

(2012) 02 DEL CK 0080

In the Delhi High Court

Case No : Writ Petition (C) 2009 of 2011, W.P. (C) 2010 of 2011, W.P. (C) 2011 of 2011, W.P. (C) 2012 of 2011 and W.P. (C) 2013 of 2011

Ram Vilas and Others

APPELLANT

Vs

Vice Chairman, DDA and Others

RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2012) 02 DEL CK 0080

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Viraj R. Datar with Mr. Chetan Lokur, for the Appellant; M. Tripathy Pandey and Mr. Ashutosh Kaushik for R-1 to R-3/DDA. Mr. N. Waziri, Standing Counsel (Civil) with Mr. Shoaib Haider, for Govt. of NCT of Delhi/EOW along with Mr. Vinod Gandhi, Inspector, EOW, for the Respondent

Judgement

Hima Kohli, J.—The present petitions have been filed by five petitioners seeking identical relief, i.e., for quashing of a common communication dated 11.12.2009 addressed by respondents No.1 to 3/DDA informing them that the Economic Offences Wing (EOW), Crime Branch, Delhi Police, vide letter dated 29.10.2009 in FIR No.2/2009 dated 9.1.2009, had informed the DDA that the allotment of the flats under the DDA Housing Scheme 2008 be withheld till the final outcome of the investigation by the EOW.

2. Learned counsel for the petitioners states that all the five petitioners had applied for allotment of flats under the DDA Housing Scheme 2008 in the Scheduled Castes category and were declared successful. Thereafter, respondents No.1 to 3/DDA had called upon the petitioners to submit their original documents for verification, which was duly complied with by them. However, in view of the aforesaid impugned communication, DDA has refused to handover the possession of the said flats to the petitioners. Initially, the petitioners had made various representations to respondents No.1 to 3/DDA to enquire about the status of the investigation. Thereafter, a legal notice dated

3.3.2011 was issued on behalf of the petitioners to the DDA for handing over of the possession of the allotted flats under the DDA Housing Scheme 2008, but as no action was taken by respondents No.1 to 3/DDA in that regard, the present petitions were filed.

3. Notice was issued on the present petitions on 25.3.2011. On the said date, learned counsel for the petitioners had stated that the petitioners have been examined by the police during the course of investigation and have not been named as accused either in column 1 or in column 2 of the charge sheets which have been file after completion of the investigation. Instead, they have been arrayed as witnesses in the charge sheets.

4. A status report has been filed by respondent No.4/EOW on 3.2.2012, wherein it is stated that in the course of investigation relating to the proxy applicants applying under the Housing Scheme 2008 introduced by the DDA, a retired employee of DDA along with his associate and other accused persons were arrested for filling up application forms on behalf of the unintending poor people of reserved categories, by giving them inducement, and creating ownership documents in their favour before the draw of lots. It was in the course of carrying out the aforesaid investigation that various documents have been recovered from the main accused and his representatives/other accused persons as also from the applicants. The petitioners were also examined and in the course of investigation, the application forms of 46 dummy/proxy applicants that were recovered, were collected and referred to Forensic Science Laboratory, Rohini, Delhi for comparison with the specimen handwritings of these dummy/proxy applicants and the accused persons, vide receipts issued by DDA, between the period of February and April, 2009 but, the said opinion is still awaited. Further, investigations have revealed that the petitioners herein were dummy/proxy applicants and even the funds for filling their application forms were arranged by the accused, Mithan Lal Gautam as per his statement recorded u/s 161 Cr.PC.

5. Counsel for respondent No.4/EOW therefore states that the applications for allotment of DDA flats were fraudulently filed on behalf of the present petitioners and flats have been got allotted to them fraudulently so as to wrongfully gain at the cost of genuine applicants. It is submitted that the in view of the pending criminal cases arising out of FIR No.2/2009, the DDA be restrained from issuing the demand-cum-allotment letters to the petitioners herein, as prayed for by them in the present petitions.

6. Counsel for the petitioners denies all the aforesaid allegations and states that none of the petitioners have been named as accused in the charge sheets filed before the trial court and further denies the fact that the main accused, namely, Mithan Lal Gautam had funded the application forms of the petitioners.

7. This Court has heard the counsels for the parties and examined the documents placed on record. It is an undisputed fact that respondents No.1 to 3/

DDA had declared the petitioners successful allottees under LIG category in respect of the DDA Housing Scheme 2008 but, they have not been issued demand-cum-allotment letters as per the directions of respondent No.4/EOW, Crime Branch, in view of the pending criminal proceedings arising out of FIR No.2/2009 filed by the EOW. It is stated by learned counsel for respondent No.4/EOW that the aforesaid case is at the stage of arguments on charge. He, however, concedes that none of the petitioners have been arrayed as accused in any of the charge sheets filed till date and they are only cited as witnesses.

8. In the aforesaid circumstances, without making any observations on the merits of the pending criminal proceedings, it is deemed appropriate to dispose of the present petitions, with liberty granted to the petitioners to seek vacation/modification of the direction dated 29.10.2009 issued by respondent No.4/EOW to the respondents No.1 to 3/DDA by filing appropriate applications in that regard before the learned ACMM. As and when the petitioners file such applications, the same shall be considered and disposed of by the trial court, as per law.