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HIGH COURT OF DELHI : NEW DELHI

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W.P. (C) 6997/2007

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**Judgment reserved on : 11.12.2008
Judgment delivered on: 07.01.2009**

R.K. SINGH

..... Petitioner
Through: Mr.R.K.Saini with Mr. Nikhil Bhalla,
Advocates.

versus

D.D.A.

..... Respondent
Through: Mr. Yeeshu Jain, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

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

VIPIN SANGHI, J.

1. In challenge in this writ petition is the decision of the respondent DDA in refusing to condone the delay in making payment by the petitioner in respect of plot No.58, Pocket-7, Block-B, Sector-4, Rohini, Delhi. The petitioner was made allotment of the aforesaid plot by the DDA after the petitioner had preferred a writ petition in this Court, being W.P(C)No.1608/2002, and on the making of a statement by counsel for the DDA that the name of the petitioner would be included in a draw of lots to be held soon. Since the learned Single Judge did

not determine the rate at which the allotment ought to be made, the petitioner preferred a Letters Patent Appeal. According to the petitioner, his priority had matured in the year 1989, and the rate that the respondent could charge is the rate prevalent in the year 1989. The allotment was made during the pendency of the LPA, but at the rate prevalent on the date of issuance of allotment letter dated 09.02.2003.

2. The aforesaid contention of the petitioner was rejected by a Division Bench of this Court in L.P.A. No.689/2002 on 22.05.2003. Not satisfied, the petitioner preferred a Special Leave Petition being SLP No.10869/2003. The Supreme Court vide order dated 19.06.2003 directed that the allotment made to the petitioner be not cancelled by the respondent. During the pendency of the Special Leave Petition, on 07.07.2005 the petitioner deposited the amount demanded by the respondent at the rate prevalent on the date of allotment. Thereafter, the petitioner withdrew the Special Leave Petition and the same was dismissed as withdrawn on 25.11.2005. The petitioner demanded the respondent to communicate the interest payable by him on delayed payment and also demanded possession of the plot. The respondent issued a communication dated 29.06.2006 refusing the request of the petitioner on the ground that the payment had been made by way of 13 different bank drafts through 7 different persons other than the petitioner. The petitioner challenged the aforesaid decision of the DDA by filing W.P.(C) No.11331/2006, which was allowed by the Court on wpc6997.07

13.11.2006. It was directed that the respondent should reconsider the issue after giving due opportunity to the petitioner to explain the source of the funds deposited by him. The respondent thereafter issued a notice dated 07.02.2007 to explain the circumstances in which payment had been made by seven different persons on his behalf. The petitioner responded to the same by furnishing a reply.

3. From the record of the respondent produced by the petitioner it appears that the Principal Commissioner made a noting to the effect that the explanation furnished did not completely satisfy the position with regard to the payment made on the petitioner's behalf. However, he noted that this may not be held against the petitioner for not regularizing the delay for making payment . On the aspect of regularization of delay of over one year in making the payment, it was noticed that the delay in depositing the amount was 844 days. He noted that there is no extremely deserving ground for condonation of delay. He observed that the petitioner did not find merit in his own case on the issue of costing of the plot, and therefore, he had withdrawn the Special Leave Petition in the Supreme Court. This noting was accepted by the Lt. Governor. The petitioner was thereafter communicated the impugned decision vide communication dated 24.08.2007.

4. The case of the petitioner on merits was that he had applied under the Rohini Residential Scheme for allotment of an MIG plot under the reserved category of Scheduled Castes by clearly declaring himself

as belonging to the Scheduled Caste. This declaration was made in column 10 of the application form. He had also annexed a Scheduled Caste certificate. According to the petitioner, the DDA treated his case as a general category applicant. He states that consequently his name was not considered while making allotment to the reserved classes during the period 1982-89 when the list of reserved category applicants was exhausted. According to the petitioner, he learned about his not being included in the process of allotment of plots to the reserved category applicants in 1998 and started making representations thereafter. In the year 2000, the petitioner preferred W.P(C) No.1608/2002 to seek a writ of mandamus to the respondent DDA to allot an MIG plot in a developed sector to the petitioner at the price prevalent in the year 1989. On 31.7.2002, the writ petition was disposed of by a learned single Judge of this Court upon the DDA making a statement through its counsel that the name of the petitioner will be included in the draw of lots to be held immediately. Since the issue with regard to the manner in which the allotment would be made was left undecided by the learned single Judge, as aforesaid, the petitioner had preferred LPA No.689/2002.

5. During the pendency of the appeal, the DDA held a draw of lots and allotted plot No.58, Pocket 7, Block B, Sector IV, Rohini, Delhi admeasuring 60 sq.mts. This was informed to the Division Bench on 20.1.2003. The DDA took time from the Division Bench to inform the rate at which the allotment was made. On 9.2.2003, the DDA issued

an allotment letter demanding a total premium of Rs.6,81,450/-. This amount was calculated at the current rate, after adjustment of the registration amount and the interest accrued thereon. The petitioner was required to deposit a sum of Rs.6,68,907/-. On 22.5.2003, the Division Bench dismissed the petitioner's LPA. The petitioner preferred a SLP before the Supreme Court and as aforesaid, during the pendency of the Special leave Petition, the cancellation of the allotment made by the DDA was stayed in favour of the petitioner. While the matter was still pending consideration before the Supreme Court, the petitioner deposited the amount of Rs.6,69,000/- with the DDA on 7.7.2005, subject to decision of the Supreme Court in the SLP. Thereafter the Special Leave Petition was dismissed as withdrawn on 25.11.2005.

6. Learned counsel for the petitioner submits that merely because the petitioner had sought to agitate his rights, he could not be made to suffer. The petitioner was, on the basis of the merit in his case with regard to the amount demanded by the DDA, granted interim orders of protection against cancellation of his allotment inter alia, by the Supreme during the pendency of the SLP. Merely because the petitioner has subsequently withdrawn the SLP after having paid the amount demanded as he preferred to buy peace rather than be tied up in litigation, he cannot be visited with the cancellation of the allotment on the ground that the delay in his case in making the payment cannot be condoned. In support of his submission, learned counsel for the petitioner relies on a decision of this Court in **S.R.Yadav V. DDA** in

W.P(C)No.12517/05 decided on 19.9.2005. By this judgment two similar cases were decided by the court. In the case of **S.R.Yadav**, which also was a case relating to the Rohini Residential Scheme, a dispute arose with regard to the size of the plot allotted to the petitioner. While the petitioner had registered himself for allotment of a 90 sq.mt plot, the petitioner was made allotment of a plot admeasuring 60 sq.mt in the year 2003. The petitioner preferred a writ petition challenging the allotment of 60 sq mt plot. Other persons similarly situated also preferred a writ petition bearing W.P(C)No.5755/2004, "**Major Gen. Pradeep Kumar Mahajan V. DDA**" which was dismissed on 15.2.2005. Following the said decision, the petitioner S.R.Yadav was informed by the DDA that the DDA would not hand over even the plot of 60 sq.mt allotted to him for the reason that the petitioner had not paid the amount claimed within the time prescribed in the allotment letter. This Court came to the rescue of inter alia the petitioner S.R.Yadav. The Court observed that the petitioner had raised a bona fide dispute with the DDA, and the Court had granted interim orders in the writ petition filed by him. The petitioner after having waited for over 24 years to get a plot, the DDA should be directed to hand over possession of the plot allotted. The petitioner also stated that he is willing to pay the demand raised by the DDA. The Court noticed that as per the policy decision taken by the DDA in its meeting held on 5.7.2004, delay beyond 180 days and upto 270 days could be condoned by the Principal Commissioner. This was,

however, subject to payment of restoration charges and penal rate of interest at the rate of 15%. To condone delay beyond one year, the power is vested with the Lt. Governor of Delhi. The Court observed that the litigation initiated by the petitioner could not be stated to be a mala fide litigation. The issue raised by the petitioner was a debatable issue, and notwithstanding the fact that the petitioner lost, issues of substance were raised. This Court thereafter held:-

- “26. Rule of law demands that citizens of the country should be permitted to approach the court of law without any fear. But if consequences of losing the court battle are what I see in the present case, it would be putting fear in the minds of the citizen to seek legal redressal.
27. The principal of proportionality means that administrative measures cannot be more drastic than is necessary for attaining the desired result. Damages and penalties that are out of proportion to the circumstances have been corrected by the courts applying the principal of proportionality. A public authority has a duty to act with fairness while dealing with the public.
28. Rational of penalized a person who pays late is that he disturbs the cash flow of DDA. If a person has bonafide dispute and is not litigating malafied and on losing the litigation, he can be directed to restore the cash flow imbalance him to pay interest.
29. Equity leans in favour of the petitioner. Since DDA has a policy as per which delay can be condoned, rather than relegating the petitioner to the remedy of approaching the Lt. Governor, since in my view delay occasioned in making the necessary payments is bonafide for the reason petitioner were litigating on a issue which cannot be said to be frivolous issue, petitioner are held entitled to have the delay condoned but on paying interest to

DDA.

30. Mr. Anil Sapra, learned counsel for the DDA submits that the petitioners should be directed to pay the restoration charges.
31. In my opinion, there is no question of cancelling the allotment made and hence there is no need to pay restoration charges. On the issue of interest notwithstanding that the issue raised by the petitioners in the earlier writ petitions cannot be said to be malafide issues, since plots have remained vacant and with no gain to DDA, petitioner must pay some to DDA.
32. Petitions stands disposed of with a direction that within 30 days from today on the petitioners paying requisite demand together with interest @ 9% p.a reckoned after 30 days of the issuance of demand cum allotment letters to the petitioners possessions of the plot would be handed over to the petitioner and on the petitioner paying requisite stamp duty and other charges, conveyance deed be executed by the DDA as per procedure as per the law. If the allotted plots are not available 60 sq mtrs plot in the same sector or in the nearest adjoining sector within two months from today."

7. Following the ratio of the aforesaid decision, which in my view squarely applies in the facts of this case, I allow this petition and quash the rejection letter dated 24.8.2007 issued by the respondent. The respondent would be entitled to charge interest at the rate of 15% per annum for the delayed period on the amount of Rs.6,69,000/-. The petitioner should pay the interest at the aforesaid rate within six weeks. Upon the payment being made, the respondents shall issue the allotment letter to the petitioner in respect of the plot allotted to the petitioner i.e plot no.58, Pocket 7, Block-B, Sector -IV, Rohini,

Delhi and deliver possession thereof to the petitioner. However, in case the said plot already stands allotted to any other person, the respondents shall allot another developed plot to the petitioner in the same block and in the same sector in Rohini of the same size or in any other developed sector of the same Rohini Residential Scheme of the same size. The allotment letter and the possession of the plot be delivered to the petitioner upon satisfying the identity of the petitioner within ten weeks from today. The petition stands disposed of in these terms leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

JANUARY 07, 2009
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