

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

21

+

W.P.(C) 13290/2009

MOHD SULTAN

..... Petitioner

Through: Mr. R.K. Saini, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Rakesh Mittal, Advocate

CORAM: JUSTICE S. MURALIDHAR

- | | |
|--|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

ORDER

11.01.2011

1. As a result of the refusal by the Delhi Development Authority ('DDA') to condone the delay in payment of instalments by the Petitioner towards allotment of a plot under the Rohini Residential Scheme, 1981 ('RRS') the present writ petition has been filed.

2. The Petitioner applied for allotment of an LIG category residential plot in Rohini in the year 1981. Twenty-two years later the Petitioner's name was included, as per his priority, in the draw of lots held by the DDA on 11th June 2003. He was allotted plot No. 593, Pocket C-2, Sector 28, measuring 32 sq. m. and thereafter an allotment-cum-demand letter bearing block dates 15th September 2003 to 19th September 2003 was issued to the Petitioner showing the total disposal cost as Rs. 1,24,448/-. The first instalment, comprising 35%

of the disposal cost in the sum of Rs. 38,458/- was to be paid by 18th November 2003. The second instalment comprising 50% of the disposal cost in the sum of Rs. 62,224/- was to be paid by 17th January 2004 and the third installment comprising 15% in the sum of Rs. 18,667/- was to be paid by 30th June 2006.

3. The Petitioner states that on account of certain domestic problems there was a delay in payment of the instalments. The first instalment in the sum of Rs. 38,458/- was paid only on 19th May 2004 with a delay of 154 days. The Petitioner sought further extension of time for making payment of the second instalment which was due on 17th January 2004. It is stated that the DDA granted extension of time by 180 days for making payment of the second instalment and that period expired on 16th April 2004.

4. The Petitioner states that during this period the wife of his brother underwent prolonged illness and her son had also fallen ill. Heavy expenditure was incurred on their hospitalization. After a prolonged treatment, both of them died in May 2005 within short intervals. The Petitioner made a payment of Rs. 20,000/- on 7th June 2005 and of a further sum of Rs. 18,000/- on 9th June 2005. Both these payments were admittedly delayed by 507 and 509 days respectively. No demand was raised as regards the third instalment since by then the DDA decided to cancel the allotment.

5. It is stated that on 19th May 2005 a show cause notice was issued to the Petitioner by the DDA informing him of the cancellation of allotment and asking him to explain if he had anything to say in the matter. The Petitioner

states that he replied to the said show cause notice on 20th September 2005 but his representations were turned down. The DDA admitted that the Petitioner's letters dated 4th March 2008, 2nd December 2008 and 5th August 2009 praying for restoration of the allotment were rejected by its letters dated 18th August 2008, 21st January 2009 and 25th August 2009 respectively.

6. On 1st December 2009 this Court directed that the matter be placed before a Committee headed by the then Chief Legal Advisor, DDA. However, on 15th January 2010 learned counsel for the Petitioner submitted that this exercise would be futile since a similar request in another case was rejected by the Committee. On 3rd February 2010 this Court directed status quo to be maintained in respect of the plot in question.

7. Mr. R.K. Saini, learned counsel appearing for the Petitioner submitted that under the policy of the DDA, the delay in making the payment of instalments beyond 180 days and upto 360 days can be condoned by the Vice Chairman, DDA. The delay beyond one year can be condoned by the Lieutenant Governor. It is submitted that there have been similar cases where larger periods of delay which have been condoned by the DDA and the allotment restored. Copies of the notings on the file of the DDA in respect of such cases have been enclosed with the petition. Mr. Saini also refers to the decision of this Court dated 6th July 2006 in Writ Petition (Civil) No. 11148 of 2005 (*Ashok Kumar Bisarya v. Delhi Development Authority*) and the decision dated 11th August 2008 of the Division Bench of this Court in LPA No. 188 of 2008 (*Raj Kumar Sharma v. Delhi Development Authority*) to urge that in the present case the DDA should exercise its discretion to condone the delay

in the Petitioner making the payment of the balance amount. It is further submitted that the plot in Rohini was not even developed when the third instalment fell due. Therefore, in terms of the policy of the DDA the date for making the payment of the third instalment would have ordinarily been postponed.

8. On behalf of the DDA it is submitted by Mr. Rakesh Mittal, learned counsel that no comparison can be made between the other cases where the delay has been condoned and the present case. He pointed out that the Petitioner defaulted in making the payment of the first instalment itself. Discretion was already exercised in his favour when the DDA further granted 180 days to make the payment of the second instalment. Even then the Petitioner did not pay the second instalment in time and there was a delay of 509 days in making the total payment of the second instalment. As regards the plot not being ready for allotment, reliance is placed on the judgment of this Court in *Bhupinder Kumar v. Delhi Development Authority* 71 (1998) DLT 461 to urge that the allottee was bound to honour the time limits specified in the allotment-cum-demand letter.

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

10. In terms of the policy of the DDA, in case of a delay beyond 180 days and upto 270 days (inclusive of the 180 days), the Principal Commissioner would have the powers to condone the delay. Where the delay was up to 360 days (inclusive of the 270 days) the case can be regularized by the Vice Chairman. This regularization would be done on payment of restoration charges and

penal interest @ 15% per annum. If the delay is beyond one year, the power to condone the delay lies with the Lieutenant Governor subject to the case being an “extremely deserving” one.

11. In the present case, the DDA was bound to consider whether the grounds adduced by the Petitioner for not being able to make the payment of instalments in time were genuine and whether the discretion could be exercised in his favour. Apart from stating that the Petitioner should be put to strict proof of the averments regarding his financial difficulties on account of the prolonged illness of his family members, the DDA is not in a position to assert that such claim by the Petitioner is false. The only factor that appears to have weighed with the DDA is that despite granting an extension of 180 days for making payment, the Petitioner did not pay the second instalment within the extended time. Therefore, the allotment was cancelled. This Court finds that the DDA really did not consider whether the delay in the present case should be condoned in terms of its policy. It is not as if the DDA has never condoned a delay of over 500 days in making payment of instalments. Some of the instances are reflected in the notings on files, copies of which have been placed as Annexure P-18 of the paper book. Certain other instances have been noticed by the Division Bench of this Court in its order dated 11th August 2008 in *Raj Kumar Sharma v. Delhi Development Authority*. In para 9 of the said order, it was observed as under:

“9. We have given our anxious consideration to the arguments made at the Bar and we have also gone through the records including various policies of the DDA regarding restoration and condonation of the delay. In the present case, the Appellant had

waited for the allotment for over 24 years and when he was allotted the demised flat in the year 2003, he was not in a financial position to make payment due to illness of his mother. The Appellant has cited in paragraph 17 of the writ petition cases of allottees Bimla Devi, Asha Bhushan, Suresh Humdraj Prithyani and Surinder Bhatia etc. in which cases DDA has condoned delay of over four years whereas in the case of the Appellant the delay in payment was only for a year. The Appellant has also furnished three specific examples where in the case of Satya Pal and Rita Pura delay of five years and six years respectively was regularized after approval of Lt. Governor. In the third case of one Manju Jain, the DDA had restored allotment after about 17 long years. Our attention was also drawn to the judgment of this Court in *Pran Nath Thukral v. Delhi Development Authority [Writ Petition (Civil) No. 19783 of 2005]* decided on 5th October 2005, wherein it is observed as under:

“Would it be just and fair to do so considering the fact that DDA has monopoly status over land in Delhi. These registrants have stood as honest citizens and have awaited a plot in an authorized colony. Many of their counterparts have chosen the softer route.

Those who have abided by law must be entitled to a compassionate consideration.

It is expected that the Vice Chairman and the Chairman, DDA would have a relook on the Rohini Residential Scheme and in particular in relation to the time-frame within which allottees have to make the necessary payments. While reconsidering the matter, it should be kept in mind that the executive has the power to condone the delay on charging reasonable interest.”

12. This Court is of the considered view that the Petitioner’s case also ought to have been considered by the DDA in light of its policy. Two members of his family expired during the period in question after prolonged illness for which considerable expenditure had been incurred. It cannot be said that this was not a genuine reason. Discretion should be exercised in his favour. In

view of the hardship explained by the Petitioner, and the delay in making the payments ought to have been condoned.

13. In view of the above conclusion, this Court does not propose to examine whether, on account of the plot in question not being ready for allotment, the demand for the third instalment ought to have been anyway postponed.

14. Consequently, the decision of the DDA cancelling the allotment of the plot in question in favour of the Petitioner is hereby set aside. The DDA will pass necessary orders restoring the allotment subject to the Petitioner completing all necessary formalities in accordance with the policy of the DDA within a period of eight weeks from today.

15. The writ petition is accordingly allowed, but in the facts and circumstances of the case, with no order as to costs.

S. MURALIDHAR, J

JANUARY 11, 2011
rk