

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 12699/2009

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Judgment Delivered on: 11.05.2010

JAI BHAGWAN

..... Petitioner

Through: Mr.R.K.Saini, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr.Arjun Pant, 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.
2. The facts as set out in the writ petition are that petitioner was registered under Rohini Residential Scheme, 1981 for allotment of an MIG plot on making payment of the registration deposit. At the time of registration, petitioner had given address of CD/57D, G-8, Rajouri Garden, New Delhi, where he was residing at that point of time. The priority number of the petitioner matured and consequently on 21.11.2003 petitioner was allotted plot bearing No.551, Pocket C-V, Sector-28, measuring 60.000 sq. mtrs. in Rohini Phase IV, Residential Scheme at a total cost of Rs.3,71,520/- and a demand letter dated 21.11.2003 was issued to the petitioner. The premium of plot was payable in three instalments. The demand/ allotment letter was sent at the address available with the DDA which was returned to the DDA as undelivered as by that time petitioner had shifted his residence at A-3/242, Janakpuri, New

Delhi. Petitioner informed the DDA with regard to change of address on 09.02.2004, which was received by the DDA vide diary no.7891. Along with this letter petitioner enclosed photographs of his ration card as well as election card, in support of his proof of new address. By this time date for making the first instalment i.e. 20.01.2004 had lapsed. The DDA while acknowledging the letter dated 09.02.2004, called upon the petitioner by its communication dated 26.02.2004 to furnish residential proof duly attested and photocopy of the FDR duly attested. The DDA did not send a fresh demand/ allotment letter at the fresh address of the petitioner and cancelled the allotment made in favour of the petitioner on 09.03.2004 without issuing any show cause notice and without granting any opportunity of hearing. This cancellation letter was also sent at the old address, despite the petitioner having informed DDA about the change of his address which was available with DDA. This letter too was returned undelivered. On 28.06.2004 petitioner again submitted documents to DDA i.e. copy of the FDR as well as copy of the election card, which were duly acknowledged by the DDA vide receipt no.33375. It is the case of the petitioner that no further action was taken by the DDA, despite petitioner's attempts to follow up the matter with the DDA. Vide communication dated 31.05.2004 upon having learnt that an allotment was made in favour of the petitioner, petitioner requested the Deputy Director, Rohini for a photocopy of the demand/allotment letter which had not been received by him due to change of address. He further requested the DDA in case cancellation of the allotment had been made, the same should be restored for which he was ready to pay restoration charges and requested that a demand letter be issued to him. Thereafter representation was made by the petitioner to the DDA on 08.08.2005 wherein it was pointed out that he had visited the office of the DDA several times, but a duplicate allotment letter was not issued to him. Petitioner appeared in the public hearing on 26.12.2005 which also did not yield any favourable result. On

27.01.2006 petitioner received a letter from the DDA calling upon him to attend the office on any working day along with certain documents. Petitioner being approximately 74 years of age, unwell at that point of time and requested DDA for two months time to attend the office, as he had been advised bed rest by the doctor. The petitioner again appeared in the public hearing on 23.03.2006 along with necessary documents. On 15.09.2006, petitioner was informed that his case was not covered under the policy dated 24.06.2005 formulated by DDA and his request was turned down. Thereafter petitioner moved an application dated 16.10.2006 under Right to Information Act as also approached the Legal Aid Society of Delhi High Court in the year 2009 for legal advice, and thereafter filed the present writ petition.

3. It is submitted by counsel for the petitioner that although petitioner did not inform the DDA with regard to change of his address prior to issuance of the demand letter, but within a period of 25 days thereafter by the communication dated 09.02.2004, petitioner informed the DDA with regard to change of his address. It is submitted that at this point of time date of making the payment of first instalment had lapsed, as the same was to be paid on or before 28.01.2004. It is submitted that 50% premium was to be deposited by 20.03.2004 and the third instalment was to be deposited upto 31.12.2004.
4. In short, the submission of counsel for the petitioner is that in case a duplicate demand/ allotment letter had been handed over to him, petitioner would have made the payment without any loss of time. He also submits that despite the DDA having received information with regard to change of address, DDA did not bother to correspond with him and in fact the cancellation letter was also sent by the DDA at the old address which shows that there was complete non application of mind on the part of the DDA. In these circumstances while relying on a decision of this court on similar facts in the case of **Jagdish Chopra Vs. DDA** [WP(C)No.20246/2005], petitioner

seeks quashing of the communication dated 15.06.2006 and seeks a writ of mandamus directing DDA to hand over plot measuring 60.000 sq. mtrs. in Rohini, Phase-IV Residential Scheme at the costs of Rs.3,70,520/- subject to payment of cancellation charges and interest from the period starting from 28.01.2004 to 31.05.2004, when he made an application for restoration and also from 15.09.2006 to 15.09.2009 when the present petition was filed, as three years period was taken and as there is no plausible explanation by the petitioner for not moving this court expeditiously.

5. Counsel for respondent has opposed this petition *primarily* on the ground that petitioner did not inform the DDA with regard to change of his address, prior to issuance of demand/ allotment letter by DDA. Consequently, demand /allotment letter was issued by the DDA at the address available in their record for which DDA cannot be faulted. As per the counter affidavit, the case of the petitioner is not covered by the policy dated 24.06.2005, as DDA cannot be blamed for sending demand/ allotment letter at the address available with them. It is further submitted that petitioner did not inform the DDA about the change of address, accordingly, neither demand/ allotment letter was issued at the correct address and consequent thereto petitioner did not make the payment.
6. I have heard counsel for the parties and perused the pleadings of the parties. The basic facts are not in dispute that petitioner had applied to the DDA in the year 1981 for allotment of an MIG plot and at that point of time, petitioner was residing at CD/57D, G-8, Rajouri Garden, New Delhi. Admittedly, after shifting from Rajouri Garden, petitioner did not inform the DDA with regard to change of his address, prior to issuance of demand/ allotment letter by the DDA. A demand/ allotment letter was issued to the petitioner on 21.11.2003 at the address provided by the petitioner to the DDA. DDA was informed only on 09.02.2004 with regard to change of address, which letter was received by the DDA vide diary no.7891

and it is also evident from the fact that this communication was acknowledged by the DDA in terms of their letter dated 26.02.2004. The letter dated 20.07.2004 shows that along with this communication petitioner had enclosed a photocopy of ration card as well as election card. In spite of the fact that petitioner had enclosed a photocopy of his ration card and election card, DDA called upon the petitioner to submit further documents. Neither in the counter affidavit which has been filed nor during the course of hearing, DDA has been able to justify as to why duplicate demand /allotment letter was not issued to the petitioner when petitioner had informed the DDA that he has not received the letter dated 21.11.2003 in view of the fact that he had shifted residence from Rajouri Garden, Delhi. I find force in the submission that in case the demand / allotment letter would have been handed over to the petitioner in February, 2004 itself the petitioner would have made the payment as per demand/ allotment letter as the first instalment was to be paid by 28.01.2004 and there was enough gap to pay the second and third instalments. There is no material on record nor any justification why DDA did not issue a duplicate demand/ allotment letter to the petitioner. I find force in the submission of counsel for the DDA that the case of the petitioner would not be covered by the wrong address policy of the DDA, which is dated 24.06.2005, however, certainly petitioner would be covered by the Resolution of the DDA dated 24.08.2004, as per which DDA has formulated a policy for condonation of delay in case of allotment made under Rohini Residential Scheme in deserving cases. Operative portion of resolution dated 24.08.2004 reads as under:

“II. Amendments proposed in the case of allotments made under Rohini Residential Scheme.

1. In case of delay beyond 180 days Principal Commissioner should have the powers upto 270 days (inclusive of 180 days). This regularization will be done on payment of restoration charges and penal rate of interest @ 15% per annum. However, if the fault is of the deptt. then restoration irrespective of the period of

- delay would be at PDR of the year of allotment + interest at 5% annually.
2. Beyond 1 year No. regularization should be entertained unless on extremely deserving grounds where the power should lie with Hon'ble L.G. Delhi.
 3. Within the above scheme, if the deficient amount involved is only up to 10% of demanded amount of Rs.25,000/- whichever is less than the power to restore the delay would vest with Commissioner (LD) irrespective of the period of delay.

Proposal I & II put up for consideration and approval of the Authority.

RESOLUTION

The proposals were discussed in detail. It was felt that the existing procedure of offering three chance to the allottees of alternate plots was leading to holding up the disposal of plots for several years, in addition to resulting in long wait for the applicants. Shri Kasana suggested that the formalities and procedures required to be completed for making the payment and taking possession etc. needed further simplification."

7. In the case **Ashok Kumar Bisarya Vs. DDA**

[WP(C)NO.11148/2005], it has been held:

"9. The allotment letter in this case was issued prior to the said Guidelines or Circulars. Even, otherwise, after having made the registrants wait for more than 22 years the DDA's stand for not complying the request for condoning the delay for deposit of the amounts towards second and final instalments, is not appreciable. Being a monopoly concern, the DDA ought to have acted with more sensitivity and considered the case in the light of its deserving one. It is not as if the petitioner or any registrant would be granted the facility of delayed payment unconditionally. The Circular itself indicated that interest rate at 15% would be leviable for a delay of up to 270 days."

8. Counsel for petitioner has also relied on a decision rendered in **Ajay Gulati Vs. DDA** [WP(C)No.564/2009], wherein delay was condoned.

I am satisfied that the case of the petitioner is covered by the resolution dated 24.08.2004 and also the decision in the case of

Ashok Kumar Bisarya (Supra) and **Ajay Gulati (Supra)**. In the absence of any explanation as to why the duplicate allotment letter was not handed over to the petitioner, the petitioner has been deprived of a plot from the year 2004. Various representations made by the petitioner to DDA, were not responded, which forced the petitioner to approach this Court. Accordingly, the present petition is allowed. Petitioner shall be allotted the plot bearing No.551, Pocket C-V, Sector-28, measuring 60.000 sq. mtrs. in Rohini Phase IV, Residential Scheme, if available; and if the said plot is not available fresh allotment shall be made in the Rohini Phase-IV Residential Scheme. Petitioner shall pay cancellation charges and interest from 28.01.2004 to 31.05.2004, when he made an application for restoration and also from 15.09.2006 to 15.09.2009 when the present petition was filed. Ordered accordingly.

9. Petition stands disposed of, in above terms.

G.S. SISTANI, J.

May 11, 2010

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