

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

Decided on:28.11.2013

+ **LPA 743/2013, C.M. APPL. 15879/2013 to 15881/2013**

DELHI DEVELOPMENT AUTHORITY Appellant

versus

MAHINDER PAL SIKRI (DECEASED) THROUGH LEGAL
HEIR MRS. NIKKI CHAWLA Respondent

+ **LPA 298/2013, C.M. APPL. 7613/2013 TO 7614/2013**

DELHI DEVELOPMENT AUTHORITY Appellant

versus

SHRI AJAY KUMAR Respondent

+ **LPA 302/2013, C.M. APPL.7674/2013 TO 7675/2013**

DELHI DEVELOPMENT AUTHORITY Appellant

versus

SHRI GAURAV GANDHI Respondent

+ **LPA 341/2013, C.M. APPL.8106/2013 TO 8107/2013**

DELHI DEVELOPMENT AUTHORITY Appellant

versus

MR. RATTAN KUMAR Respondent

+ LPA 342/2013, C.M. APPL.8111/2013 & 8161/2013

DELHI DEVELOPMENT AUTHORITY Appellant

versus

SHRI PRABIR KUMAR BHATTACHRYA..... Respondent

+ **LPA 343/2013, C.M. APPL.8112/2013 TO 8113/2013**

DELHI DEVELOPMENT AUTHORITY Appellant

versus

MR. INDERJEET SINGH TOSARIA Respondent

+ **LPA 345/2013, C.M. APPL. 8116/2013 & 8117/2013**

DELHI DEVELOPMENT AUTHORITY Appellant

versus

SHRI N.K. PURI Respondent

- + **LPA 346/2013, C.M. APPL.8119/2013 TO 8120/2013**
DELHI DEVELOPMENT AUTHORITY Appellant
versus
SMT. RAMESHWARI Respondent

+ **LPA 347/2013, C.M. APPL.8123/2013 & 8124/2013**
DELHI DEVELOPMENT AUTHORITY Appellant
versus
MR. DARSHAN SINGH BAGGA Respondent

+ **LPA 350/2013, C.M. APPL.8134/2013 TO 8135/2013**
DELHI DEVELOPMENT AUTHORITY Appellant
versus
MR. ANAND SWAROOP GOYAL Respondent

+ **LPA 369/2013, C.M. APPL. 8617/2013 TO 8619/2013**
DELHI DEVELOPMENT AUTHORITY Appellant
versus
SHRI SIYA RAM Respondent

+ **LPA 464/2013, C.M. APPL.10030/2013 TO 10031/2013**
DELHI DEVELOPMENT AUTHORITY Appellant
versus
SHRI ANURAG SAHAI Respondent

Through: Sh. Sanjay Kumar Pathak with Ms. K. Kaumudi Kiran Pathak and Sh. Praneet Singh, Advocates (for appellants in LPA 743/2013, LPA 298/2013, LPA 302/2013 & LPA 342/2013).

Ms. Shobhana Takiar, Advocate, for appellants in
LPA 341/2013, LPA 343/2013, LPA 346/2013,
LPA 347/2013, LPA 350/2013.

Sh. N.N. Aggarwal with Ms. Jaya Goyal, Ms. Manpreet Kaur, Sh. Rohit Gandhi and Sh. Varun Garg, Advocates, for appellants in LPA 345/2013, LPA 369/2013 and LPA 464/2013.

Sh. Kirti Uppal, Sr. Advocate with Sh. R.K. Sahni,

Ms. Seema Salwan and Sh. Anshumaan Sahni,
Advocates, for respondents in LPA 743/2013, LPA
298/2013, LPA 302/2013, LPA 341/2013, LPA
342/2013, LPA 343/2013, LPA 345/2013, LPA
346/2013, LPA 347/2013, LPA 350/2013, LPA
369/2013 & LPA 464/2013

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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C.M. APPL. 15880/2013 IN LPA 743/2013 (for condonation of delay)

C.M. APPL. 7613/2013 IN LPA 298/2013 (for condonation of delay)

C.M. APPL. 7674/2013 IN LPA 302/2013 (for condonation of delay)

C.M. APPL. 8106/2013 IN LPA 341/2013 (for condonation of delay)

C.M. APPL. 8111/2013 IN LPA 342/2013 (for condonation of delay)

C.M. APPL. 8112/2013 IN LPA 343/2013 (for condonation of delay)

C.M. APPL. 8117/2013 IN LPA 345/2013 (for condonation of delay)

C.M. APPL. 8119/2013 IN LPA 346/2013 (for condonation of delay)

C.M. APPL. 8123/2013 IN LPA 347/2013 (for condonation of delay)

C.M. APPL. 8134/2013 IN LPA 350/2013 (for condonation of delay)

C.M. APPL. 8618/2013 IN LPA 369/2013 (for condonation of delay)

C.M. APPL. 10031/2013 IN LPA 464/2013 (for condonation of delay)

For the reasons mentioned, the applications are allowed.

C.M. APPL. 15879/2013 IN LPA 743/2013 (for exemption)

C.M. APPL. 8619/2013 IN LPA 369/2013 (for exemption)

Allowed, subject to all just exceptions.

LPA 743/2013, C.M. APPL.15881/2013

LPA 298/2013, C.M. APPL. 7614/2013

LPA 302/2013, C.M. APPL. 7675/2013

LPA 341/2013, C.M. APPL. 8107/2013

LPA 342/2013, C.M. APPL. 8161/2013

LPA 343/2013, C.M. APPL. 8113/2013

LPA 345/2013, C.M. APPL. 8117/2013

LPA 346/2013, C.M. APPL. 8120/2013

LPA 347/2013, C.M. APPL. 8124/2013

LPA 350/2013, C.M. APPL. 8135/2013

LPA 369/2013, C.M. APPL. 8617/2013

LPA 464/2013, C.M. APPL.10030/2013

1. This judgment and order will dispose off twelve appeals by the Delhi Development Authority (hereinafter “DDA”) against the orders of learned Single Judges of this Court. This appeal concerns *DDA v. Mahinder Pal Sikri (Deceased), through Legal Heirs Mrs. Nikki Chawla*, LPA 743/2013; *DDA v. Shri Ajay Kumar*, LPA 298/2013; *DDA v. Shri Gaurav Gandhi*, LPA 302/2013; *DDA v. Rattan Kumar*, LPA 341/2013; *DDA v. Shri Prabir Kumar Bhattacharya*, LPA

342/2013; *DDA v. Inderjeet Singh Tosaria*, LPA No. 343/2013; *DDA v. N.K. Puri*, LPA 345/2013; *DDA v. Rameshwari*, LPA 346/2013; *DDA v. Darshan Singh Bagga*, LPA 347/2013; *DDA v. Anand Swaroop Goyal*, LPA 350/2013; *DDA v. Siya Ram*, LPA 369/2013 and *DDA v. Shri Anurag Sahai*, LPA 464/2013.

2. The facts giving rise to these orders are that the writ petitioners (the Respondents in the present appeals, but referred to collectively as the “*writ petitioners*”) before the learned Single Judges had registered for allotment of MIG flats under the New Pattern Registration Scheme, 1979 (“NPRS”). Each writ petitioner was allotted a flat by a demand-cum-allotment letter issued by the DDA, but in each case, the letter was returned to the DDA undelivered. Subsequently, each writ petitioner became aware of the allotment, either at a public hearing in the office of the DDA or through the internet, and requested the DDA to allot the flat in their favour. The DDA, however, rejected such applications on the ground that since the letter was sent to the residential address- but not received by the allottee-, and in each case, a public notice was released by the DDA, the cancellation of the allotment was legal and not liable to be interfered with.

3. To deal with these matters, the facts involved in LPA 743/2013, *Delhi Development Authority v. Mahinder Pal Sikri*, are narrated below as an example of the common facts before the Court today. In that case, Mr. Sikri, by application No. 096635 dated 29.09.1979, and was assigned a priority number 26733 against Registration No. 43751. On maturity of his priority, Mr. Sikri was allotted an MIG Flat in Jahangirpuri, Delhi through the draw of lots held on 27.09.1999. The

demand-cum-allotment letter dated 30.03.2000 was sent to Mr. Sikri's postal address mentioned by him in the registration application ("*Mahinder Pal Sikri, A/72, Kirti Nagar, Delhi*"), but the same came back undelivered. On 19.10.2002, the DDA also gave a press notice subsequently in leading newspapers wherein the successful applicants of various draws who had received their demand-cum-allotment letters were requested to collect them from the office of the DDA within 15 days of the publication of the above notice. Mr. Sikri, however, did not collect his allotment letter at this point, and the allotment of the flat was cancelled by the DDA.

4. Subsequently, Mr. Sikri is stated to have attended a public hearing in the office of the DDA, and found out that a flat had indeed been allotted to him. It is claimed that on discovering that a flat had been allotted on the maturity of the scheme in 1999, a communication to the DDA was issued on 02.06.2009 requesting that a fresh demand-cum-allotment letter be issued. Subsequently, one Mr. Sanjay Chawla, appeared before the DDA on various occasions (19.03.2010, 30.04.2010, 07.05.2010, and 04.06.2010), stated that Mr. Sikri has deceased and that he was Mr. Sikri's son-in-law and thus representing his claim to the flat. The DDA claims here that although it was informed of Mr. Sikri's death on 26.03.2010, no steps were taken to bring on record the legal heirs (Mrs. Nikki Chawla, his daughter) till 18.05.2010. Subsequently, given that the DDA did not issue a fresh letter due to various reasons, which need not be gone into at this stage, a writ petition was filed in this Court.

5. The learned Single Judge, through an order dated 30.10.2012

allowed the writ petition, and subsequently, by an order dated 12.04.2013 in pursuance of an application filed by Mrs. Chawla, modified the earlier order to the extent that the DDA be directed to allot the alternative flat to Mrs. Chalwa at the cost of February, 2010, when the writ was filed, as opposed to the circular dated 13.10.2011.

6. The reasoning of the learned Single Judge relied on two crucial aspects: *first*, it was noted that Mr. Sikri had in his application form indicated not one but two addresses, i.e. his residential (A/72, Kirti Nagar, Delhi) and occupational (Krishna Label Company, BB-188, Gali No. 9, New Rohtak Road (Industrial Area, Anand Parbat), New Delhi 110005) address. The original file of the DDA concerning the allotment also clearly recorded this address. Accordingly, and secondly, the learned Single Judge relied on the decision of this Court in *Hirdayapal Singh v. DDA*, 2007 (94) DRJ 741 for the proposition that the DDA must send allotment letters to all available addresses on the file, and having failed to do so, the cancellation of the allotment was illegal.

7. In all other Writ Petitions as well, the questions of delay and laches, as also of whether an obligation lay to send letters not only to one, but to all available addresses on file, were discussed in the impugned judgments.

8. In the present proceedings, learned counsel for the DDA impugns these orders on various grounds. It was argued that the impugned orders fail to recognize that the writ petitions were barred by delay and laches, as the petitioners slept over their rights for a period of 10 years approximately in each case. In such a case, it was

argued that it is not open for them to approach the Court at this late hour, after years of negligence in pursuing any legal remedies. Further, learned counsel contended that the learned Single Judges failed to give adequate weight to the Press Notice issued by the DDA, which would, if the reasoning of the learned Single Judge is followed, come to nought. For this, learned counsel relied on the decision of this Court in *Delhi Development Authority v. Ms. Prem Bhatnagar*, MANU/DE/0772/2012. Learned counsel also argued that there is no legal or contractual obligation to serve the allotment letters at all addresses available on the file of the DDA, and the learned Single Judge's reliance on the decision in *Hirdayapal Singh (supra)* was incorrect as the facts of that case are at variance with the present facts. Finally, learned counsel placed reliance on various decisions of this Court (*Lavneet Kaur Bhatia v. DDA*, LPA 720/2012, decided on 20.02.2013; *Satnam Dass Narang v. DDA*, LPA 16/2013, decided on 08.01.2013, and various other decisions of the same import) and the Supreme Court (*Banda Development Authority, Banda v. Moti Lal Agarwal and Ors.*, (2011) 5 SCC 394; *M/s. Madan and Co v. Wazir Jaivir Chand*, 1988 (2) SCALE 1408) to argue that in such cases where the letter of allotment is returned undelivered at the allottee's address, no further action is necessary.

9. As regards the other matters involved in this appeal, two facts are important in the context of the present appeals, and arguments advanced by the learned counsel for the DDA, i.e. what addresses were the allotment-cum-demand letters sent to, and what is the time period within which this Court was approached under Article 226 of

the Constitution.

10. On the question of time: in LPA 298/2013, the letter was issued on 15.01.2004, the petitioner came to know of the allotment/subsequent cancellation in May, 2009, the date of public notice by the DDA was 19.10.2002, and the writ petition was filed on 02.02.2010; in LPA 302/2013, these events, in that order, occurred on 27.02.1992, 17.07.2010, 19.10.2002, and 15.12.2011; in LPA 341/2013, on 11.08.2000, December, 2010, 19.10.2002 and 29.09.2011; in LPA 342/2013, on 25.06.2002, last week of July, 2010, 19.10.2002 and 22.12.2010; in LPA 343/2013, in sometime in 1999, 14.03.2011, 19.10.2002 and 14.07.2011; in LPA 345/2013, 19.09.2001, end of January, 2010, 19.10.2002 and 16.03.2010; in LPA 346/2013, on 30.03.2000, August, 2009, 19.10.2002 and 22.02.2010; in LPA 347/2013, in 1998, May 2011, 19.10.2002 and August, 2011; in LPA 350/2013, on 08.10.1999, October, 2010, 19.10.2002 and 29.09.2011; in LPA 369/2013, on 27.02.2004, 21.05.2009, 19.10.2002 and 05.03.2010; in LPA 464/2013, on 13.04.2000, end of June, 2011, 20.02.2001 and 28.08.2011. Thus, the maximum time period between the time the petitioner discovered that the letter had been issued, i.e. the fact came within his knowledge, and the filing of the writ petition was in LPA 302/2013 (a period of 1 year, and 5 months), whilst in all other cases the matter was brought to this Court by way of a writ petition in well under a year.

11. On the question of addresses: in LPA 298/2013, though there was only one address filled in the application form, i.e. the residential address, the occupational address was given as on the file of the DDA

through the income certificate available on record; in LPA 302/2013, two addresses were available; in LPA 341/2013, two addresses were available; in LPA 342/2013, two addresses were available (which the DDA admits, though it claims that the occupational address “*seems to be the result of interpolation and seems to be written on same later stage*”, however offering no proof of this alleged fact despite the fact that this is recorded on the DDA’s own file); in LPA 343/2013, two addresses were available (which the DDA claims to be incomplete, but it never even attempted to send the allotment-cum-demand letter to the second address); LPA 345/2013, two addresses were available (a residential and occupational); in LPA 346/2013, though only one address was available, the DDA sent the letter to the *wrong* address and did not check, when the letter came back undelivered, as to whether the letter was in fact sent to the correct address; in LPA 347/2013, two addresses were available (though it is claimed that the addresses again are incomplete, though no attempt was even made to send the letter to the second allegedly incomplete address); in LPA 350.2013, two addresses were available (though again the plea of an incomplete address is taken); in LPA 369/2013, though only one address was available, the DDA sent the letter to the *wrong* address and did not check, when the letter came back undelivered, as to whether the letter was in fact sent to the correct address; in LPA 464/2013, two addresses were available (though the DDA claims in the appeal that only one address was available, the record, and judgment of the learned Single Judge clearly records at paragraphs 10 and 12, and the DDA admitted this fact before the learned Single

Judge, that in fact, two addresses, one residential and one occupational, were available on record.)

12. On the question of delay and laches, it is well-established, as the Supreme Court noted in *Shankara Co-op Housing Society Ltd v. M. Prabhakar & Ors*, AIR 2011 SC 2161 that:

“53.....(1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

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13. Considering the facts of the present cases, it is claimed, and the DDA does not contest, that all writ petitions, with one exception, were filed in well under a year from the date of knowledge of the allotment letter, and even in LPA 302/2013, the period was 1 year and 5 months.

Such periods do not amount to such inordinate delay as to bar the petitioner's legal remedy under Article 226. In fact, all the applicants had applied under the NPRS, 1979, and all allotment-cum-demand letters were issued at least after a period of one decade (as in LPA 302/2013), or as is the norm, after approximately two decades in the other matters presently in appeal. Given such a delay in processing the applications, and subsequently, either sending the letter to the wrong address, or not to all available addresses, the equities do not demand that the petitioner's valuable rights to the allotted plots can be defeated, especially when the time lag between the knowledge of allotment and the filing of the writ petitions is not so long as to state that the petitioners were being indolent. Rather, each petitioner discovered the fact of the allotment letter through his/her own accord, and subsequently, within a reasonable period, approached this Court for relief under Article 226. In such cases, this Court is of the opinion that its discretion to bar the claim on account of delay or laches, i.e. to say that the petitioners' were negligent in pursuing their legal remedies, is not merited, and thus, the orders of the learned Single Judges on this aspect are not liable to be interfered with. This court is conscious of the fact that given the span of over two decades, - sometimes even more than three decades for an application to "mature" into an allotment, it would be unreasonable for the Court to impute negligence or deliberate inaction, since the registrants cannot be expected to have a constant or permanent address. These registrants were not possessing flats or residential accommodation, which impelled them to apply DDA; it is too much to expect them to live

more than 20-30 years in one place.

14. Secondly, the reliance upon the decision in *Prem Bhatnagar* (*supra*) does not assist the DDA's contentions in this regard either, as in that case, the learned Single Judge held, and the Division Bench agreed that:

“7. The learned Single Judge has in the judgment impugned in this petition, in the facts and circumstances of the case, accepted the plea of the respondent that since the occupational address even though not filled in by the respondent in the application form was available in the documents and since the allotment was being made long after the application, attempt should have been made to intimate the respondent at the occupational address available in the documents filed along with the application.”

15. Moreover, the Division Bench held that:

“The respondent, who had waited for the flat for so long, ought not to be deprived thereof for her default in intimating the change of address. The exercise of discretion by the learned Single Judge is not interfereable in appeal unless found to be perverse. No perversity is found in the present case. On the contrary with the respondent expressing willingness to pay the cost of the flat of the year 2011, the interest of the appellant DDA stands sufficiently protected.”

16. Indeed, this principle applies squarely to these cases as well, and thus, the decisions of the learned Single Judges cannot be faulted on this ground. In fact, the decision in *Hirdayapal Singh* (*supra*) is clear on this point, and applies squarely to the facts and circumstances of the present appeals:

“5. The short question here is whether the DDA was justified in cancelling the allotment in the facts and circumstances of the case. The records of the case with the

DDA have been perused. It is clear that DDA made a note of the change of address intimated to it by the petitioner's letter dated 4.11.1993. The DDA, therefore, took note not only of the present changed address of the petitioner as indicated in that letter but also the permanent address indicated therein. Apart from stating that it was under no obligation to send such allotment letter to the permanent address, there is no other explanation given by the DDA as to why it could not have sent the allotment letter to the permanent address as well. To the Court it appears that the intimation of allotment ought to have been set not only to the present address available on file but, if the allotment letter was returned undelivered, to the permanent address as well. From the point of view of the DDA this would have not only cost nothing to the DDA but it would have ensured that the DDA has made every possible effort to reach the allotment letter to the petitioner. From the petitioner's perspective, despite having intimated to the DDA his permanent residence, its failure to send the allotment letter there, meant that it resulted in the cancellation of his allotment. The loss to the petitioner of an allotment, for which he had been waiting since 1979, would indeed be far greater in such a situation. It must be realised that as a condition of eligibility for allotment of a flat under the NPRS 1979 an applicant should not own any other permanent residence. It is not difficult to imagine that persons who do not own premises in this city are quite likely to rent a residence and also periodically shift such residence taken on rent. Therefore, while it is certainly the obligation of such applicant to inform the DDA of the change of address, there is also a corresponding obligation of the DDA to attempt to send the allotment letter to every possible address of the applicant that has been intimated to it and is available on its records.

6. *On the facts of the present case the DDA certainly did not send the allotment letter to the addresses of the applicant/ petitioner available with it on its records. Its failure to send the allotment letter to the petitioner's*

permanent address, in the facts and circumstances of the case, cannot be justified. Accordingly the consequential cancellation of the allotment also cannot be sustained in law. It is accordingly held that the DDA's cancellation of the petitioners allotment was, in the circumstances, not justified in law and that the petitioner would be entitled to all consequential reliefs flowing from the wrongful cancellation of this allotment.”

17. The DDA admits that the occupational address of all the writ petitioners was available on its file (with two exceptions, i.e. LPA 346/2013 and 369/2013). This being the case, it is clear that an obligation lay on the DDA to attempt to inform the writ petitioners’ at *all* available addresses, rather than substitute this obligation for a press notice. Indeed, neither the decisions of the Supreme Court in *Wazir Chand* (supra) and *Banda Development Authority, Banda* (supra) nor the various judgments of this Court relied upon by the DDA displace this principle, on which the learned Single Judge rightly based his decision. Indeed, as regards the two appeals mentioned above wherein there was only one address, it is admitted by the DDA that the letters were sent to the wrong addresses through mistakes of the DDA’s clerks, and crucially, for no fault of the writ petitioners. After those letters came back undelivered, the DDA did not, at any point, try to go into the matter to determine whether indeed the letters were sent to the wrong addresses. In such a case, it does not lie in the DDA’s mouth to claim that the writ petitioners’ are liable to suffer, and their allotments be cancelled, on account of a mistake committed by the DDA itself.

18. Equally, the holdings in the various decisions on the appeal present that that the payment for the plot will be made as per the price

on the date of filing the writ, and not as per the Circular dated 13.10.2011, cannot be faulted, given the established principle to the effect that the clock in terms of the price to be paid stops at the time of approaching the Court for the appropriate remedy, and the matter at that point rests with the Court and not in the hands of the writ petitioners.

19. Accordingly, for the above reasons, we find no reason to interfere with the impugned judgments and orders. All the appeals are accordingly dismissed along with pending applications, but with no order as to costs.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

NOVEMBER 28, 2013