

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

Date of decision: 22nd July, 2011.

+ W.P.(C) 8116/2008 & CM No.15654/2008 (for stay)

% K.R. CULTURAL & WELFARE SOCIETY (REGD.) .. Petitioner

Through: Mr. Ravinder Sethi, Sr. Adv. with Mr.
Rajiv Kumar Ghawana, Adv.

Versus

DDA

.... Respondent

Through: Mr. Rakesh Mittal, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No.
2. To be referred to the reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

RAJIV SAHAI ENDLAW, J.

1. The challenge in this petition is to the order dated 4th August, 2006 of the respondent DDA cancelling the allotment of land in favour of petitioner for construction of Community Hall in Pocket No.10, Sector-15, Rohini, New Delhi.

2. Notice of the petition was issued and upon the senior counsel for the petitioner relying upon ***R.K. Saxena Vs. DDA*** 90 (2001) DLT 752 (SC) *status quo* directed to be maintained. The said order has continued in force till now. The pleadings have been completed. The counsels have been heard.

3. The respondent DDA had vide letter dated 18th January, 2002 allotted the land aforesaid to the petitioner. Clause 9 of the said letter is as under:-

“9. The payment and the acceptance letter with the required undertaking must be sent within 60 days interest at the rate of 18% shall be chargeable for the delay period up to 6 months of the issue this letter, after completion of 6 months from the date of issue, the allotment shall be automatically cancelled, if the society has made the partial payment after 6 months of issue of this letter the society shall have to re-apply for allotment.”

4. It is the case of the petitioner that the letter was never served on the petitioner and the petitioner learnt of the allotment in its favour upon visiting the office of the respondent DDA in the month of March, 2002 and whereafter the petitioner paid the entire demanded amount of ₹30,47,806/- as under:-

“1.	₹10,00,000/-	vide challan No.139506 dt. 28.6.2002
2.	₹9,50,000/-	vide challan No.144081 dt. 21.8.2002

- | | | |
|----|----------------|---|
| 3. | ₹3,00,000/- | <i>vide challan No.144082 dt. 28.8.2002</i> |
| 4. | ₹7,97,806/- | <i>vide challan No.128923 dt. 2.9.2002</i> |
| | <hr/> | |
| | ₹30,47,806/- ” | |

It is further the admitted position that besides the aforesaid, on 12th September, 2002 a further sum of ₹2,16,000/- was deposited towards interest at the rate of 18% per annum. The said amounts have remained with the respondent DDA till date.

5. The senior counsel for the petitioner has contended that the petitioner after making the payments aforesaid continued to represent to the respondent DDA and respondent DDA after nearly four years vide letter dated 4th August, 2006 (supra) cancelled the allotment; that the petitioner continued to represent thereafter also and filed this petition ultimately in the year 2008.

6. The respondent DDA in its counter affidavit has stated that the letter dated 18th January, 2002 of allotment was dispatched by speed post to the petitioner. The respondent DDA along with its additional affidavit has filed photocopies of its Dispatch Register and the speed post receipt. It is contended that the action of the respondent DDA is strictly in accordance

with Clause 9 and thus cannot be faulted with.

7. I have enquired from the counsel for the respondent DDA as to why the cancellation was effected after nearly four years, in the year 2006, when according to the respondent DDA the allotment stood automatically cancelled upon default in terms of Clause 9 (supra), on 17th July, 2002 itself. The said question has been raised inasmuch as it is felt that considering the proposed user of the land it is ultimately the residents of the locality for whose benefit and convenience the proposed Community Hall has to be constructed, who have suffered owing to the delay.

8. The counsel for the respondent DDA has stated that he has not found any noting on the file for the delay between the years 2002 to 2006.

9. The senior counsel for the petitioner has besides relying upon **R.K. Saxena** (supra), also invited attention to the judgment dated 11th January, 2008 of the Division Bench of this Court in LPA No.2594/2005 titled **DDA Vs. Ms. Swaran** where it was held that once DDA had kept the monies with itself for long, cancellation is not be effected. It was also held that under the Transfer of Property Act, 1882 time is not of essence and thus the

cancellation for default beyond 6 months ought not to have been effected.

10. The petitioner on the last date of hearing before this Court had also contended that the respondent DDA had in identical situation granted time to Rahul Dhaka Educational Society to make the payment. The counsel for the respondent DDA had then sought time to obtain instructions. He today states that he has examined the file of Rahul Dhaka Educational Society; the said Society deposited approximately 50% of demanded amount within 6 months and it was in these circumstances that after expiry of 6 months also, another opportunity was granted to Rahul Dhaka Educational Society to make the balance payment within 10 days.

11. The senior counsel for the petitioner has contended that the petitioner herein had also deposited a sum of ₹10 lacs being approximately 1/3rd of the demanded amount before the expiry of 6 months and thus there is no reason for the petitioner to be not given an opportunity as had been given to Rahul Dhaka Educational Society.

12. The petitioner has thus undoubtedly been discriminated against. There is no explanation as to why Rahul Dhaka Educational Society was

given another opportunity and the petitioner not. Part deposit of one-half or one-third appears to be no reason for treating them differently

13. I am of the view that the controversy in the present case is squarely covered by the judgment in *Ms. Swaran* (supra). The petitioner in the present case deposited the entire demanded amount with the respondent within about 8 months of the letter of demand even if believed to have been served on the petitioner and within 6 months of the date when according to the petitioner itself, the petitioner for the first time learnt of the allotment in its favour. The petitioner has also deposited the interest. The Division Bench has held that DDA ought not to have accepted the amount. The same holds good in the present case also. The respondent DDA ought to have not accepted further payments tendered beyond six months and even if the same were deposited without its knowledge, ought to have returned the same and communicated the cancellation immediately after 17th July, 2002 itself. Having not done so and having retained the same for last nine years, the judgments aforesaid squarely apply.

14. The petition therefore succeeds; the cancellation effected of the allotment in favour of the petitioner is set aside/quashed. The respondent DDA is now directed to within three months of today and subject to compliance of formalities if any remaining by the petitioner, put the petitioner into possession of the allotted land and execute documents as may be required to be executed in this regard.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 22, 2011
Bs..