

REPORTABLE

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

+ LPA NO. 2594 OF 2005

% Date of Decision : 11th January, 2008.

DELHI DEVELOPMENT AUTHORITY Appellant.
Through Ms. Sangeeta Chandra, Advocate.

VERSUS

MS. SWARAN Respondent.
Through Mr. Sumit Bansal, Advocate.

A N D

LPA NO. 1110 OF 2007

MR. VISHWA RAJ SAXENA Appellant.
Through Mr. Sumit Bansal, Advocate.

VERSUS

DELHI DEVELOPMENT AUTHORITY Respondent.
Through Ms. Sangeeta Chandra, Advocate.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. Delhi Development Authority (hereinafter referred to as DDA, for short) is the common party to the present Appeals. As similar issues are involved, both the Appeals are being disposed of by this common judgement.

FACTS OF LPA NO. 2594/2005

2. Ms. Swaran was enrolled under the Rohini Residential Scheme, 1981 for allotment of plot under the LIG category. She had deposited Rs.2081/- with the DDA on 23rd March, 1981. After waiting for almost 15 years in the draw of lots held on 27th March, 1996, she was allotted a plot measuring 32 sq. yards.

3. A demand-cum-allotment letter dated 11th /18th September, 1996 was issued calling upon her to make payment of Rs. 86,739.58/- , after adjustment of the of the deposit made in 1981 and interest accrued thereon, in the following manner : Rs. 31,799.44 within 30 days of the issue of the demand-cum-allotment letter; Rs. 45,399.20 within 90 days of the issue of the demand-cum-allotment letter and Rs. 9560.04 was to be paid within two months from the date of receipt of the communication offering possession or before taking possession, whichever was earlier.

4. Ms. Swaran did not make payment within the time schedule stipulated in the allotment letter. She made payment of Rs. 31,779.44 on 15th October, 1996, Rs. 45,399.20 and Rs.9560/- on 9th September, 1997.

5. Two letters dated 26th August, 1997 and 10th September, 2000 were received by her from DDA asking her to appear and furnish some particulars. She appeared and wrote letters of request that the delay in making payments should be condoned and the plot be allotted to her.

6. By letter dated 21st March, 2003 she was informed that allotment of plot measuring 32 sq. yds. in Rohini stands cancelled due to non-payment of demanded amount as per the terms and conditions of the allotment letter. She was asked to intimate her bank account details to process her case for refund.

7. She again made representations, but without success. Ultimately, she filed Writ Petition (Civil) No. 804/2004, which stands allowed by the impugned judgement dated 6th May, 2005. Learned Single Judge noticed that the object behind the Rohini Residential

Scheme, 1981 was to provide alternative plots to displaced persons on account of acquisition of their land by DDA. It was noticed that there was substantial delay of 15 years in making allotment of plot to Ms. Swaran. Learned Single Judge felt that though payment of the second instalment had been made belatedly, allotment in favour of the appellant should not be cancelled in the light of the policy decision and resolution passed by DDA which authorised the Principal Commissioner to regularise delays in making payment beyond a period of 180 days upto 270 days on payment of restoration charges and penal interest @ 15%. In the present case, the learned Single Judge held that the delay in making payment was about 235 days and DDA after having received the full consideration took six long years to communicate the decision to cancel the allotment. The stand of DDA was held to be unreasonable.

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8. Mr. Vishwa Raj Saxena, had deposited Rs.2000/- on 30th March, 1981 for allotment of a plot under the Rohini Residential Scheme, 1981. In the draw of lots held in 1996, he was declared successful and was allotted a plot measuring 32 sq. yards. The total consideration payable for the said plot was Rs. 75,085/-. After reducing Rs.2000/- already paid and interest accrued thereon, he

was asked to deposit the balance amount of Rs.70,983.85 in the following manner : Rs. 26,264/- to be paid within 30 days of the issue of demand-cum-allotment letter; Rs. 37,520/- to be deposited within 90 days of the issue of demand-cum-allotment letter and Rs. 7199.85 to be deposited within two months from the date of the communication for possession or before taking possession, whichever was earlier.

9. Mr.Vishwa Raj Saxena deposited Rs.26,264/- on 31st March, 1997 i.e. after a delay about 182 days and Rs.37,520/- was deposited on 3rd April, 1997 and the balance amount of Rs.7199.85 was deposited on 15th June, 1998.

10. Mr. Vishwa Raj Saxena received two letters dated 11th March, 1997 and 2nd June, 1998 from DDA requiring him to appear and furnish some details. It is stated that he complied with both the letters. Mr. Vishwa Raj Saxena wrote letters for condonation of delay in making payments and allotment of the plot. By letter dated 20th March, 2003 Mr. Vishwa Raj Saxena was informed that due to non-

payment of the demanded amount within time as stipulated in the demand-cum-allotment letter, the allotment stands cancelled and he was called upon to furnish his bank details for processing refund. The respondent wrote some letters to DDA but as he did not receive any positive response, Writ Petition (Civil) No. 4969 of 2005 was filed in this Court.

11. The said Writ Petition was dismissed vide Order dated 6th March, 2006, holding that there was delay in payment of instalments and the policy decision taken by DDA on 24th August, 2004 was not applicable as in the present case by letter dated 20th March, 2003, the allotment in favour of the respondent had already been cancelled. It was also held that Mr. Vishwa Raj Saxena cannot claim any right in his favour as the matter was entirely governed by the contract between the parties. Review application filed by the respondent herein was also dismissed. Along with the review application, Mr. Vishwa Raj Saxena had filed two letters dated 31st March, 1997 and 3rd April, 1997 addressed to DDA asking for

extension of time to make payments. Learned Single Judge held that no ground for review was made out and there was no explanation as to why these two letters could not have been filed earlier.

12. It is apparent from the above that the two judgements passed in W.P.(C) Nos. 804/2004 and 4969/2005, impugned in the present Appeals, are contradictory though the facts are almost identical.

Contentions and Findings

13. Learned counsel for the DDA relied upon the following clauses in the demand-cum-allotment letter in support of her submissions :-

Clause 2 : “No extension of time for making payment of balance premium of plot will be allowed on any ground whatsoever.”

Clause 3 : “If any installment of the amounts mentioned above is not paid within prescribed period of the due date, allotment shall stand cancelled automatically and no request for restoration of allotment of plot shall be entertained on any ground whatsoever.”

14. It was stated that the terms and conditions of the allotment letters were accepted unconditionally by the two allottees and therefore a binding contract had come into existence. There was violation of the contractual terms mentioned in the allotment letter due to belated payments. Accordingly, the allotments were cancelled for violation of the terms of the allotment letters. By letters dated 20-21st March, 2003 DDA had merely rejected the request for extension of time. It was stated that the aforesaid two letters were not in fact orders for cancellation of allotment but letters by which the request for extension of time to make payments were rejected. In the written submissions it is pointed out that there were other allottees who had made delayed payments of the instalments and therefore no benefit should be given to the two parties in the present appeals. Lastly, it was submitted that the policy decision dated 24th August, 2004 does not have retrospective effect and at the time when the allotments were made and the letters dated 20/21st March, 2003, refusing to extend the time were issued, only Vice Chancellor, DDA had the

power to grant extension of time upto 180 days and therefore there was no justification and reason to condone the delay.

15. In view of the contentions raised by the DDA, we have examined the original files of DDA in the two cases. The files reveal that after belated payments were made, the matter was kept in abeyance for awaiting a policy decision that was to be taken in such cases. The order-sheet noting dated 21st April, 1997 in the case of Mr.Vishwa Raj Saxena and noting dated 22nd September, 1997 in the case of Ms.Swaran are clear and unequivocal- "wait for policy decision".

16. The stand of the DDA that the allotments were cancelled in 1996 itself and not in March,2003 is not correct and contrary to the records. DDA was aware that payments as demanded by the allotment letters were made but not as per the time schedule stipulated therein. The consideration paid was retained by DDA as a policy decision in all such cases was to be taken. Payments were consciously and deliberately retained, to await the policy decision.

This aspect has to be kept in mind while deciding the contention raised by the DDA that time was essence of contract in view of the terms mentioned in the allotment letter.

17. In 1998, cases of late payments were referred to the Vice Chairman, DDA to take a policy decision in file no. F.30(164)96-LSB (Rohini). Photocopy of the said file noting are available in the file of Mr. Vishwa Raj Saxena at pages 155-56. The relevant portion of the said noting read as under:-

- 155 -

From over-leaf:

4. x x x x x

5. x x x x x

6. x x x x x

“7. The approved policy in which cases for 7th and 8th draw wherein the payment were received after 180 days. The plots were regularised by the Competent Authority at the current pre-determined rates. A photocopy of the policy of 7th and 8th draw are kept at page 27 to 38/C.

[This case being that of 9th draw, if agreed, the same policy can be applied in this case as well i.e. we may issue the possession

subject to regularised to the delay payment under current pre-determined rates and restoration charges of Rs.200/- per sq. mtr. The Competent Authority for the regularisation is Hon'ble Vice-Chairman, DDA.] - 'A'

Submitted please.

Sd/-
D/Asstt. LSB(R)

Sd/- Supdt .LSB (R)

Sd/- Asstt. Dir.LSB(R)

x x x x x x

'A' may kindly be approved keeping in mind the precedents of 7th and 8th draws.

Sd/-
29.10.98"

18. One would have expected that same parameters and the policy decision taken in file no. F.30(164)96-LSB (Rohini) should have been made applicable to all other cases of similar nature including cases of Ms. Swaran and Mr. Vishwa Raj Saxena. The above-quoted noting also show that till the 9th draw of lots, DDA had been regularising late/belated payments as per the policy decision taken with regard to 7th and 8th draw of lots. It was decided that

belated payments by the allottees successful in the 9th draw of lots should be regularised as in the cases of belated payments by allottees of 7th and 8th draw of lots, subject to payment of pre-determined rates and restoration charges of Rs. 200 per Sq Mtrs. This policy decision should have been applied in the present cases also, as in other cases. However, the file noting show that nothing was done in the two cases of Ms. Swaran and Vishwa Raj Saxena. There is no indication on the file why Ms. Swaran and Mr. Vishwa Raj Saxena were discriminated and not treated at par with other allottees who had made belated payments contrary to the terms of the allotment letter and who had been allotted plots in the same draw of lots i.e. the 9th draw of lots.

19. In spite of the policy decision taken in 1998, nothing was done and no steps were taken by DDA, till March, 2000, when the dealing assistant again made a note to further process the two cases. From March, 2000, it took another three years and in March, 2003 a final decision was taken to cancel the allotment and not to

regularise late payments. Relevant file noting in the month of March, 2003, at page number 159 in the case of Mr. Vishwa Raj Saxena, reads as under:-

“Placed below are the files, found out on review, pending for want of regularization of delay in making the payment by the allottees of Rohini Residential Scheme beyond 180 days, either one or two installments towards, the premium and plots are intact. The details of cases are given below:

S. No	File No./Name of allottee	Date of Draw	Date of issue of demand letter	Due Date	Date of Deposit	Delay
1.	F.30(271) 96 Kamlesh Kumar	27.3.96 9 th draw	13.8.96 to 21.8.96	1 st -19.9.96 IInd- 19.11.96 IIIRD-	21.9.96 24.7.97 24.7.97	2 days 247 days In time
2.	F.30(118) 96 Vishve Raj Saxena	27.3.96 9 th draw	22.8.96 to 29.8.96	Ist-27.9.96 IInd- 26.11.96 IIIRD-	31.3.97 3.4.97 15.6.98	185 days 128 days In time
3.	F27 (22)94 H.M.K. Saxena	17.6.94 7 th draw	19.2.96 to 26.2.96	1 st 25.2.96 IInd- 24.5.96 IIIRD- 11.11.97	20.3.96 24.5.96 17.7.98	In time In time 259 days

4.	F.30(341) 96 Shyam Sunder Alawadi	27.3.96 9 th draw	23.8.96 to 30.8.96	Ist-29.9.96 IInd- 28.11.96 III-No letter issued so far.	9.7.97 9.7.97	283 days 223 days
5.	F30(172) 96 Smt. Swaran	27.3.96 9 th draw	11.9.96 to 18.9.96	Ist- 17.10.96 IInd- 16.12.96 IIIRD-	15.10.96 9.9.97 9.9.97	In time 266 days In time
6.	F24(2587)9 4-95 Sh.Sat Narain	4.8.95 8 th draw	25.3.96 to 4.4.96 (Re- issued on 27.5.96)	26.6.96 3.7.96 1.6.97	26.6.96 28.6.96 16.9.98	In time In time 471 days

As per the terms and conditions of demand cum allotment letters issued in the above cases, if any installment of the amount mentioned above is not paid within prescribed period of the due date, allotment shall stand cancelled automatically and no request for restoration of allotment of plot shall be entertained on any ground whatsoever.

No policy is available in the Branch to regularize the delay in premium made by the allottee beyond 180 days.

In all the above cases premium stands paid except in one case where no demand for third installment has been raised so far and, therefore, cancelling the allotment at this stage after keeping the premium for about more than 6 years do not seem to be justified.

However, it is worthwhile to point out here that the cases of 7th draw, 8th draw and 9th draw at Rohini where payment of premium had been

delayed more than 180 days were regularized by the Hon'ble VC after charging current PDR plus restoration charges vide his order dt. 3.11.98, the extract of which orders taken from file No.F.30(164)96/LSB(Rohini) is placed opposite for perusal.

It is, therefore, proposed that the cases mentioned at Sl.No.3 pertaining to 7th draw; Sl. No.6 pertaining to 8th draw and Sl. No.1,2,4 and 5 pertaining to 9th draw may kindly be restored subject to regularization of delay by charging current PDR plus restoration charges keeping in mind the precedents.

Submitted for orders

Sd/-

Dy. Director (Rohini)

7/01/03"

X X X X X

"C(LD) may please refer note of DDR. During the scrutiny of pending files of the branch six cases have been noticed where part payment of premium has been deposited after a period of 180 days. In fact as per the terms and conditions of allotment letter, allotment should have been cancelled and in these cases plots should have been re-allotted. However, no action was taken either for cancellation or for re-allotment of plots. In these cases we have received entire premium but possession letters have not yet been issued due to delay.

Now after a gap of 5 years, it would not be justified to cancel the allotment. We may take lenient view and regularize the delay subject to payment of requisite charges.

We do not have any clear policy to deal with regularization of delay in allotment cases. However, in few cases the delay beyond 180 days has already been regularized by the competent authority subject to payment of requisite charges. The photocopies of decision are placed at correspondence.

The case if submitted for regularization of delay subject to payment of current PDR plus restoration charges.

Submitted for orders.

(ASMA MANZAR)

DIRECTOR (RL)

8/01/03”

20. However, the aforesaid file noting were not accepted by the Commissioner (Lands). He relied upon the allotment letter and the Clause therein which stipulated that the allotment shall be cancelled automatically. It was also observed that the fact that five years have lapsed since the allottees had made payments was not a good ground and it would not be prudent to regularise the said allotments.

The Vice-Chairman, DDA approved the said noting made by Commissioner (Lands) and accordingly letters for cancellation were issued. The relevant noting reads:-

“The terms and conditions of demand-cum-allotment letters issued in these cases very clearly state that if any instalment of the amount mentioned above is not paid within the prescribed period of due date, allotment shall stand cancelled automatically and no request for restoration of allotment of plot shall be entertained on any ground whatsoever. Keeping in view this stringent condition, it is a case of deemed cancellation and the plots should have been reallocated. Explanation may be called from the concerned officials who did not take necessary action of formally cancelling these plots and then reallocation. Even though a gap of 5 years have lapsed, delay cannot be regularised because payment was deposited by the applicants late on their own which has not yet been regularised. Hence, it would not be prudent to regularise these cases.

The refund may be made as per the policy. Hence, plots available may be included in the next draw.”

21. The above noting clearly reveal that the allottees, namely, Ms. Swaran and Mr. Vishwa Raj Saxena have been discriminated

against. They have not been treated like other defaulters who had also belatedly made payments but as per policy decision taken in 1998, their defaults were condoned. This aspect was most relevant but was ignored and not considered in the above noting. In fact, having retained full consideration, though belatedly paid, for a period of over five years, the two cases were on a better pedestal than other cases in which delay was condoned. It appears that this fact that the consideration paid was retained for over five years without action, went against the two allottees.

22. DDA being "State" and public authority cannot discriminate and is required by mandate of Art. 14 of the Constitution to treat each allottee in a similar manner and a like. DDA cannot pick and choose, condone delay of more than 180 days in some cases but refuse to examine other cases of condonation of delay beyond 180 days. Policy decision taken on 29th Oct., 1998 should have been applied to all such cases, without any discrimination and favouritism. Policy decision taken on 29th October 1998 was not illegal and

contrary to any statute. It may be noted that under the Nazul Land Rules there is no specific provision which bars extension of time for making payments in cases of allotments of this nature.

23. DDA has been given a virtual monopoly for development and allotment of land/flats in public interest and for public welfare. Providing accommodation to homeless and those belonging to lower economic strata of the society has a public purpose. Proper housing accommodation is a natural and a basic requirement. DDA should act reasonably and fairly, conscious of the civil and evil consequences that the citizens may be visited with by its action. Fairness should be perceptible in its action. Rights and obligations of those affected have to be kept in mind. ***Salus populi est Suprema Lex***, regard for public welfare is the highest law. Even contractual matters should satisfy test of Art.14 of the Constitution. Decision should not be arbitrary, capricious, discriminatory or illegal, irrational and bad for want of procedural impropriety.

24. DDA is a public authority which is established for the

welfare and well-being of the citizens and to ensure proper development of Delhi, the capital of India. One of its objectives is to provide housing to those who do not own any property in Delhi. The present Scheme was floated in the year 1981. Only persons belonging to Lower Income Group whose total annual income was below Rs.10,000/- were entitled to apply for allotment. Another requirement was that they should not own any property in Delhi. The plot size for which allotment could be requested were between 26 sq.mts. to 90 sq.mts. Persons were required to deposit Rs.2000/- in the year 1981 for registration. It is only after waiting for more than 15 years that for the first time, in present cases letters of allotment were sent. DDA at that stage wanted that substantial payment for the plots to be made within 90 days. However, it is apparent that DDA itself realised that keeping in view the income and the economic background of the allottees, there could be defaults. These defaults were condoned in several cases.

25. Defaults in cases upto 8th draw of lots were admittedly

condoned. In 1998 also defaults in making belated payments by allottees in 9th draw of lots were condoned. Again, on 24th August 2004 a policy decision was taken to condone defaults upto one year in making payments. Such policy decisions to condone defaults in belated payments have been taken under other schemes also (see policy dated 5.11.1998 quoted in the decision of the Supreme Court in ***Delhi Development Authority Versus Joint Action Committee, Allottee of SFS Flats and Ors.*** decided on 13.12.2007 . As per the said policy belated payments upto one year and six months could be condoned by the Principal Commissioner and beyond the said period by the Vice Chairman). There is no reason why the two allottees in the present case should not be treated in the like manner.

26. Whenever such policy decisions are taken, keeping in mind the adverse impact it can have on citizens, wide publicity and warning should be given. There should be transparency and public must be made aware of the consequences and results of failure,

specially when there is change in policy. DDA being a public authority is required to take policy decision on several aspects and every eventuality need not be contained in the Nazul Land Rules or the DDA Act. However, DDA must maintain openness and policy decisions taken from time to time must be informed and circulated amongst the general public as it is the public which is affected by the said policy decisions and has right to know the same. Admittedly till 8th draw of lots delay in payments were condoned subject to conditions. If there was change in policy and it was decided not to extend time beyond 180 days, it should have been widely circulated and informed. The file noting in the present cases show that even the officers and staff dealing with the files were not aware of any such policy. There was lot of adhocism and uncertainty. Policy decision taken in 1998 was to condone defaults by allottees of 9th draw of lots, as was done in cases of 7th and 8th draw of lots, but the said decision was not applied in cases of the two allottees for five years till 2003. This is unfortunate, leads to arbitrariness and

therefore actions of the authorities is discriminatory and violates Article 14 of the Constitution of India. All cases of late payment under the 9th draw of lots should have been treated alike and the cases of the two appellants should have been cleared under the policy decision taken in file no. F.30(164)96-LSB (Rohini).

27. Learned counsel for the DDA emphasised that as per the policy decision of the DDA prevailing in the year 1996-98, default beyond 180 days in payment of allotment money cannot be condoned. This stand is also reflected in the counter affidavit filed by the DDA but the same is not borne out from the records. We have already quoted the noting made in the files in 1997 to the effect that there was no policy decision with regard to the belated payments made beyond 180 days. In fact the file noting show that delays beyond 180 days in the 7th and 8th draw of lots had been condoned. Thereafter, in 1998 the Vice Chairman, DDA took a decision that delays in making payments as in the case of 7th and 8th draw of lots should be condoned/rectified subject to certain

conditions and the earlier policy decision should be followed. Policy decisions once taken must be circulated and should be brought to the knowledge of the officers concerned so as to prevent discrimination and to ensure there is uniformity and consistency.

28. There is another reason why we feel that the allottees-appellants are entitled to succeed. Payments though belatedly made were admittedly made in 1997. DDA was aware of the said payments and enjoyed the amount paid to it. It is only in March, 2003, after a gap of five years that DDA turned around and stated that the delay in making payments cannot be recognised and in fact the allotments stand cancelled automatically (Refer ***R.K. Saxena Versus DDA*** reported in JT 2001(4) SC 340 on acceptance by conduct in case of belated payments). The file noting reveal that DDA itself was uncertain during the period 1996 to 1998, as what is to be done in cases where payments beyond 180 days had been made. In 1998 it was decided to condone delay beyond 180 days. The file noting from the year 2000 onwards show that the officers of

DDA were aware of the policy decision taken in October/November, 1998 but matter had remained pending till March, 2003. Retaining payments over a long period of time does raise equity in favour of the two allottees. This fact cannot be ignored and not inconsequential and has not been given due weight age. Ignoring it, will amount to illegality and procedural irregularity. The decision taken by DDA to cancel allotments after a gap of five years and after having retained payments for five years cannot be regarded as fair and falls foul of the Wednesbury's Principle of Reasonableness.

29. Under the Transfer of Property Act, 1882 time is not normally regarded as an essence of contract in transactions relating to immovable properties, unless intention of the parties is to the contrary. Conduct of DDA whereby it condoned delays and belated payments shows that DDA itself did not regard time as essence of contract. Even as per stand taken by DDA delays upto 180 days have been condoned inspite of the two clauses in the allotment letter. Belated payments in the 7th and 8th draw of lots beyond 180

were condoned. File noting reveal that no decision was taken whether or not to condone delay beyond 180 days till 1998. In 1998 also in some cases default beyond 180 days was condoned. In 2004 again it was decided to condone delay in payments. Thus the contention of DDA that time was essence of contract, cannot be accepted. Past conduct of DDA and file noting are contrary to the stand and position taken by DDA. In ***Panchanan Dhara versus Monmatha Nath Maity***, reported in (2006) 5 SCC 340 , it was observed;

“We have noticed hereinbefore that the courts below arrived at a finding of fact that the period of performance of the agreement has been extended. Extension of (sic time for performance of a) contract is not necessarily to be inferred from written document. It could be implied also. The conduct of the parties in this behalf is relevant.”

30. Similarly, in **Swarnam Ramachandran v. Aravacode Chakungal Jayapalan**, reported in (2004) 8 SCC 689 , the Supreme Court has opined :

10. The key issue which is to be decided in this civil appeal is: whether time was the essence for payment of Rs 75,000 on or before 30-9-1981 and whether the said term was breached. This question does not depend only upon express stipulation made by the parties, but it also depends upon the intention of the parties. Notwithstanding that a specific date was mentioned in the agreement, one has not only to look at the letter but also at the substance of the contract. Whether time is of essence is a question of fact and the real test is the intention of the parties. It depends upon the facts and circumstances of each case.

11. According to Pollock & Mulla: Indian Contract & Specific Relief Acts [(2001), 12th Edn., p. 1086], the intention can be ascertained from:

- “(i) the express words used in the contract;
- (ii) the nature of the property which forms the subject-matter of the contract;
- (iii) the nature of the contract itself;
- and
- (iv) the surrounding circumstances.”

12. That time is presumed not to be of essence of the contract relating to immovable property, but it is of essence in contracts of reconveyance or renewal

of lease. The onus to plead and prove that time was the essence of the contract is on the person alleging it, thus giving an opportunity to the other side to adduce rebuttal evidence that time was not of essence. That when the plaintiff pleads that time was not of essence and the defendant does not deny it by evidence, the court is bound to accept the plea of the plaintiff. In cases where notice is given making time of the essence, it is duty of the court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case. That a vendor has no right to make time of the essence, unless he is ready and willing to proceed to completion and secondly, when the vendor purports to make time of the essence, the purchaser must be guilty of such gross default as to entitle the vendor to rescind the contract.”

31. Learned counsel for DDA also argued that there are large number of cases of similar type and nature. It was therefore submitted that allowing the allotment in cases of belated payments will open up pandora's box which will cause immense loss of revenue to the DDA. The noting in the files, however, reveal that

there are only four such cases of 9th draw of lots wherein payments were received belatedly, as is apparent from the file noting quoted above. Number of cases cannot be a ground to formulate of different policy and discriminate.

32. Applying the above principles to the facts of the present case, we find that there is no justification and reason to treat time as the essence. In the original agreement dated 18-2-1981, there is no express stipulation to show that the intention was to make the rights of the parties dependent upon the observance of the time-limits. Time limit was imposed in the allotment letter issued by the DDA. Equity treats the importance of such time-limits as being subordinate to the main purpose of the parties. (See, ***Jamshed Khodaram Irani versus Burjorji Dhunjibhai*** reported in AIR 1915 PC 83.)

33. It may be noted that allotment letter merely records that in case of failure to make payment, the allotment shall stand cancelled. The allotment letter does not say that registration under the Scheme

shall stand cancelled in case payments are not made as per schedule. Now the stand taken by the DDA is that registration under the Scheme itself shall stand cancelled because of failure to make payments in terms of the allotment letter.

34. In view of the findings recorded by us above, we find no merit in LPA No.2594/2005 filed by the DDA against Ms. Swaran. The Appeal is dismissed.

35. We allow LPA No.1110/2007 filed by Mr.Vishwa Raj Saxena against DDA. The impugned Order by which allotment of Mr.Vishwa Raj Saxena was cancelled is quashed. DDA is directed to restore allotment in favour of Mr.Vishwa Raj Saxena subject to payment of restoration charges and interest in respect of belated payments in terms of the 2004 policy. DDA will indicate restoration charges and interest within period of three weeks from today and revised demand-cum-allotment letter will be issued. In case the plots in question have been allotted to third parties, DDA will allot new plots preferably in the same locality or in a nearby area. The

allottees will deposit the interest amount and the restoration charges within six weeks of the receipt of the allotment letter. DDA is further directed to complete all formalities and handover possession within four months from today. Allottees are also entitled to costs which is assessed at Rs.5000/- in each case.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

JANUARY 11, 2008.
P