

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

%

Date of decision: 23rd August, 2011

+

WP(C) 7584/2008

MR. SUDERSHAN KUMAR

..... Petitioner

Through: Mr. Lalit Gupta, Mr. Deepak Aggarwal, Mr. Amit Pandey and Mr. M.H. Khan, Advocates.

Versus

DDA

..... Respondent

Through: Ms. Sangeeta Chandra 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.

CM.No.168/2011 (of the petitioner for restoration of the writ petition dismissed in default on 24th November, 2010) in WP(C) 7584/2008

1. The proof of payment of costs has been filed. Reply of the respondent DDA to the application has been perused.
2. It is the contention of the counsel for the respondent DDA that the

petitioner had strategically got the writ petition dismissed before the Bench which had heard similar writ petition being W.P.(C) 7581/2008 titled ***Harvinder Singh v. DDA*** which was being taken up along with this writ petition and was dismissed on 14th March, 2011.

3. Though there is merit in the said contention but it is deemed appropriate to hear this writ petition also and to dispose of the same on merits. Accordingly the application is allowed and the writ petition is restored to its original position.

W.P.(C) No. 7584/2008.

4. The arguing counsel for the petitioner is not available and adjournment is sought. The same is opposed by the counsel for the respondent DDA. In any event, considering what is recorded hereinabove, it is not deemed appropriate to adjourn the writ petition. The counsel for the respondent DDA has been heard.

5. The petitioner claims, to be a registrant for an LIG flat in the Housing Scheme of the year 1979 of the respondent DDA; the registration was subsequently got converted to for an MIG flat; an MIG flat was allotted and a demand letter dated 7th-15th January, 2004 issued to the petitioner; the petitioner in accordance with the said demand was to

make payment of ₹11,56,060/- latest by 13th July, 2004 and upon failure to make such payment the allotment was to automatically stand cancelled; the petitioner however deposited the said amount on 10th October, 2005. This petition has been filed seeking mandamus for delivery of possession of the flat allotted and execution of conveyance deed with respect thereto. Interim relief of restraining the respondent DDA from allotting or handing over possession of the said flat to anyone else sought.

6. Notice of the petition was issued but no interim relief granted. The petitioner as well as Shri Harvinder Singh aforesaid preferred LPA No.760 & 761/2008 to the Division Bench against the order of refusal of interim relief and which appeals were dismissed vide common judgment dated 12th December, 2008.

7. The respondent DDA in its counter affidavit has stated that the petitioner having failed to deposit the demanded amount even within the maximum time permitted therefor, the allotment stood cancelled and the payment by the petitioner thereafter is of no avail. It is stated that the delay in the present case is of 454 days while in **Harvinder Singh** the delay was of 722 days.

8. This Court in **Harvinder Singh** 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 a delay does not give any right to obtain possession of the flat.

9. On inquiry it is told that no appeal in the case of ***Harvinder Singh*** has been preferred.

10. The counsel for the respondent DDA has thus contended that this petition is also liable to be dismissed in accordance with the judgment in ***Harvinder Singh***.

11. The counsel for the petitioner who appears now has however urged that the facts in the present case are different from that in ***Harvinder Singh***. Attention is also invited to a notice dated 23rd September, 2005 issued by the respondent DDA in this regard calling upon the petitioner to show cause within 15 days as to why the allotment be not cancelled. It is thus contended that the allotment did not stand cancelled automatically on non deposit of the demanded amount by 13th July, 2004. It is further contended that the

petitioner within 15 days of the receipt of the show cause notice i.e., on 10th October, 2005 deposited the entire amount with the DDA. Attention is also invited to a letter dated 1st February, 2006 of the DDA to the petitioner calling upon the petitioner to give the reason for delay in depositing the payment, so that the case could be processed further and to the letter dated 3rd October, 2006 of cancellation of allotment. It is thus urged that the petitioner prior to the cancellation had already deposited the payment.

12. The counsel for the DDA has contended that a similar show cause notice had been issued in *Harvinder Singh* as also noticed in the said judgment and notwithstanding the same the Writ Petition was dismissed. It is further urged that by mere issuance of letter dated 1st February, 2006 and cancellation letter dated 3rd October, 2006 would not affect automatic cancellation in terms of the demand cum allotment letter dated 7th-15th January, 2004. It is yet further contended that the petitioner in the present case maintained an absolute quietus after admitted receipt of demand cum allotment letter and did not approach the DDA for extension of time for payment. It is yet further contended that even thereafter no reason whatsoever for the delay was indicated, not even after surreptitious deposit of the amount in the account of the DDA. It is yet further contended that

even in the Writ Petition, no reason whatsoever for delay has been stated and only in the rejoinder to the counter affidavit of the DDA it is vaguely stated that the petitioner was suffering from hypertension and depression and other problems in the family.

13. The counsel for the petitioner rejoins by contending that the petitioner was not in receipt of the show cause notice dated 23rd September, 2005 and the letters dated 1st February, 2006 and 3rd October, 2006 (*supra*) all of which have been filed with the counter affidavit of DDA and was not aware that the petitioner was required to give any reasons for delay. He has further contended that the issuance of the letter dated 1st February, 2006 shows that had the petitioner received the same and had furnished reasons for delay to the respondent DDA and had the respondent DDA been satisfied therewith, the time for payment would have been extended and cancellation would not have come into force. He urges that since the respondent DDA admittedly has a policy of condoning the delay in payment and has in other cases been so condoning delay even of more than 454 days, the petitioner is entitled to consideration of his case by the authority of the DDA competent to so condone the delay. He states that the petitioner is willing to withdraw this

writ petition subject to the direction being given to the respondent DDA to consider the representation of the petitioner for condonation of delay.

14. The counsel for the respondent DDA has vehemently opposed the claim for granting liberty to the petitioner to represent to the DDA and of a direction to the DDA to consider the said representation. It is urged that the petitioner having preferred the Writ Petition and the matter having reached the final stage, the occasion for grant of any liberty to the petitioner does not arise.

15. Though the proposal of the counsel for the petitioner of dismissing the Writ Petition as withdrawn with liberty to the petitioner to represent to the concerned authority of the DDA for condonation of delay and directing the DDA to consider the said representation appears attractive particularly when DDA has a policy of in appropriate cases condoning the delay and when the case of the petitioner has admittedly not been considered by the said authority of DDA but the Apex Court recently in *State of Uttaranchal Vs. Sunil Kumar Vaish* MANU/SC/0941/2011 has held that the Courts ought not to remand the matters for further / afresh consideration when the dispute is otherwise ripe for adjudication by courts and that duty is cast on the judges to give finality to the litigation so that the parties would know where

they stand. Undoubtedly such an order as now sought by the petitioner would result in, not only the respondent DDA again considering the matter after the question has remained pending in this Court for the last three years but upon DDA taking a decision unfavourable to the petitioner, would lead to a further round of litigation and which practice has been deplored by the Apex Court in the judgment aforesaid. It has as such been deemed appropriate to consider the matter on merits.

16. It is not in dispute that the petitioner in accordance with the demand cum allotment letter was to pay the demanded amount latest by 13th July, 2004 and non-payment was to result in cancellation / forfeiture of allotment. The quietus maintained by the petitioner during the said time of six months was definitely indicative of the petitioner's unwillingness to accept the allotment.

17. The forfeiture came into effect automatically upon non-payment by 13th July, 2004. The petitioner even thereafter remained quiet. Though the petitioner now claims to have deposited the amount within 15 days of the show cause notice dated 23rd September, 2005 but such was not the case of the petitioner in the Writ Petition. The petitioner in the Writ Petition neither disclosed receipt of any such show cause notice nor the deposit in terms of

the demand therein. It is thus clear that the petitioner, upon the said show cause notice being disclosed by the respondent DDA is wanting to take advantage thereof. It was not the case of the petitioner in the petition that automatic cancellation on 13th July, 2004 stood waived by issuance of the said show cause notice. The case of the petitioner has to stand on its own legs and the petitioner cannot take a shifting stand. The petition was filed contending that the payment on 10th October, 2005 was in terms of the demand cum allotment letter and was accepted by the respondent DDA. The said case has now been abandoned.

18. Not only so, there is not a single letter from the petitioner to the DDA even thereafter for a period of three years till the legal notice dated 29th September, 2008 claimed to have been got sent by the petitioner to the DDA. It again shows that the petitioner was in no hurry for the flat.

19. The flats are allotted by the DDA as a welfare measure to address acute housing problem in the city and not for trading. The conduct of the petitioner in the present case of maintaining quietus after receipt of demand cum allotment letter and remaining quiet for three years even after payment is indicative of the petitioner having assigned his rights to some other persons for consideration and the present Writ Petition being pursued by

some other person and which cases are not unknown, the market price of the flats being much higher than the price charged by DDA. The Division Bench of this Court in *Anil Kumar Vs. DDA* MANU/DE/0388/2008 also noticed such illegal trading in flats. During the hearing, the source from which the payment was made by the petitioner was enquired into. The counsel for the petitioner states that he has no instructions in this regard.

20. The petitioner, having not based his case on the show cause notice dated 23rd September, 2005 and on the letter dated 1st February, 2006, cannot now get any benefit thereof. In any event the show cause notice or the letter of cancellation does not indicate that the automatic cancellation in accordance with the terms of the demand cum allotment letter of the year 2004 had not come into effect. Such show cause notice appears to have been issued only to confirm that the payment within the stipulated date i.e. by 13th July, 2004 had not been made by the petitioner. The payments demanded by the respondent DDA are required to be deposited in a bank account and there may be errors in correlating a particular payment with the concerned flat. The notice to show cause was by way of abundant caution and called upon the petitioner to, if he had made the payment within the stipulated time, to furnish the proof thereof. It thus cannot be said that by issuance of the show

cause notice dated 23rd September, 2005 the allotment which stood cancelled on 13th July, 2004, was revived.

21. Once it is held that the cancellation had come into effect restoration was not a matter of right. Undoubtedly the respondent DDA has a restoration policy and under which policy various authorities/officers have been entrusted with powers to condone the delay in payment upto certain period but only in “deserving cases” and not where the allottee is at fault. Ordinarily an allottee desirous of availing of / accepting the allotment and if unable to make payment within time for the reasons beyond control, would immediately approach the DDA for extension of time. As aforesaid, nothing of this sort was done in the present case. Rather, notice of the petition was got issued by misrepresenting the facts to this Court and the petitioner, after the respondent DDA has filed its counter affidavit, sought to fit his case therein. Such conduct amounts to abuse of the process of this Court.

22. Moreover, the present case does not fit into the category of “deserving case” within the meaning of the policy of restoration of the respondent DDA. The petitioner is admittedly at fault. If the reasons as given in the rejoinder of hypertension and depression and family problems, without even filing any document were to constitute reasons for restoration, it would

tantamount to granting unlimited period for payment in pursuance to the allotment cum demand letter; the same would affect the functioning of the DDA of making houses available to deserving citizens at the earliest.

23. This Court in *Balbir Prashad Jain Vs. DDA* 101 (2002) DLT 1, relying on the judgment of the Division Bench in *Smt. Sheela Bisht Vs. DDA* 55 (1994) DLT 645 interpreted the similar demand-cum-allotment letter and show cause notice issued by DDA to mean that though allotment stands automatically cancelled but can be restored on payment with interest and other charges and subject to availability of allocated flat.

24. There is thus no merit in the petition. The same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 23, 2011
Bs

(corrected and released on 01.09.2011)