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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 8627/2006

% ***Judgment Delivered on: 21.04.2010***

HARI KISHAN MADAN Petitioner

Through: Mr.R.K. Saini, Advocate

versus

D.D.A. Respondent

Through: Mr.Rajiv Bansal, Advocate

**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. With the consent of counsel for the parties, present petition is set down for final hearing and disposal. The facts of the case as set out in the petition are that the petitioner applied to the DDA under the New Pattern Registration Scheme, 1979 for allotment of an MIG flat, in the year 1979. As per his priority, name of the petitioner was included in the draw of lots held on 30.05.2003 and demand / allotment letter dated 21.07.2003 was issued to the petitioner, whereby petitioner was informed that an MIG flat bearing NO.227 (third floor), Pocket-B, Sector14, Phase-2, Dwarka, New Delhi has been allotted to him on cash down basis at a total disposal cost of Rs.9,39,861.20. Petitioner was called upon to pay this amount on or before 19.10.2003. Petitioner was also informed that this amount could be paid with interest up to 17.01.2004.
2. Admittedly, petitioner was unable to pay this amount either by 19.10.2003 or with interest up to 17.01.2004. Petitioner deposited a sum of Rs.4.0 lacs with the DDA on 09.03.2005 along with a covering letter informing the DDA that the amount could

not be deposited within the time allowed due to unavoidable circumstances. Petitioner thereafter deposited the balance sum of Rs.5,62,219/- on 03.05.2005 along with a covering letter, whereby the petitioner informed the DDA that the amount could not be deposited within the time allowed, as he was facing a financial crunch, on account of marriage of his daughter which was fixed on 05.02.2004 as also marriage of his son fixed on 07.03.2004. The petitioner is stated to have deposited the interest as well on 03.05.2005. The DDA had issued a show cause notice to the petitioner on 17.02.2004. By this show cause notice, petitioner was informed that in case explanation was not rendered for not making the payment within 15 days, the allotment would automatically stand cancelled. The petitioner admittedly, did not file any reply to the show cause notice.

3. Counsel for petitioner submits that the petitioner has made the payment in two instalments together with interest – first instalment of Rs.4.0 lacs was made on 09.03.2005 and balance amount was made on 03.05.2005. He submits that DDA being conscious of the problems faced by the allottee based on various requests received by the DDA for extension of time to deposit the money and condonation of delay, on account of inability to make the payment, has in its wisdom formulated a policy dated 01.06.2000. He also submits that as per this policy the delay can be condoned upto 30 days by the Joint/ Deputy Directors; beyond 30 days but upto 90 days by the Director (Housing); beyond 90 days but upto one year by the Commissioner (Housing); beyond one year but upto one and a half year by the Principal Commissioner; and beyond one and a half year by the Vice-Chairman, DDA. He submits that DDA has allowed extension of time to various allottees and the case of the petitioner is no different to the similarly situated persons, who have been granted extension of time in making the payment by the DDA on the same ground. Three instances have been quoted by the petitioner in para 11 of the writ petition, details of which are as under:

Name	Due Date	Paid	Delay
Raghibir	03.11.2003	Feb, 2005	17 months
Nirmala	31.03.2002	Jan, 2004	22 months
Badan Singh	17.01.2004	Apr., 2005	15 months

4. Besides the three instances stated hereinabove, counsel for petitioner has also quoted the instance of one Smt.Usha Singhal in whose case delay of 640 days was condoned by the DDA in almost identical circumstances i.e. on account of marriage of her daughter, which is far beyond the delay in the present case. He further submits that the policy is merely illustrative and not exhaustive and the DDA is to consider the facts of each case, while rejecting or condoning delay. He also submits that the flat allotted to the petitioner was at Dwarka and the policy expressly recognizes the fact that delay in such cases may be condoned on account of the fact that basic amenities like water and electricity have not been provided to the allottees, at the time of the allotment.
5. Counsel for petitioner further submits that although admittedly such a ground was not taken by him while making the representation, but allotment having been made to him at Dwarka, the ground would automatically be applicable to the case of the petitioner.
6. Counsel for DDA has opposed this petition *primarily* on the ground that firstly petitioner did not make the payment within the time allowed and secondly despite a show cause notice having been issued to the petitioner, he did not make the payment and in fact no reply was filed, which resulted in automatic cancellation of the flat. He further submits that DDA considered the case of the petitioner based on his representation and rejected the same keeping in view the policy of the DDA. The stand taken by the DDA in paragraph 4 of the counter affidavit is reproduced below:

“4. A representation dated 09.03.05 was received from the petitioner for restoring the allotment. The case was examined by the competent authority i.e. Vice Chairman at length. Since the case was not covered under the relevant policy dated 1.06.2000, therefore, the request of the allottee for restoration of allotment, could not be acceded to. The decision of

the competent authority was conveyed to the petitioner vide letter dated 8.05.2006 with request to apply for refund of deposited amount by furnishing the original documents. It is pertinent to state that the petitioner made the deposit the cost of flat after the stipulated period and cancellation of allotment and thereafter requested for restoration of allotment."

7. Counsel for respondent-DDA next submits that even during the pendency of the writ petition, Vice Chairman DDA considered the case of the petitioner and rejected the same for the reason that firstly in the first representation made, no grounds were given as to why the amount could not be paid and secondly that the flat of the petitioner was cancelled. Counsel for respondent -DDA submits that while considering the representation for condonation of delay the DDA must record its subjective satisfaction and merely because an application for condonation of delay has been made, does not mean that the same is to be mechanically allowed. Mr.Bansal, submits that reading of the policy itself would show that death of the bread winner of the family is one of the grounds to condone the delay, in the same vein accident could be another reason, but certainly marriage in the family cannot be the reason for condoning delay in making the payment.
8. I have heard counsel for the parties and also perused the pleadings as well as the annexures filed along with the pleadings. The basic facts are not in dispute that petitioner was allotted an MIG flat in a draw of lot held in the year 2003. The petitioner could not make the payment within time allowed, nor could make the payment upto 17.01.2004 with interest. The case of the petitioner is that the payment could not be made on account of marriage of his daughter as well as marriage of his son on 05.02.2004 and 07.03.2004 respectively as all his resources were used for the marriage of his children. It is also not in dispute that the entire amount with interest was deposited on 03.05.2005. The case the petitioner is also that the policy itself recognizes the hardship which is faced by the allottees and that recognizing this hardship the DDA has formulated the policy. Four instances have been given by the petitioner, wherein DDA has condoned the

delay as admitted by the DDA in an affidavit filed on 06.01.2009. It would be useful to reproduce paras 3 and 4 of this affidavit:

“The details of four cases cited by the petitioner are set out herein below:

Name	Due Date for payment	Date of payment	Period of Delay in making payment
Raghbir	3.11.03	17 th Jan, 2005	441 days
Nirmala Rastogi	31.3.02	3 rd December, 2003	308 days
Badan Singh	17.1.04	11 th Apr., 2005	449 days
Smt.Usha Singhal	22.10.03	4 th July, 2005	654 days <u>Due to marriage of her daughter</u>

4. It is submitted that the delay in making payment for the aforesaid cases has been condoned by the Competent Authority, since the competent authority was exercising its discretion to condone the delay in favour of the allottee it was not beyond to give reasons therefor. It is pertinent to state that in the case of Smt.Usha Singhal, the entire amount has been refunded to her.

9. Reading of this affidavit would show that in the case of Smt.Usha Singhal, DDA had condoned the delay of 654 days due to marriage of her daughter. In the case of Raghbir delay of 441 days was condoned; in the case of Nirmala Rastogi delay of 308 days was condoned; and in the case of Badan Singh delay of 449 days was condoned. In the case of the petitioner the delay is approximately 480 days, which is far below the case of Smt.Usha Singhal, where delay was condoned for 654 days. I find force in the submission of counsel for the petitioner that the grounds given in the policy are illustrative and not exhaustive. DDA itself has condoned the delay of Smt.Usha Singhal, recognizing the marriage of her daughter as one of the grounds.
10. It would be useful to reproduce the office order/ policy dated 1.6.2000:

“OFFICE ORDER

While issuing allotment letters to the registrants of various schemes of DDA, a demand is raised to the concerned allottees specifying the amount to be paid with due dates of payment. However, we had seen in practice

that on account of problems faced by the concerned allottees, we get various requests for extension of time to deposit the amount and to condone the delay. In DDA we examine the cases on merit and in certain cases delay is regularized. However, there are no clear cut guidelines while accepting/ rejecting the requests for condonation of delay. At present, as per the circular No.HAU-IX/Delay/98/DDA/40-N dated March 31, 1999 (placed below) the competent authority to regularize the delay is as per the given table:-

<u>Period of Delay</u>	<u>Designation</u>
i) Upto 30 days	Jt./Dy. Directors
ii) Beyond 30 days but upto 90 days	Director (housing)
iii) Beyond 90 days but upto 1 year Commissioner(Housing)	
iv) Beyond 1 year but upto 1 year 6 months. Commissioner	Principal
v) More than 1 year 6 months	Vice Chairman

[In case where allottees default for a proportion upto 10% of the total demand amount, regularization of delay/ restoration of allotment is done at the level of Commissioner (Housing), irrespective of the period of delay].

To reduce the subjectivity and to leave some policy guidelines in this regard, the matter was discussed by the undersigned with V.C. on 29.05.2000. Accordingly, here are some points which may render a case fit for consideration/ condonation of delay: -

- (i) In cases where the bread winner of the family dies putting the family members in a vulnerable condition in depositing the entire demanded amount.
- (ii) If the allottee has deposited the confirmation amount as well as 25% of the total demanded amount and if the request for extension of time is upto one year.
- (iii) In case where the extension has been requested for the second or more lines, where the condonation is for a period of more than a year i.e. where competent authority is the Vice-Chairman, the allottee should deposit at least 50% of the demanded amount to get the relief.
- (iv) If the flat is in those areas which are not very popular and DDA is finding difficult to sell the houses for occupation, e.g. in places like Narela.
- (v) DDA colonies where we are not in a position to provide even the basic amenities like water and electricity to the inhabitants resulting to complaints by the allottees e.g. in Dwarka.
- (vi) Where defaulted amount is very small say 10% or below.
- (vii) If the allottee comes out with the plea that he/ she applied for loan from financial institution to deposit the demanded amount with the DDA, he/ she should furnish the proof given by the concerned financial institution clearly indicating that the loan would be disbursed to the applicant within a period of one year.
- (viii) If it is established that in processing the case delay has been by DDA and very little time was left for the allottee to deposit the amount.

All usual charges will continue to be levied in the cases where condonation will be granted.
This issues with the approval of V.C.

11. On receipt of an application for condonation of delay the DDA must not accept or reject the same in a mechanical manner. The facts of each case must be examined carefully and if necessary documents in support of the reasons for extension may be called for. The approach of the DDA should be humane and genuine case should be given the benefit of the policy. Careful reading of the office order would show that DDA had come across large number of cases where extension was sought on account of problems faced by the concerned allottees. It is said that only the wearer knows where the shoe pinches. DDA cannot lose track of the fact that one of its primary action is to provide shelter to the citizens of Delhi especially those who cannot afford to pay the market price. The word 'problem' is defined as "a situation or matter that is difficult to deal with".
12. Counsel for petitioner has relied upon a judgment LPA No.188/2008 **Raj Kumar Sharma Vs. DDA**, and more particularly paragraphs 7 and 9 wherein the Division Bench was of the opinion that the delay deserves to be condoned on the fact that petitioner was suffering from financial hardship on account of illness of his mother. Admittedly, policy does not include any ground of illness of the mother, yet this itself was identified to be a ground for condonation of delay. The Division Bench has also considered the fact that the flat of the petitioner in the case of Raj Kumar Sharma was also situated at Dwarka. The Division Bench considered illness of mother of the allottee as a problem being faced by him. Marriage of a child or children as in the case may not be a problem but on account of two marriages payment to DDA is definitely a problem faced by a middle class person who applied for an MIG flat in the 1979 scheme. His allotment matured only in the year 2003. In the case of Smt.Usha Singhal, DDA has condoned the delay on account of marriage of her daughter, I find the case of the petitioner is no different from that of Smt.Usha Singhal, where the delay of 654 days was condoned, whereas the delay in the case of the petitioner is far less. Consequently the

petition is allowed, delay in making the payment is condoned. As the petitioner had made an application in the year 1979 and 23 years later a flat was allotted to him in the year 2003; that the matter has also been pending since the year 2006 and all payments stand made by the petitioner, DDA is directed on completion of all formalities, hand over the flat to the petitioner as expeditiously as possible. DDA would be entitled to restoration charges and any further interest up to the date of payment.

13. Petition stands disposed of in above terms.

CM.No.6259/2006 (STAY)

14. In view of orders passed in the writ petition, application stands disposed of.

G.S. SISTANI, J.

April 21, 2010
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