

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

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Date of decision: 26th August, 2011

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W.P.(C) No.13302/2005

KRISHAN CHANDER

.....Petitioner

Through: Mr. Sumit Bansal, Ms. Sumi Anand &
Mr. Abhinav Tandon, Adv.

Versus

DDA

..... Respondent

Through: Ms. Shobhana Takiar, Adv.

AND

W.P.(C) 9051/2006

HANS RAJ DUA

..... Petitioner

Through: Mr. Sumit Bansal, Ms. Sumi Anand &
Mr. Abhinav Tandon, Adv.

Versus

DDA

..... Respondent

Through: Mr. Arjun Pant, 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. The petitioner in W.P.(C) 13302/2005 impugns the decision dated 13th May, 2005 of the respondent DDA communicated to the petitioner vide letter dated 26th July, 2005, of cancellation of allotment earlier made to the petitioner of Plot No.48 *ad-measuring* 60 sq. mtr. in Pocket B-4, Sector-17 of Rohini Phase-II under Rohini Residential Scheme, 1981 and seeks mandamus for being put into possession of the said plot of land. Notice of the said petition was issued and vide order dated 19th September, 2005 respondent DDA directed to withdraw the said plot of land from the draw proposed to be held on 21st September, 2005 and vide order dated 20th February, 2006 which was made absolute on 9th April, 2009, the respondent DDA restrained from allotting the said plot to any third party.

2. W.P.(C) 9051/2006 has been preferred by an allottee of the year 2003 of Plot No.42 *ad-measuring* 60 sq. mtr. in Pocket-B-5, Sector-17 of Rohini Phase-II who was put into possession of the said plot on 1st February, 2005, complaining of the respondent DDA having allotted and delivered possession of the plot without development and without providing any

facilities/amenities therein and seeking a direction for provision thereof. Notice of the said petition was also issued.

3. Both petitions thereafter are being taken up together. From time to time orders were made with respect to the state of affairs prevailing in the locality in the years 2003/2005 and the respondent DDA directed to file affidavits as to the state of development and provision of various facilities/amenities in the locality.

4. The counsels have been heard. The counsel for the petitioners has stated that the area has since been developed and all facilities/amenities provided and he has instructions not to press W.P.(C) 9051/2006 which has become infructuous. Arguments have thus been addressed on the other writ petition.

5. The Demand-cum-Allotment letter in W.P.(C)13302/2005 is dated 1st - 5th September, 2003 and of the total premium of ₹7,18,872/-. The petitioner therein was required to pay ₹2,38,822 latest by 4th November, 2003, ₹3,59,436/- latest by 3rd January, 2004 and the balance ₹1,07,831/- by 2nd February, 2004. The petitioner though paid the first installment within time on 4th November, 2003, paid the second and the third installments on 11th

April, 2005 i.e. after delay of more than one year. The respondent DDA issued a notice dated 20th September, 2004 to show cause and effected the cancellation on 16th February, 2005. The petitioner at no time till then, made any communication with the respondent DDA, neither claiming any extension of time for making payment nor giving any explanation for the delay; not even in response to the show cause notice. The first representation in this regard was made only on 1st August, 2005 by the attorney of the petitioner who is claimed to be the brother of the petitioner.

6. The counsel for the petitioner has argued that the petitioner is a resident of Canada and though had by the stipulated dates remitted the monies for deposit with the respondent DDA but the same could not be deposited for the reason of there being an illness in the petitioner's family in India and the money being used up in the same. It is further argued that the respondent DDA has a Policy for condonation of delay and has been condoning delays of much longer time than in the instant case. Reliance in this regard is placed on:-

- i. Judgment dated 6th July, 2006 of this Court in W.P.(C) 11148/2005 titled *Ashok Kumar Bisarya v. DDA*;

- ii. Judgment dated 19th September, 2005 of this Court in W.P.(C) 12517/2005 titled ***S.R. Yadav v. DDA***;
- iii. Judgment dated 11th January, 2008 in LPA 2594/2005 titled ***DDA vs. Ms. Swaran*** and;
- iv. ***DDA v. R.S. Yadav*** 2002 (V) AD (Delhi) 592 (FB).

7. The counsel for the petitioner has handed over in the Court the Policy of the respondent DDA for condonation of delay particularly with respect to the Rohini Residential Scheme. The petitioner has in the petition also given particulars of other cases where the respondent DDA has condoned delays. He has contended that the case of the petitioner has not been considered in accordance with the said Policy and/or by the Lt. Governor, Delhi who as per the said Policy is the Competent Authority to condone the delay as in the present case.

8. On enquiry, as to why the petitioner, if a resident of Canada, needs the plot aforesaid, it is stated that the respondent DDA has a Policy of making allotments in favour of Non-Resident Indians as the petitioner is and the Policy of the Reserve Bank of India also permits acquisition of the plot by

the petitioner and there was no restriction in this regard in the Rohini Residential Scheme of the year 1981 under which the petitioner had registered and in pursuance to which registration, allotment aforesaid was made to the petitioner. It is also contended that the allotment in favour of the petitioner has not been cancelled for the reason of the petitioner being an NRI and hence the said query is irrelevant.

9. The counsel for the petitioner relying on the orders made from time to time with respect to the state of development and provision of amenities and facilities in the locality, has also contended that the respondent DDA was not entitled to claim the full price from the petitioner and for the reason of non-payment whereof allotment has been cancelled. Reliance in this regard is placed on *K. Bhattacharjee v. DDA* 1996 (38) DRJ 343 (DB).

10. The counsel for the petitioner has thus contended that either this Court itself should set aside the cancellation and direct the petitioner to be put into possession of the plot or if not inclined to do so, direct the case of the petitioner to be considered by the Lt. Governor, Delhi for condonation of delay.

11. Before discussing the merits of the aforesaid contentions, the defence

of the respondent DDA may be considered. The counsel for the respondent DDA has argued that the petitioner in his application dated 16th March, 1981 for registration under the scheme aforesaid though had given his address as that of Punjab and though had disclosed that he was not a resident of Delhi, had declared that he was a resident of India. Attention is invited to the Application Form submitted by the petitioner and which expressly required the applicants to study carefully the terms & conditions and warned them that if the application was incorrectly filled up, it would be liable for rejection. Attention is further invited to the declaration of the petitioner of the information given in the Application Form being correct. Attention is next invited to the Passport of the petitioner to show that the petitioner is a Canadian citizen. It is contended that the criteria adopted to ascertain the eligibility for allotment of plots under the Rohini Residential Scheme did not permit the citizen of a foreign country on the date of the draw for allotment, to be considered for allotment under the Scheme. It is thus contended that the petitioner, on the date of draw of lots in pursuance to which allotment was made in his favour, being a Canadian citizen, is in any case ineligible for allotment and the writ petition is liable to be dismissed on this ground alone.

12. It is further the case of the respondent DDA that the present petition is also being pursued not by the petitioner but is being pursued by his attorney only. It is thus contended that the petitioner has no interest in the plot. Attention is invited to the General Power of Attorney executed by the petitioner in Canada on 12th November, 2004 whereunder the attorney has been empowered to sell/transfer the plot. It is further urged that the said power of attorney does not even authorize the attorney to institute the present petition and thus the very institution of this writ petition is without authority and bad.

13. The counsel for the respondent DDA has also contended that of the 156 plots allotted contemporaneously, allottees of 137 took possession without any objection whatsoever and the ground taken by the petitioner now of the non-development in the locality is an afterthought.

14. The counsel for the petitioner in rejoinder though has not been able to controvert any of the aforesaid facts but has contended that the attorney is none other than the brother of the petitioner. It is urged that the petitioner being in Canada has appointed his brother as his attorney to pursue this petition.

15. A perusal of the Power of Attorney does indeed show that though the

same empowers the attorney to file suits for recovery of rent and for eviction of tenant but does not empower the attorney to institute any other legal proceedings with respect to the land. The Power of Attorney is executed only with respect to the plot aforesaid and not with respect to any other property or affairs of the petitioner. This writ petition has remained pending for the last six years. The counsel for the petitioner has been unable to show any act of ratification by the petitioner of the institution of the writ petition. The same is indicative of the petitioner having not even visited this country in the last six years and is also indicative of the petitioner personally having no interest in the plot.

16. The empowerment of the attorney to sell the plot is also strange. On the date of execution of the power of attorney, the allotment already stood cancelled. If at all any Power of Attorney was required, the same was required to apply for setting aside of the cancellation. However rather than vesting the attorney with such powers, the attorney was empowered to sell the property.

17. It is not in dispute that the allotment aforesaid was for self use and not transferable and there is thus merit in the argument of the counsel for the

respondent DDA of the entire purport of the present proceedings being to avail of the plot of land allotted at low rates and to sell off/transfer the same at a huge premium. This Court would certainly not come to the rescue of such a petitioner and not exercise the discretion in his favour. The schemes of the respondent DDA are intended to provide housing to citizens and are not intended to enable interlopers or persons dealing in property for commercial gain.

18. Though the counsel for the petitioner contended that the petitioner enjoys dual citizenship but notwithstanding the respondent DDA having filed an affidavit taking the aforesaid pleas, no rejoinder has been filed showing that the petitioner on the date of draw of lots was an Indian citizen. The petitioner being clearly ineligible for allotment, it is felt that even if there were to be any merit in the claim of the petitioner of his case of delay in payment having not been examined by the Competent Authority under the Policy of DDA, no purpose would be served in adjudicating the same as much as the petitioner would still remain ineligible for allotment.

19. The petition is therefore liable to be dismissed on this ground alone.

20. Even on the aspect of delay, I am unable to find any merit in favour of the petitioner. The Demand-cum-Allotment letter clearly provided that upon

failure to make the payments by the stipulated date the allotment shall stand automatically cancelled. Notwithstanding the said condition and notwithstanding the default, neither any application at the relevant time was made seeking extension of time or explaining the delay, nor at any time till about six months after the formal intimation of cancellation. Such conduct shows that there was no cause for delay. There is no explanation whatsoever as to why, even if payment could not be made in time, representation was not made then. The scheme of the respondent DDA of condonation of delay in making payment is intended for *bona fide* delays and/or where the allottees for reasons beyond their control are unable to make the payment and is not intended to be used as an afterthought. A *bona fide* allottee unable to make payment is required to immediately approach the DDA in this regard. The petitioner in the present case maintained a stoic silence and clearly indicated that he was not interested in plot. The representation was made only when interest as aforesaid of the attorney was created in the plot by execution of Power of Attorney. For this reason also, no case for condonation is made out.

21. I am also of the view that the automatic cancellation which had come into effect in terms of letter of allotment was not in any way affected by the

show cause notice issued on 20th September, 2004. The same was only intended to give a chance to the petitioner, if had made the payment in the bank account of the respondent DDA and which may have escaped notice of the respondent DDA in reconciling its accounts, to intimate of the same. The petitioner did not respond to the said show cause notice also though now claims that the same was not received.

22. There is thus no merit in W.P.(C) 13302/2005; the same is dismissed; the interim order is vacated; the amounts deposited by the petitioner with respondent DDA be refunded to the petitioner in accordance with the Policy of DDA in this regard. I refrain from imposing any costs on the petitioner.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 26, 2011

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(corrected and released on 8th September, 2011).