

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

+ W.P.(C) 5950/2008 & CM Nos. 11380-81/2008

% DATE OF DECISION: 18.08.2008

ARVIND KUMAR BHASIN ..... Petitioner  
Through Mr. Baldev Singh &  
Mr. Mir Akhtar Hussain, Advs.

versus

D.D.A. .... Respondent  
Through Mr. Gaurav Sarin, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

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|---------------------------------------------------------------------------------|----|
| 1. Whether the Reporters of local papers<br>may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not?                                           | No |
| 3. Whether the judgment should be<br>reported in the Digest?                    | No |

**VIPIN SANGHI, J. (Oral)**

1. Notice to show cause as to why rule nisi be not issued. Mr. Gaurav Sarin accepts notice on behalf of the DDA.

2. I have heard counsel for the parties. In the facts of this case, in my view no counter affidavit is called for, since the facts as disclosed in the writ petition stand substantially admitted by the respondent. With the consent of parties I proceed to dispose of the writ petition.

3. The petitioner was registered under the Festival Housing Scheme, 2004 (FHS-2004). His name was included in the draw of lots and he was allotted flat bearing No.514, 10<sup>th</sup> Floor, Sector 12, Pocket-

B, Category-3 in Dwarka, Delhi on 18.2.2005. As per the terms and conditions of the demand letter, requisite amount was to be deposited by 17.8.2005. The petitioner could not deposit the requisite amount within the said period and in fact deposited the amount on 31.8.2005 thereby entailing a delay of 14 days. The reason for petitioner's inability to deposit the aforesaid amount was that the petitioner's wife at the relevant time was seriously ill. She was pregnant and due to complications in her pregnancy she delivered a premature baby girl. The petitioner, therefore, could not arrange the loan to finance the purchase of the flat. He, eventually, arranged for a housing loan and paid the amount, though somewhat late. He has been paying interest on the said loan obtained by him. The petitioner sought condonation of delay of 14 days in making the payment. However, the respondent rejected the said request of the petitioner. Consequently the petitioner filed WP(C) No.6318/2003 in this Court which was disposed of on 27.8.2007. In the course of the judgment the Court made the following observations:

"5. This Court had repeatedly noticed the various policies which have been notified from time to time by the DDA for condonation of delay and restoration of the cancellation. The DDA had itself realized the fact that there may be genuine cases wherein the delay would require to be condoned. The DDA had consequently notified the officers who would be authorized and competent to deal with the request for condonation of delay and restoration of the allotment of flats as also the period of delay which they could consider. "

"7. The order dated 10<sup>th</sup> August, 2006 which has been placed before this Court at page 56, merely refers to the terms of demand-cum-allotment letter and repeats the same. The officer does not even choose to refer the policy of restoration or to consider the reason given by the petitioner in the light of the policies in

respect thereof. The power for restoration and condonation of delay given to the authorities has to be exercised in such a manner that justice results to all persons. The amount deposited by the petitioner is lying with the DDA.”

The Court also observed that the petitioner had given the reason for 14 days delay which appeared to be bona fide and genuine. The Court directed the respondent to consider the representation of the petitioner afresh.

4. By the impugned order the respondents have again rejected the representation of the petitioner. As aforesaid, there is no dispute on the facts of this case and the genuine inability of the petitioner is not in question. The only reason given by the Director (Housing-I) of the DDA while passing the impugned order dated 10.10.2007 is that as per the provisions of the scheme no authority has power to re-examine and restore the allotment. It is further observed that though the reasons for delay are genuine, but the matter cannot be regularized as there is no provision for regularizing the delay under FHS-2004. It is clearly laid down in the brochure that no extension of time beyond the date of automatic cancellation would be given and no restoration would be allowed once the flat is automatically cancelled due to non-payment.

5. In my view, considering the fact that reason for delay of only 14 days is admittedly found to be genuine, the delay in the peculiar facts of this case deserve to be condoned. The DDA is a statutorily created organization entrusted with the task of, inter alia, providing housing to the needy population of Delhi. It has to deal with human beings and should have a humane and considerate approach.

Therefore, DDA cannot be indifferent to genuine difficulties that may arise in a given case and should be in a position to appropriately deal with the situation. While it is true that DDA should follow its policies uniformly and without favour or discrimination, it is equally true that the policies should be comprehensive enough to deal with special and exceptional situations, based on objective and reasonable criteria. Else, in the name of uniformity and even handed treatment, a genuine and deserving case would suffer. The limitation on the power of the respondent under the scheme in question does not inhibit this Court and does not prevent this Court to condone the delay to meet the ends of justice. Consequently, I allow this writ petition and direct the respondent to allot to the petitioner Flat No.514, Pocket-8 Sector 12, Dwarka if the same has not been allotted to any other person and in case the said flat has already been allotted to some other person, to allot to the petitioner another flat of the same category in the same locality within four weeks. This is, however, subject to the petitioner making payment of interest for the delay in making payment upto 31.8.2005 and restoration charges as per the policy, upon the same being communicated to the petitioner within two weeks.

The petition stands disposed of in the aforesaid terms.

**VIPIN SANGHI  
JUDGE**

**AUGUST 18, 2008**  
**aj**