

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

+ **W.P.(C.) No. 5228/2006**

% **Date of Decision: 20th JULY,2010**

SMT. KAMLESH PETITIONER

Through: Mr. C. Mohan Rao, Advocate.

VERSUS

\$ DELHI DEVELOPMENT AUTHORITY RESPONDENT

Through: Mr. Ajay Verma, Advocate.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

The petitioner is the widow of the person named Sat Pal who was allotted Kiosk No. 4, Kalkaji Extension by DDA on leasehold basis vide its letter dated 30.07.1986 (Annexure P-1 at page 9 of the paper book). The allottee of the said Kiosk died on 30.07.1993 before possession of the Kiosk could be handed-over to him by the DDA. The widow of the deceased allottee had been fighting with the DDA all along for getting possession of the Kiosk in question and it was after 20 years of the initial allotment, the DDA issued demand letter dated 25.01.2006 to the petitioner, being the widow of the deceased allottee, demanding an amount of Rs.6,31,300/- being the cost of the Kiosk including interest thereon. The breakup of the said demand contained in the demand letter dated 25.01.2006 was as under:

Cost	Rs.4,95,400/-
Interest @ 7% per annum w.e.f. Feb 2002 to 28.02.2006	Rs.1,35,900/-
Total	Rs.6,31,300/-

2. The petitioner represented against the said demand vide her representation dated 13.03.2006 (Annexure P-5 at page 17 of the paper book) and requested that the DDA should correct its demand and charge the cost of the Kiosk that was prevalent in 1986 at the time of its initial allotment. On this representation of the petitioner, the DDA conceded to the demand of the petitioner for charging the cost of the Kiosk at the rate prevalent in 1986 and issued a revised demand letter dated 29.08.2006 (Annexure A-1 at page 33 of the paper book) and demanded an amount of Rs.3,85,100/- instead of Rs.6,31,300/- as per the following details:

Cost of Kiosk as on 1986	Rs.1,62,416/-
Interest w.e.f. July 1986 to January 2006 @ 7% being its fault	Rs.2,22,684/-
Total	Rs.3,85,100/-

3. The demand in respect of the Kiosk in question was revised by the DDA during the pendency of the present writ petition.

4. The learned counsel appearing on behalf of the petitioner has raised two issues with regard to the right of the petitioner in respect of Kiosk No. 4, Kalkaji Extension allotted by the DDA in 1986 in the name of her deceased husband and these two issues raised by him are as follows:

- (i) The DDA having admitted its own fault in handing over of possession of the Kiosk in question could not have charged interest @ 7% per annum on the cost of the Kiosk;
- (ii) The Kiosk No. 4 that was allotted by the DDA in the name of her deceased husband is surrounded by Jhuggis on three sides and a toilet block on the left side cannot be put to use and the petitioner

is entitled for allotment and possession of an alternative Kiosk in place of Kiosk No. 4.

5. Mr. C. Mohan Rao, learned counsel appearing on behalf of the petitioner, has submitted that there are 200 vacant Kiosks available with the DDA in South Zone and since the Kiosk allotted by the DDA to her cannot be put to use, the DDA should be directed to allot an alternative Kiosk in South Zone to her.

6. Mr. Ajay Verma, learned counsel appearing on behalf of the respondent/DDA, has countered the above argument urged on behalf of the petitioner contending that the interest on the cost of Kiosk was demanded by the DDA from the petitioner in terms of its policy. Mr. Verma, appearing on behalf of the DDA, submits that Kiosk No. 4 allotted to the petitioner is situated on the right berm of the road and can be put to use though it is surrounded by Jhuggis on three sides and a toilet block on the left side. Mr. Verma has taken me through the photographs of the Kiosk in question in support of his argument in regard to utility of the Kiosk in question.

7. The petitioner has also placed photographs of the Kiosk in question on record along with the internal notings of the DDA with regard to the placement of the Kiosk and the Jhuggis around it. The same are available at pages 14 to 16 & 34 of the paper book. I have perused the entire notings of the DDA with regard to the placement of the Kiosk in question and have also seen the photographs shown to me by the counsel for both the parties.

8. The internal notings of the DDA with regard to placement of Kiosk in question as well as the photographs on record would show that the Kiosk cannot be properly utilised by the allottee and the said allotment, by no means, can be taken to be a proper allotment by DDA to its user.

The counsel appearing on behalf of the DDA has neither placed on record nor shown at the time of hearing any policy of the DDA to charge interest from the allottee for its own fault. It shall be significant to mention that the DDA has admitted its own fault in delaying the handing over of possession of the Kiosk in question to the allottee in the revised demand letter dated 29.08.2006 which is at page 33 of the paper book. This court is of the considered opinion that the demand of interest on the cost of Kiosk by the DDA for its own fault is most arbitrary, unreasonable and unjustified and cannot stand the test of judicial scrutiny. There cannot be any policy of the State instrumentality to charge interest from the consumer for its own fault.

9. It is quite shocking and painful to note that the DDA has taken more than 20 years in issuing demand letter in respect of a Kiosk that was allotted to the deceased husband of the petitioner way back in 1986. The DDA is a State functionary and it must come out of the cobwebs and should stop functioning in a despotic manner as it has been done by it in the present case. The petitioner, being the widow of the deceased allottee, has to run from pillar to post for getting possession of the Kiosk that was allotted by the DDA to her deceased husband about 25 years ago but till date she has not been able to get its possession from the DDA.

10. It is an admitted fact on record that the Kiosk that was allotted by the DDA to the deceased husband of the petitioner is surrounded by Jhuggis on three sides and a toilet block on its left side. The DDA has filed an affidavit of its Director Mr. Yashpal Garg which is at pages 43-44 of the paper book to say that the Jhuggis that exist around the Kiosk in question cannot be removed as they enjoy the protection granted to them by the NCT of Delhi Laws (Special Provisions) Ordinance, 2007

dated 04.07.2007. The Director of the DDA has stated in his said affidavit that the protection to the Jhuggi Jhompris around the Kiosk is continuing even presently under the NCT of Delhi Laws (Special Provisions) Act, 2009 and accordingly, no action can be taken for removal of Jhuggis around the Kiosk in question. In view of this admitted stand of the DDA, it was expected that the DDA itself should have allotted an alternative Kiosk to the petitioner, being the widow of the deceased allottee, instead of her rushing to the court for getting her lawful dues. This case demonstrates the high-handedness and callous attitude of the concerned officials of the DDA in dealing with the matter. This is not expected of them that every poor litigant particularly a widow has to rush to the court particularly when DDA itself admits its fault.

11. In view of the above and having regard to the facts & circumstances of the case, this writ petition is allowed. The original impugned demand dated 25.01.2006 is hereby quashed. The revised demand contained in DDA's letter dated 29.08.2006 at page 33 of the paper book is quashed to the extent of Rs.2,22,684/-, being the amount of interest. The respondent/DDA is directed to allot an alternative Kiosk in South Zone to the petitioner at price prevalent in 1986 within a period of six weeks from today. The petitioner is held entitled to Costs of the present proceedings quantified at Rs.25,000/-.

JULY 20, 2010
'BSR '

S.N.AGGARWAL, J