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

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+ **W.P.(C) 8619/2008**

MOTI LAL WALI

..... Petitioner

Through: Mr. R.K. Saini, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms Sangeeta Chandra, Advocate

CORAM: JUSTICE S. MURALIDHAR

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| 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 Digest? | No |

ORDER
11.01.2011

1. The Petitioner is aggrieved by the order of the Delhi Development Authority ('DDA') cancelling the registration of the Petitioner under its Rohini Residential Scheme, 1981 ('RRS 1981') for allotment of an MIG plot. He prays for its restoration.

2. The admitted facts are that the Petitioner was registered with the DDA under its RRS 1981 for allotment of an MIG plot. The Petitioner stated that at the time of registration he was the owner of a quarter bearing Municipal No. 4674, Murari Lal Building No. 2, Rosanara Road, Subzi Mandi, Delhi consisting of one kitchen, one bath room, one toilet and a courtyard on the ground floor and one room and a small courtyard on the first floor, on a plot of land measuring 55 sq. yards. It is stated that this fact was disclosed by the

Petitioner under Column VI-A of the application for registration under the RRS 1981. After the Petitioner furnished the documents and an affidavit by way of an undertaking, by a letter dated 15th June 1983 the DDA informed the Petitioner that his case has been accepted for inclusion in the next draw of lots for allotment of a plot. According to the Petitioner, he thereafter did not hear from the DDA.

3. When the priority numbers proximate to that of the Petitioner's were included in the draw of lots held on 21st September 2005 and his name was not included. The Petitioner approached the DDA on 7th February 2006 to find out why his name was not included. By its letter dated 30th November 2006, the DDA informed the Petitioner that his registration had been cancelled by a letter dated 19th December 1986. A copy of the said letter of cancellation was enclosed. The Petitioner states that he was shocked and surprised to receive the aforesaid letter for the first time and that cancellation of his registration was made without any prior notice. Thereafter, the Petitioner personally visited the office of the DDA and met the officials a number of times but without any success.

4. Mr. R.K. Saini, learned counsel appearing for the Petitioner relies upon the decision dated 7th August 2008 of this Court in Writ Petition (Civil) No. 5417 of 2007 (*Jitender Pal Bhardwaj v. Delhi Development Authority*) where it was held that a person holding a house/plot/flat having an area of less than 65 sq. m. at the time of registration, was eligible for allotment under the RRS. It

was further held that a person who acquired such house/plot/flat even after registration under the RRS, was entitled for allotment of a plot under the RRS. It is further submitted that the said decision was taken up in appeal by the DDA to the Supreme Court in Special Leave Petition (Civil) No. 27181 of 2009 which was dismissed by the Supreme Court on 9th October 2009. Reliance was also placed on an order dated 28th October 2006 passed by this Court in Writ Petition (Civil) No. 2004 of 2006 (***Basant Kumar Rastogi v. Delhi Development Authority***).

5. Ms. Sangeeta Chandra, learned counsel appearing for the DDA submits that the letter dated 19th December 1986 cancelling the allotment was sent to the Petitioner at his last known address. The said letter was not received back unserved. Therefore, a presumption ought to be drawn, under Section 27 of the General Clauses Act, that the said letter was duly served. It is submitted that the Petitioner did nothing to challenge the cancellation of his registration for more than 20 years thereafter. Consequently, it is submitted that the present petition is barred by laches. Although, it is not denied that in terms of the order in ***Jitender Pal Bhardwaj v. DDA*** the Petitioner would be entitled to relief, the DDA opposes the petition essentially on the ground of laches. It is submitted that the burden to show that he did not receive the letter dated 19th December 2006 was on the Petitioner.

6. The above submissions have been considered by this Court.

7. As regards the objection raised by the DDA on the ground of laches, this Court has perused the original file of the DDA. There is no acknowledgment

card duly signed by the Petitioner on the file. It is unlikely that the Petitioner, if he had received the letter dated 19th December 1986, would not have taken steps to challenge the cancellation. The version of the Petitioner that he had no means to suspect that his registration had been cancelled and that he was waiting for his priority to mature is not unbelievable. It is not unusual for the allottees to wait for more than 20 years for their priorities to mature. In this case, when the priority numbers proximate to the Petitioner's came to be included in the draw of lots held on 21st September 2005 and the Petitioner's name was not included, the Petitioner was prompted to approach the DDA to find out the reasons for the non-inclusion. This appears probable.

8. It is then submitted by learned counsel for the DDA that even after receiving the letter dated 30th November 2006, the Petitioner chose to wait till December 2008 to file the present writ petition. However, the Petitioner appears to have been pursuing the matter with the DDA during this period. Consequently, this Court is not inclined to entertain the objection of the DDA that the present petition is barred by laches.

9. The decision in ***Jitender Pal Bhardwaj v. DDA*** clearly applies to the case of the Petitioner. Admittedly, the quarter owned by him at Municipal No. 4674, Murari Lal Building No. 2, Rosanara Road, Subzi Mandi, Delhi was less than 65 sq. m. He was, therefore, not disentitled from allotment of a plot under the RRS 1981. The order passed by the Supreme Court dismissing the appeal filed by the DDA in the ***Jitender Pal Bhardwaj*** case reaffirms this position.

10. By the interim order dated 4th December 2008 the Petitioner's name was directed to be included in the draw of lots for allotment of plots under the RRS 1981. It is stated that pursuant to the said interim order a mini draw of lots was held on 4th February 2009 in which the Petitioner was included and an allotment was made. It was subsequently sought to be pointed out by the DDA that this was a mistake and that the Petitioner's name ought to have been included only in the regular draw of lots. This does not matter since in any event the Petitioner has been allotted a plot No. 44, Pocket C-5, Sector-28, Rohini, Delhi, pursuant to the said mini draw.

11. Consequently, the DDA's letter dated 19th December 1986 cancelling the allotment in favour of the Petitioner is hereby set aside. Within a period of four weeks from today, the DDA will inform the Petitioner of the amount that he has to pay, in terms of its policy, for restoration of the allotment. The Petitioner will make the payment within a further period of four weeks in terms of the said communication and upon completion of all formalities, he will be put in possession of the plot in question within four weeks thereafter.

12. The petition is disposed of in the above terms.

S. MURALIDHAR, J

JANUARY 11, 2011
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