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

+ W.P.(C) 453/2008

% ***Judgment Delivered on: 16.12.2009***

AMAR NATH HIRA Petitioner

Through : Mr. R.K. Saini, Adv.

versus

D.D.A. Respondent

Through : Mr. Pawan Mathur, Adv.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

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

G.S.SISTANI, J. (ORAL)

1. Rule.
2. With the consent of the parties, writ petition is set down for final hearing and disposal.
3. Brief facts of the case, which are necessary for disposal of the writ petition, are that the petitioner was registered under the New Pattern Registration Scheme, 1979, for allotment of an LIG flat in the year 1979 vide Registration No.25047. The petitioner vide application dated 25.08.1989 sought conversion of the category of the flat from LIG to MIG and also paid Rs.8260/- including (Rs.500/- towards conversion charges). Vide order dated 28.09.1989, the petitioner was intimated that conversion of his

registration from LIG to MIG category has been acceded to and he would be allotted a fresh priority number at the tail end.

4. It is the case of the petitioner that after a long wait of over 24 years he was finally allotted an MIG flat bearing No.95, Sector 19, Pocket – 1, Third Floor, Dwarka, Delhi, vide draw held on 26.12.2003. Consequent thereto, he was issued a demand-cum-allotment letter dated 27.02.2004 on hire purchase basis at the total cost of Rs.9,44,360/-. As per the demand-cum-allotment letter, petitioner was required to make the payment of Rs.5,17,360/- towards initial deposit by 26.07.2004 and the balance amount was to be deposited in 120 equal monthly installments. Much prior to the last date of making the payment i.e. 26.07.2004, the petitioner vide letter dated 01.06.2004 sought conversion of payment from hire purchase to cash down basis and also requested for issuance of a fresh demand-cum-allotment letter. The respondent – DDA issued a fresh demand letter on cash down basis in respect of the said flat to the petitioner having block date of 06.07.2004, however, inadvertently the date for making the payment remained unchanged as per earlier demand letter dated 27.02.2004. As per this demand letter, the petitioner was required to pay Rs.5,62,542/- towards the initial deposit to be paid upto 26.06.2004 and the balance amount of Rs.4,21,009.04 was to be paid upto 10.07.2004.
5. It is contended by learned counsel for the petitioner that the letter dated 06.07.2004 was issued by mistake as payment sought to be made was on a date prior to the issuance of demand letter. It is further contended that on 30.11.2004 the petitioner deposited a

sum of Rs.1.00 lakh, receipt of which has not been denied by the DDA.

6. Learned counsel for the petitioner submits that petitioner is a senior citizen of over 75 years of age, who had met with an accident, he fell from the staircase and, thus, on account of finances being utilized for medical needs, he could not make the balance payment to the DDA, due to which the flat was cancelled by the DDA. The petitioner was informed by the DDA about the cancellation of flat vide letter dated 18.03.2005. Counsel further submits that petitioner made various visits to the offices of the DDA thereby requesting them for restoration of his allotment on the ground that he is an aged senior citizen and was not able to make the payment on time because of poor health conditions and sudden financial crunch due to the accident. Counsel also submits that the petitioner even explained the reasons that after making the payment of Rs.1.00 lakhs he had fallen from the staircase and had become permanently handicapped and remained bed ridden for a long period of time and thus could not deposit the balance payment. Counsel next submits that the petitioner has also made numerous representations to the high officials including the officers of the DDA. On 01.05.2007 the petitioner was informed that his request for restoration of the flat had been turned down and at best he would be entitled for refund. Aggrieved by the response received by the DDA, the petitioner has knocked the doors of this Court to seek justice.

7. Learned counsel for the petitioner submits that petitioner could not make the payment within the time allowed due to bona fide

reasons and on account of his having fallen from the staircase, which rendered him permanently handicapped. Counsel further submits that the money could not be deposited by the petitioner, firstly on the ground that he wanted the flat to be converted from hire purchase scheme to cash down basis, and, in case, he continued under the Hire Purchase Scheme he would be burdened with a heavy interest, which the petitioner was not able to bear. Petitioner was confident that in case the allotment of the flat is converted to cash down basis, it would be easier for the petitioner to arrange the money. The other reason as stated by learned counsel for the petitioner for not making the payment is acute financial hardship suffered by the petitioner on account of money having been spent by the petitioner on his health due to his accident. Counsel also submits that in such a case where, despite allotment letters having been issued if there is default in making the payments, the DDA has formulated various policies to accommodate such persons. Counsel for the petitioner relies upon the policy dated 31.03.1999 in order to canvas her argument that in case the amount is not paid within the time allowed, there is a discretion vested in favour of the respondent to grant extension of time upon charging interest, restoration charges, etc. It is also contended that the DDA also released an office Order dated 01.06.2000, wherein the guidelines have been laid down which are to be considered by the Department while condoning the delay.

8. It is contended that the grounds given in this office order are only illustrative and are not exhaustive.

9. Per contra, learned counsel for the respondent – DDA has vehemently opposed this petition primarily on the ground of delay and laches. It is contended by learned counsel for the respondent – DDA that the petitioner deserves no sympathy as he was allotted a flat way back in the year 2004. Thereafter he did not make the payment but only delayed payment on account of flimsy grounds. It is further submitted that the case of the petitioner cannot be considered, as per the policy, as the petitioner did not even make 10% of the payment, although he deposited Rs.1.00 lakhs on 30.11.2004. It is next contended that the case of the petitioner would nowhere be covered by the Office Order dated 01.06.2000, which shows that only such people are to be accommodated where the bread winner of the family dies, or where the allottee has deposited the confirmation amount as well as 25 % of the total amount demanded and also after a particular period the concession can be granted by the Vice-Chairman or the Lieutenant Governor.

10. Learned counsel for the respondent – DDA submits that petitioner is a defaulter. It is submitted that the demand-cum-allotment letter itself has made a provision for automatic cancellation of the allotment in case the amount is not paid within the time allowed. Counsel further submits that the petitioner has been shifting his stand as to why he could not make the payment although in his communications addressed to the DDA the petitioner has been referring to some 'windfall', however, despite this windfall the petitioner did not make the payment, which shows that the petitioner, in fact, had no intention to make the payment. Counsel

also submits that in any case the New Pattern Registration Scheme already stands closed and therefore in any case the petitioner succeeds he cannot be granted another flat.

11. In rebuttal, learned counsel for the petitioner has relied upon a decision rendered by a Division Bench of this Court in LPA No.188/2008 titled as *Raj Kumar Sharma Vs. Delhi Development Authority*.
12. While noticing the facts wherein a Single Judge of this Court had dismissed the writ petition on the ground that the appellant never intimated the respondent about his financial difficulty on account of illness of his mother, as also the petitioner did not meet the parameters laid down in the Office Order dated 01.06.2000. The Division Bench noticed the submission made by learned counsel for the petitioner that at the relevant time he was suffering huge financial constraints due to illness and treatment of his mother and thereafter he had deposited some money. The relevant portion of this Order passed in LPA No.188/2008 reads as under:

“We have given our anxious consideration to the arguments made at the Bar and we have also gone through the records including various policies of the DDA regarding restoration and condonation of delay. In the present case the appellant had waited for the allotment for over 24 years and when he was allotted the demised flat in the year 2003, he was not in a financial position to make payment due to illness of his mother. The appellant has cited in paragraph 17 of the writ petition cases of allottees Bimla Devi, Asha Bhushan, Suresh Humdraj Prithyani and Surinder Bhatia etc. in which cases DDA has condoned delay of over four years whereas in the case of the appellant the delay in payment was only for a year. The appellant has also furnished three specific examples where in the case of Satya Pal and Rita Pura delay of five years and six years respectively was regularized after approval of Lt. Governor. In the third case of one Manju Jain, the DDA had restored allotment after about 17 long years.”

13. Learned counsel for the petitioner also relies upon a decision of the Single Judge of this Court in WP(C)No.11148/2005 titled as *Ashok Kumar Bisarya Vs. Delhi Development Authority*, wherein the delay in making the payment was condoned. Learned counsel for the petitioner submits that on appeal the Division Bench has also upheld this judgment. Besides, learned counsel for the petitioner contends that in large number of cases, the DDA has condoned the delay and has charged interest and restoration charges and two such instances have been given in the writ petition itself.

14. I have heard learned counsel for the parties and also taken into consideration their rival contentions. The basic facts, which are not in dispute are that the petitioner had applied under the New Pattern Registration Scheme for allotment of a flat. The flat was converted from LIG to MIG and subsequently, a demand-cum-allotment letter was issued to the petitioner on 27.02.2004. The last date of making the payment was 21.07.2004, however, the petitioner made a representation to the DDA for converting the flat from hire purchase to cash down basis. This request of the petitioner was acceded to and time was extended to make the payment. It is not disputed that the payment has not been made within the time allowed. Except that on 30.11.2004 the petitioner deposited a sum of Rs.1.00 lakhs with the DDA, a specific averment has been made in the writ petition that due to fall from the staircase the petitioner suffered badly and has become permanently handicapped. Bare reading of the policies and the Office Orders which have been placed on record would show that

the aim, object and purpose of formulating these office orders and policies, as stated in the Preamble, is that sometime on account of problems faced by the concerned allottees, the payments received by the DDA are later than the scheduled dates and thus the delay is to be condoned in appropriate cases.

15. There is force in submission of learned counsel for the respondent – DDA that the petitioner has not been able to satisfactorily explain the grounds for delay in assailing the order of cancellation. During the course of submission, it has not been denied that there is a power, which is vested in the DDA and which is exercised in appropriate cases for restoration of those flats, which stood cancelled on account of non-payment of money within the time allowed. There is also no dispute that the petitioner has only deposited Rs.1.00 lakhs and that also on 30.11.2004. Therefore, the prayer of the petitioner that the flat should be restored on his paying same interest and restoration charges cannot be allowed. However, taking into consideration that petitioner is over 75 years of age, he is ailing and infirm, and the fact that he is now permanently handicapped and in view of the fact that the policies do not lay any bar that in cases where substantial amount is not paid there would be a direct bar for condonation of delay, I am of the view that to meet the ends of justice the flat of the petitioner should be restored upon his making the payment as per the current cost for which learned counsel for the petitioner submits that his client has no objection. The respondents are, thus, directed to issue fresh demand-cum-allotment letter to the petitioner within a period of three months after adjusting the

amount of Rs.1.00 lakh. The petitioner will be entitled to make the payment as per the schedule to be fixed in the allotment-cum-demand letter. Upon receipt of payment, possession of the flat will be handed over to the petitioner within a period of one month. Learned counsel for the petitioner agrees that in case the amount is not paid by the petitioner his client will not ask for condonation of delay. Consequently, writ petition is disposed of in above terms.

16. No order as to costs.

December 16, 2009
'msr'

G.S. SISTANI, J.