
(2004) 12 DEL CK 0070
In the Delhi High Court
Case No : WP (C) No. 2794 of 1996

Mrs. Vimal Marwah

APPELLANT

Vs

D.D.A.

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Citation : (2005) 117 DLT 373

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : R.K. Saini and N.R. Sharma, for the Appellant; Anusuya Salwan, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Desire to have a self owned roof over her head led petitioner to get herself registered, on 26.7.1982, vide registration No. 1216, under the Vth Self Financing Scheme of the DDA in Category III. As per the scheme, as and when DDA decided to construct flats, registrants could apply for inclusion of their name in a draw and if successful were to be allotted a flat. On payment of the amount demanded, in Installments, possession of the flat was to be handed over by DDA.

2. Till 1991, petitioner could not get a flat. What to do! Applications were one to many.

3. In the year 1991, DDA decided to allot a few flats constructed in South Delhi to retired and retiring public servants who had got themselves registered under the self financing scheme. Petitioner applied under said scheme called RPS,1991 by submitting an application on 9.9.1991.

4. Petitioner was employed under the M.C.D. as a Principal. She had sought voluntary retirement in the year 1987. Her request was acceded to. On 29.12.1987, following order was issued :

"As per orders of Deputy Commissioner (Tax) dated 22.12.1987, Smt. Vimal Marwah, Principal Primary School Multani Dhanda, Gali No. 6 is granted voluntarily retirement with effect 31.12.87 after noon, so Smt. Vimal Marwah be relieved from her duties from M.C.D. since 31.12.1987, and the Inspector School shall take over the charges from her before relieving her.

Sd/- Head Clerk."

5. Along with her application dated 9.9.1991, petitioner submitted copy of order dated 29.12.1987 as proof of her having retired.

6. Little did the petitioner know that those she had taught did not learn their lesson well. They had learnt to read documents literally, pedantically and mechanically. Logic and reasoning had not dawned on them.

7. It is to be noted that order dated 29.12.1987 granted voluntary retirement to the petitioner with effect from 31.12.987 - a date in the future.

8. Officer concerned in DDA read the order as futuristic in nature and not one evidencing proof of the petitioner having retired. A doubting mind should learn to clear the doubt. But DDA believes in living with doubts. Order dated 29.12.1987 was submitted on 9.9.1991. If one had a doubt as to what happened on 31.12.1987, surely, in September, 1991 one could have got the matter clarified. But why should the officer do that. On petitioner's application he wrote "Not Eligible".

9. On 17.7.1992, DDA published a list of eligible applicants of retired and retiring public servants. Objections were invited by 21.7.1992. Draw of lots was to be held on 24.7.1992.

10. Petitioner checked the list of eligible applicants. Her name was missing. Petitioner claims that she contacted the concerned officer who informed her that she was held ineligible as she had not filled up Col. No. 12 of the form. Said column required the applicant to state :

"12. Have you applied in response to scheme for priority allotment for RPS earlier, if so, give application No. and date."

11. Petitioner had left the column blank. She claims to have informed DDA vide letter dated 20.7.1992 as under :

"To,

The Assistant Director,

Self Financing Scheme-II,

Delhi Development Authority,

Vikas Sadan, I.N.A.

NEW DELHI.

Sub:- Self Financing Scheme-V Category-

III- removal of objection for allotment of flats vide notification dt.

17.7.92.

Sir,

Kindly refer to my application No. 1216/SFS dt. 9.9.91, Col. No. 12 left blank inadvertently may be read as "N.A." i.e. Not Applicable as I did not apply for priority allotment for RFS earlier.

Thanking you and requesting you to kindly pardon me and reconsider my said application for allotment of flats under R.P.S.

Yours faithfully,

Dt.21.7.92 (VIMAL MARWAH) 10162-W.E.A., Gurudwara Road, Karol Bagh, New Delhi-5."

12. Name of the petitioner was not entered in the draw of lots. It is stated in the petition (para 8) that she made representations on 29.7.1992, 28.9.1992, 22.2.1993, 29.3.1993 and 12.5.1993, requesting that a flat be allotted to her in South Delhi. In para 9 of the petition, it is stated that on 18.3.1993, petitioner met the Director (Housing), SFS-I and submitted the relieving letter dated 1.1.1988, under which she was relieved from service consequent to her being voluntarily retired.

13. In para 21 of the petition, it is stated that in December, 1993, DDA floated another scheme known as SFS Vth Scheme. (I may note that DDA had in fact required registrants of Vth SFS Scheme to apply for inclusion of their name at a draw to be held.) Petitioner applied for allotment in Sukhdev Vihar, Sarita Vihar or East of Kailash. It is stated by the petitioner that on 2.4.1996, she received a letter informing her that a flat in Kondli Gharoli was allotted to her. She states that she was surprised to learn of said flat being allotted as she had never applied for a flat in said colony. It is stated that letter dated 2.4.1996 informed petitioner that she was allotted a flat in Kondli Gharoli at a draw held on 5.3.1994, since she did not pay, allotment was cancelled. Petitioner states that she never received any demand letter issued on 5.3.1994.

14. Stating the facts aforesaid, petitioner prays :-

"(a) To issue writ of mandamus directing the respondent to allot the petitioner flat in R.P.S. Scheme floated in the year 1991, on the costs prevailing in the year 1991-92 in the vicinity of Escort Hospital, i.e. Sarita Vihar, New Delhi and hand over possession of the same immediately.

(b) To issue further writ, direction, directing the respondent not to allot and hand over possession of flats bearing No. G-146, G-276 and G-243 Pocket G Sarita Vihar, New Delhi, to any other person till disposal of the writ petition."

15. Response of DDA admits that petitioner had got herself registered under the Vth SFS Scheme in the year 1982 and that petitioner could not get a flat till the year 1991. DDA also admits that on 9.9.1991, petitioner applied as a, registrant under the Vth SFS Scheme, when applications were invited from retired and retiring public servants. DDA also admits that petitioner was held ineligible as certificate dated 29.12.1987 was read as being not clear whether petitioner had retired. It is, however, stated that when DDA asked the Vth SFS Scheme registrants to apply for flats to be constructed, offer being open from 22.12.1992 to 11.1.1993, petitioner applied vide application No. 12098. A flat was allotted in Dwarka. Demand-cum-allotment letter dated 8.4.1993 was issued requiring petitioner to pay Rs. 3,37,542.15 on or before 8.5.1993. She did not pay. Petitioner, in the meanwhile, submitted another application No. 678 when scheme was re-opened from 20.12.1993 to 7.1.1994. She was allotted a flat at Kondli Gharoli vide demand-cum-allotment letter dated 15.5.1994. Petitioner did not pay.

16. In rejoinder, petitioner states :

"It is wrong and denied that against her application under the aforesaid Scheme, the petitioner was allocated a Flat in Dwarka and an allotment-cum-demand letter was issued to her. No such allotment-cum-demand letter was received by the petitioner and Therefore the question of making any payment by her and intimating the D.D.A. about it, does not arise. It is respectfully submitted here that in any case, the petitioner would have declined the said allotment even if she had received the allotment-cum-demand letter in as much as a flat in Dwarka is not suitable for her and her husband as both are heart patients. It is surprising to note that the respondents asked the petitioner to submit proof of payment in this regard vide alleged letter dated 4.3.1996 i.e. after more than three years, by which time the petitioner had once again applied for allocation under the Scheme opened from 20.2.1993 to 7.1.1994 which was the last chance for registrants under the 5th self-financing Scheme and Therefore the petitioner could not possible afford to miss it. A true copy of the said scheme is annexed herewith marked as ANNEXURE P-21 and application form is Annexure P -22.

It is wrong and denied that under the Scheme, the petitioner was allotted a flat in Kondli Gharoli and a demand-cum-demand letter was issued to her in this regard and on failure of making payment the allotment was cancelled and intimation in this regard was sent to her vide letter dated 8.9.1995. Neither any allotment letter nor any cancellation letter was received by the petitioner and as the allotment letter itself was not received, there was no question or occasion on part of the petitioner to make the payment.

It shall be pertinent to point out here that even if the petitioner had received the alleged allotment-cum-demand letter of the flat in Kondli Gharoli, she would have declined the same in as much as firstly, she never applied for allotment in Kondli Gharoli and in the application made, the only preference given was that of Sarita Vihar, Sukhdev Vihar and East of Kailash and, Therefore, it is not understood as to how the respondents on their own came to allot a flat in Kondli Gharoli to the petitioner and secondly, because a flat in Kondli Gharoli is not at all suitable for the petitioner and her husband both being heart patients and that is why they had applied for allotment of a flat at only three places, i.e. Sarita Vihar, Sukhdev Vihar and East of Kailash which are close to Heart Care Institutes.

It shall be pertinent to point out here that the petitioner came to know about these two allotments, one in Dwarka and one in Kondli Gharoli in reply to her representation dated 19.2.1996."

17. Record which was produced was seen by me during hearing. Record show that DDA had required the registrants of the Vth SFS Scheme to apply between 22.12.1992 to 11.1.1993 for being considered for allotment of a flat. It was indicated to the registrants :

"5.3 Applicants can give their options for up to 10 localities in order of their preference. A maximum of 3 localities, can be chosen from the localities falling under the "Ready Built flats" category. Remaining localities can be chosen from out of the two other sets of localities appearing at Annexure "A" where construction of flats is either in progress or is to start soon."

18. In response, petitioner submitted an application, being No. 12098. She indicated 6 areas, in order of preference, in which she desired a flat. 6th area was indicated "SW". Mr. R.K. Saini, learned counsel for the petitioner admitted during arguments that "SW" stood for "South West" i.e. Dwarka.

19. Record shows that at draw held on 23.3.1993, a ground floor flat in Block-4 was allotted to the petitioner and a demand-cum-allotment letter having block dates 6.4.1993 to 8.4.1993 was issued to her at the following address :

"10162, W.E.A., Gurudwara Road,
New Delhi-110005"

20. It is to be noted that this was the address furnished by the petitioner in the application No. 12098.

21. Averments of the petitioner in the rejoinder affidavit that DDA did not issue to her the demand-cum-letter is contrary to record. Mr. R.K. Saini, learned counsel for the petitioner submitted that petitioner had changed her residence and had informed the postal authorities to redirect her letters, may have been the reason why petitioner did not receive said letter.

22. I may note that in the writ petition there is not even a whisper that petitioner has submitted an application when scheme was open from 22.12.1992 to

11.1.1993. Petitioner has only referred to as having applied in December, 1993.

23. Record of DDA shows that when DDA required the registrants to apply between 20.12.1993 to 7.1.1994, it was made known :

"2.3 Delhi Development Authority has decided that this will be the last and final chance for the registrants of 5th Scheme. Registrants are advised to give preference for all localities mentioned in the brochure at Annexure:- A & B. The registrants not doing so will be allocated/allotted flat out of flats which would become available, after accommodating the preferences and choices of the registrants applying in this release, through draw of lots."

24. DDA had clearly indicated that this was the last chance to apply. All applicants were clearly indicated that if they did not get a flat in the locality of their choice, they would be allotted a flat in any area.

25. It was conceded by Mr. R.K. Saini that it was so stipulated since DDA was closing down the Vth SFS Scheme.

26. Record shows that petitioner submitted an application being No. 678. She indicated her choice only for 3 areas in South Delhi.

27. Draw of lots was held on 25.2.1994. Petitioner was unsuccessful in getting a flat in the area of her choice. Since DDA had made known that this was the last chance, and if a registrant did not get a flat of his/her choice, flat would be allotted in any area, petitioner came to be allotted a flat in Kondli Gharoli.

28. Demand cum allotment letter having block dates 10.3.1994 to 15.3.1994 was issued to the petitioner. It has to be noted that even in the application submitted by petitioner in December 1993 being No. 678, petitioner had stated her address to be :

"10162, W.E.A.,

Gurudwara Road, New Delhi."

29. Demand cum allotment letter was issued at the said address.

30. Mr. R.K. Saini, learned counsel for the petitioner urged that when applications were invited in 1991 from retired and retiring persons, flats were allotted in South Delhi. Number of applicants were less than the flats available and had DDA not held petitioner to be ineligible she would have got a flat in South Delhi at rates of 1991. Mr. Saini urged that order dated 29.12.1987 was clear that petitioner would be relieved on 31.12.1987 consequent to her request for voluntary retirement being accepted. It was urged that no reasonable person would read the order dated 29.12.1987 to mean as if petitioner had not retired. Mr. Saini urged that since valuable right of the petitioner was infringed by DDA, petitioner must get a flat in South Delhi at rates of 1991.

31. It is no doubt true that no reasonable person would construe the order dated 29.12.1987 as being uncertain qua date of retirement of the petitioner. The order

was submitted in the year 1991. The year 1987 was of the past. Be that as it may, DDA ought to have got the doubt cleared. Petitioner has certainly been wronged on said count.

32. But that would not mean that petitioner must get the relief as prayed. Petitioner was registered under the Vth SFS Scheme. One may call this scheme to be the genus. Retired and retiring public servants could be called a specie within the genus. Had petitioner approached the court in the year 1991 when she was denied a flat, she would have been entitled to a relief that her name be included in a mini draw for retired and retiring persons. Petitioner applied to have her name included in another draw when DDA invited applications from 22.12.1992 to 11.1.1993. She gave Dwarka as one of her preferred area. She was successful. Flat was offered to her. The wrong got remedied, may be by fate.

33. DDA issued the demand cum allotment letter at the address provided by the petitioner. She did not get the letter. Counsel for the petitioner admitted that petitioner had changed residence and had directed the postal authorities to redirect her post. DDA is not to be faulted if petitioner did not receive the letters.

34. Petitioner applied again in December 1993. It was made know that this was the last chance and if flat was not allotted in the preferred area, it would be allotted in any locality. Petitioner applied. She was unlucky in the area of her choice. She was allotted a flat in the draw. DDA issued the demand at the given address. Petitioner did not receive this letter as she had changed residence. DDA is not at fault.

35. The scheme has closed. Nothing can be done. Petitioner has to apply afresh when D.D.A. invites applications.

36. Petitioner has stated that she had been meeting DDA officials. It is highly improbable that she did not learn about the allotment of a flat firstly in Dwarka and then at Kondli Gharoli.

37. Petitioner had no Explanation to offer as to why she did not make enquiries as to what happened to her applicants submitted in 1992 and 1993. To my mind the answer lies in petitioner's pleadings in the rejoinder affidavit noted in para 16 above. Petitioner categorically states that even if she had received the allotment letters, she would have refused to accept the flat allotted to her.

38. Petitioner's averment noted above in para 16 show her desire for a flat only in South Delhi. Petitioner's averments are indicative of her mindset.

39. Vth SFS Scheme did not guarantee a flat in South Delhi. Wrong done in 1991 got remedied in 1993 and then in 1994. No relief can be granted.

40. Rule is discharged. Petition dismissed.

41. No costs.