

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

+ W.P.(C) 21146/2005

DR.KUMAR NATH CHATTORAJ Petitioner
Through Mr. Anand Yadav, Advocate.

versus

D.D.A. Respondent
Through Mr. Gaurav Sarin & Mr. Yatinder
Choudhary, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
17.03.2008

1. Mr. Anand Yadav, Advocate seeks permission to file an affidavit in the Court. Permission is granted. Affidavit is taken on record. This affidavit has been filed pursuant to order dated 24th July, 2007 whereby the petitioner was asked to submit following information:-

- i. (Response to) stand taken in the counter affidavit.
- ii. PAN number of the petitioner.
- iii. Source of funds from which the petitioner made the deposits with DDA.
- iv. Account maintained by the petitioner, if any, with South Indian Bank Limited.
- v. Whether the petitioner is an income tax payee and if yes, returns for last three years.

vi. Whether in the income tax returns, if file, petitioner intimated capital expenses incurred for acquired immovable property.”

2. These informations were required to be submitted in view of what is stated in paragraph 2 of order dated 24th July, 2007, which reads as under:-

“ Accordingly, it is directed that the petitioner here will in addition to filing a detailed affidavit on the above aspects also indicate why he himself needs the flat although admittedly he is today in Kolkata. Needless to mention that the affidavit will be signed by the petitioner himself. The affidavit be filed within ten days.”

3. The petitioner was allotted plot No. 49, Pocket No. C-III, Sector 28, Rohini, Phase IV, Delhi by allotment letter dated 1st September, 2003. It is stated in the writ petition that the petitioner deposited part payment of Rs.1,17,300/- vide challan dated 4th November, 2003, but he could not make payment of the balance amount in terms of the allotment letter. Thereafter, another payment of Rs.2,50,000/- was made on 7th April, 2005. The aforesaid payment was beyond the time given in the allotment letter. The respondent-DDA had cancelled the allotment on failure of the petitioner to make payment within time. The petitioner has filed the present writ petition for quashing and setting aside the cancellation order and for direction to respondent-DDA to make allotment of the plot in question or any other similar plot.

4. It may be noted here that the writ petition has not been signed and supported by an affidavit of the petitioner. It is supported by an affidavit of one Mr. Sanjay Bhasin, an attorney of the petitioner. DDA in the counter affidavit has pointed out that the petitioner is a resident of Berhampore, District Murshidabad, West Bengal. It is stated in the counter affidavit that payments in question were actually made by third parties and not by the petitioner.

5. Additional affidavit filed by the petitioner discloses that the payments made to DDA were not from the bank accounts of the petitioner. On the other hand, it is stated by the petitioner that he had requested his friends viz. Mr. Lalit Kumar and his brothers, whose address has not been disclosed, to deposit the amount demanded by DDA and the bank drafts were prepared by them. It is further stated that bank drafts of Rs.50,000/- or above are not issued by deposit made in cash and, therefore, three separate demand drafts of Rs.39,100/- were prepared by depositing money in cash in three separate banks. It may be relevant to state here that DDA in their counter affidavit has given complete break up of the demand drafts received and the persons on whose request the demand drafts were issued as per the issuing bank. The relevant details are given as under:-

“ It is further submitted that on verification in respect of deposit of installments in the present case, it has been noticed that the 1st

installment of Rs.1,17,283/ deposited through challan bearing no. 10933903 on 04.11.2003 in the Central Bank of India were by three different persons from two different banks. The details are as under:-

Bank draft and date	Amount	Name of the bank, branch draft drawn	Name of the person who applied for the bank draft
167333 04.01.2003	Rs.39,100	SBI East Park road	Sh. Vijay Kumar, 8752, Shidi Pura, Karol Bagh, New Delhi.
167337 04.11.2003	Rs.39,100	SBI East Park road	Sh. Vibhu, B 4/25, Sector 15, Rohini, New Delhi
139318 04.11.2003	Rs.39,100	SBI Rohtak Road	Sh. Rohit, 8752, Shidi Pura, Karol Bagh, New Delhi

As far as the second and third installment is concerned, the amount of Rs.2,50,000/- was deposited vide challan no. 31523 dated 07.04.2005 in the State Bank of India after drawing 2 bank drafts from two different banks by two different persons. The details are as under:

Bank draft and date	Amount	Name of the bank, branch	Name of the person who applied for the bank draft
100761 dt 16.03.05	Rs.1,25,000	State Bank of Bikaner and Jaipur, bara Hindu Rao, Delhi	Sh. Nitin Behal, r/o 8738, Sidipura, Karol Bagh, New Delhi

30300 dt 16.03.2005	Rs.1,00,000	Bank of India, Asaf Ali Road, New Delhi	Sh. Vijay Kumar, M/s Rohtash Tempo, Transport Service, K/4, New Colony, behind Filmistan Cinema, Delhi
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6. These details have been admitted by the petitioner in his additional affidavit. It is also stated by the learned counsel for the petitioner that aforesaid deposits have not been shown as loan received by the petitioner from the said third parties in his income-tax returns. The petitioner is an income-tax payee.

7. The case in question is covered by the decision of this Court in W.P. (C) No. 18603/2005 titled ***Nirmal Chugh versus Delhi Development Authority***.

8. In view of the above, it is apparent that the petitioner has already entered into a transaction for sale/transfer with a third party for the plot in question and, therefore, he is not entitled to any relief.

9. Mr. Anand Yadav, Advocate, however, still submits that the petitioner has not sold the plot in question. However, learned counsel contradicts himself in his next statement that the petitioner has every right to sell the plot. It is lastly submitted that several other allottees have also entered into

similar transactions. In the present case, the petitioner even before getting possession of his flat has apparently entered into a transaction for sale of the plot with a third party. It will not be appropriate for this Court to exercise and grant discretionary relief to the petitioner. If relief is granted in such cases, it will encourage third party transfers and property dealers to enter into speculative agreements. In view of supply constraints, it will prevent DDA from allotting plots/flats to genuine buyers, who require roof over their head for their personal use and residence. Article 14 prevents discrimination but the petitioner cannot claim discrimination on the basis of illegalities. It may be also noted here that there was delay of about 459 days in making payment of Rs.2,50,000/-, which was payable as per demand-cum-allotment letter on or before 3rd January, 2004. As per policy of DDA, delay beyond 360 days cannot be condoned. Delay in the present case is more than 360 days. In the present case, I do not think the petitioner has been able to make out an exceptional case, which will justify this Court in condoning the delay in payment of 459 days.

The writ petition is accordingly dismissed.

SANJIV KHANNA, J.

MARCH 17, 2008

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