

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

**Date of decision: 8<sup>th</sup> September, 2011**

+ **W.P.(C) 18837/2006 & CM No.7156/2011 (for restoration of the writ petition dismissed in default on 9<sup>th</sup> May, 2011)**

**BHIM RAM** ..... Petitioner

Through: Ms. Richa Kapoor with Ms.  
Anupma Singh, Adv.

versus

**DDA** ..... Respondent

Through: Mr. Vivek Goyal, Advocate.

**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. The petition seeks a mandamus to the respondent DDA to, “make an alternative allotment of a Janta flat to the petitioner in Rohini at the cost prevalent in the year 1990 i.e. ₹67,500/- and further direct the respondent to forthwith hand over possession thereof and reschedule the installments commencing 30 days from the date of handing over possession of the flat

to be allotted to him”.

2. Notice of the petition was issued and counter affidavit filed by the respondent DDA. The petitioner opted not to file rejoinder. Vide order dated 16<sup>th</sup> April, 2009 respondent DDA was directed to file further affidavit and which also has been filed. The writ petition was dismissed in default on 9<sup>th</sup> May, 2011. CM No.7156/2011 for restoration thereof was filed and notice thereof issued. The counsel for the respondent DDA has fairly, not opposed restoration of the writ petition. CM No.7156/2011 is accordingly allowed and the writ petition restored to its original position. The counsels have been heard on the writ petition.

3. The petitioner, claiming to be belonging to the Reserved Category of Scheduled Caste, was a registrant with the respondent DDA for a Janta flat in the New Pattern Registration Scheme (NPRS) of the year 1979; he was in the draw of lots held on 15<sup>th</sup> March, 1990 allotted a Janta flat bearing no.32 (1<sup>st</sup> Floor), Sector 15, Block-C, Pocket-6, Rohini and a Demand-cum-Allotment letter dated 24<sup>th</sup> April, 1990 - 3<sup>rd</sup> May, 1990 issued to him. The said Demand-cum-Allotment letter indicated the payment terms as “hire purchase” and called upon the petitioner to pay ₹14,412.31p by 2<sup>nd</sup>

June, 1990 and latest with interest by 1<sup>st</sup> August, 1990 and to pay 240 monthly installments at the rate of ₹671.67p commencing from 10<sup>th</sup> July, 1990. It was further communicated that during hire purchase tenancy period, the status of the petitioner shall be that of a tenant. The petitioner was in addition to the said monthly installments, also called upon to w.e.f. 1<sup>st</sup> July, 1992 pay ground rent. The total cost of the flat was of ₹67,500/-.

4. The petitioner paid the sum of ₹14,412.31p together with due interest on 26<sup>th</sup> July, 1990 i.e. before the stipulated last date. It is the case of the petitioner and confirmed by the respondent DDA in its counter affidavit that he was also required to furnish to the respondent DDA the proof of the said deposit by 1<sup>st</sup> August, 1990 but deposited the said documents on 29<sup>th</sup> October, 1990 i.e. after a delay of 88 days. The petitioner claims that notwithstanding the initial amount of ₹14,412.31p having been deposited within the stipulated date, he was not delivered possession of the flat. On enquiry as to whether he paid the installments, it is stated that the installments @ ₹671.67p per month were to commence 30 days after being put into possession of the flat and since the petitioner was

not put into possession of the flat, the occasion for the petitioner to pay the installments did not arise.

5. The petitioner further claims, to have pursued the matter by visiting the office of the respondent DDA, but to no avail; that he sent Under Postal Certificate letters dated 15<sup>th</sup> July, 1992, 26<sup>th</sup> October, 1995, 11<sup>th</sup> August, 1997, 13<sup>th</sup> April, 2000 & 20<sup>th</sup> April, 2002 but again to no avail; that in the year 1995 the respondent DDA framed a Policy dated 25<sup>th</sup> May, 1995 for condonation of delay but the benefit thereof was also not given to the petitioner; that the petitioner made a representation dated 26<sup>th</sup> June, 2005 to the Vice Chairman of the respondent DDA but again to no avail; that on his personal visits to the office of the respondent DDA he was informed that his file had been lost; that ultimately on 21<sup>st</sup> March, 2006 he sought information under the Right to Information Act, 2005 and in reply dated 10<sup>th</sup> April, 2006 thereto it was stated that since the documents deposited were late by 90 days, the allotment had been cancelled and that the main file of the petitioner was not readily on record.

6. The petitioner claims to have continued to represent to the respondent DDA with no success and ultimately filed this petition in the

year 2006. The petitioner contends that delay in submission of documents cannot be a ground for cancellation of the allotment; that it was the respondent DDA which had inspite of the said payment failed to deliver possession of the flat to the petitioner and since the said flat had since been allotted to somebody else, the respondent DDA is obliged to allot alternative flat to the petitioner at the costs prevalent in the year 1990. The petitioner in para 16 of the petition has set out other cases where delay is claimed to have been condoned.

7. The respondent DDA in its counter affidavit has stated that the scheme in which the petitioner was registered was closed in the year 1996 after issuing Public Notice to the registrants to file their objections if any; that the petitioner did not do so and thus cannot be considered for further allotment; that in terms of the Allotment-cum-Demand letter there was to be an automatic cancellation; that the case of the petitioner is not similar to those cited in the petition.

8. The respondent DDA was on 16<sup>th</sup> April, 2009 as aforesaid, directed to give the details of the total number of registrations made in various categories under the NPRS Scheme 1979 and also the allotments made

under various categories and has in the additional affidavit stated that the total number of registrations made in Janta category were 56249 and 54288 allotments had been made and there was no backlog of the said flats. The breakup of the other categories has also been stated.

9. The counsels have been heard.

10. What has struck me in the first instance in respect of the present petition is that though the allotment in favour of the petitioner was of the year 1990 but the present petition was filed after 16 years in the year 2006. It has as such, at the outset been enquired from the counsel for the petitioner as to why the petition is not liable to be dismissed for the reasons of delay, laches and acquiescence alone.

11. The counsel for the petitioner has contended that the petitioner was continuously chasing up the matter in the office of the respondent DDA. However no proof or other particulars of personal visits if any made to the office of the respondent DDA has been furnished. The letters aforesaid are stated to have been dispatched under postal certificate. There is no proof of delivery thereof. Even otherwise the letters are after long gaps. The first letter as aforesaid is of after two years of the date of deposit of the initial

amount. It is not the case of the petitioner that he was not entitled to possession of the flat immediately after paying the initial amount aforesaid. There is no explanation as to why the petitioner if was not being delivered the possession, did not take appropriate remedies then. The representation dated 26<sup>th</sup> June, 2005 claimed to have been made by the petitioner to the Vice Chairman of the DDA (Annexure P-7 to the petition) also does not refer to any visits of the petitioner to the office of the respondent DDA or to any letters having earlier been sent as is being claimed now. Rather the petitioner in the said letter stated that neither had the registration amount and other deposits been refunded nor had he heard from the respondent DDA about further allotment despite lapse of 15 years. Rather the petitioner claimed to have been activated by the judgment dated 27<sup>th</sup> September, 2004 of this Court in W.P.(C) 931/2002 titled ***Bhim Sen Dhawan v. DDA***. It has been held by the Apex Court in ***Karnataka Power Corporation Ltd. v. K. Thangappan*** (2006) 4 SCC 322 that mere making of representations to the authority concerned cannot justify a belated approach.

12. There is thus a long delay of 16 years in preferring the petition.

13. What has also struck me as odd in the present case is the non-deposit by the petitioner of the monthly installments besides the initial installment and which as per the Demand-cum-Allotment letter were to commence from 10<sup>th</sup> July, 1990. Admittedly none of them have been paid. On enquiry as to how the petitioner is not in default of the payment of the same also and not only of default in deposit by 1<sup>st</sup> August, 1990 of the proof of payment of the initial amount, the counsel for the petitioner contends that the occasion for the petitioner to pay the said amounts did not arise since the petitioner had not been put into possession of the flat. It is argued that since the said installments were towards hire purchase and the petitioner during the payment thereof was to be a tenant of the respondent DDA, the same were payable only after the petitioner had been put into possession and not before that and the delay in putting the petitioner in possession is on the part of the respondent DDA.

14. However the Demand-cum-Allotment letter does not provide for the date of commencement of payment of the monthly installments of ₹671.67p from the date of being put into possession of the flat as is being argued now but unequivocally provides the date of commencement as 10<sup>th</sup>

July, 1990. The counsel for the petitioner has not been able to show as to how the payment of the said installments was to commence from the date of being put into possession. In the face of the written document providing the date of commencement of payment of installments as 10<sup>th</sup> July, 1990, I am not willing to accept the contention to the contrary of the counsel for the petitioner. If at all the claim of the petitioner at the contemporaneous time was that he was not liable to pay the installment as demanded for the reason of having not been put into possession of the flat, he ought to have raised it at the contemporaneous time and cannot be permitted to take it as an afterthought.

15. The entire conduct of the petitioner is indicative of the petitioner, after having made the initial payment, having decided not to pay any further monthly amounts and the interest of the petitioner in the flat appears to have been rekindled in the year 2006 upon finding the prices of the flats to have appreciated.

16. I am therefore of the view that the present is not a case requiring interference by this Court in exercise of powers under Article 226 of the Constitution of India.

17. The counsel for the petitioner has relied upon several judgments but which have not been found to be apposite by me. The same are disclosed herein below:-

- a. Order dated 8<sup>th</sup> April, 2008 in W.P.(C) 645/2007 titled ***Shanti Devi v. DDA*** – the said case also related to a registrant for an LIG flat in the NPRS, 1979; allotment was made in the year 1989 and initial payment made but the allotment cancelled owing to mistake of the respondent DDA and the respondent DDA upon realizing the mistake allotted another flat and made a demand but without adjusting the amounts earlier received; upon representations another allotment was made in the year 2004 but possession not handed over. It was in these facts that the petitioner was held entitled to flat at the costs prevalent in the year 2005;
- b. Order dated 12<sup>th</sup> December, 2008 in W.P.(C) No.16636/2006 titled ***Bhiva Ram v. DDA*** –this case also of a Janta flat under the NPRS, 1979. The

allotments made from time to time were got cancelled by payment of cancellation charges and it was in these facts that a direction for allotment at costs as applicable to the tail end priority case was made. The petitioner in the present case did not seek and pay any cancellation charges and thus the said order is not applicable;

- c. The order dated 28<sup>th</sup> January, 2008 in W.P.(C) 1637/2007 ***Digambar Mall v. DDA*** and order dated 4<sup>th</sup> November, 2008 in LPA No.168/2008 arising therefrom – in this case, the DDA itself had included the name of the petitioner in the tail end priority cases draw whereof was held on 31<sup>st</sup> March, 2004 and the Division Bench found that DDA had never informed the petitioner appellant of allotment and no Demand-cum-Allotment letter was sent to him and it was in such facts that allotment was made. In the present case as aforesaid, the receipt of the allotment letter is not controverted;

- d. Order dated 27<sup>th</sup> September, 2004 in W.P.(C) 931/2002 titled ***Bhim Sen Dhawan v. DDA***. This is an order on admission and thus cannot be cited as precedent;
- e. ***Asha N. Madnani v. DDA*** 1997 I AD (Delhi) 385 – laying down that the time for payment of instalments is mandatory but the time for deposit of documents is directory. However this was not a case of hire purchase and in any case full payment had been made. Such is not the position here. As aforesaid, there is total failure of the petitioner to pay the instalments.

18. Though the counsel for the petitioner has also handed over in the Court the office order dated 19<sup>th</sup> April, 2002 of the respondent DDA but has been unable to show as to how the petitioner is entitled to benefit thereof.

19. This Court has recently in W.P.(C) 7581/2008 titled ***Harvinder Singh v. DDA*** decided on 14<sup>th</sup> March, 2011 has held that the Policy of DDA concerning condonation of delay in making the payment requires the allottee to show that the case is a “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. It was further held that payment after delay does not give any right to obtain possession of the flat.

20. I am also of the view that in the aforesaid facts when the petitioner is a defaulter in payment of installments in terms of letter of allotment, any sympathy shown to the petitioner would be misplaced. The number of flats available is far less than the claimants under various schemes. Any direction of the courts on sympathetic grounds to make allotment to a defaulter would always be to the detriment and prejudice of some other registrant, allotment in whose favour would be further delayed.

21. There is thus no merit in the petition; the same is dismissed. I refrain from imposing any costs on the petitioner.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**SEPTEMBER 8 , 2011**

PP

**(corrected and released on 13<sup>th</sup> September, 2011).**