

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

+ **LPA 183/2010 & C.M. No. 4771/2010**

% Reserved on: 16th March, 2010

Decided on: 7th April, 2010

SMT. BEENA DEVI
WIFE OF SHRI SURESH KUMAR,
PREVIOUSLY RESIDING AT:
HOUSE NO. 8, BLOCK & POCKET 1-2,
SECTOR-16, ROHINI,
DELHI-110085.

NEW ADDRESS:

81-82, SECOND FLOOR,
POCKET-9, SECTOR-24,
ROHINI, DELHI-110085.

..... Appellant

Through: Mr. Munish Tyagi, Advocate.

versus

1. DELHI DEVELOPMENT AUTHORITY
THROUGH ITS VICE CHAIRMAN,
VIKAS SADAN, I.N.A.,
NEW DELHI.
2. SHRI RAM KRISHAN SINGH,
SON OF SHRI MABI RAM,
3. SMT. GANGA DEVI,
WIFE OF SHRI RAM KRISHAN SINGH,
BOTH RESIDENTS OF A-155,
HIG, RAM GANGA VIHAR,
MORADABAD, U.P.

4. SHRI NEERAJ KUMAR,
SON OF LATE SHRI PREM NATH,
R/O 265, KOHAT ENCLAVE,
PITAMPURA, DELHI.

..... Respondents

Through: Mr. Harshit Aggarwal, Advocate for
Mr. Rajiv Bansal, Advocate for DDA.

Coram:

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA**

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

MUKTA GUPTA, J.

1. The Appellant herein is challenging the impugned order dated 13th November, 2006 passed in W.P. (C) 11331/2006 titled as R.K. Singh vs. D.D.A. At the outset, it may be noted that the Appellant was not a party in the writ petition wherein the Petitioner was one Ram Kishan Singh (the Respondent No. 2 herein), who had filed a writ petition against the Delhi Development Authority (DDA), challenging the order of the DDA dated 29th

June, 2003, conveying its decision not to regularize the delay in paying the amounts demanded.

2. An application being C.M. No.4771/2010 under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 1508 days in filing the present appeal has been filed by the Appellant. As the facts stated hereinafter on merits are also the reasons for seeking condonation of delay, and the determination thereof is essential for determination of sufficient cause for condonation of delay, we are adverting to the same together.

3. The brief background of the case is that the Respondent No. 2 got himself registered with DDA in the year 1981, under the Rohini Residential Scheme for allotment of MIG plot, in the reserved category of Scheduled Castes. He was however, considered for the general category and his representation for proper classification as a reserved category applicant was rejected on 25th September, 2000.

4. Aggrieved by the rejection dated 25th September, 2000, a writ petition being W.P. (C) No. 1608/2002 was filed by the Respondent No. 2, inter alia, seeking directions to DDA to allot a MIG plot to him in a developed sector at the price prevalent in 1989. The said writ petition was disposed of on 31st July, 2002, by this Court, on the statement of the learned counsel for the

DDA, that the name of the Respondent No.2 would be included in the draw of lots to be held immediately. As the rate on which the plot was to be sold was not decided in the said writ petition, the Respondent No. 2 filed an appeal being LPA No. 689/2002, which appeal was dismissed on 22nd May, 2003.

5. Against the appellate order dated 22nd May, 2003, the Respondent No. 2 filed a Special Leave Petition being SLP (C) No. 10869/2003 before the Hon'ble Supreme Court, wherein the cancellation of allotment made in his favour was stayed, vide order dated 19th June, 2003. During the pendency of the SLP the Respondent No. 2 paid the disputed amount of Rs. 6,69,000/- to the DDA on 7th July, 2005 subject to the decision in the SLP. However, the SLP was disposed of as withdrawn on 25th November, 2005.

6. Despite payment, the DDA took no action to hand over the possession on account of the fact that there was a delay in depositing the amount demanded. On a legal notice by the Respondent No. 2 to the DDA, the DDA responded vide letter dated 29th June, 2006 informing him that his case was examined in detail and as the payment towards premium of the plot was deposited by him, by 13 different bank drafts through 7 persons other than him, his request for regularization of period of delay was rejected. This letter dated 29th June, 2006 of the DDA was challenged in writ petition being W.P. (C) No. 11331/2006 by the Respondent No. 2.

7. The learned Single Judge of this Court after hearing the parties vide its order dated 13th November, 2006, allowed the writ petition with the following observations:-

“24. While the DDA may be perfectly justified in its concern that allotments meant for the needy should not be misused, by a few vested interests, as it would subvert the purpose underlying its schemes, yet, it ought to observe basic rules of fairness, or else it would be acting upon caprice, tarring alike all those borrowing amounts and sums of money from their relatives and friends, bona fide, to meet the demands spelt out. It is a common phenomenon that allottees obtain loans and advances, on the basis of allotment letters, and the institutions issue cheques/ demand drafts directly; yet others may prefer informal modes of financing. These are matters of choice, and the DDA cannot fetter its discretion in sifting out undesirable elements, by stating that all allottees who permit others to deposit on their behalf would not be granted possession. If indeed in given cases, there are grounds for suspicion it would be in the fitness of things that the allottee is given some opportunity to meet the allegations, before a decision is taken. Anything short of such fairplay would be a travesty of the rule of law, and result in caprice and whim prevailing- something which cannot be tolerated in public functioning. In these circumstances, I am not persuaded by the reasons given by the DDA; indeed the petitioner seems to have some explanation for the course of action adopted by him, which was not considered when his allotment was not restored on the basis of unverified suspicions.

25. As a result of the foregoing discussion, the petition deserves to be allowed. The DDA is accordingly directed to consider the request of the petitioner for regularization/ condonation of the period of delay in depositing amounts towards the demand for the flat, after considering all the materials and circumstances, including the concerns expressed by it, after consideration of the petitioner's explanation, and giving him a reasonable opportunity. The decision shall be

directly communicated to the petitioner within eight weeks, and shall be a reasoned one.”

8. The Appellant in the present appeal impugning the abovementioned order dated 13th November, 2006 contends that pursuant to the restoration of the plot by this Court, DDA issued a fresh demand to the Respondents No. 2 and 3 herein and writ petitioner in W.P. (C) No. 11331/2006. The Respondent No. 2 and 3 seeing that they have no money to deposit with the DDA entered into an agreement with the Appellant to sell the allotment of the said plot as per the prevalent market practice in the sum of Rs. 8 lakhs only. As per the said agreement the Appellant was to deposit the amount demanded by the DDA and other amount demanded by the DDA from time to time as per the policy. The Agreement to Sell dated 16th June, 2005 executed between the Appellant and the Respondents No. 2 and 3 was a registered document and at the time of the aforesaid Agreement to Sell, the Appellant herein paid the entire sale consideration to the Respondents No. 2 and 3. In terms of the agreement the Appellant has also deposited an amount of Rs. 6,69,000/- with the DDA as per the demand made by the DDA vide two challans dated 1st July, 2005 and 7th July, 2005 amounting to Rs. 3,35,000/- and Rs. 3,34,000/- respectively.

9. It is further stated on behalf of the Appellant that the orders in the writ petition were obtained by playing fraud in the proceedings and correct facts were not brought to the notice of this Court, at the time of hearing of the writ petition. Had the correct facts been before the Court, DDA would not have executed the lease deed in favour of the Respondents No. 2 and 3 and as such Respondents No. 2 and 3 could never have sold the said plot to the Respondent No. 4. The Appellant contends that despite complaints dated 19th May, 2009 and 12th August, 2009, the DDA executed the lease deed in favour of Respondent Nos. 2 and 3 on 23rd December, 2009 as a consequence whereof they sold the plot to Respondent No.4. Thus, in nutshell the grievance of the Appellant is not the allotment of the plot to the Respondents No. 2 and 3 but the subsequent sale of the plot by Respondents No. 2 and 3 to Respondent No. 4 instead of the Appellant.

10. That aggrieved by the action of DDA in executing lease deed in favour of the Respondent Nos. 2 and 3, the Appellant had also filed a writ petition before this Court which was dismissed with liberty to avail other efficacious remedy available. The Appellant thereafter has filed the present appeal impugning the order dated 13th November, 2006 passed in W.P.(C) No. 11331/2006.

11. In our view, the present appeal against the order dated 13th November, 2006 is highly misconceived and the order of the learned Single Judge dated 13th November, 2006 passed in W.P. (C) 11331/2006 cannot be set aside merely because the Respondent Nos. 2 and 3 have subsequently sold the property to Respondent No. 4 instead of the Appellant. As per the impugned order dated 13th November, 2006, no allotment was directed to be made to Respondent Nos.2 and 4 by this Court. This Court only directed the DDA to consider the request of the Respondent No.2 for regularization/condonation of the period of delay in depositing amounts towards the demand for the flat, after considering all the materials, circumstances and giving him a reasonable opportunity and thereafter pass a reasoned order. The contention of the Appellant that she entered into an agreement to sell after the order dated 13th November, 2006 is also incorrect on the face of the record, as the Agreement to Sell and Power of Attorney in favour of the Appellant are dated 16th June, 2005. The Appellant entered into an agreement to sell with Respondents No.2 and 3, when even the lease deed was not executed in their favour by the DDA, which was executed only on 23rd December, 2009. As per clause 13 of the Agreement to Sell dated 16th June, 2005, the Respondent Nos. 2 and 3 had handed over and the Appellant had taken over the title deeds in original in respect of the plot. Since the Respondent Nos. 2 and 3 were not even in

possession of any title deeds as on 16th June, 2005, none having been executed in their favour by the DDA, it is apparent that the said transaction was not as per the terms stated in the agreement. It is only when the Respondent Nos. 2 and 3 did not sell the allotted plot to the Appellant, the Appellant sought recourse to the present proceeding. The action of the Appellant not being bona fide, we do not find it to be a sufficient cause to condone the delay of 1508 days. Thus, we are not inclined to entertain the present application for condonation of delay and the appeal. The Appellant is at liberty to take recourse to proceedings in accordance with law for her grievance qua non-sale to the Appellant of the MIG plot allotted to the Respondent Nos. 2 and 3.

12. C.M. No. 4771/2010 and the LPA No. 183/2010 are accordingly dismissed with a cost of Rs.15,000/-.

(MUKTA GUPTA)
JUDGE

(MADAN B.LOKUR)
ACTING CHIEF JUSTICE

APRIL 07, 2010

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