

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

Date of decision: 23rd August, 2011.

+ **W.P.(C) 19785/2005**

% **SARLA MAHINDRA** **...Petitioner**

Through: Mr. Munish Tyagi, Adv.

Versus

DDA **..... Respondent**

Through: Mr. M.K. Singh, Adv.

AND

+ **W.P.(C) 19783/2005**

% **PRAN NATH THUKRAL** **...Petitioner**

Through: Mr. Munish Tyagi, Adv.

Versus

DDA **..... Respondent**

Through: Mr. M.K. Singh, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. Both petitions entail similar controversy and are being listed together for hearing. However since the counsel for the petitioners has argued with reference to the facts of W.P.(C) No.19785/2005, the same is given precedence in the matter of discussion. The husband of the petitioner in the said petition was a registrant for an MIG flat in the Rohini Residential Scheme of the year 1981 of the respondent DDA; he died on 8th February, 1985 and the registration was transferred in the name of the petitioner; in the draw of lots held on 11th June, 2003, the petitioner was found entitled to Plot No.325 admeasuring 60 sq. mtrs., Pocket C-V, Sector 28, Rohini Phase-IV and a demand cum allotment letter dated 5th-12th September, 2003 issued to her, demanding from her the premium of ₹3,71,520/-, of which ₹1,17,250/- was payable latest by 11th November, 2003, ₹1,85,760/- latest by 10th January, 2004 and balance ₹55,728/- on further demand; the demand cum allotment letter further provided that in case the petitioner failed to deposit the amounts as aforesaid, the allotment will be treated as cancelled and no further request for restoration will be entertained in this respect.

2. The petitioner did not respond to the aforesaid demand cum allotment letter and did not make any payment as demanded therein.
3. The petitioner however claims to have received a show cause notice from the respondent DDA and to have deposited an amount of ₹3,58,000/- in the bank account of the respondent DDA on 24th November, 2004.
4. This petition was filed, pleading that though the petitioner had been visiting the office of the respondent DDA for delivery of possession of the plot but the same had not been delivered and the petitioner had received information that the respondent DDA was intending to allot the plot allotted to the petitioner and to deliver possession thereof to someone else and seeking mandamus to the respondent DDA to deliver the possession of the plot and to execute the conveyance deed with respect thereto in favour of the petitioner and to quash and set aside the order of cancellation of the allotment in favour of the petitioner.
5. This Court vide order dated 5th October, 2005 while issuing notice of the petition observed that the Vice-Chairman of the DDA should re-look into the matter. Though the petitioner had claimed interim relief of restraining

DDA from allotting the plot to anybody else but no interim relief was granted. The application for interim relief was disposed of as not pressed on 3rd February, 2009.

6. The petitioner in W.P.(C) No.19783/2005 was also a registrant under the same Scheme and was also issued a demand cum allotment letter dated 1st-5th September, 2003/20th November, 2003 qua Plot No.221 admeasuring 60 sq. mtrs., Pocket C-2, Sector 28, Rohini Phase-IV Residential Scheme. As per the demand cum allotment letter, out of the total premium of ₹4,08,672/-, ₹1,30,290/- was payable latest by 19th January, 2004, ₹2,04,336/- by 19th March, 2004 and the balance ₹61,301/- on further demand. He deposited a sum of ₹1,30,290/- in the bank account of the respondent DDA on 19th January, 2004 and an amount of ₹2,65,637/- by three separate bank drafts of ₹61,301/- and ₹2,04,336/- on 5th July, 2005. He filed the writ petition claiming similar reliefs as in the other writ petition.

7. It is the case of the petitioner in both petitions that the 1981 Scheme envisaged the allotment to be made within five years i.e. upto 1986 and at the rate of ₹200/- per sq. mtr.; that the allotments to them were however

made after twenty two years, at a much higher rate; that owing to long delay and increase in rates, they could not make the payment within the prescribed time. It is further their case that the Sector in which the plots aforesaid were allotted to them were not even developed; respondent DDA in other cases has been condoning the delays in payment of premium of as long as seven and a half years and that they had been discriminated against. Emphasis in W.P.(C) No.19785/2005 is placed on the widowhood of the petitioner.

8. Vide order dated 6th December, 2007 in W.P.(C) No.19783/2005, the respondent DDA was directed to make available all the policies towards condonation of delay in respect of Rohini Residential Scheme, 1981. In compliance thereof an additional affidavit has been filed in W.P.(C) No.19783/2005.

9. The version of the respondent DDA in the counter affidavits filed in both the petitions is that the number of applicants in the Scheme was much more than the land which had been made available for the Scheme and further land had to be acquired and which led to the delays and the increase in cost; that the draws were held from time to time but the petitioners were

not successful therein; that the allotment of the plots was made at pre-determined rates fixed by the Government for the year of allotment and depending upon the costs of acquisition and development of the land; that accordingly the demand on the petitioner in each case was made at the rates of the year 2003; it is also controverted that at the time of allotment the Sector/area was not developed. It is pleaded that most of the allottees took possession of their plots. It is further pleaded that as per the policy guidelines, maximum delay of 360 days can be condoned by Vice-Chairman, DDA on payment of restoration charges and interest charges for the delayed period. It is yet further pleaded that had the petitioners faced any difficulty in paying the premium demanded, they ought to have approached the respondent DDA and applied for extension immediately after receipt of the demand cum allotment letters but did not take any such steps and accordingly the allotment in favour of the petitioners was cancelled.

10. It is further the version of the respondent DDA in W.P.(C) No.19785/2005 that upon finding deposit by the petitioner of ₹3,58,000/- without stating any reason for delay and being suspicious that the amount

had been deposited by some person other than the petitioners, the petitioner was called in the office of the Director (RL) of the respondent DDA; that the explanation given by the petitioner in the said meeting for the delay on her part in depositing the amount was insufficient and not satisfactory; the petitioner cited the reason of the death of her husband but which was long back in the year 1985 and the petitioner could not explain the source from which the lump-sum deposit of ₹3,58,000/- had been made. It is thus stated that the automatic cancellation in accordance with the terms of the allotment letters remained.

11. The respondent DDA in its counter affidavit in W.P.(C) No.19783/2005 has stated that the first deposit of ₹1,30,290/- was by three separate bank drafts from three different persons residing in three different areas; similarly the subsequent deposit on 5th July, 2005 also was from two different bank drafts, one of the petitioner and other of some other persons; that the same created a doubt that the payment was not by the petitioner but by others to whom the petitioner had transferred his rights; accordingly, no case for condonation of delay and for restoration of the cancellation

automatically effected on expiry of time was made in the said case also.

12. The respondent DDA has further, while admitting condonation of delay of as long as seven years, stated that it was in cases where sufficient reasons for condoning the delay were made out and which were missing in the case of the petitioners. Reliance is also placed on the order dated 19th October, 2005 in W.P.(C) No.18854/2005 and order dated 16th February, 2006 in W.P.(C) No.18603/2005 holding that where the petitioner is not found to be a genuine person and the proceedings are found to be pursued by property brokers, no error can be found in the decision of the DDA to not condone the delay and to not restore the allotment.

13. The respondent DDA in its additional affidavit in W.P.(C) No.19783/2005 has stated that under the Scheme, upon failure to make payment by the stipulated date, the allotment was liable to be cancelled and earnest money to be refunded subject to deduction of 10%; however upon receipt of representations of some ex-allottees for restoration stating unforeseen reasons for non-payment by the stipulated date, a Scheme dated 29th August, 1996 substituted by the Policy of 2004 in force at the relevant

time was formulated. It is further stated that as per the said Policy, delay beyond 180 days is condonable by the Principal Commissioner on payment of restoration charges and penal rate of interest at the rate of 15% per annum; however beyond one year, no regularization is to be entertained except on extremely deserving grounds.

14. The counsel for the respondent DDA has during the course of hearing also produced the records pertaining to the allotment in favour of the petitioner in W.P.(C) No.19785/2005 and a perusal whereof shows that the case of the petitioner was considered by the Lieutenant Governor as the Chairman of the respondent DDA and who found that the petitioner had not given any cogent reasons for the delay in making the payment and thus did not fall in the category of deserving cases and was not entitled to condonation of delay or for restoration of the allotment.

15. This Court in judgment dated 14.03.2011 in W.P.(C) No.7581/2008 titled ***Harvinder Singh Vs. DDA*** held that the Policy of the DDA concerning condonation of delay in making the payment requires the allottee to show cause that the case is deserving one; this envisages some reasons to

be given by the allottee to explain why the payment was not made within time; that without any reasons being disclosed, merely stating that the delay was not deliberate or intentional is not sufficient and that payment after a delay does not give any right to obtain possession of the plot.

16. I have in judgment dictated today in W.P.(C) No.7584/2008 titled ***Sudershan Kumar Vs. DDA*** have also held that forfeiture of allotment comes into effect automatically upon non payment by the stipulated time and the issuance of a notice to show cause does not negate against such automatic cancellation and is only to give an opportunity to the allottee to, if had made the payment within the stipulated time and which had erroneously remained to be co-related in the records of the DDA, to satisfy the DDA in that regard. It was further held that ordinarily an allottee desirous of availing of / accepting the allotment and if unable to make the payment within time for reasons beyond control, would immediately approach the DDA for extension of time. Reliance has been placed on ***Balbir Prashad Jain Vs. DDA*** 101 (2002) DLT 1 and ***Smt. Sheela Bisht Vs. DDA*** 55 (1994) DLT 645.

17. I am in the present cases unable to find any error in the refusal of the respondent DDA to condone the delay or not finding the cases of the petitioners to be deserving of condonation of delay and restoration of allotment. On the contrary, the respondent DDA has raised doubts as to the *bona fides* of the petitioners and has expressed suspicion that the monies belatedly deposited were deposited not by the petitioners but by others to whom the petitioners have traded their rights under the letter of allotment. The said reasons cannot in the circumstances aforesaid be said to be misplaced. The Division Bench of this Court in **Anil Kumar Vs. DDA** MANU/DE/0388/2008 also noticed the said illegal trade in flats. The counsel for the petitioners herein also has not been able to explain the source of the money ultimately deposited and has vaguely contended that jewellery was sold for the said purpose. It is also contended that no hearing has been given to the petitioners before rejecting their pleas for condonation.

18. I do not find any merit in any of the aforesaid reasons, if it had been the case of the petitioners that owing to the locality being not developed or for any other reasons they were not able to make the payment within the

stipulated time, they ought to have approached the respondent DDA for extension of time and having not done so and having been unable to satisfy this Court that the monies ultimately deposited are from their own source, there is no merit in the petitions; the same are dismissed. I refrain from imposing any cost. The monies deposited by the petitioners be refunded in accordance with the Policy.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 23, 2011

bs/gsr

(corrected and released on 20th September, 2011)