

34.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 8995/2008

% ***Judgment Delivered on: 04.05.2011***

KULWANT J.SINGH

..... Petitioner

Through : Mr. R.K. Saini and Mr. Sitab Ali Chaudhary,
Adv.

versus

D.D.A.

..... Respondent

Through : Ms. Manisha Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. Rule. With the consent of counsel for the parties, writ petition is set down for final hearing and disposal.
2. Brief facts of the case are that the mother of the petitioner (Smt. Waryam Kaur) (since deceased) approached DDA under the Rohini Residential Scheme, 1981, for allotment of a MIG plot measuring 90 sq. mts. out of the two options available i.e. 60 sq. mts. and 90 sq. mts. DDA prepared a seniority list for the plots measuring 60 sq mts. and the plots measuring 90 sq. mts, separately. The mother of the petitioner was given priority no.3237 for a plot measuring 90 sq. mts. As per the petition, as Smt. Waryam Kaur, mother of the petitioner, was quite old and was not

keeping good health, she applied to the DDA on 20.12.2001 to transfer her registration in the name of her son, Sh. J.S. Chandhok. This request of the Smt. Waryam Kaur, mother of the petitioner, was acceded to by the DDA on 28.1.2002. On 11.6.2003, DDA held a draw of lots, in which priority number of MIG category plots upto 5370 was covered. The DDA, it seems, inadvertently, did not include the name of either Smt. Waryam Kaur, original registrant, or Sh.J.S. Chandhok, the transferee, (son of Smt. Waryam Kaur) in the draw, however, subsequently in the draw held on 5.1.2004, instead of Sh.J.S. Chandhok, the name of Smt. Waryam Kaur, mother of the petitioner, was included and she was allotted a plot measuring 60 sq. mts., being plot no.562, Pocket 3, Block A, Sector 29, Rohini, Delhi, and an allotment-cum-demand letter bearing block dates 19.4.2004 to 23.4.2004 was issued in her name.

3. Since Smt. Waryam Kaur, mother of the petitioner, had applied for a plot measuring 90 sq. mts., the allotment of plot measuring 60 sq. ft. was challenged by Sh. J.S. Chandhok by filing W.P.(C)No.2142/2004. Similar writ petitions were filed by other allottees on the same ground. All writ petitions were dismissed on 15.2.2005. The petitioner thereafter approached DDA with a request that petitioner is willing to accept allotment of a plot measuring 60 sq. mts., which request was declined and this led to filing of another petition being W.P.(C)No.12939/2005 on 8.8.2005. During the pendency of the said writ petition, Smt. Waryam Kaur,

mother of the petitioner, filed an application being CM No.11790/2005 bringing to the notice of the Court that DDA had raised an objection and had refused to allot the plot in favour of Sh. J.S. Chandhok on the ground that he had already obtained an allotment of a flat in his name. In order to avoid any technical objection Smt. Waryam Kaur requested that the registration be transferred back in her name. The said writ petition was disposed of 17.8.2006. Operative portion of the order dated 17.8.2006 reads as under:

"8. I am of the view, having regard to the counter affidavit filed and the subsequent development by way of an application having been lodged by Smt. Waryam Kaur that it would not be appropriate to grant the relief claimed in this petition, namely, a direction to hand over possession of the plot to the petitioner. However, in view of the fact that Smt. Waryam Kaur has sought for re-transfer of the registration in her name, it would be appropriate that the DDA consider the application in accordance with law and its policies and issue a speaking order. The same shall be done within six weeks and duly communicated to the petitioner and Smt. Waryam Kaur."

4. It is worthwhile to point out that all other identical writ petitions were allowed and a mandamus was issued to the DDA to allot 60 sq. mts. plot to the allottees.
5. In the meanwhile, DDA rejected the request of Smt. Waryam Kaur, mother of the petitioner, on 18.5.2006 for re-transfer of registration in her name, however, the communication was addressed to Sh.J.S. Chandhok and not to Smt.Waryam Kaur, the original allottee. On 18.10.2006 another letter was addressed by the DDA to Sh. J.S. Chandhok with a copy marked to Smt. Waryam Kaur, mother of the

petitioner, informing her that since her request for re-transfer of registration had been rejected, relevant documents be furnished within 15 days to facilitate refund of the deposit as per rules. In the meanwhile, on 25.8.2006 Smt. Waryam Kaur, mother of the petitioner, died and the legal heirs of Smt. Waryam Kaur decided that mutation be carried out in the name of her married daughter, Smt. Kulwant J. Singh, petitioner herein. On 16.5.2007 legal heir (petitioner herein) of Smt. Waryam Kaur, sought mutation and thereafter various reminders were issued for allotment, however, DDA asked the petitioner to submit FDR so that the case for refund could be processed. This has led to filing of the present petition.

6. Submissions of learned counsel for the petitioner are three-fold. Counsel submits that, firstly, although a request for transfer of the registration was made by Smt. Waryam Kaur, mother of the petitioner in favour of her son, but the DDA, despite accepting her request, did not act upon it, which is evident from the fact that a demand-cum-allotment letter was issued in the name of Smt. Waryam Kaur, and thus subsequently to raise an objection that the allotment cannot be made in the name of Sh. J. S. Chandhok, as he had already been allotted a flat, is of no relevance, as the DDA did not act on the request of late Smt. Waryam Kaur. Secondly, an allotment of a plot measuring 60 sq. mts. was made in favour of Smt. Waryam Kaur, while she had requested for a plot measuring 90 sq. mts. Writ petition filed by similarly situated persons was

dismissed and, thus, the DDA did not allot the plot measuring 60 sq. mts. to those registrants as they had failed to make the payment within the time allowed. This resulted in filing of writ petitions by similarly situated persons, which were allowed. The effect of which would be that in case Smt. Waryam Kaur, mother of the petitioner, had not made a request for transfer of registration in the name of her son, Sh. J.S. Chandhok, she would have been identically placed as those writ petitioners, who have been allotted plots. Thirdly, since, Smt. Waryam Kaur, mother of the petitioner, has paid the entire sale consideration there is no reason for DDA not to hand over possession of the plot to the legal heir of Smt. Waryam Kaur.

7. Learned counsel for the respondent DDA submits that Smt. Waryam Kaur, mother of the petitioner, did not make the payment within the time allowed, when the demand-cum-allotment letter was issued to her at the first instance with block dates 19.4.2004 to 23.4.2004. Counsel further submits that Smt. Waryam Kaur, mother of the petitioner, had sought a transfer in the name of his son, Sh. J.S. Chandhok, who was already holding a DDA flat and, thus, the plot could not have been transferred in his name, and thirdly, Smt. Waryam Kaur was no more a registrant with the DDA.
8. I have heard counsel for the parties and also perused the writ petition and the annexures filed thereto. The undisputed facts, which emerge, are that initially the mother of the petitioner had

applied for a plot of 90 sq. mtrs. under Rohini Residential Scheme and admittedly she asked for transfer of registration on account of her old age in favour of her son, Sh.J.S. Chandhok. Although DDA allowed the request of the petitioner for transfer of registration yet the DDA included the name of Smt. Waryam Kaur, mother of the petitioner, in the draw and a demand-cum-allotment letter was issued by the DDA in her favour for a 60 sq. mt. plot. At no point of time DDA took any steps for making this correction. Various writ petitions filed by similarly situated person, who had been allotted plots measuring 60 sq. mts. instead of 90 sq. mts., were dismissed. Again similarly situated persons including the Sh.J.S. Chandhok approached this Court as DDA refused to grant them plots even of 60 sq. mts. as payments were not made by them within the time allowed. Admittedly, all those writ petitions were allowed. The mother of the petitioner was also similarly placed except for the fact keeping in view her old age she requested DDA to transfer the allotment in favour of her son Sh. J.S. Chandhok. DDA agreed to the transfer but the allotment letter was made in the name of Smt.Waryam Kaur for reasons best known to them. Sh.J.S. Chandhok filed the writ petition in which an objection was taken by the DDA that the allotment cannot be made in the name of Sh. J.S. Chandhok as he was not eligible, but that would not mean that Smt.Waryam Kaur would lose her right in the allotment. In case the DDA was of the view that the allotment cannot be transferred,

Smt.Waryam Kaur would still be entitled to the plot. In effect in case writ petition had been filed by Smt.Waryam Kaur, the same would have been allowed. The DDA cannot be permitted to take a contrary stand. In case as per their records, the registration of Smt.Waryam Kaur was transferred in the name of Sh.J.S. Chandhok, the DDA should have included the name of Sh.J.S. Chandhok in the draw of lot and not the name of Smt.Waryam Kaur. Since the name of Smt.Waryam Kaur was included in the draw, it is to be presumed that the DDA did not act upon the request of Smt.Waryam Kaur for transfer.

9. In view of the objection raised by DDA in the writ petition filed by Sh. J.S. Chandhok that registration cannot be transferred in his name, Smt. Waryam Kaur, mother of the petitioner, during her life time, again requested DDA that registration be re-transferred in her name, incidentally by that point of time the allotment had already been made in her name. Thus, technically speaking in the records of DDA the allotment stood in the name of Smt. Waryam Kaur, mother of the petitioner. The request of re-transfer of registration was rejected by the DDA without any cogent reasons. In any case there is no loss to DDA as Smt. Waryam Kaur, mother of the petitioner, had made the payment as far back as on 8.9.2005, which is with the DDA till date. Upon demise of Smt. Waryam Kaur, mother of the petitioner, her daughter, petitioner herein, had applied for mutation in her name. Since the question of allotment in

favour of the allottees, to whom initially the plot had been declined by the DDA as they have not made the payment within the time allowed, has attained finality in favour of those registrants, the situation with regard to present petitioner is no different. Accordingly writ petition is allowed and rule is made absolute. DDA shall hand over possession of the plot in the draw held on 4.2.2009 and in terms of the order dated 28.1.2009 passed in these proceedings wherein it was directed that the name of the petitioner shall be included subject to final outcome of the present petition.

10. It is pointed out that there is a delay in making part payment of 444 days. The petitioner shall pay interest @ 9%, per annum, as directed in a batch of W.P.(C)No.12517/2005 and others decided on 19.9.2005. Let possession of the plot be handed over to the petitioner within four weeks on completion of all formalities and payment of interest by the petitioner within four weeks from receipt of the order.
11. Accordingly, petition stands disposed of in above terms.

G.S. SISTANI, J.

MAY 04, 2011
'msr'