issue the final demand letter and hand over possession of the demised flat, as all the installments for the flat were made by the Petitioner way back in 1988 and 1992. In response to this representation, the Respondent vide letter dated 12.07.2010 (impugned letter) informed the Petitioner that the request for restoration of the allotment has not been acceded to and informed the Petitioner to apply for a refund.
8. It is the case of the Petitioner that after the demised flat was restored by the Respondent vide letter dated 10.02.2000, there has been no reason or occasion for the Respondent to cancel the allotment. In fact, till as late as



14.07.2008, when the mutation was affected in the name of the Petitioner, the Respondent had not intimated the Petitioner that the allotment of the demised flat had been cancelled. It is further the case of the Petitioner that the Respondent had not issued the final demand notice in respect of the demised flat and therefore, there is no question of the Petitioner making any default thereof. It is stated that this cancellation of allotment of the demised flat by the Respondent is illegal and *malafide*.

9. In short, the sequence of events from the above noted paragraphs can be crystallized as under:-

- i. The son of the petitioner was allotted the demised flat (*vide* draw of lots held on 31.12.1987).
- ii. Petitioner's son failed to make the payment of the last installment of the demised flat. Subsequently, he passed away and his allocation was cancelled due to non-payment of the last installment (*vide* alleged letter dated 09.11.1997).
- iii. Thereafter, the petitioner explained the situation to the authorities and requested them to reallocate the demised flat to him (*vide* representation dated 01.12.1999).
- iv. Petitioner's request for reallocation of the demised flat was accepted by the authorities (*vide* letters dated 10.02.2000 and 30.10.2000).
- v. The demised flat was mutated in favour of the petitioner (*vide* letter dated 14.07.2008).
- vi. Petitioner's reallocation of the demised flat was again cancelled/revoked (*vide* letter dated 12.07.2010).

10. Hence, the present petition.



SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Mr. Saini, learned counsel for the petitioner has raised objection to the letter of the Hon'ble LG dated 09.11.1997 wherein it was said that "*We may convey our earlier decision to Shri Kumar and ask him to submit 4 copies of challans for refund of his money.*" He states that the same is not clear as to what was the earlier decision, by whom it was taken and on what ground/basis. He further states that neither the earlier decision as stated in the letter above nor this decision was ever conveyed to the petitioner and also no proof of communication of this letter to the petitioner has been shown by the respondent. Hence, this letter is of no effect and cannot be legally applicable to the petitioner.
12. Learned counsel for the petitioner further states even if it is assumed without admitting that the allotment of the petitioner was cancelled by the Hon'ble L.G. on 09.11.1997, then there was no requirement for the respondents to issue letters dated 10.02.2000, 30.10.2000 as well as the mutation letter dated 14.07.2008 mutating flat No. D-123, 3rd Floor, Sarita Vihar, Delhi in favour of the petitioner.
13. He submits that if it is assumed that the Competent Authority (Assistant Director, SFS, etc) had exceeded their jurisdiction in allotting the flat to the petitioner, despite the cancellation of the same by the Hon'ble L.G, none of the counter affidavits specify the disciplinary actions taken against the erring officers.
14. Mr. Saini states that the petitioner cannot be made to suffer due to mistakes made by the authorities. He prays that the flat reserved for the petitioner way back in 2011 may be handed over to him.



SUBMISSIONS ON BEHALF OF THE RESPONDENT

15. Ms. Takiar, learned Standing Counsel for DDA submits that the petitioner applied for allocation of a flat *vide* application No. 019409. Subsequently, a draw for the allocation of the flat was held on 31.12.1987 and the petitioner was allotted a Category II SFS flat on second floor, pocket D and E, Sarita Vihar. The allottee was to make 90% payment of the estimated cost of the flat in four half yearly installments. The petitioner's son paid the first three installments, however, the fourth installment which was made by the petitioner was delayed by 3 years, 5 months and 07 days and not 3 years as alleged by the petitioner.
16. She states that the fact that the son of the petitioner expired on 07.07.1993 was intimated by the petitioner only on 08.04.2008, i.e. after a delay of 15 years. On the other hand, the petitioner was making correspondence with DDA from 05.12.1997 onwards without disclosing this fact and in the name of his deceased son.
17. She further states that since the son of the petitioner failed to deposit the demanded installments within the stipulated period, hence, the allocation of the flat stood cancelled automatically as per the terms and conditions of the allocation letter. A number of representations were made by the petitioner regarding restoration of allocation of the flat. After examining the matter, the petitioner's request for restoration was not acceded to and a reply was given to the petitioner on 20.01.1999 and 03.03.1999 advising him to apply for a refund of his deposit.
18. It is submitted that the petitioner met the Vice Chairman (VC), DDA on 01.12.1999 for restoration of the allocation of the flat. Accordingly, the



matter was placed before the Grievance Redressal Committee and the case of the petitioner's son was considered for restoration of the allocation of the flat and the same was approved by the Committee on 01.02.2000. An intimation letter was sent to the petitioner on 10.02.2000. However, when the matter was further examined, it transpired that the request made by the petitioner's son back in 1993 for restoration of the allocation of the demised flat had been rejected by the Hon'ble L.G. on 09.11.1997. Once the allotment has been cancelled by the Hon'ble L.G., no officer has the power to restore the allocation subsequently.

19. Ms. Takiar further submits that a decision was taken by the then Commissioner (Housing) to verify the genuineness of the allottee by taking his bank account number so that the approval of the Hon'ble L.G. could be obtained. Accordingly, letters were sent in the name of the petitioner's son on 03.07.2001, 23.09.2002, 07.03.2003, 12.05.2003 and 24.02.2004 asking him to supply necessary documents. The petitioner applied for mutation in his favour on 08.04.2008 but he submitted the complete documents only on 10.07.2008, after which mutation was allowed in his favour on 14.07.2008.
20. It is stated that the allocation of flat of the petitioner was cancelled due to non-payment of the demanded installments within the stipulated time. The request for restoration of the flat made by the petitioner's son was rejected by the Hon'ble L.G. on 09.11.1997 and the same was communicated to the petitioner. The action for re-allotment of the flat was done without the approval of the competent authority and the petitioner was advised to take a refund of his deposit. Hence, the petition is liable to be dismissed.

ANALYSIS AND CONCLUSION



21. I have heard learned counsel for the parties.
22. In the present case, admittedly, the son of the petitioner paid three installments and the fourth installment was paid by the petitioner, though belatedly. The flat allotted to the petitioner was first cancelled vide the impugned letter dated 21.11.1997. The letter reads as under:-

*“DELHI DEVELOPMENT AUTHORITY
SELF FINANCING SCHEME (HOUSING)
‘D’ BLOCK VIKAS SADAN N.DELHI.*

No.F.127(125)88/SFS/SV/II

Dated 21-11-1997

To

*Sh./~~Smt.~~ Ashwani Kumar
DSB/SEA. Janakpuri
New Delhi-110058*

*Sub: ~~Allocation~~/allotment/~~cancellation~~ of category II Flat at
Sarita Vihar under SFS*

Sir/~~Madam~~,

With reference to your/our letter dated 26.7.1997 on the subject noted above. I am directed to inform/~~request~~ you to that your request for restoration of allocation has been examined by the competent authority but it is regretted that same cannot be acceded to. You are further requested to submit the 4 copies of bank challans of installments as well as registration for making refund please.

T/C

*Yours faithfully,
Asst. Director
(SFS)*



DDA”

23. However, on the basis of the representation of the petitioner dated 01.12.1999, the competent authority of the respondent on 10.02.2000, restored the allocation of the flat of the petitioner. The letter dated 10.02.2000 reads as under:-

*“DELHI DEVELOPMENT AUTHORITY
VIKAS SADAN
INA, NEWDELHI-110021*

*No. 127(125) 88/SFS/SV/11/31
Asstt. Director (SFS)*

Dt.10.2.2000

*Sh. Ashwani Kumar
R/o 1-103, Laxmi Nagar
Delhi.*

Sub: Restoration of Allocations of Sarita Vihar

Sir,

With reference to your letter dated 1.12.1999 addressed to Hon'ble vice Chairman, DDA on the subject captioned above. In this connection, I am directed to inform you that your request for restoration of allocation of Cat.-II in 'D' Block, has been examined and acceded to by Competent Authority.

This specific flat No. will be allotted in due course through computerized draw.

Yours faithfully

Sd/-

Asstt. Director (SFS)

DDA”



24. This letter was followed by another letter dated 30.10.2000, which reads as under:-

“DELHI DEVELOPMENT AUTHORITY

No. 127(125)88/SFS/SV/11/2952

Asstt. Director (SFS)

Dt. 30.10.2000

*Sh. Ashwani Kumar,
R/o. I-103, Laxmi Nagar,
Delhi.*

Sub: Allotment of flat

Sir,

With reference to your letter dated 7.8.2000 on the subject cited above, I am directed to inform you that flat No. 123, 3rd Floor, D-Block, Sarita Vihar has been allotted to you through draw of lots held on 23.10.2000. The demand letter will be issued in due course.

Yours faithfully

Sd/-

Asstt. Director (SFS) ”

25. On 14.07.2008, the mutation of flat No. 123, Pocket-D at Sarita Vihar, New Delhi was made in the name of the petitioner. The letter reads as under:-

*“DELHI DEVELOPMENT AUTHORITY
SELF FINANCING SCHEME HOUSING*



NO: F127(125)88-SFS-SV-II//1673

FROM: Assistant Director (SFS).

Dated: 14.07.08

To

Sh. Ram Nath son of Late Sh. Ayodhya Prasad,

I-103, Laxmi Nagar,

Delhi: 110092

Sub: Mutation of Registration/allotment of Flat No. D-123, Third Floor, Cat.-II, -Sarita Vihar, New Delhi.

Sir,

Please refer to your letter dated 27.3.2008 and 7.4.2008 on the subject cited above. In this connection I am directed to inform you that on the basis of documents submitted by you and other legal theirs of deceased allottee, the registration/allotment of Flat No.123, Pkt.-D, Third Floor at Sarita Vihar, New Delhi has been mutated in the name of Sh. Ram Nath son of Late Sh. Ayodhya Prasad.

The other terms and conditions of the allotment letter will remain same and will be binding on Sh. Ram Nath son of Late Sh. Ayodhya Prasad. However if it is found that mutation/transfer has been obtained by mis representation or supersession/concealment of fact than the mutation so allowed shall stand automatically cancelled and withdrawn.

Yours faithfully

Asst. Director (SFS)

Copy to:-

1. Dy. Director(System)H for information.



2. Sr. AO(SFS)(H) for information

Asst. Director (SFS)”

26. I am of the view that the respondent after issuing the aforesaid letters cannot be permitted to plead that all the letters were without jurisdiction and issued inadvertently and take a defence that the Hon'ble L.G. on 09.11.1997 had already cancelled the allotment of the demised flat of the petitioner. The letter dated 09.11.1997 has neither been placed on record nor the respondent has been able to demonstrate as to how the same was served upon the petitioner or his son.
27. The letter on record is only of 21.11.1997 which informs that the competent authority has not acceded to the request of the petitioner. The letter dated 21.11.1997 categorically mentions that the decision to not restore the allocation of the petitioner is by "competent authority". The subsequent letters, and more particularly the letter of 10.02.2000, shows the same competent authority having acceded to the request of restoration of allocation in favour of the petitioner. Hence, the stand of the respondent that once the L.G. has cancelled the allotment, the same cannot be restored by competent authority seems to be without any legal basis or reasoning.
28. The letters dated 20.01.1999, 03.03.1999 and 12.07.2010 which call upon the petitioner to submit challans/apply for a refund cannot be a substitute for the letter dated 09.11.1997 which is the fountain head that cancels the allotment of the demised flat of the petitioner.
29. The respondent is a statutory body and cannot act in violation of principles of natural justice. Prior to the cancellation of the allotment of the demised flat, no show cause notice has been issued to the



petitioner and he has not been called upon to explain as to why his allotment should not be cancelled. Even assuming that there is a letter dated 09.11.1997 cancelling the allotment of the petitioner, the same is violative of principles of natural justice. The respondent-DDA ought to have issued a show cause notice to the petitioner, prior to the cancellation of allotment of the demised flat.

30. In “***SP Kureel v. Delhi Development Authority***”[2013 SCC OnLine Del 4504], a coordinate bench of this Court had held that the cancellation of allotment without issuing a show cause notice to the allottee is in violation of the principles of natural justice. The relevant portion reads as under:-

“9. In Dhani Ram Kapoor this Court held as under:-

“3. Mr. Saini, learned counsel appearing for the petitioner, has contended that the amount raising from Rs. 1,29,400/- to Rs. 2,15,600/- in the facts and circumstances of the case is illegal and arbitrary. Mr. Saini has further contended that the cancellation of the flat by the respondent Authority after allotment without giving an opportunity of being heard, is totally arbitrary and illegal, more so, when the petitioner had deposited the full amount as demanded by the respondent and was also paying regular instalments. Mr. Saini has also contended that the respondent adopted double standards in treating the petitioner as in other cases where even the amount demanded by the respondent has not been deposited, the respondent Authority had issued show



cause notices to them whereas in the case of the petitioner, even after the amount has been deposited and monthly instalments for two months have also been paid, without giving any notice the respondent has cancelled the allotment of the petitioner, which is against the principles of natural justice. Learned counsel has contended that even the cancellation order was not communicated to the petitioner. Mr. Saini in support of his contentions has cited the case of Kanta Raju v. DDA C.W.P. No. 587/1990 decided on 18.12.1990, in which it is held that:-

“.....When a flat is allocated by a State Authority to a private citizen then that private citizen, like the petitioner, gets an interest therein. If the State authority wants to cancel such allotment or allocation, then the principles of natural justice will come into play. It will be contrary to the principles of natural justice if an allotment made is sought to be cancelled without any show cause notice.”

.....

11. Thus, on the basis of law laid down in Dhani Ram Kapoor, the DDA was required to follow the principles of natural justice and to issue a show cause notice before taking the drastic action of the cancellation of the flat.

31. In the present case, no show cause notice has been issued by the respondent-DDA. The letters which have been issued by the respondent merely urges the petitioner to apply for a refund or communicates the



inability to accede to the petitioner's request. These letters, in no way, can be construed as a show cause notice as their sole purpose is to convey the cancellation of the allotted flat. The action on behalf of the respondent-DDA cancelling the allotment of the petitioner without following the principles of natural justice is bad in law and cannot be sustained.

32. In addition, the letter of 09.11.1997 is neither produced before the Court nor is in the records of respondent-DDA. Even assuming for the sake of arguments that there was a letter dated 09.11.1997 cancelling the allotment of the demised flat of the petitioner, I am unable to comprehend as to how the respondents could have then issued letters dated 10.02.2000, 30.10.2000 and 14.07.2008 to the petitioner subsequently. Furthermore, even if for the sake of arguments, I assume that the cancellation of the flat by the Hon'ble L.G. due to non-payment of the last installment was valid, even then, the only inference that can be drawn by the subsequent letters dated 10.02.2000, 30.10.2000 and 14.07.2008 issued by the respondent DDA is that the DDA condoned the delay of making the payment of the last installment, accepted the same, restored the allotment and mutated the demised flat in favour of the petitioner. Hence, the cancellation of allotment of flat to the petitioner is bad in law.

33. The respondent-DDA is not a sole proprietorship concern but is a department which is bound by the acts of its officers. Once the competent authority (Assistant Director, SFS, etc) has issued the letters dated 10.02.2000, 30.10.2000 and 14.07.2008, it does not lie upon the respondent to state that the said letters are meaningless and a nullity in the eyes of law. I am of the view that the petitioner cannot be made to suffer for the internal



confusions or discrepancies caused within the various departments of the respondent-DDA.

34.The respondent is an instrumentality of the State which is dealing with State Largesse and cannot act arbitrarily and whimsically. Once there is an allotment in favour of the petitioner, and in case the same has to be cancelled, then it can be cancelled only by following the principles of natural justice.

35.As far as the question of automatic cancellation due to non-payment of the last installment is concerned, the respondent-DDA has failed to show any agreement/contract containing such clause of automatic cancellation in case there is default in the payment of installments. In the absence of such a clause, there is no question of automatic cancellation. Even assuming that there could be an automatic cancellation of the demised flat on account of non-payment of the last installment, once the competent authority has revoked the cancellation thereby approving the re-allotment of the demised flat, the earlier letter which cancels the allotment of the flat becomes unenforceable.

36.The impugned letter of 12.07.2010 reads as under:-

*“DELHI DEVELOPMENT AUTHORITY
SELF FINANCING SCHEME BRANCH*

No.F.127(125)88/SFS/SV/II/123

Dated 12 July, 2010

From: Asstt. Director (SFS)

DDA



To

*Shri Ram Nath
I-103, Laxmi Nagar,
Delhi-110092*

Ref: F.127(125)88/SFS/SV/II

Sir,

With reference to your letter 25.6.2010 regarding flat No.D-123, Sarita Vihar, New Delhi. In this connection, I am directed to inform you that the matter has been examined by the competent authority and your request for restoration of the allotment has not been acceded to and decided to inform the applicant to apply for refund.

You are, therefore, advised to submit all the papers relating to the allotment of the above flat, all original challans proof of residence and bank particulars, i.e. bank account number, name of bank and branch to this office to process the case for refund of your deposit.

*Yours faithfully,
Asstt. Director (SFS)''*

37.This letter of 12.07.2010 again cancels the allotment of flat No. 123, 3rd Floor, D Block, Sarita Vihar, Delhi. The reason given by the respondent in the counter affidavit for this letter is that since the Hon'ble L.G on.09.11.1997 had rejected the application for restoration of allocation of the flat in favour of the petitioner, all subsequent actions by the respondent restoring the allocation was a nullity. This reasoning cannot be accepted. I



have already held in my preceding paragraphs that in view of subsequent letters dated 10.02.2000, 30.10.2000 and 14.07.2008, the so-called earlier cancellation (letter dated 09.11.1997), if any, stood revoked. Since the impugned letter dated 12.07.2010 only relies upon the earlier action/cancellation, which according to me is bad in law, the letter of 12.07.2010 also cannot be sustained.

38. For the reasons noted hereinabove, the Writ Petition is allowed and the letter dated 12.07.2010 issued by the respondent requesting the petitioner to apply for a refund thereby cancelling the allotment of the demised flat is hereby quashed. A writ of Mandamus is issued to the respondent to issue forthwith a final demand letter to the petitioner in respect of flat bearing No. D-123, 3rd Floor, Sarita Vihar, New Delhi and hand over its possession thereof after carrying out necessary formalities. In case the aforementioned flat is not available, it is directed that the respondent shall allot and handover the possession of Category- II SFS Flat, Jasola to the petitioner which was reserved for him *vide* order dated 21.04.2011, after complying with all necessary formalities. Ordered accordingly.

JASMEET SINGH, J

JANUARY 19th, 2024/st

Click here to check corrigendum, if any